SPECIAL COMMITTEE ON FINANCIAL CRIMES, TAX EVASION AND TAX AVOIDANCE (TAX3)
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PUBLIC HEARING

'VAT FRAUD: ECONOMIC IMPACT, CHALLENGES AND POLICY ISSUES'

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Fabrizia Lapecorella, Chair of the Code of Conduct Group on Business Taxation

1-002-0000

IN THE CHAIR: ROBERTS ZĪLE

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

(The meeting opened at 14.06)

1-003-0000

Chair. – Hello to everybody. I would ask you to take your seats. We are expecting some more colleagues to come in a few minutes, but because of the time slots available for today, we have to start. We have a draft agenda which is pretty simple. I will make some Chair's announcements before we start our presentations.

We have two presentations and two debates today. This event is webstreamed. The draft study, which we have just listened to in the first part of our meeting today, was sent to Members via email on 3 October this year so you should have it. Printed dossiers are available in the room, including the programme, the author's CV, printed copies of the presentation slides, and the executive summary of the draft study. What is also important is that the study will be finalised and published after the presentation, taking into account anything additional that might arise from our discussions today.

Depending on the number of Members who come here, the plan is to keep five-minute time slots for questions and answers later on. In total we have about 40 minutes for questions and answers. The order will be the same as that which Mr Ježek usually follows in this committee. I will take just a few more minutes to make some introductory remarks about the study.

The study which will be presented today was requested by the TAX3 Committee as part of our ongoing work. VAT fraud has been in our focus for some time. In June, here in TAX3, we held a very fruitful public hearing on this same topic. We are currently making efforts to modernise the EU VAT system and to put an end to VAT fraud. The latest figures show that we lost about EUR 150 billion of VAT revenue in 2016 due, in part, to VAT fraud.

The Commission recently proposed, and the Council has already adopted, a number of legislative initiatives in this regard and, as you will remember, I was responsible for one of them in Parliament, which we passed. This is a fast-track approach and we are going forward with those initiatives. As we will surely hear today, new avenues might be opening for fraud activities, especially in this digital age. The key question is how we can improve the current system, tackling these residual problems at the same time.

It is an honour for me to introduce our speaker today, Professor Dr Marie Lamensch. She is a professor of tax law at the Institute for European Studies and Faculty of Law at the Vrije Universiteit Brussel (VUB). Her main areas of research are European taxation and international taxation. She is regularly a guest lecturer at other universities and institutions as well. We are very honoured to have you with us, Professor Lamensch: the floor is yours.

1-004-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – Chair, ladies and gentlemen, it is, of course, also an honour for me to have been invited to write the study and to be here today among you to present the outcome.

I will start with a note of caution. As you said, Chair, the draft that you have received is a draft. I will have to update it in the light of the outcome of the Ecofin Council of 2 October. A couple

of decisions were taken there – nothing that was not foreseeable – so I will update the draft as soon as possible.

In this short presentation, before we can have discussions and questions, I would like to focus on two aspects that deserve specific attention: first of all, the newly adopted provisions on imports that were adopted in the context of the e-commerce package; and second, I would like to say a few words about the definitive regime proposal, the one-stop-shop (OSS) mechanism in general, and the ambition to put an end to carousel fraud.

I will start with the e-commerce package and, more specifically, the provisions on imports. We had to modernise this system because at the moment we are facing fraud in the import sector, in particular e-commerce sales to private EU customers.

What is the problem? We are facing massive cases of undervaluations by non-EU suppliers selling goods to EU customers with wrong declarations of value so as not to have the correct amount of VAT added to these imports – no VAT at all if you are below EUR 22 because we have an exemption or, in any case, a reduced amount of VAT. Everybody acknowledges that we have this issue of undervaluation. Many studies have been done that demonstrate it.

A related issue is that of administrative costs because, under the current procedure, it is up to customs authorities to monitor the correct implementation of the exemption and to collect the VAT when it has to be collected. We have seen an increase in administrative costs because of the increase in the volume of imports as a result of the development of the internet. The question I am raising here is whether, with the adoption of the e-commerce package, which will go live in 2021, we have addressed these two issues. What is the new procedure for imports? We are going to remove the exemption for low-value goods. That means that any import into the EU will be subject to VAT, which is a good thing because it levels the playing field for European businesses, but it also means that you have to organise the collection of VAT on each and every parcel arriving at the border.

We have then changed the collection procedure. There are three options. The first is that we invite non-EU suppliers to register with the OSS scheme in the EU and to declare the VAT after the sale, on a monthly basis. So, technically, when the parcel arrives at the border, there will be an exemption because the assumption is that the supplier will then declare a correct amount of VAT through the OSS.

The second scenario is when you buy something online on a platform. If that happens, there is a legal fiction whereby the platform becomes the supplier, so the platform is also invited to register with the OSS.

The third scenario is when the vendor or the platform, if there is a platform, does not register with the OSS, because this is optional. In that case, it will be up to the transporter – the postal company or express carrier – to ensure the collection of VAT from the customer and to remit the VAT on a periodic basis.

If we look at scenario one, where the non-EU vendor registers with the OSS, receives an OSS registration number and obtains an exemption at import, basically what we expect is that the suppliers currently making undervaluations will now start acting differently and declaring the correct amount of VAT through the OSS. We are now talking about administrative costs to the customs authorities. They do not, of course, have to collect VAT or to monitor the exemption, but they will have to verify the validity of the OSS registration number. Having a valid OSS number is the condition for entering the EU without VAT, because again the assumption is that the VAT will be paid later on.

So I don't think there will be any suppression of administrative costs. We are still going to have administrative costs and we might have additional administrative costs. Well, I hope so because it will still be necessary for customs authorities to verify the value declared in the import declaration. If you have a wrong value declaration at import and then you have a wrong declaration of VAT in the OSS return, it will look as though you have a compliant operator but it may be that the value declared for that import was wrong in the first place. So it will still be necessary, if we do not want to increase cases of undervaluation, to have checks on valuation.

Regarding platforms, I will not mention the case of a non-compliant platform. We want to trust that most platforms will be compliant, although we should bear in mind that not all of them will be. In my view, there is a new risk of abuse here, which is the abuse of an OSS registration number. If you are a platform, you have an OSS registration number, and vendors when they sell through you – so when it's up to the platform to declare the VAT – will have to use your OSS number in the import declaration so that they get the exemption. What can we do to prevent any supplier from using an Amazon OSS number just in order to have an exemption at import and then eventually not make a subsequent declaration in OSS?

Imagine we find this out, because there is a disconnect between the import number and what is being declared later on in OSS: even if you spot the fraud, what do you do? Do you suspend this platform's OSS number? What is the impact for the platform? What is the impact for the other vendors on the platform? Given that this is now EU legislation, which will go live in 2021, this is a specific risk of fraud, which should be addressed, and I hope that it will be addressed before 2021.

Finally, if it is the transporter, then again it will be postal operators and express carriers. These are trustworthy intermediaries, but these intermediaries work on the basis of data provided by the vendors – the same vendors that are currently making undervaluations. There will, of course, be risk assessment procedures in place, but how can we tell whether the situation regarding the data of these non-EU vendors and the reliability of that data will be better in the future than it is now?

My conclusion here – and apologies for the blunt conclusion – is that we have a broken door. We have a major problem with undervaluation. That is the problem that we have and, instead of fixing the door, we have done something else. We have organised collection differently because it was not possible for customs authorities to continue with the existing arrangements. So we have changed the windows, but we still have the broken door. We still have the issue of undervaluation and we should not wait until 2021 to fix that problem.

I will be shorter on the definitive system proposal, but I think it's also important to nuance the expectations that we can have regarding robustness against carousel fraud and missing-trader fraud. There will be no more carousel fraud. That is a fact, because there will no longer be intra-community acquisitions. So we will no longer have this type of fraud, or the circular feature of the fraud which makes it so interesting because the amounts involved just multiply again and again. But we will have other types of fraud and you can imagine that the fraudsters are already trying to find out what else they will be able to do.

This is a very simple type of fraud. Under the definitive system, as proposed, you have a business in Member State A buying something from a business in Member State B, so paying the purchase price and paying the VAT that should eventually accrue to Member State A to someone in Member State B. Then Member State A will hope that the money will come back through the OSS in Member State B. But what if the money does not come back?

How much time does it take before Member State A realises that the money has not come back? Then it will have to ask for assistance from Member State B and, even if Member State B

provides assistance, you can imagine, if we are talking about organised crime gangs, that the fraudster will be gone. It may also be that the company in Member State B is bankrupt, and will Member State A be happy about notices of non-payment just because the company has ceased to exist or has gone bankrupt?

This is a problem that should not be underestimated. It's not as bad as carousel fraud – and I think we can be happy that carousel fraud as we know it will no longer exist – but there will be new cases of fraud.

In a final word here, to try to stick to my time limit, I would like to express my worries about the risk of tensions between the Member States. If you think about the OSS system as currently designed – that is, as a decentralised system of collection – you are basically proposing that a Member State outsources the collection of its VAT. Other Member States will collect its VAT. That requires a very high level of trust. I believe that we should trust each other: I think we should build a mechanism of trust – I mean 'more EU' is very often the solution. But I think, in this case, it is too much to ask from a Member State which will have very little insight into what goes on in another country – because that country is sovereign in terms of its organisational arrangements – and will ultimately have very little control over the way in which its VAT will be collected.

