



Council of the
European Union

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Brussels, 4 October 2017
(OR. en)

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INF 175
API 125

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 25/c/01/17

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 13 September 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 21 September 2017 ([Annex 2](#));
- confirmatory application dated 30 September 2017 and registered on 2 October 2017 ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 13 September 2017 - 11:56 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): ST 11623 2017 INIT

1st preferred linguistic version: EN - English

2nd preferred linguistic version: DE - German



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 21 September 2017

DELETED

Email: **DELETED**

Ref. 17/1918-mj/jg

Request made on: 13.09.2017

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

Document **11623/17** is a classified document, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.²

This document is a Note from the European External Action Service to the Political and Security Committee which contains a draft Operational Plan (OPLAN) for the CSDP Mission EUAM Iraq.

After having consulted the European External Action Service on its possible disclosure, the General Secretariat of the Council came to the conclusion that access to document **11623/17** cannot be given for the reasons set out below.

Document **11623/17** contains key information regarding Iraqi authorities' activities in the field of security strategy and planned reforms, including inter alia sensitive data and assessments on the Iraqi capacities, which are relevant for the conduct of the EU Mission.

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ 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, OJ L 325, 11.12.2009, p. 35).

² Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

Considering the sensitive issues to be dealt with by the new Mission as well as the fact that the Mission has to operate in an extremely delicate political situation both at local and international level, we consider that a release to the public of the information contained in the document would seriously jeopardise the success of the Mission. It would indeed negatively affect the effectiveness of the efforts undertaken in strengthening the stability of the country and in assisting the Iraqi authorities in a very difficult environment.

Disclosure of the requested document would seriously undermine the European policy-making on civilian crisis management missions and jeopardise the future operation of CSDP mission.

It would therefore undermine the protection of the public interest as regards public security and the European Union's defence and military matters. As a consequence, the General Secretariat has to refuse access to this document.^{3 4}

In addition, releasing the document would not only put at risk future Mission's activities but also affect relations with relevant third parties by revealing internal considerations on the operational, security and political situation in the country.

Disclosure of the document would therefore also undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the document for this reason as well.⁵

We have also looked into the possibility of releasing parts of the document.⁶ However, as the exceptions to the right of access apply to its entire content, the General Secretariat is unable to give partial access at this stage.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁷

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

³ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001.

⁵ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁶ Article 4(6) of Regulation (EC) No 1049/2001.

⁷ Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to access@consilium.europa.eu on 30 September 2017 - 17:02]

From: **DELETED**

Sent: Saturday, September 30, 2017 5:02 PM

To: SECRETARIAT DGF Access

Subject: Ref. 17/1918-mj/jg - Confirmatory Application

Dear Sir or Madame,

I would like to hereby apply for a confirmatory application on the secretariat's decision of denying the release of document ST 11623 2017 INIT. Please find attach my confirmatory application.

Your sincerely,

DELETED

Dear Mr. Ibanez,

I would like to hereby apply for a confirmatory application based on the grounds that my request for access to document ST 11623 2017 INIT was denied due to the following reasons:

1. *'Disclosure of the requested document would seriously undermine the European policy-making on civilian crisis management missions and jeopardise the future operation of CSDP mission.'*

It would therefore undermine the protection of the public interest as regards public security and the European Union's defence and military matters. As a consequence, the General Secretariat has to refuse access to this document.'

The following articles were referred to as grounds for this negative response to my request. Article

4(1)(a), first indent, of Regulation (EC) No 1049/2001.

Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001.

It is my understanding that public security, defence and military matters and international relations all relate to issues raising those concerns within the EU territory and should not be applicable to EU missions undertaken abroad. The reference to defence and military matters is to be called such when relating to matters occurring within EU borders, therefore not applicable to the Iraq mission. In addition, the reference to public security should also be relevant only when the security of EU public is at stake, which is not duly applicable in this case.

2. *'In addition, releasing the document would not only put at risk future Mission's activities but also affect relations with relevant third parties by revealing internal considerations on the operational, security and political situation in the country.'*

Disclosure of the document would therefore also undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the document for this reason as well.'

The following articles were referred to as grounds for this negative response to my request. Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

It is my understanding that such document should not enter into conflict with regards to any International Relations related topics when considering that the CSDP Mission EUAM IRAQ should be based on values of constructive collaboration, mutual respect and openness, as stated in Article 28 of the PARTNERSHIP AND COOPERATION AGREEMENT between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part.

3. 'We have also looked into the possibility of releasing parts of the document. However, as the exceptions to the right of access apply to its entire content, the General Secretariat is unable to give partial access at this stage.'

The following articles were referred to as grounds for this negative response to my request.

Article 4(6) of Regulation (EC) No 1049/2001.

The reasons above confound my understanding of the second subparagraph of Article 1 of the Treaty on European Union, where it is stated that 'decisions are taken as openly as possible and as closely as possible to the citizen', by denying the release of this document you are contradicting the aforementioned article. Also, by stating that 'exceptions to the right of access apply to its entire content' as part of your reply, you enter a severe conflict with the overarching intent of Regulation (EC) No 1049/2001 and I am not clear of the reasoning behind why at least parts of this document are not being released.

Thank you for your time to review my confirmatory application, it is with through my strong belief in the European Union's founding principles of transparency and openness that I hope you shall reconsider your initial decision and release Document 11623/17.

Yours sincerely,

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