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Eingelangt am 10/01/14

COUNCIL OF
THE EUROPEAN UNION

Brussels, 9 January 2014

5049/14

INF 7
API 6

NOTE

Subject:	Public access to documents - Confirmatory application No 02/c/01/14

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 30 October 2013, registered the same day (Annex 1).
- reply from the General Secretariat of the Council dated 10 December 2013 (Annex 2)
- confirmatory application dated 2 January 2014, registered on 3 January 2014 (Annex 3).

ANNEX 1

[E-mail message sent on 30 October 2013 - 11:46]

From: **DELETED**

Sent: Wednesday, October 30, 2013 11:46 AM

To: SECRETARIAT DGF Access

Subject: Document access request - Regulation (EC) No 1049/2001 **DELETED**

Dear Sirs,

Please see the attached letter and enclosures.

Kind regards

DELETED

DELETED

General Secretariat of the Council of the European Union
Transparency, access to documents and public information unit
Rue de la Loi 175
B-1048 Brussels, Belgium

DELETED

By post, fax and email 30 October 2013

Dear Sirs

DELETED

DELETED

We act for DELETED, a DELETED bank DELETED
DELETED.

We understand that on 13 June 2007 there was a Relex/Sanctions meeting attended by representatives of all Member States and the Commission's legal service to discuss various issues in relation to the interpretation of Council Regulation (EC) No 423/2007. This is clear from a letter from Austrian National Bank to the Austrian Chamber of Commerce, a copy of which we enclose (together with an English translation). This letter refers to official minutes of the meeting on 13 June 2007. Please provide, in accordance with Regulation (EC) No 1049/2001, a copy of the minutes, and any other documents relating to the meeting on 13 June 2007, as soon as possible and within 15 working days.

Yours faithfully

DELETED

DELETED

Oesterreichische Nationalbank, Postfach 61, A-1011 Wien

An die
Wirtschaftskammer Österreich
Bundessektion Geld-, Kredit- und
Versicherungswesen
z. Hd. Hrn. Syndikus Dr. Herbert PICHLER
Wiedner Hauptstraße 63
1045 Wien
vorab per Telefax (0590900/272)

Akt.Nr.

Betrifft: Rundschreiben der OeNB zu Interpretationsfragen der Iran-Verordnung (EG) Nr. 423/2007 i.d.g.F.; Ergebnisse der Relex/Sanctions Sitzung in Brüssel vom 13.06.2007

Sehr geehrter Herr Syndikus!

Bezug nehmend auf die Verordnung (EG) Nr. 423/2007 des Rates vom 19. April 2007 über restriktive Maßnahmen gegen Iran i.d.g.F. dürfen wir Ihnen hiermit die wichtigsten Erkenntnisse der Relex/Sanctions Sitzung vom 13.06.2007 zu Auslegungsfragen der o.g. Verordnung mitteilen. Neben Vertretern sämtlicher EU-Mitgliedstaaten nahmen auch Vertreter des Juristischen Dienstes der Europäischen Kommission an der Sitzung teil. Österreich war zum Thema Iran-Sanktionen – durch je einen Experten der Oesterreichischen Nationalbank (OeNB) sowie des Bundesministeriums für Finanzen vertreten.

Die österreichische Delegation konnte dabei eine Reihe von in Österreich aktuellen Problemstellungen zur Diskussion stellen und sowohl vom Juristischen Dienst als auch von anderen Mitgliedstaaten durchwegs positive Reaktionen zu den von Österreich vertretenen Rechtsansichten erlangen. Die so erzielten Ergebnisse sollten unseres Erachtens maßgeblich dazu beitragen können, dass österreichische Gläubiger iranischer Unternehmen auf möglichst unbürokratischem Weg die ihnen zustehenden Gelder erhalten können. Da noch das offizielle Protokoll besagter Sitzung abgewartet werden musste, konnte dieses Schreiben nicht früher übermittelt werden.

Über die Sitzungsergebnisse hinaus erlauben wir uns, abschließend noch die Rechtsansicht der OeNB zum Thema „Verlängerung/Verwertung von Bankgarantien zugunsten Bank Sepah“ darzulegen. Diese Problematik wurde zwar nicht in Brüssel diskutiert, wurde aber in den vergangenen Wochen vermehrt von betroffenen Banken an die OeNB herangetragen.

