

**REPLY ADOPTED BY THE COUNCIL ON 14 January 2021
TO CONFIRMATORY APPLICATION 23/c/01/20,
made by email on 4 November 2020 and registered on 5 November 2020
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents on "Digital services tax"**

The 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 (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation (EC) No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 2 July 2020 the applicant introduced an initial application for access to "all agendas; minutes / notes of discussions; position papers; and any other documents relating to Council deliberations, since 1 January 2019, where the EU's Digital Services Tax proposal, and/ or the OECD's negotiations on a similar tax, were discussed." (Ref. 20/1233-jdg).
2. On 14 October 2020, the General Secretariat replied to this application by identifying 53 documents¹, and fully releasing 18 documents. Partial access was granted to 2 documents, namely WK 724 2020 INIT and WK 1733 2020 REV 1, in accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001 in conjunction with the data protection rules at EU level². Access was refused to 33 documents, namely documents WK 260 2019 INIT, WK 1093 2019 INIT, WK 1365 2019 INIT, WK 1487 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 5704 2019 INIT, WK 5870 2020 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8649 2019 INIT, WK 8650 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 10973 2019 INIT, WK 10988 2019 INIT, WK 11055 2019 INIT, WK 11448 2019 INIT, WK 11070 2019 INIT, WK 11161 2019 INIT, WK 11162 2019 INIT, WK 11769 2019 INIT, WK 11873 2019 INIT, WK 13201 2019 INIT, WK 13225 2019 INIT, WK 540 2020 INIT, WK 1619 2020 INIT, WK 2260 2020 INIT,

¹ Due to clerical errors, document WK 2260 2020 INIT appeared twice, and document WK 2630 2019 REV1 does not exist.
² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

WK 7902 2020 INIT, and WK 8515 2019 INIT, on the basis of the protection of the institution's decision-making process (Article 4(3), first subparagraph of Regulation (EC) No 1049/2001), in conjunction, for 8 of them, with the protection of the public interest as regards the financial, monetary or economic policy of the European Union or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001) and the protection of the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001).

3. On 4 November 2020, the applicant introduced a confirmatory application against the General Secretariat's reply as explained above. In substance, the applicant contends therein that the General Secretariat did not strike the right balance between the right of access to documents and the right to personal data protection, and that the General Secretariat has not proven the applicability of the exceptions to the right of access concerning the protection of the public interest as regards the financial, monetary or economic policy of the European Union or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001) or international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001) and the protection of the institution's decision-making process (Article 4(3), first subparagraph of Regulation (EC) No 1049/2001). The applicant also contends that the General Secretariat failed to take into account both that the Council was acting in its legislative capacity, and that the right to access to information "is particularly strong for public «watchdogs» such as journalists, civil society and human right organisations", whereas the applicant has "a specific «watchdog» function".
4. The Council has reassessed this application in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and in the light of the applicant's arguments.

GENERAL CONTEXT

5. On 21 March 2018, the European Commission presented a proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, with a view to finding EU solutions ensuring a fair and effective taxation in a context of fast digital transformation of the economy and outdated corporate taxation rules.

6. The challenge of such taxation is of a global nature, and other actors are also involved in trying to find a solution. Such is the case of the Organisation for Economic Co-operation and Development (OECD), in which the EU is also actively negotiating. In the meantime, Member States face pressure to act in order to avoid erosion of their corporate tax bases, with the risk of fragmenting the Single Market by resorting to competing national solutions.
7. The Commission proposal refers to the *Joint initiative on the taxation of companies operating in the digital economy* (by Germany, France, Italy and Spain Finance Ministers), a political statement supporting EU law compatible and effective solutions "based on the concept of establishing a so-called 'equalisation tax' on the turnover generated in Europe by the digital companies". The proposal also recalls the European Council Conclusions of 19 October 2017 underlining the "*need for an effective and fair taxation system fit for the digital era*".
8. The proposal would serve as an EU harmonised approach, pending the implementation of a global solution. Mainly, it would consist on an "easy-to-implement measure targeting the revenues stemming from the supply of digital services where users contribute significantly to the process of value creation" ³.
9. The proposal is highly sensitive from a political point of view as regards the establishment of positions in the Member States which requires the involvement and coordination between a large number of domestic actors and, and unanimity in the Council.
10. On substance, the Council held three policy debates, in a public deliberation, on 6 November 2018⁴, 4 December 2018⁵, and 12 March 2019⁶. In addition to the extensive work at technical level, and despite several Presidency compromise texts, the Council could not find a political agreement, given the requirement for unanimity. As some Delegations maintained reservations on some parts of the proposal or had more fundamental objections, since that date, the file has remained for examination at technical level, and has not been on the Council agenda under Finland, Croatian and German Presidency. This pause in the negotiations is also part of an effort to facilitate the work of the OECD.

