



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 December 2008**

**15717/08**

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**"I/A" ITEM NOTE**

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from : Working Party on Information  
to : Coreper (part 1)/Council

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No. prev. doc.: 15716/08

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Subject : Public access to documents  
- Confirmatory application made by Mr Oliver REMIEN (21/c/02/08)

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Delegations will find enclosed a draft reply from the Council, as it stands after examination by the Working Party on Information at its meeting on 25 November 2008, to confirmatory application made by Mr Oliver REMIEN (21/c/02/08).

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.

The Annex is available in English only.

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**DRAFT**  
**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION**  
**made by Mr Oliver REMIEN to the Council**  
**by e-mail on 12 November 2008,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents 13697/08 + ADD 1-7**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47) and has come to the following conclusion:

1. The applicant refers to documents 13697/08, 13697/08 ADD 1, 13697/08 ADD 2, 13697/08 ADD 3, 13697/08 ADD 4, 13697/08 ADD 5, 13697/08 ADD 6 and 13697/08 ADD 7, which are notes from various delegations (Czech, Greek, German, Dutch, Italian, Lithuanian, Belgian and United Kingdom delegations, respectively) to the Committee on Civil Law Matters (Contract Law). These documents contain comments from the above-mentioned delegations on a Presidency paper with regard to the Common Frame of Reference (CFR) for European contract law.
2. In its reply to the applicant dated 31 October 2008, the General Secretariat refused to grant access to the above-mentioned documents pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process). The General Secretariat considered that the disclosure of the position of explicitly identified delegations on a subject still under discussion within the preparatory bodies of the Council would jeopardise the capacity of these delegations to express their views freely at internal level. This could, in the General Secretariat's view, seriously undermine the Council's decision-making process.

3. Following the applicant's confirmatory request, the Council has thoroughly examined the documents concerned and carried out new internal consultations within the relevant services of its General Secretariat, taking into account the current state of play of the discussions on the future CFR.
4. The Committee on Civil Law Matters (Contract Law) met on 5 September and 3 November 2008 to discuss the CFR. On the basis of these discussions, as well as of Member States' comments (to be found in document 13637/08 and its addenda), the Presidency suggested that the Council endorse basic guidelines which, at this stage, should guide the Commission's work on the subject. The Council is expected to adopt these guidelines in its Justice and Home Affairs session on 27/28 November 2008. [The Council adopted these guidelines in its Justice and Home Affairs session on 27/28 November 2008.]
5. In the light of the above, the Council has come to the conclusion that the exception provided for in Article 4(3) of the Regulation no longer applies to documents 13697/08, 13697/08 ADD 1, 13697/08 ADD 2, 13697/08 ADD 3, 13697/08 ADD 4, 13697/08 ADD 5, 13697/08 ADD 6 and 13697/08 ADD 7. The applicant may therefore have access to these documents in their entirety.

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