Wien 9, Otto-Wagner-Platz 3
Telefon (+43-1) 40420 - 7313, Telefax (+43-1) 40420 - 7399

Wir ersuchen Sie höflich, dieses Schreiben Ihren von den Iran-Sanktionen betroffenen Mitgliedsinstituten weiterzuleiten.

I. Ergebnisse der Relex/Sanctions Sitzung vom 13. Juni 2007

a) Zahlungen durch die Bank Sepah/Teheran an österreichische Empfänger

Im Falle direkter Zahlungen durch die Bank Sepah aus dem Iran an österreichische Unternehmen/Banken sind diese Gelder durch europäische Kreditinstitute nicht einzufrieren, wenn die Bank Sepah keine Kontrolle mehr über diese Gelder hat, den Auftrag also zB nicht mehr stoppen oder abändern kann.

Überweist die Bank Sepah/Teheran zB zwecks Kreditrückzahlung einen Betrag an eine österreichische Bank so sind diese Gelder von europäischen Kreditinstituten nicht einzufrieren, wenn eine weitere Kontrolle der Gelder durch Bank Sepah ausgeschlossen ist. Dies gilt auch für den Fall, dass ein iranisches Unternehmen mit einem bei Bank Sepah geführten Konto eine Zahlung an ein österreichisches Unternehmen veranlasst.

Bei derartigen Konstellationen ist somit – da die Gelder bei Vorliegen der genannten Voraussetzungen nicht einzufrieren sind – kein Genehmigungsverfahren nach Art 9 notwendig. Vor diesem Hintergrund ist es grundsätzlich auch nicht entscheidend, ob die Zahlungen aufgrund von Verpflichtungen aus „Altverträgen" (das sind Verträge, die vor dem Tag, an dem Bank Sepah vom Sanktionenausschuss benannt worden ist [24. März 2007] geschlossen wurden) oder auf Basis von „neuen" Vereinbarungen getätigt werden, da hier nur die Frage ausschlaggebend ist, ob die bei europäischen Banken einlangenden Gelder als Gelder der sanktionierten Person zu werten sind oder nicht.

Europäische Kreditinstitute haben hierbei allerdings darauf zu achten, dass bei der Durchführung solcher Transaktionen die für heimische Unternehmen gedachten Gelder **nicht auf einem Konto der Bank Sepah „zwischengebucht"** werden, da die o.g. Verordnung für solche Fälle ausnahmslos vorsieht, dass Gutschriften auf Konten sanktionierter Personen ebenfalls sofort einzufrieren sind. In so einem Fall könnte eine Freigabe bestimmter Gelder nur nach vorherigem Antrag auf Genehmigung bei der OeNB sowie frühestens zehn Tage nach der Notifizierung der beabsichtigten Erteilung einer solchen Genehmigung an den UN-Sanktionenausschuss bzw die Europäische Kommission erfolgen. Auch die heimischen Kreditinstitute sind also gefordert, **Vorkehrungen** dafür zu treffen, dass derartige Buchungen – die bei herkömmlicher Abwicklung der Transaktion uU üblich wären – vermieden werden.

Zu allen über Bank Sepah erhaltenen (und uU weiterzuleitenden) Beträgen ist weiters zu beachten, dass die betroffenen Kreditinstitute in diesen Fällen weiterhin **erhöhte Sorgfaltspflichten** anzuwenden haben und so zB insbesondere prüfen müssen, dass es sich bei dem Empfänger einer solchen Transaktion selbst um keine in der Verordnung aufgelistete Person handelt.

An dieser Stelle möchten wir noch darauf hinweisen, dass ein Transfer von Geldmitteln aus dem Iran nach Österreich jedenfalls auch die notwendigen zivilrechtlichen Zahlungsvoraussetzungen sowie eine entsprechende „Zahlungsbereitschaft" des iranischen Schuldners bzw des Kreditinstituts erfordert, das die Zahlung durchführen soll.

b) Die Bewertung eines von Bank Sepah/Teheran zugunsten eines österreichischen Unternehmens eröffneten Akkreditivs

Lässt ein iranisches (nicht sanktioniertes) Unternehmen bei Bank Sepah/Teheran ein Akkreditiv zugunsten eines österreichischen Exporteurs eröffnen, so ist dieses Akkreditiv in der Regel (ebenfalls) nicht als Geld der Bank Sepah zu werten und sind Zahlungen aus einem solchen Akkreditiv daher nicht einzufrieren.

