



Council of the  
European Union

Brussels, 28 March 2017  
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**NOTE**

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From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 06/c/01/17

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 31 January 2017 and registered on 1 February 2017 ([Annex 1](#));
- reply from the General Secretariat of the Council dated 15 March 2017 ([Annex 2](#));
- confirmatory application dated 22 March 2017 and registered the same day ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 31 January 2017- 21:40 using the electronic form available in the Register application]

From: **DELETED**

Sent: Tuesday, January 31, 2017 21:40

To: SECRETARIAT DGF Access

Subject: Electronic Request for Access

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile

Fax:

Requested document(s): ST 14978 2016 INIT

ST 10448 2016 INIT

ST 8966 2016 INIT

ST 5653 2016 REV 1

ST 5499 2017 INIT

CM 1006 2017 REV 1

ST 15806 2016 INIT

ST 14555 2016 REV 2

ST 15616 2016 INIT

ST 5698 2017 INIT

ST 5700 2017 INIT

ST 5395 2017 REV 1

ST 15233 2016 REV 1  
ST 15219 2016 REV 2  
ST 5616 2017 INIT  
ST 5364 2017 INIT  
ST 5136 2017 INIT  
ST 11800 2016 REV 1  
ST 5373 2017 INIT  
ST 5264 2017 INIT  
ST 11395 2016 INIT  
ST 7963 2016 INIT  
ST 15757 2016 INIT  
CM 1336 2017 INIT  
CM 1294 2017 INIT  
ST 13169 2016 INIT  
ST 5151 2017 COR 1

1st preferred linguistic version: EN - English

2nd preferred linguistic version:

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**Council of the European Union**  
General Secretariat  
Directorate-General Communication and Information  
Knowledge Management  
Transparency  
*Head of Unit*

Brussels, 15 March 2017

Mr Alessandro Gennaro  
Email: gennyale85@gmail.com

Ref. 17/0204-nh-ld/dm

Request made on: 31.01.2017  
Registered on: 01.02.2017  
Deadline extension: 22.02.2017

Dear Mr Gennaro,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

Please find attached documents **5264/17, 15757/16, 10448/16, CM 1006/17, CM 1006/1/17 REV 1, 15806/16, 15616/16, 5698/17, 5700/17, 5395/17, 5395/1/17 REV 1, 5364/17, 11395/16, CM 1336/17 and CM 1294/17** you requested.

After consulting the European External Action Service and EUROPOL, the General Secretariat of the Council has come into the following conclusion<sup>2</sup>.

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<sup>1</sup> 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).

<sup>2</sup> Article 4(4) of Regulation (EC) No 1049/2001.

EU Classified Information (EUCI) is classified at the following level, among others:<sup>3</sup>

"RESTREINT UE": this classification is applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of its Member States.

I regret to inform you that access to documents **14978/16, 8966/16, 5653/1/16 REV 1, 13169/16, 5616/17** and **5373/17** cannot be given for the reasons set out below

Document **14978/16** RESTREINT UE/EU RESTRICTED is a note from the European External Action Service (EEAS) to the Political and Security Committee (PSC) containing a Six Monthly report 1 January - 31 October 2016 of EUVAVFOR MED Op SOPHIA.

Document **5653/1/16 REV 1** RESTREINT UE/EU RESTRICTED is a note from the EEAS to the PSC and European Union Military Committee containing a Six Monthly report 22 June - 31 December 2015 of EUVAVFOR MED Op SOPHIA.

Document **8966/16** RESTREINT UE/EU RESTRICTED is a note from the EEAS to the PSC containing Military Advice on the ENFM Strategic Review

Document **13169/16** RESTREINT UE/EU RESTRICTED is a note from the EEAS to the PSC and European Union Military Committee containing a Military Advice on the High Representative's Report on the Twenty-Fourth Operation ALTHEA Six Monthly Review.

These documents contain information on organisation and strategic review of two on-going operations. Release of this information would affect the efficiency of the European Union's action and question the feasibility of the operations as a whole.

Disclosure of the 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 <sup>4</sup>.

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<sup>3</sup> 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.

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

Document **5616/17** RESTREINT UE/EU RESTRICTED is a note from the EEAS to the Committee for Civilian Aspects of Crisis Management containing Initial Mapping Report Executive Summary on EUBAM Libya.

The requested documents contain delicate operational information on the ongoing mission in a territory with serious security challenges. Release of these documents which also contain internal EU assessments would jeopardise the EU's efforts to bring stability to the region by enhancing the security of the Libyan borders, hurt relations with relevant third parties and affect the future mission's capability to fulfill its tasks.

