

HANDLING INSTRUCTION NO 6¹

DOWNGRADING, DECLASSIFICATION AND UNMARKING OF CONFIDENTIAL INFORMATION

1. INTRODUCTION

- (1) This handling instruction defines the procedures for the downgrading, declassifying and unmarking of confidential information.
- (2) It implements the rules and principles defined in Article 13, in Annex I, Part 1, Section 10, and in Annex II, Security Notice 2 - Chapter K of the Bureau Decision.
- (3) The 'depository institution' means any European Union Institution or body forwarding confidential information to the European Parliament in accordance with Article 5(4) of the Bureau Decision.

2. PRINCIPLES

- (4) Confidential information shall be downgraded, declassified or unmarked when protection is no longer necessary.
- (5) Any decision on the downgrading, declassifying or unmarking of confidential information 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 and/or as to the degree of need to continue to apply instructions on how the information shall be handled.
- (6) This analysis may result in a decision to only partially declassify or unmark such information, when protection is no longer necessary for a part of the document concerned but continues to be justified for the rest of it.
- (7) A parliamentary body/office holder or service having downgraded, declassified or unmarked confidential information shall inform the addressees and, if applicable, the Classified Information Unit ("CIU") of the change. The addressees, in turn, shall inform any subsequent addressees to whom they have sent or copied the confidential information accordingly.

¹ Decision of the Bureau of the European Parliament of 15 April 2013 concerning the rules governing the treatment of confidential information by the European Parliament ("the Bureau Decision").

3. PRACTICE

- (8) Where the originator² did not indicate at the time of creation of EUCI an event upon which this information shall be downgraded or declassified, such information shall be reviewed and examined by the originator, the CIU or the parliamentary body/office holder or service holding such information at least once every five years following the date of its creation, in order to verify that the original classification is still appropriate.
- (9) 'Other confidential information' shall be reviewed in good time in accordance with the instructions given by the Director General concerned. Information not unmarked at the first examination shall be re-examined periodically, and at least every five years, in order to determine whether the original marking is still appropriate.
- (10) Confidential information received by the European Parliament may be downgraded, declassified or unmarked only with the prior written consent of the originator, and, where applicable, after discussion with other interested parties.
- (11) Before transmission of EUCI from one parliamentary body/office holder or service to the CIU for archiving purposes, this EUCI shall be closely examined with a view to its possible downgrading or declassification.
- (12) When the originator of confidential information cannot be established or traced in respect of confidential information created within the European Parliament, the secretariat of the parliamentary body/office holder or service holding the confidential information may submit a proposal to the Security Authority (SA)³ as regards the downgrading, declassification or unmarking of such information. The SA shall take a final decision in this respect which shall be implemented by the secretariat of the parliamentary body/office holder or service holding the information.
- (13) When confidential information is declassified or unmarked, the information shall be reintegrated electronically and/or physically into any original relevant file.
- (14) Downgrading, declassification, or unmarking shall be recorded by the parliamentary body/office holder or service, as laid down in handling instruction No 3.
- (15) Following unmarking, the document containing the relevant information shall be uploaded (scanned) in the corresponding GEDA fiche, and the confidentiality field shall be adapted accordingly.

² 'Originator' means the duly authorised author of confidential information (see Article 2(0) of the Bureau Decision).

³ Pursuant to Annex II, Security Notice I, paragraph 2, of the Bureau Decision, the Secretary-General is the Security Authority (SA).

3.1. Downgrading, declassification and unmarking of EUCI

3.1.1. EUCI received by the European Parliament

- (16) EUCI or 'equivalent classified information'⁴ received by the European Parliament may only be downgraded or declassified on the basis of the prior written consent of the depository institution.
- (17) Such prior written consent may only be requested by the CIU. A request to this end may be addressed to the CIU by the parliamentary body/office holder or service holding EUCI the downgrading or declassification of which is envisaged.
- (18) The CIU or, as the case may be, the parliamentary body/office holder or service holding the relevant EUCI shall be responsible for the downgrading or declassification of that EUCI.

