



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 April 2012

7532/12

**INF 46
API 30
JUR 141**

"I/A" ITEM NOTE

from : Working Party on Information

to : Coreper (part 2)/Council

No. prev. doc.: 7531/12

Subject : Public access to documents
- Confirmatory application No 07/c/01/12

Delegations will find enclosed a draft reply from the Council to confirmatory application No 07/c/01/12, as it stands after examination by the Working Party on Information at its meeting on 13 April 2012.

The Permanent Representatives Committee is accordingly asked to suggest that the Council at its next meeting record its agreement to the draft reply annexed to this document, as an "A" item.

The Annex is available in English only.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 07/c/01/12,
made by e-mail on 9 March 2012,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 9462/11

The Council has considered this confirmatory application under 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 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to document 9462/11, a note from the French delegation to the Working Party on Integration, Migration and Expulsion containing a contribution from this delegation concerning the Commission Communication on evaluation of EU readmission agreements.
2. In its initial reply dated 27 February 2012, the General Secretariat refused full and partial public access to the document pursuant to Article 4(3), first subparagraph of the Regulation (ongoing decision-making process of the Council).
3. In the confirmatory application dated 9 March 2012, the applicant asks the Council to reconsider its position, indicating that it is in the public interest to know which are the evaluation criteria of readmission agreements. Moreover, the applicant argues that there could be no impediment for international relations since the point at issue was not a particular negotiation with a third country but a general approach.
4. The Council has considered this confirmatory application in the light of the applicant's arguments and has concluded as indicated below.

5. Document 9462/11 sets out the French delegation's comments on the Commission Communication on the Evaluation of European Union's Readmission Agreements for a renewed EU readmission policy. The Commission sent this Communication to the Council on 23 February 2011. It contains, *inter alia*, draft recommendations to the Member States on a future EU readmission policy, including the monitoring mechanism. This Communication is a part of a process to develop a comprehensive and common migration policy.

6. At the meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 31 March and 1 April 2011, a discussion was initiated on the evaluation of EU readmission agreements and on the 15 draft recommendations set out in the Commission Communication, with a view to the preparation of the renewed strategy requested by the European Council in the Stockholm Programme (2010-2014). Subsequently, the Council (Justice and Home affairs) adopted conclusions defining the future strategy of the European Union in the field of readmission on 9-10 June 2011. Comments from various Member States, including France, served as a basis for those conclusions.

7. As a follow-up to the above-mentioned conclusions, the Danish Presidency presented on 1 February 2012 its paper entitled “Operationalising the Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission”. On the basis of this paper, the Presidency launched technical discussions in the framework of the Council Working Party on Migration, Expulsion and Integration (Expulsion formation) to operationalise the aforesaid Council Conclusions, thereby paving the way for the elaboration of new, more efficient and flexible standard negotiation directives for the conclusion of readmission agreements between the Union and third countries. These discussions are on-going in the Working Party and SCIFA. The Presidency aims to include the results of the operationalisation in the roadmap in order to ensure a coherent EU response to continued migration pressures. The Council (Justice and Home Affairs) is expected to address this issue in June 2012.
The requested document sets out the position of the French delegation to certain recommendations contained in the above-mentioned Commission Communication and contains proposals by this delegation as regards the modification of certain negotiation directives for the conclusion of readmission agreements.

It therefore forms an essential part of the on-going discussions on the elaboration of the new standard negotiation directives for the conclusion of readmission agreements between the Union and third countries.

8. The applicant argues that it is in the public interest to know what the evaluation criteria of readmission agreements are. The Council would like to point out that the requested document does not enumerate or discuss the evaluation criteria as such, but that it rather sets out the position of the French delegation to certain recommendations contained in the Commission Communication on a future EU readmission policy. However, the above Commission Communication contains clear indications as to what these criteria are and has been publicly available since February 2011 ¹.

9. The observations made by the French delegation contained in document 9462/11 were submitted in preparation of the drafting the Council Conclusions of June 2011 defining the European Union strategy on readmission. As described above, at present negotiations on the future EU readmission policy are still on-going with a view to operationalise the roadmap and to ensure a coherent EU response to continued migration pressures. The comments by the French delegation remain important to that process. The subject-matter concerned is in two respects politically particularly sensitive: first, it is part of the currently on-going internal, politically difficult deliberations in the Council. Second, these deliberations are to result in a general approach which will in turn have an impact on the future conduct of international negotiations on readmission between the Union and a number of third countries. Were elements of the on-going internal deliberations made public, this would risk provoking reactions on the international level by third countries and thus negatively affect on-going internal discussions and the search for an internal political compromise. The Council therefore considers that the release of the requested document would at this stage seriously undermine these on-going internal negotiations.

¹ COM(2011) 76 final, annexed to Council document 7044/11.

10. The Council has also carefully assessed whether there is an overriding public interest in disclosure of the requested document. It took into account the public interest in publicity of the on-going deliberations on a general approach to future readmission criteria. However, the Council came to the conclusion that this interest cannot, at present, outweigh the great public interest to find a political compromise on the subject matter under the sensitive circumstances described above. Accordingly, access to the document has to be refused pursuant to Article 4, paragraph 3, first subparagraph, of the Regulation.

 11. The Council has also carefully examined the content of document 9462/11 with a view to assessing whether the applicant might be granted partial access to it pursuant to Article 4(6) of the Regulation. However, it found that the above-mentioned exception applies to its entire content.
-