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SUBCOMMITTEE ON INTERNATIONAL TAX ENFORCEMENT

REPORT:

DEVELOPMENTS IN INTERNATIONAL TAX ENFORCEMENT

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II. INTRODUCTION

Most importantly tax authorities and governments worldwide have continued to bring criminal actions to enforce tax matters. The bilateral and multilateral enforcement initiatives continue, but the criticism by the U.S. of the EU anti-money laundering blacklist shows a disagreement on which organization should be making the evaluations and whether the procedure is proper.

III. UNILATERAL INITIATIVES

Although this section focuses primarily on the U.S., the UBS conviction in France show that prosecutors worldwide are going criminal on tax and related matters, including targeting enablers, even if they are major banks and corporations.

A. UBS Conviction in France

On February 20, 2019, the Tribunal de Grande Instance in Paris France convicted UBS AG and its French subsidiary UBS France, as well as five of their officers of crimes relating to evasion of French taxes in a 217 page judgment. The total corporate fines and civil damages imposed, more than 4 billion Euros, are by far the largest ever imposed in France on a
corporation. The conviction seems to indicate a new era of corporate criminal prosecution in France with wide-reaching consequences for transnational enforcement.¹

An important aspect of the decision is that, notwithstanding France’s relative lack of success in prosecuting corporations involved in multinational crimes, France has achieved a smashing victory.

One implication of the UBS decision is that financial intermediaries work in a globalized world and must adhere to extraterritorial standards or else they may subject themselves to criminal liability. This is especially relevant in the U.S. where private wealth is arriving in part to benefit from the fact that the U.S. has not reciprocated fully on FATCA Intergovernmental Exchange of Information agreements, has not ratified the protocol to the OECD Convention on Administrative Assistance in Tax Matters, and has not signed the Common Reporting Standard. In addition, since 2006, it has remained non-compliant with FATF standards on entity transparency and gatekeeper regulation. Revenue authorities and regulators worldwide are aware of this non-compliance and the flow of private wealth to the U.S.

B. 3rd Largest Israel Bank Agrees to DPA with U.S. on Tax Violations²

On March 12, 2019, the U.S. Department of Justice announced that Mizrahi-Tefahot Bank Ltd. (Mizrahi-Tefahot) and its subsidiaries, United Mizrahi Bank (Switzerland) Ltd. (UMBS) and Mizrahi Tefahot Trust Company Ltd. (Mizrahi Trust Company), agreed to pay $195 million to the United States and enter into a deferred prosecution agreement.

Mizrahi-Tefahot is the third-largest bank in Israel, having more than 4,000 employees, and is publicly trade on the Tel-Aviv Stock Exchange. During the relevant period of over a decade of criminal activity, Mizrahi-Tefahot had branches in Los Angeles, California, the Cayman Islands, and London, England. In 2014, the Cayman Islands branch surrendered its license and closed. UMBS, a subsidiary of Mizrahi-Tefahot, had one branch in Zurich, Switzerland. Mizrahi Trust Company, a fully owned subsidiary of Mizrahi-Tefahot, operated under the regulatory authority of the Bank of Israel. Together, Mizrahi-Tefahot, UMBS, and Mizrahi Trust Company provided private banking, wealth management, and financial services to high-net-worth individuals and entities around the world, including U.S. citizens, resident aliens and permanent residents.

In the DPA and related court documents, Mizrahi-Tefahot admitted that from 2002 until 2012, the conduct of its bankers, relationship managers, and other employees defrauded the U.S. and in particular the Internal Revenue Service (IRS) with respect to taxes by conspiring with

¹ Frederick T. Davis, The UBS Conviction: the Dawn of a New Era in France? 35 INT’L ENFORCEMENT L. REP. 83 (March 2019) His article discusses in detail the procedural history, the decision, and its implications.

