Council of the
European Union

Brussels, 12 May 2016
(OR. en)

5049/1/16
REV 1

INF 9
API 9

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5048/16
Subject:	Public access to documents - Confirmatory application No 02/c/01/16

Delegations will find enclosed the reply from the Council to confirmatory application No 02c/01/16, approved by written procedure on 11 May 2016 with Greece and Poland abstaining and Malta and Sweden voting against.

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."

Delegations agreed to publish the result of the vote with Greece and Poland abstaining.

The annex is available in English only.

ANNEX 1

REPLY ADOPTED BY THE COUNCIL ON 11 MAY 2016
TO CONFIRMATORY APPLICATION 02c/01/16,
made by email on 5 January 2016,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to several room documents of the Code of Conduct group (2004-2008)

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 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 22 July 2015 the applicant submitted a very large request for public access concerning all room documents, non-papers, aide-memoires, and similar documents emanating from the Code of Conduct group meetings and its subgroups from its creation in 1998 to 2015, in relation to a very long list of subjects (about 300 thematic items).

2. Due to the large number of documents covered by the request, and to the complexity of their identification and examination, the General Secretariat of the Council entered in a dialogue with the applicant with a view to finding a fair solution, as provided for Article 6(3) of Regulation 1049/2001. In particular, after having exchanged views with the applicant, the General Secretariat proposed to process the request gradually and to limit the request to documents relating to the period 1998-2008. The applicant accepted the General Secretariat's proposed fair solution.

3. On 18 December 2015, the General Secretariat provided a first reply to the applicant's request. With its reply, the General Secretariat granted public access to 18 documents. However, the General Secretariat also refused public access to twelve room documents of the Code of Conduct group meetings pursuant to Article 4(1)(a), fourth indent (protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State), and Article 4(3), second subparagraph (protection of the Institution's decision making process even after adoption), of Regulation No 1049/2001.[1]

4. In his confirmatory application dated 5 January 2016, the applicant asks the Council to reconsider this position to refuse the 12 room documents. He claims that the exceptions provided for by Regulation No 1049/2001 only apply to specific parts of documents on topics that are still under discussion. From his point of view, the documents to which access has not been provided concern issues and measures on which the discussion was closed many years ago. The applicant also considers that the assessment of whether an issue is still 'open' should be made in a restrictive way and that, as the discussions have been closed, there is no risk that releasing the documents would trigger any reactions by businesses, affect any negotiation process or undermine the protection of the public interest as regards the financial, monetary or economic policy of the EU and of the Member States.

5. The Council has reassessed, in full consideration of the principle of transparency underlying Regulation No 1049/2001 and in the light of the applicant's comment, whether public access can be provided to the requested documents and has come to the conclusions set out below.

6. The remainder of the applicant's request has been dealt with by the Secretariat General in a second reply on 7 March 2016. In that reply the Secretariat General has granted full access to 209 additional documents, partial access to 4 documents and refused access to 5 documents.

[1] A list of the documents assessed in the General Secretariat´s reply of 18 December 2015 is provided in Annex I

THE CONTEXT

7. In the absence of Union legislation, business taxation, that is direct taxation, falls within the competence of Member States. The Union has competence in this field only with regard to measures that directly affect the establishment or functioning of the internal market[2]. However, the number of Union measures has been limited to date due to the unanimity requirement for the adoption thereof.

8. Nevertheless, since 1997, the Member States have recognised the importance to promote at the European level coordinated action against unfair tax practices, without prejudice to the respective spheres of competence of the Member States and the Community. To that end, on 1 December 1997, the Council and the Representatives of the Governments of the Member States meeting within the Council adopted a Resolution containing a Code of Conduct for business taxation[3], which entails a political commitment not to introduce new tax measures and to roll back existing ones which provide for a significantly lower effective level of taxation than those levels which generally apply in a Member State and, as a consequence, affect or may affect in a significant way the location of business activity of the Union. Clearly, the scope of the Code of Conduct is much broader than the potential Union competence provided for in the Treaties.

9. The same Resolution has provided for a peer review mechanism based on the exchange of information among the Member States and on the assessment of existing or proposed tax measures by a dedicated group composed of representatives of the Member States. By its conclusions of 9 March 1998[4] the Council established the Code of Conduct group (Business Taxation), which is composed of a high-level representative of each Member State, to assess the tax measures that may fall within the scope of the Code and to oversee the provision of information on those measures.

