



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 July 2013

11818/13

**INF 121
API 59**

NOTE

from : General Secretariat of the Council
to : Working Party on Information

Subject : Public access to documents
- Confirmatory application made by Mr O'Huiginn (No 14/c/01/13)

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 20 May 2013 and registered on 21 May 2013 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 10 June 2013 ([Annex 2](#))
- confirmatory application dated 1 July 2013 and registered on the same day ([Annex 3](#))

[E-mail message sent on 20 May 2013 - 10:38]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in **EN**

Title/Gender: Mr - Mr

Family Name: Dan

First Name: O'Huiginn

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone:

Mobilephone:

Fax:

Requested document(s): Document number 7613/13

Op ALTHEA - Six Monthly Review Number 17, Non-paper on surplus munitions and weapons in BiH 18-03-2013

Please also provide the revision to this document REV 1 (7613/1/13, date 21-03-13).

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

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Brussels, 10 June 2013

Mr Dan O'Huiginn

e-mail: DELETED

Ref. 13/0850-mjb/mf

Dear Mr O'Huiginn,

We registered your request of 20 May 2013 for access to documents 7613/13 and 7613/1/13 REV 1. 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:

Preliminary note:

EU classified information shall be classified at one of the following level, among others³:

"RESTREINT UE/EU RESTRICTED": information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of the Member States.

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.

³ Council Decision of 31 March 2011 on the security rules for protecting EU classified information (2011/292/EU), OJ L 141, 27.5.2011, p.17.

Document **7613/13 RESTREINT UE/EU RESTRICTED** and its revised version **7613/1/13 REV 1 RESTREINT UE/EU RESTRICTED** are cover notes from the European External Action Service (EEAS) to the Political and Security Committee and the European Union Military Committee containing respectively EEAS documents EEAS 00610/13 and EEAS 00610/1/13 REV 1 "*Op ALTHEA - Six Monthly Review Number 17, Non- paper on surplus munitions and weapons in BiH*".

These documents are still being discussed and contain sensitive information on the way to address the issue of surplus munitions and weapons in BiH as well as internal situation assessments.

Release of this information would provide details on the progress achieved as well as on impediments in this process. It would affect relations with relevant third parties and undermine the efficiency of the action to be taken.

Accordingly, pursuant to Article 4(1)(a), second and third indents of the Regulation (protection of the public interest with regard with regard to defence and military matters and with regard to international relations), the General Secretariat is unable to accede to your request. The General Secretariat has also looked into the possibility of disclosing parts of the documents pursuant to Article 4(6) of the Regulation. However, as the information contained in the documents forms an inseparable whole, partial access cannot be granted.

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 reply¹.

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 July 2013 - 16:22]

Subject: Re: Ref. 13/0850-mjb/mf

I wish to make a confirmatory application, challenging this refusal.
Please find attached a letter, setting out my reasoning.

best wishes,

Dan O'Huiginn

Dan O'Huiginn

DELETED

RE: 13/0850-mjb/mf (request for 7613/13 and 7613/1/13 REV 1)

Mr. Thomsen,

My thanks for your letter dated 10 June, refusing my application for documents 7613/13 and 7613/1/13 REV 1 (Op ALTHEA - Six Monthly Review Number 17, Non- paper on surplus munitions and weapons in BiH). I am submitting this confirmatory application, asking the Council to reconsider its decision not to release the documents.

You base your refusal on Article 4(1)(a), second and third indents of the Regulation (protection of the public interest with regard with regard to defence and military matters and with regard to international relations).

These exceptions do not apply to the entire document. The ALTHEA six-monthly reporting process is specified in document 15188/04. This states that "*the review **can not be seen as a strictly military issue**; all relevant EU actors in BiH must give their input during the review process*"¹.

As for international relations: the activities of EU actors in Bosnia (including national activities by member states) does not inherently fall under international relations. You must demonstrate that disclosure would harm relations with Bosnia or another foreign government.

In both categories the question is not whether the document *concerns* international relations, but whether *disclosure would undermine the protection of the public interest* in the relevant areas. It will not. The EU officials have already made highly critical public statements on the impediments to the decommissioning of surplus weapons in BiH. Given this, the publication of further details cannot be expected to further "*affect relations with relevant third parties*". For example, an EU representative recently told the UN Security Council that:

"Political deadlock in Bosnia and Herzegovina continues to burden the process of further stabilization....Difficulties at the entity level...complicate efforts to...implement reforms in the area of defence, including the necessity to resolve the problem of unstable stockpiles of surplus arms and ammunition in the country" ²

¹ <http://register.consilium.europa.eu/pdf/en/04/st15/st15188-ex01.en04.pdf>

² EU Statement at the UN Security Council, 14 May 2013, S/PV.6966,
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/332/22/PDF/N1333222.pdf?OpenElement>

Even if disclosure did *affect* relations, it is not clear that the net effect would be negative. You do not justify your assertion that disclosure would “*undermine the efficiency of the action to be taken*” (which, in turn, is not the same as undermining the public interest).

In fact EU institutions have already decided that the public interest is furthered, not undermined, by discussion of the issue of surplus munitions. EU strategy on surplus munitions is set out in 5319/06. This calls for “*public education and awareness*”, “*promoting measures to improve transparency*”, and “*improved exchange of information*”³. EU-backed research has identified “*a clear need for the public to be educated on the dangers small arms and light weapons can present to their well-being*”⁴

Further, since this report is a compilation of input from “*all relevant EU actors in BiH*”⁵, it should not be considered an “inseparable whole”. If full disclosure is impossible, please reconsider disclosing part of the document under Article 4(6)

I am requesting the document for the purpose of journalism, which is aligned with the public interest. The information will be used to educate the public in Bosnia and the EU about an important issue of public policy. This is particularly important when EU money is being spent on decommissioning weapons in Bosnia, both directly and through the UNDP⁶.

You write that 'these documents are still being discussed'. However, they were produced almost three months ago; responses were already circulated in April⁷. Considering that this report is one of a series published twice-yearly, I consider that enough time has been allowed for any secret discussions required. You make no claim that the discussions meet the test laid out in 1049/2001 – that they “*would seriously undermine the institution's decision-making process*”

To summarize:

- the document does not fall entirely under exempt categories of 1049/2001
- at least a partial release should be possible, given the nature of the document
- the public interest is best served by disclosure, because of the issues involved and EU policy on them, and because the request is for the purpose of public-interest journalism

I consent for this confirmatory application to be made public, in the Council Register of Documents or otherwise.

Yours,

Dan O'Huiginn

³ <http://seesac.dev.bananica.com/res/files/failovi/508.pdf>

⁴ work by the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) <http://www.seesac.org/project.php?l1=126&l2=137>

⁵ Again, I quote the specifications for the ALTHEA reporting process. <http://register.consilium.europa.eu/pdf/en/04/st15/st15188-ex01.en04.pdf>

⁶ <http://www.seesac.org/res/files/failovi/100.pdf>

⁷ Documents 8488/13 (High Representative's Report on the Seventeenth Operation ALTHEA Six-Monthly Review) and 8603/13 (Op ALTHEA - Military Advice on the High Representative's Report on the Seventeenth Operation ALTHEA Six Monthly Review)