



**COUNCIL OF
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GENERAL SECRETARIAT

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Brussels, 13 November 2013

Mr Ingve Stjerna

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Ref. 13/1745-ls/mi

Dear Mr Stjerna,

We have registered your request of 22 October 2013 for access to document 15856/11. 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 documents¹ (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure² and has come to the following conclusion:

Document **15856/11** is an opinion of the Council Legal Service relating to the Draft agreement on the European Union Patent Jurisdiction. It contains a legal analysis on the compatibility of the said agreement with Opinion 1/09 of the Court of Justice of the European Union. The documents consequently contains legal advice.

Pursuant to Article 4(6) of the Regulation, you may have access to document **15856/11**, except for footnote 23 to paragraph 30 of the document.

Footnote 23 to paragraph 30 advises on matters dealing with issues which are relevant to a wide range of current and future dossiers. Moreover those issues are contentious and likely to be subject to litigation before the courts. The footnote is therefore particularly sensitive. Its disclosure would therefore undermine the protection of legal advice under Article 4(2), second indent, of the Regulation. 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 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.

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under the Regulation, 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 interest so as to justify disclosure of this footnote.

Accordingly, pursuant to Article 4(2), second indent (protection of the public interest as regard legal advice) of the Regulation, access to footnote 23 to paragraph 30 of document 15856/11 has to be refused.

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 reply³.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

³ Confirmatory applications are published in the Council's Register of documents. Please indicate whether you would like your personal data to be removed from Council documents related to your confirmatory application. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.