



Council of the  
European Union

Brussels, 10 March 2020  
(OR. en)

6042/20

LIMITE

INF 26  
API 24

**NOTE**

From:	General Secretariat of the Council
To:	Working Party on Information
No. prev. doc.:	6042/20
Subject:	Public access to documents - Confirmatory application No 05/c/01/20

Delegations will find attached a draft reply to confirmatory application No 05/c/01/20  
(see 6041/20).

**DRAFT REPLY ADOPTED BY THE COUNCIL ON xxxx**  
**TO CONFIRMATORY APPLICATION 05/c/01/20,**  
**made by email on 12 February 2020,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents**

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 referred to as "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 conclusions:

1. On 17 December 2019, the applicant submitted via the internet based platform "Ask the EU" two requests for access to all minutes and other notes reflecting the discussions related to the revision of the European Stability Mechanism (ESM) Treaty during i) the Eurogroup meeting on 4th December 2019 and ii) the Euro Summit on 13th December 2019, as well as to any declaration and hints made by Italy's representatives in the framework of those discussions.
2. In its replies to the requests dated both 23 January 2020, the General Secretariat of the Council (GSC) provided 8 documents identified as relevant to applicant's requests and links to the relevant pages of the Meetings calendar section of the Council's website where other useful documents can be found. The GSC also specified that no minutes or verbatim of discussions during the meetings of the bodies in question can be provided to the public.

3. On 12 February 2020 the applicant submitted, by e-mail to the Council's Public Information service, a confirmatory application asking the Council to reconsider its position<sup>1</sup>. The applicant justifies his application by the "vitally important" need to clarify the actual position taken by, and the contribution of, the Italian Government at the two meetings in question, explaining that the topic of the ESM Treaty revision has been a major topic of debate in Italy for months.
4. The Council has carefully considered the confirmatory application in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001, and has come to the conclusions set out below.

## **I. PRELIMINARY REMARKS**

5. At the outset, the Council deems useful to provide some background elements as well as some general information on the handling by the GSC of requests for public access to documents relating to the work of the Eurogroup and the Euro Summit.
6. In a number of instances the GSC has been entrusted with the task of supporting the activities of bodies or entities other than the Council and the European Council. In particular, the GSC provides administrative support to the work of the Eurogroup and the Euro Summit. The GSC has also provided administrative support to the intergovernmental conferences aimed at revising the Treaties or those in the area of economic governance, including the ESM Treaty.

---

<sup>1</sup> The applicant reiterated in the confirmatory application his request for access to the minutes and/or transcripts of the Eurogroup meeting of 4 December 2019 relating to the reform of the European Stability Mechanism, the full minutes and/or transcripts of the Euro Summit meeting of 13 December 2019 relating to the reform of the European Stability Mechanism as well as any contribution on that reform made by the Italian delegates at the aforementioned meetings.

7. The Eurogroup is an informal gathering of the Ministers of the Member States whose currency is the euro.<sup>2</sup> Secretariat tasks for the Eurogroup are shared between the GSC (for logistics and procedural assistance to the President) and the European Commission based Economic and Financial Committee secretariat (EFC) (for substance).<sup>3</sup> As an informal body, the Eurogroup does not adopt any formal conclusions and there is a general obligation to safeguard the confidentiality of the proceedings of the Eurogroup. Following a meeting, the Eurogroup president writes a letter ("summing-up letter") to the other Eurogroup members to summarise the debate, convey his understanding of the meeting, propose how to proceed further and suggest topics on which to focus at the following meetings. When necessary, public statements, press releases on common policy lines or policy reactions, or other policy-relevant information intended for the public, can be used as a tool for communicating policy messages, while preserving the confidentiality of the internal discussions.<sup>4</sup>
8. The Euro Summit is an informal gathering of the Heads of State or Government of the EU countries having the euro as their currency.<sup>5</sup> Non-euro-area countries that have ratified the Treaty on stability, coordination and governance in the economic and monetary Union (TSCG) are also invited to take part in Euro Summit meetings for specific discussions. The Euro Summit is an intergovernmental body, the purpose of which is to provide strategic guidance on euro area economic policy. Euro Summit meetings take place when necessary, at least twice a year after European Council meetings in Brussels, and are not public. The deliberations of the Euro Summit are covered by the obligation of professional secrecy, except insofar as the Euro Summit agrees otherwise.<sup>6</sup> The President of the Euro Summit ensures the preparation and continuity of meetings, and is also responsible for drafting any statement by the Euro Summit, in close cooperation with the President of the European Commission and the President of the Eurogroup. The GSC acts as a secretariat of the Euro Summit.<sup>7</sup>

---

<sup>2</sup> [Protocol N°14 to the Treaty on the European Union and the Treaty on the Functioning of the European Union.](#)

<sup>3</sup> Section 2(v) of [Eurogroup Working Methods](#).

