II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 April 1998

relating to the procedures whereby officials and employees of the General Secretariat of the Council may be allowed access to classified information held by the Council

(98/319/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151(3) thereof,

Having regard to the Council's Rules of Procedure ([1]), and in particular Article 23 thereof,

Having regrd to the declaration in the Annex to the Final Act of the Treaty of Amsterdam on enhanced cooperation between the European Union and the Western European Union whereby 'with a view to enhanced cooperation between the European Union and the Western European Union, the Conference invites the Council to seek the early adoption of appropriate arrangements for the security clearance of the personnel of the General Secretariat of the Council',

Whereas, by Decision No 24 of 30 January 1995, the Secretary-General of the Council adopted measures to protect classified information applicable to the General Secretariat of the Council;

Whereas the security regulations must cover not only the physical protection of classified information held by the Council but also authorisation of members of staff to have access to such information;

Whereas it is therefore necessary to introduce a procedure for authorising staff of the General Secretariat of the Council required to have access to such information for professional reasons and to restrict such access to authorised persons only;

Whereas, in the case of staff of the General Secretariat of the Council, the decision to grant authorisation will be the responsibility of the appointing authority within the meaning of Article 2 of the Staff Regulations and Rules Applicable to Officials and Other Servants, hereinafter referred to as 'the appointing authority', after security screening has been carried out by the competent national authorities of the Member States;

Whereas this Decision shall have no effect on the rules laid down by the Council regarding transparency, in particular, the Council Decision of 20 December 1993 on public access to documents,

HAS DECIDED AS FOLLOWS:

Article 1

1. The only persons authorised to have accesss to classified information held by the Council shall be officials and other servants of the General Secretariat of the Council or any person working within the General Secretariat who, by reason of their duties and for the requirements of the service, need to have knowledge of, or to use, such information.

2. In order to have access to information classified as 'secret' and 'confidential', the persons referred to in paragraph 1 must have been authorised in accordance with Article 2.

3. Authorisation shall be granted only to persons who have undergone security screening by the competent national authorities of the Member States, in accordance with the procedure laid down in Article 3.

([1]) OJ L 304, 10. 12. 1993, p. 1.

Article 2

1. The appointing authority shall be responsible for granting the authorisations referred to in Article 1.

The appointing authority shall grant authorisation after obtaining the opinion of the competent national authorities of the Member States on the basis of security clearance carried out in accordance with Articles 3 and 4.

2. Authorisation, which shall be valid for a period of five years, may not exceed the duration of the tasks on the basis of which it was granted. It may be renewed by the appointing authority in accordance with the procedure referred to in paragraph 1.

Authorisation shall be withdrawn by the appointing authority where it considers there are justifiable grounds for doing so. Any decision to withdraw authorisation shall be notified to the person concerned, who may ask to be heard by the appointing authority, and to the competent national authority.

Article 3

1. The aim of security screening shall be to establish that there are no objections to allowing the person to have access to classified information held by the Council.

2. Security screening shall be carried out with the assistance of the person concerned and at the request of the appointing authority by the competent national authorities of the Member State of which the person subject to authorisation is a national. Should the person concerned reside in the territory of another Member State, the national authorities concerned may secure the cooperation of the authorities of the State of residence.

3. As part of the screening procedure, the person concerned shall be required to complete a personal information form.

4. The appointing authority shall specify in its request the type and level of classified information to be made available to the person concerned, so that the competent national authorites can carry out the screening process and give their opinion as to the appropriate level of authorisation to be granted.

5. The whole security-screening process together with the results obtained shall be subject to the relevant rules and regulations in force in the Member State concerned, including those concerning appeals.

Article 4

1. Where the competent national authorities of the Member States give a positive opinion, the appointing authority may grant the person concerned authorisation.

2. A negative opinion by the competent national authorities shall be notified to the person concerned, who may ask to be heard by the appointing authority. Should it consider it necessary, the appointing authority may ask the competent national authorities for any further clarification they can provide. If the negative opinion is confirmed, authorisation shall not be granted.

Article 5

All persons granted authorisation within the meaning of Article 2 shall, at the time the authoristaion is granted and at regular intervals thereafter, receive any necessary instructions concerning the protection of classified information and the means of ensuring such protection. Such persons shall sign a declaration acknowledging receipt of the instructions and give an undertaking to obey them.

Article 6

1. The appointing authority shall take any measure necessary in order to implement this Decision, in particular as regards the rules governing access to the list of authorised persons.

2. Exceptionaly, if required by the service, the appointing authority may, after giving the national competent authorities notification and provided there is no reaction from them within a month, grant temporary authorisation for a period not exceeding three months, pending the outcome of the screening referred to in Article 3.

Article 7

This Decision shall be reviewed two years after the date on which it becomes applicable, on the basis of a report from the Secretary-General.

Article 8

This Decision shall take effect on the date of its publication.

It shall apply nine months after it takes effect, except for Articles 2, 3 and 4, which shall apply on the date on which it is adopted.

Done at Luxembourg, 27 April 1998.

For the Council

The President

R. COOK