

**SPECIAL COMMITTEE ON FINANCIAL CRIMES,
TAX EVASION AND TAX AVOIDANCE (TAX3)
MONDAY 1 OCTOBER 2018**

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PUBLIC HEARING

**‘RELATIONS WITH SWITZERLAND IN TAX MATTERS AND THE
FIGHT AGAINST MONEY LAUNDERING’**

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Dieter Kischel, Head of Sector, Harmful Tax Practices, DG TAXUD

Rudolf Elmer, Whistle-blower, ex-Julius Bär, Switzerland

Andreas Frank, Anti-money laundering expert, Switzerland

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 20.37)

1-003-0000

Chair. – Good evening, I would like to welcome everyone to this meeting of the TAX3 Committee. After the hearings on the third-country dimension in the fight against tax crimes, tax evasion and tax avoidance last week, the Committee continues its work hosting a hearing on the relations with Switzerland in tax matters.

The hearing will be structured in one single panel with a series of presentations by experts, which will focus on the general perspective of tax cooperation between the EU and Switzerland, on the legal situation of whistle-blowers and the challenges they may have to face and on the banking activity and its potential linkage to money laundering practices.

Let me now introduce the speakers of the panel. Welcome to Mr Dieter Kischel, Head of the Harmful Tax Practices Sector in the Directorate-General for Taxation and Customs Union at European Commission, and welcome to Mr Rudolf Elmer, a whistle-blower from Switzerland. Mr Elmer worked as a banker at Julius Bär from the 1980s to his dismissal in 2002 after he disclosed confidential bank documents to WikiLeaks, detailing the activities of Julius Bär in the Cayman Islands. In January 2011 he was convicted in Switzerland for breaching secrecy laws and his case will be discussed in a public hearing by the Federal Court of Switzerland on 10 October. The public hearing is going to be very important because it is about the question of whether Swiss banking secrecy can be applied extra-territorially or not. Then I'd like to welcome Mr Andreas Frank, a former banker and anti-money laundering expert from Germany.

I would also like to mention that the European External Action Service was invited to this public hearing to explain the state of the negotiations on the EU-Swiss bilateral agreement for an institutional framework, but unfortunately they are not present on the grounds that they consider this moment to be too sensitive for both negotiating parties. I think that it doesn't prevent us, if we find something worrying in the discussion, from approaching them and, in writing perhaps, inform them about our concerns, if there are any.

The working method of the panel will be the following: each speaker will have a maximum of seven minutes for his presentation and then a discussion will be opened with the Members. So I'd like to ask Mr Dieter Kischel for his introductory remarks. The floor is yours.

1-004-0000

Dieter Kischel, Head of Sector, Harmful Tax Practices, DG TAXUD. – Thank you, I am very honoured to be here today and to discuss with you the EU's relations with Switzerland in tax matters. In the area of direct taxation, the EU has special relations with Switzerland in two fields. One is administrative cooperation and the other is harmful tax competition. As the focus of this hearing is on the work of the Code of Conduct Group, I will mention administrative cooperation only briefly.

In the administrative cooperation area, a protocol was signed on 27 May 2015, concerning the exchange of information amongst EU Member States and the Swiss tax authorities. The protocol entered into effect on 1 January 2017. Since then, the EU and Swiss financial institutions have activated the due diligence procedures for collecting a broad range of financial information on accounts directly or indirectly held by EU and Swiss residents. The information

so collected is due to be automatically exchanged between the country of collection and the country of residence of the beneficial owner. The first such exchange took place last month, September 2018.

The agreement is in conformity with the global standard for automatic exchange of financial accounts information, as developed by the OECD and endorsed by the G20 – the so-called common reporting standard. The protocol also allows broad exchange of information upon request which is foreseeably relevant for carrying out the agreement or the enforcement of domestic laws concerning taxes of every kind in Switzerland and the Member States.

That brings me to the work of the Code of Conduct Group. The Code of Conduct on business taxation is a legally non-binding instrument to counteract harmful tax competition. It concerns mainly EU Member States. However, there is also a clause to extend the principle of the Code of Conduct to EU-dependent and associated territories and to third countries. In 2010, the Code of Conduct group decided to open a dialogue with its EU neighbour countries, Liechtenstein and Switzerland, on the principles of the Code. After several years of dialogue, the Member States and Switzerland agreed on a joint statement in October 2014. According to the joint statement, Switzerland had to abolish five harmful tax regimes and abstain from introducing new harmful replacement measures. On the other side, once Switzerland had conformed to the terms of the joint statement, Member States would stop applying defensive measures in relation to the removed regimes. The fulfilment of the terms of the joint statement would create a more level playing field in the area of taxation and mitigate the negative effects of harmful tax competition.

In June 2016, the Swiss Parliament approved a Corporate Tax Reform Act. The said Tax Reform Act would have removed the five harmful regimes. However, in a referendum held on 12 February 2017, the Swiss people rejected the tax reform. As a result, the whole Act, including the provisions removing the identified tax regimes, needed to be replaced by a new proposal. In bilateral contacts after the referendum, the Swiss authorities committed to include the removal of the five regimes in new legislation. A letter was sent to the Chair of the Code of Conduct Group, which confirmed this commitment.

Meanwhile, the Ecofin Council had decided in 2016 that the EU would establish a list of non-cooperative tax jurisdictions by the end of 2017. The Code of Conduct Group was tasked to carry out the screening and assessment of the 92 selected third-country jurisdictions. Switzerland was one of those jurisdictions and was therefore included in this exercise. However, as Switzerland had already committed in the joint statement to abolish the five measures, it was not asked to commit for a second time. The Ecofin Council therefore grouped Switzerland among those third-country jurisdictions that made appropriate commitments – the so-called Annex II – and these countries would not be on the list of non-cooperative jurisdictions, provided that they delivered on their commitments.

In 2017, the Swiss Government presented a new proposal to the Swiss Parliament, which will have the same result as the former one in respect of the abolition of the five harmful regimes. It seems that the Swiss Parliament adopted the new law last Friday, 28 September. The current situation is that the Commission is in close contact with the Swiss administration. We expect to be formally informed, in due course, about the new legislation and to get all the relevant details in order to examine it. The Commission will provide the Code of Conduct Group with such information as to enable the group to take an informed decision on whether Switzerland has fulfilled its commitment and should not be listed as a non-cooperative tax jurisdiction.

