



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-general

29. 10. 2015

Brussels,
Taxud R2/SV – ARES(2015)5013203

Mr Fabio De Masi
European Parliament
WIB 03M031
rue Wiertz 60
BE – 1047 BRUSSELS

by e-mail and registered mail

Dear Mr De Masi,

Subject: Your application for access to documents – Ref GestDem No 2015/5101

I acknowledge receipt of your e-mails, registered on 29 September 2015, in which you make a request for access to documents under Regulation 1049/01¹ as follows: *"Any informal notes, minutes or other written records from Commission representatives attending meetings of the Code of Conduct group on business taxation since its coming into existence (since 9.3.1998)"*.

I also refer to the e-mail of 8 October 2015 extending the deadline for the handling of your request until 30 October 2015.

The request relates to the core tasks of one of my Units over more than 17 years and, at first sight, the estimation is that it covers more than 5500 documents which are distributed over 518 electronic folders.

1- The work required

The work triggered by your request would first require to retrieve and to list an estimate number of 5500 documents. At this stage, it is also estimated that only between 500 and 1000 of those documents might have to be analysed in the framework of a request for access to documents. This situation results from the fact that some documents have been saved in various folders because they

¹ OJ L 145 of 31.05.2001, p. 43

were presented to several meetings. Moreover, various versions of the same document at different stages of its preparation have been saved.

This situation makes the work of the Commission services rather difficult because it means that they would have to go through all documents to remove doubles and to sort out incomplete documents but this is a demanding and compulsory step which would precede the assessment of the individual documents.

In that context, I would stress that the work carried out in the Code of Conduct group is based on information about national taxation policies that national authorities have shared in the Code of Conduct group until now only because they were assured that the information and any subsequent document would not be disclosed beyond that group. These specific confidentiality rules are stipulated in the Council Conclusion of 9 March 1998.

Therefore, given the sensitivity of the subject matters raised during the meetings and the fact that most of them are still being discussed within the Code of Conduct group, all the documents would have to be analysed. Should access be granted to documents, a majority of them should be redacted to ensure the protection of the decision making process within the Council, on the basis of Article 4, paragraph 3, of Regulation 1049/2001 which states that:

"Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure" .

Finally and pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data².

In concrete terms, the protection of privacy might require the redaction of personal data in some documents.

2- Estimation of the workload

On the basis of previous and targeted requests for access to documents relating to the work of the Code of Conduct group, the estimate is that, in average, each document contains 10 pages.

- extraction and initial work on 5500 documents

On the basis of an estimated workload of 3 minutes one document, including the *prima facie* assessment as regards its duplication, relevance and possibly its saving in a specific file, it is estimated that an official would need to work for more than **34 working days** (meaning that the official works for 8 hours without any interruption) to finalise this task.

² OJ L 8 of 12.1.2001, p. 1

- analysis of 750 documents

The analysis of 150 pages per day would require an official to work on the documents during **50 working days** (meaning that the official works for 8 hours without any interruption).

- redaction of 500 documents

This stage requires time as it needs to be carried out with a specialised software. Based on an minimalistic estimate of 10 minutes per document, for only half of the overall number of documents (500), the estimate is that an official would need more than **10 working days** (meaning that the official works for 8 hours without any interruption) to finalise this task.

- drafting of the reply

On the basis of the above work, it is estimated that **1 working day** would be required for the drafting of the reply.

- clerical work for the reply

This phase consists of collecting all the documents (redacted and non-redacted) in a single repository, preparing the list and finalising the reply. The related workload is estimated to be **1 working day** for 1000 documents, (meaning that the official works for 8 hours without any interruption).

- total amount of work

Bearing in mind that there are in average 20 working days per month, the total work would require an official to work on this request for almost 5 months.

3- Application of the principle of proportionality

It results clearly from the above estimation that it is not possible to provide an exhaustive reply to your request within the timeframe set by Regulation 1049/01. The processing of the very broad number of documents requested constitutes a huge task which would require the full time work of an official for almost 5 months.

Therefore, you will understand that the sound management of human resources imposes to assess carefully huge requests for access to document and to determine whether they are proportionate or not, in particular, in view of the core tasks within my Directorate General.

In that context, I would specify that the work linked to your request would be attributed to the Unit involved in the work linked to the Code of Conduct Group. Therefore, and in view of the Action Plan for a fair and efficient corporate taxation in the EU³, I have to ensure that the limited human resources with expertise in this area remain available to concretise this very important and sensitive Action Plan which is very high on the political agenda of the Commission, during the forthcoming months.

Therefore, I regret to inform you that your application could only be processed partly, in view of the administrative burden the full processing would create on my services.

³ Communication of 17 June 2015 from the Commission to the European Parliament and the Council on a fair and efficient corporate tax system in the European Union : 5 Keys Areas for action – COM52015 (302) final

I would stress that this decision has been taken on the basis of the Case Law of the Court of Justice which has acknowledged that "*the institutions may, in particular cases, in which the volume of documents for which access is applied or in which the number of passages to be censured would involve an inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interest of good administration*" As a result, the Court concluded that "an institution may, in exceptional circumstances, refuse access to certain documents on the ground that the workload relating their disclosure would be disproportionate as compared to the objectives set by the application for access to these documents" ⁴.

4- Documents provided

Consequently, in view of the scarcity of human resources and of the timeframe for a reply to your request, we are able to provide you with documents already disclosed further to various, previous and specific requests for access to documents originating from the Commission relating to the Code of Conduct group as listed in Annex 1. Some documents were disclosed with redactions in accordance with one or several exceptions laid down in Article 4 of Regulation 1049/01.

I hope that these specific and concrete documents you are provided with will enable you to see which specific subject matters and/or specific documents over a determined period of time would be most relevant to you. On that basis, you may decide to lodge a new, focused request for access to documents in accordance with the provisions of Article 6 of Regulation 1049/01. It should however be pointed out that the Commission is not the Registry of the Code of Conduct and does not act as its secretariat. It is therefore not guaranteed that the Commission has in its possession all documents from the Code of Conduct. You may therefore wish to address your request to the Member States or the Council Secretariat.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

⁴ Paragraph 27 of the judgment of 2 October 2014 in *Guido Strack v. Hautala* (C-127/13)

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Heinz Zourek

Annex : as stated above