



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 May 2013

9351/13

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API 48**

NOTE

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

Subject : Public access to documents
- Confirmatory application made by Mr David HALLONSTEN (No 11/c/01/13)

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 9 April 2013 and registered on the same day ([Annex 1](#))
- reply from the General Secretariat of the Council dated 7 May 2013 ([Annex 2](#))
- confirmatory application dated 7 May 2013 and registered on the same day ([Annex 3](#))

[E-mail message sent on 9 April 2013 - 12:47]

First Name: David

Family Name: Hallonsten

Email: **DELETED**

Residence Country: **DELETED**

Gender: M

Age: **DELETED**

Postal Address:

Street:

Town:

PostCode:

Country:

Initial question:

Please send a copy of the document 8384/03.



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

*- Access to Documents/
Legislative transparency*

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Brussels, 7 May 2013

Mr David Hallonsten

e-mail: **DELETED**

Ref. 13/0575-mj/jj

Dear Mr Hallonsten,

We have registered your request of 9 April 2013 for access to document 8384/03. 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 documents¹ (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure². On 30 April 2013, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

¹ Official Journal L 145, 31.5.2001, p. 43.

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

Document **8384/03** is a contribution of the Council Legal Service relating to the Proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities. The contribution analyses several aspects related to the possibility of modifying the parameters that determine pension entitlement. The document consequently contains legal advice, except for its page 1.

Although the decision-making process, to which the legal opinion in questions refers, is finalised, the legal arguments exposed therein are broad in scope and of direct relevance for the current on-going negotiation within the Council on the same subject-matter. These on-going negotiations are particularly sensitive and complex. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence risk compromising the capacity of the institutions to reach an agreement on the current dossier and thus undermine the decision-making process pursuant to Article 4(3), second sub-paragraph of the Regulation.

The legal advice covered by this opinion deals with an issue which is highly contentious and likely to be subject to litigation before the courts. Moreover the advice contains critical elements of relevance for the current on-going negotiations. The legal advice is therefore particularly sensitive.

Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of the Regulation. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of the institution's decision-making process and the protection of legal advice under the Regulation, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document. However, in accordance with Article 4(6) of the Regulation, you may have access to page 1.

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 reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

¹ 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 7 May 2013 - 12:14]

Subject: Re: Ref. 13/0575-mj/jj

Thanks for your reply. I hereby submit a confirmatory application under Article 7(2), asking the Council to reconsider this position. There is no need to keep this confirmatory application confidential.

Thanks in advance.