3.1.2. Downgrading, declassification and unmarking of EUCI created by the European Parliament

- (19) Information classified as CONFIDENTIEL UE/EU CONFIDENTIAL and above shall only be downgraded or declassified on the basis of the prior written consent of the originator. Such downgrading or declassification may only be effected by the CIU.
- (20) For information classified as RESTREINT UE/EU RETRICTED, the CIU or the parliamentary body/office holder or service holding the information shall effect the declassification only on the basis of the prior written consent of the originator. The CIU and the parliamentary body/office holder or service shall inform each other of any declassification.
- (21) EUCI created by the European Parliament which makes reference to or contains EUCI or 'equivalent classified information' forwarded to the European Parliament by a depository institution may not be declassified or downgraded with respect to this reference without the prior written consent of the depository institution concerned.

3.2. Unmarking of 'other confidential information'

3.2.1. Unmarking of 'other confidential information' received by the European Parliament

- (22) 'Other confidential information' received by the European Parliament may only be subject to unmarking or to a change of the marking on the basis of the prior

⁴ Pursuant to Article 2(e) of the Bureau Decision, " 'equivalent classified information' means classified information issued by Member States, third States or international organisations which bears a security classification marking equivalent to one of the security classification markings used for EUCI and which has been forwarded to the European Parliament by the Council or the Commission".

written consent of the depository institution or, as the case may be, of the originator.

- (23) Requests for such prior written consent for unmarking, or for a change of a marking of 'other confidential information' received by the European Parliament, can be made by the parliamentary body/office holder or service holding the relevant 'other confidential information'.
- (24) The parliamentary body/office holder or service holding the relevant 'other confidential information' shall be responsible for effecting the unmarking, or the change of the marking, of 'other confidential information' received by the European Parliament.
- (25) When the CIU holds "other confidential information" received by the European Parliament, it shall be responsible for effecting the unmarking of it. Following unmarking, it shall transfer such information to the historical archives of the European Parliament for permanent preservation. Where the CIU unmarks information which is part of a dossier that is still with a parliamentary body/office holder or service, the CIU shall transfer the unmarked information to this parliamentary body/office holder or service.

3.2.2. *Unmarking of 'other confidential information' created by the European Parliament*

- (26) Changes in marking shall, in principle, be effected by the originator.
- (27) The secretariat of the parliamentary body/office-holder or service currently holding the 'other confidential information' concerned may, at any time, address a request to the originator aimed at such a change in marking.

3.3. Public access to confidential information under Regulation (EC) No 1049/2001

3.3.1. *General provisions*

- (28) Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents applies to all documents held by an institution concerning all areas of activity of the EU (Article 2), and caters for the need to protect public and private interests (Article 4) as well as allowing for special treatment of sensitive documents (Article 9).
- (29) Public access to documents containing EUCI shall be examined by the competent service in accordance with the procedure laid down in the Bureau's decision on Rules governing public access to European Parliament documents of 28 November 2001⁵.
- (30) It follows from the case law of the Court of Justice that classification cannot, on its own, justify the refusal of public access under Regulation (EC) No 1049/2001. As a consequence, and without prejudice to Article 9 of

⁵ Bureau Decision of 28 November 2001, as amended ("the Bureau Decision on access to documents"),

Regulation (EC) No 1049/2001 concerning special treatment of sensitive documents, where public access is sought under this regulation to a document containing confidential information, the harm caused by its disclosure has to be assessed, just as it is for any other document, pursuant to Article 4 of that Regulation, on the basis of a specific examination of its content⁶.

- (31) For this purpose, a request, under Regulation (EC) No 1049/2001, for public access to documents containing classified information shall be handled by the CIU. A request for public access to documents containing 'other confidential information' shall be handled by the Transparency Unit.