Disclosure of the documents would therefore 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 these documents.<sup>5</sup>

Document **5373/17** RESTREINT UE/EU RESTRICTED is a note from the EEAS to the Committee for Civilian Aspects of Crisis Management containing Six-Monthly Mission Report No 2/2016, 1 June - 30 November 2016, of European Union Police Mission for the Palestinian Territories (EUPOL COPPS).

It reveals sensitive details of the on-going mission, internal assessments of the situation on the ground and of the Palestinian Authority's police forces and their capabilities as well as strategic objectives of the EU vis-à-vis the operation.

The General Secretariat considers that the information contained in the above-mentioned document is of a strategic and operational nature. Disclosure of such sensitive information concerning this on-going mission would seriously undermine not only the proper functioning and outcome of this specific operation but also the functioning and outcome of other current and future operations, put at risk the staff deployed in the field and prejudice the EU's relations with the Palestinian authorities. As a consequence, the General Secretariat has to refuse public access to this document.<sup>6</sup>

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<sup>5</sup> Article 4(1)(a), first and third indent, of Regulation (EC) No 1049/2001.

<sup>6</sup> Article 4(1)(a), first and third indents, of Regulation (EC) No 1049/2001.

Document **7963/16** is a note from the Political and Security Committee to the Permanent Representatives Committee (Part 2) containing draft Council conclusions on Libya.

For the Council to reach a final agreement on the adoption of these Council conclusions, its Member States held initial consultations and exploratory talks. This document contains opinions that were put forward for internal use only, as part of initial deliberations within the Council. Release of this information would harm future decision-making on this and similar issues.

Disclosure of the document would therefore seriously undermine the decision-making process of the Council, even after the specific decision has been adopted.

Release of the information contained in this document would also have a negative impact on the relations between the European Union and Libya.

Having examined the context in which the document was drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

As a consequence, the General Secretariat has to refuse access to this document.<sup>7</sup>

We have also looked into the possibility of releasing parts of the documents.<sup>8</sup> However, as the information contained in the documents forms an inseparable whole, the General Secretariat is unable to give partial access.

You will also find a partially accessible versions of documents **15219/2/16 REV 2**, **15233/1/16 REV 1** (in the form of document **15233/16 REV1 EXT 1**), **11800/1/16 REV 1**, **5151/17** and **5151/1/17 REV 1**. However, I regret to inform you that full access to this document cannot be given for the reasons set out below.

Document **15219/16 REV 2** is a note from the Secretariat General of the Council to the JHA Counsellors Group/COSI Support Group on the Operational Action Plans 2017 related to the EU's priorities for the fight against serious and organised crime between 2014 and 2017.

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<sup>7</sup> Article 4(1)(a) third indent and Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001.

<sup>8</sup> Article 4(6) of Regulation (EC) No 1049/2001.

Certain parts of this note contains detailed information on Operational Action Plans and Member States' participation that could be used by individuals or groups of persons involved in serious and organised crime to impair the EU's efforts to combat this type of crime. Full disclosure of this information could therefore undermine the protection of the public interest as regards public security.<sup>9</sup> As a consequence, the General Secretariat is unable to accede to your request for full access.

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception.

Document **15233/1/16 REV 1** RESTREINT UE/EU RESTRICTED is a note from the General Secretariat of the Council to delegations concerning the *Operational Action Plan 2017 related to the EU crime priority G3: "Cyber Attacks"*

The document reflect details on operational strategies concerning the fight against Cyber Attacks; this information could be used by ill-intended persons and organisations to frustrate the efforts of the Union and its Member States to reduce the risks of Cyber Attacks.

Full release of the information contained in them would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to these documents.<sup>10</sup>

Document **11800/1/16 REV 1** is a Note of 16 December 2016 from the Presidency to the Working Party on Information Exchange and Data Protection (DAPIX) on the Manual on Law Enforcement Information Exchange.

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<sup>9</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

<sup>10</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.



You can have access to Part I ("Operational context") and Part II ("General Information") of the note but no access can be given to Part III ("National Fact sheets"). In this part detailed operational data such as contact points and addresses, descriptions of database content and available information are given for each Member State. Disclosure of this information could be used by individuals or groups of persons affected by cross-border law enforcement measures to impair the EU's efforts to support, streamline and facilitate cross-border information exchange.

Full disclosure of this document would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to this document.<sup>11</sup>

Document **5151/17** and **5151/1/17 REV1** contain a contribution of the Legal Service of the Council concerning the possible Council participation to the Inter-Institutional Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation. Document **5151/17 COR 1** is a corrigendum to the document **5151/17**.

