



Council of the
European Union

Brussels, 5 October 2022
(OR. en)

12905/22

LIMITE

INF 149
API 84

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	12248/22
Subject:	Public access to documents - Confirmatory application No 16/c/01/22

Delegations will find attached a draft reply to confirmatory application No 16/c/01/22
(see 12248/22).

**REPLY TO CONFIRMATORY APPLICATION 16/c/01/22,
made by email on 6 September 2022 and registered on the same day**

Following this confirmatory application, the Council has considered the possibility to grant access to the documents requested thereby, in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001¹ and Annex II to the Council's Rules of Procedure², and has come to the following conclusion:

1. On 5 July 2022 the Applicant introduced an initial application for access to documents which contain information on "the monitoring of the implementation of the 2017 Guidance on tax privileges related to special economic zones, which includes but is not limited to the questionnaire for this monitoring presented at the COCG³ subgroup on internal issues meeting on 23 October 2020, responses from the Member States which were requested by 31 March 2021 and documents related to clarifications requested on 19 May 2021 from the Member States concerned and those clarifications".
2. On 18 August 2022, the General Secretariat replied to this application, identifying documents WK 12094/2020, WK 11161/2020, WK 4706/2021, WK 4706/2021 REV1, WK 6361/2021, WK 5161/2021, WK 5161/2021 ADD1 to ADD10 as falling within the scope of the request.
3. Access was refused to those documents on the grounds that their disclosure would undermine the protection of the public interests as regards the financial, monetary or economic policy of the Union and its Member States, and the decision making-process of the Council, respectively, within the meaning of Article 4(1)(a), fourth indent, and article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

¹ OJ L 145, 31.5.2001, p. 43.

² Council Decision 2009/937/EU (OJ L 325, 11.12.2009, p. 35).

³ Code of Conduct Group (Business Taxation).

4. On 6 September 2022, the Applicant introduced a confirmatory application against the General Secretariat's refusal of access as mentioned above, alleging that the General Secretariat did not make clear to which of the documents under which provision access was denied and that insufficient reasons were stated.
5. The Council has reassessed the present request for access in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and in the light of the applicant's arguments.

THE CONTEXT

6. In the absence of Union legislation, business taxation, that is direct taxation, falls within the competence of Member States. The Union has competence in this field only with regard to measures that directly affect the establishment or functioning of the internal market. ⁴
7. Since 1997, the Member States have recognised the importance of promoting at the European level a coordinated action against unfair tax practices, without prejudice to the respective spheres of competence of the Member States and the Community. To that end, on 1st December 1997, the Council and the Representatives of the Governments of the Member States meeting within the Council adopted a Resolution containing a Code of Conduct for business taxation ⁵, which entails a political commitment not to introduce new tax measures and to roll back existing ones which provide for a significantly lower effective level of taxation than those levels which generally apply in a Member State and, as a consequence, affect or may affect in a significant way the location of business activity of the Union. The scope of the Code of Conduct is broader than the potential Union competence provided for in the Treaties.

⁴ Article 115 TFEU.

⁵ OJ C 2, 6.1.1998, p. 1.

8. The same Resolution has provided for a peer review mechanism based on exchange of information among the Member States and on the assessment of existing or proposed tax measures by a dedicated group composed by representatives of the Member States. By its conclusions of 9 March 1998 ⁶ the Council established the Code of Conduct Group (Business Taxation), which is composed of a high-level representative of each Member State, to assess the tax measures that may fall within the scope of the Code and to oversee the provision of information on those measures.
9. The members of the group evaluate carefully the effects that tax measures (current and planned) may have on other Member States, *inter alia* in view of how the activities concerned are effectively taxed throughout the Union. The reviews of the group may result in recommendations to the Council. During the review process, Member States are called on to cooperate loyally in the framework of the Code of Conduct and provide relevant information about laws and administrative practices in the business taxation area.
10. The Council has taken significant steps to make the public at large more acquainted with the work of the Code of Conduct Group and it is fully committed to continue increasing transparency in the group's activities. In particular, in line with paragraph H of the Resolution, the group reports regularly on the measures assessed with the assistance of the Commission. These reports are forwarded to the Council for deliberation. The reports and the Council conclusions in connection with them are published following the respective meetings of the Council, as appropriate.
11. However, it has to be pointed out that from its very conception, it has been essential to the functioning of the Code of Conduct Group that it could serve as a forum in which Member States would be able to freely exchange views on each other's tax measures and their conformity with the Code of Conduct on Business Taxation. When engaging in discussions of this kind, Member States have always assumed that they would be conducted in a spirit of confidentiality and mutual trust and have reasonably continued to rely on such an assumption ever since.