Thank you very much for your attention. I am available to answer your questions.

1-005-0000

Rudolf Elmer, *Whistle-blower, ex-Julius Bär, Switzerland*. – Thank you very much for inviting me to this hearing. I am going to make some statements which I am not proud of, but I believe it is going to be the truth.

I would like to touch on the following points mentioned in my introduction. First of all, reporting a crime in Switzerland is a crime. Switzerland does not have a whistle-blower protection law in the private sector. In Switzerland, whistle-blowers encounter social, financial and professional death. I know many cases and even recently whistle-blowers are, generally speaking, found guilty for one or other reason.

Why is this the case?

It is the case because we do have main industries in Switzerland. I've shown them on the slides. I would simply like to talk about the red ones. We do have a so-called 'Swiss Payment Center'. It is a kind of industry set up in the state of Zurich to make payments within Switzerland and to avoid the information which should be provided if you make payments through the Swift system, because the Swift system is in Brussels and is copied to the United States. Switzerland does have a Swiss payment centre in the state of Zurich.

A second observation I made is that former Swiss army bunkers are now used to store non-financial assets. We do know the business of artwork is flourishing very much and so on, and that rooms, or space, is rented by high net worth and ultra-high net worth individuals in those bunkers.

How does Switzerland protect its key industries and its representatives? I would like to point to the methodology. Basically, what's happening is that systematically investigations were turned down, for instance, by the prosecution. We had, for instance, investigations against UBS, against Mr Oswald, the CEO. It was turned down. Some investigations were not started.

Switzerland makes dirty deals to close the investigation. I'm talking about the HSBC case in Geneva – remember Hervé Falciani? – where the Geneva bank was under investigation in respect of assisting not with tax evasion, but with money laundering. The prosecution made a deal with the bank, which paid CHF 40 million. Now you need to understand that you can get away with money laundering, or possible money laundering; you can close an investigation in Switzerland. There is mild punishment for any culprits who assisted in any criminal activity related to the key industries mentioned; so mild punishment. There is an example of a Geneva asset manager who was actually convicted of helping to set up offshore companies and accounts with Credit Suisse and EFG to mask the origin of the money and ownership of the accounts. He received a risible suspended sentence of three months and ultimately paid a thousand Swiss francs for court fees.

Whistle-blower protection in the private sector does not exist. There is a reason for that. Even though they tried already to set it up in 2003, it was delayed and delayed and it still doesn't exist.

The next point is retaliation against whistle-blowers which is, in my view, extreme. A whistle-blower will encounter social, financial and professional death in Switzerland.

I would like to give you some insight about Swiss banking secrecy. In 2005, the Tax Commission of the state of Zurich decided that the data which was confiscated from my home in Switzerland could not be investigated by the tax authorities. The reason they gave was that it is unusual to find data on a Cayman Bank when making a house search in Switzerland. The federal tax authorities couldn't do anything against it because it was not part of the deal. I filed

several complaints about Swiss clients in Switzerland because I am an activist, but all those complaints were turned down with the reasoning that I did not have a position of an injured party who has encountered damage. The data was totally ignored by the Swiss authorities, the prosecution, but on the other hand, it was used by other countries such as the US, Germany, and so on.

I felt I needed to address the matter with the Federal Prosecution Office in 2009, after the WikiLeaks event. *The Guardian* in the UK published an article naming names of Mexican drug dealers, Bin Laden constructions and so on. I provided the data to the Federal Prosecution Office as well. The Federal Prosecution Office responded within 10 days and said that there was no connection to Switzerland. I received only four lines as a response. They didn't even talk to me. The bank received about five pages of explanation on why they had come to the conclusion that there was no connection to Switzerland.

At the Federal Court of Switzerland I filed complaints against the General Council which actually lied in my case, withheld the true employment contract I had with the Cayman Islands, and which only came to light in 2016. It wasn't in the court files. Then the Financial Market Supervisory Authority – a self-governing body paid by UBS Credit Suisse and other banks and which carries out investigations – told me they were not going to make it public in my case. So the bottom line is knowing of an investigation against Julius Bär, its representative and its clients in Switzerland, Swiss...

(The Chair asked the speaker to speed up)

Moving on to the next slide, I would just like to talk about the judicial reasons to go offshore, which is basically that the system, the prosecution, does not investigate. For instance if you have a trust company in Denver, a company in Denver will never make a legal case against an investment manager because it will be turned down. Organisational reasons in telecommunication: that is an issue we had with the Bermuda islands where we had observers based with Cable & Wireless which redirected telephone calls and emails to Switzerland in order to make sure that it looked like there was an operation in Bermuda.

I now come to Swiss tax reforms. We talked about the regimes which had to be abolished, but there are new Swiss countermeasures, in my view. So we had this patent box regime. There are cantonal R&D incentives, which reduce capital and all taxes. They have tax privileges to release reserves, and a reduction of cantonal taxes. Deduction of cantonal taxes is important because – as you will see this on this slide, which was prepared by the Finance Minister of the town of Biel – what's happening is that the company rates are going down. For instance Geneva pays 24%, and now it's going down to 13%. Geneva is the financial centre and also a centre for commodities. Then there is Basel as well. That's the pharma centre. So what is actually happening is that tax rates are reduced to a level where they can still attract and keep those companies which the OECD actually wants to have taxed fairly.

Next slide. Here we are also talking about the counterparties. Here you're going to see the retaliation we are going through, that my family went through. I had irreversible damage to my reputation – I'm a thief, I'm a blackmailer, a terrorist, a psychologically sick person, and so on. Eventually I won the fight in court, three times against the newspaper that wrote about me this way. I was in solitary confinement for 220 days. I had severe post-traumatic stress disorder. My daughter made a suicide attempt because of the pressure the prosecution made on her, as did private detectives and judges. My brother worked for the police and as we still have kin liability I could no longer talk to him because he was told it was a risk to his position because he was my brother, and so on. It is a witch hunt that is still going on in Switzerland against whistle-blowers.

So what I'm saying here is I'm still an activist. I'm still fighting. I'm fearless. I hope on 10 October I can challenge the Federal Court of Switzerland to make a statement about Swiss banking secrecy. It's no longer a case about me. It is really a case about Swiss banking secrecy.

