



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 March 2012

7243/12

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NOTE

from : General Secretariat of the Council
to : Delegations

No. prev. doc.: 7242/12

Subject : Public access to documents
- Confirmatory application No 06/c/01/12

Delegations will find enclosed a draft reply from the Council, approved by the Working Party on Information by written consultation which ended on 26 March 2012, to confirmatory application No 06/c/01/12.

The Danish, Estonian, Slovenian, Finnish and Swedish delegations indicated that they would vote against the draft reply. The following statements were made:

"DK, EE, SI, FI, SE underline the importance of workable deadlines by the Council Secretariat when using the written procedure to give time for a proper examination by member states, which was not the case. For that reason, DK, EE, SI, FI, SE did not have sufficient time to examine the document in detail. From the outset it seems that the possibility of granting partial access has not been thoroughly examined and more information could be released without jeopardizing the current negotiations with Turkey.

DK, EE, SI, FI, SE are not convinced that all the negotiating directives for the Treaty establishing the Energy Community are still relevant for the ongoing negotiations on the accession of Turkey to the said international agreement".

"NL: Although we agree with the proposed answer, NL stresses the importance of workable deadlines by the Council Secretariat when using the written procedure to give time for a proper examination by member states".

It is suggested that the Council, by written procedure, record its agreement on the draft reply annexed to this document.

The Annex is available in English only.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 06/c/01/12,
made by e-mail on 2 March 2012,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 7554/04 RESTREINT UE

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 document 7554/04 (classified RESTREINT UE) which is a "I/A" Item Note from the General Secretariat of the Council to COREPER/Council containing a draft Council Decision authorising the Commission to open negotiations on behalf of the European Community with Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, United Nations interim administration mission in Kosovo, Albania, Romania, Bulgaria, Moldova, Hungary, the Former Yugoslav Republic of Macedonia and Turkey with the view to establishing an Integrated Energy Market Organisation in South East Europe.
2. In its reply dated 29 February 2012, the General Secretariat refused full public access to document 7554/04 pursuant to the third indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations). A partially declassified version of the document (document 7554/04 EXT 1) was sent to the applicant. This declassified document contains the cover note and the draft Council Decision. However, it does not contain the negotiating directives set out in the Annex to the said draft Council Decision.

3. In his confirmatory application dated 2 March 2012, the applicant asked the Council to reconsider its position.
4. The Council has thoroughly examined the document concerned. In the light of its examination, the Council has come to the following conclusion:

The negotiating directives contained in the annex of document 7554/04 RESTREINT UE to which access was denied were drawn up with a view to establishing an Integrated Energy Market in South East Europe between the European Community and Croatia, Bosnia and Herzegovina, Serbia and Montenegro, United Nations interim administration mission in Kosovo (UNMIK)¹, Albania, Romania, Bulgaria, the Former Yugoslav Republic of Macedonia and Turkey. By their nature, they concern international relations.

The negotiations were completed with all the above-mentioned countries or entities except with Turkey, with which negotiations are still ongoing. Although the Treaty establishing the Energy Community was signed on 25 October 2005² and entered into force on 1st July 2006, the negotiating directives are still relevant for the ongoing negotiations on the accession of Turkey to the said international agreement. Their disclosure would therefore weaken the position of the Council in the said negotiations.

5. In view of these circumstances, the Council is convinced that disclosure of the negotiating directives contained in the annex of the requested document would impede the proper conduct of the corresponding negotiations and would prejudice relations between the European Union and Turkey in general.
6. Accordingly, pursuant to the third indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations), the Council concluded that this part of the document could not be made public.

¹ Pursuant to the legal situation under UN Security Council Resolution 1244.

² For further information regarding this Treaty, see the following link : www.energy-community.org

7. Moreover, it must be noted that Article 4(1)(a) of the Regulation contains a mandatory exception for the protection of the public interest as regards international relations. Once it is established that the requested document falls within the sphere of international relations and that the protection of the invoked interest would be impaired if the document were to be disclosed, the institution must refuse public access. Article 4(1)(a) of the Regulation does not allow the institution to balance the protected interest against other interests.

8. The Council also examined, pursuant to Article 4(6) of the Regulation, the possibility of extending partial access to the document under scrutiny. The Council concluded that it was not possible to grant more extensive public access to the document 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 document which are to date undisclosed.

