



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, 31. 01. 2018  
TAXUD/R2/IO-taxud.r.2(2017)7126657

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 2017/4177**

Dear Mr Giegold,

We refer to your application dated 14 July 2017 under which you request to have access to the following documents: "*...Minute of the Expert Group Meeting 22 June 2009; Outcome of Council Meeting 4 Sept 2009; High-level Working Group Debrief 31 Jan 2011; Minutes of the Expert Group Meeting 17 Feb 2011; High-level Working Group Summary Record 18 March 2011; High-level Working Group Summary Record 28 April 2011; High-level Working Group Summary Record 28 Oct 2011; High-level Working Group Summary Record 6 June 2013; High-level Working Group Summary Record 4 Feb 2014; Flash note/minutes of Working Party IV Direct Taxation 26 April 2004; Flash note/minutes of Working Party IV Direct Taxation 28 Jan 2005; Flash note/minutes of Working Party IV Direct Taxation 14 Nov 2005; EBF Report on the Transposition of the EUSTD 26 April 2006; Draft Summary of Comments from Member States 1st April 2008 + Summary Record of the Council Meeting 9th April 2008; Room Document of Working Party on Tax Questions 31 March 2015 + summary report of that meeting; Summary Record of Working Party IV Direct Taxation 3rd June 2008; Summary Record of Working Party IV Direct Taxation 31 Oct 2008; Summary Record of Working Party IV Direct Taxation 3 March 2009.*"

Your request has been dealt with in accordance with Regulation 1049/2001 and we have identified the following documents<sup>1</sup>:

- 1) Flash note/minutes of Working Party IV Direct Taxation, 26 April 2004 [Ares(2017)2403886];

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<sup>1</sup> It appeared that, in some cases, the body (either a Working Party or an Expert Group) concerned by the document which you requested wasn't correctly identified in the request.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.  
Office: J-79 (5/230) Telephone: direct line (32-2) 2965897

- 2) Flash note/minutes of Working Party IV Direct Taxation, 14 November 2005 [Ares(2017)2411586];
- 3) EBF Report on the Transposition of the EUSTD, 26 April 2006 [Ares(2017)4863876];
- 4) Draft Summary of Comments from Member States, 1 April 2008 [Ares(2017)4867201];
- 5) Summary Record drafted on 9 April 2008 of the Working Party IV Direct Taxation meeting held on 1 April 2008 [Ares(2017)2412604];
- 6) Summary Record drafted on 3 June 2008 of the Working Party IV Direct Taxation meeting held on 29 May 2008 [Ares(2017)2710405];
- 7) Summary Record of the Council meeting, 31 October 2008 [Ares(2017)2710796];
- 8) Summary Record of the Expert Group meeting, 3 March 2009 [Ares(2017)2711216];
- 9) Minutes of the Expert Group meeting, 22 June 2009 [Ares(2017)2711078];
- 10) Outcome of Council Working Party meeting, 4 September 2009 [Ares(2017)2711096];
- 11) High-level Council Working Group debrief, 31 January 2011 [Ares(2017)2711103];
- 12) Minutes of the Expert Group meeting, 17 February 2011 [Ares(2017)2710518];
- 13) High-level Council Working Group summary record, 18 March 2011 [Ares(2017)2710698];
- 14) High-level Council Working Group summary record, 28 April 2011 [Ares(2011)488988];
- 15) Expert Group meeting summary record, 28 October 2011 [Ares(2017)2710487];
- 16) High-level Council Working Group summary record, 6 June 2013 [Ares(2013)2571677];
- 17) High-level Council Working Group summary record, 4 February 2014 [Ares(2014)352804];
- 18a) Room document of Working Party on Tax Questions, 31 March 2015 [Ares(2017)4867515];
- 18b) Summary report of Working Party on Tax Questions, 31 March 2015 [Ares(2015)1523917].

#### Disclaimer regarding Commission documents

In view of the nature of the documents, we would like to stress that Commission officials draft documents concerning the outcome of meetings for internal use. These documents are usually of value only for a limited time. These documents, which are intended for internal Commission use only, 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 those meetings.

#### Disclosure of documents

Following the conducted consultations and the assessments of the Commission, as detailed below, we can inform you that:

- Documents 1-10, 12 and 18a will be fully disclosed to you.
- Documents 13-14, 15-17 and 18b will be partially disclosed to you.
- Access to document 11 will be refused.
- Documents 5, 6, 8-10, 12, 14-17 and 18b to which you are granted access will be provided expunged from personal data.

## Assessment

Consultations were launched under Article 4(4) of Regulation 1049/2001 for documents 3-7 and 13-18b:

- The European Banking Federation (EBF) agreed to the disclosure of document 3.
- The Council agreed to the disclosure of document 18a.
- The UK objected to the disclosure of those parts of documents 4-7, 14-17 and 18b, which describe discussions on the External Strategy of the EU. According to the UK, access to these parts of the documents would undermine public interest with regard to international relations because these documents contain opinions and views which were expressed under the assumption of confidentiality and mutual trust. The documents reflect a free and frank exchange of views including references to other jurisdictions or officials. These documents contain also references in respect of work of the Code of Conduct Group (Code Group) and access would undermine public interest with regard to international relations under 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...economic policy of the Community*". Releasing the documents would seriously undermine the work of the Code Group given that these exchanges have been conducted under the assumption of confidentiality.
- The Slovak Republic and Portugal opposed the disclosure of parts of document 14 in accordance with Article 4(3) of the Regulation 1049/2001 which states: "*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*". They argued that the disclosure of the redacted parts of document 14 would seriously undermine the decision-making process considering these parts relate to a matter which is currently under discussion (namely the proposal on the *Common Consolidated Corporate Tax Base-CCCTB*).
- Other consulted Member States agreed to disclosure of documents 4-7, 13-17 and 18b.

## Assessment of the Commission

Based on the Commission assessment and taking into the account above consultations, documents 1-10 will be disclosed to you.

Documents 13-17 and 18b will be partially disclosed to you for the following reasons:

- Disclosure of parts of documents 13, 15-17 and 18b would undermine the public interest as regards international relations with those non-EU jurisdictions mentioned therein, under Article 4(1) (a) of Regulation 1049/2001.

- Disclosure of parts of document 14 would seriously undermine, under Article 4(3) of Regulation 1049/2001, the on-going decision making process on the CCCTB and the Financial Sector Taxation. The disclosure of those parts would release information on the positions and different arguments (in relation to any of the issues around the assessment process) which would hinder the ongoing discussions and would risk putting a halt to the progress and the remaining assessment.

Access to document 11 will be refused.

Document 11 relates to decisions which have not been taken by the Council yet. Also, document 11 involves negotiations with third countries, and its disclosure is prevented by the exception laid down in Article 4 of the Regulation 1049/2001. Disclosure of document 11 would undermine the public interest as regards international relations between the EU and the third countries mentioned therein, under Article 4(1) (a) of Regulation 1049/2001. Furthermore, the disclosure of document 11 would seriously undermine, under the Article 4 (3) of Regulation 1049/2001, the on-going decision making process.

#### Personal data

Documents 5-6, 8-9, 10, 12, 14-17 and 18b, to which you are granted full or 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 data<sup>2</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>3</sup>. 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.

#### Fair use of documents

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.

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<sup>2</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>3</sup> 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.

Confirmatory application

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.

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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Stephen Quest

Annexes: as stated above