⁶ OJ C 99, 1.4.1998, p. 1.

12. More specifically, since the establishment of the Code of Conduct Group in 1998, the Council has repeatedly indicated that it was essential that discussions held within the group remain confidential, while increasing its visibility:
- the Council conclusions of 9 March 1998 establishing the Code of Conduct indicate that the Council "*agrees that the work of the group shall be confidential*";
 - this principle was recalled by the Council conclusions of 8 December 2015 ⁷, where the Council "expresses the wish to improve the visibility of the work of the Code of Conduct Group and agrees therefore that its results, in particular its 6-monthly reports, are systematically made available to the public" but "insists however on the confidentiality of the group's deliberations with a view to protect the public interest as regards the economic policy of Member States".
13. Moreover, the exchange of information within the Code of Conduct Group has been regulated in detail in the Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council, annexed to the Council conclusions of 1 December 1997. Hence, a specific framework is in place which provides for the exchange of information within the Code of Conduct Group between the Member States and the Commission and between Member States themselves. The Resolution does not lay down a right of access for third parties to documents that are discussed within the group. This is inherent to the nature of the Code of Conduct that is an instrument of coordination among Member States which remain the subjects and the addressees of that coordination. Its activities do not concern the Union as such but are essentially of an intergovernmental nature. A generalised access of the public to the documents would jeopardise the balance which Member States have sought to ensure when they agreed to establish the Code of Conduct Group.
14. These remarks concerning the nature of the Code of Conduct Group and the legal framework in which it was set up have to be duly taken into account when interpreting the relevant provisions of Regulation (EC) No 1049/2001 and assessing whether access to the requested documents can be given.

⁷ Council document 15148/15

ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) No 1049/2001

I. As for the possibility of applying general presumptions in the present case

15. The Council would like to address the argument by the Applicant whereby the General Secretariat should have explained for each document the applicability of the exceptions to the right of public access. The Council would like to recall that the case-law has recognized exceptions to the obligation to undertake a concrete, individual examination of the documents requested. In particular, the Court of Justice underlined that it is possible for the EU institution concerned to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature. This is the case when the request for access in question covers not just one document but a set of documents of the same kind and in that type of situation; the recognition that there is a general presumption that the disclosure of documents of a certain nature will, in principle, undermine the protection of one of the interests listed in Article 4 of Regulation No 1049/2001 enables the institution concerned to deal with a global application and to reply thereto accordingly⁸.
16. In this particular instance, the Council refers to paragraphs 6-13 above regarding the works of the Code of Conduct Group. The Council considers that the documents relating to that coordination process consist in a political exchange based on non-public tax information, and in discussion and assessment by Member States with a view to reaching agreement by consensus. Based on this finding, the Council considers that the requested documents are of the same nature, and that the General Secretariat adequately replied to the Applicant in its reply of 18 August 2022 to the initial application by explaining, per category, why access was refused on the basis of the exceptions provided for in Article 4(1)(a), fourth indent, or Article 4(3), of Regulation (EC) No 1049/2001.
17. In the framework of the reply to this confirmatory application, the Council has nonetheless proceeded to an individual assessment of the documents concerned, the outcome of which can be found in part III here below.

⁸ Judgment of 27 February 2014, *Commission v EnBW*, C-365/12.

18. It further needs to be underlined that in the confirmatory application the Applicant makes reference to the *de Capitani* judgment⁹, to the high standard of transparency in the legislative domain and to the fact that the ECJ has not "*recognized a presumption of non-disclosure in respect of documents that formed part of the legislative process.*" This case-law is however of limited relevance in the present case, since the documents at stake do not concern a legislative procedure.

