COMMITTEE ON FINANCIAL CRIMES,

TAX EVASION AND TAX AVOIDANCE (TAX3)

TUESDAY 15 MAY 2018

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PUBLIC HEARING

THE FIGHT AGAINST HARMFUL TAX PRACTICES WITHIN THE EUROPEAN UNION AND ABROAD

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Exchange of views with Emily O'Reilly, European Ombudsman
Transparency of the Council's work in the tax area

Panel: EU list of non-cooperative jurisdictions: room for improvement?

Valère Moutarlier, Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union

Elly Van de Velde, Professor of Tax Law, Hasselt University

Alex Cobham, Chief Executive, Tax Justice Network

Johan Langerock, Advisor to Oxfam on EU Tax and Inequality Policy

1-002-0000

IN THE CHAIR: PETR JEŽEK

Chair of the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance

(The meeting opened at 14.37)

Exchange of views with Emily O'Reilly, European Ombudsman

Transparency of the Council's work in the tax area

1-003-0000

Chair. – Good afternoon. I welcome Members, the guest speakers and the audience to this meeting of the TAX3 Committee on 'The fight against harmful tax practices within the European Union and abroad'.

We will start the hearing with an exchange of views with the European Ombudsman, Ms Emily O'Reilly, to whom I would like to express our gratitude for accepting the invitation. Previous special and inquiry EP committees have expressed their concerns about the level of transparency of the Council when it comes to tax issues. As you are all aware, the Ombudsman has recently made public a Recommendation on the Transparency of the Council legislative process. The TAX3 Committee would like to learn how the Ombudsman assesses, inter alia, the possible impact of her recent recommendations on transparency of the Council's working methods in the tax area, including possibly on the working methods of its consultative body, the Code of Conduct Group on Business Taxation.

The hearing will continue with a panel on the EU list of non-cooperative jurisdictions for tax purposes, established by the Union last December. The list is intended to be an important instrument to fight tax evasion and harmful tax practices globally. The Code of Conduct Group on Business Taxation was central for the establishment of this list as well as for its subsequent amendments. This is why we invited the Chair of the Group, who unfortunately has not been able to accept our invitation because of a conflicting agenda. However, Ms Fabrizia Lapecorella has informed us that she would prefer to consult Coreper before accepting the invitation.

The TAX3 Committee would also have liked to engage with Minister Vladislav Goranov, the Bulgarian Finance Minister and current Chair of the Ecofin Council, on the fight against harmful tax measures and the priorities of the Bulgarian Presidency for the future of business taxation in the EU. However, the Minister's office stated that he would not be coming, and a short while ago I received the Minister's official reply, where he declined the invitation, stating that he has already presented the Bulgarian Presidency's priorities in the Committee on Economic and Monetary Affairs (ECON) and that he sees ECON as the main interlocutor on the EP side.

I see this as a lack of comprehension of the situation in Parliament, and of the relationship between Parliament and the Council. Ms Lilyana Pavlova, Minister for the Bulgarian Presidency of the Council of the EU, and Ms Monika Panayotova, Deputy Minister for the Bulgarian Presidency of the Council of the EU, were also both invited in case Minister Goranov was not available today. Unfortunately, they did not accept the invitation. I consider this deeply worrying. In my view, Parliament and the Council, represented by its Presidency in this case, must serve as an example of cooperation in the fight against financial crimes, tax evasion and tax avoidance, not the contrary.

I would like to inform members of the Committee that we discussed this issue at the level of political group coordinators this morning, and that we will take all the necessary measures to

engage the Council in our work, although it would seem natural to me that – after the key revelations by journalists, the recommendations of the previous EP committees and initiatives by the Commission – the Council would do its utmost to fulfil its part, which in the end is crucial.

But for today the Committee is happy to welcome four outside experts: Professor Elly Van de Velde, from Hasselt University in Belgium; Mr Alex Cobham, Chief Executive of Tax Justice Network (TJN); Mr Johan Langerock, from Oxfam, and Mr Valère Moutarlier, Director at the European Commission. Welcome to all of you. They will provide the Committee with their insight on the matter, including their opinions on how to improve the list to make it fully effective.

Written questions were sent to them ahead of the hearing. Owing to the short notice for this hearing, some of our guest speakers have communicated that they will be ready to provide a written reply to our written questions subsequently to the hearing. All members have received the written answers from the other panellists. Answers are also available on our Committee's website.

I am very pleased to welcome Ms Emily O'Reilly, European Ombudsman. We sent you a list of questions on different relevant topics in advance of the meeting and we are very honoured that you took the time to send your replies, which will be circulated to the members of the Committee. Ms O'Reilly, I now invite you to make your opening remarks. You have ten minutes.

1-004-0000

Emily O'Reilly, *European Ombudsman***.** – Thank you very much indeed, Chair. Good afternoon everybody. I would like to thank the Committee for the invitation to join you this afternoon to discuss the fight against harmful tax practices, as well my work on the working methods of the Council. I will give you a short overview of my inquiry into the Council's accountability and access to documents, which I opened over a year ago and which will close this week, and I am happy to take your questions afterwards.

The 2017 'Paradise Papers', which was the second biggest leak of records relating to offshore investments and tax avoidance after the 'Panama Papers' of 2016, refocused public and political attention on global corporate taxation, tax havens, tax fraud, and the related issue of the challenges caused by income inequality. Those revelations prompted the creation of this special committee, and follows the work of earlier committees on how this significant issue is being dealt with at EU level and whether enough is being done to support the public interest in creating and maintaining a fair and equitable tax system within the EU and globally.

Transparency is clearly central to this work. Those who want to avoid public scrutiny of their tax strategies – even if legal – have a vested interest in maintaining maximum confidentiality. The jurisdictions in which these strategies are being executed – and the companies helping to execute them – may of course share that interest. I note that Appleby, the company which held the Paradise Papers, recently settled its breach of confidence lawsuit against the Guardian and the BBC, the media companies that were part of the International Consortium of Investigative Journalists that broke the story.

Client confidentiality is, of course, an important part of enabling economic growth and facilitating business, but it does not eclipse the public interest in making sure that the confidential actions are lawful and align with best practice. Public institutions also need to be held accountable for their decision-making in this field. Ordinary people – ordinary citizens – have little or no control over private companies and they rely on public institutions to safeguard their interests. That is the work that this committee is engaged in.

Accountability is possible only when relevant and timely information is available. Something that is invisible cannot be measured and cannot be evaluated. The EU institutions in general have a high level of easily accessible information available to the public, but the Council still has considerable room for improvement.

My Office has not received any specific complaint concerning the transparency of the Code of Conduct Group on Business Taxation or on the working methods of the Council in the area of taxation. However, the Code of Conduct Group on Business Taxation is a formal preparatory body of the Council. Issues concerning the Group's administrative practice – and therefore documents – could therefore fall within the scope of my mandate.

The most straightforward way for me to deal with transparency issues concerning this Group would be via a complaint in the event of access to a document or documents being denied, or partial access only granted. In that way, I could see whether a refusal to release was justified on the basis of the exemptions included in Regulation 1049. High standards do not, of course, mean that everything needs to be transparent, or immediately transparent. Sometimes it is in the public interest for documents not to be published or not published until the appropriate time.

The transparency regulation, Regulation 1049/2001, essentially takes as its starting point the presumption that documents held by the EU will be released unless a specific exemption applies. Some exemptions are subject to a public interest override. In other words, even if a harm – such as commercial damage – may occur as a result of release, the public interest in release may override that. Some exemptions are deemed to be mandatory: they are records relating to public security, defence and military matters, international relations and the financial, monetary or economic policy of the Union. No public interest test has to be applied, but the institution still has to give reasons for refusal.

Where third parties are concerned – and this would include some of the countries deemed to enable tax avoidance – if a request is made for their documents sent to the EU to be released, the third party country will be consulted, but any possible refusal has to be in line with a valid exemption in Regulation 1049. Similarly, if a Member State requests an EU institution not to disclose a document it has sent to the EU, it has to be assessed whether this request is in line with a valid exemption under the regulation.

Taxation is obviously a very sensitive and contested issue within the EU. It is sensitive domestically for Member States, but also for the EU as a whole when it comes to trading and diplomatic relations with third countries, some of whose tax regimes may – and do – damage EU interests by depriving it of revenue. One can see therefore how the impulse to deal with some of these matters through opaque diplomacy may clash with the demands of transparency, and the mandatory exemptions in Regulation 1049 may come into play.

The Code of Conduct Group on Business Taxation is, as you know, tasked with important preparatory work on several important tax issues, including the examination of existing, potentially harmful tax competition within the EU and the drafting of a list of third countries with non-cooperative jurisdictions for tax purposes. It advises the Council on what countries should be on that list, what they need to do to be taken off it, and whether enough has been done to justify being taken off the list. That work would seem to demand a high level of transparency if the public is to be reassured that appropriate action is being taken to protect their interests. However, as I noted earlier, one can see how some of this work could lead to transparency challenges.

As I said, I have not received any specific complaints vis-à-vis the Group. However, my office receives few complaints concerning the Council in general, which may be due to the limited knowledge that most EU citizens have about it as an institution. My work on the Council's

accountability has so far focused on discussions on draft legislation taking place with its preparatory bodies, in the working parties and in Coreper. I launched a strategic inquiry on that matter in March 2017. Council and Parliament are co-legislators, but that linkage breaks down when it comes to accountability standards. While this House proactively publishes draft reports, amendments, and voting results, the Council restricts the access to most of its documents until after a legislative procedure is concluded.

The intent of the EU Treaties is that legislative deliberations must be sufficiently transparent for European citizens properly to exercise their democratic right to participate in the EU's decision-making process and to hold those involved to account. To do that, they need to know at an appropriate time what position their Member State is taking, or has taken, on a piece of EU legislation. If that element remains opaque, then the 'blame Brussels' culture will continue, with some citizens continuing to believe that the so-called 'faceless officials' decide on legislation and not members of their own governments.

I also believe that making the positions of Member States publicly known in a timely and accessible manner can help reduce citizen alienation from the EU institutions. I fully appreciate the difficulties in getting consensus or a majority vote among 28 Member States but, if the balance between 'behind closed doors' diplomacy and accountability shifts too far behind those 'closed doors', the public interest is no longer served.

To get an overview of the Council's practices, I inspected three legislative files of the Council, although none of them in the area of taxation. I found that the Council's current practices constitute maladministration because of its systematic failure even to record the identity of Member States taking positions in preparatory bodies, and because of its widespread practice of restricting access to ongoing legislative documents by assigning them with the so-called '*limité*', or restrictive, marking.

On 9 February of this year, I made three specific recommendations and several suggestions to the Council on how to improve its accountability. The Council failed to reply to my recommendations within the legally prescribed three-month timeframe, which elapsed last week, on 9 May 2018. But, in view of the importance of the issue of legislative transparency, I decided to proceed with my inquiry and I will most likely be sending a special report to Parliament on the inquiry this week. My understanding is that the Committee on Constitutional Affairs and the Committee on Petitions will draft a report in response to my special report. All Members will be able to participate in this process and my office is happy to keep your committee duly informed about the next steps.

It is important, however, to point out that my inquiry is about the Council's legislative work. Legislative documents have a special status under Regulation 1049 and must be made proactively available by the EU legislature. Generally speaking, under the regulation and case law, a higher standard of transparency applies to legislative documents than to other non-legislative or administrative documents. However, my inquiry is not limited to a specific policy field or legislative proposal. While the files I inspected were all adopted in accordance with the ordinary legislative procedure, this special transparency requirement extends to all legislative procedures. My recommendations are meant to apply to legislative discussions in all preparatory bodies, including legislative proposals in the area of taxation, such as the current revision of the Anti-Money Laundering Directive.

With regard to non-legislative files, I understand that the Council's Code of Conduct Group on Business Taxation issues guidance notes and prepares Council conclusions, such as the EU list of non-cooperative jurisdictions for tax purposes. These are political commitments used to coordinate Member States' actions or express a political position; they are not legally binding. Such discussions are not 'legislative' in nature and therefore do not fall within the scope of my

present inquiry. However, this does not mean that public access to this type of document cannot be sought or granted under Regulation 1049.

As you know, Parliament's previous inquiry committees on taxation faced significant issues in accessing documents from the Council. Generally, all EU institutions must give public access to EU documents, unless they fall under an exception. This also applies to documents related to the Code of Conduct Group on Business Taxation that are held by the Council. The Court of Justice has ruled, most notably in its Access Info Europe case, that 'Regulation 1049/2001 aims to ensure public access to the entire content of Council documents, including, in this case, the identity of those who put forward the proposals', referring in this case to the Member State positions. While the Court has placed special emphasis on legislative documents, it still unequivocally maintains that 'public access to the entire content of Council documents constitutes the principle, or general rule, and that that principle is subject to exceptions which must be interpreted and applied strictly'. I sometimes feel that the Council is operating from the opposite starting point, where non-disclosure is the general rule and public access is the exception, despite the clear intent of the Treaties and of the transparency regulations.

To conclude, my Office has the mandate to look into the EU institutions' application of the EU's transparency rules. As the Ombudsman, I have the power to inspect all EU documents, whether confidential or not, and can issue recommendations as to whether they should be published or not. Most of the time, I agree with the EU institution involved which refuses to publish for valid reasons. However, on other occasions we disagree. I have not yet received any complaints directly related to the Code of Conduct Group, but I will assess any complaint issued to me rapidly and in detail. My Office can accept complaints not only from citizens, but from MEPs and also from parliamentary committees. All complaints concerning access to documents are now handled internally via a new fast-track procedure, whereby my aim is to issue a decision within 40 days.

As I said at the start, in the absence of specific complaints, my observations have necessarily to be general, but I am happy to answer any questions you may have and, if needed, my Office can follow up with written answers.

1-005-0000

Chair. – Thank you very much, Ms O'Reilly, for the introduction and the efforts made. I would perhaps observe that the reason why you have not received any complaints vis-à-vis the Code of Conduct may be that not many people even know that such a powerful body exists due to the level of transparency.

We will now enter into discussion. Questions will be asked in slots of five minutes, with the question being a maximum of one minute in length and the remaining time devoted to the answer. If time allows, the Member will have the possibility to ask a follow-up question. I will first invite the two TAX3 rapporteurs to take the floor. First, Mr Niedermayer, EPP, for five minutes.

1-006-0000

Luděk Niedermayer (PPE). – Chair, thank you very much and let me say that I am delighted to have you here, especially after we listened to your inspiring speech. We are disappointed that some other people didn't show up.

We have been struggling with the issue of taxation for many years here in Parliament, and for good reason, because this is one of the most important economic battles on both the social and political agenda. Sometimes we are quite frustrated by the very slow pace of improvement, regardless of the many successes. The Code of Conduct group is at the centre of attention because this is the place where good things can start and also the place where bad things can

start. This is why we are concerned, and I am sure that we will talk about it with you in the future.

