



**EUROPEAN COUNCIL**

**Brussels, 10 February 2012**

**EUCO 23/12**

**LIMITE**

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JUR 84**

**NOTE**

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from:	General Secretariat
to:	European Council
No. prev. doc.:	5018/12 INF 2 API 2 JUR 2
Subject:	Public access to documents - Confirmatory application No 01/c/01/12

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The draft reply to confirmatory application No 01/c/01/12 for public access to documents was endorsed by the Working Party on Information by written consultation (silence procedure) which ended on 9 February 2012.

It is suggested that the European Council, by written procedure, approve the draft reply, as set out in Annex to this document.

The Annex is available in English only.

**DRAFT**

**REPLY ADOPTED BY THE EUROPEAN COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION No 01/c/01/12,**  
**made by e-mail on 30 December 2011,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents**

1. 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 (Official Journal L 145 of 31.5.2001, p. 43), Article 10 of the European Council's Rules of Procedure (European Council Decision No 2009/882/EU, Official Journal L 315, 2.12.2009, p.51) and Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35).
  
2. The applicant refers to the following documents:
  - "- all minutes (and other notes) of discussions with (representatives of) the Institute of International Finance before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011;
  - correspondence with (representatives of) the Institute of International Finance before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011;
  - documents submitted by (representatives of) the Institute of International Finance before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011".
  
3. In order to reply to the applicant's initial request dated 27 October 2011, the General Secretariat of the Council carried out an internal research in order to identify documents corresponding to the request. Following this research, it did not find any documents corresponding to the request other than the texts which were mentioned in the reply dated 12 December 2011 and which were already in the public domain.

4. In the confirmatory application dated 30 December 2011, the applicant complains about the part of the General Secretariat's reply which indicates that "the contacts with the IIF [Institute of International Finance] before, during and after the above-mentioned summits consisted of discussions between one Member State, namely Greece, and the IIF".
5. The European Council has considered this confirmatory application in the light of the applicant's arguments and has concluded as indicated below.
6. The contacts with the Institute of International Finance (hereinafter "IIF") before, during and after the summits referred to by the applicant were part of a broader negotiation in order to find agreement on a package of measures aiming at improving the debt sustainability and refinancing profile of Greece. A prominent aspect of this package was the extent and the modalities of Private Sector Involvement (hereinafter "PSI"). The entities involved in the negotiation on this aspect were Greece and private investors holding Greek bonds (at least as far as they are represented by the IIF), with the involvement of Troika representatives (i.e., from the European Commission, from the European Central Bank and from the International Monetary Fund) and of Mr *Vittorio Grilli*<sup>1</sup>.
7. However, the negotiating package also included aspects relating to: i) the economic reform program for Greece; ii) an additional support by the International Monetary Fund; iii) a contribution to the PSI package by the Euro area Member States; iv) the agreement between these Member States on stabilisation mechanisms; and v) the agreement of the members of the European Council on bank recapitalisation and funding (on the basis of measures reached by the Council (ECOFIN) on 22 October 2011).

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<sup>1</sup> During the period to which the request refers, Professor Vittorio Grilli was the Director General of the Treasury in the Italian Ministry of Economy and Finance and the President of the Economic and Financial Committee. On 28 November 2011, he was appointed Deputy Economy and Finance Minister in the Italian government.

8. As normal in the context of complex negotiations, these various aspects were inter-linked and formed part of an agreement on a package of measures. Diverse direct contacts have necessarily occurred between the various entities involved in the negotiations on the whole package. In this context, documents may have been communicated between various entities. This being said, it is only as far as the European Council or its General Secretariat received and actually hold any documents which have been exchanged in the negotiations that such documents come under the scope of Regulation 1049/2001.
9. Therefore, following this confirmatory application, the European Council, acting through its General Secretariat, has carried out a new internal research in the light of the applicant's arguments, in order to establish whether any documents corresponding to the request could be identified. In particular, the European Council consulted the services which may have been involved in various aspects of the negotiations on the package.
10. Following this research, it was established that an e-mail containing a letter from Mr *Charles Dallara* and Mr *Jean Lemierre*, representatives of the IIF, to Mr *Evangelos Venizelos*, Greek Minister of Finance, has been sent by Mr *Charles Dallara* to the President of the Euro Summit relating to the agreement reached at the October 2011 Euro-Summit and its follow-up.
11. The European Council has consulted the third-party author of the document in accordance with Article 4, paragraph 4, of Regulation 1049/2001 with a view to assessing whether an exception in Article 4, paragraphs 1 or 2 of Regulation 1049/2001 is applicable. The originator of the document assessed it and came to the conclusion that the document cannot be released as its disclosure would undermine the protection of the public interest as regards the financial, monetary and economic policy of the European Union and of its Member States.
12. Having conducted its examination of this document under Regulation 1049/2001, the European Council has reached the following conclusion:

13. Negotiations on the package and in particular on PSI are among the core actions aiming at solving the current difficulties relating to the sustainability of the Greek debt and to the euro area. Given the particular political and economic sensitivity and complexity of this negotiation process, where trust among involved entities is a key factor, releasing this document would negatively affect this trust and compromise the ongoing broader negotiating process as well as possible future negotiations of a similar kind, in a context where reactions of markets in the Union and around the world to signs of disturbances have far-reaching effects on the financial, monetary and economic situation of the Union, of its Member States and of third countries. Therefore, the European Council considers that the release of this document to the public must be refused as its disclosure would be detrimental to the protection of the public interest as regards the financial, monetary and economic policy of the European Union and of its Member States. Accordingly, access to the above-mentioned document will have to be refused pursuant to Article 4, paragraph 1, point a), 4th indent, of Regulation 1049/2001.
14. The European Council also examined whether partial access can be granted to the document concerned according to Article 4, paragraph 6, of Regulation 1049/2001. It concluded that this was not the case since the above reasons of the application of the said exceptions apply to the entire document.
15. However, as indicated in the General Secretariat's reply dated 12 December 2011, the European Council recalls that several documents corresponding to the applicant's request are already public <sup>1</sup>.

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<sup>1</sup> See in particular:  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/123978.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123978.pdf) ,  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125644.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf) ,  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125496.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125496.pdf) ,  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125621.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125621.pdf) .