



Council of the
European Union

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Brussels, 4 July 2022
(OR. en)

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INF 116
API 56

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 08/c/01/22

Delegations will find attached:

- the request for access to documents sent to the European Council on 31 May 2022 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 28 June 2022 (Annex 2);
- the confirmatory application dated 28 June 2022 and registered on 29 June 2022 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 31 May 2022 - 14:54]

From: **DELETED**

Sent: Tuesday, May 31, 2022 2:54 PM

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

Subject: access to documents request - Text messages between PM Rutte and Council President

Dear Madam, Sir,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All text messages (i.e., SMS messages) and other mobile-phone-based text communications (e.g., WhatsApp, Telegram, iMessage, Facebook Chat, SnapChat, Slack, Facebook and Twitter "direct messages," Signal Messenger, Wire, etc.) exchanged between:

- 1) Dutch prime minister Mark Rutte and Council President Herman Van Rompuy in the period from 14 October 2010 until 30 November 2014
- 2) Dutch prime minister Mark Rutte and Council President Donald Tusk in the period from 1 December 2014 until 30 November 2019
- 3) Dutch prime minister Mark Rutte and Council President Charles Michel in the period from 1 December 2019 until 31 May 2022

As the Council has previously established, (in confirmatory applications 09/c/01/19 and 39/e/01/19) text messages and other mobile-phone-based text communications may qualify as a document falling within the scope of Regulation 1049/2001, if it relates to the policies, activities and decisions falling within the European Council's sphere of responsibility and contains substantial information.

There is at least on example where press have established that a text message between PM Rutte and the then Council President indeed contained substantial information. On 16 July 2015, the Associated Press reported that a "single text message rescued the talks — and possibly the euro". (See <https://apnews.com/article/420b699b2dae44808f148699781d642a>) The report concerns the 12 July 2015 Euro Summit, about the Greek debt crisis. According to the AP, "the last sticking point keeping the two sides apart" was resolved in a compromise text sent by SMS.

Sincerely,

DELETED



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, 28 June 2022

DELETED

Email: **DELETED**

Ref. 22/1205-lk/vk

Request made on: 31.05.2022

Deadline extension: 22.06.2022

Dear **DELETED**,

Thank you for your request for access to documents of the **European Council**.¹

The General Secretariat of the Council - acting as secretariat for the **European Council** pursuant to Article 235(4) of the Treaty on the Functioning of the European Union - has not identified any document in its possession that corresponds to your request.

Yours sincerely,

Fernando FLORINDO

¹ The General Secretariat of the Council - acting as secretariat for the **European Council** pursuant to Article 235(4) of the Treaty on the Functioning of the European Union - 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 of the European Council's Rules of Procedure (European Council Decision No 2009/882/EU, OJ L 315, 2.12.2009, p. 51) set out in Article 10(2) which makes Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35) applicable mutatis mutandis.

[E-mail message sent to access@consilium.europa.eu on 28 June 2022 - 17:44]

From: DELETED

Sent: Tuesday, June 28, 2022 5:44 PM

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

Subject: Internal review of access to documents request - Text messages between PM Rutte and Council President

Dear Madam Sir,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request made on 31 May 2022, registered under Ref. 22/1205-lk/vk.

The General Secretariat of the Council has not identified any document in its possession that corresponds to my request. But it has not explained why not.

There are only two possible explanation I can come up with: either the Dutch prime minister and the three European Council presidents have never exchanged any text messages or other mobile-phone-based text communications that qualify as a document falling within the scope of Regulation 1049/2001; or they have but these messages have never been registered.

I find scenario 1 highly unlikely. As I mentioned in my initial application there is at least one example where press have established that a text message between PM Rutte and the then Council President contained substantial information. Unless the 16 July 2015 Associated Press report was inaccurate, there was at least one text message sent by Rutte to a European Council president that should have been registered.

In the case of scenario 2, I would like to refer to the European Ombudsman's recommendation in case 1316/2021/MIG. In that case, she stressed that a search for documents in the context of Regulation 1049/2001 should not be limited to registered documents. She noted that "whether a document has been registered in the institution's document management system" was irrelevant. 'Registering a document is a consequence of the existence of a document and not a pre-requisite for its existence.'

I would like to request the Council to review the text messages sent and received by the European Council presidents, to determine if any have been erroneously not registered, if so to register them, and then consider them in the context of my request.

In any case, I would appreciate if the Council can shed light on this situation by answering the following questions:

1. Can the Council confirm or deny that the 2015 text message from Rutte on Greece was received by the European Council president?

2. If it confirms that this text message was received by its president, can the Council explain why it has not been registered as a document in the scope of Regulation 1049/2001?

3. Has the Council ever registered any text message or other mobile-phone-based text sent to or by a European Council President?

Sincerely,

DELETED