Auch hier besteht die Argumentation darin, dass Bank Sepah über dieses Akkreditiv keine „Kontrolle" im Sinne der Verordnung ausübt, sondern lediglich verpflichtet ist, auf Rechnung des iranischen (nicht gelisteten) Importeurs eine Zahlung an den österreichischen Exporteur zu leisten, wenn dieser bestimmte Dokumente vorlegt.

Auch bei Zahlungen aus Akkreditiven haben die betroffenen Kreditinstitute natürlich die schon oben unter Punkt 1 a) angesprochenen Vorkehrungen zu treffen und **Sorgfaltspflichten** einzuhalten.

c) Die Anerkennung von behördlichen Genehmigungen durch andere Mitgliedstaaten

Genehmigt die zuständige Behörde eines Mitgliedstaates die Freigabe eingefrorener Gelder – zB zur Begleichung von Verbindlichkeiten aus „Altverträgen" –, so soll eine solche Genehmigung nach Möglichkeit auch von den zuständigen Behörden anderer Mitgliedstaaten anerkannt und von den Banken anderer Mitgliedstaaten umgesetzt werden.

Genehmigt also die zuständige Behörde eines Mitgliedstaates die Freigabe bestimmter eingefrorener Gelder so sind diese Gelder auf ihrem Weg zum Empfänger auch nicht von Banken in anderen Mitgliedstaaten einzufrieren.

Voraussetzung für das Funktionieren der gegenseitigen Anerkennung von Genehmigungen ist natürlich ein entsprechender Informationsaustausch zwischen den beteiligten Behörden und Kreditinstituten.

d) Unzulässigkeit von Umbuchungen zwischen mehreren gesperrten Konten

Der Transfer von Geldern von einem gesperrten Konto einer sanktionierten Person auf ein anderes gesperrtes Konto der selben sanktionierten Person ist nicht zulässig, da eine solche Transaktion gegen die Pflicht des betroffenen Kreditinstituts verstoßen würde, Gelder von sanktionierten Personen gemäß Art 7 Abs 1 und 2 der Verordnung einzufrieren (unter „Einfrieren" ist ua die „Verhinderung jeglicher Form der Bewegung" von Geldern zu verstehen, siehe Art 1 lit h).

II. Verlängerung/Verwertung von Bankgarantien zugunsten Bank Sepah

Bei der OeNB sind in den vergangenen Wochen diverse Iran-bezogene Anfragen eingelangt, denen im Wesentlichen der folgende Sachverhalt zugrunde liegt:

Anlässlich eines Geschäftes zwischen einem österreichischen Auftraggeber und einem iranischen Lieferanten stellt die Bank Sepah Teheran eine Bankgarantie zugunsten des iranischen Unternehmens aus. Weiters übernimmt eine österreichische Bank diesbezüglich (im Auftrag des österreichischen Unternehmens) eine Rückgarantie zugunsten der Bank Sepah. Beide Bankgarantien wurden vor dem Tag, an dem Bank Sepah vom Sanktionenausschuss benannt worden ist (24. März 2007), ausgestellt und enthalten eine "extend or pay"-Klausel. Bevor die zugunsten der Bank Sepah ausgestellte Bankgarantie mit einem bestimmten Stichtag ablaufen würde, fordert diese die österreichische Bank auf, entweder die Garantie zu verlängern oder den Garantiebetrag auszubezahlen.