But instead of talking about the Code of Conduct group, let me now go to the issue of your work vis-à-vis the Council. There is a big difference between the transparent manner in which Parliament is proceeding and the manner in which the Council is acting, but some people would argue that a low level of transparency in the Council is the way to make sure that a compromise is reached. However, some people would strongly disagree, so let me ask you three quite subjective questions and ask you for your personal opinion.

The first thing is that you are pushing for transparency in all fields of the European Union. Do you think that, in most cases, the strengthening of transparency is leading to better and more efficient decision-making, or could it be the other way round? The second question: is there any reason why the standard of transparency should be different when the representatives of countries are deciding on a unanimity basis compared to majority decision-making?

The third question: sometimes we are frustrated by many files being stuck in the Council without any progress and we actually don't know, formally or even informally, what is going on. Do you think that more transparency would create a certain pressure for the Council to make a decision on which way to go, either to proceed with the file, find the compromises or to stop it?

1-007-0000

Emily O'Reilly, *European Ombudsman***.** – Thank you for that. The issues that you've raised are issues that obviously have been put to us and have been considered as we did this investigation. There were two reasons why we did the investigation into Council transparency: first because we judged that there were very different levels of transparency vis-à-vis the Parliament and the Council, and also because the Council is a very opaque and not very well known institution to citizens, even though it's their governments, their Member States, who are actually taking part.

When people, as you know, blame Brussels, they think it's the bureaucrats or maybe the Parliament. They never consider that it's their own Member States acting together and co-legislating with the Parliament, in the vast majority of cases, that are doing that.

Over the weekend, I read an academic work in relation to transparency and the Council, particularly in the area of trilogues. It was looking at this issue as to as to why, for example, there is a trade-off between accountability and efficiency, because obviously trilogues have become very important. The person who did this academic study looked back almost decades in relation to this and the conclusions that he came up with were that transparency varies very much depending on what the file is, and not what the standard operating procedure is. For example, in a file where a large amount of money is at stake, where the Member States are essentially being asked, or the EU is being asked, to spend a large amount of money on something, there is limited transparency. On issues that are deemed to be politically sensitive there is limited transparency. On issues which are not politically sensitive, some issues concerning the environment, for example, or social measures or issues like that, there is wide-scale transparency.

So it is hugely political. It's the political sensitivities that determine the transparency. What we've been working through in our investigation is what is supposed to be done legally, but also in line with the Treaties, in line with the fact that citizens have a right to know what is going on so that they can get involved if they so decide.

Obviously, the argument that is constantly made is that if you have too much transparency then it's very difficult for compromises to be reached. But any good transparency law, including 1049, allows for the space to think, this deliberative process. I mean it has to happen. People have to be able to have frank exchanges at some point, and particularly when sensitive issues are attempted to be got across the line or a compromise is being reached, there has to be the space. Obviously we agree with that. It's where the line is drawn that is the important point.

In relation to one of the net pieces we were looking at, which is the Member States' positions – knowing what position the Netherlands has taken, Ireland, Germany, whoever – citizens need to know this, and what we have called for is not simply that they be published immediately somebody says something in a working group or in Coreper, but that they be recorded and that, at a particular point to be decided, they can be released. Or at least, even historically, looking at a piece of legislation, people can see what happened.

In the ECJ ruling in the Access Info Europe case, which I reference in my piece, said that if they are recorded then they have to be released. There is no exemption that would allow for them not to be released, and that the presumption would be to release. So what we discovered, possibly not unsurprisingly, when we looked back to see how the Council had behaved in different working groups and Coreper after 2012, was that they didn't record the Member States' positions. Sometimes we think we have access to information, but we don't. We have access to records. So if a record doesn't exist then you can't get it.

So the main recommendation I have made is that the Member States' positions be at least recorded. Nothing is black and white, and those issues that you have raised are of course there, but you have to balance out the possible risk in that, versus the risk that we are currently living through, which is the lack of trust in the institutions, the opaqueness, the Brussels blaming culture and so on, where people can point to unelected bureaucrats, as they call them, and say they're the ones who are bringing in all these laws, when in fact it's the Member States themselves.

1-008-0000

Jeppe Kofod (S&D). – Chair, thanks to you and to Madam Ombudsman for this very interesting and excellent presentation. I was very concerned when you said that it seems that the Council's culture is more based on non-disclosure rather than disclosure. It should be the opposite actually. We are Members of the European Parliament and are directly elected by our citizens, and they have a democratic right to know what their representatives are doing. The same goes for our governments in the Council. There will perhaps be more trust between Institutions and citizens if this happens.

Firstly, I read your written answers very carefully, and I thank you for them. You said in your written contribution that the Council had failed to meet the deadline of 9 May and that they would not reply sooner than July. I wonder about this self-set deadline that the Council now has: what happens if they don't fulfil that deadline? What will you do, as Ombudsman, in that regard?

Firstly, you also say in your very clear conclusions – and I quote you in the written answer – that the Council working groups fall short of what is expected of the Council in terms of legislative transparency and that this constitutes malpractice. That is what you wrote to us, so based on what you have seen and written, have we any seen any changes in the Council's working procedures since you started your investigations? That is my first question.
Secondly, have you been contacted by the Council concerning altering their current secretive processes. Have they started a dialogue and is there anything going on, because this is crucial. When it comes to tax issues and the Code of Conduct group for business taxation, I have to say that we are in a single market together and tax issues, such as harmful tax practices, are a big

concern in a single market where we have free flow of capital, goods, services and people. I wonder whether that link is strong enough, because we cannot be in a community together if something is going on in secrecy in a working group. They have a clear mandate to phase out harmful cross-border tax practices, but if they're not doing so, what then? They are actively failing their mandate and they are also failing to serve European citizens and countries.

1-009-0000

Emily O'Reilly, *European Ombudsman***.** – Thank you for that. Well, we gave them the deadline of 9 May, which is coincidentally Europe Day – that was a complete coincidence, not deliberate. Normally when an institution asks us for an extension we can extend it, but we made it clear because of the importance of this issue – and also because we are rapidly approaching 2019 obviously and all of that – that we would not accept requests to extend it. A few weeks ago they came back to us and they said they'd like an extension and we just said no. This week, I think, we will be announcing that. I'm going to be making a special report to Parliament, looking for Parliament's support in relation to this. It will be only the second report to Parliament of my mandate. It's a serious issue and that highlights the public interest that we see in this.

In relation to improvements, yes, I think certain improvements have been made, but the other recommendation that I made was in relation to its stamping of *limité*/restricted on so many documents. It's almost like a blanket approach. One of the statistics is that when people look for those documents, those records which have been stamped *limité* under 1049, over 80% of them are released, which means that there was no reason for them not to be released in the first instance, though there may have been a timing issue. We have said that this constitutes maladministration as well, because you cannot just put a blanket ban on release for innocuous documents and documents that may well be sensitive. Every document has to be looked at vis-à-vis 1049 to see whether an exemption applies.

The other issue, yes, I read with great interest a very detailed report of the last committee and I was very struck by the very strong words that were there about Council and about the issues that they have. I can only do a little bit vis-à-vis transparency, but I think transparency has to be the core because once you release this into the air, like the Paradise Papers and the Panama Papers, then you get the very activity that we're seeing in this room and it's pressure. It may not be pressure that will immediately have an impact, but it's pressure that also raises public consciousness, and when something is very difficult, it needs a high level, it needs a coalition of forces, to change it. I think transparency is a key tool in that.

1-010-0000

Dariusz Rosati (PPE). – Ms O'Reilly, thank you very much for joining us this afternoon, and thank you for your presentation. I am very happy to hear that both your office and the House here is on the side of more transparency. Both you and we are here to guarantee access to information for European citizens, and this certainly provides a good platform for us to cooperate.

Firstly, I would like to ask you how you could help us here in getting more access to some sensitive – or not sensitive, but protected – information, which we have been unable to get from the Council. In the previous inquiry committee on the Panama Papers, we asked for a number of documents, but what we received, in many cases, were simply blank pages or completely blacked-out pages. That, of course, has made an impression of a very discretionary process of just deleting everything which may have remotely been considered secretive. Do you think that in this framework of cooperation between your Office and Parliament you would be able to help us, for instance by issuing guidelines on how information, and especially tax information, should be treated from that point of view – on the decisions of Member States on tax rulings and information on the so-called 'ultimate beneficial owners' in financial transactions? How can we expect you to help us and therefore to achieve better and more transparency in those areas that are so important for our citizens?

A second very brief question: in February 2018, you introduced the new fast-track procedure to deal with access-to-documents complaints. Are you prepared to give us some tentative assessment of how effective it has been so far? I know it is perhaps too early to say, but maybe we could have some early observations on that.

1-011-0000
Emily O'Reilly, *European Ombudsman***.** – Thank you for those questions. Under the transparency regime within the EU, the institutions really have the power to turn on and off the tap in relation to the release of records. They can decide to have a 'full tap' or they can decide that it's just going to be a trickle. And then, if you're not happy with what happens, you can come to me or you can go to the Court. The best way that I can assist is to deal with a complaint. If you don't get access to a particular document or a set of documents, and you feel that this is not correct or you have got documents which have been blacked out, the best way for me to deal with that is simply to get a complaint from you once you've made an appeal to the relevant institution, so that I can see what is happening.

Obviously, they do not have to follow my recommendation. In the vast majority of cases, they do, but at least it will make the institution – force is probably too strong a word – it'll encourage them, because they have to give reasons as to why this particular document has not been released. By opening that up, that would be helpful. Whatever I can do to help you, you can also help me by perhaps considering sending a complaint, if that is your choice.

On the wider issue, there is a network of Information Commissioners. These are people outside of the Courts, independent officers who deal with appeals under their jurisdiction's FOI act. It may be worth having some sort of contact with the Information Commissioners across the EU to see what issues arise and how they are dealt with specifically in relation to tax matters.

In relation to Fast Track, so far – fingers crossed – it's working well. What we did was actually quite simple. We realised that transparency complaints were different to other complaints, because by the time they come to us, the institution – whether it's the Commission or the Council or whoever – will have given its definitive decision on what the issue is, and there's nothing more to add. In the past, we went back to them once we got a complaint and asked them to say all that again, which was a waste of time. So with the Commission's consent and having worked with them, we have now taken that piece out of the equation. This means that as soon as we get the complaint we can begin to deal with it, because the full explanation as to why it hasn't been released will be there. So far it's working well. Sometimes there are still delays, but so far we're happy with it, but as you say, it's early days yet.

1-012-0000
Arndt Kohn (S&D). – Chair, I would like to thank Ms O'Reilly for being here and for the fact that we know she is on our side on the subject of transparency and the subject of cooperation with the Council.

Both in the context of the budgetary discharge procedure in the Committee on Budgetary Control and in numerous other instances in the Code of Conduct Group we have now heard of many areas where things are not running smoothly.

I have just one question, Ms O'Reilly, about the fact that you have more authority than we have, either as a special committee or as Parliament, to demand or to request documents. Do you think that situation is justified or do you see any scope for us, as Parliament, to acquire more authority – albeit, in many cases, to join you in banging our heads against a brick wall?

1-013-0000
Emily O'Reilly, *European Ombudsman***.** – I know that this is an issue that has been much debated and it was one of the issues raised in the report of the last TAX Committee. I know that it comes up constantly in parliamentary committees, especially when they are doing sensitive investigative work, such as the work in which this committee is currently involved. I think it was you, Chair, who quoted from the Treaties, which talk about the institutions working in 'sincere cooperation'. I think that is the phrase.

So there is political work to be done and I am going to stay outside of the line in relation to that. But I think – as I said to the other deputy – that, in relation to my own work, it would be helpful to start getting complaints so I can begin to excavate the rationale for the Council, and that in itself might help you in relation to your work. But that there are ongoing talks, whether formal or not, about Parliament getting more power to do investigations.

I was – as a citizen, leaving aside my position as an ombudsman, obviously I am not an expert in taxation – quite shocked by the figure that was given in the last report about the amount of money that the EU loses in relation to tax evasion and tax avoidance. It is something like EUR 1 trillion per annum. It is extraordinary, and I would say that the vast majority of citizens are not aware of it. Most people, when they think of tax evasion, think of their local multimillionaire and how he or she might be skipping off to a far off island to do it. They do not see it in the terms in which you and the last committee have outlined. Therefore, there is a big piece of work to be done in relation to raising citizen consciousness about the gravity of this particular issue.

1-014-0000
Nils Torvalds (ALDE). – Usually, when I have been describing what we are trying to do concerning tax evasion, I have been describing it as the 'inverted prisoner's dilemma'. In the real prisoner's dilemma, criminals cooperate because they think that they can gain something by that. In this case we are not speaking about criminals, but we are speaking about a certain institution. It is playing a sort of stonewalling. In your presentation you actually hinted that this way of stonewalling is actually creating a lot of bad vibrations and bad press coverage for the European Union, so you could probably say that the Commission, by the way it is acting, is actually hurting the Union in a very disturbing way. That is, of course, something we should be able to address, but we do not have the muscle that the police officers have in the prisoner's dilemma, so we need your muscle.

1-015-0000
Emily O'Reilly, *European Ombudsman***.** – I'm not going to use those words either; I'll leave them to you!

(Laughter)

Yes, I obviously take and agree with your general point. Virtually every few weeks or every month we hear an EU leader – either a Council Member or the Head of the Council, the President of the Council – lamenting the lack of citizen engagement, the democratic deficit, concerns about the fallout from Brexit, the fallout from populism, all of this. So I think it is very important for the Council to join the dots and to make the connection between the big words and the big dilemmas and what actually happens on a daily basis.

I think the work of committees like this, the piece that I can do, and what Parliament more generally has to do – and when there is an election coming up, and in this case I'm talking about the European elections, the European Parliament elections, everywhere you go there are debates about the future of Europe and President Macron and others have been very active on that – has to be translated into something meaningful, something tangible, and these sorts of issues have to be looked at.

Just very briefly, I would make a point in relation to secrecy in Member State positions in Council. One cannot imagine a Minister appearing on, let's say, a radio programme in my own country, in Ireland, or anywhere else, and being asked about a domestic piece of legislation, such as 'tell us about your proposal for x, y, and z' and the Minister replying 'no, I'm not going to, that's a secret'. But that's essentially what happens at Council level. I know it's not on all floors and I know there are different issues and different dynamics that emerge, but that essentially is what it is. And yes, it is scary, and yes, it might discombobulate everybody in the consensus-building, but there is also an issue of political maturity, rather than being like an ostrich sticking its head in the sand and pretending. The Council has to trust its citizens as well in relation to understanding how things happen and the sort of compromises that have to be made in a mature political democracy. It might take a little bit of courage to do that, but I doubt that the heavens are going to fall as result of it.

1-016-0000

Max Andersson (Verts/ALE). – So many good questions have already been asked, and answered, but I have a few left on my list. The first one I would like to ask is whether you have received an explanation from the Council as to why they have not answered your letter within the deadline of 9 May. Do you have any information on the positions of different Member States regarding this issue described in the letter?

I would also like to ask about another important issue concerning the transparency of the legislative process, and that is the question of the transparency of trilogues. We now have a ruling from the European Court of Justice in the De Capitani case on trilogue transparency, and I would like to know what the follow-up steps are that you will be taking to ensure that both the Court's ruling and the recommendations in the strategic inquiry on the transparency of trilogues are complied with.

