



Council of the
European Union

Brussels, 21 March 2016
(OR. en)

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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 03/c/01/16

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 2 December 2015 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 22 January 2016 (Annex 2);
- confirmatory application dated 1 February 2016 and registered on the same day ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 2 December 2015 - 15:35]

Subject: Re: Ref. 15/2362-csm/jj

Dear SECRETARIAT DGF Access,

On the 6th of October I requested, under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, the following documents:

Any room documents or other written input prepared in the context of the work of the Code of Conduct group on business taxation since its coming into existence (since 9.3.1998).

In your answer dating from the 9th of October, you asked me to specify my request.

I thank you for your reply and herewith request the following room documents or other written input (Non-Papers, Aide-Memoires or the like) of the Code of Conduct (CoC) group on business taxation:

- Overview of measures found harmful by the CoC group (Annex) as mentioned in CoC group Room Document #3 of 23 Sept 2009
- Update of the overview of measures found harmful by the CoC group (Annex 1) as mentioned in CoC group Room Document #2 of 18 Nov 2009
- Latest version of the CoC overview of measures that were under scrutiny of the CoC group including CoC group's evaluation of the criteria for harmfulness for each measure
- Room doc #6 of CoC group meeting from 29.05.2013
- Full and final version of Annex 1 of CoC group meeting from 20.05.2010
- Annex 2 of CoC group meeting from 20.05.2010
- Annex 6b of CoC group meeting from 04.03.2010
- Annex 2 of Room doc #3 of CoC group meeting from 14.03.2010
- Room doc #2 of CoC group meeting from 04.03.2010

- Room doc #5 of CoC group meeting from 19.11.2010
 - Annex 2 to Room doc #4 of CoC group meeting from 04.06.2012
 - Room doc #5 of CoC group meeting from 30.01.2013
 - Room doc #6 of CoC group meeting from 29.05.2013
 - Room doc #5 of CoC group meeting from 22.10.2013
 - Room doc 7 of CoC group meeting from 18.03.2014
 - Room doc #4 of CoC group meeting from 22.10.2014
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- Final Model Instruction (if no final version available, latest draft) implementing exchange of tax rulings, mentioned here: <http://data.consilium.europa.eu/doc/document/ST-10608-2014-INIT/en/pdf>
 - Final Guidance (if no final version available, latest draft) on inbound profit transfers, mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>
 - Final Guidelines (if no final version available, latest draft) on special economic zones, mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>
 - Final Guidelines (if no final version available, latest draft) on intermediate entities, mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>

Yours sincerely,

DELETED



Council of the European Union

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

Brussels, 22 January 2016

DELETED

Email: **DELETED**

Ref. 15/2812-ws/mw

Request made on: 02.12.2015

Deadline extension: 23.12.2015

Dear **DELETED**,

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

You will find the following documents in attachment:

- Annex 6b of Code of Conduct group meeting from 04.03.2010;
- Annex 2 of Room document #3 of Code of Conduct group meeting from 04.03.2010;
- Room document #2 of Code of Conduct group meeting from 04.03.2010.

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).

Concerning your request for the Final Model Instruction (if no final version available, latest draft) implementing exchange of tax rulings (as mentioned here:

<http://data.consilium.europa.eu/doc/document/ST-10608-2014-INIT/en/pdf>)

we have identified the attached Commission's working document (CACT n°036 - Committee on administrative cooperation for taxation, meeting n° 7 of 28-29 November 2013).

Final Guidance (if no final version available, latest draft) on inbound profit transfers (mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>) can be found in par. 16 of document 16766/10 FISC 139.

We guess that the Final Guidelines (if no final version available, latest draft) on intermediate entities (mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>) refers to the guidance on hybrid entity mismatches. This final guidance can be found as an annex to document 16553/1/14 REV 1.

Concerning the Final Guidelines (if no final version available, latest draft) on special economic zones (mentioned here: <http://data.consilium.europa.eu/doc/document/ST-11465-2013-INIT/en/pdf>), we cannot find the trace of a final agreement on these guidance notes; the last mention of it was in the Code of Conduct report indicated above.