1-006-0000

Andreas Frank, *Anti-money laundering expert, Switzerland*. – As explained, I'm not Swiss, I'm German. In the 70s of the last century I was transferred from New York by Goldman Sachs to Switzerland and then I stayed for a few years, so I have hands-on experience. My working assumption is that I'm goal oriented, very practical and this you will see with my presentation here.

We were talking about this ongoing negotiation with a framework agreement that should replace the bilateral agreements. Now the Swiss have a clear strategy, they don't want this to happen before Brexit is happening in March 2019 because they want to go on with the cherry picking. The same goes for the harmful tax system, which the Organisation for Economic Co-operation and Development (OECD) has been criticising for years. These negotiations have also hit a brick wall and will not go on.

Whenever the Swiss don't want to decide they ask the people and it takes time and they can be sure that they get the right decision from their people. Have the cake and eat it, I mean that's a basic assumption in Switzerland. They have a phrase for it – *Dä Füfer und s'Weggli* – which means they want to have everything that serves them best.

Switzerland has a history of renegeing on promises and agreements. I'll give you a few examples: remember in the wake of the UBS deferred prosecution agreement, Switzerland promised to have what they call a *Weissgeld* 'white money' policy, only to renege on it one and a half [years] later. Then we were talking about the Foreign Account Tax Compliance Act (FATCA) and the OECD automatic information exchange being the end of Swiss banking secrecy, but as you can see here, it's still going on. It's so easy to divert the beneficial owner, put him in another jurisdiction. You can, let's say, make a US citizen into a Bahamas citizen, then you send all the information, and the Bahamas will laugh about it and the information disappears in the waste basket. That's it, nothing will happen.

Now according to the Tax Justice Network, Switzerland is still the worst contributor to financial secrecy. At the same time, Switzerland is still the largest offshore wealth centre. I would say what I said when we had the PANA Committee in Switzerland, that it remains the model for all tax havens, offshore structures and harmful secrecy systems.

Everything is confirmed. The OECD report from this year tells the whole story. We don't have to find individual information. They said in their report that Switzerland must urgently do more to protect whistle-blowers and stop money laundering and bribery. This is from the OECD. Lawyers and trusts operating in Switzerland must face tougher penalties because they are heavily into the money-laundering business. Lawyers and professionals don't face any criminal prosecution. Whistle-blowers, as my neighbour Mr Elmer said, expose themselves to criminal prosecution. Everything he said has been verified by the OECD. This is a damning report and there were no reactions to it. This is how you can cheat the automatic information exchange by changing the ID of the beneficial owner.

Here I have another chart, which shows that when you don't like the message, you kill the messenger. The critics of harmful secrecy and associated crimes in Switzerland are suppressed by joint action of the three political branches: legislator, executive branch and judicial branch. For example, in 2016 the Swiss voted for a change of the Swiss intelligence agency law that now allows the Swiss secret service to go after whistle-blowers and other critics abroad,

worldwide, and get information about them. We had a case in Germany where they infiltrated the Ministry of Finance.

Swiss libel laws – and this is something very important, I stated this also to the Bundestag – are used to silence critics in Switzerland and worldwide because they are so tough. The burden of proof is, of course, on the defendant not the plaintiff. With the libel law you can scare off not only journalists and whistle-blowers, but it also affects reporting entities in the European Union and obliged persons under the beneficial owner register. For example, if you have the duty, according to German money laundering law, to report the beneficial owner of a company, and it happens to be a Swiss person, then you might end up being sued in Switzerland for libel and slander; that's a criminal offence.

Something has to be done by the Commission. I hope my government will do something to protect the reporting entities and also these people that have to provide information for the beneficial owner register. Typically, the EU Member States would enforce the ruling by the Swiss courts. If you get a fine in Switzerland it is automatically a predicate sentencing in Germany or in the European Union. I think this has to stop. We have to follow the US model under Obama that said they will not recognise the British libel laws because they were used in the same way – they called it libel tourism. If you are from a country where it's not possible to sue somebody that is a critic of yours, you go to Great Britain. Now you go to Switzerland, and you can be sure that the critics will be stopped.

One other thing is, and I think it's very important, is if you want to obscure crime, then prevent supervision. Mr Elmer talked a little bit about it. In Switzerland the competent authorities for anti-money laundering, the so-called self-regulatory organisations (SRO), are associations belonging to their members. They are paying for it, and – this is what also happened to me – they protect their members by all means. Even confidential information given to the SRO is shared with their members and can lead to a criminal complaint for libel and slander against the informer. That means there is no trust between the supervisory authorities and reporting entities.

It leads to a system of non-supervision which attracts, of course, ideas like cryptocurrency companies. The canton of Zug prides itself as the world's virtual currency valley. It's also supported by the Bundesrat. I was recently at an OECD conference on anti-corruption attended by the chief criminal investigator of the US IRS. He termed decentralised cryptocurrency as the most serious problem for the IRS because they cannot enforce the law, when to transfer money abroad and back you don't need a bank account. This is all taken away and it is no wonder that Switzerland is using this new technology to veil illicit money since they are now cut off from other means.

To sum it up, I would suggest that, considering the prospect for harmful tax practices, the EU finance minister should move Switzerland from the grey watch list to the blacklist of non-cooperative tax jurisdictions.

Also, considering the AML deficit confirmed by the OECD, Switzerland should be on the list of third-country jurisdictions which have strategic deficiencies in their anti-money laundering and in countering the financing of terrorism. The European Union has to play hardball with Switzerland, otherwise in 10 years, in 20 years, you will have no results. Remember about eating the cake and having it too.

1-007-0000

Chair. – Thank you Mr Frank. Thank you to all the speakers, even if the picture is not very bright.

We will start the discussion now. We have not much more than 30 minutes. Slots are four minutes in total, with one minute for questions and up to three minutes for the answer. We will start with our co-rapporteur, Mr Niedermayer.