II. THE APPLICABLE EXCEPTIONS

19. The documents concerned by this confirmatory application come within the remit of the exception on the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001) and the protection of the decision making process (Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001).
20. With regard to the application of the exceptions, it should be recalled that Regulation (EC) No 1049/2001 provides in its article 4(5) that a Member State may request that a document originating from it is not disclosed without its prior agreement. Case law¹⁰ has further emphasized that this requirement would risk becoming a dead letter if, despite a Member State's objection, the Institutions were free to disclose the document in question. Nevertheless, such an objection from a Member State has to be justified by reasons related to the exceptions provided by Article 4 of Regulation (EC) 1049/2001. It follows that, before refusing access to a document originating from a Member State, the institution concerned must examine whether that Member State has based its objection on the exceptions under Regulation (EC) 1049/2001 and has given proper reasons for its position. In addition, the Institution to which the request is made does not have to carry out an exhaustive assessment of the Member State's decision. In particular, it shall not conduct a review going beyond the verification of the existence of reasons referring to the aforementioned exceptions. As it is responsible for the decision, the Institution must, however, check that the grounds relied upon as justification for the Member State's objection do appear to it to be, *prima facie*, founded.

⁹ Judgment of 22 March 2018, *De Capitani v Parliament*, T-540/15.

¹⁰ Judgment of 18 December 2007, *Sweden v Commission*, C-64/05 P; Judgment of 18 March 2011, *IFAW Internationaler Tierschutz-Fonds v Commission*, C-135/11 P; Judgment of 24 May 2011, *Batchelor v Commission*, T-250/08; Judgment of 14 February 2012, *Germany v Commission*, T-59/09; Judgment of 25 September 2014, *Darius Nicolai Spirlea v Commission*, T-669/11 and Judgment of 8 February 2018, *Pagkyrios organismos ageladotrofon v Commission*, T-74/16.

A. The exception on the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State (Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001)

21. At the outset, the Council recalls that, according to the established case law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001 are subject to a particular regime if compared to the other exceptions included in Article 4.
22. On the one hand, *"the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest"*.¹¹
23. On the other hand, once the Council has come to the conclusion that release would indeed undermine the public interest in such an area, it has no choice but to refuse access, because *"it is clear from the wording of Article 4(1)(a) of Regulation No (EC) 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests"*.¹²
24. Therefore, while the concerned institution enjoys a wide discretion in assessing the impact of the release of documents in its possession on the financial, monetary or economic policy of the Union or a Member State, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document would harm the protected interest and granting access nonetheless.¹³

¹¹ Judgment of 11 July 2018, *ClientEarth v Commission*, T-644/16; Judgment of 27 November 2019, *Izuzquiza and Semsrott v European Border and Coast Guard Agency (FRONTEX)*, T-31/18.

¹² Judgment of 1 February 2007, *Sison v Council*, C-266/05 P.

¹³ Judgment of 7 February 2018, *Access Info Europe v Commission*, T- 851/16, Judgment of 7 February 2018, *Access Info Europe v Commission*, T- 852/16.

25. Besides, for the purpose of the assessment of a request for access to documents under Regulation (EC) No 1049/2001, it is not required to establish the existence of a definite risk of undermining the protection of the European Union's financial, monetary or economic policy, but merely the existence of a reasonably foreseeable and not purely hypothetical risk¹⁴ for which, as previously recalled, the institution enjoys a margin of discretion.
26. In the case at hand, the monitoring of the implementation of the Guidance on tax privileges to special economic zones includes assessments of preferential or harmful tax regimes.
- The Member States are expected to identify their national measures on business tax privileges currently in force and setting up rules for establishing special economic zones, and establish whether the specific rules in the Guidance have been implemented and how.
27. In particular, the process aims at verifying whether the 2017 Guidance has been implemented correctly by the Member States, as regards standards of good governance in the area of taxation. This action is economically important to Member States, citizens and businesses, across the EU as it contributes further to eliminating harmful tax practices and ensuring fair taxation and a level playing field in the Internal market to the benefit of all stakeholders.
28. Therefore disclosure of documents might trigger negative tendencies, both in communication and impact on work of democratically elected governments, and possible arrangements businesses might be deciding to take, which then would consequently undermine the protection of the public interest as regards the financial or economic policy of the EU or any Member State concerned, or could have negative influence on those policies.
29. Even though the application of the exceptions of an absolute nature provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 is sufficient to justify the refusal to grant access to the documents at issue, without a possibility to take into account other legitimate interests, the Council will address for the sake of completeness the applicability of Article 4(3) of Regulation (EC) No 1049/2001.