³ 7420/18

⁴ 13525/18

⁵ 14885/18 and 14886/18

⁶ 6873/19

ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) NO 1049/2001

I. Documents to which full public access is granted

11. Having thoroughly examined the content of the documents and taking into account the state of play on the matter, the Council considers that full public access can be given to the following documents : WK 1365 2019 INIT, WK 1487 2019 INIT, WK 1733 2020 REV 1, WK 5704 2019 INIT, WK 8649 2019 INIT, WK 10973 2019 REV1, WK 11070 2019 INIT, and WK 11162 2019 INIT.
12. As regards in particular document 1733 2020 REV 1, the Council notes that its greatest part was made public already at the initial stage, except to a very limited part containing personal data. Since, in the meantime, the data subject concerned gave consent for the divulgation of its personal data to the general public, the Council considers that document 1733 2020 REV 1 can now be released in full.

II. Documents to which public access after erasure of personal data is granted (Article 4(1)(b) of Regulation (EC) No 1049/2001)

13. Having reassessed the factual and legal situation, the Council confirms that some elements contained in document WK 724 2020 INIT fall within the remit of the exception relating to the protection of the privacy and the integrity of the individual (Article 4(1)(b) of Regulation (EC) No 1049/2001). The Council recalls that access to the most important part of this document has already been granted at the initial stage, with the exception of a very limited part allowing to identify natural persons and therefore containing personal data. Similarly, documents WK 11161 2019 INIT, and WK 11873 2019 INIT, to which access had been refused in full by the general Secretariat, fall within the same category.

14. According to Article 3(1) of Regulation (EU) 2018/1725, personal data is in broad terms "any information relating to an identified or identifiable natural person". Moreover, the Court of Justice has constantly rejected any attempt to interpret restrictively the notion at issue. In particular, it has stressed that professional data or information provided as part of a professional activity may well be characterised as personal data⁷; it has further stressed that the fact that certain information has already been made public does not exclude its characterisation as personal data⁸; finally, names and forenames, even when alone, qualify as personal data⁹.
15. According to established case law, when an application is made seeking access to personal data within the meaning of Article 2(1) of Regulation (EU) 2018/1725, the provisions of that Regulation become applicable in their entirety¹⁰. More specifically, according to Article 9(1)(b) of Regulation (EU) 2018/1725 personal data may be transferred to recipients established in the Union only if two cumulative conditions are met: (1) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and (2) the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

1. The necessity and proportionality of the transfer

16. It is up to the applicant to show whether the transfer of the requested personal data is necessary, that is to say, whether it is the most appropriate measure to achieve the objective pursued by the applicant and if it is proportional to that objective¹¹.
17. In this regard the applicant generally states in the confirmatory application that the requested disclosure concerns names of public officials who are taking important decisions on behalf of the citizens of the EU, and that the names of these individuals should not be given such high levels of data protection. The applicant also indicates that it does not seek personal data other than the names, and that access to the documents should be granted in full.

⁷ Judgment in *Commission v. Bavarian Lager* (C-28/08, ECLI:EU:C:2010:378, paragraphs 66 to 70).

⁸ Judgment in *Satakunnan and SATAMEDIA* (C-73/07, ECLI:EU:C:2008:727, paragraphs 48 and 49).

