



**ΣΥΜΒΟΥΛΙΟ
ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ**

**Βρυξέλλες, 7 Μαρτίου 2007 (08.03)
(OR. en)**

5032/07

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ΣΗΜΕΙΩΜΑ ΣΗΜΕΙΟΥ «I/A»

της :	Ομάδας «Πληροφόρηση»
προς :	την EMA (2ο τμήμα)/το Συμβούλιο
αριθ. προηγ. εγγρ. :	5031/07
Θέμα :	Πρόσβαση του κοινού στα έγγραφα – Επιβεβαιωτική αίτηση αριθ. 04/c/01/07) του κ. Aurel SARI

Επισυνάπτεται για τις αντιπροσωπίες σχέδιο απάντησης του Συμβουλίου στην επιβεβαιωτική αίτηση αριθ. 04/c/01/07, του κ. Aurel SARI, όπως διατυπώθηκε μετά την εξέταση από την Ομάδα «Πληροφόρηση», κατά τη συνεδρίασή της στις 2 Μαρτίου 2007.

Ως εκ τούτου, η Επιτροπή των Μόνιμων Αντιπροσώπων καλείται να εισηγηθεί στο Συμβούλιο να σημειώσει, στο πλαίσιο των σημείων «Α» της επόμενης συνόδου του, τη συμφωνία του με το συνημμένο σχέδιο απάντησης.

Το Παράρτημα είναι διαθέσιμο μόνον στην αγγλική γλώσσα.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON

TO CONFIRMATORY APPLICATION 01/c/01/07

made by Mr Aurel SARI to the Council

by e-mail on 27 December 2006,

registered by the General Secretariat of the Council on 3 January 2007,

pursuant to Article 7(2) of Regulation (EC) No 1049/2001,

for access to documents

The Council has carefully considered the 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 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47) and has come to the following conclusion:

1. The applicant requested access to the following documents in the context of the EU's civilian and military crisis management missions launched to date:
 - documents relating to the work of the claims commissions;
 - separate arrangements or technical agreements concerning settlement of claims;
 - any other documents produced by or originating with the claims commissions;
 - any documents concerning claims brought by third parties against the European Community Monitoring Mission and documents with regard to the settlement of such claims.
2. Owing to the wide scope of the two applications made by the applicant on this issue and to the complex procedures for internal and external consultations, the initial applications could not be treated within the deadlines laid down in Articles 7(1) and 7(3) of the Regulation..

3. In its replies dated 25 July and 11 December 2006 , the General Secretariat :
- a) released in full the following documents:
 - SN 3126/05, 12329/05, 12510/05 and 11533/06 (EU Monitoring Mission in Aceh (Indonesia));
 - SN 2648/2/06 REV 2 and 10256/06 (status of the EU-led forces in the Gabonese Republic);
 - 9167/00 (restructuring of the European Community Monitoring Mission);
 - b) granted partial access to document 10607/05 (authorisation to open negotiations concerning the draft Model Agreement on the status of the European Union Civilian Crisis Management Mission in a Host State (SOMA) - one part refused on the basis of Article 4(1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations));
 - c) refused to grant access to documents 8720/05, 9847/05 (+ REV 1, REV 2, REV 3) and 10564/05, which contain draft model agreements in the framework of EU civilian ESDP and civilian crisis management operations, and to document 11315/06 (EU Planning Team for Kosovo) pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations).
4. In his confirmatory application, the applicant does not oppose to the partial or total refusal of the Council's documents referred to in points 3b) and 3c), but exclusively disagrees with the General Secretariat's reply dated 11 December 2006 as far as it indicated that *“with the exception of [...] the documents identified by its General Secretariat in its previous replies to your application, the Council does not hold any other document concerning the implementation of the status of forces negotiated within the framework of the EU/EUFOR civilian and military operations with regard to the setting up of claims commissions for treatment of compensation claims, filed by the host country or by its citizens, for damages occurred in the operations' field”*.

5. The applicant argues that the EU crisis management framework is established by Council acts and under its effective control. In his view, documents relating to crisis management operations can therefore not be considered as “third party” documents, since the committed authorities are “*subsidiary organs of the Council exercising delegated powers on its behalf*”. Consequently, he claims that even documents negotiated by the Operation or Force Commander acting within the framework of each EU crisis management operation “*are in fact documents held by the Council*”, this therefore “*giving rise to an obligation on part of the Council to grant access to these items in accordance with Regulation No 1049/2001.*”.
6. The Council has carefully examined the matter in the light of the applicant's arguments and carried out new consultations with the relevant departments of its General Secretariat. It has reached the following conclusions.
7. No technical arrangement concerning settlement of claims at the level of the Heads of Mission/Operation or Force Commanders was ever concluded in the framework of any civilian crisis management operation or in the framework of ARTEMIS/EUFOR RD Congo military operations.
8. Contrary to what is alleged by the applicant, the EU crisis management operations are not “subsidiary organs of the Council exercising delegated powers on its behalf”.
9. To start with, an “EU crisis management operation” is an *action*, not an entity. It follows that such operations are neither part of an institution nor another body or organ of the European Union. It also follows that an ‘operation’ does not itself ‘hold’ documents.

10. Moreover, the headquarters for the operation cannot be assimilated to a Council body. The status of the EU-led forces and of the EU mission is generally determined in accordance with the provisions of bilateral agreements and/or memoranda of understanding with the authorities of the third country concerned. Personnel deployed in the field by decision of the Member States engaged in the operation's field are co-ordinated by the Operation Commander or the Head of Mission. The practice thus far for military operations has been that the Council, instead of establishing its own headquarters, uses for each operation at the strategic level the HQ of a Member State or, in two cases, of NATO. The claims commissions fall under the responsibility of the Operation Commander or of the Head of mission, who concludes the relevant technical arrangements with the authorities of the third country concerned. In this capacity, they act neither “on behalf of” the Council, nor “on behalf of” the Union. The fact that the Council initiated the operation in no way changes this situation.
11. Since the Headquarters of the crisis management operations are not subsidiary bodies of the Council, and there is no hierarchical relationship between these headquarters and the General Secretariat of the Council, the files concerning the settlement of claims brought against any EU force or mission, in particular as far as EUMM is concerned, by third parties (rules of procedure, terms of reference, distribution of legal liability and costs, decisions taken by the relevant authority towards each claim) are not held by the Council., to the extent that they were not communicated to the Council’s General Secretariat.
12. In the light of the above, the Council is unable to accede to the applicant’s request.