1-008-0000

Luděk Niedermayer (PPE). – I will probably focus my question to the Commission. As I was a member of the PANA Committee mission to Switzerland I am quite aware of the situation and not only our findings, but also the results of the Financial Assistance Task Force, show that the situation is not good. To summarise, I guess the sanctions for anti-money laundering law are low, they do not discourage that behaviour, they do not stimulate change and maybe are considered as something like a fee for doing business. I guess there is an extremely low number of reported transactions, there are problems with due diligence, and big problems with the actions of lawyers and advisers who do not actually committing the financial transactions.

I would like to ask you this. In the Commission's view, is there an improvement, or is the situation steady? According to that – and let me rephrase what Mr Frank has just said – what should be the position of Switzerland on the list of anti-money laundering that we are putting together?

The second question relates to our recent mission to the US where we heard that the US authorities are very satisfied with the Swiss banking programme. It seems, at least they believe, that Swiss banks are doing sufficient work for the US tax authorities in order to deal with the problems of US taxpayers. So I wonder, in your view, what is the level of cooperation between Swiss banks and European authorities compared to cooperation of Swiss banks with the US authorities?

1-009-0000

Dieter Kischel, Head of Sector, Harmful Tax Practices, DG TAXUD. – Thank you for the question Mr Niedermayer. I am afraid that I can only partially answer your question because I need to recall that I came here for the Commission's DG TAXUD – so for the tax authorities – and I cannot comment on the money laundering aspects and the cooperation you have mentioned.

What I can say with regard to the exchange of financial account information, as I said in my short presentation, is that the revised protocol was concluded in 2014. It has come into force and the first exchange of information took place last month. So the system works as such. However, I can't tell you here and now how good the quality is – whether it's worthwhile doing it, whether there is sufficient information – because we need to analyse the exchanged information in substance but have not had time to do this. So I can't give you a substantial answer with regard to the exchange of information.

Was it you who asked about the grey list? Yes. Well, let me give a similar reply, which is that although here I'm competent, I can't give you a final answer for the simple reason that the tax reform law was just concluded last week. We have a principle in the Code of Conduct that we don't assess draft law, so we now have to wait for the Swiss authorities to inform us about the adopted law.

Why don't we assess preliminary law? For two reasons. First, it is for the Member State or third country jurisdiction concerned to draft the new legislation in its own sovereignty and it is neither for the Commission nor for the Code of Conduct Group to interfere in this process. Secondly, law – as you will know better than me – is very often changed at the last minute for political compromise reasons so assessing draft law is very often in vain. For these two reasons the Code of Conduct Group only assesses adopted law. This has only just happened, so I am afraid that we will need to wait until we get the final information from our Swiss colleagues.

1-010-0000

Jeppe Kofod (S&D). – First, for the Commission briefly, you can't say anything about the quality of information you will get from the Swiss yet but when you can, please inform us. I would also like it if, when we have the agreement with Switzerland – I was actually the spokesperson for the Parliament on this, so I am very curious – you can also do an analysis as to whether they circumvent their obligation to exchange financial information. I think that's what both of you alluded to: that the banks and the financial institutions could do that. I think it is also important that the EU does that analysis, because I think that will be breaking, maybe not that the letter, but the spirit of the agreement. So that would be a comment to you.

Then I want to ask about the protection of whistle-blowers because I think you gave a very compelling reason why we need much better protection of whistle-blowers. I would like to ask what can we do. Is it something we can include in the agreement we have with Switzerland – for example demand that we will have some kind of minimum standard of protection of whistle-blowers, including in the private sector, when it comes to anonymity, when it comes to legal protection and when it comes to other things. Is it possible in your view maybe to develop some kind of standards internationally we can use for protecting whistle-blowers?

We recently had a case in Denmark now with Danske Bank and there the whistle-blowers came forward the other day – Howard Wilkinson, a UK citizen – and he is now fearing for his security, of course, because he revealed money laundering linked to FSB, to Putin's family and so on. He was also very angry because his anonymity was compromised, probably by the bank itself. It's things like that which can have a severe impact on a whistle-blower's life, as you explained. So, in your view, what can we do from the EU side, not only within the European Union but also externally to protect and enforce better protection of whistle-blowers?

1-011-0000

Rudolf Elmer, Whistle-blower, ex-Julius Bär, Switzerland. – There is something the EU could do and I think it's a pretty simple job. I was recently in Serbia and learned about the Serbian whistle-blower law and how it was set up and structured. In my view it's actually a copy-paste issue.

In Serbia they have trained the prosecutors and judges dealing with whistle-blowers based on that law and they were very successful. I can tell you that, of the 30 cases they showed, in 27 cases the courts already decided from the second or third day after the whistle-blowing happened to protect the whistle-blower. So the law is already there. I can only recommend that you have a look at this and maybe copy it. In the United States, Stephen Cohen has also worked on a whistle-blower law, so it's of a very high standard.

1-012-0000

Jeppe Kofod (S&D). – You are now saying you are going to analyse the quality of the information you receive from Switzerland now, so I want to ask you whether you will be sure that they will not circumvent their obligation to exchange financial information that is useful for the EU – because that's what we heard that they are doing by setting up new schemes. So would you also do that analysis and provide it to the Parliament? That was a question to the Commission.

1-013-0000

Dieter Kischel, Head of Sector, Harmful Tax Practices, DG TAXUD. – I understood that, thank you very much. Sorry, I understood it as a comment. I'll take the message home with me, of course. But technically you need to know the exchange of information takes place amongst competent authorities of Member States. So it's the bank of one State to its tax authority and then to the others. So the Commission doesn't directly get the technical details of everything. What we do is, together with the Member States, once they've sufficiently exchanged information, then we have a general analysis of the quality, whether there are any gaps. Yes, that I can take that home, and once we have done that we will inform you. I mean on both

aspects, first on the quality of the exchange of information and then on the question of whether the exchange of information is circumvented.

1-014-0000

Rudolf Elmer, *Whistle-blower, ex-Julius Bär, Switzerland*. – I'd like to make a statement on automatic information exchange. I'm a practical man, I work on secrecy restrictions. Exchange of information only works if the client has opened up an account in his or her name, then you know. But if you have a company in the BVI, or wherever, where you use nominees, bearer shares or even corporate directors, corporate secretaries... I mean a corporate director is a company which has USD 20 000 in equity and that's it, and that's the director of the company, so behind that person there is nothing at all. So from that point of view, automatic information exchange is a start but it will go for the man in the street, he is eventually going to pay the bill. The big players have already set up their structures, they have had plenty of time in the last four years to set up offshore structures to hide the beneficial owner.

