



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 September 2011

14845/11

CSC 64

NOTE

From: The General Secretariat

To: Delegations

Subject: Guidelines on downgrading and declassifying Council documents

Delegations will find attached the "Guidelines on downgrading and declassifying Council documents" as approved by the Council Security Committee on 22 September 2011.

Guidelines on downgrading and declassifying Council documents

I. Introduction

1. These guidelines on downgrading and declassifying Council documents, agreed by the Council Security Committee in accordance with Annex III, paragraphs 15 and 16 of the Council Security Rules¹ (hereinafter 'CSR'), are designed to support implementation of the CSR.
2. They describe the principles and the procedure to be applied for downgrading and declassifying Council documents.
3. The Council and the General Secretariat of the Council (GSC) will apply these security guidelines in their structures and communication and information systems (CIS).
4. When EU classified information is handled in national structures, including national CIS, the Member States will use these security guidelines as a benchmark.
5. EU agencies and bodies established under Title V, Chapter 2, of the TEU, Europol and Eurojust should use these security guidelines as a reference for implementing security rules in their own structures.

¹ Council Decision 2011/292/EU of 31 March 2011, OJ L 141, 27.5.2011, p. 17.

II. Principles

6. EU classified information may be downgraded or declassified only with the authorisation of the originator, who, if necessary, may consult with other relevant parties.
7. At the time of its creation, the originator will indicate, where possible, whether EUCI can be downgraded or declassified on a given date or following a specific event. Otherwise, the originator will review the document no less frequently than every five years in order to determine whether the original classification is still appropriate.²
8. Downgrading or declassifying Council documents may also have to be decided on an *ad hoc* basis, for example following a request for access from the public, a request from the European Parliament or at the initiative of the Presidency or the policy department in charge of the file in the GSC.
9. Information should be declassified or downgraded when protection is no longer necessary or is no longer needed at the original level. If the reasons which originally justified the classification of the document are still valid, the document should not be downgraded or declassified.
10. Any decision on downgrading or declassifying a document should be taken in the light of a careful analysis as to the degree of prejudice which unauthorised disclosure of the information in question could cause to the interests of the European Union or of one or more of the Member States. Such a decision should be taken in accordance with the CSR.
11. This analysis may result in a decision to partially declassify a document, when protection is no longer deemed necessary for a part of the document but continues to be justified for the rest of the document.

² Annex III, paragraphs 15 and 16 of the Council Security Rules.

12. When the review of EUCI contained in a Council document results in a decision to declassify it, consideration must be given as to whether the document should be made public or bear the distribution marking LIMITE (i.e. not be made public).

III. Procedure

13. Where the originator of EUCI is the Council, it is for the Council to exercise the originator's rights and prerogatives. Any decision by the Council on downgrading or declassifying EUCI must be taken in accordance with the Council's rules of procedure³.
14. The relevant Working Party will be consulted either at a meeting or, if necessary, by written consultation. Should it deem it necessary, it may seek technical advice from the Council Security Committee.
15. The Information Working Party will be informed where the decision on downgrading or declassification results from a request for access to documents in accordance with the instruments implementing Article 15 (3) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU')⁴.
16. Once the relevant Working Party has been given an opportunity to check whether the downgrading or declassification of the document under examination could be prejudicial to the interests of one or more Member States or to those of the EU, a decision to downgrade or declassify may be taken by COREPER as a procedural decision on the basis of article 240(3) TFEU.
17. Paragraphs 14-16 imply that the relevant documents must be issued sufficiently in advance for delegations to be able to assess the implications of downgrading or declassifying a given document, so that the decision of the Council on downgrading or declassifying is an informed decision which protects the interests of the EU and of the Member States.

³ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 235, 11.12.2009, p. 35-61).

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43-48),

18. If it is clear, on the basis of the analysis referred to in paragraphs 9 and 10, that downgrading or declassification would not prejudice the interests of the EU or of one or more of its Member States and that no consultation of working parties is therefore needed, the GSC may take the decision to downgrade or declassify.
19. Where a decision to downgrade or declassify a document has been taken, the relevant GSC departments, including the Classified Information Office (BIC), will make the necessary practical arrangements.
20. Where a Member State introduces classified information bearing a national or EU security classification marking into the structures or networks of the EU, that Member State will be solely responsible for determining whether to downgrade or declassify such classified information in accordance with national laws and regulations. Should the originator of classified information not be identified, the Council will assume responsibility and the procedures set out in paragraphs 13-19 above will apply.
21. For documents pre-dating 1 March 1995⁵:
 - when such documents bear a national classification marking, they will be handled as if they bore the equivalent EU security classification marking in accordance with Appendix B of the CSR;
 - when such documents bear other types of classification markings, an equivalence with the EU security classifications will be determined by the GSC in accordance with the CSR, if necessary in consultation with the Member State(s) concerned.

⁵ Date of introduction, by decision of the Secretary-General, of a classified information security regime in the GSC.