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#### 'I/A' ITEM NOTE

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From: The Antici Group  
To: COREPER/Council  
Subject: Handling of documents internal to the Council

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#### Introduction

1. In 2011, the Council endorsed guidelines for the handling of documents internal to the Council.
2. On 27 March and 10 April 2018, the Antici Group discussed the need for certain adjustments to the guidelines to reflect changes in working practices since 2011.
3. It was agreed that a wider revision of the guidelines would take place at a later stage in order to set out a comprehensive set of guidelines regarding the full lifecycle of such documents to include elements regarding the criteria for marking documents as LIMITE and the review of the LIMITE status of such documents.
4. In the light of the above, subject to confirmation by Coreper, the Council is invited to endorse the guidelines set out in the annex.

## GUIDELINES

### FOR HANDLING OF DOCUMENTS INTERNAL TO THE COUNCIL

#### I. Introduction

1. This document contains guidelines on handling unclassified Council documents whose distribution is internal to the Council, its members, the Commission, the European External Action Service (EEAS), and depending on the subject-matter, certain other EU institutions (e.g. European Parliament, Court of Justice, European Central Bank) and bodies (e.g. Committee of the Regions, European Economic and Social Committee). The untimely public disclosure of such documents could adversely affect the Council's decision-making processes.
2. The guidelines have a direct impact on the functioning of the Council and, as a consequence, are to be respected by Member States as members of the Council, in line with the principle of loyal cooperation which governs relations between the EU institutions and the Member States.
3. The guidelines contained in this document replace the guidelines set out in document 11336/11 of 9 June 2011 on handling of documents internal to the Council .

## II. Marking and applicable legislation

4. Documents which are internal to the Council must bear the marking "LIMITE" on the front page, and in the footer of all subsequent pages, in all language versions. "LIMITE" is a distribution marking, and not a classification level within the meaning of the Council's security rules<sup>1</sup>.
5. Documents marked "LIMITE" are deemed covered by the obligation of professional secrecy in accordance with Article 339 of the Treaty on the Functioning of the European Union (TFEU) and Article 6(1) of the Council's rules of procedure<sup>2</sup>. Moreover, they must be handled in compliance with the relevant EU legislation, in particular:
  - (i) Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>3</sup>;
  - (ii) Regulation (EC) No 45/2001 of 18 December 2000 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>4</sup>;
  - (iii) Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community<sup>5</sup>.
6. Unclassified documents which bear no "LIMITE" marking are automatically accessible to the public.

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<sup>1</sup> Council Decision (2013/488/EU of 23 September 2013) on the security rules for protecting EU classified information (OJ L-274, 15.10.2013, p. 1-50).

<sup>2</sup> Council Decision (2009/937/EU of 1 December 2009) adopting the Council's Rules of Procedure (OJ L-325, 11.12.2009, p. 35-61)

<sup>3</sup> OJ L-145, 31.5.2001, p. 43-48.

<sup>4</sup> OJ L-8, 12.1.2001, p. 1-22.

<sup>5</sup> OJ L-43, 15.2.1983, p. 1-3

### III. Minimum protective measures for LIMITE documents

7. "LIMITE" documents should be stored, whenever possible, in official premises. EU and Member States' officials should not leave "LIMITE" documents visible on their desks when leaving their offices unlocked or when receiving external visitors. When not in use, such documents should be stored in locked furniture.
8. When removed from official premises, "LIMITE" documents should be kept under the control of the official at all times, either on their person or in locked furniture.
9. Council documents, including those marked "LIMITE", are distributed via the Council's official distribution systems: Delegates Portal and U32Mail on Extranet. If exceptionally "LIMITE" documents have to be sent by other means such as e-mail, fax or post, care must be taken to ensure that they are sent only after authorisation has been given by a duly authorised official and solely to recipients entitled to receive them<sup>6</sup>.
10. When "LIMITE" documents are sent by post, envelopes and packages should be addressed to a named individual and / or function, should include a return address and should not bear the "LIMITE" marking.
11. Communication and information systems (CIS) which handle "LIMITE" documents do not require specific technical measures for protection above and beyond the standard network protective measures.
12. Particular care should be taken when storing large numbers of "LIMITE" documents on recordable media (e.g. removable hard-drives, memory sticks, CDs), as the collective damage caused by the loss of such media resulting in unauthorised disclosure could be more harmful to the Council's decision-making process than the unauthorised disclosure of a single "LIMITE" document.

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<sup>6</sup> Delegates Portal allows individual users to access official Council documents marked "LIMITE" from their personal computers and mobile devices. Moreover, users are notified rapidly about the availability of documents through the system's "e-notification" feature.

13. When "LIMITE" documents are no longer required and have been properly archived, all remaining copies should be disposed of by shredding or by some other equivalent method of destruction. When this is not possible, the documents should be manually ripped up. No special requirements are needed for the deletion of "LIMITE" documents on reusable computer storage media.

#### **IV. Distribution of "LIMITE" documents**

14. Council documents marked "LIMITE" may be distributed to any official of a national administration of a Member State, the European Council, the Council, the European Commission and the EEAS. "LIMITE" documents may also be distributed to nationals of a Member State who are duly authorised to access such documents by virtue of their functions.
15. Certain "LIMITE" documents may be released to acceding States<sup>7</sup> and to other EU institutions and bodies depending on the "subject code" on the front page of the document.
16. Private contractors may be granted privileged access to "LIMITE" documents in accordance with the relevant contractual obligations, which should be consistent with these guidelines, in particular as regards professional secrecy and non-disclosure.
17. "LIMITE" documents may not be distributed to any other entity or person, the media or the general public without prior authorisation (preferably written) by a relevant official (see also paragraphs 18 and 19 below).
18. Where appropriate, "LIMITE" documents may be made available to relevant European Parliament bodies and office holders by duly authorised Council officials, on the understanding that the European Parliament will handle them in a manner that is consistent with these guidelines and will not make such documents or parts of them public without prior authorisation.

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<sup>7</sup> Detailed internal arrangements for implementing information and consultation procedures with acceding States are agreed by the Council (see doc. 16326/04 of 6 January 2005, *Enlargement, EU internal implementing arrangements for the interim period*).

19. "LIMITE" documents may only be released to third States or international organisations by Council officials duly authorised by the Secretary-General of the Council. Third parties will be requested to handle such documents in a manner that is consistent with these guidelines and not to make them public without prior authorisation.

## **V. Public access to LIMITE documents**

20. "LIMITE" documents must not be made public unless a decision to that effect has been taken by duly authorised Council officials, by the national administration of a Member State (see paragraph 21), or, where relevant, by the Council, in accordance with Regulation (EC) No 1049/2001 and the Council's rules of procedure.
21. Personnel in any EU institution or body other than the Council may not themselves decide to make "LIMITE" documents public without first consulting the General Secretariat of the Council (GSC). Personnel in the national administration of a Member State will consult the GSC before taking such a decision unless it is clear that the document can be made public, in line with Article 5 of Regulation (EC) No 1049/2001.
22. The content of "LIMITE" documents can only be published on secure Internet sites or web-based platforms approved by the Council or with protected access features (e.g. Delegates Portal).