

EU 'breaking own laws' by keeping documents secret



The Guidelines for handling of documents internal to the Council were adopted at a session in Luxembourg on 20 June 2011 (Photo: The Council of the European Union)

By **PETER TEFFER**  

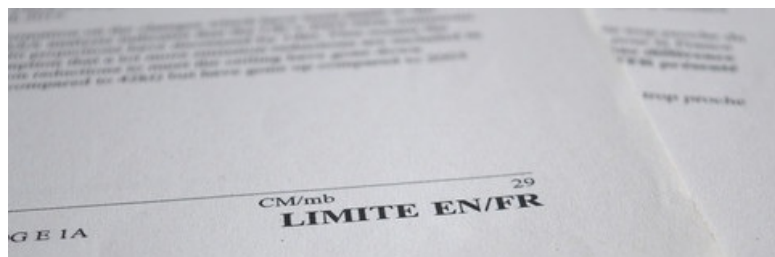
BRUSSELS, 10. MAR, 15:33

The Council of the EU, where national governments meet, acted against EU law when they laid down guidelines for handling internal documents, the Dutch parliamentary attorney [said in a report](#) this week.

The report said that the principal rule that all internal Council documents should be marked LIMITE “is incompatible with European transparency law”.

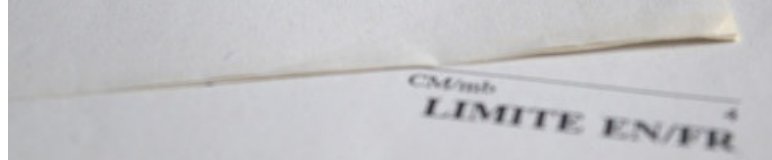
LIMITE is the lowest of five levels of secrecy classification, deriving from the French *limité*.

The Council adopted its [Guidelines for handling of documents internal to the Council](#)



in 2011.

The rules state that texts “which are internal to the Council must bear the marking 'LIMITE' on the front page”.



Internal Council documents should be marked with LIMITE, which means they should not be leaked to the press (Photo: Peter Teffer)

Council employees are not allowed to share LIMITE documents with the media or general public without prior authorisation.

But according to the Dutch parliamentary attorney, this principle is in conflict with the EU's [2001 regulation on public access to EU documents](#).

“The main rule of the guidelines is 'non-disclosure, unless', while [the 2001 regulation] prescribes the principle of 'disclosure, unless',” wrote the three lawyers who analysed the rules.

The parliamentary attorney was asked to carry out the legal analysis of the guidelines by a majority in the Dutch lower house, at the initiative of centre-right Christian-Democrat MP Pieter Omtzigt.

Omtzigt told EUobserver on Friday (10 March) the analysis confirmed his repeated statements.

“This is very serious,” Omtzigt said.

“Twenty eight ministers have acted illegally by adopting these guidelines,” he added. “How can you expect European citizens to abide by European law, if the European ministers don't?”

Omtzigt said he wanted the Netherlands to discuss the issue at council level and expected a response from the Dutch government.

That will have to wait until after next Wednesday's lower house elections. Polls on Thursday suggested Omtzigt will be easily re-elected as an MP.

The decision to endorse the guidelines was taken at the Economic and Financial Affairs council on 20 June 2011, in Luxembourg.

The Dutch minister involved in that council was then finance minister Jan-Kees de Jager, a fellow Christian-Democrat who has since left politics.

Other ministers present when the guidelines were endorsed include France's Christine Lagarde, who now heads the International Monetary Fund, and Wolfgang Schaeuble, Germany's finance minister.

Citation ban

The Dutch parliamentary attorney also looked at a rule which prohibits members of parliaments

The Dutch parliamentary attorney also looked at a rule which prohibits members of parliaments from citing LIMITE documents in debates.

This ban “hinders access to Council documents more than can be justified from a European law perspective”, the lawyers noted.

However, they also noted that the Dutch government consented to the citation ban, so it cannot unilaterally revoke that ban without discussing it with its counterparts in the Council.

Omtzigt said he would also inform his fellow party members in the European Parliament, as suggested by the legal report.

The lawyers suggested that “the European Parliament could confront the Council with what can be regarded as a systematic violation of European transparency law”.

Green member of the European Parliament Sven Giegold told EUobserver he also saw the contradiction, but that it is not easy to find a way to challenge that rule in court, because LIMITE-documents can become available if citizens file a freedom of information request.

“An individual can only ask to get certain documents, but cannot challenge the guidelines,” the German MEP said.

“Only member states or the European Parliament can do that,” noted Giegold, adding that the EU parliament hardly ever takes the step to go to court.

'Convincing'

Brussels-based transparency campaigner Olivier Hoedeman told EUobserver in a written statement the legal analysis “is clear, convincing and extremely important”.

Hoedeman is a campaigner for the Corporate Europe Observatory activist group.

“Secrecy around Council decision-making is a serious and pressing problem that massively contributes to the EU's democratic deficit,” said Hoedeman.

“Defining 'limite' documents as confidential should be the exception - not the rule - and should be limited to extraordinary cases,” he noted.

Nato's example

Andreas Pavlou, transparency campaigner at Access Info Europe, pointed out that Nato's 2005 [guidance on handling documents](#) encourages personnel to assign the “correct” security classification.

It said that Nato should be “limiting the information that requires a security classification, encouraging the placing of more sensitive information into appendices to texts so that the main text can be distributed more widely and with less stringent security measures”.

“If Nato is able to adopt rules that look to limit over-classifying information, the Council of the European Union should be able to as well”, Pavlou told EUobserver via e-mail.

A Council official said the institution did not wish to comment "at this stage" since the Dutch government had not addressed the issue to the Council yet.

The European Commission, in charge of making sure EU law is respected, told EUobserver it did not have any comment on the report.

MEP Giegold has written a draft report on transparency, which he said will be voted on in the EU parliament's committee on constitutional affairs on 21 March, [after the vote was postponed last September](#).

The non-binding text will call for more transparency.

REPORT

[Legal analysis of Council guidelines on internal documents \(Dutch\)](#)

[Legal analysis of Council guidelines on internal documents \(Annex, with English summary\)](#)

DOCUMENT

[Regulation regarding public access to European Parliament, Council and Commission documents](#)

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