Für die österreichische Bank kommen demnach zwei Vorgehensweisen in Betracht, deren Embargo-spezifische Zulässigkeit die OeNB wie folgt beurteilt:

1) Auszahlung des Garantiebetrages durch die österreichische Bank an Sepah: Dies wäre nach Ansicht der OeNB gemäß Art 11 Abs 2 lit b der Verordnung (EG) 423/2007 i.d.g.F. zulässig, da es sich um eine Zahlung aus einem Altvertrag handelt. Zu beachten ist dabei natürlich, dass eine Zahlung nur auf ein gesperrtes Konto der Bank Sepah erfolgen dürfte und der gutgeschrieben Betrag umgehend einzufrieren wäre. Die Auszahlung hätte allerdings auch die - vertraglich vorgesehene - Konsequenz, dass der österreichische Unternehmer eine "Deckungszahlung" in der Höhe des Garantiebetrages an die österreichische Bank zahlen müsste.

2.) Verlängerung der Bankgarantie: Auch eine Garantieverlängerung durch die österreichische Bank wäre unseres Erachtens zulässig, da die bloße Verlängerung der bestehenden Garantie nach Ansicht der OeNB nicht als eine "Zurverfügungstellung" von Geldern zu werten ist, zumal sich durch diese Handlung – im Vergleich zum Zeitpunkt vor der Garantieverlängerung – weder der Vermögensstand der Bank Sepah ändert, noch dieser zusätzliche Geldmittel zur Verfügung gestellt werden. Auch die Pflicht zum "Einfrieren von Geldern" wird unseres Erachtens durch die Garantieverlängerung nicht verletzt (siehe die Definition in Art 1 lit h der Verordnung 423/2007).

Für diese Ansicht spricht weiters folgende Überlegung: Wenn schon die Auszahlung (mit anschließender Sperre) des Garantiebetrages zugunsten Bank Sepah zulässig wäre (in diesem Fall würden sogar Gelder in das Eigentum der Bank Sepah übertragen werden, auch wenn Letztere über diese vorerst nicht frei verfügen könnte), so muss es erst recht zulässig sein, die Bankgarantie selbst zu verlängern, da bei dieser Variante lediglich der bisherige Status Quo aufrechterhalten und kein Anwachsen des Vermögens der Bank Sepah bewirkt wird. Diesbezüglich ist auch der übergeordnete Zweck der Verordnung zu beachten, der ua darin liegt, die Vermehrung des Vermögens sanktionierter Personen weitgehend zu verhindern.

Im Übrigen kann auch Variante 2.) maximal zu dem Ergebnis führen, dass die Bankgarantie zu einem späteren Zeitpunkt durch Bank Sepah gezogen wird und der Garantiebetrag dieser auf einem gesperrten Konto gutzuschreiben ist. Dies hätte soweit denselben Effekt wie bei Variante 1.), lediglich zeitlich verzögert.

Sowohl die Verlängerung der Bankgarantie als auch die Auszahlung des Garantiebetrages auf ein gesperrtes Konto verstoßen – bei einer wie oben beschriebenen Fallkonstellation – nach Ansicht der OeNB somit nicht gegen die Verordnung (EG) 423/2007 i.d.g.F.

Im Übrigen wird diese Rechtsansicht – informellen Gesprächen mit dem deutschen Bundesministerium für Wirtschaft und Technologie zufolge – auch von den in Deutschland zuständigen Behörden geteilt und entsprechend praktiziert.

Wir bedanken uns vorab für Ihre Mithilfe und zeichnen

mit vorzüglicher Hochachtung

Oesterreichische Nationalbank
Rechtsabteilung

Dr. Mölzer

Dr. Zehentner

Austrian National Bank, PO Box 61, A-1011 Vienna

To the
Austrian Chamber of Commerce
Federal Section Money, Credit and Insurance
Attention Dr. Herbert PICHLER, General Attorney
Wiedner Hauptstrasse 63
1045 Vienna
Previously by fax (0590900/272)

Document No.

Subject: Austrian National Bank Circular on interpretation of the EEC Iran Regulation 423/2007 as current; results of the Relex/Sanctions meeting in Brussels on 13.06.2007

Dear General Counsel

With reference to EC Council Regulation 423/2007 of 19 April 2007 concerning restrictive measures against Iran, current version, we would hereby advise you of the main findings of the Relex/Sanctions meeting on 13.06.2007 on the interpretation of the above Regulation. In addition to representatives of all EU Member States, representatives of the European Commission's Legal Service also attended the meeting. Austria – as far as Iran sanctions were concerned – was represented by an expert from the Austrian National Bank (OeNB) and one from the Federal Ministry of Finance.

