



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

21.09.2017

Brussels,
Taxud R2/VG/esi – taxud.r.2(2017)4968102

Mr Fabio De Masi
European Parliament
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(by e-mail and registered mail)

Dear Mr De Masi,

Subject: Your application for access to documents – Ref GestDem No 2017/4237

I refer to your request of 18 July 2017, in which you make a request for access to the following documents under Regulation 1049/2001¹ :

- 1- Commission Meeting Report Code of Conduct Group held on 07 April 2015, Ares(2015)528188;
- 2- The two pages on model instructions on information exchange on tax rulings from the German cables on the CoCG meeting held on 07 April 2015, Ares(2016)293542;
- 3- Commission minutes of the CoCG meeting held on 28 March 2006, Ares(2015)5249172;
- 4- Commission input to agenda point 'Future of the Code of Conduct' of CoCG meeting held on 23 November 2005, TAXUD-CAD/2005/D/28354;
- 5- Page 3 of the report of the CoCG to the ECOFIN from 11 June 2015, 9620/15 FISC 60;
- 6- Room Document #2 from the CoCG meeting held on 12 April 2016 as compiled by Commission Services, Ares(2016)2046950;
- 7- Room Document #3 from the CoCG meeting held on 12 April 2016 as compiled by Commission Services, Ares(2016)2047082;
- 8- Room Document #4 from the CoCG meeting held on 12 April 2016 as compiled by Commission Services, Ares(2016)2047170;
- 9- Room Document #5 from the CoCG meeting held on 12 April 2016 as compiled by Commission Services, Ares(2016)2047368;

¹ OJ L 145 of 31.05.2001, p. 43

10- Room Document #8 from the CoCG meeting held on 12 April 2016 as compiled by Commission Services, Ares(2016)2047607.

On 8 August 2017, your attention was drawn to the fact that we received your application at a time when many colleagues take their summer holiday and that we received several wide-scope requests on the same day which fall under the remit of the same Unit. Therefore, an extended time limit was needed to finalise the reply to your request, hence the extension of the time limit for a reply until 28 September.

I have the pleasure to provide a copy of the above documents.

Regarding Documents 3, 4, 6, 7 and 10, I would like to draw your attention to the fact that they are documents which have been made public on the website of the Commission under the following link:

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

Moreover, document 5 is a document made public on the website of the Council of the European Union.

You will notice that documents 1 and 3 are expunged of 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 data².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. 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 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 such personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

Moreover, documents 1, 8 and 9 had to be partially redacted in relation to ongoing issues within the Code of Conduct Group that they cover.

² OJ L 8 of 12.1.2001, p. 1

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, not yet reported

These 3 documents concern the issue the rollback of old IP boxes which is not completely finalized. Some of the arguments concerning patent boxes that were brought forward before the agreement on the Nexus approach in November 2014 are connected to the currently on-going discussion on patent boxes. The current discussion on new Member States patent boxes and the interpretation of the Nexus approach is still pending and if negotiation positions, arguments and the views of delegations that are relevant for that current discussion were to be revealed this would risk seriously limiting progress on this file. More specifically, the documents concern the Commission's interpretation and application of the Nexus approach in the context of assessments carried out within the Code of Conduct Group, which have not been endorsed or formalized. These documents also concern ongoing discussions on the implementation of specific aspects of patent boxes which are not yet public.

Moreover, document 1 had to be redacted in relation to information about discussions with Liechtenstein which are still on-going. Therefore, disclosing information about the arguments of third countries as well as those of the Member States would risk damaging the relationship between the parties and would undermine the chances of successful future results.

Document 1 also contains information about the future of the Code of Conduct which is still being discussed. The revelation of the 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, only partial access to the documents can be granted. Full 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*".

Those 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. Under these circumstances, the representatives' freedom to express their views would be curtailed if they would have to take into account that their opinion would be disclosed to the public upon request. 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 final texts have been approved by the Council, 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.

Moreover, disclosure of some requested document referring to on-going discussions with third countries would undermine the protection of the public interest as regards public security in accordance with the third indent of Article 4 (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 (...) international relations".

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

Yours faithfully,



For Stephen Quest, absent

His replacement, M. A. Kastrissianakis
Director TAXUD/B

Annexes: as stated above