3.3.2. *Requests for public access to documents containing EUCI*

- (32) When a request for public access under Regulation (EC) No 1049/2001 concerning a document containing classified information is received by Parliament, it shall be transferred to the CIU without delay. The CIU shall examine whether one of the exceptions laid down in Article 4 or 9 of Regulation (EC) No 1049/2001 is applicable.
- (33) If, once this verification has been conducted, it is established that access to the requested document shall be denied on the basis of one of the exceptions laid down in Article 4 or 9 of Regulation (EC) No 1049/2001, a negative response to the applicant shall be proposed by the CIU.
- (34) As regards documents containing EUCI which were created by the European Parliament, in the event of a proposal to respond favourably, the CIU shall inform the originator of the request and of the proposal to proceed with the partial or total declassification of the classified information in question. The originator, within 5 working days, shall make its position known, with a view to assessing whether one of the exceptions laid down in Article 4 or 9 of Regulation (EC) No 1049/2001 is applicable.
- (35) If no reply is received within that deadline, or if the originator cannot be identified or contacted, the CIU shall submit to the SA the proposal to proceed with the partial or total declassification of the document containing classified information in question, taking into account the deadline of 15 working days for the final decision, as laid down in Regulation (EC) No 1049/2001.
- (36) If the originator is another Institution, a Member State or a third party, it shall be consulted by the CIU, in accordance with Article 4(4) or Article 4(5) of Regulation (EC) No 1049/2001, for an opinion as to the applicability of one of the exceptions contained in Article 4 or 9 of Regulation (EC) No 1049/2001 and as to the question of whether or not the requested document may be fully or partially declassified. If, following such consultation, the originator fails to provide the Parliament with its opinion and, if applicable, its consent for declassification, the CIU shall submit the matter to the SA who shall take a decision on partial or full declassification of the classified information in question, taking into due account the legitimate interests of the originator.

⁶ See the judgment of the General Court in case T-93/11, *Stichting Corporate v. Commission*, para. 52.

(37) The CIU may, at any time, refer an application to the Legal Service and/or to the Data Protection Officer (DPO) of the European Parliament for opinion. The draft reply to confirmatory applications may be referred to the Legal Service, which shall deliver its opinion within three working days. With a view to ensuring a coherent application of Regulation (EC) No 1049/2001 by the European Parliament, the CIU may at all stages of the procedure consult the Transparency Unit for an opinion.

3.3.3. Requests for public access to documents containing 'other confidential information' created by the European Parliament

(38) Requests for public access to documents containing 'other confidential information' created by the European Parliament shall, if received by another service of the European Parliament, be transferred to the Transparency Unit without delay.

(39) The Transparency Unit shall request an opinion from the originator of the 'other confidential information' who shall suggest the course of action to be taken, within five working days, in particular whether one of the exceptions contained in Article 4 of Regulation (EC) No 1049/2001 applies and whether or not the requested document may be unmarked.

(40) When, on the basis of this verification, it is established that public access shall be granted, the Transparency Unit shall invite the originator to unmark the document accordingly within three working days. If the originator fails to unmark the document within the deadline, or if the originator cannot be identified or contacted, the SA may take a decision, upon a proposal by the Transparency Unit, to fully or partially unmark the document in question in order to respect the legal obligations of the European Parliament, under Regulation (EC) No 1049/2001, to disclose the document to the public.

(41) The Transparency Unit may, at any time, refer an application to the Legal Service and/or to the Data Protection Officer (DPO) of the European Parliament for an opinion. The draft reply to confirmatory applications may be referred to the Legal Service, which shall deliver its opinion within three working days.

3.3.4. Requests for public access to documents containing 'other confidential information' received by the European Parliament from depository institutions or third parties

(42) Requests for public access to documents containing 'other confidential information' received by the European Parliament from depository institutions or third parties shall, if received by another service of the European Parliament, be transferred to the Transparency Unit without delay.

(43) The Transparency Unit, where appropriate in coordination with the parliamentary body/office holder or service holding the 'other confidential information' concerned, shall verify whether one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 applies.

- (44) When, on the basis of this verification, it is established that public access shall be denied on the basis of one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, a decision may be taken by the competent authority under the Bureau Decision on access to documents to this end without consulting the depository institution or third party.
- (45) In all other cases, the Transparency Unit shall consult the depository institution or third party, pursuant to Article 4(4) of Regulation (EC) No 1049/2001, who shall within five working days make its position known on possible unmarking and on the applicability of one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.
- (46) The competent authority under the Bureau Decision on access to documents shall adopt, on this basis, a decision on possible disclosure or refusal to disclose.
- (47) If the originator fails to reply within the deadline, or if the originator cannot be identified or contacted, a decision on the matter shall be taken by the competent authority under the Bureau Decision on access to documents in accordance with the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, taking due account of the legitimate interest of the originator on the basis of the information in possession by the European Parliament.
- (48) The Transparency Unit may, at any time, refer an application to the Legal Service and/or to the Data Protection Officer (DPO) of the European Parliament for an opinion. The draft reply to confirmatory applications may be referred to the Legal Service, which shall deliver its opinion within three working days.