1-015-0000

Andreas Frank, *Anti-money laundering expert, Switzerland*. – I have seen physical papers where a Swiss bank laundered money and laundered identity. So if you wanted to be a non-US citizen, what you did was you sent the money to Hong Kong, it went through three companies and then finally came back not having any connection to this beneficial owner. I saw this. The difference with normal business is you pay about 300% higher fees than in normal business, so the banks know exactly what they are doing. It's done purposely and there is a huge business. Of course, not the small accounts, we're talking about accounts of 10, 100 million upwards, then it's worthwhile to do it.

And secondly, I went twice to the Bundestag and in April 2017 there was the amendment of the German money laundering act, respecting the fourth Anti-Money Laundering Directive. It's very difficult for the reporting entities if their names end up in a criminal court. And now they have changed the system, and the names are no longer shown, they are kept confidential. It's the first step for whistle-blowers, because they are the most important people inside the companies for the legal process reporting suspicions of money laundering.

1-016-0000

Dariusz Rosati (PPE). – This is all very interesting and certainly we need to have a second look at the status quo of relations between the EU and Switzerland when it comes to cooperation in the area of money laundering and tax avoidance and evasion. I must say I am very surprised, and even shocked, at this information we have just heard, about how Switzerland circumvents the established rules and the provisions of the agreement with the EU. We certainly need to have a second look at that.

But coming back to the questions very quickly. We were on a mission in Latvia recently in the context of the ABLV scandal, and Latvia has been known for huge amounts of money being transferred to accounts by non-residents in the Latvian banking sector, and this money then being transferred to other destinations – final destinations – Latvia was not the final destination. Among these two or three EU or non-EU jurisdictions that received this dirty money was Switzerland. The large amounts of money flowing from the Russian Federation and other CIS countries were directed via the Latvian banking system taking advantage of, I would say, very lax supervision, and they were then sent to Switzerland. I would like to hear a comment on that: is it true or not? Do you have any assessment of the magnitude of these transfers?

My second question. We are working on the legislative package on taxation of digital companies. One of them is the proposal to impose short-term tax measures in order to do something with these digital companies before the OECD finally comes to a common position, which is very unlikely. I would like to ask your opinion about how the Swiss Government would react to this, and what kind of role does it play in the OECD Forum? Does it support this idea or oppose this idea?

1-017-0000

Rudolf Elmer, *Whistle-blower, ex-Julius Bär, Switzerland*. – There are only some indications, but the private banking business in Switzerland in the case of large banks is really flourishing, so you can assume that something is going on, there is a big money inflow. Any more I cannot say but the indications are that it is going very well for Switzerland in the banking industry. I'm talking about the large banks, not the small ones.

1-018-0000

Chair. – Any views on what could be the position of the government on digital taxation?

1-019-0000

Dieter Kischel, *Head of Sector, Harmful Tax Practices, DG TAXUD*. – I am not an expert on that, but what I can tell from my private knowledge is that the Switzerland-OECD discussion takes what I would call a 'prudent approach' in the sense that everything needs to be carefully analysed and verified, so they don't want to have any ... (*the speaker is interrupted*). That is all I know, sorry.

1-020-0000

Andreas Frank, *Anti-money laundering expert, Switzerland*. – I explained that these competent authorities in Switzerland are not functioning. They are not supposed to function. This is why, when they talk to the competent authorities, the information you're getting back is not very reliable. You should have direct access and not talk through other people who filter the information.

Maybe I should say something to the Commission. We've seen banking cases – Danske Bank, ING, the other bank – and there is a problem in the EU that I have been referring to for years. In the EU, we are not treating Member States as third countries as we should according to the Financial Action Task Force. I think the only solution to this would be for the Commission, as a founding member in 1989 of the Financial Action Task Force, that in future we will not evaluate the Member States, we are evaluating the Commission and then we could have common standards. That's the only way out here.

1-021-0000

Peter Simon (S&D). – Chair, I have just been doing some counting. Since seven of the 12 Members present speak German and all three of our guest experts have German as their mother tongue, I said to myself 'Right, I am going to speak German' and I have questions for you, Mr Elmer and Mr Frank, about what you have told us today. I found your last comments particularly interesting, Mr Frank, when you said that all these bodies were actually structured so as to be non-functional, that they are actually not supposed to function. With your many years of experience of the European Union, where precisely do you think that the Union should exert pressure, enough pressure to ensure that remedial action is taken and that functional authorities are created?

I also have a question for Mr Kischel, the Commission representative. I don't quite understand, Mr Kischel, why you are showing so much forbearance with Switzerland here. You say that new legislative proposals are now on the table and that we first need to see what comes of them before any decision can be taken as to blacklisting. However, I have been thinking: the EU has set an absolute deadline for legislative reform in Jersey, Guernsey and the British Virgin Islands by the end of 2018. Why are we not doing something similar with Switzerland? We have been pussyfooting around for years.

Second question: why is it that you have to wait to see whether some law may or may not meet our expectations? Why not work on the basis of the status quo: why not decide to put Switzerland on the list at the end of the year, and then, should it introduce legislation that would justify its being taken off the list, at that point delist it? Why not take that approach?

1-022-0000

Andreas Frank, *Anti-money laundering expert, Switzerland*. – To put pressure on Switzerland, the right forum would be the Financial Action Task Force. The European Commission is a member and they could bring the information about Switzerland, the SROs are networking, all the others... this is a clear violation of the 40 plus nine recommendations of the Financial Action Task Force. That is the right forum and I can say, from my own experience, in 2009/2010 I supported the Financial Action Task Force on the evaluation on Germany and I got a big hug from the Financial Action Task Force. There are possibilities, but you've got to do it. You've got to talk to people. You have to point to the deficits and then they can do it in this forum, the Financial Action Task Force. We need an evaluation of Switzerland that says 'non-compliant' period. Put them on the grey or the blacklist.