⁹ Judgment in *Commission v Bavarian Lager* (C-28/08 P, ECLI:EU:C:2010:378, paragraph 68)

¹⁰ Judgment in *Commission v Bavarian Lager* (C-28/08 P, ECLI:EU:C:2010:378, paragraph 63 regarding the predecessor Regulation (EC) No 45/2001.

¹¹ Judgment in *Dennekamp v European Parliament* (T-115/13, ECLI:EU:T:2015:497, paragraphs 59, 77 and ff.).

18. The Council does not consider that the applicant's arguments are sufficient to establish the necessity of the transfer of the requested personal data.
19. The Council stresses that, the data subjects at issue are not public figures in the sense of the case-law that the applicant invokes – which concerned personal data of Members of the European Parliament – but officials of the OECD, of a Member State's national administration or of the permanent representation of a Member State in the European Union. Moreover, the Council notes that participation, in the sense of taking, shaping or influencing its decisions, results from membership of the Council and that whenever a third party is invited to be present, on an occasional basis, in its meetings or meetings of its preparatory bodies, this is simply to provide information in view of its specific expertise in a subject matter and may not participate in the deliberations leading to the taking of a decision by the Council.
20. Thus, contrary to the applicant's assertion, the data subjects at stake are not public decision-makers or, to use the applicant's own words, individuals "who are taking important decisions on behalf of the citizens of the EU".
21. It results therefore that the data transfer requested is neither appropriate nor proportionate in relation to the objective pursued by the applicant.

2. The prejudice to a legitimate interest of the individuals concerned

22. The Council considers that the disclosure of the personal data would prejudice the legitimate interests of the persons concerned. The data subjects did not give consent for the divulgation of their personal data to the general public at the time the documents were prepared. Rather, the documents were specifically intended for the members of the Working Party on Tax Questions (Digital Taxation) for internal working purposes. Attempts by the General Secretariat of the Council to obtain such a consent as part of the present procedure for access to documents have not proven successful.
23. What is more, taking into account the considerations developed in paragraphs 14 to 16 above, the Council does not consider that disclosing the name of the officials at issue increases the transparency of the decision-making process but, conversely rather exposes the data subjects to external pressure. In addition, the Council underlines that public access shall be granted to the whole content of the requested documents and that the only parts withheld are those reflecting the names of the individuals concerned.

24. In light of these considerations, the Council deems that the disclosure of documents WK 11161 2019 INIT, WK 11873 2019 INIT and WK 724 2020 INIT, in their entirety, would cause prejudice to the legitimate interest of the data subjects concerned and that, on balance, those interests prevail over the objectives pursued by the applicant.
25. The Council therefore considers that the principle of transparency does not, in the present case, take precedence over the interests protected by Article 4(1)(b) of Regulation (EC) No 1049/2001 so as to justify full disclosure of documents WK 724 2020 INIT, WK 11161 2019 INIT and WK 11873 2019 INIT.

III. Documents covered by the exception on the protection of the decision-making process (Article 4(3), first subparagraph of Regulation (EC) No 1049/2001)

26. The following documents are under consideration by the Council to this end:

- WK 260 2019 INIT, of 10 January 2019, contains a "Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services - Digital Advertising Tax – possible circumvention risks";
- WK 1093 2019 INIT, of 24 January 2019, contains a "Digital Advertising Tax Directive - State of play and way forward";
- WK 2235 2019 INIT, of 15 February 2019, contains a "Digital Advertising Tax - Presidency compromise text";
- WK 2630 2019 INIT, of 25 February 2019, contains a "Digital Taxation - Discussion in preparation of the policy debate at ECOFIN";
- WK 7156 2019 INIT, of 12 June 2019, contains a "International tax reform: way forward for the EU";
- WK 8212 2019 INIT, of 8 July 2019, contains a "Tax challenges arising from the digitalisation of the economy";
- WK 8515 2019 INIT, of 12 July 2019, contains a "Methodology for the economic analysis of the proposals on international corporate tax reform";
- WK 8545 2019 INIT, of 15 July 2019, contains a "Exploring the possible ways forward on the issue of Pillar 2 and its compatibility with EU law";
- WK 8553 2019 INIT, of 15 July 2019, contains a "Example based impact of the Pillar 1 proposals";
- WK 8650 2019 INIT, of 17 July 2019, contains a "Economic Analysis of Corporate Tax Reform Options (for the EU) - Presentation";

