



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from: Council Legal Service
to: COREPER (2nd part)
Subject: Cases before the EU General Court
- Case T-331/11 Besselink v. Council

1. On 12 September 2013 the General Court rendered its judgment in the above-mentioned case, which concerned a confirmatory decision rejecting full public access to document 9689/10. This document contains a draft decision of the Council authorising the Commission to negotiate the Accession Agreement of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the ECHR”).
2. The General Court noted that one of the negotiating directives contained in the requested document had already been communicated to the Union’s negotiating partners. This being the case, the risk that the public interest as regards international relations would be undermined could not be justified on the ground that disclosure of that directive would weaken the Union’s negotiating position.

3. The General Court therefore concluded that, as far as this negotiating directive is concerned, the Council committed a manifest error of appreciation and that access should be given to this document. However, the Court rejects the applicant's argument that other public Council documents paraphrase other negotiating directives, noting that nowhere the latter are reproduced or disclosed in detail.
4. The General Court accepted the Council's argument that the fact that the negotiating directives might have been exploited by the other parties to the negotiations was sufficient to establish a risk that the interest of the Union as regards international relations might be undermined. It concluded that the Council was right in considering the negotiating directives (other than the one mentioned above) covered by the exception.
5. However, the General Court held that with the Council should have provided more partial access to those parts of the negotiating directives that could be disclosed without endangering the Union's negotiation position.
6. Lastly, the General Court rejected the applicant's plea related to the allegedly insufficient reasoning of the confirmatory decision. It also held that the applicant's plea that the draft decision was "constitutional" in nature was not sufficiently specific to be admissible and did not in any event affect the application of Article 4(1)(a).
8. After an analysis of the judgment the Legal Service recommends to COREPER not to lodge an appeal against those aspects of the ruling upholding the applicant's position and to refer the matter to the Information Working Party for a re-assessment of the applicant's request for public access in line with the Court's judging at paragraph 6 above.
9. The Court orders both sides to bear their own costs.