The Austrian delegation was able to raise a number of problems topical in Austria and to obtain an altogether positive response from the Legal Service and also the other Member States on the legal views put by Austria. The results thus obtained should, in our view, contribute considerably towards Austrian creditors of Iranian companies receiving the funds due to them in the most unbureaucratic way possible. This letter could not be sent to you earlier as we were still waiting for the official minutes of the meeting in question.

Over and above the results of the meeting, we would finally further put the OeNB's view to you regarding "extension/disposal of bank guarantees in favour of Bank Sepah". This problem was not in fact discussed in Brussels but has in recent weeks been increasingly mentioned by the Banks concerned to OeNB.

Vienna 9, Otto-Wagner-Platz 3
Tel. (+43-1) 40420 - 7313, Fax (+43-1) 40420 - 7399

We would kindly ask you to pass this letter on to your member banks affected by the Iran sanctions.

I. Results of the Relex/Sanctions meeting on 13 June 2007

a) Payments by Bank Sepah/Teheran to Austrian beneficiaries

In the event of direct payments by Bank Sepah from Iran to Austrian companies/banks, these funds must not be frozen by European credit institutions if Bank Sepah has no further control over these funds, and can therefore no longer e.g. stop or alter the order.

If Bank Sepah/Teheran remits a sum to an Austrian bank, e.g. for credit repayment, European banks must not freeze these funds if further control thereof by Bank Sepah is excluded. This also applies in cases where an Iranian company has a payment made to an Austrian company from an account kept at Bank Sepah.

With situations of this kind, - as the funds must not be frozen when the said prerequisites apply – no approval procedure is therefore necessary under Art. 9. Nor, against this background is it essentially decisive whether payments are made under obligations under "existing contracts" (i.e. contracts concluded before the date on which Bank Sepah was named by the Sanctions Committee [24 March 2007]) or on the basis of "new" arrangements, since in this case all that is decisive is whether the funds received at European banks must be regarded as funds of a sanctioned person or not.

However, European banks have to make sure in this case that when executing transactions of this kind the funds intended for a domestic undertaking **are not "buffered" on a Bank Sepah account** since the said Regulation provides without exception that credits into a sanctioned person's account must in such cases similarly be immediately frozen. In a case of this kind, designated funds could be released only on prior application for approval to OeNB and at the earliest 10 days following notification of the intended granting of such approval to the UN Sanctions Committee or the European Commission. Domestic banks are also required to take steps that such entries – which might have been usual under the traditional processing of transactions – are avoided.

It should further be noted with all sums received (and possibly to be passed on) through Bank Sepah that the credit institutions concerned must in such cases continue to apply **enhanced diligence** and therefore, for example, in particular, check that the beneficiary under such a transaction is not itself a person listed in the Regulation.

We would also take this opportunity to point out that a transfer of funds from Iran to Austria in any event requires the necessary payment provisions under civil law to be met and corresponding "payment readiness" on the part of the Iranian debtor and the credit institution that is to undertake payment.

b) Assessment of a letter of credit opened by Bank Sepah/Teheran in favour of an Austrian undertaking

If an Iranian (non-sanctioned) undertaking has a letter of credit opened at Bank Sepah/Teheran in favour of an Austrian exporter, such letter of credit will not

normally (similarly) be regarded as cash from Bank Sepah and payments under such a letter of credit need not therefore be frozen.

Here, too, the argument is that Bank Sepah has no "control" over such letter of credit within the meaning of the Regulation but is merely obliged to make payment to the Austrian exporter on behalf of the Iranian (unlisted) importer where such documents exist.

With payments under letters of credit also, the credit institutions concerned must of course make provision as already described under point I (a) and observe **due diligence.**

c) Recognition of official approvals by other Member States

If the competent authority of a Member State approves the release of frozen funds – e.g. to settle liabilities under "existing contracts" – such approval should where possible also be recognised by the competent authorities of other Member States and be implemented by other Member States' banks.

If, therefore, the competent authority in a Member State approves the release of certain frozen funds, such funds need not, either, be frozen by banks in other Member States on their way to the beneficiary.

