

Recent initiative to improve Eurogroup transparency

Correspondence - 14/03/2016

Case SI/5/2016/EA - **Opened on** 14/03/2016 - **Decision on** 30/11/2016 - **Institution concerned** Council of the European Union |

Mr Jeroen Dijsselbloem President of the Eurogroup Ministry of Finance Korte Voorhout 7
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Strasbourg, 14/03/2016

Re: Recent initiative to improve Eurogroup transparency

Dear Mr President,

I would like to warmly congratulate you on your recent initiative toward greater transparency in the work of the Eurogroup. Given the significance of its work, it was right to highlight transparency as an issue of prime importance for further legitimacy and public trust.

I noted with great interest the proactive transparency measures you tabled at the Eurogroup meeting of 11 February 2016, namely to publish (i) a complete draft annotated agenda of the Eurogroup, (ii) the Eurogroup summing-up letter (which reflects your understanding of what has been discussed in the meeting), and (iii) programme-country related documents ahead of decisions, as well as notes presented to the Eurogroup after the meetings. [1]

In welcoming your initiative at the time, [2] I mentioned that this matter had been brought to my attention in June 2015, when I received a complaint alleging lack of transparency of Eurogroup meetings, specifically in relation to the negotiations on a programme of financial support to Greece. [3] In the meantime, I have been monitoring how requests for public access to Eurogroup documents are handled, notably by the Council.

I was therefore most encouraged to learn that during the Eurogroup meeting of 11 February 2016, there was an agreement on points (i) and (ii) of the aforementioned proposals. On point (iii), it was decided at the Eurogroup meeting of 7 March 2016 that *"Eurogroup meeting documents will be published unless the institutions which drafted them object. Documents which have not been finalised or which contain market-sensitive information will not be made public"*.



Since I began work as European Ombudsman, I have launched a number of strategic inquiries and initiatives aimed at promoting proactive transparency within the EU institutions, offices, bodies and agencies. Proactive transparency helps to ensure that citizens obtain access to relevant documents at the earliest moment possible and without needing to ask for them, while the body in question is seen to be as transparent as possible about the documents it holds and what can and cannot be proactively disclosed.

In relation to documents that will not be published proactively, such as those mentioned above, citizens may still exercise their fundamental right of public access to documents, under Article 42 of the Charter of Fundamental Rights, and request access to them. Given the economic, financial and societal impact of the decisions taken by the body over which you preside, I think it is of particular importance to clarify the handling of requests for public access to documents relating to the work of the Eurogroup. There appear to me to be three related aspects to take into account.

First, according to a 2015 information note drafted by the Council's Legal Service [4], requests for public access to documents held by the General Secretariat of the Council (GSC) in relation to the performance of tasks of support to bodies or entities other than the Council (including the Eurogroup) fall within the scope of application of Regulation 1049/2001 on public access to documents [5] and are, therefore, to be processed by the GSC in line with the substantive and procedural legal framework set out in that.

The Council's Legal Service further notes that, following the entry into force of Article 15(3), third indent TFEU [6], applicants could decide to address their requests for public access directly to the bodies which are administratively assisted by the GSC. In the case of the Eurogroup, the note identifies the President as the person to whom requests could be addressed. The Legal Service adds that *"As a consequence, the bodies concerned are required to adopt rules in order to implement their Treaty obligations in the domain of transparency. Those rules should reflect those laid down in Regulation 1049/2001, pending a revision of that Regulation. They should also include procedural arrangements for the handling of the requests for access. It is advisable that those arrangements include a delegation of powers to GSC for the handling of the requests for access and of possible litigation"*.

It would be helpful to know what measures have been taken to follow up on this note and to obtain a copy of any relevant documents (e.g. delegation of powers decision). Since its establishment, the European Ombudsman has as you may know conducted a number of inquiries into public access to documents' issues to determine whether the body in question had adopted rules on the matter and if so whether the rules are easily available to the public [7]. On the basis of the response to this letter, I will determine the next steps of my Office in this area.

Second, a range of bodies and services prepare Eurogroup meetings [8]. My officials have not been able to find notices and provisional agendas of the meetings of relevant bodies on the Council's public register, even though it is possible to do so for other Council preparatory bodies (e.g. Budget Committee, Working Party on Cooperation in Criminal Matters). Given the proactive transparency measures that you personally have championed, I believe it would be



appropriate for similar measures to be considered for relevant preparatory bodies. In the light of your 11 February announcement that the Eurogroup Working Group would be charged with following up your transparency initiative, it would be useful to know whether you would be willing to refer this question for similar follow-up.

Third, the Legal Service note also states that documents held by the GSC in relation to the performance of tasks of support to bodies or entities other than the Council are not in principle published on the Council's public register of documents. This means that it is currently not possible to obtain an overview of Eurogroup documentation that citizens can request [9]. To facilitate the exercise of the citizen's fundamental right of public access, it would be most useful to also address this question.

I would be grateful to receive your reply by 30 June 2016. If any further information is required in relation to the present letter, contact can be taken with the Ombudsman's Strategic Inquiries Unit (Ms Rosita Agnew, Tel: 00 32 2 284 25 42).

I congratulate you again on your initiative toward greater transparency.

Yours sincerely,

Emily O'Reilly

cc: President of the European Parliament, Mr Schulz

President of the European Commission, Mr Juncker

Secretary-General of the Council of the European Union, Mr Tranholm-Mikkelsen

[1] I note that you addressed a letter with these proposals to all Eurogroup members on 17 December 2015.

[2] Press Release No 3/2016 "Ombudsman welcomes Eurogroup proactive transparency proposals",

11 February 2016,

<http://www.ombudsman.europa.eu/en/press/release.faces/en/63843/html.bookmark> [Link]

[3] No inquiry was ultimately opened by my services as the complainant had not given the Council and Commission adequate time to address the concerns he raised.



[4] Document No12258/15 on the “handling of requests for public access to certain categories of documents held by the Secretariat General of the Council”,

<http://data.consilium.europa.eu/doc/document/ST-12258-2015-INIT/en/pdf> [Link]

[5] 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 2001 L 145, p. 43.

[6] Article 15(3), third indent TFEU provides that *"each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents (...)"* .

[7] See, for example, own-initiative inquiry 616/PUBAC/F/IJH and OI/1/99/IJH.

[8] For example, the Economic and Financial Committee (EFC), the Economic Policy Committee (EPC) and the General Secretariat of the Council (GSC). The Eurogroup is furthermore supported by the Eurogroup Working Group Secretariat within the Commission's DG ECFIN. The Eurogroup Working Group is a configuration of a Council preparatory body (namely, the Economic and Financial Committee), in which the Euro area Member States, the Commission and the ECB are represented.

[9] If a document cannot be made public proactively, the document reference and, if possible, its title should be made public.