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2 Article 115 TFEU.
3 OJ C 2, 6.1.1998, p. 1.
4 OJ C 99, 1.4.1998, p. 1.

10. The members of the Group evaluate carefully the effects that tax measures (current and planned) may have on other Member States, *inter alia* in view of how the activities concerned are effectively taxed throughout the Union. The reviews of the Group may result in recommendations to the Council. During the review process, Member States are called on to cooperate loyally in the framework of the Code of Conduct and provide relevant information about laws and administrative practices in the business-taxation area.

11. The Council has taken significant steps to make the public at large more acquainted with the work of the Code of Conduct group and it is fully committed to continue increasing transparency in the group's activities. In particular, in line with paragraph H of the Resolution, the group reports regularly on the measures assessed with the assistance of the Commission. These reports are forwarded to the Council for deliberation. The reports and the Council conclusions in connection with them are published following respective meetings of the Council, as appropriate.

12. However, it has to be pointed out that, from its very conception, it has been essential to the functioning of the Code of Conduct group that it could serve as a forum in which Member States would be able to freely exchange views on each other's tax measures and their conformity with the Code of Conduct on Business Taxation. When engaging in discussions of this kind, Member States have always assumed that they would be conducted in a spirit of confidentiality and mutual trust and have reasonably continued to rely on such an assumption ever since.

13. More specifically, since the establishment of the Code of Conduct group in 1998, the Council has repeatedly indicated that it was essential that discussions held within the group remain confidential, while increasing its visibility:

– the Council conclusions of 9 March 1998 establishing the Code of Conduct indicate that the Council "*agrees that the work of the group shall be confidential*";

– this principle was recalled by the Council conclusions of 8 December 2015[5], where the Council "*expresses the wish to improve the visibility of the work of the Code of Conduct group and agrees therefore that its results, in particular its 6-monthly reports, are systematically made available to the public*" but "*insists however on the confidentiality of the group's deliberations with a view to protect the public interest as regards the economic policy of Member States*".

14. Moreover, the exchange of information within the Code of Conduct group has been regulated in detail in the Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council, annexed to the Council Conclusions of 1 December 1997. Hence, a specific framework is in place which provides for the exchange of information within the Code of Conduct group between the Member States and the Commission and between Member States themselves. The Resolution does not lay down a right of access for third parties to documents that are discussed within the group. This is inherent to the nature of the Code of Conduct that is an instrument of coordination among Member States which remain the subjects and the addressees of that coordination[6]. Its activities do not concern the Union as such but are essentially of an intergovernmental nature. A generalised access of the public to the documents would jeopardise the balance which Member States have sought to ensure when they agreed to establish the Code of Conduct group.

15. These remarks concerning the nature of the Code of Conduct group and the legal framework in which it was set up have to be duly taken into account when interpreting the relevant provisions of Regulation 1049/2001 and assessing whether access to the requested documents can be given.

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5 Council document 15148/15

6 See seventh recital of the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997.

THE APPLICABLE EXCEPTIONS

16. The requested documents come within the remit of the exception of protection of the public interest as regards financial, monetary or economic policy of the Union or a Member State (Article 4(1)(a), fourth indent, of Regulation No 1049/2001) and the protection of the Council's decision making process (Article 4(3), second subparagraph, of Regulation No 1049/2001).

17. At the outset, the General Secretariat recalls that, according to the established case law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation No 1049/2001 are subject to a particular regime if compared to the other exceptions included in Article 4.

18. On the one hand, "the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest"[7].

19. On the other hand, once the Council has come to the conclusion that release would indeed undermine the public interest in this area, it has no choice but to refuse access, because "*it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests*"[8].

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7 Judgment of the Court of Justice of 1 February 2007 in case C-266/05 P, Sison v Council, para 35.

8 Judgment of the Court of Justice of 1 February 2007 in case C-266/05 P, Sison v Council, para 46.

20. Therefore, the Council enjoys a wide discretion in assessing the probable impact of the release of a document on the financial, monetary or economic policy of the Union or a Member State and it is barred from taking into account other legitimate interests in order to override the conclusion that giving access to a document would harm the protected interest.

