

REPLY ADOPTED BY THE COUNCIL ON 11 JUNE 2021
TO CONFIRMATORY APPLICATION 18/c/01/20,
made by email on 4 May 2021,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents WK 5230/2017, WK 10931/17, WK 12197/2017 and
WK 12197/2017 REV1

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 4 May 2021, the General Secretariat refused access to the four documents referred to above on the basis of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 (protection of the decision making-process of the Council).
2. The Council has reassessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and in the light of the applicant's comments, whether public access can be provided to the documents fully withheld in the General Secretariat's reply.
3. In so doing the Council has carefully scrutinized the content of the documents, having due regard to the current state of play on negotiations related to these issues. The Council has come to the conclusions set out below.

I. THE CONTEXT

4. In April 2016, the European Commission presented a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (CBCR) ¹.
5. The topic of tax transparency has gained particular importance as a tool in the fight against tax avoidance and tax evasion, particularly in the field of corporate income tax and aggressive tax planning. Cooperation between tax authorities aims at allowing them to obtain information covering the global business of multinational enterprises (MNEs).
6. The proposal is presented as a response to the challenge posed by corporate income tax avoidance and to "intensified public demand" relating to the payment of taxes by multinational enterprises (MNEs) in the countries where their profits are produced. It refers to European Council Conclusions of 18 December 2014 regarding the urgent need to advance efforts in the fight against tax avoidance and to the European Parliament's call for increased transparency in the area of corporate taxation in order to "improve tax collection, make the work of tax authorities more efficient and ensure increased public trust and confidence in tax systems and governments."
7. The Council adopted its negotiating mandate on 3 March 2021², and the trilogue negotiations with the European Parliament are now ongoing.

¹ Document ST 7949/16 available from the Council register: <https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/>

² Document 6399/21 available from the Council register: <https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/>

II. ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) 1049/2001

8. Document WK 5230/17 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains the comments received from delegations on CBCR Proposal after the Working Party meeting on 29 March 2017.
9. Document WK 12197/17 and its revised version WK 12197/17 REV1 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains a consolidated table with contributions from delegations following up the Working party on 11 September 2017.
10. Document WK 10931/17 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains the comments received from the delegations after the Working Party meeting on 20 September 2017.
11. The Council notes that after having examined individual documents WK 5230/17, WK 12197/17, WK 12197/17 REV1 and WK 10931/17, they are of the same nature i.e. contain revised versions of parts of the draft directive proposing modifications and drafting suggestions as a result of the meetings of the Working Party on Company Law (CBCR) of 29 March 2017, 11 September 2017 and 20 September 2017.
12. 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.
13. In that regard, 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.³
14. Taking into account the above considerations as well the current state of play of the file, the Council has come to the conclusion that public access may be granted to documents **WK 5230/2017, WK 12197/2017, WK 12197/2017 REV1, and WK 10931/17.**

³ 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.

III. CONCLUSION

15. On the basis of the above considerations, the Council concludes that public access can be granted to documents **WK 5230/2017, WK 12197/2017, WK 12197/2017 REV1, and WK 10931/17.**
 16. The Council notes that the positive decision regarding these documents is based on an individual analysis of their content and the specific circumstances of the present case. It does under no circumstances constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.
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