



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from : Working Party on Information
to : Coreper (part 1)/Council

No. prev. doc.: 8497/10

Subject : Public access to documents
- Confirmatory application No 13/c/01/10

Delegations will find enclosed a draft reply from the Council to confirmatory application No 13/c/01/10, as it stands after examination by the Working Party on Information.

The Danish, Finnish and Swedish delegations indicated that they would vote against the draft reply and made the following statements:

DK: *"Denmark finds that there should be full release of documents 15374/09 ADD 1 and 5759/10. Denmark does not concur with the conclusion that full release of document 15374/09 ADD 1 would undermine the protection of public security (Article 4(1)(a)) nor with the conclusion that full release of document 5759/10 would undermine the protection of defence and military matters (Article 4(1)(a))."*

FI: *"Of FI's view, disclosing document 15374/09 ADD 1 would not undermine the protection of public interest as regards public security and it should therefore be released in its entirety. Furthermore, as regards document 5868/10, it seems that the possibility of extended partial access in accordance with Article 4(6) of the Regulation has not been thoroughly considered."*

SE: *"Disclosure of document 15374/09 ADD 1 would not undermine any of the interests protected under Article 4. Consequently, the document should be released in its entirety."*

A majority of delegations agreed to publish the result of the vote.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting:

- record its agreement to the draft reply annexed to this document, as an "A" item, with the Danish, Finnish and Swedish delegations voting against,
- decide to publish the result of the vote.

The Annex is available in English only.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 13/c/01/10
made by e-mail on 12 April 2010,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents 15374/09 ADD 1 (RESTREINT UE), 16869/1/09 REV 1,
5759/10 and 5868/10 RESTREINT UE)

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to the following documents:
 - a) 15374/09 ADD 1 (RESTREINT UE): note from the Presidency to the Article 36 Committee containing a revised EU radicalisation and recruitment action plan;
 - b) 16869/1/09 REV 1: note from CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration) to the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland) containing an analysis of the replies to the questionnaire on unaccompanied minors arriving to the EU;
 - c) 5759/10: note from the European Union Military Committee containing a revised EUMC Collegiate View on the document "Priorities - Proposed Mechanism to identify further Cooperative Actions" drafted by the European Defence Agency; and

d) 5868/10 (RESTREINT UE): note from the Council General Secretariat to the Committee for Civilian Aspects of Crisis Management containing a Draft CivCom Advice on the document "Strategic Review of EU Engagement in Guinea-Bissau" (doc. 5356/10 - RESTREINT UE)".

2. In its reply dated 22 March 2010, the General Secretariat:

a) refused public access to document 15374/09 ADD 1 pursuant to Article 4(1)(a), first indent, of the Regulation (protection of the public interest with regard to public security);

b) granted partial access to document 16869/1/09 REV 1. Public access to the remaining parts of the document was refused pursuant to the first and third indents of Article 4(1)(a) of the Regulation (protection of the public interest with regard to public security and international relations);

c) refused public access to document 5759/10 pursuant to the second indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters) as well as pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision making process of the Council); and

d) refused public access to document 5868/10 pursuant to the first, second and third indents of Article 4(1)(a) of the Regulation (protection of the public interest with regard to public security, defence and military matters and international relations) as well as pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision-making process of the Council).

3. Following the applicant's confirmatory application dated 12 April 2010, the Council has thoroughly examined the documents and carried out internal consultations to ascertain the applicability of the above-mentioned exceptions to the documents. The Council has come to the conclusion set out below.

4. The EU Strategy for Combating Radicalisation and Recruitment to Terrorism from November 2008 provides a framework to the European Union and the Member States for combating radicalisation and recruitment to terrorism. The EU Radicalisation and Recruitment Action Plan complements this Strategy by listing more detailed measures to be taken by the EU and the Member States in order to assess the extent of radicalisation and recruitment and to identify and systematically analyse the various environments within which radicalisation and recruitment may occur.
5. Document 15374/09 ADD 1 (RESTREINT UE) is a note from the Presidency to the Article 36 Committee and contains a proposal from the Swedish Presidency for a revised EU Radicalisation and Recruitment Action Plan. Having regard to the sensitive issues dealt with in this document, the Council holds the view that, if released to the public, the information contained in the document could be misused by persons or groups whose aim it is to facilitate radicalisation and recruitment processes or who are already involved in radicalisation and recruitment to terrorism. Such misuse would jeopardize the internal security of the Member States and cause serious prejudice to the effectiveness of present and future measures adopted/planned by the EU and the Member States in the area. Accordingly, pursuant to the first indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to public security), the Council is unable to grant full public access to this document.
6. However, in the light of the internal consultations referred to above, the Council has come to the conclusion that, in application of Article 4(6) of the Regulation, partial access may be granted to the titles of the different chapters of document 15374/09 ADD 1. In the Council's view, these parts of the document are not covered by any of the exceptions under Regulation 1049/2001. A partially declassified version of document 15374/09 ADD 1 including the parts mentioned above is set out in document 15374/09 ADD 1 EXT 1.