² This article is taken from Bruze Zagaris, 3rd Largest Israeli Bank Agrees to Pay $195 Million and Enters into DPA with US on Tax Violations, 35 INT’L ENFORCEMENT L. REP. 87 (Mar. 2019) without the footnotes.
U.S. taxpayer-customers and others. Mizrahi-Tefahot employees’ acts of opening and maintaining bank accounts in Israel and elsewhere around the world and violating Mizrahi-Tefahot’s Qualified Intermediary Agreement (QI Agreement) with the IRS enabled U.S. taxpayers to hide income and assets from the IRS.

The statement of facts and the DPA show these employees helped U.S. customers to hide their ownership and control of assets and funds held at Mizrahi-Tefahot, Mizrahi Trust Company, and UMBS, which enabled those U.S. customer-taxpayers to evade their U.S. tax obligations, including

- Helping and referring U.S. customers to professionals to open and maintain accounts at Mizrahi-Tefahot and UMBS in names of pseudonyms, code names, Mizrahi Trust, and foreign nominee entities in offshore jurisdictions, such as St. Kitts and Nevis, Liberia, Turks & Caicos, and the British Virgin Islands (BVI), and thereby enabling those U.S. taxpayers to hide their beneficial ownership in the accounts and maintain undeclared accounts;

- Opening customer accounts at Mizrahi-Tefahot and UMBS for known U.S. customers using non-U.S. forms of identification, and failing to maintain copies of required identification and accounting opening documents;

- Opening and maintaining foreign nominee bank accounts for certain U.S. clients holding U.S. securities, enabling those U.S. taxpayers to evade U.S. reporting requirements on securities’ earnings in violation of Mizrahi-Tefahot’s QI Agreement with the IRS;

- Entering into “hold mail” agreements with U.S. customers whereby Mizrahi-Tefahot and UMBS employees held bank statements and other account-related mail in their offices in Israel and Switzerland, and by doing so enabling documents reflecting the existence of the offshore accounts to remain outside the U.S.;

- Until 2008, providing U.S. customers at Mizrahi-Tefahot’s Los Angeles branch use of their funds held in offshore Mizrahi-Tefahot and UMBS accounts (pledge accounts) through back-to-back loans, while excluding any record of the offshore pledge account at its Los Angeles branch to take advantage of Israeli and Swiss privacy laws and prevent disclosure of the funds to U.S. tax authorities;

- Failing to abide by the requirements of Mizrahi-Tefahot’s QI Agreement by (i) allowing U.S. customers who refused to provide the bank with the proper IRS Forms W-BEN and/or W-9 to continue trading in accounts holding U.S. securities, (ii) transferring assets to foreign entity accounts controlled by U.S. customers to avoid the proper QI reporting requirements, and (iii) failing to timely address compliance deficiencies in U.S. customer accounts holding U.S. securities; and
Until 2008, sometimes sending “Roving Representatives,” to the U.S. to solicit new
customers and to meet with existing U.S. customers in Los Angeles, California, New York, and
other locations in the U.S. for the purposes of opening accounts and surreptitiously reviewing
and managing existing customers’ offshore accounts.

In August 2018, Mizrahi-Tefahot rejected a proposal from the DOJ to pay a fine of $342
million to settle the tax evasion investigation, saying at the time that any “reasonable
calculation” based on its employees’ conduct would result in a significantly smaller fine.
According to the bank, it undertook intensive discussions with U.S. authorities. Moshe Vidman,
Chair of the bank’s board said he was satisfied the negotiations reached positive results and led
to an agreed settlement.

The DPA requires Mizrahi-Tefahot, UMBS, and Mizrahi Trust Company to cooperate
fully, subject to applicable laws and regulations, with the IRS, and other U.S. authorities. The
DPA requires Mizrahi-Tefahot to ensure that all of its overseas branches and other companies
under its control that provide financial services to customers covered by the Foreign Account
Tax Compliance Act (FATCA) to continue to implement and maintain an effective program of
internal controls with respect to compliance with FATCA in their affiliates and subsidiaries.
Under the DPA Mizrahi-Tefahot and its subsidiaries must affirmatively disclose certain material
information it may later uncover concerning U.S.-related accounts, as well as to disclose certain
material information it may later uncover concerning U.S.-related accounts, as well as to disclose
certain information consistent with the DOJ’s Swiss Bank Program with respect accounts closed
between Jan. 1, 2009, and October 2017. The DPA provides that prosecution against the bank
for conspiracy will be deferred for an initial period of two years to permit Mizrahi-Tefahot,
UMBS, and Mizrahi Trust Company to comply with the DPA’s terms.

