



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 May 2013**

**8960/13**

**INF 69  
API 40**

**NOTE**

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from : General Secretariat of the Council  
to : Working Party on Information

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Subject : Public access to documents  
- Confirmatory application made by Mr Giulio MARINI (No 09/c/01/13)

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 6 April 2013 and registered on 6 April 2013 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 24 April 2013 ([Annex 2](#))
- confirmatory application dated 25 April 2013 and registered on the same day ([Annex 3](#))

**[E-mail message sent on 6 April 2013 - 10:07]**

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in EN

Title/Gender: Mr - Mr

Family Name: Marini

First Name: Giulio

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobilephone:

Fax:

Requested document(s): 7427/13 Council Proposal Directive 2005/36 dated 22/03/2013

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French

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**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

Directorate-General F  
Communication  
Transparency

- Access to Documents/  
Legislative transparency

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E-MAIL:

[access@consilium.europa.eu](mailto:access@consilium.europa.eu)

Brussels, 24 April 2013

**Mr Giulio Marini**

e-mail: **DELETED**

**Ref. 13/0559-mj/mf**

Dear Mr Marini,

We registered your request of 6 April 2013 for access to document 7427/13 on 8 April 2013. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>1</sup> (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure<sup>2</sup> and has come to the following conclusion:

Document **7427/13** is a note of 22 March 2013 from Presidency/General Secretariat of the Council to the Working Party on Establishment and Services on a *proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System*.

This proposal was submitted by the European Commission to the European Parliament and the Council on 19 December 2011. Since that date, it was examined by the Working Party on Establishment and Services several times. The negotiations with the European Parliament are ongoing.

No decision has yet been taken on the matter.

<sup>1</sup> Official Journal L 145, 31.5.2001, p. 43.

<sup>2</sup> Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

You may have access to the content of the document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified.

The General Secretariat considers this to be a good compromise between protection of the decision-making process of the Council, on the one hand, and public interest in disclosure, on the other. This allows you to be informed of the arguments raised during discussion concerning an issue on which the institution has not yet taken a decision.

Nevertheless, the General Secretariat considers that protection of the institution's decision-making process outweighs possible public interest in identifying the delegations whose positions are set out in the document. In the framework of preliminary discussions and negotiations within the Council's preparatory bodies, it is essential that delegations are able to express their views freely so that the Council can find compromise solutions and achieve progress on delicate questions.

Disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. The General Secretariat is of the opinion that disclosure of these parts of the document could seriously undermine the Council's decision-making process. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the Council's decision-making process), the General Secretariat is at present unable to grant you access to these parts of the document.

Nevertheless, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure, this document and any other legislative document relating to this directive shall be made available to the public in full after the final adoption of the act, unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of the Regulation.

#### Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply<sup>1</sup>.

Yours sincerely,  
For the General Secretariat

Jakob Thomsen

Enclosure

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<sup>1</sup> Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application - sent by e-mail on 25 April 2013 - 15:08]

**Subject : Confirmatory Application**

The Application is attached.

Giulio Marini (**DELETED**)

**DELETED**

**DELETED**

**DELETED**, 25/04/2013.

Directorate General-F  
Communication Transparency.  
Mr. Jakob Thomsen.

**Subject :Council Partially granted access to document 7427/13.**

Pursuant to Article 7(2) of the Regulation, I submit a confirmatory application requesting the Council to reconsider the position with regards to the non-disclosure of identification concerning the delegations positions

I agree on the Council view that the right of delegations to freely express their position in negotiations overrides the interest of stakeholders to have full access to documents.

However, I argue it could be slightly different for those Member States that have already transposed the Directive 2005/36 to notaries.

Their position is expected to be in line with the transposition that has taken place in their Member States, and their margin of manoeuvre in negotiations – in principle - should be limited only to support inclusion.

Otherwise, such Member States representatives do not truly represent their respective Member States positions ; they should not hide facts, but set them out as they are.

The view I express is that **the right** for the public to be informed on Coreper Members supporting a position that is opposite to **the rules actually in force** in their respective Member States **overrides the Public interest not to disclose their identity.**

It is in fact of public interest to check if they had the authority to do so , as Members providing incomplete information concerning the actual application of the Directive in their respective Member States could seriously affect negotiations.

Below two specific cases I have a particular interest in ,should their respective delegations support the exclusion of notaries.

**France:**

1. Ministry of Justice expressly stated that “France should accept foreign candidates” ( min 11-15).

<http://www.justice.gouv.fr/la-garde-des-sceaux-10016/christiane-taubira-au-congres-des-notaires-24599.html>

2. Ministry issued the Decree of admission of a foreign candidate to the profession of notary in France ( see next page).

[http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=C2EF961BE827361A0285F0F5FC7BC2CE.tpdjo07v\\_3?cidTexte=JORFTEXT000026194711&idArticle=JORFARTI000026194712&dateTexte=20120717&categorieLien=cid#JORFARTI000026194712](http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=C2EF961BE827361A0285F0F5FC7BC2CE.tpdjo07v_3?cidTexte=JORFTEXT000026194711&idArticle=JORFARTI000026194712&dateTexte=20120717&categorieLien=cid#JORFARTI000026194712)

**Italy:**

a case concerning the recognition of the Scottish qualification of Notary Public in France has been transmitted to the Italian Solvit Centre by the IMI System , after an advice in that direction obtained by YourEurope service.

I have an interested in viewing the position expressed by Italian Members at Coreper, as Solvit Italy has a very strict relation with the Italian Government.

Should also their position be against the inclusion, I argue it could be more appropriate to have my case managed by another Solvit Centre, possibly the one where I have been granted my qualification.

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Thus , I ask in light of the view I have expressed the permission of identifying the delegations position of those Member States that have transposed the Directive 2005/36 , plus the Italian position.

No access to identification of other Member States positions is requested by virtue of this Confirmatory Application , and I permit the Council to make it fully public in the Council's Register of documents.

Respectfully Yours.

Giulio Marini