- WK 8652 2019 INIT, of 17 July 2019, contains a "Tax challenges arising from digitalisation - Presentation";
- ST 9148 2019 INIT, of 10 May 2019, contains a "Digital taxation in the international context Policy debate";
- WK 10921 2019 INIT, of 7 October 2019, contains a "Tax challenges arising from digitalisation";
- WK 10988 2019 INIT, of 8 October 2019, contains a "Tax challenges arising from digitalisation";
- WK 11055 2019 INIT, of 10 October 2019, contains a "Presentation by the Commission";
- WK 11448 2019 INIT, of 22 October 2019, contains a "Tax challenges arising from the digitalisation of the economy";
- WK 11769 2019 INIT, of 24 November 2019, contains a "Preliminary results pillar 2 - Presentation by the Commission";
- WK 13201 2019 INIT, of 19 November 2019, contains a "Initial discussion on EU law compatibility of Pillar 2";
- WK 13225 2019 INIT, of 20 November 2019, contains a "Hungary's Position Paper on the compatibility of the Pillar 2 Proposals with EU law";
- WK 540 2020 INIT, of 17 January 2020, contains a "Tax challenges arising from digitalisation - Presidency discussion paper";
- WK 1619 2020 INIT, of 2 February 2020, contains a "Presidency steering note";
- WK 2260 2020 INIT, of 26 February 2020, contains a "'Digital taxation: economic impact analysis - Letter from OECD";
- WK 5870 2020 INIT, of 4 June 2020, contains an exchange of letters on "Economic impact assessment (digital taxation)";
- WK 7902 2020 INIT, of 17 July 2020, contains a "Letter to OECD - digital taxation".

27. The negotiations on global digital taxation are currently ongoing, both within the EU and the Organisation for Economic Co-operation and Development (OECD). The views and reflections in the documents are neither exhaustive nor final, and do not necessarily reflect the final position of Delegations. Disclosure of these documents at this stage of the decision-making process is likely to put into question the final choices made by Delegations and would create unnecessary uncertainty on their intentions.

28. Release to the public of the information contained in the documents would expose Delegations with certainty to undue pressures by stakeholders directly or indirectly affected by the measures under discussion. It would severely affect the negotiating process and diminish the chances of the Council reaching the necessary unanimity.
29. Many of the elements set out in these documents are the result of difficult ongoing negotiations between Delegations. They give details of progress made and thereby reflect the difficulties that still need to be addressed before the Council can reach an unanimous agreement.
30. The documents include free and frank discussions between Delegations on the basis that they were not meant to become public at this stage of the negotiations. Premature disclosure would not stimulate debates in the Council or between the Institutions, but more likely dissuade Member States from sharing such details in the future in a climate of mutual trust. This, in turn, would seriously reduce the chances of successful discussions and, hence, the outcome of the internal deliberations in the Working Party on Tax Questions (Digital Taxation). Their release would seriously undermine the mutual trust and confidence that enable the Working Party on Tax Questions (Digital Taxation) to perform effectively and thus undermine its workability. Moreover, any disclosure at this stage when a decision has not yet been taken would seriously affect the outcome of these negotiations.
31. In addition, since the documents are relevant to a tax that would be imposed on multinational companies, should they be released, interested stakeholders may attempt to influence or exert pressure on the policy choices to be made by the Council in this specific decision making process. This is all the more so, since disclosure would reveal preliminary reflections on sensitive issues pertaining, for instance, to the impact of the envisaged measures on tax revenues and businesses, their macroeconomic impact, the methodology for the economic analysis of the tax reform options, constraints and key issues of such analysis, data regarding specific Member States or exploratory views on the compatibility with the EU framework and the internal market. Disclosure of such information presents a serious risk of increasing external interference and pressure to the detriment of the effectiveness of the decision-making process.