So I'm very much afraid of the risk of tensions, which may be justified because they are about cases of non-payment or, if they are not justified, will create a climate of suspicion. I think we should also take into consideration the fact that we have big Member States with big capacities and a lot of customers – so potentially a lot of administrative requests for assistance – and then smaller Member States, which could be overwhelmed by too many requests for assistance in collecting VAT that does not belong to them.

I am very much afraid of the risk of tensions there, and, before we go further, we should perhaps think of ways to ensure more trust between the Member States. I will not go further into the recommendations here, for the sake of time, but they are all in the report. In the questions and answers, I will, of course, be happy to say more about them.

1-005-0000
Chair. – Thank you very much, Professor. It was an excellent presentation, very robust and very straight. We can also can read your recommendations. MEPs who would like to see them can do so, either in the electronic version or on paper.

Now we have time for questions and, as always, we will start with our co-rapporteurs, Mr Niedermayer and Mr Kofod. Mr Niedermayer, the floor is yours. We will try to keep to five-minute slots for both question and answer.

1-006-0000
Luděk Niedermayer (PPE). – Chair, I would like to thank the Professor for coming here and sharing her thoughts. In your presentation, Professor, we have seen that many things are broken and that it's difficult to fix them. Let me start with the fact that trust is precisely what is now badly missing in the European Union – not only in the area of taxation – and that ways to restore it are difficult to find. We will certainly look at the suggestions and see to what extent you think we can change the system quickly and increase its efficiency.

Basically I have two questions in mind. The first is that some people believe there are so many problems related to VAT that it would actually be better to get rid of VAT and to go for what is sometimes called a generalised reverse charge, but which we can better imagine as a sales tax. I would like to hear to what extent you believe that such a system, if it were used in general way – basically replacing VAT across the board or at least in some countries – would solve rather than create problems.

The second thing is that, for example in the fraud you described at the end of your presentation, what we are talking about is basically fraud related to non-collection of VAT. In carousel fraud we are very often dealing with false rebates, but here we are dealing with problems of collection. It seems that some Member States believe they should ideally move forward to online, or quasi-online, collection of sales and supply-chain data. To what extent do you believe that such information, together with the effective and responsible work of the tax authorities, can actually afford a solution, regardless of the issues that you talked about?

1-007-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – To take the first question – VAT versus sales tax – yes, we have a lot of problems with VAT but I think all the studies have shown that the level of fraud is even higher in the case of a sales tax. So the VAT system with a fraction collection method remains the best solution, the best way out.

This does not mean that we have to be happy with the level of fraud that we have, but turning the VAT system into a sales tax is not a good idea, because you can, of course, focus all the efforts on the retail stage, but we know that it is much more difficult in the end to ensure compliance. I believe that a trail, an electronic trail throughout the supply chain, as the VAT system offers, remains the best option.

With the types of fraud that I have just explained, I am not a fraudster so I did not try to look for sophisticated methods or ways to avoid or to steal VAT. This is nothing sophisticated, this is very easy: it is not remitting the VAT, and that is made possible or, I think, easier, under this system because you will have several weeks or maybe months before the taxing Member State, or the Member State of destination, finds out and then asks for assistance from another Member State. The timing is good for the fraudster: the fact that they have more time basically to collect a lot of VAT, not remit it and then just go – leave and disappear. I think this makes it even easier for fraudsters to commit a very simple type of fraud, which is not reporting VAT.

But think about the volume of transactions that you can have in one month! Just take one month, and think of the very high VAT rates that we have in some of the Member States, and you will see the margin that you can have, and then you disappear and you start again under a different name. We are making life easier for the fraudsters, and I'm not the only one to mention it.

Now, regarding the collection of data, definitely we should use these new technologies as much as we can, and I don't think that means just offering an online registration system: that is not making full use of technologies. It is a basic use of technology. Of course we should invest in data collection, and of course we should invest in new methods of tracking fraudsters and tracking goods throughout the EU, etcetera.

Now, to come to the concept of the 'certified taxable person' (CTP), if I still have time. One problem here is that it will be possible for fraudsters, because again they are sophisticated fraudsters, to tick the boxes and become a CTP. But the other problem is reciprocity. If you identify a Member State where the control of CTP status is perhaps more lenient, then you can become CTP for the rest of the EU, and here again the risk of tensions between the Member States arises.

Are we going to look over each other's shoulders? How do you implement the concept of CTP? I mean, again, this is risky. We already have the 'trusted traders' programme with Authorised Economic Operator (AEO) status, which entails very robust checking, and you still have fraud, but at least it's more difficult to have AEO status. Now I think that CTP status might be too easy to acquire, in particular for fraudsters. And then you have the mutual recognition issue.

I hope I answered your question.

1-008-0000

Jeppe Kofod (S&D). – Chair, first of all, thank you to Professor Lamensch for the excellent presentation. We need to study your document further, Professor. The issue of trust between Member States and authorities is fundamental if you want a system that works. As the Chair also said, we are discussing reforming the VAT system and going towards a more definitive system, and you also talked about the new 'certified taxable person' (CTP) status, which, as I understand, you say is opening up opportunities for more fraud. That's one of the conclusions that I'd like to query.

What Parliament underlined in its response to the Commission's proposal is that we have to have coherent implementation of that type of new category of reliable taxpayers, and, if we have that coherent and effective implementation, then I would think the opposite: that it is better to have such a system, whereby you have to show yourself to be a reliable taxpayer, before you can have the advantages of these 'quick fixes' that the Council has also just adopted. So, don't you think that if we have coherent implementation then we will actually get rid of some of the fraud instead of increasing the avenues of fraud? That's the first question.

And secondly, there is the question of what happens now, with the quick fixes. I understand that the Council adopted the quick fixes but postponed the CTP issue until 2021-2022. So in the meantime, what system do you see? Will fraud increase because, as the Commission says, a system with quick fixes and without CTP is fraud-sensitive: that's the Commission's own wording in this regulation. So it seems to me that, in the coming years, we can envisage more fraud if we do not do something about it. I hope you understand my question. It concerns something we are dealing with right now, so perhaps you could elaborate on that.

1-009-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – I understand that one of the objectives of the Certified Taxable Person (CTP) scheme is to reduce the traffic in the one-stop shops (OSSs), because they will have to handle a lot of transactions. If all the reports have to be done through the OSS, then at least we would like to have reliable operators, rather than continuing in the same way as now.

I mean it's not going to be an intra-Community acquisition, but you're going to have the reverse charge. So basically you still allow the same mechanism for some operators. Now you can imagine that, if it is still possible to apply the current mechanism on which the carousel fraud is based, they will do anything they can to get the status so that they continue business as usual – and, again, I don't know how but they will manage. There is no doubt about that. And then we will track them, and catch them perhaps, but then they're going to start again.

So I think it's dangerous because the issue is not the small traders who commit carousel fraud, or at least that's not the most damaging kind. You know that the most damaging, in terms of amounts of revenue, is the fraud committed by these gangs, and we should be in no doubt that they will manage to get CTP status.

In a way, with this, we are retaining the opportunity to commit carousel fraud. So, indeed, with the quick fixes there was no reference to the CTP scheme, and maybe we can query the Commission on that point.

I see that some quick fixes have been adopted, and I think it is very welcome that they have been adopted, although in the end we should indeed move on to another system. What is very important, however – given that we are talking about a VAT gap of, as you mentioned,

EUR 150 billion per year – is that we cannot afford to wait until 2022 to have another system. We need immediate action and I think we have very good tools for that. I am talking about Eurofisc and, for example, the agreement that we now have concerning administrative cooperation, and new data available to Eurofisc, and also the TNA, which will also go live next year, etcetera. This is a very positive development because it will help Eurofisc with detection.

Of course it's only a tool of detection, and it will only stop one possibility for fraud at a time. The situation is always the same, it's like turning off the water: you turn off the water here and then they switch to another place and then you turn off the water again, but the quicker you can turn off the water the better, of course. It is essential that all the Member States participate actively in the TNA, or at least I would invite all the Member States to do so, because at the moment I see it as the best tool for detecting and stopping fraud.

Now, now on the judicial side – and this, of course, depends on the Member States – fraudsters should also be sued. They should also be prosecuted because it's not enough to identify the fraud and stop the fraud: we should stop them definitively. This is another very important aspect.

In the meantime, now, today, it's very important to invest a lot in what Eurofisc can do; invest a lot in new technologies; and then, in the future, the definitive system, as you have mentioned, could be made a more centralised than a decentralised system. I think it would be easier for the Member States to trust each other if it was in the context of a centralised system, in which they were represented and in which they had direct access to the data, and where Eurofisc could also see what's going on – what the flows are and whether anything is suspicious.

While it could be perceived as a loss of sovereignty to have this body there collecting VAT, I think it's less a loss of sovereignty than expecting other Member States to collect your VAT without having much control over them.

That is one aspect worth changing, and we're not very far from that because the OSS is actually the embryo of that. The system whereby we have a single point of collection, that is the OSS idea. But then, I think, we should go further and develop on that: have, instead of a single point in each Member State, a single point in the EU. So the OSS is just the beginning, it is a very promising beginning but we should go further because without trust it is not going to work.

I think that's it.

1-010-0000

Arndt Kohn (S&D). – Chair, I will start by expressing my thanks, too, to Professor Lamensch for enlightening us as to why all is not yet well on the VAT front. I had feared that such was the case and sadly you have confirmed that today, Professor Lamensch.

There are three questions I would like to ask. Firstly, on improved cooperation between national authorities and the European Public Prosecutor's Office (EPPO), and also OLAF of course, in the fight against fraud, you had written about the importance of the EPPO having ambitious terms of reference. What exactly is your point? Do you think the EPPO's current terms of reference are inadequate? And where specifically can we do more in future in terms of cooperation with both OLAF and the EPPO?