¹⁴ Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19.

B. The exception on the protection of the decision-making process (Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001)

30. As regards the applicability of the exception provided for in Article 4(3) of Regulation (EC) No 1049/2001, the Council points out that in order to allow for an effective political process in a highly sensitive area of taxation, it is of particular importance to ensure workable preparatory discussions of the Code of Conduct Group. This is all the more so for the monitoring of the Guidance on tax privileges related to special economic zones, as it requires the cooperation of the Member States in the transmission of non-public information, as well as a political dialogue and exchange.
31. The requested documents reflect the EU strategy concerning the assessment of business tax privileges in special geographic area in the Member States. The functioning of the delicate mechanism established for this process would be jeopardised if Member States had to take into account the possibility that preparatory documents forming the basis for the discussions may be made public before the decision-making process has come to an end. This is particularly the case given the sensitive subject matter discussed which relates to the assessment of Member States legislation in force or in the making, and how this affects the EU or its Member States' resources, and to the exploration of measures considered to be implemented.
32. Many of the elements set out in the requested documents are the result of difficult exchanges of a political nature held at the EU level. They give details of progress made and thereby reflect the difficulties that still need to be addressed before Member States can reach a consensus. Disclosure to the general public of the frank discussions or interim positions would compromise the necessary atmosphere of mutual trust and cooperation and undermine the effectiveness of the decision-making process.
33. 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. It is also in that regard that the Council has decided to reconsider its position as regards several of the requested documents and to grant greater public access.

34. However, the Council considers that the legitimate public interest in release of the information does not outweigh in this particular case the equally legitimate need to protect the decision-making process. In this regard, the Council recalls that the requested documents discuss intergovernmental issues going beyond EU competence.
35. The Council considers that the Applicant's arguments on the public interest in disclosure, as exposed in the confirmatory application, are of a general nature and amount to refusing the institutions any discretion to refuse to grant access to documents. In particular, a statement setting out general considerations is not sufficient for establishing that an overriding public interest prevails over the reasons justifying the refusal to disclose the requested documents¹⁵.
36. The argument put forward by the Applicant whereby the public interest prevails on the protection of the decision-making process amounts to pre-empting the possibility of applying the exception under Art. 4(3) of Regulation (EC) No 1049/2001. This interpretation has been expressly rejected in the case-law as regards the legislative domain where, contrary to the process to which the documents belong, the principle of a wider access applies¹⁶. Therefore, this argument shall be all the more considered as ungrounded in the present case where the decision-making process at stake is not of a legislative nature.
37. Similarly, the Council considers that the right of public access to documents of the Institutions under Regulation (EC) No 1049/2001 is of an objective nature. In particular, the claim of the Applicant that "it was thanks to leaks in the press and thus transparency and the public scrutiny that followed that measures such as the anti-tax avoidance directive were adopted" is an idea not based on any actual evidence. Furthermore, it may not lead to the conclusion of the existence of an overriding public interest in disclosure, since such an interpretation amounts to pre-empting the possibility of applying the exceptions under Regulation (EC) No 1049/2001 to the detriment of the protection of the public interests provided therein and to the useful effect of the Regulation.

¹⁵ Judgment of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P; Judgment of 27 February 2014, *Commission v EnBW*, C-365/12 P; Judgment of 2 October 2014, *Strack v Commission*, C-127/13 P; Judgment of 15 September 2016, *Herbert Smith Freehills LLP v Council*, T-710/14.

¹⁶ Judgment of 22 March 2018, *De Capitani v Parliament*, T-540/15.