The $195 million payment consists of: 1) restitution in the amount of $53 million,
representing the approximate unpaid pecuniary loss to the U.S. as a result of the criminal
conduct; 2) disgorgement in the amount of $24 million, representing the approximate gross fees
paid to the bank by U.S. taxpayers with undeclared accounts at the bank from 2002 through
2012; and 3) a fine of $118 million.

In December 2014, the Bank Leumi Group agreed to a DPA with the DOJ admitting that
it conspired to aid and assist U.S. taxpayers to prepare and present false tax returns to the IRS by
hiding income and assets in offshore bank accounts in Israel and elsewhere around the world.
During the first week of March, Hapoalim, one of Israel’s two largest banks, announced it would
set aside an additional $246 million to cover a potential settlement of a U.S. investigation of its
tax wrongdoing. As a result, it has now set aside $611 million for the U.S. settlement.

The DOJ investigations have resulted in Israeli banks decreasing their activities abroad.
According to the Bank of Israel, a dramatic fall in the number of deposits held by foreign
residents in Israeli banks has occurred. In the past 10 years, Central Bank data indicates that
approximately $19 billion worth of deposits by foreign residents have left Israel’s banking system.

As a result of the DOJ investigations of the three largest Israeli banks, Israeli banks have called Israelis with business interests abroad to their bank to explain how they earned their money, and, if unable to provide satisfactory answers, having their bank account closed.

For many years Israeli banks have provided essentially the same services as Swiss banks did, but without the banking secrecy.

The Mizrahi-Tefahot settlement, along with the Bank Leumi DPA and the pending bank Hapoalim, will mean that U.S. taxpayers who have used Israeli banks will need to take steps to come into compliance with their U.S. taxes or risk enforcement action, since Mizrahi-Tefahot and bank Hapoalim will have to disclose the accounts by U.S. taxpayers as part of the DPA.

The DPA also shows that, in the aftermath of the OVD for Swiss Banks, the DOJ is now extending its tax enforcement tentacles to other jurisdictions.

C. New York Bar Censures Lawyer for Counseling Client to Engage in Fraudulent Conduct Arising out of 2016 Global Witness Sting

On January 15, 2019, the Attorney Grievance Committee for the First Judicial Department, New York State Bar censured Marc S. Koplik for his conduct in participating in counseling a client to engage in conduct he knew was illegal or fraudulent during a 2016 undercover sting operation organized by the civil society organization, Global Witness. CBS Sixty Minutes broadcast the undercover sting operation on multiple occasions.

The Attorney Grievance Committee started the disciplinary proceeding by a petition of charges alleging that Koplik was guilty of certain misconduct in violation of the Rules of Professional Conduct (22 NYCRR 1200.00) for counseling a client to engage in conduct he knew was illegal or fraudulent during a 2016 undercover sting operation organized by the civil society organization, Global Witness. CBS Sixty Minutes broadcast the undercover sting operation on multiple occasions.

A purported attorney representing the minister stated that his client (the minister) wanted to buy real property in the form of a brownstone, an airplane, and a yacht in the U.S.

Koplik was under the impression that the money involved was in the tens of millions. The purported attorney’s explanation of the source of the money suggested that the money was

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3 This section is taken from Bruce Zagaris, New York Bar Censures Lawyer Involved in 2016 Global Witness Video for Counseling Client to Engage In Fraudulent Conduct, 35 INT’L ENFORCEMENT L. REP. 47 (Feb. 2019) without the footnotes.
from potentially illegal sources. The purported attorney stated that “companies are eager to get hold of rare earth or other minerals…And so they pay some special money for it. I wouldn’t name it briber; I would say facilitation money.”

