



Council of the  
European Union

Brussels, 10 October 2014  
(OR. en)

13327/14

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API 107

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 27/c/01/14

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 27 June 2014, registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 9 September 2014 ([Annex 2](#));
- confirmatory application dated 9 September 2014 and registered the same day ([Annex 3](#)).

**[E-mail message sent to access@consilium.europa.eu using the electronic form available in the Register application]**

**From:** Miettinen Samuli

**Sent:** Friday, June 27, 2014 12:00

**To:** SECRETARIAT DGF Access

**Subject:** Electronic Request for Access

Title/Gender: Mr

Family Name: Miettinen

First Name: Samuli

E-Mail: samuli.miettinen@helsinki.fi

Occupation: researcher

On behalf of: Samuli Miettinen

Address: Faculty of Law

P.O.Box 4

Telephone: **DELETED**

Mobile: **DELETED** Fax:

Requested document(s): Dear sir or madam,

I am writing to request access to documents in a number of cases in which the Member States and the Council have appeared before the Court of Justice. To the best of my knowledge they are not found in the registry.

I am requesting access to the full submissions made to the Court of Justice by the Council as well as the intervening Member States in ECJ cases C-91/05, C-176/03 and C-440/05. I understand these have already been released in 2010 pursuant to confirmatory application No 20/c/01/10, but have not found them in the registry of documents.

I would also like access to the submissions of the Member States and the Council in cases C-137/12 and C-43/12.

Any assistance in finding these documents would be greatly appreciated.

Sincerely yours,

Samuli Miettinen



**Council of the European Union**

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

**Mr Samuli Miettinen**

**Email:**

**samuli.miettinen@helsinki.fi**

Brussels, 9 September 2014

**Ref. 14/1166-ADD 4-mi/ws**

Dear Mr Miettinen,

Further to your request for access of 27 June 2014 to "*the full submissions made to the Court of Justice by the Council as well as the intervening Member States in ECJ cases C-91/05, C-176/03 and C-440/05 and to the submissions of the Member States and the Council in cases C-137/12 and C-43/12*" and our letters dated 29 July, 11 August 2014 and 25 August, the General Secretariat would like to indicate as follows:

The General Secretariat of the Council has finalised the examination of 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:

Pursuant to Article 4(4) of the Regulation, the General Secretariat has consulted France relating to the submission made by this Member State to the Court of Justice in the ECJ case C-137/12. On the basis of the reply received, the General Secretariat has come to the conclusion that revealing to the public the detailed arguments set out in the submission in question would undermine the protection of court proceedings and legal advice. Indeed, the observations made in the submission are still pertinent in the context of future cases before

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<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.

the Court and far from all legal questions raised have been settled by the Court; the proper conduct of such proceedings would be adversely affected if these arguments, which may need to be developed again, were to be made public now. Access to the document thus has to be refused pursuant to Article 4(2), second indent, of the Regulation.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under Regulation (EC) No. 1049/2001, 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 interest so as to justify disclosure of the document.

The General Secretariat has also looked into the possibility of disclosing parts of the document pursuant to Article 4(6) of the Regulation. However, as the information contained in the document forms an inseparable whole, partial access cannot be granted.

#### 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>3</sup>.

Yours sincerely,

For the General Secretariat

Jakob THOMSEN

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<sup>3</sup> Confirmatory applications are published in the Council's Register of documents. If you introduce a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

**[Confirmatory application - sent by e-mail on 09 September 2014 - 12:10]**

Dear Mr Thomsen,

Thank you for your email. Please find attached my confirmatory application regarding your letter Ref. 14/1166-ADD4-mi/ws.

Sincerely yours,

Samuli Miettinen

Mr Samuli Miettinen  
Faculty of Law, P.O. Box 4  
FIN-00014 University of Helsinki  
Finland  
Email: samuli.miettinen@helsinki.fi

Jakob Thomsen  
Council of the European Union  
General Secretariat  
Directorate-General Communication and Document Management  
Directorate Document Management  
Transparency and Access to Documents Unit  
By email 9.9.2014 to *ACCESS@CONSILIUM.EUROPA.EU*

Dear Mr Thomsen,

Thank you for your email dated 9. September, noting that France has refused consent to reveal its pleadings in C-137/12. I appreciate that the issues are sensitive. Nevertheless, I ask in this confirmatory application that the initial decision of the Council on refusal is reviewed.

First, under the General Court's case law, the Member State's appreciation of sensitivity cannot be definitive. Second, the decision does not specify to which future proceedings the pleadings refer, or which issues are particularly sensitive; it is not possible to evaluate those claims based on the decision. Third, as the case in question has already been decided by the Court, there can be no general presumption even such as to state categorically that the pleadings as a whole are sensitive; a case-by-case examination should be offered. Despite the references to overriding public interest, it is not clear that this has been sufficiently considered. The pleadings of an institution or Member State in the context of an annulment action against legal instruments such as the decision to sign the Conditional Access Convention at issue in C-137/12 cannot as a rule remain confidential. They are a matter of public record given the aims of the Regulation 1049/2001, the Charter of Fundamental Rights provisions on access to documents and good administration, and the Treaty rules on the same.

I am happy for the publication of my details in the context of this application, and append the text of your initial reply Ref. 14/1166-ADD 4-mi/ws below. I look forward to the Council's reply in due course.

Sincerely yours,

  
Samuli Miettinen