1-017-0000

Emily O'Reilly, *European Ombudsman***.** – In relation to the Council response, I think they simply said that because of the structure of the Council, they did not have time to get views and pass them on. That was it, and nothing much deeper than that. In relation to trilogues, yes, we did do an investigation into that and we made certain recommendations. At the time, the Council and, indeed, the Commission and the Parliament, were awaiting an ECJ ruling that had been taken in relation to the publication of the so-called 'four column' document which shows the amendments and the compromises that are made. The ruling came out about three or four weeks ago, I think, and it said that there is no reason why that document could not be accessed, providing Regulation 1049 allowed for it, during a trilogue. My recommendation had been different; my recommendation was that the four-column document could be released at any time, obviously, but, at the very least, after a trilogue ends. So they were holding back to a certain degree and now that this ruling has come out we will be going back to see what they have done. There have been some moves in relation to very basic stuff such as making it easy for citizens to know what trilogues are going on, when they are happening, who is taking part and all of that, but we do not just put those out and let them fester, if you like. We do have a policy of following up and making sure that the recommendations are followed. As I said, the delay was partly because of this ECJ ruling which was in the making, but now it has been made, so we will follow up.

1-018-0000

Martin Schirdewan (GUE/NGL). – Thank you, Ms O'Reilly, for your excellent contribution. You have highlighted in your responses that the regulation aims to ensure public access to the entire content of Council documents, including Member States' positions. In this committee, and previous ones, we have sometimes – and this has already been mentioned today – been frustrated by the refusal of the Council to provide us with access to documents that show the positions that Member States take, but it is even more alarming to see in your report from February that the positions of Member States are frequently not even noted in the Council's own records.

Your findings seem to indicate that the Council is in breach of Article 15 of the Regulation governing public access to documents, which says that the institutions shall develop good administrative practices to facilitate the exercise of this right of access.

We welcome the recommendations in your report on the Council's legislative process, but note that the Council has not engaged with the Ombudsman by responding to the report within the deadline. Do you have a process in place to follow up on the recommendations you made that the Member State positions must be recorded in Council documents? That would be my first question. Do you intend to carry out a follow-up investigation and is there, in your opinion, the possibility of specific legal action regarding the breach of the Regulation mandating good administrative practice?

1-019-0000

Emily O'Reilly, *European Ombudsman***.** – Well, obviously a court case can be taken in relation to refusal to access a document and, as you know, MEPs have taken them in the past. What I am doing is a very big step for my Office, in that I am making a special report to Parliament and asking for Parliament to support it. As I said, this is only the second time I have made a special report since 2013, when I began my mandate, and in fact my first special report was actually a follow-on from an initiative by my predecessor, so this is really my first one in that sense.

I think that there is also another issue and it has not been raised here: where are the blockages within the Council? Why are you not getting the records? Obviously there may be certain advised political issues and political sensitivities as well but, given the nature of taxation and given that the figures that we are talking about are not billions or multi-billions but trillions, clearly there are an awful lot of interests at stake and clearly lobbying plays a huge role in how this issue is dealt with. A lot of my work has been in the area of lobbying transparency, and I have obviously followed Parliament's and the Commission's work in relation to the toughening-up of the rules in relation to the lobbying register and so on. I have also talked to colleagues – ombudsmen and others – in other Member States in relation to how lobbying is regulated or not regulated in Member States. I would say that it would be a safe enough bet that this is arguably one of the most lobbied areas within the Member States and even within the EU. I don't know the extent to which one can find that out, but it is something that is there and that I would say is very strongly influencing the way in which this committee and others are being, and have been, dealt with. In relation to my follow-up, that will be the special report which I will announce later this week.

1-020-0000

Barbara Kappel (ENF). – Chair, I would like to thank Ms O'Reilly for her very interesting presentation.

I was a member of the Special Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA Committee), and just now, when you were saying, Ms O'Reilly, that a complaint would give you the opportunity to address the Council within the scope of your mandate, I was thinking – the point has been mentioned already – of just how many redacted Council documents we had in the PANA Committee. Perhaps we should have lodged a complaint with you against the Council. We may even do so retrospectively – the Chair is here today.

I really think that the Council behaved quite presumptuously, even by its own standards, in failing to meet your deadline of 9 May. I assume you gave them a reasonable period of time in which to respond properly.

So I would like to ask you to outline briefly, if you can, what you will be calling for or requiring in the special report, which will be your first such report. How do you intend to tackle the Council?

Secondly, with regard to the Code of Conduct Group, something else which emerged very clearly from the PANA Committee's recommendations – to take the example of the EU list of jurisdictions that are non-cooperative in tax matters – was the absence of transparency, notably in the listing process. As you noted again today, it has not been clear how a country gets listed, who doesn't get listed and who gets taken off the list. There has been a great lack of transparency there. So my next question is whether perhaps – even in the absence of a complaint – you have specific recommendations for the Code of Conduct Group, or guidelines on corporate taxation indicating how these processes could be made more transparent, how to standardise access to transparency, and whether perhaps you have a standardised approach, or proposals for such an approach, in the whole area that you mentioned today of accountability versus diplomacy behind closed doors. It is another area in which, I believe, we need a very specific approach with standards and guidelines so that transparency does not go by the board again.

1-021-0000

Emily O'Reilly, *European Ombudsman***.** – Thank you for that. What I will be asking Parliament to do, and this will go before the Committee on Constitutional Affairs and the Committee on Petitions, and then to plenary, would be to quite simply endorse my recommendations, with a view to putting pressure on the Council to act in relation to them. That will be happening very shortly. In relation to the other matters, for me, standards, yes – and I am repeating myself, I know, at this stage – the simplest way is to send complaints, because then I will be able to see what reasons the Council gave, and if it did not give reasons I would ask them to give reasons as to why they had refused. Then I would be able to evaluate, assuming I got a sufficient number of complaints that were able to show this in detail, whether or not the reasons for non-disclosure were valid. But without seeing them I cannot do that.

Another suggestion is that whoever wishes could have informal talks with some of my investigators in relation to some of the more technical matters and explore ways in which this issue could be advanced. You are more than welcome to contact my Office and we will put you in touch with people who would be able to guide you in relation to that. For me, when I was writing my address to you and seeing that we had not had any complaints, aside from frustration, obviously it is an issue of significant public interest and one on which I would welcome giving whatever assistance I could.

1-022-0000

Esther de Lange (PPE). – I am sorry to have missed your introduction, but I would like to hear from your experience – because you are surely aware of the initiative of COSAC and the national parliaments, and you might have referred to it in your introduction – how we can use the information that is available in certain Member States where there is a very lively debate on European legislative files, where in national debates Ministers will actually take a certain position. From my experience in practical terms over the past ten years, I have seen that it is possible to compare and contrast what Ministers say in a Member State and what information we have at a European level – often informal – as to their behaviour at European level. I can do that for my Member State, the Netherlands, because I can follow the debate in the national parliament, and I can often follow – informally, because as you mentioned, the records are not there – the positioning within Council. On a number of legislative files where I was pretty much in the lead I have done so for several Member States, so I can see where the gaps are, but I have never been able to make a full picture for all 28 or all 27, although I am convinced that the information is there.

On the basis of your experience, what is the advice you can give this House on how to work better with the information that is already there at a national level, so that we can have a more complete puzzle, including in the work that we do here on tax matters, than we have now when we can only base ourselves on the limited information that the Council is willing to give us, which is virtually nothing. What would you advise?

1-023-0000
Emily O'Reilly, *European Ombudsman***.** – I have often said that when you get an issue which is as sensitive as this one, what you need are political champions. You need someone who is actually going to take the issue and run with it, someone with clout, and forgive me, but I had meant to mention COSAC, and particularly the Dutch, who have really taken the lead in relation to this in encouraging their colleagues to attempt to make the Council more transparent. Certainly during the Presidency they did a lot of work on this and on transparency generally. I think they got 20 national chambers to sign up, so that is a start, but it has to be done at that level. I sometimes find in my work when there is a difficult issue to try to get interest in or traction on, or a recommendation across the line, if you don't have some 'small 'p'' political champions, if you don't have a consensus including civil society, politicians, Parliament, NGOs, all working on the same issue, if it is sensitive, then it is difficult.

So the work of COSAC is obviously vital and we could see that because it was very helpful to us and I think some of the work we were doing was equally helpful to the Dutch in relation to how they were pressing this issue. I think they took a lot from our trilogues piece and the work we have done on Council transparency so, without it being a formal collaboration, it is helping. But you need people to really ramp it up in terms of allowing people to know how important this is. I made the point earlier that it was only when I was reading certainly through the last committee report that I, as a citizen, realised how extensive this is, the huge numbers that are involved in it, the figures that are involved in it, and the actual real lived impact this has on citizens. So certainly the work that your own government has been doing, and COSAC, in getting traction among other Member States is very important, and whatever I can do in my work to assist you in that I am happy to do so. To be continued. Work in progress.

1-024-0000
Virginie Rozière (S&D). – Thank you very much for your recommendations, which constitute an important phase for this Parliament. It is clear that the Council's lack of transparency is an obstacle to our efforts, particularly our work on the code of conduct, which was criticised in the TAX 1 and TAX 2 reports.

Your investigation is rather general in scope. Could a specific examination of the issue of the code of conduct could be considered with the stated aim of making recommendations particular to this case, which is something of a one-off, and a major obstacle in the way of progress on tax fairness issues? As has been partially alluded to, would a formal complaint from this Parliament be likely to help you in this type of work?

I also wanted to refer back to the De Capitani case, with Parliament's obligation to disseminate the trilogue documents. Do you think that the underlying logic behind the court's decision in that instance could provide new arguments with which to request greater transparency of the Council and the Member States?

1-025-0000
Emily O'Reilly, *European Ombudsman***.** – As everybody in this room has noted, this is a highly sensitive and contested issue. Recently, in preparation for this hearing, I was reading the Commission's general piece on taxation policy in the EU, and what is for the Member States to decide and what is for the EU to decide, and all of that. One of the first lines in that was that taxation goes to the heart of Member State sovereignty. It is the touchstone, so I think we can all understand, if you look at it through that prism, why it is so important. On the other hand, there is huge public interest at heart and I think these issues have been very well elucidated both

by this committee and by other committees as well. I cannot exaggerate any potential role I might have. I am always looking for issues where I could usefully involve myself, where an issue would be of significant public interest and where I am not just replicating the work of an institution or an organisation that might be better placed to do it. Also, an issue that is doable – not so easy that anybody would accept it, but not so difficult that I am wasting my time even trying to do it. Certainly, as a jumping-off point I would welcome individual complaints and then at some point I could consider a more systemic piece. Given that I have not had any glimpse into how the Council operates in relation to this particular matter, it would be useful in the first instance to get some individual complaints.

1-026-0000

Catch-the-eye procedure

1-027-0000

Ana Gomes (S&D). – Thank you, Ms O'Reilly, for your position. Indeed, I really appreciate your support. You mentioned that the opacity that the Council has been imposing could amount to malpractice and maladministration, but it's actually worse than that. Of the one trillion that you mention, we know from the Commission that at least 50 billion are not entering the coffers of the Union or the Member States, in the process of so-called 'tax fraud', of 'carousel fraud', and this is benefiting all sorts of organised crime organisations, including terrorist organisations such as Daesh and al-Qaeda. That is what the Commission has been telling us. So, in my opinion, it could be worse than malpractice and maladministration, it's actually abetting or indeed enabling organised crime and terrorist organisations to continue financing their criminal enterprises. In the case of VAT fraud, the Commission has been proposing action to Member States for more than a year and nothing has been done. What would you say about that?

1-028-0000

Emily O'Reilly, *European Ombudsman***.** – I realise there can be frustration when proposals that are put by the Commission are blocked at Council level, not just in the area of taxation but also in others. I think you have rightly pointed to the gravity of this particular issue. Obviously money laundering is a big part of it, and some of the phenomenon you have mentioned there use money laundering as a means of facilitation. I mean, I think this Committee and Parliament generally, and the Commission and presumably the Council, are well aware of the extent, the width and the depth of this particular problem, which really emphasises the need for this Committee to be able to work effectively. Not just that, but also that recommendations, if they are deemed to be valid, are followed up. You've highlighted that. Again, from my experience as an Ombudsman, both here and in my own country, when things are difficult, things are political, things are sensitive, things are charged, the more separate groupings you have working together the more chance you have of making change. That is why, insofar as my office can do its particular piece in relation to transparency, and that this will give people the sort of information – or some of the information – they need on which to validly make recommendations and to inform themselves, and most importantly to inform citizens, then I will do that.

1-029-0000

(End of catch-the-eye procedure)

1-030-0000

Jeppe Kofod (S&D). – I want to thank the Ombudsman for what I think are very interesting and good answers. Firstly, as you said at the beginning, we in this special committee are looking at companies and institutions, tax advisors, accountants and so on, but as you also said that is only part of the problem in tax evasion and financial crimes. Another part is our own institutions, our public institutions, and the ability for them to be transparent and accountable, where citizens can understand what's going on. I think this fight we are leading together on transparency is fundamental if we are going to build a truly fair single market in Europe, where we don't see issues and where we don't still tax revenues from one country to the other and where we help big corporations to evade their taxes as we have seen multiple times – I mean,

the other day, you could see how a corporation like McDonald's now pays almost nothing in tax in Europe because it has redone its corporate structure, so they can put its revenues, its profits, outside the EU.

So my question to you, or my message to you, is that we need to fight for this transparency and hold our own governments accountable, because some governments are also in this business of tax dodging and we cannot allow that as citizens and as policy makers, and at least we should know why a government is taking a stand and what stand a government is taking so we can confront it and have an open debate. May I remind colleagues also that we had in the European Union also two countries where we had banking secrecy – I mean Austria and Luxembourg – for example. We managed to get rid of that. We managed also to make a deal between the EU and Switzerland to end banking secrecy there for EU citizens. So it's possible we are progressing, but we need transparency, we need to hold our governments and officials accountable and, in that case, I think what you said about the Council and its practices will have repercussions if we do not change the behaviour now. We have huge scope I think for trust, but also for the effectiveness of our EU cooperation and, as I said in my introduction, I don't think we can have a single market where we have removed all barriers, for example to capital, and at the same time we allow harmful corporate tax practices to take place between European countries. I don't understand how we can accept that. So it's not that it's not sensitive to governments or to nation states – of course tax is sensitive – but it's that other part that it is important to deal with.

So I just wanted to say let's work together and let's fight for transparency – not only with the Code of Conduct on Business Taxation but also in general as regards what the Council is doing, and what our finance ministers are doing in Ecofin. We need to be clear on this issue on taxation. We've seen governments that are de facto acting as tax havens. We will have another discussion later today, and if we use some of the criteria that the EU used for third jurisdictions outside the EU, you can even apply these criteria to EU countries and you will find that some of our own EU countries could actually be named as tax havens as well, because their behaviour is similar to the ones we call tax havens.

