Ms Elodie Lamer
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Ref. 22/1480-mw/ns

Request made on: 05.07.2022
Deadline extension: 27.07.2022

Dear Ms Lamer,

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

You request access to documents concerning the monitoring of the implementation of the 2017 Guidance on tax privileges related to special economic zones, which includes but is not limited to the questionnaire for this monitoring presented at the COCG subgroup on internal issues meeting on 23 October 2020, responses from the Member States which were requested by 31 March 2021 and documents related to clarifications requested on 19 May 2021 from the Member States concerned and those clarifications.

We have identified documents WK 11161/2020, WK 12094/2020, WK 4706/2021, WK 5161/2021 and WK 5161/2021 ADD 1-10, WK 6361/2021 as related to your request.

I regret to inform you that access to these documents cannot be given for the reasons set out below.

Document WK 11161/2020 of 16.10.2020 is a note from the Commission services to the Code of Conduct Group (Business Taxation). It contains a draft questionnaire in order for the Member States to identify their relevant measures (if any) on business tax privileges applicable to special geographic areas.

Document WK 12094/2020 of 30.10.2020 is a note from the Commission services to the Code of Conduct Group (Business Taxation) containing the final version of the questionnaire mentioned above.

Document WK 4706/2021 of 09.04.2021 is a note from the Commission services to the Code of Conduct Group (Business Taxation). It contains a state of play of the replies from the Member States to questionnaire at 8.04.2021.

Document WK 4706/2021 REV1 of 12.05.2021 is a revised version of the previous document containing the replies to questionnaire at 22.04.2021.

Document WK 5161/2021 and ADD1 to 10 of 22.04.2021 are notes from the General Secretariat of the Council to the Code of Conduct Group (Business Taxation). They consist in a compilation of the Member States’ replies to the questionnaire as follows: Bulgaria (ADD 1), Spain (ADD 2), France (ADD 3), Croatia (ADD 4), Hungary (ADD 5), Italy (ADD 6), Latvia (ADD 7), Lithuania (ADD 8), Poland (ADD 9), Portugal (ADD 10).

Document WK 6361/2021 of 12.05.2021 is a note from the Commission services to the Code of Conduct Group (Business Taxation) containing horizontal remarks regarding the completion of the questionnaire.

All of these documents refer to difficult ongoing discussions regarding the field of taxation. Release of these documents would trigger undesirable behaviour by economic operators in order to avoid taxation and thus interfere with the economic and fiscal policy of the European Union and of the Member States. It would therefore undermine the protection of the public interest as regards the financial, monetary or economic policy of the EU and of the Member States.

Moreover, these documents are preparatory working documents outlining certain issues to be considered in the political discussion in the group. The political workability of that delicate mechanism would be jeopardised if Member States or the EU Institutions had to take into account the possibility that preparatory documents forming the basis for the discussions may be made public, all the more so when the decision-making process has not yet come to an end.

Release of the information included in these documents would affect the negotiating process and diminish the chances of the Council reaching an agreement. Disclosure of these documents would thus seriously undermine the decision making-process concerned.

Having examined the context in which the documents were drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

As a consequence, the General Secretariat has to refuse access to these documents².

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The General Secretariat of the Council has also looked into the possibility of releasing parts of the documents, in the light of the considerations set out above. However, as the exceptions analysed above apply to their entire content, the GSC is unable to give partial access.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO