



Council of the
European Union

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Eingelangt am 19/04/18

Brussels, 19 April 2018
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API 24

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 06/c/01/18

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 15 February 2018 and registered the same day, with a confirmation sent by e-mail ([Annex 1](#));
- reply from the General Secretariat of the Council dated 8 March 2018 ([Annex 2](#));
- confirmatory application dated 16 March 2018 and registered on 19 March 2018 ([Annex 3](#)).

[E-mail message sent to access@consilium.europa.eu on 15 February 2018 - 14:13]

From: **DELETED**

Sent: Thursday, February 15, 2018 14:13

To: SECRETARIAT DGF Access Access@consilium.europa.eu

Subject: Re: Ref. 18/0166-nh/ns

Dear Transparency unit
Att. Mr Ramón Chismol Ibáñez,

Thank you for the answer to my request which on a formal level was positive. I did receive what I asked for.

But as you probably could foresee that does not entirely satisfy my curiosity. I now understand that the content I'm interested is not to be found in document 13671/17 but in the referred documents 6121/17 and 11257/17.

Thus I'm not sure whether I'm now filing a confirmatory application, or if this should be seen as a restart as I now ask for the content of the Requirements Catalogue.

I understand these documents have been classified CONFIDENTIEL UE/EU CONFIDENTIAL. Never the less I believe according to regulation 1049/2001 their content should be evaluated in such a way that exceptions from the public interests to access must be applied strictly and interpreted narrowly, and that the institution also should examine the possibility of providing partial access, as stated by the Court in the case C-353/99 P, (referring to the ruling of the Tribunal T-14/98 in my first application was a mistake of mine.)

To illustrate my request I take the liberty to elaborate a bit on my interest:

In earlier defence strategy documents known as the Head Line Goals and Head Line Goals 2010, the overall defence goals were made known to the public, namely the capacity to deploy a specific number of soldiers within a defined time frame leading to among other things a demand of transport capacity.

My understanding is that the documents 6121/17 and 11257/17 known as the Requirements Catalogue 2107 serve a similar purpose today, and that they are therefore vital for anyone taking an interest in the development of PESCO and EU defence policies.

Should there in these documents be specific and technically sensitive requirements such as range capacities of certain weapons, I believe it is still a public interest to learn what kind of requirements are being discussed; be they communication systems, type of weaponry, et cetera by granting access to parts of the content such as headlines and/or general categories of requirements.

I therefore ask the General Secretariat to consider, or the Council to reconsider, my request for access to the Requirements Catalogue or parts thereof depending on if this is seen as a new request or a confirmatory application of 18/0166-nh/ns.

Yours sincerely

DELETED

[E-mail message sent to **DELETED** on 15 February 2018 - 14:58]

From: SECRETARIAT DGF Access Access@consilium.europa.eu

Sent: Thursday, February 15, 2018 14:13

To: **DELETED**

Subject: Re: Ref. 18/0166-nh/ns

Dear **DELETED**,

Many thanks for your mail. As we gave access to document 13671/17 you requested, this cannot be considered as a confirmatory application.

We will register your new initial request for public access to documents 6121/17 and 11257/17.

Sincerely,

Transparency



Council of the European Union
General Secretariat
Communication and Information
Knowledge Management
Transparency

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Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 8 March 2018

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Ref. 18/0322-nh/jg

Request made on: 15.02.2018

Dear **DELETED**,

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

After consulting the European External Action Service (EEAS)² the General Secretariat of the Council has come to the following conclusion.

I regret to inform you that access to documents **6121/17** and **11257/17** cannot be given for the reasons set out below.

Document **6121/17** is a note from the EEAS to the Political and security Committee (PSC) containing an EEAS document **EEAS(2017) 1736 REV 3 *EUMS Proposal for RC Illustrative Scenarios Package***.

Document **11257/17** is a note from the European Union Military Service (EUMS) to the PSC containing an EEAS document **EEAS(2017) 862 REV 3 *EUMS Proposal on Requirements Catalogue concurrences***.

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

These documents are classified documents, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of their contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.³

These documents contain information on the updated EU military requirements, reasoning and modus operandi for overall CSDP operations.

Release of this information would reveal to third parties the details of the current and the future EU military operations. This would affect the efficiency of the European Union's action and question the feasibility of the EU operations in the future.

Disclosure of these documents would therefore undermine the protection of the public interest as regards defence and military matters. As a consequence, the General Secretariat has to refuse access to these documents.⁴

We have also looked into the possibility of releasing parts of the documents.⁵ However, as the information contained in the document in each of the documents forms an inseparable whole, the General Secretariat is unable to give partial access.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁶

Yours sincerely,

Sally Bliss

³ 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.

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

⁵ Article 4(6) of Regulation (EC) No 1049/2001.

⁶ 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 16 March 2018 - 17:03]

From: **DELETED**

Sent: Friday, March 16, 2018 17:03

To: SECRETARIAT DGF Access <Access@consilium.europa.eu>

Subject: Re: Ref. 18/0322-nh/jg - confirmatory application

Dear General Secretariat,

Following the rejection of my request Ref 18/0322-nh/jg for access to documents 6121/17 and 11257/17, your date 8 March 2018, I hereby ask the Council to review this decision and thereby make a confirmatory application.

I am aware of that the said documents are classified Restreint/UE/EU Restricted and that their content covers defence matters thus making article 4.1 second indent in regulation 1049/2001 applicable. I also understand the General Secretariat has considered article 4.6 with the same outcome.

Never the less I'm not convinced the content is an inseparable whole and that access to each and every part of it could possible harm the legitimate interest protected by article 4.1 second indent.

In this respect I would like to point to a statement by Commission President Jean-Claude Juncker according to whom the permanent structured cooperation in security (PESCO) should be regarded as the Sleeping Beauty, now being awakened. The European Parliaments Research Service has in a similar way described establishing PESCO as the renaissance of EU defence police, although I'm fully aware of that this does not reflect any official position of the Parliament.

These statements and other in any way reflect the possible importance of PESCO. There are in my opinion few other areas more important to citizens than their physical security, and measures taken by the EU-institutions to safeguard stability, peace and security. Thus, the public has in my mind a genuine legitimate interest in being able to follow and understand the development of PESCO, as have Council and Member States an interest in creating an understanding in, and establish accountability for, the forthcoming development in this field.

Should the requested documents contain technical specifications solely relevant to military personnel (and their possible counterparts from third parties) such specifications can easily be redacted. But I believe there is a legitimate interest for the public as citizens and taxpayer to understand in what direction PESCO is developing in different areas, which in my understanding the requested documents illustrate.

I therefor ask the Council to review the negative decision on access bearing in mind the words and intentions of article 4.6.

Yours sincerely,

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