The decision-making process to which the requested documents relate is currently ongoing. The Council has not yet taken a position on the issue dealt with by the legal contribution, which is complex and forms a fundamental part of the ongoing internal discussions. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence risk compromising the capacity of the Council to reach an agreement on the dossier. Moreover the Council's eventual participation in the Inter-Institutional Agreement will have to be negotiated with the other institutional actors involved. The disclosure of the document would make known to all interlocutors the Council's internal reflections and concerns and would therefore limit its options during possible upcoming interinstitutional negotiations. For those reasons, disclosure of the requested document would undermine the Council decision-making process<sup>12</sup>.

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<sup>11</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001

<sup>12</sup> Article 4(3), first indent of Regulation (EC) No 1049/2001

The legal advice covered by this opinion deals with issues which are contentious and which constitute critical elements in the negotiations. The legal advice is therefore sensitive. Disclosure of such a document would therefore undermine the protection of legal advice<sup>13</sup>. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend the negotiating position of the Council in the possible upcoming interinstitutional negotiation or eventually its possible decision to participate in the Inter-institutional agreement. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences. Finally, the issues touched upon in the legal opinion are novel, contentious and likely to be relevant for individual decisions concerning interest representatives once the proposed scheme is put in place. As a consequence there is a high risk of future litigation and disclosure of the requested document would undermine the serene conduct of the judicial proceedings by possibly altering the equality of arms and affecting the capacity of the Council Legal Service to effectively defend the Council in Court.

As regards the existence of an overriding public interest in disclosure the requested documents in relation to the interests in protecting the ongoing decision making procedure and in having a frank, objective and comprehensive legal advice under Regulation (EC) No. 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the documents.

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<sup>13</sup> Article 4(2), second indent of Regulation (EC) No 1049/2001

In view of the foregoing, the General Secretariat of the Council is unable to grant you full access to the requested documents. However, in accordance with Article 4 (6) of the Regulation (EC) No. 1049/2001, you may have access to paragraphs 1 - 12 of the legal opinion<sup>14</sup>.

However, access to **5151/17 COR 1** will be refused in its entirety.

I regret to inform you that access to documents **14555/2/16 REV 2**, **5499/17** and **5136/17** cannot be given for the reasons set out below.

Document **14555/2/16 REV 2** is a Note from The Presidency to the COSI Support Group of 15 December 2016 on "Strengthening cooperation on counter-terrorism threat analysis"

This note contains detailed findings, assessments and recommendations with the aim of further strengthening the cooperation between security services and law enforcement to achieve a more comprehensive and future-oriented picture of the terrorist threat.

The disclosure of this information could be used by persons or organisations involved in terrorism, to hamper the EU-efforts to combat this type of activities.

Disclosure of the document would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse access to document **14555/2/16 REV 2**<sup>15</sup>.

This document furthermore reflects preliminary consultations and opinions that were put forward for internal use only, as part of initial deliberations within the Council preparatory bodies.

Disclosure of the information contained in this document would therefore also jeopardise a final decision as regards possible follow-up actions and thus seriously undermine the decision-making process of the Council. As a consequence, the General Secretariat has also for this reason to refuse access to this document<sup>16</sup>.

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<sup>14</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>15</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001

<sup>16</sup> Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001

Having examined the context in which the document was drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

Document **5499/17** RESTREINT UE/EU RESTRICTED is a note from EUROPOL to Delegations of 20 January 2017 on " An outlook on Developments in Jihadist Terrorism"

The document presents an outlook on the current *modi operandi* in jihadist terrorism affecting the EU, and contains operational information on the threat of jihadist terrorism in EU Member States, the trends in terrorism with regards to different actors, the propaganda, recruitment and financing methods, the weapons of choice, as well as on the convergence between terrorism and organised crime and terrorism and immigration in the EU. The disclosure of such information to the public would risk undermining the operational activities by the law enforcement authorities of EU Member States and third countries in their fight against terrorism. The release of this information would equally risk weakening Europol's partners' trust and endangering their mutual cooperation, which is essential to Europol's activities, and consequently would risk hindering Europol's ability to effectively perform its tasks.

Disclosure of the document would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse access to this document<sup>17</sup>.

Document **5136/17** RESTREINT UE/EU RESTRICTED is a note from the Slovak delegation to the Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland) containing a Report on the activities of the Immigration Liaison Officer's (ILO) Network and on the situation in the Republic of Serbia in matters relating to illegal immigration.