Koplik informed the purported attorney that they would need to hide the true source of the money by establishing different corporations to own the properties the minister allegedly wanted to buy. Koplik also gave assurances concerning protection of the attorney-client privilege. He stated that “[t]hey don’t send the lawyers [in the United States] to jail because we run the country.

Koplik and the New York Bar agree on the stipulated facts, including the admission to the acts of professional misconduct and the violation of rules 1.2(d) and 8.4(h) of the Rules of Professional Conduct, the relevant factors in mitigation, and on the discipline. They now jointly move pursuant to 22 NYCRR 1240.8(a)(5) for discipline by consent and request the imposition of a public censure.

In support of the joint motion for discipline by consent, the parties rely on Matter of Jankoff, and agree that the circumstances in that case are analogous here and should be followed. Due to the significant factors in mitigation, including Koplik’s cooperation, admitted conduct, and acceptance of responsibility, as well as the fact that the misconduct was aberrational and happened in the context of a single, open-ended conversation during a meeting with a potential client after which Koplik took no further action, the parties agree that a public censure is appropriate.

Accordingly, the court granted the parties’ motion for discipline by consent and censured Koplik.

As a result, the parties’ motion for discipline by consent should be granted, and Koplik is publicly censured (M-5384).

The censure illustrates the ethical discipline that can result when a member of the bar encounters a potential or existing client who seeks investment advice and help to invest potentially illegal proceeds of transnational corruption, namely corruption-based money laundering.

Overall, Global Witness met with 16 lawyers at 13 firms. Neither Koplik nor any of the others ultimately agreed to be retained by the fictitious official. Nevertheless, most of them gave informal advice to the supposed adviser, according to the nonprofit. Only one—Jeffrey Herrmann—refused outright to help, saying, “This ain’t for me.”

Koplik is the latest of at least two lawyers caught up in the Global Witness sting to have received a public censure. The First Department issued that same sanction in September 2018 to
John Jankoff, a lawyer who was told by the undercover investigator that the mining official’s funds were “gray money” or “black money.”

D. Foreign Agents’ Registration Act

The Department of Justice is more proactively enforcing FARA.4

On January 17, 2019, U.S. Assistant Attorney General for National Security John Demers announced Skadden, Arps, Slate, Meagher & Flom LLP entered into a settlement agreement with the U.S. Department of Justice, resolving its liability for violations of the Foreign Agents Registration Act (FARA).

The agreement evidences that Skadden acted as an agent of the Government of Ukraine within the meaning of FARA, 22 U.S.C. § 611 et seq., by participating in a public relations campaign directed at select members of the U.S. news media in 2012. In 2012 and 2013, in response to multiple inquiries from the Justice Department’s FARA Registration Unit about its role in that campaign, a partner then at Skadden made false and misleading statements to the FARA Unit. Thereafter, the FARA Unit concluded in 2013 that the firm did not have to register. In fact, Skadden was active in the public relations aspects of the report, but mislead the FARA Registration Unit in that regard. For instance, Gregory Craig, then the lead Skadden partner on the case, arranged for David E. Sanger of the New York Times to receive a copy of the report, then discussed the report with him. When more facts were known, Skadden was required to register in 2012. Skadden has agreed to register retroactively.

According to the 38-page Appendix to the settlement agreement, Paul Manafort, the former Trump Presidential campaign manager, on behalf of the Ukraine government suggested changes to the report, some of which were made.

Skadden has agreed under the settlement to pay the U.S. Treasury more than $4.6 million, which it received in fees and expenses for its work with Ukraine, and to ensure that it has formal, robust procedures for responding to inquiries concerning its conduct from any federal government entity and ensuring FARA compliance as to its engagements on behalf of foreign clients.