A prerequisite for the functioning of mutual recognition of approvals is, of course, appropriate information exchange between the participating authorities and credit institutions.

d) Ban on account transfers between several blocked accounts

Funds may not be transferred from a sanctioned person's blocked account to another blocked account of the same sanctioned person, since such transaction would infringe the duty of the credit institution concerned to freeze sanctioned persons' funds in accordance with Art. 7 (1) and (2) of the Regulation ("freezing" includes inter alia the "prevention of any form of movement" of money, see Art. 1 (h)).

II. Extension/disposal of bank guarantees in favour of Bank Sepah

Various Iran-related enquiries have reached OeNB in recent weeks essentially concerned with the following subject matter:

In the course of a transaction between an Austrian principal and an Iranian supplier, Bank Sepah Teheran will issue a bank guarantee in favour of the Iranian undertaking. Furthermore, an Austrian bank will provide a counter-guarantee in this connection (on instructions from the Austrian undertaking) in favour of Bank Sepah. Both bank guarantees were issued before the day on which Bank Sepah was named by the Sanctions Committee (24 March 2007) and contain an "extend or pay" clause. Before the bank guarantee issued in Bank Sepah's favour would expire on a particular target date, the latter will require the Austrian Bank either to extend the guarantee or to pay out the guaranteed sum.

Two ways of proceeding therefore apply to the Austrian bank, the embargo-specific admissibility of which is regarded by OeNB as follows:

1) Payment of the amount of the guarantee by the Austrian bank to Sepah: in OeNB's view, this would be permissible under Art. 11 (2) b. of EC Regulation 423/2007, current version, as a payment is concerned under an existing contract. It must of course be noted in this case that a payment can be made only into a blocked account at Bank Sepah and the sum credited would have to be immediately frozen. However, the payment would also have the – contractually provided – consequence of the Austrian undertaking having to pay a "hedge" to the Austrian bank in the amount of the guarantee.

2.) Extending the bank guarantee: In our view, it would also be permissible for the Austrian bank to extend a guarantee since the simple extension of an existing guarantee should not in OeNB's opinion be regarded as a "provision" of funds, since in such action – compared with the time before the guarantee is extended – would neither change Bank Sepah's asset position nor provide it with additional funds. In our opinion, extending the guarantee does not infringe the duty to "freeze funds" (see definition in Art 1 (h) of Regulation 423/2007).

This view is further supported by the following consideration: if payment (with subsequent blocking) of the guaranteed sum in Bank Sepah's favour were permissible (in this case, cash would actually be transferred into Bank Sepah's ownership, even if the latter could not initially dispose of it freely), it must be all the more permissible for the bank guarantee itself to be extended, since under this variant the existing status quo is simply maintained and no assets accrue to Bank Sepah. The ultimate object of the Regulation must also be observed in this case, which inter alia is broadly to prevent growth of the assets of sanctioned persons.

Furthermore, variant 2 may also result at the most in the bank guarantee being drawn upon by Bank Sepah at a later date and the guaranteed sum credited to it on a blocked account. This would then have the same effect as under variant 1, but simply extended in time.

In the circumstances of a case as described above, neither the extension of the bank guarantee nor payment of the sum guaranteed into a blocked account would in OeNB's view therefore conflict with EC Regulation 423/2007 current version.

Furthermore, this view of the law – following informal discussions with the German Federal Ministry of Trade and Technology – is also shared and largely adopted by the competent authorities in Germany.

We thank you in advance for your assistance,

Yours faithfully

Austrian National Bank
Legal Department

Dr. Molzer Dr. Zehentner

COUNCIL OF
THE EUROPEAN UNION

GENERAL SECRETARIAT

Directorate-General F
Communication
Transparency

- Access to Documents/
Legislative transparency

rue de la Loi, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-mail:
access@consilium.europa.eu

Brussels, 10 December 2013

DELETED

e-mail:
DELETED

Ref. 13/1814-ws/jj

Dear **DELETED**,

We have registered your request of 30 October 2013 for access to Council documents. 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[1] (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure[2]. On 21 November 2013, 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:

Documents 10858/07, 10858/07 COR 1, 10507/07 and 10635/07 have been identified as relevant to your request.

