



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, 3. 05. 2016
Taxud R2/SV – ARES(2016)2346317

Mr Sven Giegold
European Parliament
ASP 05F163
rue Wiertz 60
BE – 1047 BRUSSELS

ask+request-2275-56fee232@asktheeu.org

(Sent by e-mail and registered mail)

Dear Mr Giegold,

Subject: Your application for access to documents – Ref GestDem No 2015/1856

I acknowledge receipt of your e-mails, registered on 18 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 reply you received on 29 October 2015, providing you with documents already made public and inviting you, on that basis, to determine more precisely the subject matters of interest to you.

Since 18 November, there have been exchanges between you and my services in order to find a fair solution in accordance with Article 6§3 of Regulation 1049/2001.

On 3 February, you agreed to receive a reply to your request covering the informal minutes of the Group of the Code of Conduct by 26 February. Unfortunately, due to the workload triggered by the handling of that request, I was only able to send you a reply under the reference GestDem 2015/4940, on 11 April 2016.

Moreover, you provided the following list of documents:

¹ OJ L 145 of 31.05.2001, p. 43

- Overview of measures found harmful by the CoC group (Annex) as mentioned in CoC group Room Document #3 of 23 Sept 2009
- Update of the overview of measures found harmful by the CoC group
- (Annex 1) as mentioned in CoC group Room Document #2 of 18 Nov 2009
- Latest version of the CoC overview of measures (the so-called grid evaluation) that were under scrutiny of the CoC group including CoC group's evaluation of the criteria for harmfulness for each measure
- Room doc #6 of CoC group meeting from 29.05.2013
- Full and final version of Annex 1 of CoC group meeting from 20.05.2010
- Annex 2 of CoC group meeting from 20.05.2010
- Annex 6b of CoC group meeting from 04.03.2010
- Annex 2 of Room doc #3 of CoC group meeting from 14.03.2010
- Room doc #2 of CoC group meeting from 04.03.2010
- Room doc #5 of CoC group meeting from 19.11.2010
- Annex 2 to Room doc #4 of CoC group meeting from 04.06.2012
- Room doc #5 of CoC group meeting from 30.01.2013
- Room doc #6 of CoC group meeting from 29.05.2013
- Room doc #5 of CoC group meeting from 22.10.2013
- Room doc 7 of CoC group meeting from 18.03.2014
- Room doc #4 of CoC group meeting from 22.10.2014.

Upon request of my services, you provided the following clarification on some above documents on 17 February:

- Full and final version of Annex 1 of CoC group meeting from 20.05.2010" and other annexes of this meeting
- Annex 2 of CoC group meeting from 20.05.2010" and all Annexes of this meeting
- Annex 6b of CoC group meeting from 14.03.2010 and all annexes to the meetings from 04.03.2010 and 14.03.2010
- Overview of measures found harmful by the CoC group (Annex) as mentioned in CoC group Room Document #3 of 23 Sept 2009 (the document itself and the Annex).

On the basis of those elements, your request has been dealt with in accordance with Regulation 1049/2001 on public access to Commission documents and we identified the following documents:

- 1- Room document #3 of 23 September 2009 on links to third countries and its annex,
- 2- Room document #2 of 18 November 2009 on links to third countries,
- 3- Annex1 to room document #6 of 20 May 2010 on an Administrative practices questionnaire,
- 4- Annex 2 to room document #6 of 20 May 2010 on comments from Germany and Sweden on the Simmons and Simmons report,
- 5- Annex to room document #2 of 4 March 2010 on an administrative practices questionnaire,
- 6- Annex 2 to room document #3 of 4 March 2010 on third country tax systems,
- 7- Room doc #2 of 04.03.2010 on administrative practices,
- 8- Room doc #5 of 19.11.2010 on profit participating loans (replies from MS),
- 9- Annex 2 to Room doc #4 of 04.06.2012 on inbound profit transfers (consolidated replies),
- 10- Room doc #5 of 30.01.2013 on work package 2011- revised draft guidance ,
- 11- Room doc #6 of 29.05.2013 on work package 2011 – administrative practices,
- 12- Room doc #5 of 22 October 2013 on work package 2011- monitoring guidance on inbound profits,

- 13- Room doc #7 of 18.03.2014 on Member States' comments on patent boxes,
- 14- Room doc #4 of 22.10.2014 on comments of the Luxembourg delegation on the modified nexus method,
- 15- List of harmful measures set up by the Commission services in March 2016.

I have the pleasure to inform you that all documents except documents 8 and 14 have been made fully or partly public under Regulation 1049/2001 and can be retrieved via the following link:

http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

Document 14 concerns the patent regime in Luxembourg. It contains comments of the representative of Luxembourg regarding the modified nexus method. On 22 October 2014, the representative shared these comments for internal use with the Code of Conduct Group. The Commission has consulted the Luxembourg authorities who have opposed the disclosure of the document on the basis of Article 4(1)(a), fourth indent and Article 4(3), first subparagraph of Regulation 1049/2001. In view of the current discussions, any disclosure at this stage would carry a risk of premature conclusions, amongst the general public, on the currently existing or planned national tax measures. This, in turn, would harm the present financial/economic interests of the EU or Member States.

Document 8 concerns replies from Member States to a questionnaire on profit participating loans. This topic is still being discussed within the Code of Conduct Group and the disclosure of arguments and positions of delegations would at this stage of discussions risk to limit progress on this file.

On the basis of the above considerations, access to the documents cannot be granted. Access to the requested documents above cannot be provided on the basis of the fourth indent of Article 4, paragraph 1 (a) of Regulation 1049/2001 which states that: "*The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] the financial, monetary or economic policy of the Community or a Member State*", as well as on the basis of Article 4, paragraph 3, first sub-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*".

The above issues are still under discussion within the Code of Conduct Group. The documents at stake refer to positions expressed by representatives of Member States who act in their professional capacity with the legitimate expectation that their position would not be made public. Disclosure of positions taken by delegations would breach the trust between representatives of Member States and the Commission for forthcoming discussions and that would seriously undermine the decision-making process protected by Article 4(3).

Before the discussions are finalised within the Code of Conduct Group, any publication of intermediate steps, positions and opinions will negatively affect the chances for a successful completion. Therefore, disclosure of the document at the present stage will seriously undermine the ongoing decision-making process. Moreover, such disclosure would undermine the effectiveness of the activities of the Code of Conduct Group and the measures it develops, thus having a negative impact on the fiscal revenue of the Member States.

You may reuse the documents or parts thereof that you will find on the website, 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 document. Please note that the Commission does not assume liability stemming from the reuse.

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.

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 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S. Quest'.

Stephen Quest