



Council of the  
European Union

078502/EU XXVII. GP  
Eingelangt am 03/11/21

Brussels, 3 November 2021  
(OR. en)

13450/21

INF 283  
API 155

#### NOTE

---

From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 38/c/05/21

---

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 10 May 2021 and registered on 11 May 2021 (Annex 1);
- the reply from the General Secretariat of the Council dated 18 October 2021 (Annex 2);
- the confirmatory application dated 3 November 2021 (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 10 May 2021 - 11:07]

Dear representative of the General Secretariat of the Council of the European Union,

Following your kind suggestion on making a more targeted document request (see your letter Ref. 21/0506 and 21/0519-mw/vk), please find attached my information request about 30 working documents on the EU list of non-cooperative jurisdictions for tax purposes.

I look forward to your reply.

Thank you in advance and have a nice day.

Kind regards,

**DELETED**

General Secretariat of the Council of the European Union

DG F - Transparency

Rue de la Loi/Wetstraat 175

B-1048 Bruxelles/Brussel

Subject: Document request EU Code of Conduct Group and EU tax haven blacklist

[REDACTED], May 10, 2021

Dear representative of the General Secretariat of the Council of the European Union,

My name is [REDACTED] and I am a PhD candidate in [REDACTED]  
[REDACTED]. My PhD-dissertation discusses and evaluates the design and effectiveness of the EU tax haven blacklist. For this purpose, I would like to submit a targeted information request on the basis of Regulation 1049/2001 for documents in the possession of the Council about the work of the EU Code of Conduct Group, and its Subgroups, concerning the EU list of non-cooperative jurisdictions for tax purposes (EU tax haven blacklist).

This information request covers Council documents that are listed in the enclosed pdf file. It contains working papers (WK-documents) from January-June 2020.

I would like to point out that this additional targeted information request covers documents that are comparable to other documents that the Council has recently made public in its document register. For example, the Council has published the following types and categories of documents:

- commitment letters and other responses from third jurisdictions (see docs. 6097/19 and related ADDs, docs. 6972/18 and related ADDs);
- letters seeking commitments (see docs. 5981/19, 6671/18);
- countries' progress and monitoring reports (see docs. 5361/20 DCL 1, 6886/19 DCL 1, 6810/19 DCL 1, 5669/19 DCL 1, 5625/19 DCL 1, 5623/1/19 REV 1 DCL 1, 5618/19 DCL 1, 5443/19 DCL 1, 10791/19 DCL 1, 12713/20 and ADDs, 10791/19);

- guidelines and scoping papers on the interpretation of listing criteria (see docs. 14784/17 Annex I, 9637/18 Annex I and IV, 14114/19 Annex III, 9652/19 Annex IV, 14364/18 and its Annex III, 8374/20);
- coordination on defensive measures (see docs. 13888/19 DCL 1, 7232/18, 14114/19 Annex IV);
- information papers (see docs. 13015/17 DCL 1, 14451/17 DCL 1);
- note of the CoCG (13949/17 DCL 1, 10901/17 DCL 1);
- endorsement of FHTP outcomes on 2.1 jurisdictions (see docs. 9639/4/18 REV 4, 8603/1/20 REV 1);
- reports of the CoCG (see docs. 14784/17, 9637/18, 8828/1/19 REV 1, 14114/19).

Given the fact that my request concerns similar documents, I would kindly ask you to positively consider my document request.

I look forward to hearing from you.

Yours faithfully,

[Redacted signature]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]



**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, 18 October 2021

**DELETED**

Email: **DELETED**

Ref. 21/1021-ADD 2-mw/jl

Request made on: 10.05.2021

Registered on: 11.05.2021

Dear **DELETED**,

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

Following the letters sent to you on 17.05.2021 and on 19.08.2021, please find attached documents WK 2222/2020, WK 2222/2020 REV1, WK 2185/2020, WK 2094/2020, WK 1090/2020, WK 1090/2020 REV1, WK 1090/2020 REV2, WK 1090/2020 REV3, WK 1039/2020.