So I want to thank you, but I think we need to continue this fight and I hope you will be committed, with us, to that.

1-031-0000

Luděk Niedermayer (PPE). – Let me go back to your answer to the issue of transparency versus efficiency. I very much appreciate your balanced view. Talking about my background, in the 1990s I was working in the central banks. Central banks tremendously increased transparency throughout the 1990s, and that led, I believe, to a much better efficiency of monetary policy. I understand that broad policymaking decisions by governments is a slightly different subject, but I would like to ask you, how you see the possibility of increased transparency in the Council in the area of taxation?

This is a very delicate issue. We have unanimity, and we have high political sensitivity. In your view, is there a chance that this might actually harm the ability to find a compromise, or can it facilitate and ease the way to good decisions being made in the end?

1-032-0000

Emily O'Reilly, *European Ombudsman***.** – I don't have a crystal ball, and I can't really see what might happen. I mean, as I've said, I have been struck by the gravity of this issue and the spread of it. And again I'm not sure that citizens fully realise this and how their own Member State finances, and sometimes their employment possibilities, lots of things, have been compromised by the failure to get money that is legally due to a Member State.

So I think, yes of course, it is in the public interest that compromises or agreements be reached in relation to this, but we at least have to know what the parameters of the debate are, what the various positions are. I'd like to know what Ireland's position is on this and what the Dutch position, French, German, whatever, position is on this. Very often, when there is secrecy at Council level it's not that Council members are trying to withhold it from their fellow or sister Council members, they are trying to withhold it perhaps from the folks back home for reasons that your colleague at the end of the table here said.

So I don't think there is a single easy answer. I think raising consciousness among the public is important – because political pressure always comes about when there is significant public consciousness and concern about an issue – as is transparency, and that this committee continues to push for greater access, and I will, if I can, assist in that by dealing with actual complaints and seeing whether the Council is correct or incorrect in terms of its refusal to release certain records.

1-033-0000
Werner Langen (PPE). – Chair, I would like to thank Ms O'Reilly for her readiness to help achieve greater transparency.

The Code of Conduct Group, as we have been told by the Chair of the PANA Committee of Inquiry – is not currently an official European Union body. It is intergovernmental. Its argument for refusing to release information has been: 'We are not an EU body, so we don't have any duty to the European Parliament.'

How does that situation compare with the Ombudsman's position? On the basis of your remit as you outlined it, Ms O'Reilly, are you in a position to require information even from intergovernmental bodies and to influence such bodies to change their behaviour? I ask because this was the group's justification for redacting everything, even their agenda. We failed to get any information out of them and the justification for their refusal was that they were an intergovernmental, rather than an EU, body. Do you think you are better placed to get round that?

1-035-0000
Emily O'Reilly, *European Ombudsman***.** – In relation to that, yes, I would hope that this cooperation continues. I fully understand the issues surrounding negotiations, particularly at Council level, and all of that, but that does not mean that our citizens should be deprived of information in relation to the parameters of any debate that has taken place. When you have a fact-free zone, that allows false facts to enter and that allows a narrative around the EU to develop that can ultimately be very harmful for Member State interests and for EU interests as well. I do not think we should be afraid of allowing the facts to come out appropriately. That is, after all, the right that every EU citizen enjoys under the Treaty.

1-036-0000
Chair. – Thank you very much again, Ombudsman. I hope that the Council will soon reply to your recommendations and, more importantly, that this will be in a constructive manner, so the transparency of their work will be increased for the other EU institutions and, mainly, for the general public.

We may also consider in this Committee, of course, individual ways to lodge a formal complaint to the Ombudsman, or a number of complaints, but that still remains to be seen. Thank you for your contribution and for your long-term efforts to increase transparency.

(Applause)

Panel: EU list of non-cooperative jurisdictions: room for improvement?

1-037-0000
Chair. – That brings us to the second panel of today's hearing on 'The EU list of non-cooperative jurisdictions: room for improvement?'. Let me briefly introduce the speakers on this panel: Mr Valère Moutarlier, Director at Directorate D, Direct Taxation, Tax coordination, Economic Analysis and Evaluation, European Commission; Mrs Elly Van de Valde, Professor of Tax Law, Hasselt University; Mr Alex Cobham, Chief Executive, Tax Justice Network; and Mr Johan Langerock, Adviser to Oxfam on EU Tax and Inequality Policy.

The procedure will be the same: five minutes in total for the Member's question and the response. We will start with short presentations by the speakers. We will begin with Mr Valère Moutarlier and, talking about transparency, I can reveal that today he has become one year older and wiser. I would like to wish him a happy birthday. I appreciate it that he is celebrating it with us!

1-038-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – Thank you, Chair: it is a nice way to spend a birthday afternoon, and I am very happy to be here with you today to update you on the EU listing process and its next steps.

The idea of the common EU list was first floated by the Commission in January 2016, in the External Strategy for Effective Taxation. Less than two years later, in December 2017, Member States adopted the first-ever EU list, after an extensive, thorough and credible screening process of 92 jurisdictions around the world, led by the Council with the technical support of the Commission. The coordination, focus and political will that this required must be recognised but, even more importantly, through this listing process the EU succeeded in getting our international partners to sit up and listen when it comes to our good-governance expectations in the field of taxation.

The vast majority of the jurisdictions concerned took this exercise very seriously. They were engaged during the technical phase and cooperated fully with the experts to establish the facts. Most jurisdictions agreed to make a high-level political commitment to address the deficiencies identified.

Unlike the OECD list, which is based on transparency only, the criteria used to establish the EU list were broad enough to cover all types of deficiencies: transparency, of course, but also harmful tax practices and the risks associated with zero-tax jurisdictions. As a result of the EU listing process, more than 100 harmful tax regimes should be addressed worldwide before the end of this year. Many more jurisdictions have committed to international standards in terms of tax transparency, and to other improvements to their tax systems. Finally, zero-tax jurisdictions have committed to introducing a 'substance' requirement into their domestic legislation.
Jurisdictions are now working to implement the changes by the end of this year, or by the end of 2019 in the case of developing countries, and the Commission is helping them to do so. In fact, we are currently engaged in dialogue with a large number of these jurisdictions, providing them with explanations and assistance to ensure that every jurisdiction understands what it is expected to do. At the same time, any jurisdiction that does not cooperate and implement the promised change should face the consequences, otherwise this list would have no weight. The threat of repercussions should translate into real action for jurisdictions that do not deliver on their commitment, or persistently refuse to comply with the standards.

This brings me to a very important ongoing task, namely in relation to defensive measures. From the start, the Commission has stressed the need for strong, effective and dissuasive defensive measures, to be applied by all Member States against listed jurisdictions. The Commission's view is that there is still some way to go before the Member States reach this

goal. Current practices show that defensive measures are neither as thorough nor as coordinated as they should be.

For its part, the Commission has done a lot to give teeth to the EU list. We have introduced comprehensive measures into EU funding legislation to ensure that there are consequences for countries on the EU list, and also to make sure that EU financial assistance is not used in projects prone to tax avoidance. Parliament and the Council have now agreed the requisite changes in the Financial Regulation and other legal instruments, which introduce the concept of tax avoidance and make a clear link between EU funding and the EU list. As a follow-up, in March, the Commission adopted a communication that clarifies the consequence of these provisions for the international financial institutions and other partners when they use EU funds. This is consistent with our total commitment to be clear and open, and to engage with our various international partners on issues in relation to the EU list. Indeed – and we have just been discussing this point intensively with the Ombudsman – the Commission has advocated an EU listing process that is open and transparent. The public, stakeholders and third countries need to see that the whole process has been based on fair criteria and objective assessment.

Most recently, Commissioner Moscovici pushed his counterpart in the Economic and Financial Affairs Council (ECOFIN) to release, for everyone to see, the letter of commitment that the third countries have sent to the Code of Conduct Group. Currently, more than half of the commitments have published following the green light from the jurisdiction concerned and we expect more to follow. This transparency and extra scrutiny on these jurisdictions will also help keep up the pressure, so that they deliver what they have promised.

Looking ahead, the EU listing process must continue to evolve if it is to stay relevant. Last year, we agreed to develop new criteria, notably in the field of beneficial ownership and implementation of Base Erosion and Profit Shifting (BEPS) minimum standards. Member States are now working on this.

To conclude, the list is definitely a dynamic process and one that the Commission will continue to support. It is an entirely new exercise, which probably has room for improvement, and Parliament has always been a very important source of ideas and inspiration in this area. We have also greatly appreciated the input of the NGOs, notably through their participation in the Platform for Tax Good Governance, where the shaping of this list has emerged. We are always ready to listen to their points of view and to continue to improve the standard setting in terms of development of this list, but we should recognise that this remains a major achievement in terms of the capacity of the 28 Member States in the Union to address this issue.

We very much look forward to continuing our cooperation with Parliament and with external stakeholders and we are confident that we can continue to rely on your support and on the pressure you can exert on the Member States to continue to deliver.

1-039-0000

Elly Van de Velde, *Professor of Tax Law, Hasselt University***.** – Thank you, Chair, for your kind invitation. I came here to speak in the TAX1 and TAX2 workshops as well, and I would like to congratulate the European Parliament on the progress and suggestions that have been made.

You have asked me to answer two questions today. Firstly: what is my assessment of the EU list of non-cooperative jurisdictions for tax purposes, in terms of the process and results? Do I find the outcome credible? What would be my suggestions for improvements?

Secondly, do I think the EU list should also include Member States proposing aggressive tax-planning opportunities, as mentioned in the study commissioned by the Directorate-General for Taxation and Customs Union (DG TAXUD)?

I would like to combine these two questions, because my answers to them are interlinked. I understand that the blacklist of tax havens is a tool, rather than a solution, to pressure tax havens to apply certain criteria, rules and standards that Member States should apply as well. And I read, in the very good briefing by the European Parliamentary Research Service of December 2017, that this implies that Member States themselves are outside the scope of the list, which does not automatically mean that they are immune to criticism. Listing is part of a strategy to identify and address harmful tax competition and aggressive tax planning used by multinational enterprises. I also read that examples of various types of instruments for aggressive tax planning include trusts and offshore and/or letterbox companies. As an academic in law, I will focus on a few legalistic aspects that imply certain suggestions.

In my opinion, it is difficult to place tax planning and aggressive tax planning, on the one hand, and tax fraud, on the other hand, on a single scale of gradation. Under the term 'aggressive tax planning', defined as taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems, the Commission includes the excessive use of opportunities to reduce the corporate tax burden. This definition of aggressive tax planning is very open, and even vague. I wonder, in fact, what the Commission means by 'aggressive'. When is tax planning aggressive, and what is excessive?

Tax planning as such is not a bad thing, and even aggressive tax planning is not illegal – in contrast to tax evasion, or tax fraud, that infringes the law. In my opinion, tax planning is aggressive from the moment there is a huge difference between legal structure and economic substance. I call it a forced lack of balance between the letter of the law and the spirit of the law. The more the spirit of the law is disregarded, the more aggressive tax planning becomes and the closer it comes to tax evasion or tax fraud, while still constituting activities that are lawful. However, when the letter of the law is misused or abused by those activities, then anti-tax-avoidance rules are necessary.

But it is possible that, for corporate purposes, not tax purposes, Member States will permit a letterbox company without any economic activity in the Member State in question. The 'statutory seat' theory is different from the 'real seat' theory. Both are national choices of Member States. According to the European Court of Justice ruling in the Polbud case, a corporation making full use of the 'statutory seat' theory, which after a transfer of its seat initially fell under the 'real seat' theory in its own Member State, is in accordance with the principle of free movement of establishment.

Paying taxes in accordance with the law of the Member State with the 'statutory seat' theory is okay. The problem occurs when there is no real transfer of seat – merely an 'as if' transfer – and the activities just go on in the Member State with the 'real seat' theory.

Trusts can be part of a bona fide family tax-planning structure for charity purposes. The fact that taxpayers make use of trusts or private foundations does not mean there is aggressive tax planning involved. The fact of countries providing for trusts does not mean that they are tax havens.

My colleague Professor Niels Appermont wrote a doctoral thesis under my supervision on the legal and tax aspects of bona fide and sham trusts – and even legislators encourage normal tax planning by introducing tax deductions. What is, for example, the difference between tax nudging – encouraging the use of certain tax deductions to engage in pension savings, to

promote a notional interest deduction in Belgium or to discourage eating sugar – and tax planning?

In fact, tax nudging could be seen as tax planning organised and approved by the government, whereas tax planning is an idea in the heads of the tax advisers of companies and multinational enterprises. Tax competition is also something organised by governments, and multinational enterprises, as well as individuals and other companies, are facilitated in making use of it. Tax competition deals with cross-border situations. Tax planning can also apply to domestic activities as well, and is not by definition cross-border.

I would like to suggest formulating clear definitions of tax planning, aggressive tax planning, aggressive tax competition, harmful tax competition, tax avoidance and tax evasion. And are we talking about a fight against rules, against aggressive tax competition, or about a fight against the misuse of rules – aggressive tax planning?

I understood that the list of tax havens can be seen as an instrument to fight against aggressive tax competition organised by third countries themselves. And I would like to refer here to the in-depth analysis written for the TAX1 Committee by Professor Geoffrey Owens, of Vienna University, in which he identified the challenges for policymakers in the coming decades. Reconciling national tax systems with globalisation is one of the challenges he mentions. On the one hand, governments guard their tax sovereignty, while on the other hand they have to operate in an increasingly global environment where cross-border activities are very important. Moreover, small countries benchmark their tax systems against those of their competitors, and so tax competition, even harmful tax competition, exists. Professor Owens' appropriate response to globalisation is better cooperation between governments, even if that means giving up a little sovereignty. For third countries, this means pressure to adopt anti-BEPS measures and to increase tax transparency and fair taxation.

However, there is also the key issue of the still-existing aggressive tax competition between EU Member States. Either we see a race to the bottom in tax rates, or there are initiatives to achieve a lower corporate tax base. As long as Member States express and affirm their sovereignty on direct taxation, the only means of exerting a measure of pressure on their governments is through reports, studies and analyses by the Code of Conduct Group, the Commission and Parliament. In the past, the OECD report on harmful tax competition and the EU Code of Conduct for business taxation were very useful and successful. And it is my opinion that the final report by DG TAXUD on aggressive tax planning indicators is very useful and will be helpful as a means of pressure in the fight against aggressive tax competition by the Member States.

However, because of tax sovereignty, the only hard way of limiting and sanctioning EU Member States and multinational enterprises that are introducing and engaging in aggressive tax competition and planning is through application of the rules on illegal fiscal state aid.

I do not think that third countries and EU Member States could technically be put together on the same list of non-cooperative jurisdictions. Moreover, there is one single market within the EU and, in fact, corporate planning and tax planning are in accordance with EU rules, as long as there is no legal discrimination between corporations of different Member States.

Furthermore, the national legislation and administrative practices of the Member States have to be in accordance with the EU directives on tax transparency, etcetera.