<sup>4</sup> Section 2(vii) of Eurogroup Working Methods.

<sup>5</sup> Article 12 of the Treaty on stability, coordination and governance in the economic and monetary Union (TSCG) and [Rules for the organisation of the proceedings of the Euro Summits](#) ("Rules of the Euro Summit") adopted at the meeting of 14 March 2013.

<sup>6</sup> Section 7 of the Rules of the Euro Summit: "*Without prejudice to the provisions on public access to documents applicable under the law of the Union, the deliberations of the Euro Summit shall be covered by the obligation of professional secrecy, except insofar as the Euro Summit agrees otherwise.*"

<sup>7</sup> Section 8.1 of the Rules of the Euro Summit: "*The Euro Summit and its President shall be assisted by the General Secretariat of the Council under the authority of its Secretary-General.*"

9. Requests for public access to documents held by the GSC in relation to the performance of tasks of support to bodies or entities other than the Council and the European Council fall within the scope of application of Regulation 1049/2001, in so far as the documents in question are drawn up or received by the GSC and in its possession<sup>8</sup>, regardless of their authorship. When it receives a request for access to documents of the Eurogroup, or of the Euro Summit, the GSC handles it as a request for access to documents held by the Council in the sense of Article 2(3) of Regulation No 1049/2001.
10. It should therefore be clear that such requests are processed by the GSC in line with the substantive and procedural legal framework set out in Regulation No 1049/2001. As regards Eurogroup in particular, this was also reflected in exchanges with the European Ombudsman relating to Eurogroup transparency that date back to 2016<sup>9</sup> and more recently in the decision of the European Ombudsman in strategic inquiry OI/1/2019/MIG concerning the transparency of the Eurogroup preparatory instances, in which the European Ombudsman commended the Council for how it has dealt with access to documents requests.

## **II. ASSESSMENT OF THE APPLICATION UNDER REGULATION 1049/2001**

11. On the basis of the above considerations, the GSC handled applicant's initial requests by identifying and providing documents held by it and relevant to the requests. The documents in question included those available via a link to the relevant Eurogroup and Euro Summit meeting webpage (where annotated agendas and summing-up letters are available for downloading), six technical documents related to the process of the revision of the ESM Treaty and two documents related to the relevant Euro Summit meeting (the Euro Summit statement and a letter dated 5 December 2019 from the President of Eurogroup to the President of the Euro Summit on the comprehensive package of deepening Economic and Monetary Union, including information on ESM reform).

---

<sup>8</sup> Article 2(3) of Regulation 1049/2001.

<sup>9</sup> Case SI/5/2016/EA

12. In its replies to the initial requests, the GSC also specified that no minutes or verbatim of discussions during the meetings of the bodies in question can be provided to the public. It is, however, necessary to clarify that the Council does not hold such documents. In fact, the Council does not draw up minutes or transcripts of the meetings of the Eurogroup and the Euro Summit. In that regard, it could be further pointed out that, whereas minutes are formally kept and signed by the Secretary General of the Council as regards meetings of the Council and the European Council, as provided in article 13 of the Rules of Procedure of the Council and Article 8 of the Rules of Procedure of the European Council respectively, such a provision does not apply as regards meetings of Eurogroup, which, as mentioned above, is an informal gathering of the Ministers of the Member States whose currency is the euro and of the Euro Summit which is an intergovernmental forum gathering the Heads of State or Government of the contracting parties in the TSCG whose currency is the euro.
13. On the other hand, "summing-up letters" for Eurogroup meetings, as mentioned above, are drafted under the responsibility of the President of the Eurogroup. They reflect the President's understanding of what has been discussed in the meeting. They are not "minutes". However, those "summing-up letters" have been identified by the General Secretariat, as they provide a record of the discussions held in those meetings. They are publicly accessible.
14. As regards the requested disclosure of Italy's representatives declarations and hints to the discussion about the European Stability Mechanism reform, the GSC did not provide any documents at the stage of the initial application. Indeed, the GSC does not hold any documents related to such statements or contributions to the discussions during the meetings of the Eurogroup and the Euro Summit.
15. As a final remark, the Council wishes to recall that, according to the established case law "the right of access to documents held by the institutions within the meaning of Article 2(3) of Regulation No 1049/2001 applies only to existing documents in the possession of the institution concerned"<sup>10</sup> and "Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document (for which it has been asked to grant access but) which does not exist"<sup>11</sup>.

---

<sup>10</sup> CJUE, 2 October 2014, C-127/13 P, *Strack v Commission*, par. 38

<sup>11</sup> CJUE, 11 January 2017, C-491/15 P, *Type v Commission*, par. 31 and in the same line CJUE, 2 October 2014, C-127/13 P, *Strack v Commission*, par. 46

### III. CONCLUSION

16. In view of the foregoing, the Council concludes that it does not hold, and therefore cannot grant public access to more documents than those already provided to the applicant under the initial application.
-