I also have a question about Customs Procedure 42 because you say, similarly here, that the changes introduced are still not sufficient. Where could we, or indeed the Member States, do more in that regard?

Lastly, to pick up on Mr Niedermayer's question about the reverse charging procedure: could we not take a broader approach here, looking much more deeply into this procedure in other countries, too, and perhaps adopting it as an effective tool against many types of fraud?

1-011-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – Thank you for the question. I think I made it quite clear in the report that we should have ambitious terms of reference for the European Public Prosecutor's Office (EPPO). It's already a great achievement that we have managed to get agreement on an EPPO, so we should be very satisfied with that outcome.

Of course, it should result in the effective prosecution of fraudsters. There is also the criminalisation directive, and I think I mentioned that it should be seen as a minimum standard. To the extent possible, any type of fraud – and by 'severe fraud' I also mean fraud involving amounts lower than EUR 10 million – should be prosecuted, and I see this as a minimum standard, because there is something which is very dangerous which is the feeling of impunity. There has been a feeling of impunity and a feeling that carousel fraud is not such a risky business. I mean, you know, they will stop a particular fraud and sometimes they will prosecute the small fry but they never go after the big fish. So, at the moment, there may well be this feeling that this is not a risky business – and we should make carousel fraud a risky business with very small benefits.

While I realise that, politically speaking, the EPPO is already a great achievement, I think that, to the extent possible, we should definitely continue our efforts: see how it works, and then, increasingly, see how we can improve the work of the EPPO.

With regard to the work of OLAF, you know that we have Eurofisc, first of all, then we have OLAF, then we also have Europol, all working on these investigations. We have a lot of bodies there, they all have a role to play, and perhaps it is time for some brainstorming with all these different bodies to see how they could work together better. I don't think it would make sense to say now that we will put everything in the hands of Eurofisc. Of course, it plays a central role, as does OLAF. But they have different pieces of the puzzle, and it is altogether that we can move forward. However, that requires some brainstorming with these bodies, because they know best what they can do, and they know best what they are willing to do and able to achieve.

I think it's time now, with the EPPO, to have that discussion involving all the different bodies we have in the EU because, as I said, we have a pretty consistent regulatory framework, including all these bodies.

Now, on the CP 42 customs regime, administrative cooperation is basic. We need administrative cooperation. We've had it for years. It should have been taking place. We've seen that there are many flaws, and that it is sub-optimal. Now we are going to have increased cooperation. This is the most obvious way to tackle this kind of fraud.

It's normal in terms of business administration that, when you have an import, you cannot be sure, even if you're not a fraudster, what the final destination of the goods will be. It's not necessarily fraud if you change, if you re-route the goods, but it's absolutely necessary that the administration should know exactly where the goods are. So, in addition to administrative cooperation, again we should be more ambitious and invest in technologies, and here we could learn a lot from the customs authorities. I mean, blockchain technology is not something unknown to them: they are using it already. We are using blockchain for international trade and so, within the EU, with the tax administration, we should find a way to draw on the experience

of colleagues in customs on how, in addition to exchanging information, to track goods within the EU, even if we no longer have borders.

Now, on the reverse charge. The reverse charge has proven effective in stopping massive carousel fraud, and I am thinking here of carbon emissions, for example. We needed it, it was necessary. But it is just a patch on the wound, and then it will be the turn of another sector. I think it's necessary to stop a trend. This is one of the tools that we have to stop the leak, and then we move to the next sector where the next leak is going to be.

If you want to have a complete reverse charge system, then we come back to the discussion we had with the first question: you then have a sales tax system, and I do not think this is the way to go. I know some Member States are in favour of reverse charging because they have seen the effect on carousel fraud in specific sectors, but in my view it should remain one of these specific tools that we have when something big is developing and you need to stop the leak.

1-012-0000

Chair. – Thank you very much for your answers. Now I have an ECR slot, but I am the only ECR Member here, and I would like to use the opportunity to give you some minutes of the floor to select the recommendations that you did not have time for in your presentation. Maybe you can use this. Already in your answer you already mentioned about EU-based OSS and maybe others as well, in your recommendation. The floor is yours.

1-013-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – As I said, I think the one-stop shop (OSS) system is the embryo of something really promising, which is a more centralised collection of VAT. Now this would be an improvement on something that we already have in mind – in fact more than in mind because it's already applicable in the EU in other sectors. Now we can also be more ambitious and we can also look at what some academics have proposed, using new technologies.

For example, and I make reference to a study there by Professor Ainsworth, the idea is to ask where the risk is, and the risk is in cross-border payments of VAT: the fact that the money goes to another country and that we don't know whether it's going to be paid to the competent tax administration. What these academics have proposed is to replace these cash payments of VAT, in real currency, by digital payments with single-purpose currencies. That would be useless for fraudsters – if they hack it or steal it, it would be useless for them – so you secure the payment.

I cannot enter into the details because I do not have all the details of their proposal but I think this is a very interesting way of securing revenue because, with this proposal, the VAT never leaves the taxing Member State. When the customer makes a payment the money will immediately be paid to the tax administration. This kind of proposal is very promising, and I must say that if the EU does not investigate it, I think other jurisdictions will. I think, for example, that the Gulf Cooperation Council (GCC), which has just adopted VAT, is investigating the potential of such a solution.

Maybe we should not wait until a newcomer in the area of VAT comes up with these outstanding ideas. I would say that we too should investigate the potential of this new technology.

(Interruption with inaudible query)

Yes but single-purpose, single-purpose. We are not talking about bitcoins. We are not going to use bitcoins to pay VAT. This is something which the state will command and master, and which it will ask businesses to use to organise cross-border payments. I have seen a presentation

by one of the co-authors of this paper, and I must say they have very compelling arguments because they have been running this study for a couple of years and they have tried it with many lawyers working in the field of fraud, etcetera, because this is also what you have to do. If you want to design a robust system you need to make a case study, you need to have a business case, you need to really test it – you know, a stress test – and this is what we lack at the moment with the definitive system. There are so many things that could happen that we are not even aware of, and I think the best way to protect ourselves would be to have a stress test.

1-014-0000

Molly Scott Cato (Verts/ALE). – Your report shows that there is really quite a significant difference in VAT gaps between different EU countries. So for example, Sweden – good old Sweden – 1.24%, Luxembourg 3.8%, Finland 6.90%, whereas at the other end of the spectrum we've got Romania on nearly 40%, Lithuania 37%, Malta 35% and so on, so can you help us to understand why there are such differences in these tax gaps between different countries? What is working and what isn't working?

And then, if you will allow me a second question – because being a Brit I see most things through the lens of Brexit these days – we had an interesting debate in the European Parliament this week (well, it was 10 o'clock on a Wednesday, but it was still quite interesting actually), which was about a big VAT and customs fraud that OLAF had looked into which involved the import of Chinese shoes and clothes that were, exactly as you suggested, grossly undervalued into Britain, and it was 2 billion lost in customs duties.

Now two things about that. One is, Britain has refused to become a member of the European Public Prosecutor, so what are we to do with countries – obviously you'll probably be glad to see the back of us – but with other countries that won't join the European Public Prosecutor, can we not link that somehow to the VAT regime?

And also, how are we supposed to accept that the UK can collect VAT and customs on behalf of all EU countries and distribute it? Why should the UK be trusted to do that when they have not investigated this particular fraud?

1-015-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – Well, these are tough questions. On not joining the EPPO: Member States remain sovereign after all. We cannot force them, we can just convince them. This is what diplomacy is about and this is what the EU is about, so we can only show them that it would be beneficial for all, but I do not see the point of forcing Member States. Again, we should convince them that this is good, this is a win-win if they all join.

Of course if they do not – but then... I mentioned the word 'tax dumping' and it is the same with the VAT gap. Fraudsters know where to go. They know where it is easier to get away with the fraud. They know. As terrible as it may sound, we know that in some Member States you can buy the tax administration. You can buy harbour and then you know that when it is coming into your harbour... I mean, you have very little control. This is the reality that we have to deal with, but then again it is all about negotiating diplomacy and sharing best practices and this is the only way.

Explaining the VAT gap: I think this is no more complicated than that, it is just that you have different levels of controls, of compliance, among the Member States. It is a different, yes, it is a different situation and of course they will attract then the fraudsters.

And then the last question – how can you accept that? Well because at the moment they are still part of the club and so we have to deal with this Member and we have again to convince them

to act differently and that it may have an impact on future Brexit negotiations as well, perhaps, but that is more of a political question that I am not competent to answer.

1-016-0000
Miguel Viegas (GUE/NGL). – Chair, I have only three brief questions: the first concerns the role of shell companies, i.e. fictitious companies, which are an integral part of most of the VAT fraud cases reported in the 'Paradise Papers'. In other words, shell companies are key in hiding the status of the final consumer. My question is: given their central role, do you think that part of the legislation should address these fictitious companies? Should they be banned? By which I mean, should undertakings which do not have a concrete economic underpinning be prohibited?

My second question concerns Rule 42, which allows international transactions to be exempted from VAT provided that the importer is not the final consumer. There is a vulnerability here since this implies cooperation between states, but we are clearly discussing a sensitive point, and I would like you to elaborate a little more whether we can do more to overcome this difficulty, bearing in mind that monitoring takes time and that, a great many transactions can be made during the weeks that inspections take, and this, of course, leaves room for fraud.