To come to my final point: with respect to the criteria for the list of tax havens, namely tax transparency, fair taxation and the implementation of anti-BEPS measures, I would like to add a few more legalistic and concrete criteria. For example, what about the ring fencing of regimes

that protect one's own economy? That means no or minimal taxation of income and assets of non-residents, or tax advantages to non-resident individuals. It was a criterion of the OECD report on harmful tax competition in 1998. And nowadays, what about the quality and quantity of tax audits in third countries? What about corporate tax compliance programmes? What about the quality of transparent and healthy tax-ruling systems? What about access to the courts?

In my opinion, it is very important that countries including Member States should be in accordance with these rules of law, in order to address aggressive tax planning by multinational enterprises.

1-042-0000

Alex Cobham, *Chief Executive, Tax Justice Network***.** – Chair, on behalf of the Tax Justice Network, I am very grateful for the opportunity to talk to you, and indeed grateful for the work that you are doing, which is so important in ensuring scrutiny in this area, an area where, as we have been hearing, there are clearly incentives to hide a great deal of the information that citizens ought to be aware of around the policy decisions that are being made.

We are here as civil society – as I think you are here too – because tax is crucial for sustainable development, both within the European Union and elsewhere. The four Rs of tax, if we think of it like that, are: not just Revenue, but also Redistribution, i.e. the ability to tackle gross inequalities, the Repricing of damaging goods such as tobacco, or of carbon emissions, and, crucially, Representation.

Without effective taxation, especially direct taxation of income, capital gains and profits, there is not effective political representation and standards of governance weaken over time. This is one of the few strong results we have in terms of what challenges corruption over time: when governments are more reliant on citizens' tax revenues for each euro of expenditure. That is kind of why we came into existence. Tax is fundamentally political for that reason, and sovereignty, as has been discussed, is crucial, not just because citizens need the right to set tax policy in their own countries, but because the tax decisions of individual jurisdictions have spill-over effects that can undermine sovereignty elsewhere. The work you are engaged on here is addressing the question of the extent to which the European Union is willing to circumvent sovereignty elsewhere to protect it here and in other countries – and it is not a clear trade off one way or the other.

The amount of revenue losses – perhaps USD 500 million annually – to multinational tax avoidance, and potentially in a similar order from offshore tax evasion, stem from secrecy and profit-shifting opportunities provided by individual jurisdictions, which fundamentally undermine sovereignty in the EU and elsewhere, and in which a number of EU Member States themselves are active participants, threatening the sovereignty and indeed the development, of all others.

The list that we are discussing here is one potential mechanism to change the balance around sovereignty, to bring some alignment, but it needs to be considered in the context of that political decision-making. It is clearly no legitimate position for the EU to impose costs on Namibia, whose tax behaviour has no discernible impact on any EU Member State or on sovereignty here. At the same time, the EU is clearly the only actor currently capable of disciplining the behaviour of the United States of America, currently ranked number two in the financial secrecy index and arguably the greatest global threat in terms of financial secrecy and tax sovereignty elsewhere.

In our written submission we have gone into aspects about industries, which I won't repeat, but a key point, as was mentioned earlier, is that the basis of the listing in an index be objectively verifiable. On this, as we have heard, the work of the Code of Conduct Group is a fundamental

obstacle, both for the ability of EU citizens to hold their own Member States accountable, and also because of the way it is now being used in the list, for the legitimacy of the EU as a whole as an international actor taking extra-territorial actions of this sort. I am pleased to hear the extent to which there seems to be consensus here that this is unacceptable and must be challenged.

In the short term, then, leaving the criteria as they are, the key thing is to make sure they are fully transparent: that all necessary deliberations and decisions and assessments of jurisdictions are in the public domain. Within the next few months we will be in a position where the current criteria, relying on the OECD assessment of the Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters, will clearly identify the United States as necessary to be listed, and at that point, the question of countermeasures becomes ever more important. It should be possible to design countermeasures, for example requiring public country-by-country reporting by a jurisdiction's multinationals if they are listed, which would affect the United States and would not impinge unduly on Namibia, so I would urge some short-term thinking on that.

In the medium term, the improvements in criteria that are being discussed in terms of beneficial ownership and a greater focus on base-erosion and profit shifting (BEPS) perhaps – including a requirement for public country-by-country reporting – are, of course, highly welcome. But in the slightly longer term, thinking ahead two or three years, this is perhaps a place where this committee can really make a contribution. How do you get from a position of what is inevitably a somewhat illegitimate attempt by one group of relatively rich countries to impose their standards on others towards something which is globally shared, and in which the behaviour against compliance by a country like the United States could be effectively disciplined, not just as an EU-US conflict, but as something broader?

The answer is one that has been discussed a number of times and it is the idea of an international convention on tax transparency – perhaps tax transparency and tax sovereignty conceived together – saying: let's take the Tax Justice Network platform, the 'ABC of tax transparency', set out after we were established in 2003, as standard. That means automatic exchange of tax information between jurisdictions – not just with your friends or with big economies, but with all jurisdictions, i.e. Switzerland, to be considered compliant, must exchange information not just with Germany but also with Malawi, and similarly for EU Member States – as well as full beneficial-ownership transparency, public registers for companies, trusts and foundations, and public country-by-country reporting by multinationals.

With that as a basis – and it is more or less the global consensus (how things have changed over 15 years, we used to be laughed at for proposing these ideas once we'd explained what they were) – I think there is now a good chance of getting agreement, perhaps with the absence of the United States at the moment.

Taking a step towards legitimate multilateralism, strengthening sovereignty around the world, not only defending the EU space, will put the EU in a much stronger position and make its contribution to tax and sustainable development a significant one over the coming years.

1-043-0000

Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – Chair, I would like to give Mr Moutarlier my best wishes for his birthday, and to begin by saying that I feel very honoured that you have invited me to share with you Oxfam's view on the EU list of non-cooperative jurisdictions, better known as the EU blacklist or, as I prefer to call it, the grey list process. At the end of my speech, I will share with you some recommendations to make the blacklisting process better able to address harmful tax practices, which was the main question you asked me to address.

Oxfam, an organisation operating in more than 90 countries to fight against poverty and promote equality, has been working on the issue of tax justice for years. For us, tax havens, being the ultimate expression of the global corporate tax race to the bottom, cause much harm to the poorest people in the world. It is for this reason that Oxfam has been intensively working and building expertise on the topic of tax havens. Last November, Oxfam released the 'Blacklist or Whitewash' report scrutinising the EU criteria and Council process, while investigating what a fair EU blacklist should look like.

The EU blacklist was revolutionary in the sense that, finally, harmful tax practices and zero-tax regimes were taken into account as important features of tax havens. So Oxfam has supported and welcomed the EU's move to establish a blacklist. But, in order to work, a blacklist must be based on transparent and objective criteria and be free from any vested interests or political interference, and there the problem starts. From what follows, you will understand that I have mixed feelings about the outcomes of the EU blacklisting process.

Unfortunately, Oxfam has observed that none of the three basic requirements I mentioned were respected in the process. It is disturbing to see that mostly small countries ended up on the EU blacklist, while the most notorious tax havens – Bermuda and the British Virgin Islands – got away with being on the grey list. Oxfam was also shocked to find low-income and middle-income countries listed, especially when they simply were not compliant with tax standards agreed at OECD level and to which they were not allowed to contribute. Other countries, for example Brazil, strangely were able to escape from both blacklist and grey list. Finally, the process leading up to the list and the aftermath have been extremely opaque, although some good things have happened with the commitment letters that have been published, as Mr Moutarlier mentioned.

In addition, the EU list, as you all know, is intended to look only at countries outside the EU. This step strongly harms the credibility of the process, as EU Member States such as Ireland, Luxembourg, Malta and the Netherlands, following our assessment, themselves failed the fair-taxation criteria. Nevertheless, even if we are disappointed with the outcome, the EU listing process remains an interesting exercise as it opens the crucial debate on zero-tax regimes, which have not been addressed until now. The grey list also reopens the debate on how to address harmful tax practices and offers an opportunity for countries on the grey list to change their laws.

However, here again there is scepticism as the EU Code of Conduct Group has already been screening EU countries on harmful tax practices for 20 years. It is true that some regimes were rolled back successfully, but others were legitimated and remain harmful, explaining why a country like Belgium could use a very harmful notional interest-reduction scheme for years. Seeing this history, the strategy that is now being applied – to have the EU Code of Conduct Group's doctrine implemented by others in order to create a level playing field – will not mean the end of tax havens. Even worse, it might just whitewash harmful tax practices. In that sense, the EU listing process could end up being a distraction from urgently needed reforms.

So, coming to the question I need to address – how the EU list of tax havens could be improved in order to tackle harmful tax practices better – my recommendations are as follows. Firstly, revise the EU Code of Conduct Group's criteria, as some tax practices fall outside their scope. It would also be interesting to strengthen the role of economic indicators when assessing economic substance or whether tax havens are harmful. Here, a very interesting study was conducted by DG TAXUD at the end of 2017, which served for the European Semester when assessing the seven harmful EU Member States.

My second recommendation would be that the EU should work towards an improvement of the blacklist, make it more transparent and objective and, at the same time, push for a global process by the UN.

My third recommendation would be to ask the Council to look seriously at the commitments made by grey-listed countries. This exercise should not be turned into a whitewash. There is a good opportunity here to have meaningful change in those jurisdictions.

My fourth recommendation is to have different types of sanctions, which should apply depending on the criteria not respected. Mongolia should not have sanctions imposed because it did not apply the BEPS minimum standards: no. Whereas Bermuda should have sanctions imposed for being one of the most harmful tax havens.

So for us – and this is the most important recommendation – the EU blacklist should not be turned into a distraction from implementing fundamental reforms that could really stop tax avoidance. When I say fundamental reforms, I am talking about an EU-wide, harmonised, strong role on CFC (controlled foreign corporation) rules. In practice, this could create a minimum effective tax rate. The US has done this in practice with the global intangible low-taxed income (GILTI) tax and the base erosion and anti-abuse tax (BEAT). Why not the EU? We also have public country-by-country reporting still stuck in Council. And, finally, there is the common consolidated corporate tax base (CCCTB). These three measures could significantly help to stop tax avoidance, and we should not just focus all our energy on a blacklisting process that might end up being flawed or just whitewashing harmful tax practices.

1-044-0000
Chair. – Thank you very much to you and to all the speakers. Now we will enter into the discussion with the Members. Five minutes, as before, for a Member's question and responses. Please try to target the questions, if possible, because it would be difficult to accommodate five interventions in five minutes, and we have 12 speakers on the list, so we must really stick to five minutes. Please, let us try to do that.

First, the co-rapporteur for the EPP Group, Luděk Niedermayer.

1-045-0000
Luděk Niedermayer (PPE). – Thank you very much to the speakers for coming, and all the best to Mr Moutarlier for his birthday.
I will not focus on the existence of two EU lists and other lists, I will try to focus on the purpose, and I guess we all agree that the purpose is to encourage a change of behaviour by the countries concerned towards good, cooperative and responsible policy-making. To that end, we went through all the exercises involved and we created a black list, and I firmly believe that, in order to be efficient, the process of listing and de-listing must be of high quality and transparency. But the consequence of being on the black list or grey list must also be sufficiently clear, and this is the substance of my question.

I guess that the Commission, in the discussion paper of September 2016, highlighted different ways of setting up so-called sanctions, which I would rather call 'consequences', but it seems to me that progress so far has been limited. Instead of having a clearer EU reaction to a country being on the list, we are going for the coordination of national approaches. My first question is: obviously we are at the beginning, so for the time being our black-listing policy has some impact, but if we believe the consequences of being on the list are currently unclear, will this, in the future, not undermine the overall efficiency of the policy?

My second question concerns the extent to which there could be significant variation in national reactions to a country being on the black list. Some countries may have a harsher reaction while others go to the opposite extreme, albeit not wishing to encourage bad tax policies, but if some

countries focus on friendly cooperation with certain tax havens that are on the black list, might that not actually undermine the overall efficiency of the framework? I would like to hear the reactions of as many participants as possible.

1-046-0000

Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – I cannot hide the fact that, as far as the Commission is concerned, this remains a point on which we would have wished for a quicker result and greater progress. We have done our bit in terms of mobilising EU funds, and we should not underestimate the impact of that. This has been a very, very important step forward. Still, the two levels of possible countermeasures to be coordinated at Member State level, administrative or legislative, are key in the long term for the sustainability of the process.

In the short term, the reputational impact of being listed, or being on the grey list – which is nearly equivalent because, with the transparency of the letters, it means a lot of pressure – is there as a means to push for progress. In the longer term, I think that having a coordinated approach, with some minimum set of sanctions is very important. Why? Because what we do not want to put at risk are the Treaty freedoms and the single market. Of course, there is a tension between, on the one hand, being extremely firm on these Treaty freedoms and, on the other, their misuse in order to go through some hubs in terms of outbound or inbound payment. I believe, therefore, that if we want to alleviate the pressure on the freedoms of establishment and the movement of capital, we need to converge on some minimum set of countermeasures to be coordinated by Member States.

Member States agreed to report to the Code of Conduct Group this year on the preliminary steps that they have taken. Some of them explained that they are discussing how to use the EU list plus their domestic list in the same basket in terms of countermeasures, and we are really eager to have the relevant reporting from the Member States to see where we are.

1-047-0000

Alex Cobham, *Chief Executive, Tax Justice Network***.** – For as long as we have a list based on criteria that disproportionately target smaller, lower-income countries, we are cautious about countermeasures. But I would say this: it would be easy to construct countermeasures that have a financial cost, and are therefore most likely to get a response from those poorer lower-income countries, and they will have little or no benefit to the EU. I would encourage you to think instead of measures that require the type of transparency from individual economic actors – multinationals, for example – that you are not getting from their home jurisdictions. This would be a way of ensuring that two things happen: firstly, that the countermeasures move you in the direction you want to go, i.e. you get more tax transparency; and, secondly, that you provoke political reaction within those jurisdictions in the same way that the US Foreign Account Tax Compliance Act set all the financial institutions of pretty much every country around the world onto their governments to say 'You must negotiate with the US so that we can continue to do business there'.

You can imagine countermeasures here which will ensure, for example, that US businesses are pushing the US to see that they have a deal with the EU where they reach the kind of level of transparency and compliance that you are after, in a way that would not necessarily have a damaging impact for, say, Namibia. But that design question is crucial if you are serious about taking measures.

1-048-0000

Jeppe Kofod (S&D). – I would like to thank the panellists for their very interesting contributions. I know we have limited time, so let me start with Mr Langerock. First of all, I understand, Mr Langerock, you said that CFC (controlled foreign corporation) rules, country-by-country reporting and also the common consolidated corporate tax base (CCCTB) need to

be implemented before we have a genuine fight against tax avoidance, but, in your view, is it possible to talk about effectively fighting tax avoidance and tax evasion without public country-by-country reporting? I emphasise 'public' because there is a big discussion about this right now. Do you imagine we could do without it? Surely we need it as a fundamental tool in ensuring that we have corporations reporting on where they make their profits and so on. That is the first question.

