



**COUNCIL OF
THE EUROPEAN UNION**

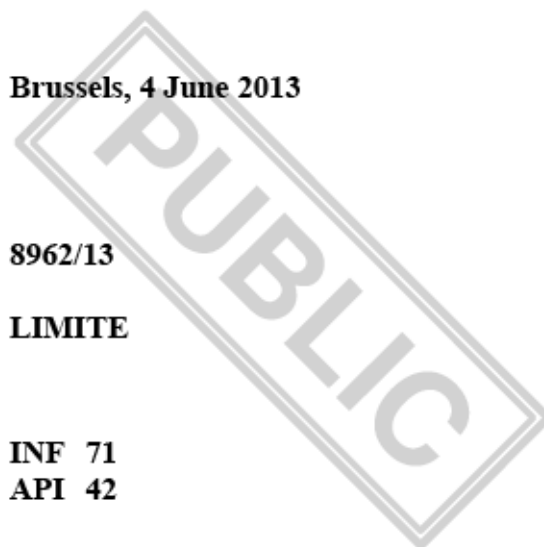
Brussels, 4 June 2013

8962/13

LIMITE

INF 71

API 42



"I/A" ITEM NOTE

from : Working Party on Information

to : Coreper (part 2)/Council

No. prev. doc.: 8961/13

Subject : Public access to documents

- Confirmatory application made by Mr Giulio MARINI (No 09/c/01/13)

Delegations will find enclosed a draft reply from the Council to confirmatory application No 09/c/01/13 made by Mr Giulio Marini, approved by the Working Party on Information on 4 June 2013.

The Estonian, Finnish and Swedish delegations indicated that they would vote against the draft reply. The following statements were made:

EE, FI and SE: *"Estonia, Finland and Sweden welcome that partial release to the document is granted. However, as regards the identities of the Member States, Estonia, Finland and Sweden take the view that at least Estonian, Finnish and Swedish positions as reflected in the document should be disclosed in their entirety, since they are already publicly available. Furthermore, Estonia, Finland and Sweden cannot concur with the reasoning in the draft reply since the reply does not mention or analyze the effect of the General Court's judgment in case T-233/09 (Access Info Europe v. Council)."*

NL and SI: *"The Netherlands and Slovenia agree with the proposal of the General Secretariat, however, the Netherlands and Slovenia are of the opinion that the reply should include a reference to the General Court's judgment in case T-233/09 Access Info Europe v. Council."*

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 Estonian, Finnish and Swedish delegations voting against,
- decide to publish the result of the vote and the statements reproduced above.

The Annex is available in English only.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 09/c/01/13
made by e-mail on 25 April 2013,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 7427/13

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 7427/13 which is a note of 22 March 2013 from Presidency/General Secretariat of the Council to the Working Party on Establishment and Services on a proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System.
2. In its reply dated 24 April 2013, the General Secretariat refused full public access to the requested document pursuant to Article 4 (3) first sub-paragraph of Regulation No 1049/2001, but partial access was granted to it (i.e. excluding those parts of the document which enable the delegations concerned to be identified).

3. In its confirmatory application dated 25 April 2013, the applicant agreed with the General Secretariat's view that the right of delegations to express freely their position in negotiations overrides the interest of the public to have full access to the document. However, he argued that the situation should be different for the Member States which have already transposed the directive 2005/36/EC to notaries. The applicant is of the opinion that the position of these delegations should be in line with the transposition that has taken place in their Member States. He explained that he is particularly interested in the French and Italian positions on this proposal. He asked the Council to have access to the position of the Members States which have transposed Directive 2005/36/EC to notaries and to the Italian position.
4. The Working Party on Establishment and Services, the Council's preparatory body responsible for the proposal referred to in the requested document, began the examination of the Commission's proposal in January 2012 and has discussed it several times since then. The negotiations with the European Parliament are currently ongoing.
5. Disclosure of the names of the delegations that have put forward proposals during the discussions would adversely affect the efficiency of the Council's decision-making process at this stage of the negotiations on the Commission proposal by reducing the Council's ability to conclude this dossier in particular by narrowing down delegations' room for compromise within the Council. Furthermore, if it were to be accepted that documents containing written positions of delegations be disclosed in their entirety in an ongoing decision-making procedure, delegations would be induced to cease submitting their views in writing, and instead would limit themselves to oral exchanges of views in the Council and its preparatory bodies, which would not require the drawing up of documents. This would cause significant damage to the effectiveness of the Council's internal decision-making process by impeding complex internal discussions on the proposed act and would also be seriously prejudicial to the overall transparency of the Council's decision-making process.

6. The Council has weighed the public interest relating to the efficiency of its internal decision-making process against the public interest in increased openness, which guarantees that the EU institutions enjoy greater legitimacy and are more accountable to the citizens. It has concluded that in that case the protection of the Council's decision-making process outweighs the applicant's interest in the disclosure of document 7427/13.
7. The Council has also examined - in the light of the specific request made by the applicant - whether it would be possible to assess, on a case-by-case basis, whether the name of the Member States concerned could be released. However, this option was rejected because it would lead to very arbitrary assessments which themselves could be challenged. This approach does not, of course, prevent the Member State delegations concerned from making public their own position.
8. In the light of the above, the Council confirms the decision of the General Secretariat in reply to the initial application, whereby it granted, in accordance with Article 4(6) of Regulation 1049/2001, partial access to document 7427/13, excluding those parts of the document which enable the delegations concerned to be identified. Public access to those parts has to be refused pursuant to Article 4(3), first sub-paragraph of Regulation No 1049/2001 (protection of the Council's decision-making process).
9. Finally, the Council recalls that this document, and any other documents relating to the proposed directive, will be made available to the public in full after the final adoption of the act, unless their content is covered by other exceptions pursuant to Article 4(1), (2) or (3) second subparagraph of Regulation No 1049/2001.

10. Regarding the issue of the profession of notary, the Council would like to draw the applicant's attention to the information contained in document 8297/13 which is public and which notably states that: "A number of Member States have reopened the discussion on the profession of notary in recent Working Party meetings. This issue was discussed by the Permanent Representatives Committee at its meeting of 1 March [2013]. It was agreed at that meeting that the profession of notary should be excluded from the Directive but that a review clause would be included so that this issue would be revisited in the future. The Council text was amended on that basis."