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

WK 5307/2020: Note of the Commission services on the use of tax havens in the context of COVID-19 state aid measures

WK 4378/2020: Overview of current priority work as impacted by COVID-19

WK 3649/2020: Impact of the COVID-19 crisis on the work ahead

WK 2104/2020: Review of the EU RESTRICTED classified documents issued by the COCG in 2017

WK 2030/2020: Follow up to the AOB item at the December 2019 ECOFIN Council - (Draft) questionnaire

WK 1306/2020: EU list of non-cooperative jurisdictions for tax purposes: Report #34 by the Code of Conduct Group (Business Taxation) Chair on interactions on procedural and/or political aspects of the monitoring process = Turkey

These documents reflect very delicate issues pertaining to fiscal policies which may affect in a significant way the location of business activity between the Union and jurisdictions outside the Union. Their release would severely affect the Union's policy efforts in this regard and weaken its position vis-à-vis those jurisdictions.

Full disclosure of the documents would therefore seriously undermine the protection of the public interest as regards international relations, as regards the financial, monetary or economic policy of the Union or a Member State and as regards the Council's decision making process.

As a consequence, the General Secretariat has to refuse full access to the documents.

We have also looked into the possibility of releasing parts of the documents. However, as the exceptions to the right of access apply to their entire content, the General Secretariat is also unable to give partial access.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

Enclosures: 9

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 3 November 2021 - 09:46]

Dear representative of the General Secretariat of the Council of the European Union,

Please find attached my confirmatory application to Council decision Ref. 21/1021-ADD 2-mw/jl.

I would also like to notify my new address: **DELETED**.

Thank you in advance for processing my application.

I look forward to your reply.

Have a nice day.

Kind regards,

**DELETED**

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

[REDACTED], 26 October 2021

**Subject:** Confirmatory application – Ref. 21/1021-ADD 2-mw/jl

Dear representative of the Secretariat-General of the Council of the European Union,

My name is [REDACTED] and I am a PhD candidate in [REDACTED]  
[REDACTED] My PhD dissertation discusses and evaluates the design and effectiveness of the EU list of non-cooperative jurisdictions for tax purposes (hereinafter, the EU list).

This letter refers to the decision issued by the Council of the European Union (hereinafter, the Council) on October 18, 2021 and registered under Ref. 21/1021-ADD 2-mw/jl. With this decision, the Council refuses me access to the following documents:

- WK 5307/2020: Note of the Commission services on the use of tax havens in the context of COVID-19 state aid measures
- WK 4378/2020: Overview of current priority work as impacted by COVID-19
- WK 3649/2020: Impact of the COVID-19 crisis on the work ahead
- WK 2104/2020: Review of the EU RESTRICTED classified documents issued by the COCG in 2017
- WK 2030/2020: Follow up to the AOB item at the December 2019 ECOFIN Council - (Draft) questionnaire
- WK 1306/2020: EU list of non-cooperative jurisdictions for tax purposes: Report #34 by the Code of Conduct Group (Business Taxation) Chair on interactions on procedural and/or political aspects of the monitoring process = Turkey



The documents are all in relation to the EU list.

As motivations for the denial, the Council reported that “[t]hese documents reflect very delicate issues pertaining to fiscal policies which may affect in a significant way the location of business activity between the Union and jurisdictions outside the Union. Their release would severely affect the Union's policy efforts in this regard and weaken its position vis-à-vis those jurisdictions. Disclosure of these documents would therefore seriously undermine the protection of the public interest as regards international relations, monetary or economic policy of the Union or a Member State and as regards the Council's decision making process.”

Based on Article 7(2) of Regulation (EC) No 1049/2001, with this letter I would like to express objections to the opinion that forms the above-mentioned decision.

