



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, 23. 01. 2018
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Mr Sven Giegold
European Parliament
ASP 05F163
Rue Wiertz 60
BE – 1047 Brussels

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(via e-mail and registered mail)

Subject: Your application for access to documents – Ref GestDem No 2017/4175

Dear Mr Giegold,

We refer to your application dated 14 July 2017 under which you request to have access to the following documents: "... *Code of Conduct Group Documents: Room Doc #4 (2nd June 2016) updated questionnaire on administrative practices; Briefing Note (20 July 2016) + meeting reports; Briefing Note (21st September 2016) + meeting reports; Briefing Notes and meeting reports for all CoCG since October 2016...*".

Your request has been dealt with in accordance with Regulation 1049/2001 and we have identified the following documents:

- 1) Room document # 4, Code of Conduct Member States' replies to Updated Model Introduction Questionnaire, 2 June 2016, [Ares(2017)6018366];
- 2) Briefing note (preparatory document) 20 July 2016, [Ares(2017)6018470];
- 3) Meeting Report Code of Conduct Group 20 July 2016, [Ares(2016)3963568];
- 4) Briefing note (preparatory document) 21 September 2016, [Ares(2017)1628428];
- 5) Meeting Report Code of Conduct Group 21 September 2016, [Ares(2016)6407422];
- 6) Meeting Report Code of Conduct Group 19 October 2016, [Ares(2016)6407295];
- 7) Meeting Report Code of Conduct Group 24 November 2016, [Ares(2016)6884497];
- 8) Meeting Report Code of Conduct Group 25 January 2017, [Ares(2017)624051];
- 9) Meeting Report Code of Conduct Group 7 April 2017, [Ares(2017)1954602];
- 10) Meeting Report Code of Conduct Group 8 June 2017, [Ares(2017)3026782].

In view of the nature of the documents, we would like to stress that Commission officials draft reports for internal use. These reports are usually of value only for a limited time. These documents are intended for internal Commission use only and have not been agreed upon or discussed with any of the other participants at the meeting. Therefore, they constitute a subjective view of the contents of the meetings covered and cannot in any way be regarded as official minutes of the meeting.

Document 1

We have the pleasure to inform you that document 1 is public and can be accessed at the following link:

https://circabc.europa.eu/d/d/workspace/SpacesStore/1102e312-ab2e-42a5-94aec5c13b44ccab/04_%2016-0602#4%20CoC%20MS%20Replies%20to%20Updated%20Model%20Instruction%20Questionnaire.pdf.

Document 2

Based on the Commission assessment, disclosure of document 2 must be refused under Article 4 (3) first paragraph 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"*.

Disclosure of document 2 would seriously undermine the protection of the decision-making process. Document 2 is an internal preparatory document, drawn up by the Commission staff, stating the internal reflexions and opinions for internal use during the discussion of specific topics by the Code of Conduct Group.

Against this background, access to document 2 is refused.

Document 3

For document 3, consultations have been launched with Denmark, Germany, Netherlands, Ireland, Hungary, Luxembourg, Austria, Spain, France, Italy, United Kingdom (UK) and Belgium under Article 4 (4) of Regulation 1049/2001.

The following Member States opposed the disclosure of document 3: Italy, France, Luxembourg and UK, while Belgium agrees to the disclosure of document 3, but underlines the relevance of the confidentiality while assessing documents of this type. Denmark, Germany, Netherlands, Ireland, Hungary, Austria and Spain agree with the disclosure of document 3.

Italy and France consider that disclosure would undermine the protection of the public interest as regards the economic policy of a Member State. Furthermore, France considers that disclosure of document 3 would undermine the protection of the public interest as regards international relations too. These arguments are based on Article 4(1) (a) of Regulation 1049/2001 which states: *"The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards (...) international relations (...) the financial, monetary or economic policy of the Community or a Member State"*. Also, Italy and France refuse disclosure of document 3 under the provisions of Article 4 (3) of Regulation 1049/2001.

Belgium raises a general concern about granting public access to Code of Conduct meeting documents and notes made by Commission officials during the meetings of the Group. To their understanding, this is not in accordance with the Council Conclusions of 9 March 1998 concerning the establishment of the Code of Conduct Group (business taxation) (98/C 99/01)

and especially with its point 13, since the work of the Code of Conduct Group shall be confidential. Furthermore, Belgium considers that granting public access to document 3 is not in compliance with the Council Conclusions on the future of the Code of Conduct Group of 8 December 2015, especially point 17, since it has been insisted on the confidentiality of the Group's deliberations with a view of protecting the public interest as regards the economic policy of Member States, and maintaining the efficiency of the assessment process and countering related risks of aggressive tax planning. Belgium considers that disclosure of the Commission's reports will make Member States more hesitant and undermine the confidence of discussions in the Code of Conduct Group. This could affect the Group's effectiveness. In order to protect the public interests in the area of financial, monetary or economic policy of the EU or of a Member State, the content of discussions about ongoing issues in the Code of Conduct Group have to be kept confidential, since these discussions deal with sensitive issues of tax policy of Member States (sometimes also with reference to areas which touch upon tax secrecy). These discussions are geared to reaching agreements in sensitive questions in the area of the financial, monetary or economic policy, and to protect this process confidentiality is an important basic requirement. Belgium considers that Article 4 (1) (a) and Article 4 (3) of Regulation 1049/2001 are applicable in this case, since releasing the document would undermine the protection of the public interest as regards international relations and the economic policy of the Member States and would seriously undermine the decision-making process, having in mind that the document contains subjects where a decision has not yet been taken. However, in this specific case, Belgium points out that it acknowledges the value of transparency and the public interest in the context of politically relevant discussions, and agrees to the disclosure of those parts of document 3 which are related to closed issues.

