



Council of the  
European Union

057241/EU XXVI. GP  
Eingelangt am 11/03/19

Brussels, 11 March 2019  
(OR. en)

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#### NOTE

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From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 07/c/01/19

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 26 January and registered on 28 January 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 22 February 2019 (Annex 2);
- confirmatory application dated 6 March 2019 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 26 January 2019 - 17:02 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): ST 14639 2013 INIT, ST 14639 2013 COR 1

1st preferred linguistic version: DE - Deutsch

2nd preferred linguistic version: EN - English

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**Council of the European Union**  
General Secretariat  
Directorate-General Communication and Information - COMM  
Directorate Information and Outreach  
Information Services Unit / Transparency  
*Head of Unit*

Brussels, 22 February 2019

**DELETED**

Email: **DELETED**

Ref. 19/0268-em/nb

Request made on: 26.01.2019

Registered on: 28.01.2019

Deadline extension: 18.02.2019

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

Please find attached a partially accessible version of document **ST 14639/13 INIT**.<sup>2</sup> However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **ST 14639/13 INIT**, dated 9th October 2013, is an opinion of the Council Legal Service (CLS) regarding the Proposal for a Regulation of the European Parliament and of the Council on the provision and quality of statistics for the macroeconomic imbalances procedure.

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<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

<sup>2</sup> Article 4(6) of Regulation (EC) No 1049/2001.

Document ST 14639/13 COR1, dated 31st October 2013, is a corrigendum which only contains minor corrections of typing mistakes without reflecting the content of the CLS opinion.

The requested opinion provides analysis on the compatibility with the legal basis of the proposal, namely Article 338(1) TFUE, of its provisions related to sanctions and missions to Member States, as well as on the respect of the principle of proportionality. Therefore document ST 14639/13 INIT contains legal advice, except for its paragraphs 1 to 3.

The legal advice is relevant to a decision-making process that has not been finalised to date. The issues on which the legal advice pertains form an important part of the basis for the discussions and are controversial, the different actors involved in the legislative procedure having expressed divergent positions on that very issues. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence risk compromising the capacity of the institutions to reach an agreement on the dossier. In addition, should the opinion be released, third parties may attempt to influence or exert pressure on the policy choices to be made by the institution in the decision-making process in question. Disclosure of the requested document would thus seriously undermine the decision-making process. As a consequence, the General secretariat of the Council has to refuse full access to the document.<sup>3</sup>

What is more, the legal advice contained in this opinion deals with issues that are delicate and contentious. This is notably the case as regards the assessment on the provisions on sanctions and missions to Member States. The legal advice provided is also of a particularly wide scope going beyond the legislative process in question. In particular, the questions of fines as well as of missions to investigate compliance with Union law are raised in other files (sectoral or in other fields). The legal advice is therefore sensitive.

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<sup>3</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

Disclosure of the requested documents would therefore undermine the protection of legal advice. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences. In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to the requested document.<sup>4</sup>

As regards the existence of an overriding public interest in disclosure, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the documents. However, in accordance with Article 4(6) of Regulation (EC) No. 1049/2001, you may have access to paragraphs 1 to 3 of document ST 14639/13 INIT.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>5</sup>

Yours sincerely,

Paulo VIDAL

(Enclosures)

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<sup>4</sup> Article 4(2), second indent, of Regulation (EC) No 1049/2001.

<sup>5</sup> Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

**From:** **DELETED**

**Sent:** Wednesday 6 March 2019 08:20

**To:** TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

**Subject:** Re: Our ref. 19/0268-em/nb

Dear Sir/Madam,

Please find enclosed my confirmatory application in connection with the above.

(Complimentary close)

**DELETED**

**Council of the European Union**

General Secretariat  
Directorate-General for Communication  
and Information – COMM Information  
and Outreach Directorate  
Information Services Unit/Transparency – for the attention of Mr Paulo Vidal

Our ref. 19/0268-em/nb – confirmatory application

6 March 2019

Page 1 of 1

Dear Mr Vidal,

Many thanks for your detailed answer to my request for access to Council document  
ST 14639/13 INIT.

Although I can understand, to a certain extent, your arguments against disclosing the whole document, I would hereby like to request you to review your decision and accordingly am submitting a confirmatory application for access to this document under Article 7(2) of the Regulation regarding public access to documents.

In my view, on this occasion the public interest in the legal assessments in this document prevails, since they refer to the relevant grounds for the legislative consultations, which have still not been concluded after nearly six years, concerning the European Commission's proposal for a Regulation of the European Parliament and of the Council on the provision and quality of statistics for the macroeconomic imbalances procedure.

(Complimentary close)

Signed

**DELETED**