#### **Reasoning of the confirmatory application:**

- Lack of clarification/motivation in invoking the exceptions

The Council justified the denial of disclosure on the basis of the following exceptions of Regulation 1049/2001: i) the protection of the public interest as regards international relations (Article 4(1)(a) 3<sup>rd</sup> indent); ii) the protection of the public interest as regards financial, monetary or economic policy (Article 4(1)(a) 4<sup>th</sup> indent); and iii) the protection of the Council decision-making process (Article 4(3), first subparagraph).

However, only generic explanations are granted by the Council. There is no sufficient motivation on the applicability of the exception to the documents required. Additionally, even supposing that the applicability of the exception is justified, sufficient and appropriate argumentation is provided neither on the reason why this damage would happen, nor on the specific and actual damage that the Member States or the Union would suffer from full disclosure of the documents. In particular, the Council does not precisely explain why the disclosure of mere technical and/or procedural issues would hurt international relations, the Council's decision-making process and/or the public interest as regards financial, monetary or economic policy.

It is kindly stressed that Member States and the Council have no veto right according to Regulation 1049/2001. Their denial of access should be justified and motivated on the basis of specific exceptions, and the actual link of applicability of such exceptions to the documents requested should be explained specifically for each document. Also, concrete arguments should be given, explaining how the public interest as regards international relations, financial, monetary or economic policy and the Council's decision-making process would be damaged by the disclosure of the documents.

As stated by the European Court of Justice (hereinafter, the Court) in the case *Access Info Europe v Council of the European Union*, paragraph 31: “if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, first explain how disclosure of that document could specifically and actually undermine the interest protected by the exception – among those provided for in Article 4 of Regulation No 1049/2001 – upon which it is relying. Moreover, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (*Sweden v MyTravel and Commission*, paragraph 76 and the case-law cited)”. The same line of reasoning by which exceptions to Regulation 1049/2001 must be interpreted and applied strictly has been expressed by the Court in other cases (e.g. *Sison v Council*, paragraph 63; *Sweden and Turco v Council*, paragraph 36; *Sweden and Others v API and Commission*, paragraph 73; and *Sweden v MyTravel and Commission*, paragraph 75).

In contrast, it seems that in the decision here discussed the Council merely relied on vague and hypothetical considerations, without substantiating, in a comprehensive way, a specific and actual causal-link between the release of the documents and the undermining of contra-interests.

- “Unless there is an overriding public interest in disclosure”

Article 4(3) of Regulation 1049/2001 admits that an overriding public interest in disclosure should prevail. It could be argued that such overriding interest exists in the case at hand, considering the relevance and essentiality of research for the benefit of society and its institutions.

As it is commonly known, tax avoidance is a matter becoming always more delicate, difficult and at the core of heated debates. It is evidently attracting attention, social tension and criticism towards governments and public institutions<sup>1</sup>. Meanwhile, it is also known that the work on the EU list is currently involved in relevant discussions and criticism at the European Parliament. Therefore, the ambition of purely academic and expert research to provide well-informed and rational analysis on the topics linked to the EU list of non-cooperative jurisdictions should be appreciated. It should be supported via a transparent approach that is aware of the social, political and academic interests at stake. Together with the hard work that the European Union is doing at fighting against aggressive tax planning and tax fraud, such an open approach (especially with academia) would help at recovering clarity and adding solutions to the matter.

As explained in my first letter to the Council, the request of access to documents was made in a full spirit of collaboration and reciprocal support, believing in the potentiality of academic research at constructively driving the European institutions to progressively improve their useful work. For this reason, among others, and in the interest of the European community I am part of as an European citizen, the transparency of the Union is essential: it allows society to work at the service of institutions, so that institutions can work at the service of society.

Therefore, I would kindly ask the Council to reconsider its position.

Thank you very much for processing this confirmatory application.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>1</sup> It could be useful to recall the critical discussion started since the LuxLeaks scandal in 2014.