My third question concerns tax rates – a directive that we adopted last week – you refer to work on this issue as a sensitive element that can lead to an increase in the incidence of fraud. I would also like you to expand on the negative list of products that can benefit from reduced rates. How can this increase fraud? This is a concern that you raised in your report, and I would like to hear a little more on this matter.

1-017-0000
Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – Now, when you talk about letterbox companies that we let... they get a VAT number, they become a taxable person etc., but this is exactly the issue that we have with the CTP. We know that some countries accept, they close, they just turn a blind eye to these companies. Whether we should ban these countries? Again in my view the solution is not, not in this case at least, in banning one country because then you exclude it from the negotiation and it is over and then there is no dialogue anymore.

It is more about convincing them, but this is the whole debate also about harmful tax competition because we know that they are attractive countries because fraudsters know that it is possible to set up a shell company, to have the letterbox company, in their countries. So this is part of the big issue of harmful tax competition because they take benefit from it, probably, one way or another.

But then again what if you... I see code of conduct up there on the panel, I think this will also be the subject of the next discussion that you are going to have. The only thing that you can do is peer reviewing, negotiating, convincing and then, little by little, try to have a levelled situation where all the countries agree to follow a code of conduct and agree to stop these damaging behaviours, because they are damaging for the rest of the EU.

Then again it is all about negotiating with these other countries, but as you said, you know, what you mentioned there, this is very important, this is really my point for the CTP. It will be easier to get CTP status in some countries just as it is possible to have a VAT number with very little control in some Member States whereas in other Member States it would not be possible without a lot of control to get a VAT number.

On the controls. Well the tax authorities – there are two types of fraud. Of course you have domestic national fraud and then you have intra-community fraud and this requires different

types of techniques and audit methods. Now as concerns intra-community, just listen to Eurofisc, participate in Eurofisc, use their expertise, contribute, provide the data, share the data, react to their requests, and then – I think this is again the best way to go – go and really participate in this TNA.

Now on the national level, you have to put in place different types of controls, but they are of a very different nature and there again there are best practices that are being shared in meetings between the administration.

Now the last point, on reduced rates. I made the point in this report that reduced rate fraud in itself probably does not represent huge amounts, but the problem is that if you diversify the tax rates structure you open up opportunities for new abuse because you know that there will be some commodities in some Member States subject to reduced rates. You are going to have misqualifications – no doubt. So maybe the loss of revenue will be ridiculous when compared to carousel fraud, but we are certainly not going in the right direction on this topic if we diversify further the tax rate structure.

1-018-0000

Neena Gill (S&D). – Thank you very much, and my apologies that I was late. Molly has raised one of the issues I wanted to touch upon, which is about how you make future third countries prioritise the fight against VAT fraud. I think it is important, even leaving aside the Brexit issue, that we really have an increased cooperation with tax authorities in relation to third countries in order to successfully challenge this.

Just moving from that, one of the points you touched upon is that prosecution is key to fighting VAT fraud, and you said sanctions are too soft. I question that, because I think prosecution clearly hasn't been sufficiently utilised for one thing, but secondly, you could make sanctions a lot harder and stronger to get that greater prosecution going, because it's also still a soft option. I wonder what you think about that?

And then, in terms of how we prevent abuse in terms of VAT registration in case of imports, you underline many risks about it that haven't been properly addressed in the e-commerce package. Could you elaborate a bit more exactly what you think is needed?

Finally, I just wanted to touch upon the fact that you rightly point out that digitalisation and the way businesses operate has a major impact on the VAT system, and new technologies and strategies should be investigated. How do you think VAT fraud can be properly tackled in terms of the digital world? I think it would be helpful if you could again elaborate a bit more.

1-019-0000

Marie Lamensch, *Research Professor International and European Tax Law, Institute for European Studies and Law Faculty of the Vrije Universiteit Brussel***.** – There are a lot of questions there and I could talk for an hour, elaborating.

Talking about cooperation with third countries: in any case if we have the OSS with third countries or for third country suppliers, it seems unavoidable that if you want to audit Chinese vendors, you may want to have good contacts with the Chinese tax administration. But is it realistic at all for us to audit a Chinese business? Is it even a Chinese platform, or even, not talking only about China but any third country, what is the quality? How can we expect to have reliable data? How will the procedure go?

We are not talking about exchanging information. This is rather neutral. You ask them to exchange their information, that is neutral. Now if you ask them to do whatever is necessary to audit their businesses because of the VAT they owe us, that is completely different. I think international cooperation there has its limits. That is why I think we should design systems that

are self-sufficient. We should keep control of our VAT and we should not outsource collection of our VAT, in this case to third countries.

Talking about the prosecution, there has been a tendency – and this has been described by my colleague, Rita de la Feria, for example – that tax administrations have been very hard on small traders that were considered as traders because they were part of a chain etc., because they were the easiest targets. It has also been proven that tax administrations are looking to recover the revenue and so sometimes they go for the easy prey. They go for local traders and turn a blind eye again – and this was the case, for example, in the UK – to all these non-UK and non-EU businesses selling to the UK online without charging any VAT.

There is a business association, which showed evidence etc. and it took years before HMRC started investigating just because it is more difficult to go against these non-EU suppliers. So yes, there have been sanctions, but never on the real fraudsters and never on the organised crimes themselves because they are the most difficult and it is most expensive to go after them.

To elaborate on what kind of technology could be used: I have been advocating for a change of model. I think the vendor collection was a very good idea when trade was domestic and when B to C was domestic, because then you could go after the businesses around the corner. The problem now is that our tax collectors are in India, China and Russia and we cannot continue with this model of sending the VAT over there and hoping it will come back.

So I have been advocating for a change of model and I am not the only one. I think we should use the data from payment operators, we should use data from customers and we should use big data in accordance with GDPR rules etc. We must of course be very careful, but in any case we have to change the model because the one invented by Maurice Lauré in the 1950s cannot continue to be valid today. With all due respect to Maurice Lauré, I think it is time to move on to a different collection method.

1-020-0000
Chair. – Thank you so much, Professor. I think we can say that was an excellent presentation, with good answers, which has given us new ideas.

Now we will have a break for a few minutes. Please could those who are leaving and those arriving do so very quickly.

(The meeting was suspended for a few minutes)

1-020-0000
Chair. – Colleagues, please take your seats. May I ask you not to continue your discussions.

We now have in our TAX3 Committee meeting an exchange of views with Fabrizia Lapecorella. I hope I pronounced that correctly. We have an excellent speaker today. As you all know, Ms Lapecorella is the Chair of the Code of Conduct Group, which has been, since its establishment in 1998, the most significant advisory body of the Council when it comes to tax measures.

Ms Lapecorella, I am glad that you could accept our invitation to this exchange of views. We are looking forward to hearing your presentation and later to the debate on this issue. We are particularly interested in the developments made with regard to the EU list of non-cooperative tax jurisdictions, but also in the work carried out by the Code of Conduct Group in the field of potential aggressive tax measures in the EU. The Committee would also like to hear from you about any progress made in increasing the transparency of the Group, and whether we can expect any significant reform of the Group in the near future and the scope thereof.

Ms Lapecorella, you will have 15 minutes as agreed. The previous meeting was delayed a bit, but not too much. After your opening remarks, we will have a question and answer session, as we normally do, with five-minute slots for the question and your answer and then we move ahead with questions.

Ms Lapecorella, the floor is yours.

1-022-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – Chair, honourable Members, it is a real pleasure to be here today with you in my capacity as the Chair of the Code of Conduct Group of the Council. I should say at the outset that I have discussed your invitation with Member States in the Group and we agreed that I would join you on a voluntary basis to exchange views with all members of this committee.

As you just recalled Chair, the invitation for me today is to inform you about the work of the Code of Conduct Group and the main topics in which you are interested are the EU list of non-cooperative jurisdictions for tax purposes, the existence of potentially aggressive tax measures in the EU, as well as the transparency and reform of the Code of Conduct Group, and I am very happy to note that the issues at stake are not only a priority for the EU finance ministers in the Council but also for the European Parliament.

As the honourable Members know, the Code of Conduct Group was created back in March 1998 by the Council with the objective to assess potentially harmful preferential tax regimes and curb harmful tax competition within the EU. Our activities have recently expanded to a much larger scope and beyond the borders, the EU borders, through the EU list of non-cooperative jurisdictions for tax purposes.

So I would like to start by giving you a brief update on the EU list, which was recently updated at the Ecofin Council on 2 October 2018.

The political process that led us to where we are now is very well known to you. On 25 May 2016, the Council agreed on the establishment of an EU list of third country non-cooperative jurisdictions and entrusted the Code of Conduct Group with the preparatory work. From the start we have looked at this as a constructive process, aiming at promoting cooperation among the EU and the third countries and stimulating wider acceptance of the tax good governance principles developed at the EU level and at international level.

Therefore we have always talked about an EU list of non-cooperative jurisdictions and not about a black list of tax havens, contrary to what is often reported. The objective, in fact, is not to name and shame jurisdictions, but rather to provoke effective changes in respect of worldwide tax good governance through cooperation. Fighting against tax fraud and tax avoidance cannot indeed be done effectively by the European Union alone.

In November 2016, the Council approved the procedure, the geographical scope of the exercise and a screening criteria. The screening phase then lasted the whole year, 2017, until the adoption of the first version of the EU list of non-cooperative jurisdictions for tax purposes reported in Annex I of the Council conclusions of 5 December 2017. Annex II of these conclusions includes the jurisdictions which agreed, through commitment letters signed at high political level, to take the necessary steps to address all the concerns identified by the EU. Annex II records the progress made by third countries in the implementation of the commitments taken.