Luxembourg refuses access to parts of document 3 dealing with IP regimes and outbound profit transfers, while basing the refusal on Article 4 (3) of Regulation 1049/2001. Luxembourg considers that disclosure of these parts of document 3 would seriously undermine the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices.

UK considers that disclosure of document 3 would undermine the public interest regarding international relations because this document contains opinions and views which were expressed under the assumption of confidentiality and mutual trust. The document reflects a free and frank exchange of views including frank references to other jurisdictions or officials. Also, document 3 contains references in respect of issues in the work of the Code of Conduct Group that would undermine public interest as regards international relations, if disclosed. Access should also be denied because document 3 contains opinions on ongoing negotiations. Releasing the document would seriously undermine the work of the Code of Conduct Group given that these exchanges have been conducted under the assumption of confidentiality. Access would be detrimental to the climate of trust and confidentiality that characterises the works of the Code of Conduct Group and therefore would seriously undermine the effectiveness of its decision-making process, especially considering some of these issues are still ongoing. From these reasons, the refusal is based on Article 4 (1) (a) and Article 4 (3) first paragraph of the Regulation 1049/2001.

Against this background, partial access to document 3 will be provided.

Document 4

Based on the Commission assessment, disclosure of document 4 must be refused under Article 4 (3) first paragraph of Regulation 1049/2001, since disclosure would seriously undermine the protection of the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices. Document 4 is an internal preparatory document, drawn up by Commission staff, stating the internal reflexions and opinions for internal use during the discussion of specific topics by the Code of Conduct Group.

Against this background, access to document 4 is refused.

Document 5

For document 5, consultations were launched with France, Belgium and Ireland. Ireland agrees to the disclosure of the document. Belgium agrees with the disclosure of document 5 with the same general remark made when providing the explanation for document 3. France refuses disclosure of document 5 since disclosure would undermine the protection of the public interest as regards international relations and economic policy of a Member State under Article 4(1) (a) of Regulation 1049/2001. Also, France considers that disclosure of document 5 would seriously undermine the protection of the decision-making process as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices.

Based on the Commission assessment, disclosure of parts I.1, II.1, II.2, II.4 of document 5 must be refused under Article 4 (3) first paragraph of Regulation 1049/2001, since disclosure would seriously undermine the protection of the decision-making process. Access to these parts cannot be granted, as they relate to decisions which have not yet been taken by the Code of Conduct Group. The exercise concerning the rollback of old IP boxes is still not completely finalized and the Code of Conduct Group is still dealing with the rollback and standstill of patent boxes. There is not yet a final overall agreement on the scope and content of these procedures. Although the Group reached some conclusions in respect of certain specific national IP rules, releasing information on positions and arguments in relation to any of the issues around the assessment process would damage the discussions and would risk putting a halt to the progress and the remaining assessments.

Against this background, partial access to document 5 will be provided.

Document 6

For document 6, consultations were launched with Denmark, Ireland, UK, Austria, Italy and Germany. Denmark, Ireland, Austria and Germany agree to the disclosure of document 6. Italy and UK object to the disclosure of the document, since it would undermine the protection of the public interest of the economic policy of a Member State. Also, UK considers that releasing the document would undermine the protection of the public interest as regards international relations under Article 4(1) (a) of Regulation 1049/2001, since this document contains opinions and views which were expressed under the assumption of confidentiality and mutual trust. Furthermore, disclosure of the document would seriously undermine the protection of the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices. UK considers that disclosure of document 6 would be detrimental to the climate of trust and

confidentiality that characterises the work of the Code of Conduct Group and therefore its disclosure would seriously undermine the effectiveness of its decision-making process – especially considering that some of these issues are still ongoing.

Based on the Commission assessment, disclosure of part I.5 of document 6 must be refused under Article 4 (3) first paragraph of Regulation 1049/2001, since disclosure would seriously undermine the protection of the decision-making process. Access to that part of the document cannot be granted, as it relates to decisions which have not yet been taken by the Code of Conduct Group. The exercise concerning the rollback of old IP boxes is still not completely finalized and the Code of Conduct Group is still dealing with the rollback and standstill of patent boxes. There is not yet a final overall agreement on the scope and content of these procedures. Although the Group reached some conclusions in respect of certain specific national IP rules, releasing information on positions and arguments in relation to any of the issues around the assessment process would damage the discussions and would risk putting a halt to the progress and the remaining assessments. Also, disclosure of parts II.1- II.3, II. 5 of document 6 would undermine the protection of the public interest as regards international relations, under Article 4 (1) (a) of Regulation 1049/2001. Disclosure would upset the negotiations that are taking place in a sensitive context which has been characterised by resistance on the part of some countries as well as the difficulty in reaching an agreement, while also undermining the relations with the third countries which are referred to in the documents. Disclosure of these parts of the documents would also undermine the room for negotiation needed by the EU and its Member States.