32. It should also be noted that the negotiations in the Council are linked to the OECD negotiations on global digital taxation that are still ongoing (see par. 38-41). As a consequence, disclosure of the documents, including but not limited to drafts of legal provisions, would give away a trend and the scope of the negotiations in a situation where everything is still open and nothing is agreed. This would hamper the efforts of progress in the discussions.
33. In addition, documents WK 8515 2019 INIT WK 8650 2019 INIT, WK 11055 2019 INIT, and WK 11769 2019 INIT, are Commission services papers presenting a methodology used by Commission services to initially estimate the revenue impacts of ongoing OECD-led negotiations or potential reforms resulting from them. Information contained in these documents was provided on a strictly confidential basis for internal use. Documents WK 2260 2020 INIT, WK 5870 2020 INIT, and WK 7902 2020 INIT contain exchanges of letters between the Council and the OECD related to this particular information.
34. The Council has to strike a balance between the need to protect the decision making process and the legitimate interest in transparency, taking into account all relevant aspects and the context in which the documents were drafted. The Council has particularly taken into consideration the public interest in transparency for documents that relate to legislative procedures. The Council wishes to underline that it fully acknowledges that the principle of transparency is particularly pressing in relation to decision-making processes of a legislative nature, since openness in that respect contributes to strengthening democracy by allowing citizens to scrutinize the information which has formed the basis of a legislative act.¹² It is in that regard that the Council has also decided to reconsider its position as regards several documents and to grant greater public access.

¹² See for example in this respect Judgment of the General Court of 22 March 2018 in Case T-540/15, *De Capitani v Parliament*, EU:T:2018:167, paragraph 78.

35. However, the Council considers that the legitimate public interest in release of the information does not outweigh in this particular case the equally legitimate need to protect the decision-making process. In that regard, the Council also stresses that in the present case the requested documents discuss issues that do not only pertain to a decision-making process in which the Council acts in its legislative capacity, but are relevant and have broader repercussions for discussions in which the EU and its Member States act in an international framework. Similarly, the Council considers that the right of public access to documents of the Institutions under Regulation (EC) No 1049/2001 is of an objective nature, as the latter Regulation doesn't create different categories of applicants. As a consequence, the individual interest invoked by the applicant for requesting the documents cannot be taken into account for the purpose of assessing the possible existence of an overriding public interest¹³. In particular, the claim of the applicant that it has a function of public "watchdog" may not lead to the conclusion of the existence of an overriding public interest in disclosure, since such an interpretation amounts to pre-empting the possibility of applying the exceptions under Regulation 1049/2001 for a whole category of applicants to the detriment of the protection of the public interests provided thereof and to the useful effect of the Regulation.
36. For all the reasons stated above, the Council considers that full release of documents WK 260 2019 INIT, WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8515 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8650 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 10988 2019 INIT, WK 11055 2019 INIT, WK 11448 2019 INIT, WK 11769 2019 INIT, WK 13201 2019 INIT, WK 13225 2019 INIT, WK 540 2020 INIT, WK 1619 2020 INIT, WK 2260 2020 INIT, WK 5870 2020 INIT and WK 7902 2020 INIT would seriously undermine the decision making-process of the Council, pursuant to Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

¹³ Judgement of the General Court of 20 March 2014 in Case T-181/10, *Reagens v Commission*, paragraph 144.

37. The Council has furthermore considered the possibility of giving partial access to the requested documents. It has come to the conclusion that partial access can be granted to documents WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 11448 2019 INIT, WK 13201 2019 INIT, WK 540 2020 INIT, and WK 1619 2020 INIT, pursuant to Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 in conjunction with Article 4(6) of Regulation (EC) No 1049/2001.

