

Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance
The Chair

Ms. Fabrizia LAPECORELLA
Chair of the Code of Conduct Group
Council of Ministers of the European Union
Rue de la Loi 175
B-1048 Brussels

D 308215 18.05.2018

Subject: *Invitation to an exchange of views with the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) on Monday, 25 June 2018, in the afternoon*

Dear Chair,

The Members of the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) would have much appreciated to engage with you on 15 May 2018 within the framework of a hearing on fighting harmful tax practices within the European Union and abroad. The committee had a very productive discussion with the Commission and representatives from the academia and civil society.

The TAX3 Committee has within its remit to assess the methodology, country screening and impact of the EU list of non-cooperative jurisdictions for tax purposes and to follow up on the progress by the Member States in ending tax practices that allow for tax avoidance and/or tax evasion that are harmful for the proper functioning of the single market. This is a task for which the group you preside over has a crucial role and for the discussion of which you are in a privileged position.

The committee has thus decided to invite you again to an exchange of views with the TAX3 Special Committee on **Monday, 25 June 2018, from 15:45 to 17:00**. The purpose of the exchange of views will be to discuss the work of the Code of Conduct Group, notably as regards the EU list of non-cooperative tax jurisdictions, potential aggressive tax measures in the EU and the transparency and reform of the group.

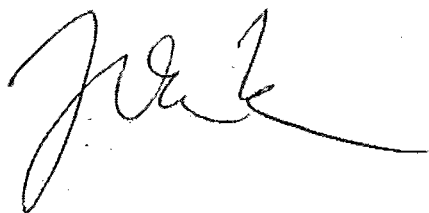
In order to better prepare the discussion, the committee would be grateful if you could provide it with a written answer to the questions you will find in an annex hereto by **Tuesday, 19 June, e.o.b.**

I hope you will be able to accept our invitation in the same way your predecessor Dr Wolfgang Nolz did, and to engage with our committee members in an open dialogue based on sincere cooperation.

The TAX3 committee secretariat (Francisco Manuel RUIZ-RISUEÑO, Tel. +32 228 40561, francisco.ruizrisueno@ep.europa.eu) will liaise with your services for the practical arrangement of our invitation.

I remain at your disposal for further discussions on this matter. I thank you in advance for your availability and look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JEŽEK', with a long horizontal stroke extending to the right.

Petr JEŽEK

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council
Mr Andreas STRUB, Head of Unit, Council of the European Union

ANNEX

Questionnaire

- Would you say that the work of the Code of Conduct Group is successful? If so, could you provide Members of the TAX3 Committee with statistics?

On the CoCG reform

- In March 2016, the Council adopted conclusions on the Code of Conduct Group on Business Taxation¹. In these conclusions, Member States:
 - “Recalled the Group to develop guidance on the interpretation of the gateway criterion and its application”. Could you please provide an update on the state of play of these guidelines?
 - “Decided that a subgroup will deal with the clarification of the third and the fourth criteria of the Code and that another subgroup will deal with dialogues with relevant third countries”. Could you please provide an update on the state of play of this clarification?
 - “Invited the Group to explore initiatives to further inform the public on the results of its meetings and to report back to ECOFIN on this issue by June 2017”. Could you please explain which initiatives have been adopted to increase information to the public on the outcomes of CoCG meetings (beyond the 6-monthly reports to ECOFIN)?
- The COCG met on 12 April 2018 and discussed amongst others “Revision of the mandate of the COCG: state of play (presentation by the Chair) and preliminary exchange of views”.
 - What are the conclusions or ongoing progress of the HLWP on the revision of the Code of Conduct Group’s mandate? Could you detail the state of play of the COCG discussions and plans for the reform of the COCG?
 - According to your view, what areas or elements of the Code of Conduct Group and its work need a reform/improvement and why this has not been done so far?
- How is the Code of Conduct assessing whether the harmful measures have truly be rolled-back (i.e. not just by law but in practice as well, and that no substitute measures with an equally harmful effect are being introduced)? Based on the work of the CoC Group, do any EU Member States has in place any harmful practices of which you are aware, but about which the CoC Group has not taken its position or has not found a common solution (e.g. VAT advantages, investment related tax relieve, patent boxes, etc.)?

¹ <http://www.consilium.europa.eu/en/press/press-releases/2016/03/08/ecofin-conclusions-code-conduct-business-taxation/>

On the listing process

- The European Parliament has been calling for more transparency in the screening process by the Code of Conduct Group, especially in the commitments third countries take to be removed from the so-called “blacklist”.
 - What steps have you taken or are you planning to take in this regard?
 - What do you respond to the PANA report stating “notes, however, that the screening process, as conducted and overseen by the Subgroup on Third Countries of the Code of Conduct Group (Business Taxation), is not fully transparent and does not allow the EP to exercise its scrutiny powers”? (§10)
 - Will the Code of Conduct Group publish all the documents concerning the EU list of non-cooperative jurisdictions for tax purposes, namely the detailed methodology to assess third countries and the compiled outcome of this assessment (with country profile)? If yes, when can we expect this to happen?
- Brazil is not in the list of non-cooperative jurisdictions for tax purposes, nor in the “grey list”, while Brazil has an “Export Processing Zone”, a preferential tax regime which does not seem to comply with criteria 2 of the EU list. Has this been addressed during the assessment phase of third countries? For which reasons was it decided to not put Brazil on any list?
- For which reasons did the Code of Conduct Group suggest to withdraw the mention of “no or close-to-zero corporate tax rate” as a sub-criteria for the assessment of third countries in preparation of the EU list?

On transparency issues

- Can you please provide more information regarding the CoC policy to declassify/publish documents? Which documents does the CoC Group decide not to publish?
- Following the former Special or Inquiry Committees TAXE, TAX2 and PANA, the EP made notably the following recommendations:
 - Regular report and exchange with the ECON committee by the Chair of the Group and the Council to regularly report on the activities of the Group;
 - Regular provision, updates and publication of a list every two years of harmful tax practices;
 - Regular production, provision and publication of its minutes, notably with an indication of representatives of MS' positions;
 - Production of an annual report identifying and describing the most harmful tax measures used in the MS, and stating what counter-measures were taken;
 - annual CoC report on most harmful tax practices used by Member States during the year
- Which responses and concrete follow-up actions have you already carried out and how do you intend to follow up on the points on which you have not yet done so?