In the spring of 2012, the Ministry of Justice (MOJ) for Ukraine, with the help of Paul Manafort, hired Skadden to write a report on the evidence and procedures used during the 2011 prosecution and trial of former Prime Minister Yulia Tymoshenko and discuss questions concerning its fairness. At the time Tymoshenko had filed an application with the European Human Rights Court, challenging the fairness and legitimacy of her prosecution in Ukraine for tax evasion and money laundering. Skadden also agreed to advise Ukraine concerning a second, potential future prosecution of Tymoshenko. According to the engagement letter between

4 This section is taken in part from Bruce Zagaris, Skadden Agrees to Civil Settlement with DOJ over FARA Violations, 35 Int’l Enforcement L. Rep. 56 (Feb. 2019) without the footnotes.
Skadden and the MOJ, the latter would pay Skadden only 95,000 Ukrainian hryvynas (approximately $12,000). Skadden understood that a Ukrainian business person would pay its fees. Eventually, the money came from a Cypriot bank account of an entity named Black Sea View Ltd., which Manafort controlled. Eventually Skadden received $4,657,578.91 for this work. The arrangements with the Ukrainian business person, the amounts paid, and advice on a second criminal prosecution of Tymoshenko were not disclosed in connection with the issuance of the report.

After it started work for the MOJ and realized that Ukraine intended to use the report as part of a public relations campaign to influence U.S. policy and public opinion toward Ukraine, Skadden’s lead partner for the Ukraine engagement, advanced the public relations campaign.

The settlement agreement states that Skadden has taken substantial steps to comply with the terms of the settlement agreement and has cooperated extensively with the DOJ in its investigation, including with the Special Counsel’s Office and the National Security Division of DOJ in relation to these matters. Skadden has undertaken affirmative steps to enhance its internal procedures and processes. Skadden must submit a report to the FARA Unit within 180 days, setting forth its client intake procedures to identify the direct or indirect involvement of a foreign principal and/or activities that may trigger potential FARA registration obligations; and promoting firm-wide awareness of FARA compliance, including FARA-compliance training and messaging to appropriate personnel.

The settlement may well cause other law firms with significant international practices to modify their client intake and training procedures.

Skadden is the first large organization to be ensnared with FARA enforcement problems. The media has reported that the Skadden partner on the project who made false and misleading statements to the DOJ FARA unit is Gregory Craig, a former White House counsel under President Barack Obama. He may yet have legal exposure.

The case illustrates that the DOJ is continuing to increase enforcement of FARA.

On April 11, 2019, Gregory Craig, formerly of Skadden, was indicted in the U.S. District Court for D.C. for making false statements in connection with his FARA statement and investigations arising out of it.

**E. Unexplained Wealth Orders**

A development of importance to gatekeepers is the rise of Unexplained Wealth Orders, which the UK has introduced as part of the Criminal Finances Act 2017.\(^5\)

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\(^5\) This section is taken largely from Bruce Zagaris, *UK Forfeits £466,321 from Son of Moldova’s Former Prime Minister*, 35 INT’L ENFORCEMENT L. REP. 57 (Feb. 2019).
On February 7, 2019, upon the application of the UK’s National Crime Agency (NCA) the City of London Magistrates Court, District Judge Michael Snow granted forfeiture orders on Vlad Luca’s three frozen accounts, requiring the forfeiture of £466,321.72.

In May 2018, after NCA financial investigators suspected the funds came from illegal activity by his father, Vladimir Filat, the former Prime Minister of Moldova, and pursuant to new forfeiture provisions introduced by the Criminal Finances Act 2017, a court granted freezing orders for three HSBC accounts held by 22-year-old Vlad Luca Filat.

At present, the former PM is serving a nine-year prison sentence as a result of his June 2016 conviction for his role in the disappearance of $1 billion (£646m) from three Moldovan banks, which is the equivalent to an eighth of the country’s entire GDP.

HSBC records show that Vlad Luca had no registered income in the UK and that large deposits from overseas companies based in Turkey and the Cayman Islands funded his accounts and living expenses. The UK branch network also identified multiple cash deposits, with £98,100 paid in over one three-day period.

As soon as he moved to London in July 2016 to start his studies, Vlad Luca led an extravagant lifestyle, spending large amounts of money on luxury goods and services, including a £200,000 Bentley ‘Bentayga’ bought from a Mayfair dealership.

