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Brussels, 13 June 2013

**Mr Axel Horns**

**e-mail:**

**horns@** [REDACTED]

**Ref. 13/0708-mj/mjb**

Dear Mr Horns,

We have registered your request of 25 April 2013 for access to documents 15856/11 and 13751/11. Thank you for your interest.

The General Secretariat of the Council has examined 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>. On 22 May 2013, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

You may have access to document **13751/11 (+ COR 1 & COR 2)**.

Document **15856/11** is a contribution of the Council Legal Service relating to the Draft agreement on the European Union Patent Jurisdiction. The contribution analyses the compatibility of the said draft agreement with Opinion 1/09 of the Court of Justice of the European Union. It therefore contains legal advice, except for its paragraphs 1, 2 (first sentence), and 4 to 15, which are already public.

The legal advice covered by this opinion deals with issues which are contentious and subject to litigation before the Courts<sup>3</sup>. It is therefore very sensitive.

Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively

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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.

<sup>3</sup> Cases C-146/13 Spain vs. Parliament and Council and C-147/13 Spain vs. Council.

defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

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 interests so as to justify disclosure of the documents.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document. However it would like to provide you with the attached version which is already accessible to the public.

#### 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>4</sup>.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosures

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Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.