Council of the European Union

Brussels, 2 September 2019
(OR. en)

11748/19

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NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 24/c/01/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 3 July 2019 and registered on 4 July 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 16 August 2019 (Annex 2);
- confirmatory application dated 26 August 2019 and registered on 27 August 2019 (Annex 3).

ANNEX 1

[E-mail message sent to access@consilium.europa.eu on 3 July 2019 - 20:16 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:

Fax:

Requested document(s): I would like to request all documents (incl room documents, informal meeting minutes, working documents, non-papers, but excl reports and agenda's published in the Council's register) on the topic CCTB/CCCTB-proposals of the Working Party on Tax Questions (direct taxation) and the High Level Working Party related to the years 2016-2019.

1st preferred linguistic version: EN - English

2nd preferred linguistic version: EN - English

Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 16 August 2019

DELETED
Email: **DELETED**

Ref. 19/1569-mw/jg

Request made on:	03.07.2019
Registered on:	04.07.2019
Deadline extension:	25.07.2019

Dear **DELETED**,

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

1. Please find attached the following documents you requested.

WK 3822 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Impact of the CCTB on the effective tax burden of corporations - 15/03/2019

WK 3821 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Impact of the CCTB on the effective tax burden of corporations - 15/03/2019

WK 3758 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Questions on Leasing (cf. WK 3732/2019 INIT) - 14/03/2019

[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).

WK 3732 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Leasing - 14/03/2019

WK 3712 2019 INIT - Presidency compromise text on Chapters I to X of the proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - 14/03/2019

WK 2370 2019 REV 1 - CCTB - hidden profit distributions and contributions - 19/02/2019

WK 2370 2019 INIT - CCTB - hidden profit distributions and contributions - 18/02/2019

WK 2250 2019 INIT - Presidency discussion document - Possible ways forward on the anti abuse measures foreseen in the CCTB proposal - 15/02/2019

WK 2212 2019 INIT - Third Presidency compromise text on chapters I-II-III-IV-V of the proposal for a Council Directive on a Common Corporate Tax Base - CCTB - 14/02/2019

WK 148 2019 REV 2 - CCTB: Goodwill - 12/02/2019

WK 159 2019 ADD 1 - CCTB: Mergers, divisions and losses - Presentation - 18/01/2019

WK 306 2019 REV 1 - CCTB: Hidden profit distributions - 17/01/2019

WK 148 2019 REV 1 - CCTB: Goodwill - 16/01/2019

WK 306 2019 INIT - CCTB: Hidden profit distributions - 10/01/2019

WK 159 2019 INIT - CCTB: Losses in the context of restructuring - 10/01/2019

WK 148 2019 INIT - CCTB: Goodwill - 10/01/2019

WK 261 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - Presidency compromise on CCTB Chapters I-II-III-IV-V - 10/01/2019

WK 12787 2018 REV 2 - CCTB revenue assessments: summary of responses received - 06/11/2018

WK 12787 2018 REV 1 - CCTB revenue assessments: summary of responses received - 25/10/2018

WK 12787 2018 INIT - CCTB revenue assessments: summary of responses received - 24/10/2018

WK 12706 2018 INIT - CCTB: way forward for more detailed provisions - 22/10/2018

WK 12705 2018 INIT - Presidency compromise text on CCTB Chapters I-II-III-IV-V - 22/10/2018

WK 12697 2018 INIT - Proposal for a Common Corporate Tax Base (CCTB) - Political issues arising from the evaluation of the impact of the Proposal for a Common Corporate Tax Base (CCTB) on national tax revenues - 22/10/2018

WK 12662 2018 ADD 3 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire - 22/10/2018

WK 12024 2018 INIT - CCTB proposal - Insurance undertakings - 10/10/2018

WK 11706 2018 INIT - Presidency compromise text on CCTB Chapters I-II-III-V - 05/10/2018

WK 10852 2018 INIT - Presidency working paper on the German-French common position paper on the CCTB proposal - 19/09/2018

WK 10851 2018 INIT - CCTB proposal: state of play and further handling in the Council under the Austrian Presidency - 19/09/2018

WK 9088 2018 INIT - German-French common position paper on CCTB proposal - 19/07/2018

WK 4449 2018 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Third Presidency compromise on specific provisions for evaluating the impact on national tax revenues - 16/04/2018

WK 3952 2018 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Second Presidency compromise on provisions needed for evaluating the impact on national tax revenues - 05/04/2018

WK 2676 2018 INIT - First Presidency compromise on provisions for evaluating impact on national tax revenues - 02/03/2018