And then, Mr Cobham, according to your assessment, based in part on the EU criteria and using them in the way that you use them, six EU Member States, specifically Cyprus, Ireland, Luxembourg, Malta, Netherlands and the United Kingdom, belong on the EU blacklist of tax havens. The current blacklist excludes EU Member States, but if the UK leaves the EU would you, in your assessment, think that it should then be placed on a blacklist in the future? I think that will be one of the consequences if nothing changes. Or are things changing in the UK that will alter that trajectory?

Finally, Mr Moutarlier, on a point to which you alluded. Of course the Commission has some tools when it comes to sanctions against non-cooperative tax jurisdictions, but can you elaborate a little bit on what type of tools you, as the Commission, can implement vis-à-vis these third countries on the blacklist? Can you also take action against companies and individuals based in those countries, or what type of limits do you have when it comes to taking action against blacklisted countries and jurisdictions, and companies and people around the world?

1-049-0000
Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – I will address the first question. I have a feeling that you are proposing a deal, so would a deal be CFC (controlled foreign corporation) rules or public country-by-country reporting?

No, public country-by-country reporting is fundamental for us for public transparency and public accountability by big corporations when paying tax – and it has been proven already in the past that transparency helps companies to change their behaviour – so I do not know why Council members are still opposing the position on public country-by-country reporting. But, going back to a strong, harmonised CFC rule, I think this would be very useful. We can talk as much as we want about different sanctions and targeted sanctions, etcetera, but there is already a very easy rule existing, which is the CFC rule which has been implemented through ATAD (the Anti-Tax-Avoidance Directive).

However, what we see is that Member States have been implementing CFC rules differently, so it is a CFC swamp, so to speak. It would be easier to have a coordinated, harmonised CFC rule and then we would have, in effect, a minimum tax rate for offshore profits which are not taxed appropriately.

1-050-0000
Alex Cobham, *Chief Executive, Tax Justice Network***.** – I should begin by saying I am sorry about Brexit. The UK is going to suffer and is already suffering as we slide down the growth table, with significant economic and possibly wider social and political costs. We opposed it as the Tax Justice Network, but now we are in the position of looking for a silver lining. If there is one, it is that the UK will be removed as a blocker from a set of processes, including those around tax and financial regulation, and that may open the way for the EU to take more progressive positions more quickly.

To the extent that those positions are then able to be imposed on the UK, this will be of benefit also to the people of the UK. One road to that would be the blacklisting of the UK – as you say, if you apply the same criteria as best as we can judge them from the outside, the UK would be listed. I think the type of counter-measures that would require greater transparency and compliance in terms of tax rules would not only reduce the UK's attractiveness as a profit-

shifting hub and increase the progressiveness of the UK's tax structure but would also benefit the EU, rather than having this looming presence off the Channel.

1-051-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – When it comes to the sanctions, at EU level what we have is mostly legislation. We have legislation in the making. We have the public CbCR proposal where we have put in one element in terms of more granularity when it comes to businesses operating in blacklisted jurisdictions. We have another piece of legislation in the making, which is the MiFID revision, where we suggested – and we hope that the rapporteur will help us in this – taking into consideration the EU list when it comes to equivalence analysis, and we have already adopted the legislation in the form of EU financial assistance. This is horizontal legislation, but of course, when it comes to sitting around the board of the international financial institution and having a say on some specific project, whether or not they comply with the general tax avoidance requirement or whether they are channelled through blacklisted jurisdictions, we take, as the Commission representative in these boards, decisions that will have an impact on specific businesses or individuals. But our capacity to act is through legislation, the monitoring and the implementation of the legislation.

1-052-0000
Markus Ferber (PPE). – Chair, we have spent a long time here talking about blacklists. We were, of course, over the moon when the Commission produced a blacklist that actually included a full 17 of the 210 countries in the world!

The Council then moved swiftly to take eight of the 17 off the list. Today I read in my local newspaper about a fast-food group, operating mainly in countries that were taken off the list, which has managed to stack the companies it controls inside one another in such a way that virtually none of them has paid, or will be paying, any tax.

One wonders what the criteria for getting off the list actually are. My question, therefore, is very basic: does this blacklisting system really work, or can we save ourselves the bother? After all, and I need to do the arithmetic here – 17 minus 8 equals 9 – there are only nine countries left on the list, out of the 210 in the world. Have we got any sort of monitoring or screening procedures to check whether anything has changed in these jurisdictions? Do you have plans – my question here is to the Commission – to take the further step of penalising the countries on the list? And what about the ways in which countries get themselves onto the list? What do you have to do to get listed? I ask because, at the moment, it would seem the only way to go is off the list.

Quite honestly, what we learned about all this at the end of last year and the beginning of this year has not made us any more convinced of the effectiveness of blacklists. Instead, it has left us with the impression that the Council and Commission are classing even major offenders as respectable states with impeccable cooperation procedures. So, to be honest, I would have liked to hear in more detail where you see this going in the long term.

1-056-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – Thank you very much for your question.

To a certain extent I can understand the surprise of some interlocutors in seeing the evolution over a certain period of time of the list. This is due to the choice of the Council to de-list jurisdiction on the basis of commitment. I think that this is something that we can understand at the beginning of this process, where – I think that one of our speakers mentioned this – the objective is really to trigger behavioural change and commitment to improve the situation. So

the choice of Ecofin has been to shift jurisdiction from the blacklist to a list where commitment needs to be monitored, and I think that it is very important in this first year, basically, of the exercise to understand that (and I heard this from our Oxfam colleague) this is not a way to escape anything. So they haven't escaped. They have made a commitment – and the jury is still out between now and the end of the year – to see how much of this commitment will be honoured. So I think that, if you want to compare figures (we hear how many jurisdictions are on the Tax Justice Network list), our figure is 92.

We are dealing with and monitoring the situation of 92 jurisdictions. Some did not commit. Others committed, and we are very strong against them in order to screen those commitments. But I would also raise the following point. The Chair of Ecofin, a couple of weeks ago, wrote to the OECD asking for the Forum on Harmful Tax Practices to make sure that the new element of the US tax reform would be screened in the context of the OECD Forum on Harmful Tax Practices.

So I think what should be extremely clear is that the monitoring and the vigilance continues to be there for all the 92, depending on the status of these jurisdictions and on how much commitment they took in relation to the EU.

So the situation is that the Commission has been entrusted with the work of monitoring the commitment. We are reporting on a regular basis to the code of conduct. The code of conduct will establish an interim report before the summer, as requested by the ministers in the December conclusion, so that we can have maybe early warning on some of these jurisdictions in their capacity to deliver on their commitment and, if necessary, take corrective action.

My point here is that let not *'l'arbre cache la forêt'* as we would say in my native language. The blacklist is what it is: those who do not want to cooperate. But none of the others are totally free in terms of how to behave, in terms of tax good governance between now and the end of the year.

1-057-0000

Elly Van de Velde, *Professor of Tax Law, Hasselt University***.** – I can only confirm that I think that a small blacklist is a political measure of pressure, and it could be more effective than it is on first sight, and the reason that I see is that there is also the watch list and monitoring of the commitments of the countries.

1-058-0000

Peter Simon (S&D). – Chair, let me start by saying to the Commission representative: we all fully appreciate the political situation in which you find yourself. Anyone who has been working on these issues since the days of the first TAXE Committee, as Mr Kofod and I have been, and anyone who is aware of the processes involved, including in the Code of Conduct Group, will realise just how difficult the Commission's position is. You are not actually involved yet you are repeatedly held responsible. We recognise that.

We all recognise too, I think, that it is sensible vis-à-vis countries which show willing, in terms of amending their tax systems, to have incentives to encourage them to cooperate. The principle of blurring the dividing line is therefore understandable as such.

I also welcome, I must say, your intention to publish, over time, letters of commitment from the countries which say they are willing to cooperate with us, and the fact that there will be a progress report in the meantime. What is missing – and I am speaking for Parliament here – is transparency about the structural arrangements. What specifically are we looking for in a country that will get it onto a blacklist, and what specifically do we expect of a country in order to get itself off – right off – the list again?

I have spent my whole working life dealing with EU matters, I worked for many years in the structural funds, and I can tell you that the Commission is the best in the world when it comes to evaluating and presenting things precisely and publishing them in a transparent way, down to the most detailed ramifications. This area we are discussing is the only one where there is zero information about methodology – and specifically about the extent to which a country has to meet, or fail to meet, a criterion – to enable people to grasp how your evaluation process works. So I would like to ask you this: is the Commission willing to respond or, in the light of your relationship with the Code of Conduct Group, is it actually able to respond to this desire for transparency in the specific form I have just described? Or is that something we cannot count on?

I will tell you why I think it is so important that we get this particular level and extent of transparency here: it is because, until we have it, everyone will continue to believe that what you are engaged in here is political jiggery-pokery. Perhaps that is not the case. But until you render what is going on intelligible enough to be understood, you will never shake off that suspicion. That concludes my question to the Commission representative.

I have a second question, to the representative from Oxfam. It was suggested, in Oxfam's report entitled *Blacklist or Whitewash*, that the EU should exert pressure on tax havens such as the Netherlands and Ireland. I would like to ask you how, as someone looking at this from outside, you envisage that working in practical terms.

And I have a final question – another one, which I forgot about – for the Commission representative. My apologies for slipping this in. It is simply something I would like to understand. Possibly you touched on it earlier when I had to pop out, but I don't think so. Why were countries which function as conduit tax havens, like Singapore – which I regard as a tax haven – not included on the blacklist?

1-059-0000

Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission.* – Chair, as I only have one minute, I will be very quick.

Of course, progress is always possible and, from the Commission's point of view, we have always advocated maximum transparency in this exercise. We published our scoreboard, which caused us problems because some people did not like it, but we published it as the first step in structuring the exercise. As I said, it was Commissioner Moscovici who pushed for the commitment letters from the countries to be made public, because that is what answers your question. The Council conclusions and the list set out the reasons why jurisdictions are listed: transparency problems, or having regimes that are not online and are harmful. We are aware of the problem, and the letters that the code of conduct has sent to all these jurisdictions are public, so we all collectively have access to the reasons why they are listed or at least to the subjects on which we have asked them to make commitments. If we succeed in making all the letters of commitment public, we can find out what each country has committed to. You will therefore be able to make us accountable for monitoring these commitments, and public opinion and stakeholders will also be able to exert pressure on these countries to carry out the reforms. So, yes, we are asking for commitments made by the countries on the grey list – which are at the heart of our concerns – to be made public, because that is our best guarantee that these commitments will be respected.

1-060-0000

Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – For EU Member States like the Netherlands, Malta, Luxembourg or Ireland, we welcome the fact that the Commission targeted these Member States in its last European Semester. That was a good step. As I mentioned in my speech, we would need to revise the criteria of the EU Code of Conduct

Group and its ways of working, because it has failed to target these Member States about their harmful tax practices. We could perhaps also stop patent boxes. Why is Ireland harmful? Why are the Netherlands harmful? Mainly because of the patent boxes that are still there. They have been legitimised by the OECD with the modified nexus approach, which does not solve anything – it just makes sure that profits are taxed even less than before.

On Singapore as a conduit, it could be targeted by the EU listing process, but the problem is that criterion 2.2 – attracting offshore profits – is not clear. It is very vague, so we don't know what attracting offshore profit means. Does it mean that you retain the profits, or does it mean that you just take the profits and then the profits leave your country again? So that's maybe a question that should be asked in the EU Code of Conduct Group or the Council to specify what attracting offshore profits means.

1-061-0000

Roberts Zīle (ECR). – I have been on the Committee on Transport and Tourism for many years as a coordinator. Why am I saying so? Because we have had a blacklist in aviation system for safety for years, and there is a clear procedure and clear measures. But what does it mean?

If you are on a blacklist as a country where there is an aviation safety agency that doesn't work reliably, no islands can fly through European airspace. Or it's clear, if it's like with Royal Thai for example, the Thai aviation agencies, safety aviation agencies, are not ready to fulfil all EASA (which is the European Aviation Safety Agency, which does all those jobs), if in total other Thai companies cannot fly to Europe, then Royal Thai can do because they are cooperating with the European Agency and they are fulfilling their obligations.

There is a clear procedure about who can decide, and the Council perhaps can do informally (but not formally), to influence Commission decisions and Parliament coordinators approving every six months the update of this blacklist. So rules are set up.

Why I am saying this introduction is that I understand this is the new blacklist and this is a very different area, but I think from the political point of view, you have to set up some kind of direction for experts and those who are doing professionally, because otherwise we cannot explain to our citizens how does this blacklist really works and is it really... For example, I visited in March, also with a group, some Middle East countries which used to be on the non-cooperative list, and they already said that they will be out of the non-cooperative list – they were sure about it. And if see those countries (for example one of them is the United Arab Emirates), there are no taxes, they just started to introduce 5% of VAT this year, and they are very proud that they started to pay some taxes, and when you are speaking with Dubai financial centre, what they are paying and what kind of information, it was very interesting: there is nothing. But they are on the watch list, which is a kind of grey list, as I understand – okay, I expect that they will cooperate with the EU tax authorities or the taxes which avoided EU taxes and sitting somewhere in the Middle East. But how does it work? Thank you, Mr Moutarlier, for explaining why you put those two lists, and I know you are watching 92 countries, that's great – some certainties. But at the same time, do you suggest something which could be on a political level we can do the bigger steps?

One more example, but it was very interesting, recently my country – Latvia – tried to update our public procurement legislation (there is an EU directive, of course, covered), and we wanted to exclude offshore companies. And then we came close to these blacklist companies and some others which we can legally include, and lawyers say: 'Look, it's a violation, because EU directives say you cannot make a shorter list of clients who would like, through tenders, to receive the EU taxpayers' money, to being blacklisted actually'. I think from a political point of view you cannot explain it for your electorate. How then can it be that a European Union

directive is keeping the rights for blacklisted jurisdiction companies to receive EU taxpayers' money? To me it's strange, absolutely.

Could you explain what we as politicians can do? Because you do your professional work, and NGOs would be very interested to hear your opinion.

1-062-0000
Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – I will address a first part of the question. I am happy that you mentioned the problem of zero tax regimes, because that's a problem that is too little tackled at the moment, and I have the feeling that the Council also does not really know how to tackle the zero tax regimes.

What is the problem? Now we have harmful tax practices: those are easy to tackle, because you can say, well, you should change your harmful tax practices in such and such a way in order not to make it preferential for non-residents, and then it's okay. But for zero tax regimes, we don't know what to do: what should we do about a zero tax regime? It has, perhaps, no tax administration. There's just no tax rate, there's no corporate tax regime, so what should we ask these regimes to do in order to make sure that they are not causing spillover effects for other sovereign countries that have established that tax rate and would like to tax their corporations as they feel?

My proposal there would be not to start adding small legal substance requirements in Bermuda, like having two people employed in Bermuda (Coca Cola would be very happy to do so, or any other company – just mentioning an example). But what I would propose is, again, coming back to my strong CFC rule, to just make sure that in Europe, you make sure that the profits in Bermuda are taxed with a strong anti-avoidance measure, because it will be impossible, in my view, to ask Bermuda to implement strong criteria themselves or to tax themselves profits in Bermuda. But maybe I'm wrong: maybe Bermuda is going to change its practices. It's up to the Council to negotiate with that jurisdiction.