In announcing his forfeiture decision, Judge Snow said: “I am satisfied on the balance of probabilities that the cash was derived from his father’s criminal conduct in Moldova.” Judge Snow also awarded the NCA its costs in the sum off£4,079.

Rob MacArthur, from the NCA’s International Corruption Unit, said Vlad Luca Filat could not show a legitimate source for the money and the court found it to be recoverable.

Rachel Davies Teka, the head of advocacy at Transparency International, welcomed the freezing order and said “(m)ore action like this against high-profile and powerful targets is key to ending the UK’s reputation as a safe haven for dirty money.”

Ava Lee, a senior anti-corruption campaigner at Global Witness, clamored for the NCA to investigate the UK entities that received large payments from Luca. She said the NCA should be asking the bank, the university, the estate agent,

Considered the largest theft in Moldovan history, the international aid money vanished between 2012 and 2014. While the incident led to Filat’s arrest and prosecution, it also resulted in the collapse of the national currency and triggered street protests and international aid freezes. In March 2013, Filat’s government fell after a no-confidence vote.

Over the last couple of years, Britain has strengthened its anti-corruption and anti-money laundering laws. For instance, in January 2018, Unexplained Wealth Orders (UWO) were
introduced as part of the UK Financial Crimes Act. UWOs permit UK enforcement authorities, such as HMRC, to request orders to investigate the way in which property was acquired. UWOs are primarily designed to prevent tax evasion and money laundering in the U.K. However, the orders also apply to suspects residing outside the UK, as well as to any properties located abroad. Prior to the UWOs, the enforcement authorities of British law enforcement were limited, unless the person under suspicion was convicted in his or her country of origin.

If authorities suspect that the source of funds used to buy property was illegal, UWOs permit authorities to request that owners explain how they took ownership of the property. If the owners fail to provide sufficient and convincing information, the property can be seized through the Proceeds of Crime Act.

On October 18, the NCA obtained a UWO against properties belonging to Zamira Hajiyeva, who spend £16 million at Harrods during 2006-2016. Her husband, Jahangir Hajiyeva, was previously convicted of defrauding £2.2 billion from Azerbaijan’s national bank.

In its decision the High Court rejected Mrs. Hajiyeva’s arguments, including (1) the order violated her rights under Article 1 of Protocol 1 of the European Convention on Human Rights (Protection of Property); and (2) that her husband (who was chairman at a bank whose shareholders included the Ministry of Finance of Azerbaijan, which held between 50.2 percent and 60.6 percent of shares at the relevant time) was not in fact a PEP.

The Court also rejected Mrs. Hajiyeva’s arguments that complying with the order would violate her privilege against self-incrimination and spousal privilege because she is the subject of an ongoing criminal investigation in Azerbaijan. Additionally, she unsuccessfully argued that since her husband is now in custody in Azerbaijan, compliance with the order would put him in jeopardy for further charges. The Court found that these privileges only apply to criminal offenses in the UK and held, among other things, that the evidence placed before it did not show a “real and appreciable risk that Mrs. Hajiyeva and her husband would be prosecuted for offenses in the UK” and that, since the UWO proceedings were civil proceedings, the privilege against self-incrimination did not apply.

The NCA’s actions in the Hajiyeva and Filat cases illustrate that UK law enforcement, especially the NCA, are much more proactive in investigating and combating corruption-based money laundering. The new laws and investigative actions show heightened risks for gatekeepers and financial institutions in dealing with PEPs. Since UWOs can be issued for extraterritorial property, gatekeepers and persons outside of the UK will be implicated by the UWOs.
IV. MULTILATERAL INITIATIVES

F. EU Adds 9 Jurisdictions to Tax Haven Blacklist

On March 12, 2019, the EU finance ministers updated the EU list of non-cooperative tax jurisdictions. The list now has 15 countries and is part of the EU’s fair taxation initiative.

The Commission explained that it assessed 92 countries based on three criteria: tax transparency, good governance and real economic activity, and the existence of a zero corporate tax rate. As a result of the assessment and pressure to avoid the blacklist, 60 countries acted and eliminated over 100 harmful regimes.