Since then the EU has repeatedly reacted to developments by jurisdictions and the list has been updated by the Council at a number of Ecofin meetings. This happened on 23 January, on

13 March, on 25 May, and, as I just recalled, most recently on 2 October 2018, and the updates have occurred based on a recommendation by the Code of Conduct Group.

Six jurisdictions at the moment have not met the requirements as set by the EU and this is the reason why they remain listed in Annex I. Nevertheless, the Code of Conduct Group maintains an open dialogue with these jurisdictions also. Most other jurisdictions chose to cooperate with the EU, as illustrated in Annex II, which now contains 64 jurisdictions.

This, in our view, shows that the positive approach chosen by the Council has led to a constructive engagement with many jurisdictions around the world and, further, that this intergovernmental initiative has so far been a success and is making a fundamental contribution to the spread of international tax good governance principles.

We take the commitments of jurisdictions that feature in Annex II very seriously. We are closely monitoring their implementation through the Code of Conduct Group and these jurisdictions will need to deliver on these commitments, on the commitments taken, against precise deadlines, otherwise they will be listed as non-cooperative. And this is basically the main gist of the process that is going on with respect to the listing.

With respect to the issue of potentially aggressive tax measures in the EU, it is important to point out that since its creation, the Group has examined 455 preferential regimes of EU Member States and their dependent territories, 131 of which were deemed harmful and have been, or are in the process of being, rolled back.

The Group has also agreed more than 27 Guidance notes for applying the criteria of the Code, since its creation, and regularly reviews their effective implementation. It is fair to say that the Group has worked very hard and has been able to make a difference. This does not mean that things cannot be improved and, as you surely are aware, discussions are ongoing about a possible reform of the Group as well as about how to increase the transparency of the Group's work.

With regard to these last points, starting with the reform of the Group, the Ecofin Council mandated the High Level Working Party on Taxation to examine the possible revision of the mandate of the Group. These discussions were resumed during the Bulgarian Presidency on the occasion of the 20 years anniversary of the Group and are continuing during the Austrian Presidency.

As regards transparency, the process of establishing the EU list of non-cooperative jurisdictions is technical in nature and yet at the same time is also diplomatically sensitive and this requires a certain degree of caution. Nevertheless, the Group, at the request of Member States, has decided to take a number of measures aimed at increasing transparency.

We created a new web page on the Council website with links to all publicly available documents. We published the various guidelines used during the screening and the monitoring process. We published all the letters seeking commitments sent to jurisdictions and we published the commitment letters received in return for all cases where consent was received from the concerned jurisdiction. So at the moment 46 letters have been published.

We published the review of all the preferential tax regimes screened by the Code of Conduct Group in the 92 jurisdictions that were covered in the scope of the exercise. We are providing a more detailed regular six monthly progress report to the Ecofin Council and this was certainly the case for the last report released in June 2018. We publish the Code of Conduct Group reports to the Council suggesting the delisting of certain jurisdictions and we publish the descriptions and the final assessments of the preferential regimes once they are endorsed by the Council.

Let me conclude by saying that the issues that the Code of Conduct Group is dealing with will remain very relevant in the future and I am convinced that the Group is indeed well placed to meet these challenges and above all to offer concrete answers when it comes to potentially harmful tax regimes. This is what all EU institutions aim for and what the citizens expect.

1-023-0000
Chair. – Thank you very much Ms Lapecorella, I think that was a very good start for our debate now. Before I give the floor as usual to our two co-rapporteurs, I would like just to ask Members: I have some Group representatives on the list but if somebody wants to ask a question, perhaps we can find a time slot, so please indicate – those who are not yet on the list – please indicate here.

Now I would like to give the floor to Mr Luděk Niedermayer.

1-024-0000
Luděk Niedermayer (PPE). – Thank you Chair, and thank you for being here with us. I must say that I was impressed by the changed and improved level of transparency by the Code of Conduct Group. I carefully went through all 78 pages of disclosure of your rulings on preferential tax regimes, and I must say that it made a very good impression, because it seems that all cases – especially within the EU – that you have got on the table are solved, with the exception of a few within the EU (I guess Spain's patent box regimes).

But when I look at the webpage on tax in the EU I immediately have links to pages that were suggesting that if you set up a company in country X you will avoid paying tax on dividends in country Y, or you will avoid paying tax on capital gains, and so on. So I wonder, because your page is creating an impression that there are no harmful tax regimes in Europe anymore, but my impression from discussions here are different. For example, some countries are suggesting that if we move to CCTB that would be for me some kind of ultimate solution for harmful tax regimes within the EU. They will lose billions for euros of tax revenues, so it seems to me that they are actually admitting that they have placed into their tax regimes some provisions that are actually allowing to get these billions of tax base that are probably coming from some other places. So how can we actually understand on one hand the disclosure of the Code of Conduct Group showing that actually all harmful issues were solved, and on the other hand have a feeling that there are still things that are not perfect in the EU?

1-025-0000
Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – Thank you very much for the question and for the appreciation of the improvements we have achieved on the grounds of transparency. As I said before, we are still working on that, so we are actually aiming at doing even better.

As to tax competition in the EU, as I just recalled, the analysis and the assessment of the harmfulness of tax regimes/tax measures in force in EU Member States has been carried out thoroughly, and is currently constantly being carried out on the basis of the current criteria of the Code, that are the same as those existing from the beginning of this Group. We are perfectly aware – a fact notwithstanding the effort placed into this exercise – that there are still areas in which significant improvements can be made for the benefit of the efficient functioning of the internal market. This is precisely the reason why the Group – in fact, the high-level group, with also the contribution of the Group – is discussing a revision of the criteria. It is the revision of the criteria on which I am sure we will find soon an agreement that will allow us to further investigate existing tax regimes and improve the level of competition in the internal market.

As you probably know, there are a number of issues that are being discussed to revise the criteria of the Code, and among this one very important one is the revision of the gateway criterion – the criterion that basically triggers the assessment on the potential unfairness of the regime.

That criterion is currently stated in terms of low level of taxation, of a level of taxation lower than the general level of taxation. Our ambition is to make that criterion more stringent. Discussions are ongoing, but I'm hopeful that we will succeed in making a step further also in this direction.

1-026-0000
Luděk Niedermayer (PPE). – I have just a few seconds but I just want to make something clear. You talk about tax competition. I am not against tax competition, but I am against countries trying to seize a tax base that belongs to other Member States. So I guess no one here wants to talk about abolishing tax competition and governments' full rights to decide about the level of taxation, but they should not try to steal the tax base from the others, just for clarification.

1-027-0000
Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – I was referring to harmful tax competition, and harmful tax competition is precisely related too.

1-028-0000
Jeppe Kofod (S&D). – Thank you, Chair. Ms Lapecorella, thank you very much for participating in our Committee and also for the written contribution, which I studied with great interest.

I think it is no secret that the Code of Conduct Group for Business Taxation and previous committees, and this Committee, have had some issues over cooperation. I am of course happy that some of the things that we asked for are transparent, but I think the fundamental problem is the same, namely the lack of transparency in the decision-making process in the Code of Conduct Group.

We, as directly elected Members of the European Parliament, have no idea how Member State representatives are influencing ongoing legislative files or how the voters even position themselves on a given subject. We cannot see that. You work as a Group with one position and I think that is still a big problem. The free press and citizens cannot really see what is going on.

I have to mention today that I agree with the European Ombudsman. Emily O'Reilly clearly stated in her investigations into the Council's working methods that, and I quote, 'the discussions in all these preparatory bodies are therefore a crucial part of the EU law-making process'. Those are her words, not mine. Your Group is the same.

I would say that the Code of Conduct Group is exactly such a formalised preparatory body for the Council, hiding behind its formulistic answer – and I also see this several times in the written answer – that you are an intergovernmental body, which means that we have no scrutiny or anything from the European Parliament's side over your work, but you still deal with things which are fundamental to common legislation in the EU. You prepare meetings for Coreper and you are an extension of the Council of Ministers. I think you even meet in the Council building, if I am not mistaken.

You are charged, as we have heard about today, with the updating of the EU list of non-cooperative tax jurisdictions and even communicate with third countries on behalf of the EU. So it is quite clear to me that the Code of Conduct Group, and other working groups for that matter, play an integral part in the formulation or non-formulation of EU rules, directives and regulations.

So I would ask you whether it is not time to give up the pretence that you are not in fact an EU preparatory body – in a sense you are that – and not only an intergovernmental body that works without the scrutiny of Parliament, and isn't it time to follow the very clear conclusions from the Ombudsman? I think that she gave the most damaging verdict possible by concluding that

the current practice constitutes, in her words, 'maladministration'. I think that is really severe language. Finally, I would like to ask what steps you would take, in concrete terms, to follow up on the Ombudsman's critique because I think that would be interesting to hear.

I thank you again for appearing before our Committee. I could ask a lot of questions about the list of non-cooperative jurisdictions, but I think I will limit myself to this and then hopefully get back to a better dialogue for the future. I also welcome you as the new Chair of the Group.

1-029-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – I see your point perfectly, but it is a matter of fact. As a matter of fact, for the Code of Conduct Group there exists the Code of Conduct, and the Code of Conduct for business taxation is a political commitment that was taken by Member States at the end of the 1990s to establish this. The Group was created and instituted as an intergovernmental group, as the forum that had to ensure that all the EU Member States were actually fulfilling the political commitment taken at the moment when the Code was agreed by the Council. This is a matter of fact. I think it is also important that the level of transparency – everything that is actually done and the results produced by discussion in the Group – are public. I am very well aware that this was not the case before.

