



**COUNCIL OF  
THE EUROPEAN UNION**

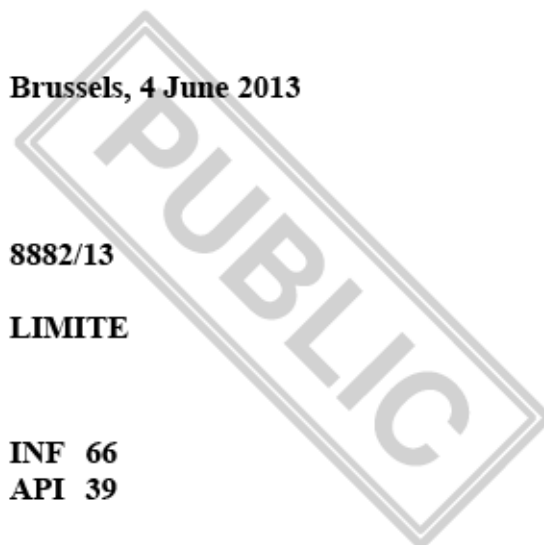
**Brussels, 4 June 2013**

**8882/13**

**LIMITE**

**INF 66**

**API 39**



**"I/A" ITEM NOTE**

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from : Working Party on Information

to : Coreper (part 2)/Council

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No. prev. doc.: 8880/13

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Subject : Public access to documents

- Confirmatory application made by Mr Samuli Miettinen (No 08/c/03/13 )

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Delegations will find enclosed a draft reply from the Council to confirmatory application No 08/c/03/13 made by Mr Samuli Miettinen, approved by the Working Party on Information on 4 June 2013.

The UK delegation indicated that it would vote against the draft reply and made the following statement:

UK: *"Under the EU Access to Documents regime there is a general presumption against releasing legal advice, and that there should be exceptional public interest reasons to depart from this. The UK's view is that despite the age of the advice and the proposal that it directly relates to having been withdrawn, the subject matter of the advice is relevant to current discussions in the Council regarding the PIF Directive and the choice of legal base. Consequently, the case for exceptional disclosure in the public interest has not been made out."*

A majority of delegations agreed to publish the result of the vote.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting:

- record its agreement to the draft reply annexed to this document, as an "A" item, with the UK delegation voting against,
- decide to publish the result of the vote and the statement reproduced above.

The Annex is available in English only.

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**DRAFT**  
**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION 08/c/03/13,**  
**made by email on 23 April 2013,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to document 11221/01**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to document 11221/01 which is an opinion of the Council Legal Service relating to a proposal for a Directive on the criminal-law protection of the Community's financial interests (hereafter referred to as "the proposal").
2. Document 11221/01, except for its paragraphs 1 and 2, contains a legal analysis on whether the proposal falls within the competence of the European Community.
3. In its reply dated 11 April 2013, the General Secretariat of the Council gave access to paragraphs 1 and 2. It refused public access to the remaining parts of the document pursuant to the second indent of Article 4(2) (protection of legal advice) of Regulation 1049/2001.

4. In his confirmatory application dated 23 April 2013, the applicant contests the assessment made by the General Secretariat of the Council and questions the applicability of the exception invoked notably by referring to "the age of the opinion, issued over eleven years ago" and "the formal withdrawal of the legislative proposal to which it is linked". He also refers to "*the balance between transparency and the overriding public interest in disclosure as regards the redacted pages in the document*". He finally adds that "*even if some of the advice might still be considered sensitive, the question of choice of legal basis is of constitutional significance*".
5. The Council has considered the confirmatory application in the light of the applicant's arguments and it has assessed the request for access in full consideration of the principles underlying Regulation (EC) No 1049/2001 and the aim of ensuring the widest possible public access to documents.
6. It has come to the conclusion that on balance and in spite of the fact that the document contains legal advice which retains a certain sensitivity, full public access to document 11221/01 can be granted.

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