21. As regard the exception provided for in Article 4(3), second subparagraph, the Council points out that in order to allow for an effective political peer review between Member States in a sensitive area of taxation, it is of particular importance to ensure workable preparatory discussions of the Code of Conduct group. In that regard, it should be stressed that the group's reports and the Council conclusions must be agreed between Member States by consensus. The requested documents are preparatory working documents outlining certain issues to be considered in the political discussion in the group. The political workability of that delicate mechanism would be jeopardised if Member States or the EU Institutions had to take into account the possibility that preparatory documents forming the basis for the discussions may be made public, be it before or after the decision-making process comes to an end.

INDIVIDUAL ASSESSMENT OF THE REQUESTED DOCUMENTS

22. The refused documents are room documents issued by certain Member States. Room documents are preparatory documents circulated shortly ahead of or even during specific meetings of the Code of Conduct group in order to prepare and facilitate the discussions in relation to a specific agenda item. They can take different forms (working papers, letters, notes, reports, bullet points, presentations) and do not constitute official Council documents.

23. In order to comply with the obligation stemming from Article 4(5) of Regulation 1049/2001, the General Secretariat of the Council has consulted the Member States from which the various documents originate with a view to assessing whether their disclosure is likely to specifically and effectively undermine the interests protected by Article 4 of Regulation 1049/2001. The General Secretariat of the Council did so in preparation of the first reply and has proceeded to a new and more thorough consultation following the submission of the confirmatory application.

24. In that regard, it has to be pointed out that, according to the case law of the Court of Justice the institution to which a request for access to a document has been made does not have to carry out an exhaustive assessment of the Member State's decision to object to the disclosure of a document originating from it. In particular, the institution shall not conduct a review going beyond the verification of the mere existence of reasons referring to the exceptions in Article 4(1) to (3) of Regulation No 1049/2001.[9]

25. As a consequence, in carrying out its own assessment, the General Secretariat of the Council is not allowed to replace its evaluation to the one provided by the consulted Member States, but has only to be satisfied that the reasons given by the Member States for their objections are capable of justifying *prima facie* a refusal.[10]

Room documents originating from Malta

26. Room documents 2 and 5, prepared for the meeting of the Code of Conduct group on 8 November 2004, room document 5 of 18 October 2005, room document 6 of 27 April 2006, room documents 4, 6 and 8 REV 1 of 8 November 2006 were issued by Malta.

27. These documents deal with the rollback discussions on Malta's old regime and the move to the new regime concerning measures related to International Trading Companies, Maltese companies with foreign income and Investment Services Companies. More specifically, room documents 2 and 5 both relate to the meeting on 8 November 2004 and provide details on the Maltese proposal to roll back the measures at issues by introducing certain amendments to the existing tax provisions (room document 2) and contain a request for the extension of the existing tax treatment under certain conditions (room document 5, which was re-issued as room document 5 relating to the meeting of 18 October 2005). Room document 6 relating to the meeting on 27 April 2006 contains Malta's preliminary comments on a Commission

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9 See Judgment of the General Court of 25 September 2014 in case T-669/11, Spirlea v Commission, para. 83.

10 See Judgment of the General Court of 14 February 2012 in case T-59/09, Germany v Commission, para 53.

note assessing the rollback proposal. Room document 4 relating to the meeting of 8 November 2006 contains Malta's replies to questions and requests for clarifications submitted by a number of Member States on various points of the rollback proposal. Room document 6 of 8 November 2006 contains detailed comments on a further note submitted by the Commission in relation to certain aspects of the rollback proposal. Finally document 8 REV 1 relating to the same meeting puts forward amendments to the rollback proposal in order to meet certain concerns expressed by other Member States.

28. The requested documents contain comments on the policy choices that the Maltese authorities have made when designing the new tax regime. They indicate the way in which Malta interprets certain concepts that have been included in relevant legislation and the manner in which it would apply that legislation, including the way in which anti-abuse provisions would work in practice.

29. According to Malta, disclosure of this information – which does not necessarily reflect the final position that it has taken on the questions raised during the Code of Conduct group meetings – is likely to put into question the choices that Malta has eventually made and to subject the new tax regime to criticism. Therefore, the disclosure of these documents would specifically and effectively undermine the public interests as regards the protection of Malta's economic, financial and monetary policy. Malta further stresses that disclosure of the preliminary consultations and discussions concerning the rollback of the tax measures deemed to be harmful and of the discussions on the alternative tax regime proposed by Malta would be detrimental to the climate of trust and confidentiality that characterises the works of the Code of Conduct group and therefore affect its effective decision-making process.

