



European Council

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NOTE

from	General Secretariat of the Council
to:	European Council
Subject:	Public access to documents - Confirmatory application No 29/c/01/14

Delegations will find enclosed the reply to confirmatory application No 29/c/01/14 for public access to documents as adopted by the European Council by written procedure on 27 October 2014, the Italian delegation abstaining.

Denmark, Estonia, Italy, the Netherlands, Sweden and Finland made the following statement:
"We do not fully agree with the reasons proposed by the General Secretariat, especially in paragraph 13."

The Annex is available in English only.

REPLY ADOPTED BY THE EUROPEAN COUNCIL ON 27 OCTOBER 2014
TO CONFIRMATORY APPLICATION No 29/c/01/14,
made by e-mail on 23 September 2014,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to a German and a Romanian contribution
to the Task Force on economic governance

The European 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 1049/2001") and Article 10(2) of the European Council's Rules of Procedure (European Council Decision 2009/882/EU; Official Journal L 315 of 2.12.2009, p. 51) and has come to the following conclusion:

1. The applicant introduced an initial request on 10 June 2014 for access to several documents submitted to the 'Task Force' which was set up by the President of the European Council to strengthen economic governance across the EU in 2010.
2. On 1 July 2014, the General Secretariat sent the applicant 23 documents covered by his request.
3. In its reply of 17 September 2014, the General Secretariat disclosed a further 17 documents, but refused access to one German and one Romanian contribution to the work of the Task Force. It justified its refusal on the basis of Article 4(3) of Regulation 1049/2001 (protection of the decision-making process).

4. By e-mail of 23 September 2014, the applicant made a confirmatory application, asking to be granted full access to the documents requested.
5. In his confirmatory application, the applicant argues that "according to Article 4(3) of Regulation No 1049/2001 documents can only be denied "where the decision has not been taken by the institution" and points out that the European Council, as a whole, has signed off on the recommendations by the Task Force and that those recommendations were the basis for two legislative packages known as the "Six-Pack" and the "Two-Pack", which have been approved by Parliament and Council. He further contests that protection of the decision-making process outweighs the public interest in disclosure.
6. The European Council has carefully considered the confirmatory application. Having thoroughly examined the requested documents, and having in particular conducted fresh consultations both within the General Secretariat of the Council and with the two delegations concerned, the European Council has come to the conclusion set out below.

The requested documents

7. The requested German contribution is an electronic document taking as a basis document DS 1632/10 of 24 September 2010 ("Second draft of the Final Report of the Task Force to the European Council" – which, as such, was disclosed to the applicant) and adding "tracked changes" and comments.
8. The requested Romanian contribution is a note from the Romanian Ministry of Public Finance dated 1 June 2010 and making comments following the meeting of 21 May 2010, signed by Sebastian Vlădescu, Minister of Public Finance.
9. These documents were thus drawn up as part of the discussions within the Task Force and contain opinions voiced for internal use by the relevant delegations at one point of those discussions.

Re-assessment by the European Council

10. As stated above, the European Council has conducted new consultations, in particular with the two delegations concerned. Based on the explanations received pursuant to those consultations, the European Council comes to the conclusion that two exceptions to the principle of transparency apply to the requested documents:

Exception pursuant to Article 4(1)(a), fourth indent, of Regulation No 1049/2001

11. Article 4(1)(a) fourth indent, of Regulation No 1049/2001 protects the public interest as regards "the financial, monetary or economic policy of the Community [now Union] or a Member State". The aim of the Task Force was to determine ways to strengthen economic governance across the European Union. It was set up against the background of a serious financial crisis, the effects of which are still being felt. Accordingly, the results of its work continue to be of high importance for the financial, monetary and economic policy of the Union and its Member States.
12. It should be pointed out that the General Secretariat has already disclosed an important number of documents concerning the work of the Task Force. The particular sensitivity of the opinions developed in the two documents subject of the confirmatory application is such, however, that their release would harm the financial, monetary and economic policy of the Member States concerned and of the Union as a whole.
13. The European Council is not in a position to set out in more detail the nature of this sensitivity without revealing part of the very information protected by the exception.
14. As Article 4(1) of Regulation No 1049/2001 does not provide for an overriding public interest test, the above considerations alone must mandatorily lead the European Council to conclude that it must refuse access to the requested document pursuant to Article 4(1)(a) fourth indent, of Regulation No 1049/2001.

Exception pursuant to Article 4(3), second subparagraph, of Regulation No 1049/2001

15. At the outset, the European Council wishes to underline that Article 4(3) of Regulation No 1049/2001 is not limited to situations "where the decision has not been taken by the institution", as the applicant contends. In its second subparagraph, that provision explicitly states that "access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused *even after the decision has been taken* if disclosure of the document would seriously undermine the institution's decision-making process" (emphasis added).
16. As already stated above, the discussions in the Task Force concerned important issues of economic governance that remain of utmost importance to the economic and financial stability of the European Union and its Member States. They thus touch on questions which will certainly come up again in discussions within the Council and the European Council and elsewhere. It is important that in these situations the different views and approaches can be debated freely. If the preliminary views contained in the requested document were to be disclosed, this would negatively affect the Council's and the European Council's capacity to find compromise solutions and achieve progress on difficult but highly important questions regarding economic governance, as members would be more reluctant to express their views and make suggestions. Disclosure under such circumstances would therefore involve a concrete risk of undermining any future decision-making process on such and other issues, even after the endorsement of the recommendations of the Task Force, thereby seriously undermining the good conduct of such negotiations.
17. In the light of the above considerations, the European Council confirms that access to the requested documents should be refused under Article 4(3), second subparagraph, of Regulation No 1049/2001 (protection of the decision-making process).

18. The European Council has thoroughly examined in relation to the exception relating to the protection of its decision-making process whether there is an overriding public interest in disclosure of the requested documents. In that respect, the European Council has taken due account of the need to ensure transparency and public participation and the obvious interest of the public in being informed about discussions on economic governance that finally affect all citizen.
19. In the light of its examination, the European Council concludes that on account of the particularly sensitive nature of the discussions concerned and the ensuing negative impact of public disclosure on the decision-making process, the principle of transparency which underlies Regulation (EC) No 1049/2001 does not prevail over the protection of the European Council's decision-making process under Article 4(3), second subparagraph, of Regulation 1049/2001 in respect of the requested documents.

Partial access

20. The European Council has also looked into the possibility of disclosing parts of the documents pursuant to Article 4(6) of the Regulation. However, as the information contained in each of the documents forms an inseparable whole, partial access cannot be granted either.

Conclusion

21. In the light of these considerations, the European Council confirms the General Secretariat's refusal to grant access to the two documents in question. It does so pursuant to Article 4(1)(a), fourth indent, (protection of the public interest with regard to the financial, monetary or economic policy of the Union or a Member State) and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001.