



Council of the
European Union

075034/EU XXVI. GP
Eingelangt am 16/09/19

Brussels, 16 September 2019
(OR. en)

12234/19

INF 252
API 122

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 27/c/01/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 22 July and registered on 23 July 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 4 September 2019 (Annex 2);
- confirmatory application dated 13 September 2019 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 22 July 2019 - 19:15 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: **DELETED**

Address: **DELETED**

Telephone:

Mobile: **DELETED**

Fax:

Requested document(s): Dear Sir, Madame,

As part of my research for the Parisian think tank **DELETED** I am currently seeking the disclosure of the latest available Revised Operation Plan (OPLAN) for the European Union Police Mission for the Palestinian Territories (EUPOL COPPS).

Best regards,

DELETED

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Director

Brussels, 4 September 2019

DELETED

Email: **DELETED**

Ref. 19/1705-vl/ns

Request made on: 22.07.2019
Registered on: 23.07.2019
Deadline extension: 13.08.2019

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 **9417/19** cannot be given for the reasons set out below.

Document **9417/19** is a working document drawn up by the European External Action Service (EEAS) for the Committee for Civilian Aspects of Crisis Management, containing the Revised Operation Plan (OPLAN) for the European Union Police Mission for the Palestinian Territories (EUPOL COPPS).

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).

It is bearing the classification code "RESTREINT UE/EU RESTRICTED", which 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 contains the detailed operational plan of a civilian CSDP mission in the occupied Palestinian territory. It is a concise document based on confidential information from the EU Member States, the EU's international partners, the Palestinian Authority and other third states. This sensitive information includes threat assessments and associated risks, as well as reflections on ongoing and planned mitigating measures and security and other contingency plans, the confidentiality of which should be ensured as an important part of the CivOpsCdr's duty of care over the Missions' staff.

It also contains detailed information on the missions' course of action, including in the area of counter terrorism and organised crime, elaborated in a very sensitive political context which, if released to the public, would compromise the EU's international relations with its partners and seriously jeopardise the success of the mission, by negatively affecting the effectiveness of the efforts undertaken in strengthening the stability of the occupied Palestinian territory and in assisting the Palestinian Authority in a very difficult environment.

Furthermore, disclosure could seriously compromise the security of the mission staff to be deployed on the ground as well as the European policy-making on civilian crisis management missions and jeopardise the future operation in the occupied Palestinian territory.

Finally, document 9417/19 contains revised draft opinions for internal use that, if disclosed, would seriously undermine the EU CSDP decision-making process as a whole.

In the light of the above, and having also consulted the EEAS' competent services, the General Secretariat has to refuse access to this document.³

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, second and third indent and Article 4(3), 1st subparagraph of Regulation (EC) No 1049/2001.

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,

Inga ROSINSKA

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:** Friday, September 13, 2019 3:28 PM**To:** TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>**Subject:** Re: Ref. 19/1705-vl/ns

Paris, September 13, 2019

Council of the European Union

General Secretariat

Confirmatory application

GestDem 2019/1705

Dear M. Secretary General,

I acknowledge receipt of the reply to my request number GestDem 2019/1705 and wish to address you a confirmatory application as per Art. 7(2) Reg. 1049/2001 to reconsider the refusal to disclose the documents I have requested.

I have taken close consideration of the reasons leading to your refusal and would hereby advance a number of objections.

First, I would like to underline how though insisting on the damaging potential of disclosure by relying on Articles 4(1)(3) and 4(3) Reg. 1049/2001, your response fails to demonstrate how the disclosure of document **9417/19** would *specifically* and *actually* jeopardize the interest protected.¹ As a matter of fact, the jurisprudence of the European Court of Justice is clear in stating that the mere fact that a case falls within an exception does not justify refusal of access. Similarly, Ms. Secretary General, I believe that you fail to address the probability of that interest being compromised, the jurisprudential threshold being reasonable foreseeability.²

Moreover, the document at stake cannot be regarded as one "drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution"³, contrarily to your claim. EUPOL-COPPS' Operation Plan for the year 2019-2020 (Doc.

¹ ECJ Case T-2/03, 2013 Council of the EU v. Access info Europe, (63).

² ECJ Case T-2/03, 2013 Council of the EU v. Access info Europe, (65).

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Art. 4(3).

9417/19), was voted for and approved when the mission's mandate was renewed, as such the negotiations and discussions -that you claim would be affected by disclosure- are by now closed.

In light of the above, I seriously doubt that your analysis demonstrates that the disclosure of document **9417/2019** would "seriously compromise [...] European policy-making on civilian crisis management" as a whole, nor how it would "seriously undermine the EU CSDP decision-making process as a whole".

Second, I am profoundly persuaded that a partial redaction of the most sensible information, could have allowed for the disclosure of the document, which remains the general rule. Advancing as justification for the complete refusal the fact that "information therein contained forms an inseparable whole" is to me deeply insufficient.

In this regard, I wish to remind you the principle of openness, outlined in Articles 1 ("This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."), 10(3) ("Decisions shall be taken as openly and as closely as possible to the citizen.") and 11(2) (« The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society ») of the Treaty on the European Union. This principle, lying at the core of the functioning of EU institutions, should be preserved and upheld, which has not been the case here.

Surprisingly, I did not find in your letter any consideration of the public interest of a potential disclosure of document **9417/2019**. It seems to me that training, mentoring and advising activities provided to different actors in a non-elected and increasingly authoritarian government (as per numerous NGOs on the ground) by the European Union is a matter of public interest for the European taxpayer and voter. Rather than stressing how disclosure would "compromise the EU's international relations with its partners and seriously jeopardize the success of the mission" or "jeopardize the future operation in the occupied Palestinian territory", I am convinced that considerations pertaining to the relationship between the Palestinian Authority and the EU are here irrelevant for the European citizen, before which all EU institutions are primarily responsible. Given the Mission's highly political work -despite its technical mandate- to increase the capacities of an illegal government, the public interest of disclosure should override the interests protected by the exceptions advanced.

While the decision-making process with regards to CSDP is far from transparent and accessible to the public, I deeply believe the disclosure of document **9417/2019** has here an overriding public interest, as EUPOL COPPS's mandate is precisely to build capacities of a non-democratic, illegitimate and increasingly authoritarian government, in the European citizen's name. These actions, which might go against European fundamental values and principles, have to be evaluated and deserve a larger public debate. This overriding public interest, as per Art. 4(2) Reg 1049/2001, thus excludes the motives put forward to justify the non-disclosure of document **9417/2019**.

In conclusion M. Secretary-General, I hope that you have been convinced that large parts of the documents demonstrate a public interest and can therefore be disclosed.

Best regards,

[Redacted signature block]