30. The Council considers that the arguments put forward by Malta justify *prima facie* to refuse access to the requested documents. In particular, the Council notes that the information contained in the requested documents would, if disclosed, make public the very frank reflections on certain features of the new fiscal tax regime in Malta. It would further make known considerations by the Maltese authorities on the implementation of the new tax regime and more specifically on the functioning of the anti-abusive provisions that it contains. The Council further notes that not all solutions debated have been finally retained and that therefore the disclosure of the requested documents would create uncertainty on the intentions of Maltese authorities. Under these circumstances, the disclosure of the requested document would inevitably have an impact on the expectations, behaviours and decisions of private economic operators that are based in Malta or plan to be based there. This would inevitably affect the effectiveness of the new tax regime and its implementation and more generally Maltese financial and economic policies.

31. Moreover, the Council considers that disclosure of the requested documents, which have been prepared for internal use as part of deliberations and preliminary consultations, would affect proper decision making within the framework of the Code of Conduct. More specifically, it would expose to the public frank exchanges designed to remain confidential as explained above in paragraph 7 and following and therefore compromise the climate of mutual trust on which the Code is based. This is particularly true, of course, in case disclosure had to be decided against the opinion of the Member State who is the originator of the requested documents. In such a circumstance, the disclosure would inevitably have a “chilling effect” on the exchange of information within the framework of the Code and on the quality of the review carried out within the framework of the Code in future cases.

The fact that the Code of Conduct group concluded the examination of the tax measures at stake and that therefore the specific decision making is closed does not affect this conclusion, but rather reinforces it, since what is at stake here is the working method as such of the Code of Conduct group. In that regard, it should once more be stressed that the Code of Conduct does not concern an area of activity of the Union as such, but is essentially of an intergovernmental nature. Its efficiency is dependent upon the voluntary engagement of the Member States and its effective functioning relies on their good-faith cooperation.

32. The Council has made up the balance between the need to protect the decision-making process and the interest in transparency underlying Regulation No 1049/2001. In doing so, it has duly taken into account the importance of transparency, as recognised by the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights, while noting at the same time, that these documents do not relate to Union legislative procedures and that the discussions concerned have taken place outside the normal institutional framework of the Union. In that regard, it needs to be noted that the final outcome of both the Code of Conduct work and EU Institutions' work in this area is already public. Access to that information therefore does not require release of the requested documents. Given that the outcome of these discussions has already been made public, the Council has come to the conclusions that, on balance, the legitimate public interest in release of the remaining information does not outweigh the equally legitimate need to protect the decision-making process.

33. Furthermore, the documents in question concern matters which were also, at the time, being considered in parallel under the aegis of a Commission State aid investigation. Similar information had been submitted in parallel for that review process. In this regard, the Council considers that disclosure of the requested documents, which correspond to documents in the Commission's administrative files, would undermine the protection of the objectives of investigation activities and that therefore access also needs to be refused on the basis of the exception contained in Article 4(2), third indent (protection of the purpose of inspections, investigations and audits), of Regulation No 1049/2001.[11]

[11] See Judgment of the Court of Justice of 29 June 2010 in case C-139/07, Commission v Technische Glaswerke Ilmenau, para. 53 and ff.

34. The Council therefore considers that the exceptions provided for under Article 4(1)(a), fourth indent, (2), third indent, and (3), second subparagraph, of Regulation No 1049/2001 apply to the documents in question.

35. As regards the possibility of partial access to the requested documents, the Council notes that Room document 6 relating to the meeting on 27 April 2006 and room document 6 of 8 November 2006 are drafted in the form of comments to other documents, which are already in the public domain. It is therefore possible to grant access to the corresponding parts of the requested documents. Concerning room document 2 of 8 November 2004 and room documents 4 and 8 REV 1 of 8 November 2006, the Council has, after a thorough examination of the documents, concluded that partial access cannot be granted, because only very limited parts are not covered by the above-mentioned exceptions, rendering any partial access meaningless.

Room documents jointly originating from Malta and Slovakia

36. Room document 5 of 8 November 2004 (which has been re-issued as room document 5 of 18 October 2005) also contains a request made by Slovakia to the Code of Conduct group concerning the application of a transitional period in relation to the modification of a given fiscal measure.

37. After having consulted the Member State concerned and having reassessed the risks linked to disclosure of the requested documents, the Council has come to the conclusion that public access can be given to the parts of the two documents relating to Slovakia.

