



Council of the  
European Union

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Eingelangt am 28/01/15

Brussels, 28 January 2015  
(OR. en)

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#### NOTE

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From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 01/c/01/15

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 13 January 2015 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 20 January 2015 ([Annex 2](#));
- confirmatory application dated 20 January 2015 and registered the same day ([Annex 3](#))

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 13 January 2015 - 12:12 PM using the electronic form available in the Register application]

**From:** DELETED

**Sent:** Tuesday 13 January 2015 - 12:12 pm

**To:** SECRETARIAT DGF Access

**Subject:** Electronic Request for Access

Title/Gender: Ms DELETED

Family Name: DELETED

First Name: DELETED

E-Mail: DELETED

Occupation: DELETED

On behalf of: DELETED

Address: DELETED

Telephone: DELETED

Mobile: DELETED

Requested document(s):

The explanatory and discussion notes accompanied by the document 15756/14 FISC 197 the Proposal compromise text on a Common Consolidated Corporate Tax Base (CCCTB) for discussion at the Working Party on Tax Questions - Direct Taxation on 24 November 2014.



**Council of the European Union**

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

Brussels, 20 January 2015

**DELETED**

Ref. 15/0064-ws/ns

Request made on: 13.01.2015

Dear **DELETED**,

Thank you for your request for access to "the explanatory and discussion notes accompanied by the document 15756/14".<sup>1</sup>

Document 15756/14 ADD 1 has been identified as corresponding to your request.

However, I regret to inform you that access to document 15756/14 ADD 1 cannot be given for the reasons set out below.

This document is an addendum to a note from the Presidency to the Working Party on Tax Questions – Direct Taxation – on the *proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)* and contains *Explanatory Notes*.

It contains very detailed explanations by the Presidency concerning the proposals it made in document 15756/14. It concerns a protracted legislative procedure that has been going on since 2011. The Presidency's task is all the more arduous as on the one hand unanimity is required for the adoption of the proposed legal act and on the other hand the CCCTB by its very nature has an important impact on corporate taxation and thus on an extremely large number of economic operators. Sensitive questions like tax avoidance and profit shifting are linked to it. The Presidency and the working party are therefore working under conditions of high pressure.

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<sup>1</sup> 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).

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of very difficult negotiations.

It considers that disclosure of this document which gives very detailed insight into the Presidency's strategy would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this subject and thus seriously undermine the decision making-process of the Council. The General Secretariat fully recognises the public's legitimate interest in being informed about legislative procedures in general and this important file in particular. In fact, document 15756/14 (containing the Presidency's proposed compromise text) has earlier been released in recognition of this overriding public interest. However, when it comes to the explanatory notes contained in document 15756/14 ADD 1, release of the document would have a much more significant impact on the Council's decision-making process, and the General Secretariat has to conclude that the public interest in release would not, on balance, justify disclosure of the document in question. As a consequence, the General Secretariat has to refuse access to the document at this stage.<sup>2</sup>

We have also looked into the possibility of releasing parts of the document.<sup>3</sup> However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give such partial access.

I would also like to inform you that once the legislative act in question is adopted, this document and any other legislative document relating to this act will be made available to the public.<sup>4</sup>

You can ask the Council to review this decision within 15 working days of receiving this reply.<sup>5</sup>

Yours sincerely,

Jakob THOMSEN

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<sup>2</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

<sup>3</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>4</sup> Pursuant to Article 11(6) of Annex II to the Council Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001).

<sup>5</sup> 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.

From: **DELETED**

**Sent:** Tuesday, January 20, 2015 2:41 PM

**To:** SECRETARIAT DGF Access

**Subject:** Re: Ref. 15/0064-ws/ns

To whom it may concern,

Based on Article 7 of Regulation No 1049/2001, hereby I ask the Council to reconsider the Council's decision on 20 January 2015 of refusing my request to Document 15756/14 ADD 1 on 13 January 2015. The reference number of my previous request is Ref. 15/0064-ws/ns.

As the reasons in the refusal decision indicate, the Document 15756/14 ADD 1 contains sensitive questions and thus "the Presidency and the working party are therefore working under conditions of high pressure." I think these reasons need reconsidering.

In addition to my personal interests, there is an overriding public interest to release the Document 15756/14 ADD 1 based on Article 4(2) of Regulation No 1049/2001. Base erosion and profit shifting (BEPS) is under intense discussions, both in academia, governments, and the media. Releasing the research results that the Council is valuable and fundamental for the public to widely discuss. The more the tax avoidance scenarios and BEPS are discussed, the more loopholes can be detected and solved. After releasing the document, the negotiations can only be more correct and balanced.

Furthermore, even in the area of tax avoidance and profit shifting, there are technicalities and detailed examples under the CCCTB Directive. In the released Document 15756/14, the compromised proposal still lacks the illustrative examples and technical instructions. These technical examples and instructions, recorded in the explanatory notes of Document 15756/14 ADD 1, are in fact objective and informative rather than being politically sensitive. I think it is unreasonable that the Council decided to refuse the request totally. Therefore I ask the Council to reconsider the previous decision, and re-examine Document 15756/14 ADD 1 substantially, and release the document 5756/14 ADD 1.

The examples and illustrations in Document 15756/14 ADD 1 shall fall within the scope of Article 4 of the REGULATION (EC) No 1049/2001, as exceptions, which will not undermine the protection of the public interest of the financial, monetary or economic policy of the Community or a Member State.

To sum up, I ask the Council to reconsider the total refusal decision, and re-weight the public interests of accessing to information and promotes democratic discussions versus the need of not influencing the Council's negotiation process. If the total release cannot be done, the partial releasing of illustrative examples and explanatory notes can achieve this goal and strike the balance.

Sincerely,

**DELETED**

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