The ministers blacklisted 15 countries. 5 have taken no commitments since the first blacklist adopted in 2017: American Samoa, Guam, Samoa, Trinidad and Tobago, and the U.S. Virgin Islands. 3 others were on the 2017 list, but were moved into the grey list following commitments they had taken. However, they have been blacklisted again for not following up: Barbados, the United Arab Emirates and the Marshall Islands.

7 additional countries were moved from the grey list to the blacklist for the same reason: Aruba, Belize, Bermuda, Fiji, Oman, Vanuatu, and Dominica. Another 34 countries will continue to undergo monitoring in 2019 (grey list), while 25 countries from the original screening process have been cleared.

The 34 jurisdictions that have already taken positive steps to comply with the requirements under the EU listing process, but should complete this work by the end of 2019, to avoid being blacklisted next year and are being monitored by the Commission are: Albania, Anguilla, Antigua and Barbuda, Armenia, Australia, Bahamas, Bosnia and Herzegovina, Botswana, British Virgin Islands, Cabo Verde, Costa Rica, Curacao, Cayman Islands, Cook Islands, Eswatini, Jordan, Maldives, Mauritius, Morocco, Mongolia, Montenegro, Namibia, North Macedonia, Nauru, Niue, Palau, Saint Kitts and Nevis, Saint Lucia, Serbia, Seychelles, Switzerland, Thailand, Turkey, and Vietnam.

According to EU Commissioner of Economic and Financial Affairs, Taxation and Customs Pierre Moscovici, the EU tax haven list has been a true European success, because dozens of countries have abolished harmful tax regimes and have come into compliance with international standards on transparency and fair taxation. Moscovici said the EU’s action are raising the bar of tax good governance globally and eliminating the opportunities for tax abuse.

The Commission first proposed the initiative, to which EU Member-States agreed in December 2017. The listing process has also established a framework for dialogue and cooperation with the EU’s international partners, to address concerns with their tax systems and

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6 This is taken from Bruce Zagaris, *EU Adds 9 Jurisdictions to Tax Haven Blacklist*, 35 INT’L ENFORCEMENT L. REP. 82 (Mar. 2019) without the footnotes.
discuss tax matters of mutual interest. Going forward, the screening will deepen with more compulsary transparency criteria to be respected. In addition, three G20 countries – Russia, Mexico and Argentina – will undergo the next screening.

The EU members have agreed on a set of countermeasures against listed countries. They can choose to apply them, including increased monitoring and audits, withholding taxes, special documentation requirements, and anti-abuse provisions. The Commission will continue to support EU members’ work to develop a more coordinated approach to sanctions for the EU list in 2019. Additionally, new provisions in EU law forbid EU funds from being channeled or transited through entities in countries on the tax blacklist.

The EU will send a letter to all jurisdictions on the EU list, explaining the decision and what they can do to be de-listed. The Commission and Member States (Code of Conduct Group) will continue to monitor the jurisdictions that have until the end of 2019/2020 to deliver, and assess whether any other countries should be included in the EU listing process. The Commission will continue the dialogue and engagement with the jurisdictions concerned, to provide technical support and clarifications whenever needed and to discuss any tax matters of mutual concern.

On March 11, the UAE said that it regrets the EU's decision to re-include it in its blacklist of non-co-operative tax jurisdictions. The UAE said it “remains firmly committed to its long-standing policy of meeting the highest international standards on taxation, including the OECD’s requirements, and will continue to update its domestic legislative framework in this regard.” The UAE also stated it has also shared with the EU a detailed timeline of actions currently being implemented “in accordance with its sovereign legal process and constitutional requirements.” The inclusion of the UAE has been controversial, with Italy and Estonia arguing that it should not be on the list.

