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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
No. prev. doc.:	14352/16
Subject:	Issuing and release of LIMITE documents

1. In its information note 14352/16, the GSC announced (paragraph 8) that it was reflecting on the release of documents marked LIMITE¹. The present note gives background information in this regard, concerning the legal framework and the status quo.

A. Documents that are already public rather than LIMITE

2. Under Article 12 of Regulation 1049/2001, "[t]he institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned. [...] In particular, legislative documents [...] should, subject to Articles 4 and 9, be made directly accessible."²

¹ It should be recalled that documents marked LIMITE are documents that are not classified under the Council's security regulations, but nevertheless not public and thus subject – for the time being – to the obligation of professional secrecy under Art. 339 TFEU.

² It needs to be noted that transparency is already established as the rule in the treaties (Article 42 FRC, Article 15(3) TFEU) and that therefore any exception to this rule – i.e. withholding of documents – should be based on good reasons.

3. In accordance with this, the Council's Rules of Procedure provide for mandatory public circulation of
- a) Annex II, Article 11(3):
 - i) third party documents made public by their author,
 - ii) provisional agenda for meetings of the Council in its various configurations,
 - ii) any text adopted by the Council and intended to be published in the Official Journal,
 - b) Annex II Article 11(5):
 - i) cover notes and copies of letters concerning legislative acts,
 - ii) documents submitted to the Council which are listed under an item on its agenda included in the "legislative deliberations" part or marked with the words "public deliberation" or "public debate",
 - iii) notes submitted to Coreper and/or to the Council for approval ("I/A" and "A" item notes) concerning draft legislative acts,
 - iv) the draft legislative acts to which the notes mentioned under (iii) refer and adopted legislative acts.
4. In addition, the Rules of Procedure provide for the possible public circulation of "provisional agendas of committees and working parties" and "other documents, such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies which do not reflect individual positions of delegations, excluding Legal Service opinions and contributions" provided they are "clearly not covered" by an exception to the rule of transparency (Annex II Article 11(4)). Therefore, such documents have been routinely made public upon circulation for many years where it appears evident at that time that no exception under Article 4(1)-(3) can justify withholding them. In the legislative field, these documents, together with the mandatorily public documents mentioned earlier, are about half of the documents circulated.

B. LIMITE documents and their release

5. Documents are thus circulated with the LIMITE marking where
 - a) there are reasons to consider that one or more of the exceptions in Article 4(1)-(3) of Regulation 1049/2001 apply³ or
 - b) one of the cases of mandatory LIMITE circulation in the Council's Rules of Procedure applies (individual positions of delegations, CLS opinions and contributions).
6. Currently, public release of these documents at a later time is essentially request-driven, i.e. such release takes place when a member of the public asks for a document and upon assessment no exception to the rule of transparency is identified. It only happens occasionally that a document is later made public at the request of the originating service (e.g. to avoid having to issue a new document after adoption of a text by the Council) or of a delegation (e.g. to be able to transmit it to its national parliament where no arrangements are in place for non-public parliamentary treatment of such documents).
7. A systematic review only takes place after the adoption of a legislative act, pursuant to Annex II, Article 11(6) of the Council's Rules of Procedure.
8. At some point in time, the LIMITE status of a document may cease to be justified. In those cases, a decentralised approach will be reinforced whereby originating services take the initiative to make LIMITE documents public – even without a request by a member of the public – from the time when circumstances allow to do so.

³ This is a *prima facie* assessment done by the originating service circulating the document, and on a case-by-case basis; whereby documents that are "clearly not covered" by an exception (see point 4 above) are circulated as public.