



Council of the
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NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
No. prev. doc.:	6947/20
Subject:	Public access to documents - Confirmatory application No 08/c/01/20

Delegations will find attached a draft reply to confirmatory application No 08/c/01/20
(see 6947/20).

DRAFT

**REPLY ADOPTED BY THE COUNCIL ON ...
TO CONFIRMATORY APPLICATION 08/c/01/20,
made by email on 10 February 2017,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to several documents relating to the
Proposal for Directive of the European Parliament and the Council amending Directive
2013/34/EU as regards disclosure of income tax information by certain undertakings and
branches (CBCR)**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 20 February 2020 the applicant introduced an initial application for access to "all documents (room documents, working papers, ST-Documents, (informal) meeting minutes drafted by Council Secretariat representatives, etc) on the Directive as regards disclosure of income tax information by certain undertakings and branches (public country-by-country reporting) related to the years 2016-2019."
2. On 4 March 2020, the General Secretariat replied to this application, fully releasing 43 documents. Six documents were also partially released pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001 since disclosure of the personal data contained in them would undermine the protection of privacy and the integrity of the individuals. Access was refused in full for documents WK 5230/17, WK 12197/17, WK 12197/17 REV1, and WK 10931/17.

3. On 19 March 2020, the applicant introduced a confirmatory application against the General Secretariat's refusal of access in full to the four documents mentioned above. The applicant does not contest the partial access granted for reasons of personal data protection¹ as disclosure of the personal data would undermine the protection of privacy and the integrity of the individuals². In substance, the applicant contends therein that the General Secretariat has not given sufficient explanations for the application of the exception to the right of access as regards protection of the decision-making process (Article 4(3), first subparagraph, of Regulation No 1049/2001).
4. The Council has reassessed, in full consideration of the principle of transparency underlying Regulation No 1049/2001 and in the light of the applicant's comments, whether public access can be provided to the documents fully withheld in the General Secretariat's reply.
5. In so doing the Council has carefully scrutinized the content of the documents, having due regard to the current state of play on negotiations related to these issues. The Council has come to the conclusions set out below.

I. THE CONTEXT

6. In April 2016, the European Commission presented a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (CBCR).
7. The topic of tax transparency has gained particular importance as a tool in the fight against tax avoidance and tax evasion, particularly in the field of corporate income tax and aggressive tax planning. Cooperation between tax authorities aims at allowing them to obtain information covering the global business of multinational enterprises (MNEs).

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295 21.11.2018, p. 39).

² Article 4(1)(b) of Regulation (EC) No 1049/2001.

8. The proposal is presented as a response to the challenge posed by corporate income tax avoidance and to "intensified public demand" relating to the payment of taxes by multinational enterprises (MNEs) in the countries where their profits are produced. It refers to European Council Conclusions of 18 December 2014 regarding the urgent need to advance efforts in the fight against tax avoidance and to the European Parliament's call for increased transparency in the area of corporate taxation in order to "improve tax collection, make the work of tax authorities more efficient and ensure increased public trust and confidence in tax systems and governments."
9. The proposal is still being debated in the Council, building on Presidency compromise texts. This state of play has been presented twice in the European Parliament, under Romanian Presidency and Finnish Presidency³.

II. ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) 1049/2001

10. Document WK 5230/17 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains the comments received from delegations on CBCR Proposal after the Working Party meeting on 29 March 2017.
11. Document WK 12197/17 and its revised version WK 12197/17 REV1 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains a consolidated table with contributions from delegations following up the Working party on 11 September 2017.
12. Document WK 10931/17 is a working paper from the General Secretariat of the Council to the Working Party on Company Law (CBCR). It contains the comments received from the delegations after the Working Party meeting on 20 of September 2017.

³ 18 April 2018 and 22 October 2019.

13. The Council notes that after having examined individual documents WK 5230/17, WK 12197/17, WK 12197/17 REV1 and WK 10931/17, they are of the same nature i.e. contain revised versions of parts of the draft directive proposing modifications and drafting suggestions as a result of the meetings of the Working Party on Company Law (CBCR) of 29 March 2017, 11 September 2017 and 20 September 2017.
14. The Council has to strike a balance between the need to protect the decision making process and the legitimate interest in transparency, taking into account all relevant aspects and the context in which the documents were drafted.
15. In that regard, the Council has particularly taken into consideration the public interest in transparency for documents that relate to legislative procedures. The Council wishes to underline that it fully acknowledges that the principle of transparency is particularly pressing in relation to decision-making processes of a legislative nature, since openness in that respect contributes to strengthening democracy by allowing citizens to scrutinize the information which has formed the basis of a legislative act.⁴
16. Taking into account the above considerations as well the current state of play of the file, the Council has come to the conclusion that full public access may be granted to documents **WK 5230/2017, WK 12197/2017, WK 12197/2017 REV1, and WK 10931/17.**

⁴ See for example in this respect Judgment of the General Court of 22 March 2018 in Case T-540/15, *De Capitani v Parliament*, EU:T:2018:167, paragraph 78.

III. CONCLUSION

17. On the basis of the above considerations, the Council concludes that full public access can be granted to documents **WK 5230/2017, WK 12197/2017, WK 12197/2017 REV1, and WK 10931/17.**

18. The Council notes that the positive decision regarding these documents is based on an individual analysis of their content and the specific circumstances of the present case. It does under no circumstances constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.
