



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 July 2013

11718/13

**JUR 338
API 58**

INFORMATION NOTE

from:	Council Legal Service
to:	Permanent Representatives' Committee (part 2)
Subject:	Case T-303/13 before the General Court - Samuli Miettinen v. Council of the European Union

1. By an application registered with the General Court on 6 June 2013 and notified to the Council on 12 June 2013, Mr Samuli Miettinen has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 21 March 2013, to refuse full public access to document 15309/12.
2. By the latter decision, the Council refused, pursuant to the second indent of Article 4(2) (protection of the public interest as regards legal advice) and to the first sub-paragraph of Article 4(3) (protection of the Council's decision-making process) of Regulation (EC) N° 1049/2001¹, full public access to document 15309/12, which comprises an opinion of the Council Legal Service regarding the legal basis for the Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law.

¹ Regulation (EC) N° 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

3. At the same time, the Council granted partial access to those parts of the requested document (i.e. paragraphs 1-4) which were not covered by any exceptions under Regulation (EC) No 1049/2001.
4. The applicant invokes the following grounds in support of his claim for annulment:
- a) misapplication of Article 4(2) second indent of Regulation 1049/2001 insofar as the Council allegedly failed to explain how the disclosure of the requested document would prejudice the Legal Service's ability to defend it in future legal proceedings. Moreover, the applicant invokes that the Council failed to show that the requested opinion is particularly sensitive or of a particularly wide scope, and that its theory of harm is factually and legally unfounded since the content of the advice contained in the requested document was public knowledge at the time the contested decision was taken;
 - b) misapplication of Article 4(3) first subparagraph of Regulation 1049/2001 insofar as the Council allegedly failed to establish that disclosure of the requested document would undermine the legislative process for the adoption of the proposed directive;
 - c) misapplication of the overriding public interest test contained in Articles 4(2) and 4(3) of Regulation 1049/2001 as allegedly the Council was considering only the perceived risks to its decision-making process associated to disclosure, while failing to consider the positive effects of such disclosure, *inter alia*, for the legitimacy of the decision-making process;
 - d) breach of the obligation to provide a sufficient statement of reasons.
4. According to Article 46(1) of the Rules of Procedure of the General Court, the Council must lodge a statement of defence within two months of the date on which the application was notified to it. The Director-General of the Council Legal Service has appointed Ms Kezia PELLINGHELLI and Mr Eric SITBON, members of the Legal Service, as the Council's agents in this case.