



**COUNCIL OF
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CSC 39
CAB 38**

"I/A" ITEM NOTE

From: The Antici Group
To: COREPER/Council
Subject: Handling of documents internal to the Council

Introduction

1. Upon COREPER's invitation, the Council Security Committee (CSC) discussed on 29 September and 16 November 2010, and on 17 February 2011, the handling of sensitive unclassified information within the Council with a view to reporting back to the Antici Group (see doc. 12204/10 of 14 July 2010).
2. The Antici Group discussed this topic on 16 and 30 May 2011, and finalised the draft guidelines contained in the annex.
3. In examining this question, full account was taken of the wish previously expressed by COREPER that any guidelines must be *"light and proportionate so as to not impede the smooth operation of the Council"*.

4. A general orientation has emerged from the discussion at this stage with regard to the handling of sensitive unclassified information within the Council; the current guidelines on the handling of documents internal to the Council which are not automatically made public (marked "LIMITE") should be slightly more developed and rendered more visible with a view to strengthening the protection, storage and disposal elements of the handling procedures. Furthermore, the new guidelines should be endorsed by the Council.

5. Subject to confirmation by COREPER, the Council is invited to endorse the guidelines contained in the annex.

GUIDELINES
FOR HANDLING OF DOCUMENTS INTERNAL TO THE COUNCIL

I. Introduction

1. This document sets out specific requirements regarding the handling of unclassified Council documents whose distribution is internal to the Council, its members, the Commission, the European External Action Service (EEAS), and depending on the policy area, certain other EU institutions (e.g. European Parliament, Court of Justice, European Central Bank) and bodies (e.g. Committee of the Regions, European Economic and Social Committee). The untimely public disclosure of such documents could adversely affect the Council's decision-making processes.
2. These specific requirements are applicable for the functioning of the Council and, as a consequence, are to be respected by Member States to the extent that they are members of the Council, in line with the principle of loyal cooperation which governs relations between the EU institutions and the Member States.
3. The guidelines contained in this document replace the guidelines set out in document 5847/06 of 16 March 2006 on handling of documents marked "LIMITE".

II. Marking and applicable legislation

4. Documents which are internal to the Council must bear the marking "LIMITE" on the front page, and in the footer of all subsequent pages, in all language versions. "LIMITE" is a distribution marking, and not a classification level within the meaning of the Council's security rules¹.
5. Documents marked "LIMITE" are deemed covered by the obligation of professional secrecy in accordance with Article 339 of the Treaty on the Functioning of the European Union (TFEU) and Article 6(1) of the Council's rules of procedure². Moreover, they must be handled in compliance with the relevant EU legislation, in particular:
 - (i) Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents³;
 - (ii) Regulation (EC) No 45/2001 of 18 December 2000 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁴;
 - (iii) Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community⁵.
6. Unclassified documents which bear no "LIMITE" marking are automatically accessible to the public; this is the case with most Council documents⁶.

¹ Council Decision (2011/292/EU of 31 March 2011) on the security rules for protecting EU classified information (OJ L-141, 27.05.2011, p. 17-65).

² Council Decision (2009/937/EU of 1 December 2009) adopting the Council's Rules of Procedure (OJ L-325, 11.12.2009, p. 35-61)

³ OJ L-145, 31.5.2001, p. 43-48.

⁴ OJ L-8, 12.1.2001, p. 1-22.

⁵ OJ L-43, 15.2.1983, p. 1-3

⁶ They accounted for 75.5% of all official Council documents in 2010.

III. Minimum protective measures for LIMITE documents

7. "LIMITE" documents should be stored, whenever possible, in official premises. EU and Member States' officials should not leave "LIMITE" documents visible on their desks when leaving their offices unlocked or when receiving external visitors. When not in use, such documents should be stored in locked furniture.
8. When removed from official premises, "LIMITE" documents should be kept under the control of the official at all times, either on their person or in locked furniture.
9. The EXTRANET is the electronic distribution system for official Council documents, including those marked "LIMITE". If exceptionally "LIMITE" documents have to be sent by post, non-encrypted fax or e-mail, care must be taken to ensure that they are sent only after authorisation has been given by a duly authorised official and solely to recipients entitled to receive them⁷.
10. When "LIMITE" documents are sent by post, envelopes and packages should be addressed to a named individual and or function, should include a return address and should not bear the "LIMITE" marking.
11. Communication and information systems (CIS) which handle "LIMITE" documents do not require specific technical measures for protection above and beyond the standard network protective measures.
12. Particular care should be taken when storing large numbers of "LIMITE" documents on recordable media (e.g. removable hard-drives, memory sticks, CDs), as the collective damage caused by the loss of such media resulting in unauthorised disclosure could be more harmful to the Council's decision-making process than the unauthorised disclosure of a single "LIMITE" document.

⁷ EXTRANET allows individual users to obtain official Council documents marked "LIMITE" on their personal computers within one hour of their being issued. Moreover, users are notified rapidly about the availability of documents through the system's "e-notification" feature. However, in exceptional circumstances, and in order to facilitate the timely preparation of discussions, "LIMITE" documents may be distributed by e-mail.

13. When "LIMITE" documents are no longer required and have been properly archived, all remaining copies should be disposed of by shredding or by some other equivalent method of destruction. When this is not possible the documents should be manually ripped up. No special requirements are needed for the deletion of "LIMITE" documents on reusable computer storage media.

IV. Distribution of "LIMITE" documents

14. Council documents marked "LIMITE" may be distributed to any official of a national administration of a Member State, the European Council, the Council, the European Commission and the EEAS. "LIMITE" documents may also be distributed to nationals of a Member State who are duly authorised to access such documents by virtue of their functions.
15. Certain "LIMITE" documents may be released to acceding States⁸ and to other EU institutions and bodies depending on the "subject code" on the front page of the document.
16. Private contractors may be granted privileged access to "LIMITE" documents in accordance with the relevant contractual obligations, which should be consistent with this policy, in particular as regards professional secrecy and non-disclosure.
17. "LIMITE" documents may not be distributed to any other entity or person, the media or the general public without prior authorisation (preferably written) by a relevant official (see also paragraphs 18-19 below).
18. Exceptionally, hard copies of "LIMITE" documents may be made available to the chairpersons of relevant European Parliament committees, upon written request to the General Secretariat of the Council (GSC) and following agreement by duly authorised Council officials, on the understanding that the European Parliament will handle them in a manner that is consistent with this policy and will not make such documents or parts of them public without prior authorisation.

⁸ Detailed internal arrangements for implementing information and consultation procedures with acceding States are agreed by the Council (see doc. 16326/04 of 6 January 2005, *Enlargement, EU internal implementing arrangements for the interim period*).

19. "LIMITE" documents may only be released to third States or international organisations by decision of the Council or by persons duly authorised to release such documents under a Council Decision. Third parties will be requested to handle such documents in a manner that is consistent with this policy and not to make them public without prior authorisation.

V. Public access to LIMITE documents

20. "LIMITE" documents must not be made public unless a decision to that effect has been taken by duly authorised Council officials, by the national administration of a Member State (see paragraph 21), or, where relevant, by the Council, in accordance with Regulation (EC) No 1049/2001 and the Council's rules of procedure.
21. Personnel in any EU institution or body other than the Council may not themselves decide to make "LIMITE" documents public without first consulting the GSC. Personnel in the national administration of a Member State will consult the GSC before taking such a decision unless it is clear that the document can be made public, in line with Article 5 of Regulation (EC) No 1049/2001.
22. The content of "LIMITE" documents can only be published on secure Internet sites or web-based platforms approved by the Council or with protected access features (e.g. EXTRANET-L).