III. Documents covered by the exception on the protection of the public interest as regards international relations and the financial, monetary or economic policy of the European Union or a Member State (Article 4(1)(a), third and fourth indents, of Regulation (EC) No 1049/2001)

38. At the outset, the Council recalls that, according to the established case law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001 are subject to a particular regime if compared to the other exceptions included in Article 4.
39. On the one hand, *"the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest"*.¹⁴
40. On the other hand, once the Council has come to the conclusion that release would indeed undermine the public interest in this area, it has no choice but to refuse access, because *"it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests"*.¹⁵

¹⁴ Judgment of the Court of Justice of 1 February 2007 in case [C-266/05 P](#), Sison v Council, para 34.

¹⁵ Judgment of the Court of Justice of 1 February 2007 in case [C-266/05 P](#), Sison v Council, para 46.

41. Therefore, the Council enjoys a wide discretion in assessing the probable impact of the release of a document on the financial, monetary or economic policy of the Union or a Member State – and, where applicable, on international relations – and it is barred from taking into account other legitimate interests in order to override the conclusion that giving access to a document would harm the protected interest.

A) Protection of the public interest as regards international relations

42. Documents listed in paragraph 22 discuss the EU work and potential measures at EU level in the area of digital taxation and the coherence with the work in the framework of the OECD and exchange ideas on the options negotiated in the OECD, the impact of possible OECD measures and their compatibility with the EU framework. Those discussions are not limited to the legislative decision-making of the Council with "some consultation with or input from the OECD and G20" as the applicant asserts in the confirmatory application, the key political objective being the one of finding a global consensus on tax challenges arising from digitalisation.
43. Disclosure of the information contained in the documents listed in paragraph 22 would have a negative impact on the relations of the European Union with its counterparts in the OECD and G20. Should the European Union internal views and negotiation strategy be made public while negotiations to find a consensus-based solution to tax challenges linked to the digitalisation of the economy are still ongoing, the position of the Union in such multilateral negotiations would be seriously weakened. Such disclosure could seriously undermine the mutual trust essential to the effectiveness of the international negotiations and risks upsetting those discussions that are taking place in a sensitive context. This is all the more so since disclosure would reveal preliminary reflections on sensitive questions such as the impact of the measures on revenues, their macroeconomic impact, the methodologies for the assessment of impacts and the compatibility with the EU framework and the single market. Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations, since the documents contain information on negotiations which are still under discussion within the Council on the approaches to be taken in international fora.

44. Additionally, these negotiations are in a crucial phase, as the OECD has just postponed its initial deadline of end-2020 for finding global consensus to mid-2021. Should no agreement be found in the OECD framework, the EU could revert to its own solutions, in which case the Digital Services Tax Proposal would be of actuality in a very immediate future and as a pressing political priority.
45. What is more, digital taxation is an issue of particular sensitivity in the international context, third countries having threatened to take measures and impose sanctions in case a system of collect of tax on digital activities affecting multinationals was imposed. Full disclosure of the content of the requested documents, which reflect preliminary positions and international reflections on those issues, would adversely affect trade relations with international partners and third countries.
46. For all the reasons stated above, the Council considers that full release of documents WK 260 2019 INIT, WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8515 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8650 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 10988 2019 INIT, WK 11055 2019 INIT, WK 11448 2019 INIT, WK 11769 2019 INIT, WK 13201 2019 INIT, WK 13225 2019 INIT, WK 540 2020 INIT, WK 1619 2020 INIT, WK 2260 2020 INIT, WK 5870 2020 INIT, and WK 7902 2020 INIT would undermine the protection of the public interest as regards international relations, pursuant to Article 4(1)(a) third indent of Regulation (EC) No 1049/2001.
47. The Council has furthermore considered the possibility of giving partial access to the requested documents. It has come to the conclusion that, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, partial access can be given to those parts of documents WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 11448 2019 INIT, WK 13201 2019 INIT, WK 540 2020 INIT, and WK 1619 2020 INIT that are not covered by the exception under Article 4(1)(a) third indent of Regulation (EC) No 1049/2001.