You may have access to documents **10507/07** and **10635/07**.

Document **10858/07** contains the outcome of proceedings of the meeting of the Foreign Relations Counsellors "Sanctions" formation Working Party of 13 June 2007. It relates to issues which are still under discussion within the preparatory bodies of the Council.

It is classified "RESTREINT UE", meaning that it contains information "the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of the Member States"[3]:

[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 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), Official Journal L 274, 15.10.2013, p. 1.

In particular, it contains internal information, the public release of which would not only prejudice the EU's position vis-à-vis relevant third parties but also facilitate circumvention strategies and thus weaken the effectiveness of the restrictive measures concerned.

Additionally, release of this delicate information from internal discussions would severely hamper future discussions on such measures.

Accordingly, pursuant to Article 4(1)(a), third indent of the Regulation (protection of the public interest with regard to international relations) and – in the absence of any evidence suggesting an overriding public interest in disclosure – pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to grant you full access to this document.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by these exceptions. You will find the parts that have been made accessible in document 10858/07 EXT 1.

Document **10858/07 COR 1** (RESTREINT UE as well) contains a corrigendum concerning a part of the above-mentioned document to which access has to be refused. The reasons set out above therefore also apply to document 10858/07 COR 1 and no partial access pursuant to Article 4(6) of the Regulation can be granted.

Please note that, your request being specifically based on Regulation (EC) No 1049/2001, it has had to be examined pursuant to the criteria applicable to the public at large, and not on the basis of any specific right of access your client could possibly have in relation to the documents concerned.

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 reply[4].

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosures

[4] 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.

[Confirmatory application - sent by e-mail on 2 January 2014 - 14:53 and 17:57]

From: **DELETED**
Sent: Thursday, January 02, 2014 5:57 PM
To: SECRETARIAT DGF Access
Subject: RE: Reply to request under Regulation 1049/2001 (ref: 13/1814-ws/jj) **DELETED**

Dear Sirs

Please note that the letter enclosed with the email below contains an error. Paragraph 1 of page two should refer to our letter of 30 October 2013, not 30 October 2007. Please find enclosed a copy of the amended letter.

Furthermore, the letter from the Austrian National Bank to the Austrian Chamber of Commerce, referred to in the same paragraph of the attached letter, was omitted from the previous email (below). Please now find enclosed a copy of that letter.

Kind regards

DELETED

From: **DELETED**
Sent: 02 January 2014 14:53
To: access@consilium.europa.eu
Cc: **DELETED**
Subject: Reply to request under Regulation 1049/2001 (ref: 13/1814-ws/jj) **DELETED**

Dear Sirs

Please see the attached letter.

Kind regards

DELETED

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DELETED

General Secretariat
Directorate-General F Communication
Transparency
Council of the European Union
rue de la Loi, 175
B-1048 Brussels
Belgium

Your reference 13/1814-ws/jj

Attention: Jakob Thomsen

By email and post 2 January 2014

DELETED

Dear Sirs

We refer to your letter dated 10 December 2013 in response to our request of 30 October 2013 on behalf of DELETED for access to a copy of the minutes and any other Council documents relating to the Relex/Sanctions meeting on 13 June 2007.

You identified four documents relevant to our request: 10858/07, 10858/07 COR, 10507/07 and 10635/07. Documents 10507/07 and 10635/07 were provided to us in full. The Council refused to provide document 10858/07 COR and certain parts of document 10858/07. The Council stated that the latter documents relate *"to issues which are still under discussion within the preparatory bodies of the Council"* and provided two reasons for its refusal to disclose the documents: (i) they *"contain internal information, the public release of which would not only prejudice the EU's position vis-à-vis relevant third parties but also facilitate circumvention strategies and thus weaken the effectiveness of the restrictive measures concerned"*; and (ii) *"release of this delicate information from internal discussions would severely hamper future discussions on such measures"*.

We write pursuant to Article 7(2) of Regulation 1049/2001 to request that the Council reconsiders its position, for the following reasons.

