

Non-Paper: Improving the transparency of the Code-of-Conduct Group

1. Introduction and objective

Transparency about agendas and policy discussions improves accountability and legitimacy of decisions taken. In general, enhancing openness and sharing information are key, as it brings citizens closer to the EU and enables the institutions to enjoy greater legitimacy and accountability.

In recent years, the EU and its institutions have shown their commitment to modernizing its working methods and pursuing the principles of transparency and accountability. For example, in July 2020, the Council took an important step in its legislative work through active communication and more frequent and proactive publication of EU legislative documents. Nevertheless, throughout the EU and its institutions, bodies and agencies, there is still more that we can and must do¹. This also applies to the Code-of-Conduct Group (COCG). Though steps forward have been taken in the COCG - for example, by publishing agendas and a bi-annual account of efforts undertaken by each rotating Council presidency – we believe that the COCG could take further steps in contributing to a modern and coherent EU policy with regard to tax matters adapted to the expectations of the twenty-first century.

Also, the European Parliament, national parliaments and other external stakeholders have called for improved transparency of the COCG. Especially, events such as the publication of Pandora papers understandably lead to urgent calls for more transparency. This non-paper argues that steps can be taken to improve transparency and accountability without compromising the working of the COCG. To this end, it formulates a concrete proposal to provide more openness by pro-actively publishing more documents, while at the same time preserving the effectiveness and confidentiality of decision-making.

2. Proposal

Documents to be published

Type of document	Argumentation
Steering note	The steering note of each COCG or its subgroup shall be published on the website of the Council within two weeks after the meeting. This can be done after a silence procedure with no objection by Member States. Any reference to individual Member States or jurisdictions in the agenda or steering note shall be redacted before publication.
Follow-up note	After a main group meeting of the Code-of-Conduct a follow-up note is drafted containing a brief overview of the discussion, conclusions and follow-up actions. The proposal is to publish this follow-up note on the website of the Council within two weeks after the meeting. This can be done after a silence procedure with no objection by Member States. Reference to individual Member States or third country jurisdictions or information that would make them identifiable shall be redacted from the follow-up note.
Summing-up note on a discussion in the COCG	In addition to the follow-up note after every main group meeting a summing-up note shall be made public after a meeting of the sub group of the Code-of-Conduct Group as well. The summing up note should reflect discussions or conclusions concerning, for example, working methods or policy issues such as how the COCG

¹ As also noted in the recent “transparency pledge” signed by Ministers of all 27 Member States. For full text see: [Transparency Pledge | Publication | The Netherlands at International Organisations \(permanentrepresentations.nl\)](#)

	intends to apply criteria from the Global Forum. Reference to individual Member States or third country jurisdictions, or information that would make them identifiable shall be redacted from the summing-up note. When the listing process is discussed it shall only generically refer to the fact the COCG discussed the listing process.
Guidelines explaining the rules of the Code of Conduct (internal and external)	With a view to creating a better understanding, a codification of the "case law" decisions could be a way forward. The rules of procedure of the COCG on the mandate, process, and criterions are condense and during the COCG's 23 years existence some rules have changed based upon "case law" The current guidance which is published on the Council website of the Code of Conduct provides a paraphrased text of the mandate. Unfortunately, this guidance does not provide an explanation of the text of the mandate, nor does it seem to reflect decisions taken over this period. For instance: manufacturing regimes are also covered by the scope of the CoCG (in contrast to the FHTP scope), but there is no clear reference to this extension of scope. Besides a better explanation an update seems in order.

Argumentation

By publishing these documents the decision-making process of the COCG becomes more transparent and accountable. Transparency is important with regard to discussions on working methods of the COCG as it helps to explain to the outside world both the proceedings as well as the logic behind decision-making.

It is worth bearing in mind that currently a large number of requests for access to documents are routinely made concerning COCG-documents. These requests often concern Commission summaries of the COCG meetings. The advantage of a Council summary is that the content is written and approved by the Member States. In addition, the information requests addressed to the Commission lead to the publication of information at a much later stage through a more cumbersome process that creates additional work for national delegations, the General Secretariat of the Council and the Commission alike. We consider pro-active publication to be a preferable route as it creates a more systemic and timely means of accountability. We wish to underline that the proposal for increased transparency set out above would omit any reference to individual Member States or third country-jurisdictions. This to allow an open discussion on national regimes of Member States and retain the political primacy of the ECOFIN Council in the listing process.

Drafting suggestion

Paragraph H second subparagraph (blue is change)

(...) Without prejudice to sensitive information on individual Member States' or third country jurisdictions annotated agendas of meetings, minutes of meetings reflecting follow-up actions as well as Ffinal documents, as approved by the Council, should be made public within a short timeframe after the said meeting took place. ~~and, if the Council so decides, published.~~