Room documents originating from Belgium

38. Room document 6 was prepared by Belgium for the meeting of the Code of Conduct group on 9 September 2008. This document was issued for internal use within the framework of preliminary consultations and deliberations of the Code of Conduct group. This document concerns the functioning of the Code of Conduct group and its relationship with the ECOFIN Council in the specific cases of "patent boxes". It was issued on a strictly confidential basis for internal use.

39. Room document 1 of the meeting on 18 November 2008 was also prepared by the Belgian delegation. In this document, Belgium raises questions concerning current tax regimes in Jersey, Guernsey and the Isle of Man who are represented by the United Kingdom within the Code of Conduct group.

40. According to the Belgian authorities, disclosure of the requested documents would compromise the spirit of mutual trust and cooperation proper of the Code of Conduct by revealing to the public frank comments and observations on certain procedural and substantial issues. Belgium therefore considers that disclosure of the two documents would affect the correct functioning and decision making within the framework of the Code of Conduct.

41. The Council considers that the arguments put forward by Belgium justify *prima facie* to refuse access to the requested documents. After having assessed the two documents in question, it considers that disclosure of these documents would undermine the workability of the Code of Conduct group as set out in points 7 and following and in point 31, in particular by exposing to the public the divergence of views of Code of Conduct group members and thus compromising the necessary atmosphere of mutual trust within the framework of the Code and undermining the effectiveness of the peer review method and its decision-making process. Here again, the Council has had to strike the 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 document was drafted. In that regard the Council notes that the outcome of the discussions to which the two documents relate has already been made public and that the legitimate public interest in release of the remaining information does not outweigh the equally legitimate need to protect the decision-making process.

42. As specifically regards Room document 1 of the meeting on 18 November 2008, the Council considers that its disclosure would also affect the protection of the financial policy of the Member State involved. As a matter of fact, disclosure of the requested document would make known to the public considerations expressed by a member of the Code of Conduct group on certain features of the tax regimes in Jersey, Guernsey and the Island of Man, with the effect of creating uncertainties that would inevitably have an impact on economic operators. Disclosure should therefore also be refused in light of Article 4(1)(a), fourth indent, of Regulation 1049/2001.

43. As regards the possibility of partial access to these documents, the Council has thoroughly examined them and concluded that partial access cannot be granted, because only very limited parts are not covered by the above-mentioned exceptions, rendering any partial access meaningless.

44. Room document 9 issued by Belgium for the meeting on 9 September 2008 concerns the Belgian tax ruling of 5 June 2007 on hybrid PPL. This document contains comments on the application of generally and genuinely applicable Belgian fiscal qualification rules in regards to the OECD principles and several European Court of Justice judgments. After a new thorough assessment of the document and a new consultation with the Belgian authorities, the Council considers necessary to review the initial position and to give full public access to this document.

Room documents originating from Portugal

45. Room document 2 of 7 May 2008 and room document 2 of 9 September 2008 were issued by Portugal. These documents, which have in fact the same content, concern the applicability of the Code of Conduct to a certain Portuguese tax aid regime for regional development purposes. They also contain sensitive internal comments on the working of the Code of Conduct group.

46. According to the Portuguese authorities, disclosure of the requested document would cast doubts on the concerned tax aid regime. The Portuguese authorities also stress that disclosure of the requested documents would undermine the climate of mutual trust among Code of Conduct members and therefore affect its decision-making process.

47. The Council considers that the arguments put forward by the Portuguese authorities justify *prima facie* to refuse access to the requested documents. The Council points out that the stability of taxation regimes is of paramount importance for economic operators, whose decisions to carry out – or to continue carrying out – activities or investments in a given region depend on the predictability of the system and on the expectations of future changes. If disclosed, the requested argument would raise doubts on the concerned tax aid regime and therefore effectively undermine the interest as regards the financial and economic policy of a Member State.

48. Furthermore, the Council considers that disclosure of these documents would undermine the workability of the Code of Conduct group as set out in points 7 and following and in point 31, in particular by exposing to the public certain sensitive internal comments on the working of the Code of Conduct group. Also in this case, disclosure of the documents would compromise the necessary atmosphere of mutual trust within the framework of the Code and in so doing undermine the effectiveness of the peer review method and its decision-making process. Here again, the Council has to strike the 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 document was drafted. In that regard the Council notes that the outcome of the discussions to which the two documents relate has already been made public and that the legitimate public interest in release of the remaining information does not outweigh the equally legitimate need to protect the decision-making process.