As a consequence, the interest invoked by the Applicant for requesting the documents is not decisive and, in any case, does not amount to an overriding public interest in the present case¹⁷.

III. INDIVIDUAL ASSESSMENT OF THE REQUESTED DOCUMENTS

Documents to which public access is granted

38. The Council has reassessed the request on the basis of the reasons stated in the confirmatory application. It has also consulted the Commission on the basis of Article 4(4) of Regulation (EC) No 1049/2001 and the Member States on the basis of Article 4(5) of the Regulation.
39. Documents **WK 5161/2021 ADD1**, **WK 5161/2021 ADD 4**, **WK 5161/2021 ADD7**, **WK 5161/2021 ADD9** and **WK 5161/2021 ADD10** contain the replies to the questionnaire, respectively from Bulgaria, Croatia, Latvia, Poland and Portugal. These Member States agreed to release the information contained in the documents.
40. Document **WK 5161/2021** of 22.04.2021 is a note from the General Secretariat of the Council to the Code of Conduct Group (Business Taxation). It contains an information on the state of play concerning the Member States' replies to the questionnaire on the monitoring of the 2017 Guidance on tax privileges related to special economic zones.
41. Having thoroughly examined the content of the documents and taking into account the state of play on the matter, as well as the results of the consultations of the Commission and of the Member States, the Council considers that full public access can be given to documents WK 5161/2021, WK 5161/2021 ADD1, WK 5161/2021 ADD4, WK 5161/2021 ADD7, WK 5161/2021 ADD9 and WK 5161/2021 ADD10.

¹⁷ Judgment of 20 March 2014, *Reagens v Commission*, T-181/10; Judgment of 25 March 2015, *Sea Handling v Commission*, T-456/13; Judgment of 26 May 2016, *International Management Group v Commission*, T-110/15.

Documents to which partial access is granted

42. Here again, the Council has consulted the Commission on the basis of Article 4(4) of Regulation (EC) No 1049/2001 and the Member States on the basis of Article 4(5) thereof .
43. Document **WK 11161/2020** of 16.10.2020 is a cover note for a Commission services document to the Code of Conduct Group. It contains a draft questionnaire in order for the Member States to identify their relevant measures on business tax privileges applicable to special geographic areas. Member States were asked whether they agreed to the draft questionnaire and the deadline set for the reply to it.
44. Document **WK 12094/2020** of 30.10.2020 is a cover note for a Commission services document to the Code of Conduct Group. It contains the finalised questionnaire on the monitoring of the 2017 Guidance on tax privileges related to special economic zones and the extended deadline for reply to it by the Member States.
45. Document **WK 4706/2021** of 09.04.2021 is a cover note for a Commission services document to the Code of Conduct Group (Business Taxation). It contains a preliminary overview of Member States' responses to the questionnaire (as of 8 April 2021), on the monitoring of the 2017 Guidance on tax privileges related to special economic zones.
46. Document **WK 4706/2021 REV1** of 12.05.2021 is a revised version of document WK 4706/2021. It contains an overview of Member States' responses to the questionnaire (as of 22 April 2021).
47. Documents WK 11161/2020 and WK 12094/2020 consist in a questionnaire to be completed by the Member State and contain specific remarks on practical and theoretical issues related to the Guidance on SEZ and suggestions on the procedural steps and scope of the monitoring.
48. Documents WK 4706/2021 and WK 4706/2021 REV1 prepared by the Commission contain information on the identified tax measures applicable to SEZ in some of the Member States.