7. Document 16869/1/09 REV 1 is a note from CIREFI to the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland) and contains an analysis of the replies to the questionnaire on unaccompanied minors arriving in the EU. This questionnaire aims at gathering information on different aspects of the phenomenon of unaccompanied minors arriving in the EU, such as trends, modus operandi, dismantling of criminal networks involved in helping minors to enter the EU/Schengen area, push and pull factors as well as any possible preventive measures that Member States undertake or plan to undertake in the countries of origin or in cooperation with them.

8. The document is an important instrument in understanding and assessing the phenomenon of unaccompanied minors arriving in the EU from third countries and its consequences. The document contains sensitive information on, among others, the routes and methods of travel used by unaccompanied minors to enter the EU/Schengen area, measures that Member States undertake in order to try to prevent unaccompanied minors from disappearing from reception centres as well as measures of the Member States to return unaccompanied minors to their countries of origin. In the Council's view, releasing this information would enable criminal organisations active in human trafficking, forced labour or prostitution to pinpoint weaknesses in the infrastructures of the Member States' law enforcement systems, thereby causing prejudice to the effectiveness of the measures undertaken/planned by the Member States and the EU to combat this kind of criminality. Furthermore, full disclosure to the public of the assessments contained in this document would seriously prejudice the relations between the European Union and the third countries mentioned and would, in addition, be detrimental to the efforts undertaken by the EU to cooperate with the countries of origin of the unaccompanied minors when returning them back to these countries. Accordingly, pursuant to the first and third indents of Article 4(1)(a) of the Regulation (protection of the public interest with regard to public security and international relations), the Council is unable to grant full public access to this document.

9. However, in the light of the internal consultations referred to above, the Council has come to the conclusion that, in application of Article 4(6) of the Regulation, further partial access may be granted to the following additional parts of document 16869/1/09 REV 1 which are not covered by any of the exceptions under Regulation 1049/2001:
- page 3, point B (Routes and methods of travel): first paragraph; and
 - page 11, Conclusions: second sentence of the third paragraph.

Document 5759/10

10. Document 5759/10 is a note from the European Union Military Committee and contains a revised EUMC Collegiate View on the document "Priorities - Proposed Mechanism to identify further Cooperative Actions" drafted by the European Defence Agency. It also contains a contribution from the EUMC related to the preparation of Phase 1 of mechanism proposed by the EDA.
11. The document expresses an opinion by the EUMC for internal use on a document related to the update of the Capability Development Plan (CDP). In the Council's view, full release of this internal military opinion to the public would seriously compromise the on-going discussions on the update and review of the CDP, which is the major driver for EU Military Concept development, and would thereby also be detrimental to the efforts undertaken by the EDA and the Member States to keep on providing timely guidance for Member States' national defence planning and proposing innovative solutions for addressing ESDP capability requirements.
12. Accordingly, pursuant to the second indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters) and, in the absence of any evidence of an overriding public interest in release, also pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision-making process of the Council), the Council is unable to grant full public access to this document.

13. The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the document in question. The Council has come to the conclusion that partial access may be granted to the following parts of the document which are not covered by any of the exceptions under Regulation 1049/2001:

- page 1

- page 2: part entitled "Background"

- page 2: first paragraph of the part entitled "Comments"

Document 5868/10

14. Document 5868/10 (RESTREINT UE) is a note from the Council General Secretariat to the Committee for Civilian Aspects of Crisis Management and contains a Draft CivCom Advice on the document "Strategic Review of EU Engagement in Guinea-Bissau" (doc. 5356/10 - RESTREINT UE)".

15. In February 2008, the Council adopted a joint action establishing an EU mission in support of security sector reform in Guinea-Bissau (EU SSR Guinea-Bissau) to be conducted under the ESDP. The overall objective of EU SSR Guinea Bissau is to provide advice and assistance to the local authorities on reform of the security sector in Guinea-Bissau, in order to contribute to creating the conditions for implementation of the national security sector reform strategy. In November 2009, the Council approved an extension of the mission for six months, requesting that a strategic review on the future of the EU engagement in Guinea-Bissau, taking into account regional aspects, be carried out by January 2010.

16. Document 5868/10 contains an assessment of an on-going CSDP mission as well as an internal opinion regarding the options for future EU engagement in the country concerned, a matter on which a decision has not yet been taken by the Council. In the Council's view, its full disclosure would not only put seriously at risk the current operation but also be detrimental to the efforts undertaken by the Council to come to efficient and effective conclusions about similar CSDP actions to be taken by the European Union in the future. Furthermore, release of the opinions as regards a possible line of action to be taken concerning the mission in question would seriously undermine the Council's decision-making process on this matter. Disclosure of the analyses of the political and security situation in the country concerned would also put at risk the international relations of the EU and its Member States.
17. Accordingly, pursuant to the second and third indents of Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters and international relations) as well as pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision-making process of the Council), the Council is unable to grant full public access to this document.
18. The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the document in question. The Council has come to the conclusion that partial access may be granted to the following parts of the document which are not covered by any of the exceptions under Regulation 1049/2001:
- page 1;
 - points 1 and 2 on page 2; and
 - point 10 on page 5.

A partially declassified version of document 5868/10, which includes the parts mentioned above, is set out in document 5868/10 EXT 1.
