



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 February 2012

6048/12

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COVER NOTE

from : General Secretariat of the Council
to : Working Party on Information
Subject : Public access to documents
- Confirmatory application No 03/c/01/12

Delegations will find attached:

- request for access to a document sent to the General Secretariat of the Council on 12 December 2011 and forwarded to and registered by the Access to Documents service on 13 December 2011 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 1 February 2012 ([Annex 2](#))
- confirmatory application dated 1 February 2012 and registered on 2 February 2012 ([Annex 3](#))

[E-mail message sent on 12 December 2011 - 16:30]

I apply for the following document 18239/11

Draft Agreement on the creation of a Unified Patent Court - Presidency compromise text

Best regards

DELETED



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

Directorate-General F
Press
Communication
Transparency

- Access to Documents/
Legislative transparency

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Brussels, 1 February 2012

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e-mail:

DELETED

11/2100-mj/jj

Dear **DELETED**,

Your request of 12 December 2011 for access to document 18239/11 was registered on 13 December 2011 by the "Access to Documents" unit. 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 (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35). On 12 January 2012, 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:

Document **18239/11** is a Presidency Note to Delegations on the Draft Agreement on the creation of a Unified Patent Court and contains a Presidency compromise text.

A debate took place on this issue on the basis of a compromise package drawn by the Presidency at the Competitiveness Council of 5 December 2011. The compromise was broadly accepted in substance but the debate showed that further work was still needed.

This issue is still under discussion within the Council and negotiations are still ongoing.

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations.

It considers that, at this stage, disclosure of this document which gives details of progress made would be premature in that it could impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this subject. As there is no evidence suggesting an overriding public interest to warrant disclosure of the document in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure.

Accordingly, pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to accede to your request for access at this stage.

As the exception to the principle of transparency applies to the content of the entire document, the General Secretariat is unable to grant you partial access as provided for in Article 4(6) of the Regulation.

If you wish to have more information on this topic, the General Secretariat of the Council would like to draw your attention to the press release of the Competitiveness Council of 5 and 6 December 2011 available through the following link :

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/126579.pdf
(see in particular pages 19-21).

According 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 ¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ 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.

[Confirmatory application sent by e-mail on 1 February 2012 - 17:36]

Dear Ladies and Gentlemen,

hereby I file a confirmatory application for insight in Council document 18239/11 containing a Presidency Note to Delegations on the Draft Agreement on the creation of a Unified Patent Court.

My first application was rejected today (see below). Please reconsider your opinion considering inter alia that:

1. any process which excludes the possibility of public participation risks a loss of acceptance of the whole process.
2. My personal need of insight is due to my work as researcher at a public university concerning therefore a fundamental right.

Best regards

DELETED