Regulation 1049/2001 is designed to confer as wide a right of access as possible to documents of the EU institutions. The general rule is that access to the entire content of documents should be given. That general rule is subject to certain exceptions based on grounds of public or private interest which the EU Courts have consistently held must be interpreted and applied strictly. If the Council refuses access to a document, it must explain how disclosure of that document could specifically and actually undermine the interest protected by the exception upon which it relies. Moreover, the Council must weigh the particular interest to be protected against, *inter alia*, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.

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First, none of the documents or parts of documents provided relate to the matters contained in section I (Results of the Relex/Sanctions meeting on 13 June 2007) of the letter from the Austrian National Bank to the Austrian Chamber of Commerce (copy enclosed again for your convenience), which we referred to in our letter of 30 October 2013. Section I concerns issues raised and conclusions reached at the Relex/Sanctions meeting. The letter also suggests that these matters are referred to in the official minutes of that meeting. There is no reason for the Council to refuse to disclose, at the very least, the parts of the minutes and other Council documents related to these matters. In particular:

1 It is not accepted that such matters are *"still under discussion within the preparatory bodies of the Council"*. The meeting took place more than 6.5 years ago, since which time the Council has adopted more than 20 sets of restrictive measures against Iran. In any event, Section I concerns conclusions reached at the meeting.

2 In circumstances where the Austrian National Bank's letter already refers to issues raised and conclusions reached at the meeting, disclosure would not *"facilitate circumvention strategies and thus weaken the effectiveness of the restrictive measures concerned"*.

3 The assertion that the release of such information would *"prejudice the EU's position vis-à-vis relevant third parties"* is not understood as it is not sufficiently detailed and specific. The Council does not explain how it considers the EU's position would be prejudiced nor which third parties are referred to. Clearly no prejudice would be caused by the disclosure of, at the very least, the parts of the minutes and other Council documents related to the matters referred to in the Austrian National Bank's letter.

4 Again, disclosure of, at the very least, the parts of the minutes and other Council documents related to the matters referred to in the Austrian National Bank's letter would not *"severely hamper future discussions"*. That information is already publicly available.

It is clear, therefore, that the blanket refusal to provide access to documents, or parts of documents, related to the matters referred to in the Austrian National Bank's letter is unnecessary.

Second, the Council has failed to weigh the public interest protected by the exception upon which it relies with the public interest in the administration of justice. As you will be aware, the Council imposed restrictive measures upon DELETED on 23 May 2011. DELETED challenged those measures in the General Court DELETED and has subsequently appealed the General Court's decision DELETED DELETED relies on the Austrian National Bank's letter as evidence of the issues raised and conclusions reached at the Relex/Sanctions meeting on 13 June 2007 in support of DELETED claim that the restrictive measures against it are unlawful. DELETED has also sought access to the Council documents relating to the Relex/Sanctions meeting, which are directly relevant to DELETED argument. We wrote to the Council to request access to those documents on 22 July 2011 and 13

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March 2012. No substantive response was received. The administration of justice requires disclosure of, at the very least, the parts of the minutes and other Council documents related to the matters referred to in the Austrian National Bank's letter.

For the reasons set out above, the general rule should apply and the Council should disclose, at the very least, the parts of the minutes and other Council documents related to the matters referred to in the Austrian National Bank's letter.

However, if the Council has any remaining concerns, disclosure could be made to DELETED legal advisers only solely for the purposes of current legal proceedings. That would on any view protect the interests which they Council alleges require protection, while permitting access to the documents for the purpose for which access is sought.

You state that our request *"has had to be examined pursuant to the criteria applicable to the public at large, and not on the basis of any specific right of access your client could possibly have in relation to the documents concerned"*. The criteria applicable to the public at large do not exclude consideration of the public interest in the administration of justice, nor does Regulation 1049/2001 exclude the possibility that a person might at their request be granted access to documents solely through their professional advisers, in order to ensure the protection of interests which the Council insists (wrongly in our view) would be prejudiced by unrestricted access to the documents in question.

We note that confirmatory applications are published in the Council's Register of documents. Please could you remove all personal data from Council documents related to this confirmatory application.

We look forward to hearing from you.

Yours faithfully

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(annex to this letter:

letter from the Austrian National Bank to the Austrian Chamber of Commerce, see pages 4 through 12 of ANNEX 1 above)