I think that at this stage there are many elements to appreciate the work of the Group. The nature of the Group is not that of an ordinary body of the Council, as is clear from the fact that, for instance, when the Ministers decided that there was a need to revise the mandate and the criteria, they mandated not the Group, but the High Level Working Party. So they entrusted an ordinary formation of the Council to do that. Unfortunately I am not in a position to change this. This is just for clarity.

As to the other point you made about the opaqueness of the discussions held in the Group, as I said before when I was briefly illustrating the way of working, there is a degree of discreetness that it is reasonable to maintain for this. But the important thing is that, whatever the discussion is at Member State level, what counts and what constitutes progress in the work of the Group is the final decision, and all the final decisions, all the guidance and all the procedural guides – everything – is public. I think that further steps will be taken for transparency, but I have the impression that the important things that the public and the Parliament should know are already available at this stage.

1-030-0000

Werner Langen (PPE). – Chair, I have been listening to Ms Lapecorella with some surprise. As the former Chair of the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA) ... Time zero please!

I have been listening and thinking how nice it is, Ms Lapecorella, that you are here! In your written answer you said you would reply to our questions 'in the spirit of cooperation and transparency'. When I was chairing that committee, inquiring into the Panama Papers, I received a rather different answer from you. Yours was one of the few bodies at any level that was not prepared to appear before the European Parliament, and you justified your refusal in writing – I filed the document carefully – by explaining that you were not an EU body and that, therefore, you were in no way answerable to Parliament. If that is about to change, then our conclusions on the Panama Papers will have achieved at least something.

I recall two more points about the documents you sent us. Firstly, there was a set of minutes, 12 pages in length: the first page, with a list of nine points, was readable and the other 11 pages had been entirely redacted. In fact, even point nine, 'Any other business' had been censored. There was nothing there. It was an unparalleled provocation to Parliament!

And I remember the minutes on the subject of tax rulings. Here, 11 Member State contributions had been redacted, 10 of them entirely and in one case, that of Spain, in respect of a Province. That was your idea of transparency at that time. If you are now doing things differently, but merely directing people to the website and saying that what matters is the final decision, then I would like to suggest that you take a leaf out of Mr Draghi's book. The European Central Bank enjoys full autonomy, yet Mr Draghi is ready and willing to share information with this House. I simply do not understand the Council's ducking and weaving vis-à-vis Parliament. It is not something we will tolerate indefinitely.

I'd like to move now to a different issue. My second question concerns this blacklist of countries and the publication of their replies to your letters. Who then checks that they do what they undertake to do? Do you think it is sufficient for a listed country to reply to you? Ought it not to demonstrate what action it has taken before it can be delisted? It seems a most odd way to proceed!

Thirdly: to what extent, in the 20-odd years that your Group has been in existence – it was set up in the late 1990s, after all – have you thus far exempted the EU Member States from your investigations? Your deliberations about who has owned up to what have always taken place behind closed doors, never in public.

We in Parliament are calling here for full transparency.

1-031-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – I think that I have already said what I wanted to on transparency in replying to Mr Kofod, but Mr Langen has raised a very important point, which has to do with the monitoring of the implementation of the commitment.

This is exactly the phase of the exercise which we are in at the moment. The EU has expressed and communicated in a very detailed way. You can read all the letters we have written to our partners about the elements of concern for the EU with respect to the *[unintelligible]* criteria of the exercise. We are currently monitoring the implementation of the commitment taken. This means that we are monitoring not only whether legislative initiatives are being taken, or have been taken, to meet the EU's concerns in due time, but we are also monitoring the quality of this legislative initiative. So we are monitoring the substance of the legislation, and the Code Group will assess the adequacy of the initiatives taken.

We will drop jurisdictions that are currently listed in Annex II of the Council conclusions – listed as willing to be cooperative with the EU – only at the end of this of this process. It is exactly the same way as that in which, when we assess that in EU Member States there is a potentially harmful tax regime, we ask for the rollback of that regime and we monitor and assess the adequacy of the rollback. It is exactly the same process with a very strict deadline – for instance, the deadline for implementing the commitments taken with respect to criterion 2.1. Criterion 2.1 is basically the criterion that refers to potentially harmful tax regimes. We have asked third countries and jurisdictions to adopt the legislative initiatives needed to remove that element of concern by the end of 2018. At the end of 2017, we asked to have these regimes or some features of the regimes removed by the end of 2018. When the deadline has expired, we will assess the adequacy of what they have done.

In the meantime, we have been in a constant dialogue with all these jurisdictions at a technical level, examining what they have done and supporting the legislative process in all instances in which we have been asked for support. Because we have been asked for support and have been asked for indications. Many of these countries and jurisdictions have shown a generally

cooperative attitude with respect to the EU, and it is exactly in this respect that I think that the exercise has been a success.

1-032-0000

Ana Gomes (S&D). – Sorry, you seem to think that we are idiots, but we are not. Of course we know that there are indeed many harmful jurisdictions out there, and that 'out there' also means inside the European Union. We don't understand what you've been doing, if not serving an agenda to perpetuate that outrageous system for our citizens. You have not understood the world we are in now. Things have changed somewhat, namely after all these scandals – LuxLeaks, Panama Papers, Paradise Papers – but you don't seem to realise that.

Anyhow, let me ask you: how do you discard the criteria of 0% in tax rates to identify an offshore? How do you discard that? Even the OECD, since 1998, has said that key factors in identifying tax havens are no – or only nominal – taxation on the relevant income. This is the starting point to classify a jurisdiction as a tax haven. Isn't this totally contradictory to what you do? Indeed, how do you monitor the implementation – as you were saying – of these commitments if you are dealing with countries or jurisdictions with zero tax rates?

Then on the question of transparency: the Code of Conduct Group has the power to declassify documents, and namely – as you have done – letters that have been analysed from this so-called blacklist (which you say is not a blacklist). What is your criteria? Because apparently you seem to be only reacting depending on the pressure of this Parliament, the Commission and NGOs. What is your criteria? You also said that you have analysed hundreds of schemes in the Member States that could be construed as harmful tax schemes. You have already been asked a question about patent boxes, but I would ask whether you have, for instance, focused on the tax amnesties that some of our own Member States have been using and abusing? Because of course they may amount, according to the Commission – now, finally – to state aid. They are definitely tax schemes that have a harmful purpose against other Member States. They are legalised schemes for legalising tax evasion and money laundering. Have you, for instance, dealt with such tax schemes and tax amnesties as those that were enabled in my own country, Portugal, in 2005, 2010 and 2012?

1-033-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – You raised a number of issues. I will try to reply to them in turn.

Maybe I can start with a clarification. The criterion to which you were referring as one of the criteria that is being used only for the purpose of this exercise with an external dimension – the EU listing – is indeed more articulated in a slightly different way in the sense that the Council has decided – and this is not a matter for the Group, this is a decision by the Council – that zero taxation per se was not an issue. However, the Council has decided that zero taxation was to be considered a serious issue in all instances in which the absence of a corporate tax regime or the existence of a corporate tax regime with zero tax or very low tax was attracting offshore structures with no substance. This is key to understand the criterion, as decided by the Ministers, and to understand the work that we are doing to monitor the commitments of all the jurisdictions that have been identified as presenting concerns with respect to the capacity of their zero taxation for attracting offshore structures without substance. This means simply that it is presumed that economic activities or entities with no economic substance located themselves in jurisdictions with a zero corporate tax regime (that may be a little simple) only for the purpose of avoiding paying taxes. This is the focus of our attention.

This is the focus of the analysis of the commitment that they have taken. They have taken the commitment of actually implementing legislation that will not necessarily lead them to establish a level of taxation different from the one they have or even comparable with the average level of corporate tax in the EU, but we are asking to implement legislation that will prevent entities

or companies with no economic substance locating themselves in a dangerous way in that jurisdiction. This legislation will have a number of requirements, including important transparency and exchange of information requirements. That is what we need to be able to defend ourselves from these situations. So I think that the issue has been tackled in a satisfactory way, given the fact that the starting point – the definition of the criterion – is a political decision for our Minister. I think this is an important point of clarification.

On the issue of tax amnesties, I genuinely agree with you that tax amnesties are nasty and dangerous practices, but unfortunately they are not in the scope of the Code of Conduct. The Code of Conduct is the Code of Conduct on business taxation. One could decide, maybe, to take a wider political commitment and have another code of conduct. I think we have had this discussion. We met before – I don't know whether you remember – and we discussed other serious issues to do with the tax treatment of certain natural persons. I agree with you that it is an issue that is worth examining, but at the moment it does not fall within the scope of the Code of Conduct, which is a code of conduct on business taxation. I think these reflections should maybe push the political authorities to reflect on other types of wider commitments that can be taken to improve the situation.

On the commitment letters, we published all our letters. We keep constantly asking third countries to give their consent, because at the moment we cannot publish anything that has been signed at high political level and for which there is no consent for publication.

1-034-0000

Eva Joly (Verts/ALE). – I will come back to this criteria of no tax or close to zero tax, as it is not a criterion per se, as you said in your written answer, but you have to screen whether you also have the situation that they attract harmful structures. So I have a very simple question. Do you have a single example of a country that has a zero or close to zero tax and that is not attracting harmful structures? If not, I think this should be a criterion for itself, because what you are saying is not very credible. That is my first question.