On March 11, Barbados Prime Minister Mia Mottley wrote a letter to Mr. Moscovici, explaining that the EU has not yet stated what enhanced spontaneous exchange of information it wants, or what the higher evidentiary threshold for high-risk intellectual property should be. Additional safeguards for detailed reports by companies on outsourced activities and detailed reported by Service Providers in terms of work undertaken on behalf of companies inclusive of keeping time sheets requires clarity. The EU request for unfettered access to beneficial ownership may violate the Barbados Data Protection, which was done to comply with the EU General Data Protection and may breach the EU’s international human rights laws. In addition, Barbados has learned that in the future divergence may occur between the OECD Forum on Harmful Tax Practices and EU Criterion 2.2. PM Mottley said blacklisting for not making open-ended commitments on matters not yet resolved by the EU would not be in good faith.

A press release by the Ministry of Finance in Dominica said the reasons for listing Dominica – lack of exchange of information and failure to join the OECD Convention on Mutual
Administrative Assistance in Tax Matters – is unfair and misleading, insofar as, despite severe effects of hurricane Maria in September 2017. Dominica has apparently tried to join the Convention, but received many questions and then the OECD has not responded to its communications.

Approximately one week ago, pressure from the U.S., Saudi Arabia, and Panama prompted EU governments to block another blacklist of countries that show deficiencies in countering money laundering and terrorism financing.

A criticism of the EU listing initiative is that it does not include the many EU countries with international financial services, such as Ireland, Luxembourg, the Netherlands, Cyprus, Austria, Hungary, and the U.K. A continuing criticism is that, notwithstanding the EU’s statements of open and vigorous engagement, the targeted countries complain about ever-shifting and obscure standards, as well as insufficient communication over the standards and the expectations from the EU. Another complaint centers around the overlapping standards of the EU and OECD.

G. U.S. Criticizes EU AML Blacklist

On February 13 the European Commission publicly identified high-risk third countries that represent strategic deficiencies in its anti-money laundering (AML) and counterterrorist-financing (CFT) regime. The same day, the U.S. Treasury issued a statement, criticizing the list of “purportedly” high-risk jurisdictions “posing significant threats” to the EU’s financial system. Treasury said it “has significant concerns about the substance of the list and the flawed process” used to develop it.

The 23 blacklisted jurisdictions, which include four U.S. territories, are Afghanistan, American Samoa, the Bahamas, Botswana, the Democratic People’s Republic of Korea, Ethiopia, Ghana, Guam, Iran, Iraq, Libya, Nigeria, Pakistan, Panama, Puerto Rico, Samoa, Saudi Arabia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, the U.S. Virgin Islands, and Yemen.

On March 5 the European Council blocked the list’s issuance after all but one EU member objected that the proposal “was not established in a sufficiently transparent way.” Even so, the council called for an EU listing at some point in the future.

The disagreements between the U.S. and EU are continuing to build on matters such as state aid against U.S. multinationals, digital tax, the insistence that the United States fully reciprocate on FATCA IGAs, and the international automatic exchange of information best practices, namely the common reporting standard. Add to those the growing gap and increasing disagreement over AML.

Much international tax and AML enforcement cooperation is the result of regulatory transnational networks that have developed over many decades. The U.S. criticism of the EU
over the AML blacklist is perhaps due to the inclusion of U.S. territories and Saudi Arabia. In any case the U.S. government’s immediate criticism about the list and process shows that the cooperation is starting to breakdown.7

**H. Financial Action Task Force**

FATF has prepared new set of risk-based good practices for lawyers and other gatekeepers, which are based on the newer and tougher standards. This means that governments and bar associations worldwide will be amending their standards and that gatekeepers will be held to these higher standards.

**V. Summary and Conclusion**

Unilateral enforcement efforts will continue and will emanate not just from the U.S., but from many other prosecutors and tax authorities worldwide. Notwithstanding some of the controversies in international organizations caused by nationalistic policies, enforcement standards and new initiatives will continue to come from multiple sources, including the OECD, the EU, FATF, the World Bank Group and multilateral development banks, the U.N., and informal groups, such as the G7, the G20, and the Financial Stability Board.

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7 For more discussion of the US criticism of the EU AML blacklist, see Bruce Zagaris, *U.S. Treasury Criticism of EU Anti-Money Laundering Blacklist Shows Cracks in Financial Enforcement*, 93 TAX NOTES INT’L 1283 (Mar. 25, 2019)