1-023-0000

Rudolf Elmer, *Whistle-blower, ex-Julius Bär, Switzerland*. – One of the key issues, I believe, is this tax race to the bottom, which is actually going to accelerate. The finance minister of Zurich five days ago wrote that Zurich companies will pay hundreds of millions less taxes due to the tax race to the bottom and to the countermeasures they have planned to implement. On the countermeasures, it's always a question of looking at, for instance, R&D – what are the costs of R&D and what is allowed to pose as R&D. So there's a lot of flexibility in it. The big four have the chance, and they should be responsible for making sure that certain clear guidelines are there on what can be put into those countermeasures so that, from an EU point of view, you know what is part of R&D, for example.

Then, in my view, yes: I believe Switzerland belongs to the blacklist, as I see it today. We even have to consider sanctions, in my view. The discussion was about Americans: why did the Americans really get along very well with the Swiss? In Credit Suisse, they have an American expert who is actually supervising what's going on in the bank, so they're in a much better position. However, I believe Europe can do the same thing, even though we do not control US dollars. US dollars are controlled by the Americans with the correspondence bank, so you need to have a US dollar account to make US dollar payments. So the United States can make a lot of pressure, saying to bank xyz 'you can't make any transactions anymore in US dollars', and the bank is dead. The EU has to think about introducing, if Switzerland doesn't comply, sanctions in that direction.

I'm sorry to say that, as a Swiss, but it's the truth and it needs to change. There are many Swiss in Switzerland who believe and think the way I do: we are not really happy with our elite in Switzerland.

1-024-0000

Dieter Kischel, *Head of Sector, Harmful Tax Practices, DG TAXUD* – You asked why we have been so forbearing. I am not clear who you mean by 'we'. So I am going to begin by clarifying the question of responsibilities. The point is this: in the area of harmful tax competition, it is not the EU which is responsible; what we have is the so-called Code of Conduct on business taxation, whereby the Member States have agreed among themselves, in a sort of peer pressure approach, to subject their harmful tax arrangements to comparative examination and to curb them, while the Commission has what you might call a technical, auxiliary role. As to why it is taking so long ...

(Interjection: 'But you draw up the proposed list. Why not include them on it?')

I want to explain why it is taking so long. The simple reason is that Switzerland has already stated it is prepared to cooperate. The list is a list of 'non-cooperative jurisdictions'. You may take the view that the conception of the list was flawed. However, as a matter of principle, jurisdictions that have declared themselves ready to make changes – to join the good guys, if you will – are not placed on the blacklist, and Switzerland made such a declaration back in

2014. I am not trying to defend Switzerland, that's not my job, but, in principle, Switzerland delivered on its declaration for the first time in 2016. What happened then was that the necessary change in the law was defeated in a referendum in February 2016, not on the issue of unfair tax measures but because the population as a whole did not accept the financing measures in the new act, and you can decide for yourselves who to blame for that. After that first failed attempt, however, after the referendum, Switzerland once again declared its willingness to commit to virtually the same measures that it promised previously. And now they have brought forward a new bill. The wheels of the Swiss legislative process turn slowly – and that is a problem – but Switzerland is, in principle, cooperating albeit slowly, so for that reason ...

(Interjection: 'Why didn't you set them a deadline, like you did for little countries?')

In principle, the Code of Conduct Group will have to take a decision on that at the end of the year. It is something that the Group ...

(Interjection: 'But why have they not already been given a deadline, when other countries have one?')

Because, in 2014, Switzerland indicated its readiness to make changes.

It committed, more or less voluntarily, to making them, before the list was in existence. It is unfortunate how things have turned out, but you will have an opportunity – on 10 October, I think – to put these same questions to Ms Lapecorella, the Chair of the Code of Conduct Group. It is not the Commission that will take the decision – let me repeat that, to be quite clear about it – but the Code of Conduct Group, so it is a matter for their judgment. And the decision will be taken next January. So my advice to you is: put the question to Ms Lapecorella.

I can understand your irritation ...

1-025-0000

Wolf Klinz (ALDE). – Chair, thirty years ago, I worked in Switzerland for four years and, at that time, the Swiss made absolutely no secret to me of the fact they were exploiting banking secrecy in order to do every conceivable sort of dirty deal – to put it quite bluntly – on behalf of both Swiss citizens and foreigners. One of the things they did, in their branches inside Germany in the area near the Swiss border, was actively to encourage German citizens to move their money into Switzerland, and they advised them on the most advantageous ways of doing so.

Things have changed somewhat since then. And I have been really shocked by what we have heard from the three experts here: I knew the situation was not perfect but I had not thought it was anything like as bad as it currently seems to be. We need to bear in mind, of course, that a change of this kind is a major cultural shift, and culture change is not something that happens overnight. I am wondering what exactly our response should be now.

Today's hearing is entitled 'Relations with Switzerland in tax matters and the fight against money laundering'. So we are talking about two sets of issues here: about tax matters and about money laundering. On tax matters, the big question we need to ask is whether money is being moved into tax havens and whether we have unfair tax competition. I have to say, in all honesty, I am not sure that we, as the EU, are squeaky clean in this regard. Looking around the EU, from the Channel Islands to the Netherlands, to Luxembourg, to Gibraltar and so on, the picture is very uneven.

Switzerland, a decentralised state in which the cantons have a relatively high degree of fiscal autonomy, manages nonetheless to have a common tax base. We have been trying for 14 years to develop a common corporate tax base and we have still not succeeded – and it looks as if we

are not going to succeed. As I see it, we are not in a good position to criticise the behaviour of others: people in glass houses shouldn't throw stones!

When it comes to money laundering, things are not much better. We've been talking here about money laundering in relation to the financial sector, but we are well aware that other sectors – drugs, property, art, etcetera – are also involved in money laundering. In my own country, Germany, alone, hundreds of billions are laundered through such channels. And, so far, we have not even managed to quantify it all, to bring the problem into the open and to address it.

So, what are we going to do? I agree that we need to do something so that Switzerland does simply get off the hook. What leverage do we have? It seems to me that Switzerland as a whole, in terms of its economy, is heavily dependent on the EU. We have heard the point made that it is a landlocked state and that if it does not have sensible economic relations with the EU its own development will suffer. Therefore we should simply use the existing bilateral agreements as leverage, and say: if there is no improvement here by such and such a date we are going to suspend your preferential agreements with us. In my view, nothing else will work. Issuing appeals, telling them they are going to be blacklisted and then delisted, or whatever, will not have the necessary effect.