This document contains detailed information on migration situation in Serbia in context of the global situation in the Western Balkans, migration routes and *modus operandi* included. Release of this information to the public would seriously hamper the efforts of the law enforcement authorities in relation with illegal immigration and prejudice relations between the European Union and Serbia and other countries in the region.

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<sup>17</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

Disclosure of the document would therefore 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 the document.<sup>18</sup>

We have also looked into the possibility of releasing parts of the documents **14555/2/16 REV 2**, **5499/17** and **5136/17**<sup>19</sup>. However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>20</sup>

Yours sincerely,

Fernando PAULINO PEREIRA

Enclosures

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<sup>18</sup> Article 4(1)(a), first and third indent, of Regulation (EC) No 1049/2001.

<sup>19</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>20</sup> 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.

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Trento, 16<sup>th</sup> March 2017

Council of the European Union  
General Secretariat  
Directorate-General Communication and Information  
Knowledge Management  
Transparency  
Head of Unit

[via e-mail at [access@consilium.europa.eu](mailto:access@consilium.europa.eu)]

**Subject: confirmatory application with reference to your letter of 15<sup>th</sup> March 2017**  
(ref: 17/0204-nh-ld/dm)

Dear Mr. Paulino Pereira,

in accordance with Article 7(2) of Regulation (EC) No 1049/2001 (Regulation), I respectfully request the Council to review its decision of 15.3.2017 for the following reasons.

**I- Legal ground for my request to access documents**

1. Whereas the purpose of the Regulation is *to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission [...] documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents*<sup>1</sup> and whereas it states that *the right of access also applies to documents relating to the common foreign and security policy*<sup>2</sup>, I have the right to be granted the widest possible access to the requested documents.

**II- Failure to comply with Article 9 of Regulation No 1049/2001**

2. As for documents **14978/16, 5653/1/16 REV 1, 8966/16, 13169/16, 5616/17 and 5373/17** the Council in the first place has stated that they are classified at the RESTRAINT UE/EU RESTRICTED level so that access cannot be granted, but it has failed to comply with Article 9(1) of the Regulation which does not consider documents classified at the above mentioned level as sensitive documents. That consideration is relevant as it establishes the basis for a different treatment between sensitive documents and other documents.

3. According to Article 9(1) *[s]ensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIEL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas*

1 OJ L 145, 31.5.2001, p. 44

2 OJ L 145, 31.5.2001, p. 43

*covered by Article 4(1)(a), notably public security, defence and military matters*<sup>3</sup>.

4. The 12<sup>th</sup> recital in the preamble to the Regulation states that *all rules concerning access to documents of the institutions should be in conformity with this Regulation*<sup>4</sup>, so that the Council cannot refer to its Decision No 2013/448/EU<sup>5</sup> adopted under Article 240(3) TFEU (which applies only to internal rules)<sup>6</sup> to reject my request, since it must be handled only in accordance with the Regulation.

5. The European Court of Justice, in case C-266/05, confirmed two criteria laid down by the Court of First Instance which relates to the application of Article 9(3) of the Regulation. Paragraph 107 of the aforementioned decision states that *[i]n paragraph 64, the Court of First Instance expressly noted that the two criteria for the application of Article 9(3) of Regulation No 1049/2001 were, first, the fact that the document in question is a sensitive document and, second, the fact that the originating authority opposed disclosure of the information requested*.

6. As for the first criteria used by the Court, it cannot be applied to my request for the reason set out above, namely that document classified at the RESTRAINT UE/EU RESTRICTED level do not fall under the provisions of Article 9(1).

7. That implies that Article 9(3) cannot be applied to my request so that neither the second criteria set out by the Court in the above mentioned decision can be applied to my request. The Council stated that it held consultations with the EEAS (for the documents listed at paragraph 2 of this confirmatory application) but it has not said which was the position adopted by the EEAS. Should its position be to reject my request, it cannot be used to refuse access under the Regulation.

### III- Failure to comply with Article 2, Annex II to the Council Rules of Procedure

8. In its decision of 15.3.2017 the Council also referred to the specific provisions concerning public access to Council documents set out in Annex II to Council Decision No 2009/937/EU<sup>7</sup>.

9. Article 2 of Annex II applies to consultations as regards third-party documents and therefore must be applied to my request.

10. Article 2(1) states that *[f]or the purpose of applying Article 4(5) and Article 9(3) of Regulation (EC) No 1049/2001 and unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall not be disclosed, the third party concerned shall be consulted if:*

*(a) the document is a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001; [...]*

11. I have already explained why the documents listed at paragraph 2 of this confirmatory application cannot be considered "sensitive documents" as they are defined in the Regulation, so they do not fall under the provisions of Article 2(1).