49. These documents relate to the preparation by the Commission of an assessment of national measures on business tax privileges applicable to special geographic areas, as provided for in the 2017 Guidance on tax privileges related to special economic zones (SEZ).
50. The documents are preparatory and do not yet reflect the final position of the Code of Conduct Group. Indeed, discussions on the transposition of the Guidance on tax privileges related to SEZ are underway in the Member States, and the Guidance leaves a large discretion to the Member States in the determination of the relevant areas. In this context, the issues discussed in the documents concerned are being discussed again on the domestic level. The views and reflections in the documents are neither exhaustive nor final and do not necessarily reflect the final position of the national authorities concerned.
51. Therefore, disclosure of the documents is likely to put into question the choices that these Member States will eventually make in terms of implementation of the Guidance. The disclosure of the documents would create unnecessary uncertainty on the intentions of national authorities. This would inevitably have an impact on the expectations, behaviours and decisions of private undertakings as well as other economic operators and due to this also more generally on financial and economic policies of the Member States concerned.
52. Disclosure of the documents would thus undermine the protection of the financial, monetary or economic policy of Member States, as provided for in Article 4(1)(a), fourth indent, of Regulation No 1049/2001. Furthermore, it cannot be ignored that delegations always act with a double hat, both as members of the Council and as national authorities, making it difficult to disconnect the decision-making process until a final decision of the Code of Conduct Group is taken.
53. Therefore, problems at this stage also have an important bearing on the Council's decision-making process, as contemplated by Article 4(3), first subparagraph, of the same Regulation, and on balance, the Council has not been able to identify an overriding public interest justifying full release of these documents in spite of the considerations set out above.

54. As regards the possibility of partial access to documents WK 11161/2020 and WK 12094/2020, the Council has thoroughly examined it and concluded that access can be granted to parts of the documents which are not covered by the above-mentioned exceptions.
55. As regards the possibility of partial access to documents WK 4706/2021 and WK 4706/2021 REV1, the Council considers that access cannot be granted to the parts of documents WK 4706/2021 and WK 4706/2021 REV which contains information from Member States that have opposed to making it public, partly or in its entirety. However, access can be granted to the other parts of the documents.
56. Document **WK 5161/2021 ADD8** is a cover note from the General Secretariat of the Council to the Code of Conduct Group (Business Taxation). It contains the reply from Lithuania to the questionnaire on the monitoring of the 2017 Guidance on tax privileges related to special economic zones.
57. The reply from Lithuania contains information which is produced for internal use and is protected by the Law on Tax Administration of the Republic of Lithuania. The Lithuanian authorities considered that the document contains data on declared taxable profit/taxable income and amount of tax benefits involved/budget revenue losses which necessitate protection.
58. Lithuania has asked not to release these data of the document. The Council considers that Lithuania's request to refuse full access to this document is justified and that disclosure would undermine the financial, monetary or economic policy of the Union or a Member State and also the protection of the institution's decision-making process.
59. Having assessed the document in question, and as a result of consultations with the Lithuanian authorities, the Council considers that access can be granted to parts of document WK 5161/2021 ADD8 which are not concerned by the abovementioned exceptions.

Documents to which access is refused

60. The Council has also consulted the Commission on the basis of Article 4(4) of Regulation (EC) No 1049/2001 and the Member States on the basis of Article 4(5) of that Regulation concerning the following documents.

61. Document **WK 5161/2021 ADD2** contains the reply from Spain to the questionnaire. The Spanish authorities consider that the work on the revision of the Guidelines of the Code of Conduct Group on special economic zones has not yet been completed. The Code of Conduct Group has yet to examine the information and data on the different schemes provided by the Member States before taking a decision on them. In fact, Spain has provided data and information complementary to that contained in the requested document which will be assessed by this Group in the near future. Disclosure of the document would seriously undermine the institution's decision-making process.

62. Spain has asked not to release the document. The Council considers that Spain's request to refuse access to this document is justified.

63. Document **WK 5161/2021 ADD3** contains the reply from France to the questionnaire.

The French authorities consider that this document is part of the group's review of the Code of Conduct for zoned schemes. It contains a contribution from the French delegation that can be considered as a working document, which should enable the Commission to make an assessment of the proper implementation of the 2017 guidelines on tax privileges related to economic zones.

64. Moreover, this evaluation has not yet been carried out, as the Commission still has additional questions for France on its zonal schemes. The disclosure of this preparatory document would also make it difficult for Member States to make future contributions, which would undermine the future work of the Code of Conduct Group. Therefore, as long as the evaluation process has not been completed, the comments sent by the French authorities on the subject are not intended to be disclosed to the public. Disclosure of the document would seriously undermine the institution's decision-making process.