You will also find in attachment a partially accessible version of the following documents:

- Room document #5 of Code of Conduct group meeting from 30.01.2013
- Room document #6 of Code of Conduct group meeting from 29.05.2013
- Room document #5 of Code of Conduct group meeting from 22.10.2013
- Room document #7 of Code of Conduct group meeting from 18.03.2014
- Room document #4 of Code of Conduct group meeting from 22.10.2014

These documents were produced by the Commission.

Commission refused to grant full access to these documents for the reasons stated below:

These room documents concern difficult tax issues, which are still the subject of ongoing discussions, and contain informally voiced internal opinions and assessments related to tax measures.

The Commission considers that full release of this information would trigger reactions by businesses which would interfere with the economic and fiscal policy of the European Union and of the Member States. It would therefore undermine the protection of the public interest as regards the financial, monetary or economic policy of the EU and of the Member States.

Full release of these documents would also affect the negotiating process and diminish the chances of the Council reaching an agreement. Full disclosure of the documents would thus seriously undermine the decision making-processes concerned.

Please note that the necessary consultations concerning the following documents are still ongoing:

- Overview of measures found harmful by the Code of Conduct group (Annex) as mentioned in Code of Conduct group Room Document #3 of 23 Sept 2009
- Update of the overview of measures found harmful by the Code of Conduct group (Annex 1) as mentioned in Code of Conduct group Room Document #2 of 18 Nov 2009
- Room document #6 of Code of Conduct group meeting from 29.05.2013
- Room document #5 of Code of Conduct group meeting from 19.11.2010
- Annex 2 to Room document #4 of Code of Conduct group meeting from 04.06.2012

You will be informed on the results in due time.

Finally we inform you that we could not identify a document containing the "latest version of the Code of Conduct overview of measures that were under scrutiny of the Code of Conduct group including Code of Conduct group's evaluation of the criteria for harmfulness for each measure".

Likewise we could not identify any full and final version of Annex 1 and Annex 2 of Code of Conduct group meeting from 20.05.2010.

You can ask the Council to review this decision within 15 working days of receiving this reply.

Yours sincerely,

Jakob THOMSEN

Enclosures

[E-mail message sent to access@consilium.europa.eu on 1 February 2016 - 10:45]

From: **DELETED**

Sent: Monday, February 01, 2016 10:45 AM

To: SECRETARIAT DGF Access

Subject: Internal review of Freedom of Information request - Code of Conduct Group on business taxation - background documents of meetings

Dear SECRETARIAT DGF Access,

Thank you for your overview of the current status of my request.

In your reply you are writing: "Finally we inform you that we could not identify a document containing the 'latest version of the Code of Conduct overview of measures that were under scrutiny of the Code of Conduct group including Code of Conduct group's evaluation of the criteria for harmfulness for each measure'."

In order to help you to identify this document, I want to inform you that I am referring to an updated version of the "Overview of measures found harmful by the Code of Conduct group (Annex) as mentioned in Code of Conduct group Room Document #3 of 23 Sept 2009".

It should be a spreadsheet with the following structure:

Type - Measure - Name - Code Criteria (1A, 1B, 2A, 2B, 3, 4, 5, Misc.)

This spreadsheet should include the CoCG assessment of all measures that were under CoCG scrutiny from 1998 until today and provide an evaluation for each of the Code Criteria.

Furthermore, in your reply you are writing: "Likewise we could not identify any full and final version of Annex 1 and Annex 2 of Code of Conduct group meeting from 20.05.2010". In order to help you to identify these documents, let me please further specify that I would like to receive Annex 1 and 2 to Room Document # 6 from 20.05.2010.

As far as the partial release of

- Room document #5 of Code of Conduct group meeting from 30.01.2013
- Room document #6 of Code of Conduct group meeting from 29.05.2013
- Room document #5 of Code of Conduct group meeting from 22.10.2013
- Room document #7 of Code of Conduct group meeting from 18.03.2014
- Room document #4 of Code of Conduct group meeting from 22.10.2014

is concerned, I herewith make a confirmatory application. In your reply you are writing: "Full release of these documents would also affect the negotiating process and diminish the chances of the Council reaching an agreement." I would like you to know that, on the contrary, I am convinced that full release of these documents would increase pressure from civil society on countries blocking an agreement in the Council and therefore full disclosure of the documents is in the public interest. I therefore would like to ask you to rethink your decision to only partially release these documents.

I am looking forward to co-operate with you and your services.

Yours sincerely,

DELETED
