



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council
to : Delegations

No. prev. doc.: 12339/12

Subject : Public access to documents
- Confirmatory application made by Ms Joanna Hosa (No 15/c/01/12)

Delegations will find enclosed a draft reply from the Council to confirmatory application made by Ms Joanna Hosa (No 15/c/01/12), as it stands after examination by the Working Party on Information at its meeting on 13 July 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 15/c/01/12,
made by e-mail on 4 July 2012,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents 18217/11 and 7973/11

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 (EC) 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 documents 18217/11 and 7973/11. Document 18217/11 is a "I/A" item note from the General Secretariat to the Permanent Representatives' Committee and to the Council and contains the Common Steps towards visa-free short term travel of Russian and EU citizens. Document 7973/11 is a "I/A" item note from the Working Party on Eastern Europe and Central Asia to the Permanent Representatives' Committee and to the Council and contains the Methodology of the EU-Russia common steps towards visa free travel.
2. In its reply dated 21 June 2012, the General Secretariat refused full public access to the documents pursuant to Article 4(1)(a), third indent (protection of the public interest with regard to international relations) of the Regulation and, in the absence of any evidence of an overriding public interest in release, also pursuant to Article 4(3) of the Regulation (protection of the decision-making process of the Council). Partial access was granted to page 1 of 18217/11 and to paragraphs 1 and 5 in pages 1 and 2 of 7973/11.

3. In the confirmatory request made on 4 July 2012, the applicant refers to the fact that the Common Steps have been approved at the EU-Russia Summit on 15 December 2011. The applicant takes the view that as the negotiations on the Common Steps are over, the disclosure of the above-mentioned documents would not undermine the protection of the public interest with regard to international relations. The applicant requests access to the final version of the Common Steps.
4. The applicant confirmed by letter of 6 July 2012 that the confirmatory application concerned both documents 18217/11 and 7973/11. The applicant considers that the exceptions laid down in Article 4 of the Regulation do not apply as there was an agreement between both parties. Moreover, the applicant argues that as the content of the Common Steps is already known to the Russian side, disclosure of the documents would not negatively influence future negotiations in that framework.
5. The Council has examined the above-mentioned documents in the light of the applicant's arguments and has come to the following conclusion:
6. The documents under scrutiny concern the Common Steps towards visa-free short-term travel of Russian and EU citizens.

Document 7973/11

7. Document 7973/11 is an internal document setting out a methodology to be followed by the European Union during the negotiations on an EU-Russia visa waiver agreement. It also contains assessments of the progress made during those negotiations and on the possible impact of visa liberalisation. The content of this document was not shared with Russia.
8. The Council considers that full release to the public of document 7973/11 would reveal aspects of the strategic objectives of the EU in the negotiations with Russia. This would not only prejudice the EU's relations with Russia, but would also enable the public as well as third countries, to compare those objectives to the results of the negotiations, and to evaluate the EU's willingness to compromise in future negotiations on similar subjects. This would have an adverse effect in future negotiations on similar subjects.

9. The Council recalls that other similar negotiations are currently ongoing with several Eastern Partnership countries. The visa facilitation with these countries is a long term goal of the EU. As the negotiations which the EU is conducting with these countries have reached different stages, disclosure of the content of document 7973/11 would enable the negotiating partners of the EU to establish a parallelism and assess the EU's positions and willingness to compromise in similar international negotiations. This would not only weaken the EU's position in the said negotiations, but would also have an adverse effect in future negotiations on similar subjects.

Document 18217/11

10. At its meeting on 13 December 2011, the Council adopted the Common Steps (doc 18217/11) which were launched at the EU-Russia Summit on 15 December 2011. The Common Steps include a list of actions for both the EU and the Russian Federation to implement in preparation of a visa-free travel agreement. Their full implementation remains an essential precondition for the continuation of the visa dialogue.
11. The applicant claims that public access should be granted as Russia and the EU together agreed on the launching of the Common Steps and that the disclosure would not negatively influence future negotiations in the framework of the Common Steps. However, the Council would like to recall that the content of the document was not communicated to the public by the negotiating partners and its unilateral release by the EU would negatively affect the climate of confidence among the actors involved in the negotiations and would prejudice the EU's relations with Russia. The Council would also like to draw the applicant's attention to the fact that the Common Steps still need to be fully implemented. After their complete implementation, the parties will decide on starting negotiations on an EU-Russia visa-waiver agreement. The implementation of the Common Steps will be assessed on a regular basis and Russia and the EU will agree on their adaptation in case a change of situation requires it.

Conclusion

12. For the reasons set out above, full public access to both documents must be denied on the basis of Article 4(1)(a), third indent of the Regulation (protection of the public interest as regards international relations).

 13. The Council also examined, pursuant to Article 4(6) of the Regulation, the possibility of extending partial access to the documents under scrutiny. The Council concluded that it was not possible to grant more extensive public access to the documents than initially granted, since the above exception of the protection of the public interest with regard to international relations applies to all parts of the requested documents which are to date undisclosed.
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