65. France has asked not to release the document. The Council considers that France's request to refuse access to this document is justified.

66. Document **WK 5161/2021 ADD5** contains the reply from Hungary to the questionnaire.

The Hungarian authorities oppose the disclosure of the document in question, for the reasons that the Code of Conduct Group is currently conducting an examination on the tax benefits for special economic zones based on its previously issued guidelines and that this examination process will continue in the course of the Czech presidency as well. Since the document in question contains replies of Hungary to a questionnaire issued by the Code of Conduct Group, and also bearing in mind the fact that the above-mentioned examination process regarding the compliance of the Hungarian law with the Code of Conduct Group guidelines is still ongoing, Hungary is of the opinion that the disclosure of the document would seriously undermine the institution's decision-making process. Moreover, the Hungarian authorities highlight the fact that replies to the questionnaire also contain detailed information on the financial policies of Hungary which relate to the compliance with the Code of Conduct Group guidelines, that are also, by their nature financial policies of the Union. Disclosure of the document would undermine the financial, monetary or economic policy of the Union or a Member State, and the protection of the institution's decision-making process.

67. Hungary has asked not to release the document. The Council considers that Hungary's request to refuse access to this document is justified.

68. Document **WK 5161/2021 ADD6** contains the reply from Italy to the questionnaire.

The Italian authorities oppose the disclosure as the document contains sensitive information from Italy. They consider that the evaluation and monitoring process to which this document is pertinent has not yet been completed. The refusal was decided as disclosure would undermine the financial, monetary or economic policy of the Union or a Member State, and the protection of the institution's decision-making process.

69. Italy has asked not to release the document. The Council considers that Italy's request to refuse access to this document is justified.
70. Therefore, the Council confirms that access to these documents must be refused in view of the need to protect the public interest as regards the financial, monetary or economic policy of the Union or its Member States and as regards the protection of the need to protect the decision making process pursuant to Article 4(1)(a), fourth indent and Article 4(3) of Regulation (EC) No 1049/2001.
71. The Council has furthermore considered the possibility of giving partial access to the requested documents. It has come to the conclusion that no partial access can be given, as the documents are an inseparable whole.
72. Document **WK 6361/2021** of 12.05.2021 is a cover note for a Commission services document to the Code of Conduct Group. This document contains horizontal remarks regarding the completion of the questionnaire and addresses suggestions and questions to the Member States on several aspects regarding the special economic zones.
73. The document addresses difficult issues such as the definition of relevant special economic zones or the availability of data provided by the Member States. It also discusses the different assessments by the Member States concerning the activities in these areas. Finally, it suggests that Member States complete the questionnaire in the light of the clarifications and questions which are still to be discussed within the Code of Conduct Group.
74. Having assessed the document in question, and as a result of consultations with the Commission, the Council considers that the Commission's request to refuse access to this document is justified.
75. As regards the possibility of partial access to this document, the Council has thoroughly considered the possibility of giving partial access to it. It has come to the conclusion that no partial access can be given, as the document is an inseparable whole.
76. The Council considers that access to the document must be refused pursuant to Article 4(1)(a) fourth indent and Article 4(3) of Regulation (EC) No 1049/2001.

CONCLUSION

For the above-mentioned reasons, the Council concludes that;

- full public access can be given to documents, WK 5161/2021, WK 5161/2021 ADD1, WK 5161/2021 ADD4, WK 5161/2021 ADD7, WK 5161/2021 ADD9 and WK 5161/2021 ADD10;
- partial access can be given to document WK 11161/2020, WK 12094/2020, WK 4706/2021, WK 4706/2021 REV1 and WK 5161/2021 ADD8 with the exception of those elements which are protected by the exceptions laid down in Article 4(1)(a), fourth indent, and Article 4(3), first subparagraph of Regulation (EC) No 1049/2001, read in connection with Article 4(5) of Regulation (EC) No 1049/2001;
- no access can be given to documents WK 5161/2021 ADD2, WK 5161/2021 ADD3, WK 5161/2021 ADD5, WK 5161/2021 ADD6 and WK 6361/2021.

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.