



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 April 2012

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"I/A" ITEM NOTE

from : Working Party on Information
to : Coreper (part 2)/Council

No. prev. doc.: 8357/12

Subject : Public access to documents
- Confirmatory application No 08/c/02/12

Delegations will find enclosed a draft reply from the Council to confirmatory application No 08/c/02/12, as it stands after examination by the Working Party on Information at its meeting on 27 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 08/c/02/12,
made by e-mail on 28 March 2012,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 11505/04

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 11505/04, a Communication from the Commission to the Council and the European Parliament containing a Report on the priorities for the successful development of a common readmission policy.
2. In its initial reply dated 21 March 2012, the General Secretariat refused full public access to the document pursuant to Article 4(1)(a), third indent of the Regulation (protection of the public interest with regard to international relations). Partial access was granted by giving access to page 1, to the Table of Contents on page 2, except for points 3.2. and 4, to page 3, except for the last paragraph, to page 11, except for three sentences in the last paragraph, to page 12, to the first paragraph on page 13 and to page 18, except for the first paragraph.
3. In the confirmatory application dated 28 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 11505/04 RESTREINT UE sets out a Communication from the Commission to the Council and the European Parliament entitled "Report on the priorities for the successful development of a common readmission policy". On 16 and 17 October 2003 the European Council invited the Council and the Commission to produce a report identifying the priorities of a common readmission policy and the measures to ensure the successful development of a such a policy. The Commission drafted its Communication on 19 July 2004 and sent it to the Council on 26 July 2004. The report contained in this Communication describes the difficulties encountered by the Commission during the negotiations for readmission agreements and the concrete measures considered necessary in order to ensure the successful development of a common readmission policy. It also contains details of specific agreements in force or under negotiations with certain third countries.
6. Moreover, the requested document contains detailed information on the negotiations conducted by the Commission with a view to conclude readmission agreements with several third countries. In some cases it reveals the level of compensatory offers, "incentives", that the Commission offered to its negotiating partner in order to enable the conclusion of the agreement in question. In other cases, the document reveals details about difficulties encountered by the Commission in negotiations which have still not been concluded to date. Disclosure of this information could prejudice relations between the European Union and the different third countries concerned and thereby negatively affect the climate of confidence. It could also hamper open and constructive co-operation, which is essential in the EU's efforts to conclude further readmission agreements.

In accordance with Article 4(4) of Regulation No 1049/2001 the Commission has been consulted on document 11505/04. It came to the same conclusion, asking for access to be refused accordingly.

7. According to the applicant, it is public interest to know what criteria are used to evaluate readmission agreements and that any evaluation should be based on transparent criteria. The Council would like to point out that the requested document does not contain direct references to the evaluation criteria. Furthermore, unlike the applicant argues, the document does discuss particular negotiations with individual third countries.
8. Having regard to the above, the Council is of the opinion that full public access to the document concerned has to be refused pursuant to the third indent of Article 4(1)(a) (protection of the public interest with international relations) of Regulation (EC) No 1049/2001. Nevertheless, the Council has also examined the possibility of providing, in accordance with Article 4(6) of Regulation 1049/2001, a more extensive partial access to the document. It concluded that public access may also be granted to the following points:
- page 2: points 3.2 and 4
 - pages 3 and 4
 - page 5, except for the fifth paragraph
 - pages 6 and 7, except for the last sentence on page 6 which continues on page 7
 - page 8, except for the last sentence
 - pages 9 - 10
 - page 11: fifth paragraph
 - pages 13 and 14
 - page 15, except for the sixth and the seventh sentence in the chapter concerning Russia
 - page 16, except for the end of the fifth sentence starting by "Negotiations are well underway" in the chapter concerning Ukraine, the beginning of the second sentence which continues "an ADS agreement,", the fifth and the sixth sentence in the chapter concerning China and the third, the fourth and the fifth sentence in the chapter concerning Turkey
 - page 17, except for the first paragraph on page 17 and the last sentence in the chapter concerning Algeria.

The Council considered that these points are not covered by any exceptions to the right of public access.