



Council of the
European Union

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Eingelangt am 20/05/19

Brussels, 20 May 2019
(OR. en)

9493/19

INF 143
API 55

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 14/c/01/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 17 April 2019 and registered on the same day (Annex 1);
- reply from the General Secretariat of the Council dated 15 May 2019 (Annex 2);
- confirmatory application dated 19 May and registered on 20 May 2019 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 17 April 2019 - 11:51 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): I am requesting the document ST 7048 2006 INIT (08-03-2006) Report following the Joint Council-Commission Fact Finding Mission to Kosovo between 19-27 February 2006 for research purposes.

1st preferred linguistic version: EN - English

2nd preferred linguistic version:



Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 15 May 2019

DELETED

Email: **DELETED**

Ref. 19/1056-vl/ns

Request made on: 17.04.2019

Dear **DELETED**,

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

I regret to inform you that access to document **7048/06** cannot be given for the reasons set out below.

Document **7408/06** is a note drawn up by the General Secretariat of the Council of the EU for the **Political and Security Committee (PSC)** containing a joint Council-Commission report following the Fact Finding Mission to Kosovo carried out between 19 and 27 February 2006.

The mission concerned has a very important role in contributing to the stability of Kosovo and the region at large, giving the actors' engagement in a delicate political context.

This document is bearing the classification "RESTREINT UE". 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.²

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).

This note was drawn up with a view to possible future EU/ESDP broader engagement in the mission. To this end, it contains not only detailed operational information on the personnel deployed in the field as well as on logistics and security aspects of the planning team, but also on possible strategic developments related to, among others, police and justice activities, as well as an internal assessment of the geo-political environment concerned.

Given its sensitive content, disclosure of document 7408/06 would be undermine the protection of the public interest as regards public security and international relations. As a consequence, the General Secretariat has to refuse access to this document.³

We have also looked into the possibility of releasing parts of the document.⁴ However, as the information therein contained 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).⁵

Yours sincerely,

Paulo VIDAL

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.

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

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

⁵ 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 (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

From: **DELETED**

Sent: Sunday, May 19, 2019 11:59 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Confirmatory application, Re: Ref. 19/1056-vl/ns

Dear Sir/madame

On 15 May 2019 I received your reply to my requests. I regret to find that my request was denied.

May I take this opportunity to recall that the Regulation (EC) No 1049/2001 clearly positions openness as a core principle of the EU, and guarantees public access to documents as a right of EU citizens which can only be limited exceptionally and under certain specific exceptions. The Regulations explicitly states that this “...*right of access also applies to documents relating to the common foreign and security policy ...*” (Preamble, item 7). The Regulation also explicitly stipulates that “*If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.*” (Article 4 (6))

Therefore I confirm my initial requests and ask that you to review your position in relation to the following documents:

May I take this opportunity to specify my request - in case you feel you are not able to provide me with the whole of the document, more specifically I am interested in findings, statements or conclusions related to corruption in the judiciary in Kosovo, or remark that the document does not include such findings, statements or conclusions. In other words, what I am looking for is the assessment/evaluation of the level and type of corruption in the judiciary in Kosovo around the time of the planning of the EULEX Kosovo mission. As the mandate of EULEX Kosovo so heavily emphasises the anti-corruption work, I assume that there was an assessment made stating that this is necessary. I want to be absolutely clear that I am interested only in what one might refer to as ‘the environment in which the mission operates’ but only related to the judiciary in Kosovo. So, I am not interested in the ‘detailed operational information’, ‘logistics’, security aspects’, ‘possible strategic developments’ or ‘assessment of the geo-political environment concerned’.

I am denied even partial access because “Given it's sensitive content, disclosure ... would be undermine the protection of the public interest as regards public security and international relations.”

The judiciary in Kosovo is widely seen as corrupt. This claim is also reiterated by EU, for example in the Draft CONOPS from 2008 which states that “Corruption and the perception that corruption is widespread in the Kosovo society poses a threat to the Rule of Law. “ and “Local judges and prosecutors are not yet in a position to handle the most sensitive criminal and civil cases due to inter alia security concerns and political pressure;...”

I fail to see how releasing the assessment of the state of play of the corruption in the judiciary in Kosovo presented in this report would undermine the public security when in broad terms this is already know to public.

The access is denied also because disclosing this document would undermine the international relations. It is not easy to imagine a scenario under which the assessment of the state of play of the corruption in the judiciary in Kosovo would ‘undermine the protection of international relations’. In case this related to information stemming from other countries or organisations, I recall the consultation procedure with third-party with a view to assessing whether an exception in paragraph 1 or 2 is applicable (Article 4(4) of the Regulation 1049/2001). In case this refers to the authorities in Kosovo, I put it to you that they should already be aware of this assessment as EULEX Kosovo was established and extended with the consent of the local authorities, and it is them whom should have been 'on the drivers' seat' - that is to say, leading the reforms and responsible for the improvement of the judiciary (including reduction of corruption) as per principle of 'local ownership'.

I further claim that even if at the time of the issuance of the document the classification as “RESTREINT UE” would have been justified, I would like to recall the stipulations of the Regulation, Article 4 (7) which state amongst others that “The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document.” The document was drafted in 2006, in a situation where EU was planning to launch a civilian crisis management mission with executive powers to Kosovo which was about to declare independence. However, this was over 12 years ago and the current situation is completely different. For example, the mandate of EULEX Kosovo was modified in 2018 (Council Decision (CFSP) 2018/856) and currently it has only very limited executive functions, which do not directly concern the judiciary in Kosovo.

Lastly, I would like to point out that the Regulation does not stipulate ‘delicate political context’ or ‘very important role’ of the mission as grounds for refusal for access to documents.

I would also like to state here that I do not give my consent for my name to appear in public in relation to this confirmatory application.

Yours sincerely,

DELETED