1-063-0000
Alex Cobham, *Chief Executive, Tax Justice Network***.** – Just on the procurement point, as you probably know, there is an active discussion in tax justice circles around the Latvian case and what that means. I think where we are likely to end up encouraging further attempts is to say: rather than address it on the basis of the offshoreness of the jurisdiction from which a company comes, address it on the basis of the company itself. So you get yourself out of the problem of treating states differently, but you require that, in order to be eligible for public procurement, individual companies meet minimum standards of transparency. So that may be around beneficial ownership, around country-by-country reporting, around reporting of their accounts, effectively to ensure that, wherever the home jurisdiction is of a bidding company, it meets at a minimum the same tax transparency as a domestic company would have to do. I think legally that may be the best that that we can get.

1-064-0000
Roberts Zīle (ECR). – I just wanted to say, ok, public procurement, you cannot check from the municipality level you are making a tender. How can you do it?

1-065-0000
Alex Cobham, *Chief Executive, Tax Justice Network***.** – I think it is about setting minimum standards, but ...

1-066-0000
Eva Joly (Verts/ALE). – I have a first question for Mr Moutarlier. In its recommendation No 187 in the PANA report, Parliament called for Article 116 be used to make a legislative proposal to amend the code of conduct, which we consider to be severely dysfunctional. You have said you didn't believe in this and didn't think it was an effective way to reform it. I would also like

further justification of this position, if possible. Why do you not think this is a viable way of reforming the code of conduct?

Then I have a question for Mr Langerock.

What is the explanation, in your mind, for the fact that Oxfam lists 35 jurisdictions using similar methodology, and the EU ended up listing only nine jurisdictions at the moment? Could you give us your analysis on why Brazil is not on the list? What are the main improvements that you would recommend to us or to the EU policy makers regarding the blacklist procedures?

1-068-0000

Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission.* – Thank you very much, Ms Joly, for your highly political question, which allows me to repeat what Commissioner Moscovici has already had the opportunity to say here.

Your speech actually contains two questions. Do we need to reform what constitutes a tool for coordination between Member States, and which functions via peer pressure, to make it into a legislative instrument? And if so, on what legal basis? In deciding whether we need to change the legislative environment, we first have to establish whether a code of conduct that works differently would enhance effectiveness. That's why we have begun a comprehensive assessment of how we deal with tax competition in the internal market and what the code of conduct contributes in this regard. The aim is to determine whether the results the code has yielded over the past 20 years, which are real even if they have sometimes been the subject of debate (i.e. a large number of measures dismantled at Member State level, the capacity to conduct negotiations with Switzerland and Liechtenstein, a great deal of investment in the list), have lived up to our expectations. We will therefore first undertake this assessment to determine whether we need to change the regime or consider another type of organisation.

Secondly, as the commissioner said, Article 116 of the Treaty imposes a number of conditions, particularly as regards legislative conditions and the existence of practices within the Member States which cannot be addressed and resolved by means of coordination.

This is an opportunity we shouldn't miss because it would be the first time we'll have done this, but I believe that Commissioner Moscovici has told you that we need to reflect carefully on this and that reforming it is perhaps not the best idea being as it is an instrument that works and yields a certain amount of results.

1-069-0000

Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy.* – Thank you for your questions, the first being why there is a difference between us and the EU. We didn't expect the EU to come up with a grey list, so that changed the whole game, because we were just thinking about creating a blacklist, and we created a blacklist based on the criteria that were there in the texts and we tried to use them objectively.

We also used economic indicators in order to assess which jurisdictions were truly harmful. That worked out very well, because we could clearly see in our reports which jurisdictions were really harmful. But the EU chose to have a blacklist and a grey list. Another difference is that the EU also targeted low- and middle-income countries and developing countries, which Oxfam had also decided not to do, because these countries are mostly not harmful in terms of tax avoidance. So those are the differences between us and the EU.

With regard to Brazil, Brazil is a particular case. I am not accusing any country whatsoever, but Brazil has regimes that could fall under Criterion 2: fair taxation. There is a certain country in the EU that has particular ties to Brazil, so who knows, that country might have opposed that

country ending up on the black- or the grey list. But again, those are just thoughts that we had when we saw that result.

1-070-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission.* – I have to react to this type of statement, and I would really like to emphasise that the so-called politicisation of the listing process has been greatly exaggerated.

As regards the process of analysing and monitoring the jurisdictions in October and November of 2017, this work was carried out by experts from the Member States – which we were able to observe as a committee since we were technically assisting them – in an objective and politically unbiased manner.

The reasons why some jurisdictions appear neither on the black list nor the grey list can be explained by the fact that the analysis, made using the criteria chosen – which some may consider insufficient at this stage – was conclusive and was not the result of a political process or pressure exerted on the expert panels.

1-071-0000
Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – Can I quickly react? I'm speaking as an NGO. Seeing what happens in society and what happens in the media, for me perception is reality, and as the process has not been transparent, we can only think that the process has been politicised. When seeing in the media that the Cayman Islands and Bermuda publish articles every week and saying that we're putting pressure on the EU not to blacklist us, seeing in the media that Switzerland said – literally – 'We are not ending up on the blacklist' before the blacklist was published, then we can only conclude: well, this list must be politicised, because why else would Switzerland say such a thing in the media?

So if the Council wants us to think that the process has not been politicised, then be as transparent as possible, and I'll be happy to believe you.

1-072-0000
Paloma López Bermejo (GUE/NGL). – Chair, I wish to thank the guests for their contributions, and above all for their time. It is regrettable that the Chair of the Code of Conduct Group on Business Taxation has absented himself from this meeting. I really hope that we get more than excuses from other institutions in the future.

Unfortunately, we are witnessing a gradual whittling down of the list of uncooperative jurisdictions, of low or zero tax jurisdictions. It is somewhat surprising that – although the criteria are still the same – the Council's list of seventeen such jurisdictions is now nine and may well be seven by the end of Friday. And yet the Tax Justice Network has drawn up a list with forty-one jurisdictions and Oxfam another one with thirty-five. I don't want to dwell on this, as a number of explanations have already put forward, but I would like to point out that while this is not – of course – part of a political process, it really does look like one. Worse still, the public perceives it as forming part of a political process, and therefore out-of-keeping with the objective criteria that should be applied.

On top of this, the European Commission has recently found signs of aggressive tax planning and drawn up a list of the countries concerned that includes: Ireland, Malta, Hungary, the Netherlands, Belgium, Luxembourg and Cyprus. The conclusion is that these are countries which offer possibilities for what one might unambiguously call – and let's not beat about the bush – tax avoidance and evasion.

Commissioner Moscovici has said, here in Parliament, that he has had discussions with the Member States and some felt that they had been wrongly included on the list. However, these are by and large the same countries that feature on all such lists.

I have two questions for the Commission: does it not feel that, with the information available, it is very risky taking countries off the list in exchange for an undertaking rather than actual change, especially when doing so undermines the punitive power of the blacklist? And, as a corollary: how much more incentive do these jurisdictions – which are continual offenders in this area – need?

1-073-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – I have the feeling that there are two questions. The first one in terms of how to make sure that being on the grey list is not escaping. The second question is the geographical scope of the exercise and the relation with EU Member States.

On the first question, as I mentioned, we are going through a very detailed and in-depth monitoring of the commitment, so being de-listed is no escape; being de-listed is getting the pressure to deliver, and this is something I can tell you that our interlocutors start to understand and start to feel that it is serious and that they will have to be *au rendezvous* at the end of the year. On your second issue, as I mentioned in my introduction, this exercise has been promoted and designed by the Commission in its 2016 external strategy communication as a tool to deal with relations with third countries. So the scope of the EU list exercise has always been conceived in terms of being limited to third countries.

Does it mean that we have no preoccupation on what good governance means for the single market? Of course, no. We have other tools that we use in the single market. The first one which, I have to admit, being from the Commission, is our preferred one: legislation. We went through a massive number of legislative proposals which have been adopted by the Council: DAC 2, 3, 4, 5, 6; ATAD 1, ATAD 2; public CbCR. So this is one of the very strong tools. Why strong? Because we have legislation; we have the Commission – Guardian of the Treaty, making sure that the transposition and implementation is good – and we have the Court of Justice.

Second tool: coordination and peer pressure – code of conduct for what is not under legislation. Probably it could be improved, notably in terms of transparency; I think that I really understood the strong message from you today. But this is also a strong tool to go beyond what is under legislation.

And then the last one which you referred to, which is the dialogue we are having with our Member States when it comes to the reform of their economic policy through the European Semester, and the eurozone area recommendation that we have adopted this year. This is a very strong instrument – we have been working on taxation with this instrument since the very beginning, and it is true, you will have seen this year in the country report and in the eurozone recommendation, with a particular emphasis on aggressive tax planning.

1-074-0000
Alex Cobham, *Chief Executive, Tax Justice Network***.** – I didn't want to dwell on the weaknesses of the listing process, but I think there are a couple of things worth saying about this.

As long as two weaknesses remain, I don't think there can be any serious legitimacy for the list, I'm sorry to say, regardless of the extent to which has been useful in pushing a conversation. Those weaknesses are: first, on the published criteria that are possible to make objectively

verifiable, we have demonstrated that the criteria systematically discriminate against smaller and lower per-capita-income countries. This is a feature – not a bug, if you like – of the choice of criteria that's been made.

The third criteria, the one that is not objectively verifiable, based on information provided privately to a group which is notoriously opaque in its workings, is clearly worse. So I don't think we should try to defend something that is indefensible in that sense. Let's talk about where we go from here.

On the question of looking at 20 years of the Code of Conduct Group, that sounds quite useful, but I think we can provide a piece of evidence for that that may be useful already. The analysis that we published in the Journal of International Development earlier this year shows that, for US multinationals, the share of their global profit that they've declared for tax purposes in jurisdictions other than where their economic activity took place rose since the 1980s from about 5% to something like 20 or 25%, and the great majority of that profit shifting went into European Union Member States, in particular the Netherlands, Ireland and Luxembourg. So if we were to judge the Code of Conduct Group's performance over that period in restricting profit shifting into European Union Member States, we could only draw one conclusion.

I think we should try and move past things that are clearly indefensible and say: what can we do more productively? The reform of the Code of Conduct Group and its behaviour is one, and moving beyond the criteria with the established weaknesses would seem to be another.

1-075-0000

Bernard Monot (ENF). – Chair, dear members of the panel, with regard to the question on the EU's list and non-cooperative countries and territories concerning taxation, is there room for improvement? My answer is yes. This list of non-cooperative countries could be radically improved, but certainly not thanks to the federalist European Union, which is itself the cause of the scourge of tax evasion by multinationals.

There are two reasons for this: the first is that the principal cause the flight of tax revenue is to be found within the Union: the total capital movement limit authorised by Article 63 of the Treaty on European Union and the harmonisation of company law by the EU. This allows Ireland, Luxembourg and the Netherlands to help multinationals artificially funnel their profits into these countries for taxation a derisory rate, and then to turn a blind eye as these profits are whisked away to their final port of call, tax havens such as Trinidad and Tobago or Saint Lucia.

With this federalist European Union, there will never be a list of non-cooperative European jurisdictions. The only solution is for nation-states such as France (which loses almost EUR 100 billion euros in tax revenue each year) to regain power and implement retaliatory measures such as effective tax controls and adjustments on their territory to combat abuses by multinationals and target Ireland, Luxembourg, the Netherlands or Malta, which abuse EU rules to carry out unfair tax dumping at the expense of their European partners.

The second reason is the list of third countries, which does not include the main culprit: the USA. Against a backdrop of the will to impose global transparency in tax matters, the USA is cultivating tax opacity to remain an offshore financial centre. The USA is the only OECD country to have refused to commit to common reporting and the automatic exchange of information. However, with monies leaving Switzerland, Panama and the British Virgin Islands (which have become more transparent), an estimated USD 1.5 trillion, the proceeds of offshore tax evasion, are already being held in the USA, mainly in Delaware, Nevada and South Dakota.

My question to the members of the panel, and more specifically to Mr Montarlier and Mr Langerock, is therefore: can we expect to see the USA, or at least the states of Delaware, Nevada

and South Dakota, placed on the list of non-cooperative jurisdictions, whether the grey- or blacklist?

1-076-0000
Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – For the United States, the criteria are clear. Criterion one: tax transparency. There are four sub-criteria, one being commitment to CRS, and this has to be done and the countries have to commit to all the sub-criteria of tax transparency by June 2019, if I'm not wrong. So if the United States by that time did not implement the common reporting standards by the OECD, in theory the United States should be blacklisted. But that's in theory, so I'm actually looking forward to June 2019.

1-077-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission.* – Mr Monot, thank you for your question. We don't have specific objectives for any jurisdiction in particular. We have a pool of jurisdictions (92 in fact) and we examine their situation over time since the criteria, as was just pointed out, evolve over time.

It is clear that, with regard to the USA in particular, some of these territories do not currently meet the criteria and thus blacklisted. Today, however, the USA fulfils all of the criteria laid down by the Council. Further efforts will be needed by mid-2019 to ensure that all the currently applicable transparency criteria are met.

I would add that the US tax reform means that certain issues – concerning to new regimes and their compatibility with criterion 2.1: the existence of harmful tax regimes – will have to be revisited and will most probably be examined in the autumn under the aegis of the OECD.

1-078-0000
Alex Cobham, *Chief Executive, Tax Justice Network***.** – Perhaps to defend the federalist European Union, it's worth recognising that the OECD Common Reporting Standard (CRS) – the multilateral instrument on automatic exchange of information, which is the biggest global step ever against tax evasion – has its roots in the European Union Savings Directive. Without that, it is unlikely that the US FATCA would have happened, and therefore that the CRS would have happened. While I am being critical of the blacklist process, we shouldn't be critical of the EU's role in this area, which has largely been more positive than anything that anybody else can claim. That doesn't make it perfect at all, but we should be fair.

1-079-0000
Dariusz Rosati (PPE). – Chair, I have a question on the criteria. We've spent some time already on this, so my knowledge on this is a little bit deeper now, but still I would like to get some more precise answers on the way the criteria are used and also on the way further steps in the procedure are applied. I understand that there are some reservations about the criteria from the point of view of their quantitative versus qualitative nature. The criterion on fair taxation is very difficult to gauge, very difficult to measure, and how does the Commission actually make an objective and impartial apolitical assessment of what is fair taxation, and what is not.

Here in this House we have heard many times about the concept of so-called 'fiscal dumping', which actually means nothing to me because this is not an economic term, it's just a propaganda term. So that's the first question. How to help the Commission ensure that this assessment with the use of the criteria is indeed free from judgmental – I would say – deficiencies?

The second point is about the further steps in the procedure. To what extent does this procedure involve automaticity? You said that this is not a legislative matter, there is no legal basis for that. Does that mean that this process is politically driven? Does it mean that there are political judgments made on the basis of criteria and other available information in order to make a

judgment as to whether this country should be put on the blacklist or should be removed from the blacklist?

