



**EIROPAS SAVIENĪBAS
PADOME**

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"I/A" PUNKTA PIEZĪME

Sūtītājs: : Informācijas jautājumu darba grupa

Saņēmējs: : Pastāvīgo pārstāvju komiteja (II)/ Padome

Iepr. dok. Nr.: 8314/09

Temats: Publiska piekļuve dokumentiem

- *Kalliopi STATHOPOULOU* kundzes atkārtots pieteikums 08/c/01/09

Pielikumā pievienots projekts Padomes atbildei uz *Kalliopi STATHOPOULOU* kundzes atkārtotu pieteikumu (08/c/01/09), kāda tā ir pēc tam, kad to izskatīja Informācijas jautājumu darba grupa 2009. gada 21. aprīļa sanāksmē.

Pastāvīgo pārstāvju komiteja ir attiecīgi lūgta ierosināt, lai Padome nākamajā sanāksmē kā darba kārtības "A" punktu pieņemtu lēmumu, apliecinot, ka tā atbalsta šim dokumentam pievienoto atbildes projektu.

Pielikums pieejams tikai angļu valodā.

DRAFT**REPLY ADOPTED BY THE COUNCIL ON****TO CONFIRMATORY APPLICATION 08/c/01/09****made by Ms Kalliopi Stathopoulou by e-mail on 30 March 2009,****pursuant to Article 7(2) of Regulation (EC) No 1049/2001,****for public access to documents 6493/08, 8083/08, 8083/08 ADD 1, 11278/08****and 11854/08**

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

1. The applicant refers to documents 6493/08, 8083/08, 8083/08 ADD 1, 11278/08 and 11854/08 concerning the Draft Operation Plan (OPLAN) for the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO).
2. In its reply dated 25 March 2009, the General Secretariat refused access to these documents pursuant to Article 4(1)(a), first and third indents, of the Regulation (public security and international relations).
3. In her confirmatory request, the applicant asks the Council to reconsider its position, pointing out that she needs the documents for her master's dissertation.
4. Having thoroughly examined the requested document and carried out internal consultations with the relevant department of its General Secretariat, the Council has come to the conclusion set out below.

5. On 14 December 2007, the European Council stated the EU's readiness to assist Kosovo in the path towards sustainable stability, including by an ESDP mission. According to the mission statement of the EULEX KOSOVO mission, it shall assist Kosovo authorities, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX KOSOVO, in full co-operation with the European Commission Assistance Programmes, shall implement its mandate through monitoring, mentoring, and advising, while retaining certain executive responsibilities.

In order to fulfil its mission statement, the EULEX KOSOVO mission shall, among others, ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities. Furthermore, it shall ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law. It shall also contribute to strengthening co-operation and coordination throughout the whole judicial process, particularly in the area of organised crime as well as contribute to the fight against corruption, fraud and financial crime.

6. Document 6493/08 is a note from the General Secretariat to the Council on the Draft Operation Plan (OPLAN) for the EULEX KOSOVO. Document 8083/08 is a note from the General Secretariat to the Political and Security Committee concerning draft amendments to annexes P to AB of the OPLAN. Document 8083/08 ADD 1 is a note from the General Secretariat to the Political and Security Committee containing draft amendments to Appendix A to Annex R of the OPLAN. Document 11278/08 is a note from the General Secretariat to the Political and Security Committee containing the Annex P (Intelligence Architecture) to the OPLAN. Document 11854/08 is a note from the General Secretariat to the Political and Security Committee containing the Annex AC (Arrangements for non-majority community areas) to the OPLAN. All these documents are classified "RESTREINT UE" and pertain to the most sensitive sections of the EULEX mandate.

7. Following the renewed assessment of the above-mentioned documents, the Council confirms the approach taken by the General Secretariat in its reply to the applicant's initial request. Having regard to the sensitive issues dealt with by the mission as well as the fact that the mission has to operate in a delicate political situation on the international level, the Council considers that, if released to the public, the operational information contained in these documents would seriously jeopardize the success of the on-going operation by affecting the mission's effectiveness and thus undermine the protection of the public interest as regards public security in Kosovo. The release of this information would also put at risk the measures undertaken by the mission to ensure the security of the personnel deployed, the confidentiality of which is an important element to ensure their effectiveness. It would also be counterproductive to the running of future similar missions.

The Council also considers that disclosure of the information contained in the documents under scrutiny would seriously prejudice the European Union's international relations by revealing in detail the steps being taken by the European Union in circumstances which have a high political impact in the whole area. It would also seriously affect relations with the countries in the region. Furthermore, in the absence of a common position among the EU Member States pertaining to the final status of Kosovo, release of the documents would affect the position of the EU in the settlements towards a sustainable political solution for the future of Kosovo.

8. Public access to documents 6493/08, 8083/08, 8083/08 ADD 1, 11278/08 and 11854/08 must therefore be denied pursuant to Article 4(1)(a), first and third indents, of the Regulation (public security and international relations).
9. The Council has also looked into the possibility of granting partial access to these documents in accordance with Article 4(6) of the Regulation. It has come to the conclusion that partial disclosure was not possible since the exceptions in the first and third indents of Article 4(1)(a) of the Regulation applied to the requested documents in their entirety. In fact, given the still very delicate situation in Kosovo, all information contained in the documents continues to be covered by the above-mentioned exceptions. Partial access to the documents cannot therefore be granted either.

10. The Council understands the applicant's interest in inspecting the documents for the purposes of her academic research. However, it is not possible to grant the applicant privileged access to the documents, since the Council is obliged, when releasing the document, to do so *erga omnes*, in conformity with Article 10(2) of Annex II of its Rules of Procedure.