49. Therefore, the Council considers that access cannot be granted to these documents on the basis of Article 4(1)(a), fourth indent, and of Article 4(3), second subparagraph, of Regulation No 1049/2001. As regards the possibility of partial access to these documents, the Council has thoroughly examined them and concluded that partial access cannot be granted, because the above-mentioned exceptions apply to all parts of the documents.

ANNEX 2

List of documents assessed in Council's reply of 18 December 2015

Documents to which access has been granted

MEETINGS	DOCUMENTS	CONTENT
11.10.2004	Room document #1 Origin: Greece	Greek Tax incentives-Law 3220/2004
08.11.2004	Room document #3 Origin: Czech Republic	Lack of transparency – rollback measure in the Czech Republic
	Room document #6 Origin: Spain	Proposed Draft, p. 14
24.02.2005	Room document #1 Origin: Czech republic	Lack of transparency – rollback measure in the Czech Republic
	Room document #9 Origin: United Kingdom	State Aid: Commission welcomes phasing out of tax benefits for Offshore Exempt Companies in Gibraltar (press release)
	Room document #10 Origin: United Kingdom	State Aid: Commission welcomes phasing out of tax benefits for Offshore Exempt Companies in Gibraltar (press release)
15.09.2005	Room document #2 Origin: Hungary	Royalty income
	Room document #3 Origin: United Kingdom	British Virgin Islands International Business Companies (F056)
18.10.2005	Room document #6 Origin: Hungary	Increase of the tax base compared to the total interest paid Hungarian-owned companies and Foreign-owned companies
	Room document #7 Origin: France	Régime français des redevances et régime hongrois des intérêts.
08.11.2006	Room document #7 Origin: Cyprus	Maltese rollback proposal for ML5 - Comments from Cyprus
11.10.2006	Room document #3 11 October 2006 Origin: UK delegation	UK 2006 Rollback notification: supplementary information Progress of rollback in the Isle of Man, Jersey and Guernsey.
06.02.2008	Room document #2 Origin: Italy + Spain	Disadvantages and problems raised by the proposed introduction of the "Size of countries or market" and "Openness of the economy" criteria
22.04.2008	Room document #4 Origin: Italy	Evaluation
07.05.2008	Room document #7 Origin: United Kingdom	Guernsey: Rollback of harmful measures New Corporate Taxation regime (Standstill) Consequential measures

09.09.2008	Room document # 8 Origin: United Kingdom	Response of the UK to request for information on Jersey, Guernsey and Isle of Man
18.11.2008	Room document # 4 Origin: UK Delegation	Response of the UK to Room Document #1 from Belgium and note from Spain
	Room document #5 Origin: Spain	New Guernsey, Jersey and Isle of Man corporate taxation regime

Documents refused

MEETINGS	**DOCUMENTS**	**CONTENT**
08.11.2004	Room document #2 Origin: Malta	Letter Proposal for Rollback of Measures ML4 (International Trading Companies) and ML5 (dividends from (other) Maltese companies with foreign income) and the Rollback of ML7 (Investment Services Company)
	Room document #5 Origin: Malta and Slovakia	Requests for extension of benefits
18.10.2005	Room document #5 Origin: Malta and Slovakia	Requests for extension of benefits
27.04.2006	Room document #6 Origin: Malta	Malta's Preliminary Comment to the Commission's note concerning the MT rollback proposal for ML4 and ML5
08.11.2006	Room document #4 Origin: Malta	Malta's reply to questions and points of clarification from Members of the Group (of Room Doc. #3)
	Room document #6 Origin: Malta	Malta's response to note from the Commission (of Room Doc. #5)
	Room document #8 REV1 Origin: Malta	Amendments proposed by Malta to address concerns expressed by Member States
07.05.2008	Room document #2 Origin: Portugal	Letter concerning the measure of the State tax aid regime for regional development purposes
09.09.2008	Room document #2 Origin: Portugal	Letter concerning the measure of the State tax aid regime for regional development purposes
	Room document #6 Origin: Belgium	Letter concerning the report to ECOFIN Council
	Room document #9 Origin: Belgium	The Belgian tax ruling of 5 June 2007 on a hybrid PPL
18.11.2008	Room document #1 Origin: Belgium	Questions New Guernsey, Jersey and Isle of Man Corporate Taxation Regime