



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 March 2013

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"I" ITEM NOTE

from:	Council Legal Service
to:	Permanent Representatives' Committee (part 2)
Subject:	Case T-331/11 (Besselink v. Council of the European Union) before the General Court - Production of a Council document before the General Court

1. By information note 13660/11 the Council Legal Service informed Coreper about an application to the General Court in Case T-331/11 by which Mr Leonard Besselink brought an action for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 31 March 2011, to refuse full public access to document 9689/10 (RESTREINT UE).
2. Document 9689/10 comprises a note from the Presidency to delegations containing a draft Council Decision authorising the Commission to negotiate the Accession Agreement of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR).
3. By order for measures of inquiry of 19 March 2013, notified to the Council on 20 March 2013, the General Court ordered the Council to produce, within a week from notification of the order, Document 9689/10. The order states that Document 9689/10 is not to be communicated to the other parties, i.e. the applicant and the Commission.

4. In accordance with Article 6(2) of the Council Decision of 15 September 2006 adopting the Council's Rules of Procedure, the Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions on public access to documents.
5. It is noted that this document is also classified RESTREINT UE. The Council's security rules make no explicit provision for the provision of classified documents to the European Court of Justice. The Council has, however, previously provided such documents to the Court where they are requested in cases related to public access to documents¹. The authorisation of Coreper is thus also sought to provide this document to the Court on the basis of suitable arrangements regarding its handling while maintaining its status.
6. Coreper is therefore requested to authorise the production of the document in legal proceedings.

¹ Document 12952/11 concerning Case T-529/09 (Sophie in 't Veld v. Council of the European Union).