What are the proportions between discretion and the automatic – I would say, or quasi-automatic – mechanism, in order to ensure that transparency is preserved and that public opinion knows how this decision is taken?
This is a question to Mr Moutarlier, but of course if other speakers would like to comment, then they are welcome.

1-081-0000
Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – On the criteria, I have to say that, whether we like it or not, the Code has been in existence for 20 years and a set of very detailed criteria has been implemented to assess what is a harmful regime for a long, long period of time. So we have a lot of experience, and a lot of empirical experience, on how to implement these criteria, and these are a very technical and precise set of criteria.

The concept is 'harmful tax regime', but you have a series of very detailed and technical – super-technical – criteria to assess a specific regime. There is, and I understand the scepticism of some of you because you don't have access to the discussion, but I have to say that for us at the Commission who are putting on the table of the Code of Conduct an assessment of the regime, we have very little, if not no, margin for manoeuvre in terms of whether or not we are within the criteria or not.

This is a very technical analysis that we put on the table of the Code of Conduct in terms of implementing the criteria. I'd be very happy to follow up to this to this Committee with a much more detailed explanation on how we go through the set of five criteria that we apply for each assessment.

To your second question. Is it automatic? Well, it depends what you mean by automatic. It is not stupid. We need to be able, once we have an assessment, if we want to have a collective decision, to be able to wait for the assessment that the Commission is putting on the table and, once more, our mandate is to prepare technically the discussion. At the end of the day, it's for the Code of Conduct Group to assess, and this is the case both for EU Member States' regimes or for the assessment of third countries.

Without disclosing what happens in that Group, I'm happy to share with you what I previously said. I think that the suspicions of very intense, politically-driven debate is unfounded. But that is my approach, my perception. You will tell me that I have the privilege of being there and you do not, so I don't ask you to trust me, I am just sharing with you my feeling of what happens around the table.

(Interjection from Mr Rosati: 'perception is reality')

1-082-0000
Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – I won't repeat that phrase again. Actually it's not unfortunate that the EU Code of Conduct Group established these rules 20 years ago. Actually, the 1997 report is very ambitious because if you read the texts in an ambitious manner with a lot of political will you could target zero tax regimes, you could target harmful tax practices. Actually a lot of it could fall under that scope. But the problem with the texts after 1997, and the OECD texts after 1998, is that there was no more political will from the year 2000/2001 onwards to tackle harmful tax practices and tax avoidance that could fall under the scope of that text. That's why I think that what happens within the EU Code of Conduct Group is, with a lot of technicalities and a lot of lawyers, looking for a way to make

sure your country does not fall under a certain criterion. But if we had applied the text in an ambitious manner then I'm pretty sure we would not have been here today – or it would have been different. I don't know, but in any case it would have been different.

1-083-0000

Ana Gomes (S&D). – I'm not really surprised that, in a way, the process of the list was to be a red herring; many warned us about that. It was a convenient red herring to the Council to answer to the taxes scandals, but indeed, because of the flaws and the contradictions in it, it does not make it more effective. My first question to Mr Moutarlier would be, what concrete measures are really being taken to ensure that countries in the grey list follow up on their commitments? And yes, it was totally politically motivated. I remember some Member States even went back home and their lack of shame was such that they even vaunted to public opinion 'Oh we were able to get Macau' – for instance – 'off the blacklist; its only on the grey list'. That was the case of my own country, my own authorities.

I'm pretty sure that others did the same.

I would like to go back to the question of zero tax regimes, because how can we indeed deal with zero tax regimes, also when we aren't accepting them within the Union itself. Again, I can give the example of my country, which happens to be the country of the same guy who is now President of the Eurogroup, and who has a system of zero tax for foreign residents, creating outrageous discrimination against nationals who do pay tax. How can we be credible about advocating it for others if we don't look at ourselves and correct it among ourselves?

Then there is the lack of sanctions. I'm very happy to see, Mr Moutarlier, that you are hinting to us there will be some action on the US soon, but how, if indeed the system is lacking sanctions? I mean, the most important thing is the political will, and I totally dismiss what was said about the federal argument; this is exactly one area where either we move into a federal solution or we going to be stuck in the tax jungle of national sovereignty, but of course it has to require effective sanctions.

Finally, where are we exactly on this idea of moving towards a tax body at UN level? I mean, couldn't the Commission really take the lead on that, as we have suggested here in Parliament through our reports?

I mean, it could make a hell of a difference. It was the EU, by the way, that at the development summit in 2015 blocked action by developing countries on illicit flows of capital; it is only appropriate that the EU take the lead and move on that. Where is the Commission on that?

1-084-0000

Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission.* – Ms Gomes, on your first point, I have also read over-interpretations of the Ecofin decision. But, as I said, being on the grey list doesn't mean you can get out of anything. We will go and see these countries or they will come to see us. We have already carried out a number of missions to some of them, as we are now getting to the heart of the matter analysing the legislative proposals which they have submitted to us, with a view to ascertaining whether reforms to their regimes hold water or meet our expectations. And what I can confirm today is that, finally, some of them are beginning to wonder if they have done the right thing by making a commitment because the expectations are extremely onerous.

I'm not therefore sure whether we should congratulate ourselves for helping someone end up on to the list or whether action is needed. At any rate, our mandate consists in ensuring that these commitments are honoured. We are doing this with all the technical expertise at our

disposal so as to report objectively on the situation between now and the summer and, of course, by the end of the year, which is the deadline for fulfilling these commitments.

You alluded to a phenomenon we see both inside and outside Europe: regimes which grant you the citizenship of a country, or even tax advantages, in return for a certain number of investments. This is a method of tax competition and tax avoidance that exists and that the Commission is looking at with some concern. The difficulty is that very often this is a matter of the taxation of individuals. This raises a question: is the scope of our corporate taxation arrangements sufficient to deal with all phenomena that may prove problematic? You asked me the question, and we will answer it because we need to ensure the principle of collective responsibility works; on the reform of the Code of Conduct, it's no secret that the Commission has repeatedly called for reflection on its scope and the transparency of its processes. We will have the opportunity to clarify our point of view in the response that will be given to you.

The lack of governance at global level on this issue was the subject of a Commission position at the Addis Ababa conference. What we see is that we have a starting point, which is not satisfactory. I think we all regret that the broader community did not participate in the setting of standards, but what we also see is that this broader community is joining the inclusive framework of BEPS, which now includes over 100 countries.

A further question today is: are we strengthening implementation of existing standards and the development of criteria in this forum and do we really need an additional forum at United Nations level? I have nothing to tell you from my institution today on this point.

1-085-0000

Catch-the-eye procedure

1-086-0000

Werner Langen (PPE). – – Chair, I will be brief. To date, and it has been confirmed again today, the main instrument available to the EU for tackling unfairness in tax arrangements has been that of competition law. Competition law applies both to states and to companies. My suggestion would be to consider the additional possibility, under EU competition law, of drawing up a watchlist of international companies that make extensive use of aggressive tax planning: to consider whether that is a realistic option. You did say, Mr Moutarlier, that the international agreements were moving in the right direction but the power to implement them was lacking.

The second thing I want to mention is citizenship and the linking to it of individual tax advantages. This is something that has not yet been addressed at EU level. However, as Ana Gomes has reminded us again, it needs to be on the agenda.

My third point is about the recent tax reform in the USA. Some misleading ideas and misleading information about this are still going around. There are 11 of the 50 states in the USA which have no state-level corporation tax. Delaware is not one of them: its rate of corporation tax is 8%. We were there and we can confirm that it is not one of the 11. However, under President Trump's tax reform, the amnesty for the past and the 21% tax rate for the future apply to all these companies, so the 'zero tax' argument – which is currently meaningful in relation to Amazon, Apple, etcetera – will no longer have traction. That being so, I do not believe it is realistic to envisage the USA ever being blacklisted. I would like to hear some views in that regard.

1-087-0000

David Coburn (EFDD). – Well, it is fascinating that you are now talking about putting the US on a blacklist. That is utterly interesting. I am sure Great Britain will be on your blacklist as soon as we get Brexit, which I look forward to, as do most of my countrymen.

I am sure that you would probably all disagree, but tax competition, ladies and gentlemen, is healthy. It stops states squandering taxpayers' money, which they work hard to create. It makes states more efficient. Otherwise, bureaucrats would just go mad. The EU wants to spread institutionalised socialism across the world. I completely disagree with Ms Gomes. I prefer the healthy tax jungle of national sovereignties, competing one against the other for folks' hard-earned income. That's the way it should be, not institutionalised socialism. We had that with the Soviet Union, we had it in Eastern Europe and we thought we had got rid of it. You people want to bring it back. Disastrous.

1-088-0000

Thomas Mann (PPE). – Chair, I would like to point out, for the benefit of all our guests, that Mr Coburn never misses an opportunity to give his own personal performance at European Parliament events. We are quite used to it now but I realise that others could be somewhat taken aback.

I have a question for the Commission representative. You described the existing situation: we have a code of conduct, OK; we have had it for 20 years, OK; and it is insufficient, we all agree. You then said you want to come back to us to explain how it is working. Surely that is not good enough! Ought it not to be a requirement that this information is made public? We have a specific set of tools, we have specific means of oversight and, in our opinion, the code of conduct is not something to be treated lightly, it constitutes a clear commitment.

I meant to congratulate my colleagues on their persistence in calling this a 'blacklist' – that is the message we need to get across – and when you get off the blacklist you are on a 'grey list'. As you rightly said, Mr Moutarlier, that does not then mean that all is well, rather it means: 'We are keeping an eye on you.' The figure of 92 countries that you mentioned is the least known aspect of all this. If we could get the message across more strongly that 'We are keeping an eye on you' not in a considerate, friendly, political way, but keeping an eye in order to make sure this system is workable, then I believe we would be making some progress.

The last question was about penalties. So far there aren't any. We did, however, have a lot of them: in other fields we have procedures for infringement of the Treaties, and we have notifications. But what about penalties in this area? Surely we need to be able to say, and to make quite clear, when enough is enough? That is something people expect of us.

1-089-0000

Johan Langerock, *Advisor to Oxfam on EU Tax and Inequality Policy***.** – I would like to address the first question from the German MEP, on a watchlist of companies doing tax avoidance. I would say no way. Why go for a watchlist of companies when we have public country-by-country reporting, which would be more efficient in that sense, because then we would have out there all the data of companies, and we could assess whether these companies are avoiding tax, yes or no.

I want to add to this a specific call for all the Germans here in the room. Call on your government to take a positive stance on public country-by-country reporting in the next company law working group meeting on 23 May. It is crucial to have Germany on board for public country-by-country reporting. Instead of calling for a watchlist, call for country-by-country reporting.
I want quickly to address the reference to 'institutionalised socialism'. You can be very happy as there is still a lot of tax competition in the world and I do not think governments are that much more efficient with it! So there is no 'institutionalised socialism', for me at least.

1-090-0000

Valère Moutarlier, *Director, Directorate for Direct Taxation, Tax coordination, Economic Analysis and Evaluation, Directorate-General for Taxation and Customs Union, European Commission***.** – Thank you very much, Chair

To return to Mr Mann's point, we shouldn't over-focus. We have a timetable for addressing fair, equitable and efficient taxation in the internal market, using an extremely wide variety of instruments: the proposed and adopted legislation, proposed legislation that is yet to be adopted, the public country-by-country reporting, the common corporate tax base (CCCTB), the Commission's excellent proposals on the very important issue of digital taxation in the internal market, and finally the code of conduct and the list, which are complementary instruments.

I would therefore like to convince you, Mr Mann, that we have been working on this since the beginning of the Juncker Commission, in all its facets and, of course, with the state aid instrument, which deals only with one company in particular but also creates political momentum for the adoption of legislation systematically addressing an extremely important problem. We would not have made all the progress in the Council if the state aid instrument had not been available.

The business registry is not something that is being considered. I believe the public country-by-country reporting to be extremely important. I would also like to draw attention to the most recent review of the directive on administrative cooperation, which included provisions on transparency and ensuring tax authorities have access to information on aggressive tax planning structures which, of course, are obliged to identify themselves and also their beneficiaries, thus providing tax authorities with a great deal of highly specific information with which to combat such aggressive tax planning entities.

The 'list and code' instrument is thus part of a much wider set of tools which not only address the issues encountered in the internal market, but also aim to strengthen the international system, which has its limits. The limits we have been set arise from the need to be effective, and one of President Juncker's guidelines is to get results.

Indeed, we are sometimes criticised for our policy of slow progress, with incremental step-by-step results. This may seem insufficient for some. But I thank them for this attitude because it paves the way for us to go further. This provides the more general edifice of fair taxation in the internal market with very solid foundations on which we will continue to build.

1-091-0000

Alex Cobham, *Chief Executive, Tax Justice Network***.** – Let me just flag one thing. I think we can think optimistically that in quite a short period of time we will have new data that will allow us, with new measures, to track the progress and indeed to drive focus. The UN sustainable development goals has a target to reduce illicit financial flows, including tax evasion and tax avoidance. We are working, at the Tax Justice Network, closely with the UN organisations responsible for coming up with those indicators. Of the two main runners at the moment, one is, for each jurisdiction, the share of declared profits of multinational companies that has no associated economic activity. That's to give a global figure for the total scale of avoidance, but also at a national level to enable you to see who you should be looking at more closely. Similarly, for tax evasion, it is the share of assets held by financial institutions in each jurisdiction on which there is not automatic exchange of information with the authorities of the resident who holds those assets. That gives you a set of measures which could be used at EU level, or indeed to construct measures on which non-EU jurisdictions you might want to be particularly cautious about or impose greater transparency on. This is moving and I think there's an opportunity there for the Committee to feed into things and be a part of this as it develops.

1-092-0000

Elly Van de Velde, *Professor of Tax Law, Hasselt University***.** – To conclude, I think that this list deals with the minimum standards and if you want to go broader, if want to have a longer list, in my opinion you need more criteria. But we're all happy looking at the series of very detailed and technical criteria you use.

1-093-0000

(End of catch-the-eye procedure)

1-093-0000

Chair. – Let me thank all the guest speakers very much. I think it was an extremely interesting and helpful discussion. I would say that it's clear that an EU list seems to be a very important step forward, but the question is whether it's used in the most efficient way, whether the criteria are the best ones, and perhaps even more importantly, whether they are used properly. The criteria should be objective, verifiable, and when using them, while listing and the listing jurisdiction, the process should not be politicised.

But of course, it's easier said than done. We can recall that, when we delved in Parliament with delegated acts related to the list of high-risk countries from the point of view of money laundering, we were subject to heavy lobbying, and there is a certain or large degree of transparency in Parliament, certainly when it comes to discussion in the committees, plenary and about the results of the roll-call votes. But one way or another, enhanced transparency seems to be the only way forward, and perhaps with fine-tuning the criteria, and of course the way they are used. I am sure that we will try to address these issues in our final report of the committee if, when it's adopted, there are still some blacklisted countries. So thank you very much to the speakers, it was really interesting, thank you very much to the Members, and this concludes the meeting.

(The meeting closed at 17.59)