WK 1929 2018 REV 1 - First Presidency compromise on Chapter IV of the Proposal for a Council Directive on a Common Corporate Tax Base - 16/02/2018

WK 1929 2018 INIT - First Presidency compromise on Chapter IV of the Proposal for a Council Directive on a Common Corporate Tax Base - 16/02/2018

WK 990 2018 INIT - CORTAX model - 29/01/2018

WK 980 2018 INIT - C(C)CTB: flexibility for Member States - 26/01/2018

WK 979 2018 INIT - CCTB: Scope vs. Flexibility of the Common Base - 26/01/2018

WK 905 2018 INIT - CCTB: level of harmonisation - 25/01/2018

WK 5965 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - 29/05/2017

WK 5898 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - Second draft Presidency compromise on Articles 9, 11 and 42 - 24/05/2017

WK 5211 2017 INIT - Common Corporate Tax Base (CCTB): - State of play and way forward - 08/05/2017

WK 4623 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - Draft Presidency compromise on Article 11 - 21/04/2017

WK 4607 2017 INIT - Anti-avoidance provisions relating to ACE - 21/04/2017

WK 4529 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - Draft Presidency compromise on Article 42 - 20/04/2017

WK 4528 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - Draft Presidency compromise on Article 9 - 20/04/2017

WK 2849 2017 INIT - Allowance for growth and investment ('AGI') – Article 11 CCTB - 14/03/2017

WK 2848 2017 INIT - Temporary cross-border loss relief – Article 42 CCTB - 14/03/2017

WK 2847 2017 INIT - Super deduction for Research and Development (R& D): way ahead – Article 9(3) CCTB - 14/03/2017

WK 1361 2017 INIT - Common Corporate Tax Base (CCTB) proposal, chapters 1-5: article by article comparison document - 07/02/2017

2. You will also find attached a partially accessible version of document WK 754/2019.[2] However, I regret to inform you that full access cannot be given for the reasons set out below.

Document WK 754/2019 is a document of 17 January 2019 from the Presidency to the Working Party on Tax Questions (Direct Taxation – CCTB). It contains a powerpoint presentation on the priorities of the Romanian Presidency.

You may have access to this document except to the part which contain personal data about some Presidency officials.

Disclosure of this information would undermine the protection of privacy and the integrity of the individuals in question, in particular in accordance with European legislation regarding the protection of personal data. Accordingly, pursuant to Article 4(1)(b) of the Regulation (protection of privacy and the integrity of the individual), the General Secretariat is unable to grant you access to this part of the document.

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to the rest of the document which is not covered by this exception.

3. I regret to inform you that access to the following documents cannot be given for the reasons set out below.

WK 3725 2019 INIT - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Franco-German proposal on CCTB scope extension - 4/03/2019
WK 12662 2018 ADD 5 REV 1 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire - 12/11/2018
WK 13019 2018 INIT - CCTB Revenue Assessment - Powerpoint presentation by the Commission services - 26/10/2018
WK 12817 2018 INIT - CCTB: Profit and Loss method vs. Business Asset Comparison Method (BACM) - 24/10/2018
WK 12662 2018 ADD 5 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire - 22/10/2018
WK 12662 2018 ADD 4 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire - 22/10/2018

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

WK 12662 2018 ADD 2 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire 22/10/2018
WK 12662 2018 ADD 1 - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire - 22/10/2018
WK 12662 2018 INIT - Proposal for a Common Corporate Tax Base (CCTB) - National revenue assessments of the CCTB frozen text: compilation of delegations' responses to the questionnaire 22/10/2018
WK 12025 2018 INIT - CCTB proposal - Financial instruments - 10/10/2018
WK 11018 2018 REV 1 - Common position paper on the CCTB proposal: additional remarks and explanations - 21/09/2018
WK 11018 2018 INIT - Common position paper on the CCTB proposal: additional remarks and explanations - 21/09/2018
WK 7662 2017 INIT - Proposal for a Council Directive on a Common Corporate Tax Base - CCTB mapping - 05/07/2017
WK 2837 2017 INIT - 1) Tax Treatment of Debt and Equity Financing from the Viewpoint of the Borrower's Tax Jurisdiction 2) Operation of the 10-year reference date for the purpose of computing increases in the "AGI tax base" - 13/03/2017
WK 2563 2017 REV 1 - Cross-Border Loss Relief and Recapture – Article 42 CCTB - 08/03/2017
WK 2563 2017 INIT - Cross-Border Loss Relief and Recapture – Article 42 CCTB - 07/03/2017
WK 1730 2017 INIT - Common Corporate Tax Base (CCTB) proposal - Presentation by the Commission Services - 15/02/2017
WK 1732 2017 INIT - Common Corporate Tax Base (CCTB) proposal - Presentation by the Commission Services - 15/02/2017

All of these documents contain informally voiced internal opinions and assessments related to a protracted legislative procedure that is still going on. 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 Common Corporate Tax Base (CCTB) by its very nature has an important impact on corporate taxation and thus on an extremely large number of economic operators.