My second question is that in the list that you ended up with after all this work, there are notably missing famous tax havens (and I think you know) such as Delaware in the US, Hong Kong or Qatar, among others. Could you explain how this is possible with your criteria? How did they escape? And could you also tell us if the screening of EU Member States with the same criteria is foreseen by the Group. Was it ever discussed? It will be interesting and fair to apply the same criteria internally, because – as you also know – your Group is perceived by the citizen as being the heart of the disfunctioning of this Union and for which we are paying very expensively in the elections.

1-035-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – I think I should be rapid now. So, on the criterion 2.2, I think I could give you plenty of examples now. There's not only the Shetland Islands. In all the third countries and jurisdictions to which we have asked for commitments signed at a high political level to implement the legislation, there were cases where we actually did find that their legal structure was not secure enough. So we have changed things. So we know that there are – and this is the reason why – in all these countries and jurisdictions that appear in Annex 2 of the Council conclusion and that are recalled with respect to criterion 2.2, there are dangerous situations. The objective – we will discuss this; we should go back to this in a year's time, in two years' time maybe, because by the end of this year we've asked to enact legislation that should correct this, and we will need to monitor whether this legislation is effective. So we should go back to that after the commitments have been implemented. If the legislation is not implemented, as I said before, these countries and jurisdictions will go back to the list in Annex 1 of non-cooperative jurisdictions, precisely for the reason that we know that there are there offshore structures with

no economic substance that are attracted to those territories because of the existence of a zero tax regime.

The list is missing some famous tax havens. This complex exercise has started but is not finished; there is a dynamic in it but ministers decided to have a clear starting point. It was the scoreboard. The starting point was the scoreboard that was prepared by the Commission services on the basis of certain criteria: a list of third countries and jurisdictions was drawn up based on the importance of key economic and financial ties with Europe and taking into account stability indicators. And then I should add that the ministers, already in 2016 when this exercise started, have envisaged a wider perspective and have actually asked the Group to start work on the 92 jurisdictions presented in the scoreboard and among these, unfortunately, there was no Qatar and no Hong Kong, but the ministers have asked (and we are working on this) to widen the criteria, to try to look at... I don't remember exactly all the countries and jurisdictions that are in Annex 2, and Mr Strub is suggesting to me that both Qatar and Hong Kong have been screened and they are in Annex 2.

So we have found deficiencies with these countries and we are asking them to correct these deficiencies.

But in general, our exercise has not covered the whole world. I started from the scoreboard. There is a clear indication from the minister of reflecting on new criteria, and in particular we have been asked to include among the criteria to be used to identify compliance with tax, good governance principles – the beneficial ownership criterion is very important. It is a very important aspect that our ministers (mainly European ministers) have indicated as key in fighting international tax avoidance and tax evasion, and it's there that there is a mandate and we are working on that, and there is also a mandate for widening the geographical scope of the exercise.

The first step that has already been agreed is to extend the exercise – this will be done immediately after we finish this first monitoring phase – to the three G20 countries that currently are missing from the scoreboard – this is Argentina, Russia and Mexico, I think. The exercise will cover all the G20 countries.

The fact of screening the EU Member States with the same criteria is exactly what is under discussion in the context of the revision of the mandate of the Code Group that currently the Austrian Presidency of the Council is taking forward.

1-036-0000

Matt Carthy (GUE/NGL). – Thank you, Chair, and first I want to add my voice to the concerns that have been expressed over the lack of transparency in the operations of the Code of Conduct Group and the lack of what I would consider to be a sincere cooperation attitude in relation to their dealings with this Parliament on a general basis.

Specifically my Group shares the concerns that have been expressed over the lack of transparency regarding the process of creating and modifying the tax haven blacklist. The outcome of this process is completely unsatisfactory to us and to Parliament more generally, because as we know and as has been said, most of the world's worst tax havens aren't actually on the list. You may know that earlier this year the Commission addressed this Committee, where the Commissioner suggested, I would suggest maybe encouraged, that we lodge an official complaint with her and I hope that Parliament will be doing that. It is something that our Group fully supports.

I have two specific questions relating to the modified nexus regime of patent boxes post-Brexit, specifically, and also in relation to the first phase of the blacklisting process. If we look back to

how the OECD's modified nexus approach on patent boxes was initially agreed, it was largely a political compromise between Britain and Germany.

So given the role of Britain in pushing for even less restrictions on patent boxes, has there been any discussion on a change in the EU's approach to patent boxes in a post-Brexit scenario? Has there been, for example, any discussion among the Code of Conduct Group about developing guidelines on patent boxes that are stricter than the OECD's or of shutting down patent boxes altogether?

And if this hasn't been discussed, do you consider it might be appropriate to start discussing that sometime in the near future?

In relation to the blacklisting process, many of us are intrigued as to what exactly were the criteria used to remove 20 countries from the list of 92 at the beginning of the listing processes. Among those are countries that were assessed for their risk and their level of economic links with the EU, such as the US of course, but none of the publicly available reports of the Code of Conduct Group describe the criteria that actually took those 20 countries off the blacklist, so I was wondering if you would like to use the opportunity afforded to you today to actually outline the process and the criteria that was used in that instance.

1-037-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – On the modified nexus approach and post-Brexit, at the moment I do not envisage that there will be any consequences, because the modified nexus approach that has been used as the basis for examining IP regimes by the Code of Conduct is the approach that was already agreed at international level, and we have actually assessed the patent box regimes enacted by EU Member States applying that regime. So once the UK would no longer be part of the EU – still, if the UK will change its patent box regime to make it more aggressive and no longer compliant with the modified nexus approach, we will look at that situation as a dangerous situation in a third country, but before that certainly there will be a reaction at the level of the OECD – at international level – because the criterion has been agreed at that level, and so much so that in all instances, our ministers have always pointed out the importance of the coherence and the consistency between the exercise carried out at EU level and the parallel work carried out at international level.

Not simply the OECD, because there is the parallel work at international level – the transparency criteria, the work done at the level of the global forum for tax practice – the level is that of the inclusive framework, and the same for the implementation of the BEPS minimum standard. So it has always been the case that our ministers have always believed in the fact that there had to be a synergy between the European level and the international level, because non-compliance with the principles of tax good governance – or rather, the compliance – should be ensured at the global level. I wouldn't be concerned you know with what can happen after Brexit with the UK patent box regime.

For the comfort letters: the comfort letters have been sent to all the third countries and jurisdictions that have been screened according to the criteria of the EU listing exercise and following the procedure that is detailed in the documents that are published on the website. We have published on the website the procedure that our experts, assisted by the Commission service, have used for the screening exercise, and on the basis of that, in all cases where no non-compliance has been identified, we have written a comfort letter to the screened jurisdictions after carrying out a full screening with respect to all the three criteria.

1-038-0000

Thomas Mann (PPE). – Chair, Werner Langen referred, quite rightly I think, to the paradox here.

On the one hand, Ms Lapecorella, you talk about transparency and tell us we can get information on the website while, on the other, you send us documents in which information has been redacted. Blacked-out text does not yield a great deal of insight. If we cannot actually obtain the information we need in order to make a start, then we cannot do our job. People are looking to us to take action against tax avoidance, they don't want this to be left to the experts, they want us to make it crystal clear that tax evasion must be punished and cannot be treated as a trivial misdemeanour, because the Member States still bear responsibility here, and we have not yet firmly established EU-level responsibility.

My question is as follows. There were 17 countries on the blacklist, and now there are six, the reasoning being that the others have announced they are prepared to cooperate. But they cannot simply disappear from the blacklist like this and tell themselves that they have shifted into a grey area. Something more needs to happen. There need to be qualitative differences in place before we let a country off this 'name and shame' blacklist.

Second question: the UK. Ms May is currently trying to steer her way through the complexities of the Brexit negotiations to a point where she can announce 'OK folks, we have attractive rates of corporation tax!' In other words, she is aiming to pitch the tax rates so low that we will then be able to call the UK out for harmful tax practices – because that is what these drastically reduced rates will amount to.

Where will the Code of Conduct Group stand then? Will you simply take note of what's going on or will you actively oppose it?

My third question reflects the fact that I am German, and the German Finance Minister has said that we need to be able to continue treating the UK like an EU Member State for purposes of taxation policy until the end of 2020: that is, we need to provide for a transition period in order to create legal certainty. What is your view on a Brexit transition period of this nature?

1-039-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – I will comment on the last point. I have read that and I think that is a position that is being expressed at a point in time when the negotiations have not yet finished, so we need to see where the negotiations will lead us. But anyway there will certainly be coherence in the treatment of the EU, coherence with the conclusions of the negotiations.

The important point is whether it is bad news that a list that included 17 third countries has now been reduced to six third countries and whether commitment is enough. It depends on how you see the exercise. If you are ready to accept the perspective that what counts – and what the objective should be of this whole exercise – is to have as many countries as possible on board, basically playing by the rules, then it is certainly a good thing that we have moved from 17 to six because it means that the difference, the 11 which are missing, have actually taken a commitment at a high political level to comply with our rules by a certain deadline. This is good news.

Is commitment enough? No, it is certainly not enough. Implementation of the commitment will be enough and we are monitoring the implementation of the commitment. The letter is not enough. We needed a letter signed by a Minister because it cannot be without meaning, but it is the implementation of the commitment that will be monitored, but not only that. We will follow the monitoring of these countries.

The other thing is that, when the actual phase of monitoring the implementation of the commitments has been completed, there is unfortunately a chance that some of the third

countries and jurisdictions that have declared at high political level that they are willing to cooperate with us will be found actually not to be cooperating with us and will go back onto the Annex I list.

