



Council of the
European Union

Brussels, 26 September 2017
(OR. en)

12426/17

INF 164
API 118

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 23/c/01/17

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 18 July 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 30 August 2017 ([Annex 2](#));
- confirmatory application dated 11 September 2017 and registered on 20 September 2017 ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 18 July 2017 - 14:57 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone:

Mobile: **DELETED**

Fax:

Requested document(s): I want to request all documents regarding the considerations of the Dutch patent box (innovatiebox) according to Transparency Regulation (EC) No. 1049/2001. This procedure ended April 28 this year.

I will incorporate the documents in my thesis about the innovatiebox. For example, the discussion drafts and room drafts will be very useful for research.

1st preferred linguistic version: NL - Nederlands

2nd preferred linguistic version: EN - Engels



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 30 August 2017

DELETED

Email: **DELETED**

Ref. 17/1670-ws/ns

Request made on: 18.07.2017

Deadline extension: 09.08.2017

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

You requested access to "all documents regarding the considerations of the Dutch patent box (innovatiebox)".

The only document held by the Council and corresponding to your request is working paper **WK 3693/2017 INIT**, a meeting document of 28 March 2017 submitted by the European Commission to the Code of Conduct Group (Business Taxation) on the subject of *Standstill: Patent Boxes – NL: Innovation Box amendment*.

The Commission has been duly consulted on the possible release of this document.² Based on the information received, the General Secretariat of the Council has come to the conclusion that access currently cannot be given to this document for the reasons set out below.

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

² Article 4(4) of Regulation (EC) No 1049/2001.

The examination of the Dutch fiscal provisions concerned is indeed completed as such. Similar provisions in two other Member States are however still being examined. Considerations contained in the requested document are likely to have an impact on these discussions and the application of relevant provisions as well.

Disclosure of the document would therefore seriously undermine the protection of the public interest as regards the financial, monetary or economic policy of the EU and of Member States concerned, as well as the ongoing decision-making processes. As a consequence, the General Secretariat has to refuse access to this document.³

We have also looked into the possibility of releasing parts of the document.⁴ However, as the exceptions to the right of access apply to its entire content, the General Secretariat is also unable to give partial access at this stage.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Yours sincerely,

Fernando PAULINO PEREIRA

³ Article 4(1)(a), fourth indent, and – in the absence of any evidence of an overriding public interest in release – Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

⁵ Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to access@consilium.europa.eu on 20 September 2017 - 15:41]

From: **DELETED**

Sent: Thursday, September 20, 2017 3:41 PM

To: SECRETARIAT DGF Access

Subject: Confirmatory application request documents Dutch patentbox

Please find attached my confirmatory application concerning my request for access to the working sheet regarding the Dutch patentbox.

Yours faithfully,

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Counsel of the European
Union Rue de la
Loi/Wetstraat 175
B-1048 Brussel
Belgium

Amsterdam, 20 September
2017 Reference: 7/1670-
ws/ns

Regarding: confirmatory application on the subject of the request for the working
paper concerning the Dutch patent box (WK 3693/2017 INIT)

Dear Sir/Madam,

In this letter I want to make a confirmatory application against the statement of 30 August 2017 I cannot agree with the statement and I would like to ask the Counsel to review its decision.

As mentioned in the abovementioned statement, the examination of the Dutch patentbox is completed, but because similar provisions in two other Member States are still being examined, the requested document, (WK 3693/2017 INIT,) will not be released on the basis of Article 4(4) of Regulation (EC) 1049/2001. I understand that the Counsel has consult the European Commission to assessing whether an exception is applicable. In addition, the counsel recommends that the disclosure of the document as previously mentioned seriously undermines the protection of the public interest¹. This reasoning of the Counsel, I cannot follow.

The provisions of the other Member States regarding patentboxes should be judged in the same way as the Dutch patentbox. In my opinion, releasing revealing the way in which a patentbox is being evaluated would not undermine the public interest because it should not change the way a patentbox is being evaluated. It could only strengthen the public interest by being clear. Releasing the way a patentbox is being judged could contribute to the legal development. In this way patentbox provisions in all Member States could be more uniform, which is an important endeavour of the European Union.

¹ Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001

The aim of Regulation (EC) No 1049/2001, after all, is to achieve an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizens². Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizens in a democratic system³. For this reason I would like to ask the Counsel to reconsider their statement and disclose the abovementioned working sheet.

Thanks for your attention and your valuable time. I await your reply with interest.

Yours faithfully,

DELETED

² OJ C 177 E, 27.6.2000, p.70.

³ Opinion of the European Parliament of 3 May 2001 and Counsel Decision of May 2001 .