3 OJ L 145, 31.5.2001, p. 43

4 OJ L 145, 31.5.2001, p. 43

5 OJ L 274, 15.10.2013

6 OJ C 326, 26.10.2012, p. 154

7 OJ L 325, 11.12.2009, p. 35

12. Article 2(4) states that for all third-party documents which do not fall under the provisions of Article 2(1), the third-party's negative opinion does not bind the Council to reject the request.

13. In its decision of 15.3.2017 the Council has not stated which was the position adopted by the EEAS, but, since access was not granted, I assume that it opposed my request. The same consideration must be applied to the consultations held with EUROPOL or other institutions.

14. For the reasons set out above, the position adopted by the EEAS, EUROPOL or other institutions cannot, by themselves, determine the refusal to my request.

#### IV- Misapplication of Article 4 of the Regulation

15. The fact that consultations were held implies that it was not clear upon examination of the above mentioned documents in the light of Article 4(1), (2) and (3) of the Regulation if the document were or were not suitable for release. That being said, the Council is clearly in the position to change its decision of 15.3.2017.

16. The Council, as for documents listed at paragraph 2 of this confirmatory application, based its refusal also on the exceptions provided by Article 4(1)(a), that reads as follows:

*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of:*

*(a) the public interest as regards:*

- *public security,*
- *defence and military matters,*
- *international relations,*
- *the financial, monetary or economic policy of the Community or a Member State;*
- *privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data<sup>8</sup>.*

17. As for documents **14978/16**, **5653/1/16 REV 1**, **8966/16** and **13169/16** the Council stated that *they contain information on organisation and strategic review of two on-going operations. Release of this information would affect the efficiency of the European Union's action and question the feasibility of the operations as a whole.* The refusal was based on the exception provided by Article 4(a) second indent.

18. As for documents **14978/16** and **5653/1/16 REV 1** they both contain a Six Monthly report of the ENFM Op SOPHIA. They relate to an operation which operates in international waters that cannot be considered a military zone nor a conflict zone. The aim of the operation is to stop migrant smuggling and it is not clear how a report on the accomplishments of the operation can *affect the efficiency of the European Union's action and question the feasibility of the operation as a whole<sup>9</sup>.* The disclosure of this information cannot, in my opinion, endanger the lives of people involved in the operation nor put at risk the operation itself. Moreover, is not clear how migrant smugglers can use at their advantage the numbers of migrants rescued or the number of boats destroyed during the operation. I am requesting at least a partial declassification of these two documents since, given the

<sup>8</sup> OJ L 145, 31.5.2001, p. 45

<sup>9</sup> 17/0204-nh-ld/dm, page 2



importance that this matter has in the political debate within the civil society, there is an overriding public interest to oversee what are the action taken by the EU institutions on this regard.

19. As for document **8966/16** which is *a note from the EEAS to the PSC containing Military Advise on the ENFM strategic review* can be applied the same observations that I made in the previous paragraph. ENFM Op SOPHIA is not an operation in a war zone so it is difficult to understand why the Council refused total or partial access to the document. The Council asserted that it relates to defense and military matters, but it is difficult to see how trying to stop smuggling operations can relate to this provision. That being the case, the Council, by relying on the exception provided under Article 4(1)(a) second indent, is either stating that migrant smugglers pose a threat which need to be addressed militarily or that they directly impact national defense.

20. As for document **13169/16** which is *a note from the EEAS to the PSC and the European Union Military Committee containing a Military Advise on the High Representative's Report on the Twenty-Fourth Operation ALTHEA Six Monthly Review*, while the reasons to retain from public domain detailed military plans is clear, it is not clear why the document has been retained in its entirety.

21. As for documents **5616/17** and **5373/17**, they both contain information that, given their importance, entitle the public with a right to know. It is clear that details about these operations cannot be disclosed, but the public has the right under the Regulation to have a general overview of the situation.

22. As for document **15233/1/16 REV 1**, which has been released in the form of document **15233/1/16 REV1 EXT 1**, I appreciate the partial declassification which has been granted, but the information released is so general that it is almost useless. For that reason I request the Council to review its decision in order to include more information, while withdrawing operation details.

23. As for document **5499/17** I request the Council to review its position in order to partially release the document.

24. As for the other documents listed in my initial application that have not been considered in this confirmatory application, I am not requesting the Council to reconsider its position.

25. I do not authorize the Council to publish my name or my e-mail address.

Sincerely yours,

DELETED