We need to exert leverage in the same way that the USA did on banking secrecy. That has worked fairly well, at least as far as the USA is concerned. So the question is this: are the bilateral agreements, of which there are over 100, a means whereby we can exert pressure? Can we say: if you don't cooperate and make changes, then we are going to suspend these agreements?

1-026-0000

Rudolf Elmer, *Whistle-blower, ex-Julius Bär, Switzerland*. – To make pressure is one way but I do believe they need guidance. And guidance could be that you're going to say a company profit needs to be taxed by 20% across the whole of Europe – it could be 15% or whatever – but what's below that is harmful tax evasion, harmful action. [In response to shout of 'rubbish'] No, I don't think it's rubbish because then you give guidance and you can use a very simple method to show what you expect, and if they are below 20% or around 5-6% then you can take action.

1-027-0000

Wolf Klinz (ALDE). – You will never succeed in implementing that in the EU. The Member States insist on their sovereignty in tax matters and so there's absolutely no chance whatsoever in the foreseeable future of introducing a common equal tax rate for corporations across the EU27: that's completely out of the question. Apple was fined because it didn't pay enough taxes in Ireland. What did Apple do? It moved its operations from Ireland to Jersey where it pays less than 1% of income tax now. So there we are. We pretend to have the solution, but within the EU we are as bad as Switzerland, we have not really made any progress.

1-027-5000

Chair. – David Coburn, did you want to take the floor?

1-027-7500

David Coburn (EFDD). – Oh, I'd love to...

1-027-8750

Chair. – Sorry Sven and sorry Mr Coburn, it is Mr Giegold's turn.

1-028-0000

David Coburn (EFDD). – Oh Sven, I'm sorry.

1-029-0000

Sven Giegold (Verts/ALE). – But please don't complain that you can't speak here any more.

1-029-5000

David Coburn (EFDD). – I love everything you say Sven.

Sven Giegold (Verts/ALE). – I was only kidding ...

Chair, My questions are mainly for the Commission representative. The Commission has been trying since 2006 to clamp down on measures that constitute harmful tax competition. So this is not something new.

As you told us, the Swiss Parliament has accepted certain corrective measures in Tax Proposal 17, and what I would like to know is whether you were involved in the process of preparing that proposal. Were you asked by the Swiss whether the new rules met the EU's requirements? Were there actually specific requirements? I ask because, for one thing, in the ranking of profit tax rates the Swiss cantons' rates are already among the most advantageous and they are now reducing them still further.

We have tax exemptions when undisclosed reserves are uncovered within 10 years if the seat of a company is transferred to Switzerland. We have a patent box regime that covers software patents. We will have tax deductibility of up to 150% for R&D expenditure. We have the investment principle whereby profits can be entered as repayment of capital investment and will be tax deductible. Certain restrictions have been imposed in that regard but the existing arrangements will essentially stay in place.

What I would like to know is whether you have analysed these measures. Or can you give us an undertaking here that you will analyse them? And how do they square with the goal that we are actually pursuing vis-à-vis Switzerland, which is to curb the harmful tax competition? The EU, in the meantime, has been adopting further measures: we have the registers of beneficial ownership which are to be public in the 28 EU Member States. Have you, as the Commission, put pressure on Switzerland to introduce an equivalent system, i.e. a public register?

Switzerland has no enforceable rules on tax subsidies. In the EU we have such rules. Has the Commission pressed for the introduction of corresponding measures in Switzerland? With regard to the exchange of information, the situation is that group requests can be made only under the Double Taxation Agreement, whereas in the EU such requests can be made among the Member States generally under the Mutual Assistance Directive. Moreover, the provision under the Double Taxation Agreement does not apply to the past, so potentially there may be thousands of tax evaders in Germany who have used Switzerland and who can no longer be investigated.

The EU has also made tax rulings subject to the automatic exchange of information. These are not matters under the remit of the Code of Conduct Group but matters of EU law. Has the Commission pressed for an agreement with Switzerland on the automatic exchange of information about tax rulings? EU workers working in Switzerland do not receive equal treatment even though that is provided for in the Agreement on the Free Movement of Persons. Have you pushed Switzerland to hurry up and implement the Agreement on the Free Movement of Persons? If we provide cross-border services within Switzerland we are subject to new reporting thresholds in respect of turnover tax and, in practice, this is making it impossible for companies, especially smaller companies, from the EU28 to continue to provide such services. In other words, what I want to know from the Commission is this: have you used the opportunities available, in ongoing bilateral negotiations and in the context of implementing other tax rules, to work towards the rectification of these unacceptable anomalies? And can you please tell us exactly what steps you have taken to work towards their rectification?

Chair. – I don't know when the Commission should reply because it is already 4 minutes and 45 seconds. Would you respond briefly or in writing, perhaps?

1-032-0000

Dieter Kischel, *Head of Sector, Harmful Tax Practices, DG TAXUD* – I can try to answer the question here briefly. If you would like a written answer then I will be guided by the Chair.

With regard to the negotiations on bilateral agreements, as I said in my opening remarks, I am here on behalf of the Commission's Directorate-General for Taxation, not on behalf of the European External Action Service, so I cannot speak for them. That is an institutional matter. And, personally, I think I would be a poor adviser to you in that regard, so you should simply do as the Chair suggested in his introduction and direct your question to the EEAS. They will give you the relevant information on the bilateral agreements.

I will try now to answer the specific points you raised. Were we consulted on the 2017 Tax Proposal, the new legislation? No, we were not consulted, because tax reform is a sovereign competence of individual countries and they shape their tax laws as they see fit. In other words, Switzerland came up with this independently.

You also asked, however, whether we were going to analyse the new tax reform measures. The answer to that is yes, of course. For one thing, we need to check whether the five harmful tax regimes that were to be removed have in fact been removed. That should be relatively straightforward. At the same time however, we will obviously be checking, as an ongoing part of the process, that no new harmful measures have been introduced in their place. In the joint statement, Switzerland gave an undertaking that the harmful tax regimes would not be replaced by other new ones.

Then you asked about patent boxes. Mention was also made of notional interest deduction. There are international standards in place in this regard and we will be checking the new legislation against those. You referred, too, to the 150% rate of tax deductibility for R&D. What I would say to you here is this: tax incentives for investment in R&D are actually something that we in the EU support. Our proposal on the common corporate tax base (CCTB) includes provision on specific types of expenditure with a specific deduction for R&D which is also, I believe, at a rate of 150%.