B) Protection of the public interest as regards the financial, monetary or economic policy of the European Union or a Member State

48. The documents listed in paragraph 22 come within the remit of the exception of the protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001).
49. The documents concern difficult issues on which no decision has been taken yet, as explained above in par. 23-41. The envisaged measures foresee to establish a tax that would fall on multinational companies that benefit from the digital economy and the value created by the contributions of users to networks and platforms. Therefore, their release is likely to trigger unwarranted and undesirable behaviour by economic operators which would interfere with Member States' fiscal policy.
50. The issues at hand are economically important to many governments, citizens and businesses, across the EU and are likely to be even more important in the aftermath of COVID-19 when revenues are needed to finance recovery, but where state finances also need to be put back on a sustainable footing. Therefore any disclosure of the documents might trigger negative tendencies, both in communication and impact on work of democratically elected governments, and possible arrangements businesses might be deciding to take, which then would consequently undermine the protection of the public interest as regards the financial or economic policy of the EU or any Member State concerned, or could have negative influence on those policies.
51. Several of the requested documents contain elements on preliminary economic analysis of the tax reform options, the methodology for the assessment of economic impact, the constraints and key issues of such analysis or data of analysis regarding specific Members States. Disclosure of such sensitive information would adversely affect the protection of the public interest as regards the financial and economic policy of the European Union and its Member States.

52. For all the reasons stated above, the Council considers that full release of documents WK 260 2019 INIT, WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8515 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8650 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 10988 2019 INIT, WK 11055 2019 INIT, WK 11448 2019 INIT, WK 11769 2019 INIT, WK 13201 2019 INIT, WK 13225 2019 INIT, WK 540 2020 INIT, WK 1619 2020 INIT, WK 2260 2020 INIT, WK 5870 2020 INIT, and WK 7902 2020 INIT would undermine the protection of the public interest as regards financial, monetary or economic policy of the Union or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001).
53. The Council has furthermore considered the possibility of giving partial access to the requested documents. It has come to the conclusion that partial access can be given to documents WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 11448 2019 INIT, WK 13201 2019 INIT, WK 540 2020 INIT, and WK 1619 2020 INIT, pursuant to Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001 in conjunction with Article 4(6) of Regulation (EC) No 1049/2001.

CONCLUSION

54. For the above-mentioned reasons, the Council concludes that:

- full access can be granted to documents: WK 1365 2019 INIT, WK 1487 2019 INIT, WK 1733 2020 REV 1, WK 5704 2019 INIT, WK 8649 2019 INIT, WK 10973 2019 REV1 (an updated version of WK 10973 2019 INIT), WK 11070 2019 INIT, and WK 11162 2019 INIT;
 - partial access can be granted to documents WK 724 2020 INIT, WK 11161 2019 INIT and WK 11873 2019 REV1 (an updated version of WK 11873 2019 INIT) pursuant to Article 4(1)(b) in conjunction with Article 4(6) of Regulation (EC) No 1049/2001;
 - partial access can be granted to documents WK 1093 2019 INIT, WK 2235 2019 INIT, WK 2630 2019 INIT, WK 7156 2019 INIT, WK 8212 2019 INIT, WK 8545 2019 INIT, WK 8553 2019 INIT, WK 8652 2019 INIT, ST 9148 2019 INIT, WK 10921 2019 INIT, WK 11448 2019 INIT, WK 13201 2019 INIT, WK 540 2020 INIT, and WK 1619 2020 INIT, pursuant to Article 4(3), first subparagraph, and Article 4(1)(a), third and fourth indent of Regulation (EC) No 1049/2001, in conjunction with Article 4(6) of Regulation (EC) No 1049/2001;
 - no access can be granted to documents, WK 260 2019 INIT, WK 8515 2019 INIT, WK 8650 2019 INIT, WK 10988 2019 INIT, WK 11055 2019 INIT, WK 11769 2019 INIT, WK 13225 2019 INIT, WK 2260 2020 INIT, WK 5870 2020 INIT, and WK 7902 2020 INIT, pursuant to Article 4(3), first subparagraph, and Article 4(1)(a), third and fourth indent of Regulation (EC) No 1049/2001.
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