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 these informal documents 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.

As a consequence, the General Secretariat has to refuse access to these documents at this stage.[3]

We have also looked into the possibility of releasing parts of the documents.
You will, however, find enclosed a partially accessible version with the main parts of the document WK 15069/17 that are not covered by these exceptions.[4]

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

Yours sincerely,

Paulo VIDAL

Enclosures

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[3] Article 4(1)(a), fourth indent, and – in the absence of any indication 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.

ANNEX 3

[E-mail message sent to access@consilium.europa.eu on 26 August 2019 - 12:52]

From: DELETED

Sent: Monday, August 26, 2019 22:45

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Confirmatory application (Ref. 19/1569-mw/jg) (RE: access@consilium.europa.eu heeft je bestanden gestuurd via WeTransfer)

Please find attached a letter from **DELETED** concerning a confirmatory application (Ref. 19/1569-mw/jg) for access to documents.

Yours sincerely,

DELETED

DELETED

Council of the European Union General Secretariat
Directorate-General Communication and Information – COMM Directorate Information and Outreach
Information Services Unit / Transparency

SENT BY EMAIL TO access@consilium.europa.eu

Amsterdam, 26 August 2019

Subject: Confirmatory application (Ref. 19/1569-mw/jg)

Dear Sir or Madam,

This letter includes a confirmatory application concerning the handling of my application for access to documents (Ref. 19/1569-mw/jg).

In its decision from August 16, 2019 the Council refused me to grant access to 18 important documents specified in paragraph 3 of your letter. In a footnote of the decision, the Council referred to the following two provisions of Regulation (EC) No 1049/2001:

- Article 4(1)(a) fourth indent, which relates to the undermining of the public interest as regards the financial, monetary of economic policy of the EU or a Member State; and
- Article 4(3) first subparagraph, which relates to seriously undermining of the decision- making process.

My objection is that the Council in its letter, does not, or insufficiently, explain why these exceptions to the access of documents should apply. The following reasons are being mentioned:

- The documents contain informally voiced internal opinions and assessments related to protracted legislative procedure that is still going on;
- Unanimity is required for the adoption of the proposed legal act;
- The Common Corporate Tax base (CCTB) has by its nature an important impact on corporate taxation and thus on an extremely large number of economic operators; and This area is subject of very difficult negotiations.

My objection is that these reasons do not justify the claim that disclosure of the documents (1) would undermine the public interest as regards the financial, monetary of economic policy of the EU or a Member State or (2) would seriously undermine the decision-making process.

On the contrary, it can be argued that disclosure of the documents, as a result of which transparency is also given about “informally voiced internal opinions and assessments related to protracted legislative procedure that is still going on”, can actually benefit the decision- making process. Anyway, the fact that the documents contain “informally voiced internal opinions” is simply not a reason to refuse disclosure. To the extent that the refused documents contain opinions intended for internal use and the disclosure of those documents would seriously undermine the decision-making process, I believe that there is an overriding public interest in disclosure. This public interest means that disclosure of the documents will enable a better informed public debate on the CCTB and restore public confidence in the creation of harmonised tax rules and fairness in the corporate tax system. Furthermore, the disclosure of the documents is essential to promote fair tax competition within the Union.

In addition, it is hard to see why the disclosure of documents relating to discussions and negotiations on a harmonised corporate tax base (CCTB) in the future, would undermine the public interest as regards the financial, monetary of economic policy of the EU or a Member State. The fact that the CCTB would potentially affect “an extremely large number of economic operators” does not in any way mean that disclosure of documents relating to the CCTB would have this kind of drastically effects. Besides, it is not at all to be expected that the CCTB will have consequences for “an extremely large number of economic operators”. According to the European Commission’s proposal, the CCTB system will be compulsory only for companies with a consolidated turnover in excess of EUR 750 million.

I hope that on the basis of this confirmatory application the Council will review its position.

Kind regards,

DELETED