Then you asked, *inter alia*, whether we had pressed for the introduction of a register of beneficial ownership. Now again I am speaking here for the tax administration and the Code of Conduct, and our remit is confined to harmful tax regimes. We are not in the business of standardisation or harmonisation, our job is to carry out checks. That, unfortunately, is how the Code of Conduct system works: we are required to check whether a given country is using special tax arrangements that constitute a departure from its normal system – a form of special treatment. So questions such as whether a country should have a common register, or rather a public register, do not arise in the ambit of the Code of Conduct.

You asked, too, whether Switzerland would be required to exchange information about tax rulings, whether we had pushed for that. We have not: because, again, this is something beyond the scope of the Code of Conduct. However, Switzerland is a member of the OECD. Within the OECD, in the Working Group for Harmful Tax Practices, there is a requirement that tax rulings be subject to information exchange – it is essentially a parallel provision to the information exchange requirement at EU level. Accordingly, Switzerland is required within the OECD framework and *vis-à-vis* the OECD member states – and that covers most of the EU Member States – to engage in information exchanges about its tax rulings.

On the question of equal treatment for workers: I believe that this is being discussed in a mutual agreement procedure that has been ongoing for quite some time. I do not know what the current state of play is there: it is something that I worked on ten years ago and we did our best at that time. I am surprised to hear that the question has not yet been resolved.

I think I have answered most of the honourable Member's questions. If there are any further questions you can send them to us and we will answer them in writing. Thank you.

1-033-0000

Chair. – We have already extended our meeting. The interpreters will leave at 10.00, which is in three minutes.

1-034-0000

David Coburn (EFDD). – Just before everybody goes... Regarding whistle-blowers, they need to take their chances in the courts like everybody else. We cannot have frivolous whistle-blowers, every Tom, Dick, and Harriet, who has either squabbled over the photocopier or who has not had promotion, suddenly deciding to blow whistles. Business would be impossible to conduct. It's just not possible to conduct a business like that, be it banking or anything else, which just shows how few of the people here actually were involved in business. They must take their chance in the courts and they must have a serious issue to report.

I sat in the Paradise Papers committee and despite the huge furore and expenditure of public money, no one was prosecuted – no one. Nothing massively criminal was discovered. The EU is basically hysterical about money laundering in Switzerland and the UK and its overseas territories, not because of great fear of crime or terrorism. It's about fear of massive capital flight from an overtaxed, financially incompetent EU with a political currency, not an economic currency, which is of course extremely dangerous. The banks in Italy are on the brink. Deutsche Bank is also in trouble. As for a tax race to the bottom the gentleman was discussing, I would point out that our accredited Parliamentary assistants (APAs), the people who work for us here in the European Parliament, pay very little tax. And many of the nations do not tax their MEPs. This is the biggest tax racket going in the world, so I don't know why you're all looking so virtuous, with virtuous signalling like mad. It's all nonsense.

Maybe Switzerland and Great Britain, when we leave the European Union, perhaps we should get together and put the European Union on the blacklist. It seems to have some pretty exotic practices. What right has the EU to decide what taxes should be set across the European continent? I've even heard Members here threatening Switzerland, a landlocked nation, to do damage to their economy if they don't fit in with the way the EU wants it to be. Well, that's not very friendly. That's not very good, that's not very democratic, is it now? The EU does not have the right to set taxes across Europe. Great Britain will be even more competitive with taxes after Brexit. Perhaps we should work with Switzerland and other countries such as EU-occupied Hungary and Poland who are being threatened for expressing their national liberty.

The EU should cut taxes and compete like the rest of the world. It will have to in the end, you can't carry on like this, you're going to have to just be realistic. The Americans won't tolerate it, the British won't tolerate it and the Far East won't tolerate it. So you're going to have to wake up eventually. Copying the old French model, which is what the EU is – it's the French model writ large because they cannot compete in the world and the whole European Union is there to protect France – well, that nonsense is going to stop. We will be leaving. We won't be the first. I'm sure the Poles, the Czechs, the Hungarians and various others will follow us out, and perhaps create a different sort of European economic arrangement. Something a little better than this place has provided.

1-035-0000

Arndt Kohn (S&D). – I would like to begin by thanking both the guest speakers who joined us here today, for attending our hearing and also for the work that they do on a daily basis, with all the challenges it entails: you and your colleagues, gentlemen, have my utmost respect.

And I have a question for Mr Kischel. The situation as the two speakers described it is not what you envisaged before you came here today, but their observations have been largely confirmed by the work of the OECD. You told us that the decision on whether to place Switzerland on the

blacklist or on the grey list – we don't have many shades of grey here, I must say – will be taken on the basis of an assessment as to whether the five harmful tax regimes have been removed. Will what you have heard here this evening inform, at all, the decision about where Switzerland should be situated vis-à-vis the list?

1-036-0000

Dieter Kischel, *Head of Sector, Harmful Tax Practices, DG TAXUD*. – Chair, we are required to abide by the procedure and, as I said, what we are concerned with is harmful tax competition in the field of corporation tax. Many references were made here today to money laundering, to information exchange and to whistle-blowers. None of that has anything to do with taxation so, once again as I said, you need to draw a distinction between two steps. The first step, at the end of this year or the beginning of next year, will be the decision as to whether, on the basis of how well it has met its commitments, Switzerland will be placed on the blacklist or the grey list, or on no list. That is a 'yes or no' decision – to be taken by the Code of Conduct Group – and Switzerland's commitment relates 'only' to the five harmful tax regimes that are to be removed.

Then we have the second step, which lies further ahead. That will entail checking whether the new corporate tax arrangements, currently being introduced as financing measures, are compatible with the Code of Conduct. That checking process will take place at a later stage and, at that stage, the issues raised here today can be taken into account.

1-037-0000

Chair. – Thank you very much. That closes the list of speakers. Thank you very much to the guest speakers, Mr Kischel, Mr Elmer and Mr Frank. The situation is clearly worrying and this committee will follow it closely. Thank you very much to the interpreters and to everybody. That concludes the meeting.

(The meeting closed at 22.03)