So the process is entirely dynamic. The importance of giving a chance to those partners that have agreed to be willing to change the rules is crucial to the success of this exercise, but the list is dynamic. We started with 17 and we are now six. We may well be more than six at one point in 2019 when our Minister will have a look at our assessment of the implementation of the commitments.

1-040-0000

Pervenche Berès (S&D). – Thank you for this discussion. At the same time, if this committee is again holding discussions with the Code of Conduct Group, it is obviously because not all the criticism or concerns that this Parliament has expressed since the beginning of this term have yet led to a sufficient changes within the Code of Conduct Group. That is the least we can say, and I understand that a number of questions have already been tabled, particularly concerning the status and the level of transparency of your operations.

That said, I would like to broach the issue of the commitments made by the jurisdictions listed in Annex 2 the so-called 'grey list' and how compliance with deadlines is ensured, particularly in the case of Switzerland. I have not been able to find any implementation date for Switzerland. That country's agreement is four years old. Negotiations, although scheduled, never began because Switzerland was holding a referendum at that point. Is there, therefore, a real risk that Switzerland will be placed in Annex 1, the 'blacklist'? It is clear that activism on the part of the international or regional community is a prerequisite for any serious commitments from that country on taxation.

However, Switzerland continues to engage in certain potentially damaging tax practices, such as patent boxes, notional interest rates or other ongoing reforms. This is all the more important because these activities, although not necessarily the actions of a tax haven, remain harmful. At European level, we have seen in the case of McDonald's, that in respect of competition the European Commission could do nothing to combat its structures because they were legal. And we have the impression that today, Switzerland is preparing to reintroduce mechanisms that are officially legal, but which actually constitute gaping loopholes in legislation and, therefore, harmful mechanisms in tax matters.

1-041-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – You have raised an important issue on which I think clarity is important. We don't implement the deadlines. We have agreed certain deadlines and we have communicated these deadlines to our partners. We have agreed deadlines at the beginning of the process – I will tell you in a minute what we have agreed – and we have communicated them.

For a commitment to be considered adequate for the purpose of this exercise, we basically asked three things: the commitment had to be signed at a high political level, at Minister or Under Secretary of State level; the commitment had to indicate clearly the willingness to address all the concerns that were detailed in our letter to the country; and the commitment had to include respecting the deadlines for implementation that were asked by us.

The deadline for implementation is basically – and I say 'basically' because our Ministers have actually decided to take different positions in exceptional circumstances – is 31 December 2018 for the harmful tax regimes and this is in coherence and not by chance. Again, going back to what I said a minute ago, this is in coherence with the deadline for compliance that has been asked for at international level by the Forum on Harmful Tax Practices.

Regarding different deadlines: for instance, our Ministers decided that, for a little group of third countries, in particular those that were hit by the hurricane last year, the process started later. We didn't ask them to commit. We postponed the exercise and we postponed the deadline for the commitment.

But in general, everything has been decided.

Regarding the Swiss, the first thing we need to do is agree on the assessment of the legislation that the Government is proposing because it could be that we find in fact that this new attempt at reforming the corporate tax system is not satisfactory. I don't think that that is the case. I think they know what the international community, and in particular the European Union, is expecting from them and I think that they have written their reform of the corporate tax system in line with the international and European requests. But still we need to have a formal assessment of the adequacy of the legislation.

We know that the Swiss Constitution foresees a popular vote on each of these initiatives. This popular vote may or may not happen. If it doesn't happen, they could actually be in the position of meeting the deadline. If the assessment at a technical level of the Code of Conduct Group on the reforms and all the pieces of legislation that we have received is okay and it works and it removes all the features, and if there is no popular vote, maybe there is no problem. If there is a popular vote, there is an issue that we will need to discuss in the context of the Code.

One point that I can make is that, as I said before, we have assumed the deadlines that are foreseen at international level. At international level it has been agreed that the deadline for implementing the commitments – that is not the language but it is the same thing, for implementing the changes in the legislation – had to be 2018. No beneficiaries of harmful regimes must exist under legislation beyond a certain date in 2021. This is what we have asked of third countries with whom we have interacted with respect to harmful tax regimes.

At international level it has been agreed that there could be a certain degree of flexibility, in the face of clear constitutional or legal constraints. When the Code of Conduct Group agreed to rely on the assessment at a technical level made by the Forum on Harmful Tax Practices for all the regimes that were, at the same time, in the scope of the two exercises, to keep the coherence and the consistency the Group decided to take the whole of the current structure – that is the deadline of 2018 or the grandfathering for June 2021 – allowing for a special consideration for specific constitutional and legal problems. But these will need to be discussed by the Group after we assess that, at the technical level, the Swiss reform reflects and meets our concern.

So the steps are these: first, a technical assessment of the legislation; and second, we wait because if there is no popular vote, we are fine. If there is a popular vote, then we will need to go back to the Group and, taking into account the fact that we have agreed to use the scheme of the Forum on Harmful Tax Practices, we will need to decide what to do.

1-042-0000
Chair. – Thank you very much. I am sorry that I interrupted you.

Catch-the-eye procedure

1-043-0000
Evelyn Regner (S&D). – Chair, my thanks to Ms Lapecorella for coming here to take our questions.

We have asked you several things, Ms Lapecorella: why are there no EU Member States on the blacklist; why don't we see Delaware listed there; and what is happening with Switzerland? We are talking specifically here about countries which – and we know this from the work of the

PANA Committee and the many substantive issues we encountered – clearly should be on the list.

I have listened extremely attentively today to your answers to the various questions. However, I must ask you again: what exactly are the criteria and how does the screening process work? Could you tell us that, please, perhaps taking Panama as an example? The fact that a country like Panama could escape listing – after all the work we had done – was a real slap in the face, you know. So could you take us through that again? About the criteria you spoke of, my impression so far is that, alongside obviously important criteria like beneficial ownership, stability has also been a consideration. Does this mean, if the imperative here is actually to rescue Europe's stability, that Delaware can be listed but – in the interests of overall comparability – all the other countries which, in principle, would very clearly meet the criteria do not need to be listed?

As I see it, a great many questions remain unanswered, so I am asking you, please, to take us through the example of Panama. Can you tell us precisely what the reasoning was for Panama not being blacklisted?

1-044-0000

Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – Well, I think the reply cannot be different from the one I gave earlier: Switzerland is not on the list of non-cooperative jurisdictions because Switzerland has agreed to cooperate and has agreed to implement legislation to meet to our concerns. That is what we need. And, I mean, you are part of a Parliament and you know that legislating is a complex activity; you know that the interaction between the government and the Parliament is an interaction that takes time. But, certainly, what the government has committed to is what the government has done.

Now there is a serious issue that is linked to a constitutional constraint that they have. Swiss colleagues have explained to us that the reason for the 'no' in the first popular vote had nothing to do with the substance of the reform of the corporate tax system, so there is a good hope that this time, with a new government, a new majority in the Parliament and everything, this thing could go through more easily. What we want is that it should go through. There is no point in simply saying 'If the Swiss had told the EU we would do something' and they had not legislated anything. Then, you know, we would list them – and we will list them if they do not implement the measures in question. At the moment, what we observe in practice is that steps have been taken. This is what we want to see: steps, simply steps. The important thing is to take steps. There is no point putting a country on a list, writing it down on a piece of paper, and then that country doing nothing to align itself with the rules that you think are the right rules to protect European citizen: you've not concluded anything.

When you achieve a result is when that country enacts legislation that improves the pre-existing legislation. This is the object of the exercise.

Now I agree it is a delicate situation, we all know that. In tax matters we've been dealing with the Swiss for ages and we know very well how difficult that is, but – if you will excuse my putting it this way, Chair – we are not idiots. I mean we know. We know very well, and we are working towards achieving an effective result. This is what we're trying to do, and I think you and I know how delicate it is, but we should hope that this time it happens. Otherwise, we will have grounds for listing Switzerland and applying the non-tax countermeasures that already apply to the countries in Annex 1, as well as tax countermeasures if we agree on a coordinated reaction in that respect.

1-045-0000
Peter Simon (S&D). – Chair, there are two things I do not understand. The first is that other countries – small countries – have been given deadlines for making certain changes. Why has Switzerland never been given a deadline? That is point one.

Point two is this: in its dealings with all third countries, the European Union follows the principle of international law that when states enter into external commitments under international law, it is they who are responsible domestically for their adherence to those commitments. Switzerland's domestic reasons for failing to adhere to its commitments need be no concern of ours. Why is the European Union, here as elsewhere, not focusing on ensuring that there will be consequences if a commitment which a country has given – in this case, Switzerland's commitment to amend its tax system – is not acted upon?

It is not our job to assess, or to give any sort of internal feedback on, the likelihood of Switzerland pulling this off domestically. They have given an external commitment, a commitment to us to fulfil their obligations, and they have not done so. Why are they being allowed to get away with that?

1-046-0000
Fabrizia Lapecorella, *Chair of the Code of Conduct Group on Business Taxation***.** – We will deal with that, as I said before.

1-047-0000
Chair. – Colleagues, we still have interpretation, so if our co-rapporteurs wanted very quickly to sum up? Ok, they are doing other things.

(End of Catch-the-eye procedure)

In that case, I would like to say thank you very much to Ms Lapecorella. It was very difficult, and we understand that Parliament is one side and the executive part and also diplomacy is the other side. That is why I cannot conclude anything from the substance point of view. I wish you good work in the Code of Conduct Group. You have caught all the emotions and also questions from the MEPs, so thank you very much for this event.

(The meeting closed at 16.36)