



Council of the European Union
General Secretariat

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CM 2293/16

INF
API
PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: PUBLIC ACCESS TO DOCUMENTS
– Confirmatory application No 02/c/01/16
– Outcome of the written procedure initiated by CM 2292/16

Delegations are hereby informed that the written procedure for the adoption of the replies to the above-mentioned confirmatory applications (see CM 2292/16) was completed on 11 May 2016 and that:

1. all delegations agreed to the use of the written procedure to adopt the replies referred to below.
2. all delegations agreed to the adoption of the replies to the confirmatory application No 02/c/01/16 (reply annexed to document 5049/16 INF 9API 9), with the exception of the MT and SE delegations, who voted against, and the EL and PL delegation abstaining.
3. the majority of the delegations agreed to publish the result of the vote, with the EL and PL delegation abstaining.

The following statements were made:

MT: "Malta does not agree with the draft reply. As per Malta's previous replies to bilateral consultations from the GSC, Malta does not agree to the public disclosure of any references to ML4 and ML5 within Code of Conduct Group (Business Taxation) documents. As such, Malta opposes giving extended partial access to Room Document 6 relating to the meeting of 27 April 2006 and Room Document 6 relating to the meeting of 8 November 2006. While the draft reply proposes access to comments on other documents which are already in the public domain, the extended partial access places said comments out of context and would undermine the public interest as regards financial, monetary or economic policy.

Malta is of the opinion that the applicant is better guided by the information of the Code of Conduct Group and DG Competition on the matter which is already public. As such, the public interest is best served by the documentation which is already public on the matter."

NL: " The Netherlands welcomes that with regard to some documents full or partly access can be granted.

We are of the opinion that the assessment whether access may be granted to documents related to certain Member State(s) should primarily be made by the Member State(s) concerned.

Here, The Netherlands would like to recall the Council conclusions of the ECOFIN of 8 March 2016, which inter alia:

- (15) underlined the necessity to increase the transparency of the group on past and ongoing work, whilst stressing the importance to ensure that result-orientated cooperation within the Code of Conduct Group can continue in a confidential manner;
- (16) called for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance;
- (17) invited the Group to explore initiatives to further inform the public on the results of its meetings and to report back to ECOFIN on this issue by June 2017;
- (18) supported regular oral reports to ECOFIN of the Chair of the Group, as well as interinstitutional exchange of information, if necessary;
- (19) expressed its wish to facilitate the access to information on ongoing and past work in the Group including already public documents, e.g. through a dedicated page on the Council's website and by releasing, to the extent possible, documents related to general guidance notes and to final decisions on individual measures.

The Netherlands would also like to recall the outcomes of two Fiscal Counsellors/Attachés meetings on 13 and 19 January 2016, during which the issue of ensuring transparency of the documents of the Code of Conduct Group was discussed. As a result of their discussion, Fiscal Counsellors/Attachés expressed their support for an approach that was elaborated in Council document 5643/16 (FISC 12 ECOFIN 57) of 28 January 2016. This document provides a valuable tool for the assessment of requests for access to documents of the Code of Conduct group (business taxation) now and in the future."

SE: "Sweden cannot fully agree with the reasons proposed by the General Secretariat in the draft reply. Sweden welcomes that a thorough examination of the documents has been conducted as regards the possibility of partial access. However, Sweden cannot agree with the reasoning in paragraph 35 and 43 that partial access cannot be granted because only very limited parts are not covered by the mentioned exceptions, rendering any partial access meaningless."