Against this background, partial access to document 6 will be provided.

Document 7

Based on the Commission assessment, disclosure of part II.5 of document 7 would seriously undermine the protection of the decision-making process under Article 4 (3) of Regulation 1049/2001, as it would negatively affect the frank exchanges of views among Member States and with the Commission on harmful tax practices. Although the Group reached some conclusions, releasing information on positions and arguments in relation to the issues around the assessment process would damage the discussions and would risk putting a halt to the progress and the remaining assessments.

Against this background, partial access to document 7 will be provided.

Document 8

For document 8, consultations were launched with Slovakia, Italy, UK and Spain. Slovakia and Spain agree with the disclosure of document 8. According to Italy and UK, disclosure would undermine the protection of the public interest of the economic policy of a Member State under Article 4(1) (a) of Regulation 1049/2001 and would seriously undermine the protection of the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices under Article 4 (3) of Regulation 1049/2001. When justifying the refusal of disclosure of document 8, UK provided the same arguments as for document 3.

Based on the Commission assessment, disclosure of parts I.7-8, II.7 of document 8 would seriously undermine the protection of the decision-making process as it would negatively

affect the frank exchanges among Member States and with the Commission on harmful tax practices under Article 4 (3) of Regulation 1049/2001, because the Code of Conduct Group is still dealing with the rollback and standstill of patent boxes. There is not yet a final overall agreement on the scope and content of these procedures. Although the Group reached some conclusions in respect of certain specific national IP rules, releasing information on positions and arguments in relation to any of the issues around the assessment process would jeopardise the discussions and would risk putting a halt to the progress and the remaining assessments.

Against this background, partial access to document 8 will be provided.

Document 9

Based on the Commission assessment, disclosure of parts I.2, I.5, II.2 of document 9 would upset the negotiations that are taking place in a sensitive context - Article 4 (1) (a) of Regulation 1049/2001. Negotiations are taking place in a sensitive context which has been characterised by resistance on the part of some countries as well as the difficulty in reaching an agreement, while also undermining the relations with the third countries which are referred to in the documents. Disclosure of these parts of the document would also undermine the room for negotiation needed by the EU and its Member States. In addition, disclosure of parts I.5, II.3, II.5 of document 9 would also seriously undermine the protection of the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices under Article 4 (3) of Regulation 1049/2001, since the Code of Conduct Group is still dealing with the rollback and standstill of patent boxes.

Against this background, partial access to document 9 will be provided.

Document 10

Based on the Commission assessment, disclosure of part II.1a of document 10 would hinder the on-going negotiations with Switzerland – Article 4 (1) (a) of Regulation 1049/2001. The topic of the potentially harmful regimes is still being negotiated in the Group. Furthermore, this concerns vital interests of Switzerland and publishing them would hinder the on-going negotiations with this country. In addition, next to this separate screening process, in the context of the ongoing negotiations on the EU listing process the topic presents even more sensitivity.

In addition, disclosure of part II.1b of document 10 would upset the negotiations that are taking place now in a sensitive context which has been characterised by resistance on the part of some countries as well as the difficulty in reaching an agreement, while also undermining international relations with third countries which are referred to in the document – Article 4 (1) (a) of Regulation 1049/2001. Disclosure of this part of the document would also undermine the room for negotiation needed by the EU and its Member States. The topic on the potentially harmful regimes in Liechtenstein is still being negotiated in the Code of Conduct Group. Furthermore, this concerns vital interests of Liechtenstein and publishing a document about negotiations with it would hinder the negotiations with it.

Furthermore, disclosure of part II.2 of document 10 would upset the negotiations that are taking place now in a sensitive context which has been characterised by resistance on the part of some countries as well as the difficulty in reaching an agreement, while also undermining

the international relations with the third countries which are referred to in the documents – Article 4 (1) (a) of Regulation 1049/2001.

Finally, disclosure of the parts II.3d, 4a and 4b of document 10 would seriously undermine the protection of the decision-making process, as it would negatively affect the frank exchanges among Member States and with the Commission on harmful tax practices, under Article 4 (3) of Regulation 1049/2001. Code of Conduct Group is still dealing with the rollback and standstill of patent boxes with the same explanation as for the redactions in the document 6.

Against this background, partial access to document 10 will be provided.

Documents with redactions of personal data – documents 3, 5-10

Documents 3, 5-10 to which you are granted partial access contain personal data. 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

In case you would disagree with the overall assessment of the documents or if you consider that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

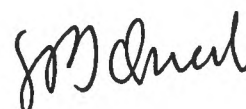
¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

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-4
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Quest', written in a cursive style.

Stephen Quest

Annexes: as stated above