

PANA committee of inquiry

The European Parliament's 'Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion' (PANA committee) was established in June 2016. Its report and the recommendation submitted for adoption by the European Parliament's December plenary session now pave the way for further monitoring and follow-up actions.

Panama papers: shedding light on a part of world-wide shadowy practices

The '[Panama papers](#)' refers to a tax leak revealed by the International Consortium of Investigative Journalists (ICIJ) in [April 2016](#), uncovering myriad ways to exploit secretive offshore tax regimes, which were being offered by a Panama-based law firm, Mossack Fonseca. Basically, the Panama papers shed light on mechanisms designed to escape regulations, with avoiding tax provisions just one of a long list seen in the Panama papers, along with others such as breaches of economic sanctions and gambling. The situations uncovered span all around the world, and have triggered [inquiries, audits or investigation](#) in a large number of countries. Further light was shed by subsequent leaks, including the [Bahamas leak](#) and, in November 2017, the [Paradise papers](#).

Opaque transactions [hide](#) money laundering in support of all kinds of illegal and criminal activities, including tax evasion and fraud. As regards tax challenges, [tax avoidance](#) (which is *a priori* legal) can also rely on opacity, as [risk-taking](#) tax-strategies (minimising the tax liability) are less likely to be scrutinised in a shadowy environment. Opacity helps in keeping aggressive tax practices undetected and therefore lowers the tax burden and the negative publicity ([reputation](#)) costs, not to mention that tax avoidance is legal as long as it is not deemed illegal by the tax authorities or, ultimately, by the courts.

The uncovering of legal or illegal tax planning by multinational undertakings (MNE) and high net worth individuals ([HNWI](#)) able to move their tax bases around the globe has highlighted governments' [loss of resources](#).

Key concepts: secrecy, traceability, facilitators, secretive (tax) jurisdictions

Those vying for discretion or anonymity will seek the assistance of facilitators such as advisors, law firms and banks, and use different types of instruments, such as shell, offshore and/or letterbox companies, as well as trusts. Information essential to authorities is obscured, thus creating a safe haven out of sight of the authorities (tax and others, depending on the nature of the operations). It makes the identification of the [beneficial owner](#) extremely difficult, because of the partial or complete lack of traceability of the transactions. A number of countries have created tax regimes that are attractive for those offering or seeking these practices. The terms [tax haven, offshore financial centre, and secrecy jurisdiction](#) describe jurisdictions with certain tax features, namely no or minimal taxation on income and assets of non-residents, lack of effective exchange of relevant information with other governments on their taxpayers, and minimal or no disclosure of financial dealings and ownership of assets. The map revealed through the Panama papers is not static, yet there are recurrent places and actors involved in the schemes revealed. Regulatory measures allowing traceability and the sharing of information (on the movements of financial transactions – country by country – and other relevant information namely within the framework of [anti-money-laundering](#) efforts) are tools to counteract these practices.

Investigating Panama papers relating to the EU and its Member States

The European Parliament's [investigative powers](#) are laid down in its rules of procedure ([Rule 198](#) and their [Annex VIII](#): Detailed provisions governing the exercise of the Parliament's right of inquiry established by the 19 April 1995 decision of the European Parliament, the Council and the Commission). The [decision of 8 June 2016](#) on setting up the PANA committee determined the conditions and set its [mandate](#). The inquiry committee was established for a year, with its [constituent meeting](#) on 12 July, and its mandate was twice



extended for a three-month period. The [composition](#) of the special committee reflects the composition of Parliament ([Rule 199](#)). Werner Langen (EPP, Germany) was elected chair, and Jeppe Kofod (S&D, Denmark) and Petr Ježek (ALDE, Czech Republic) were nominated co-rapporteurs.

The work of the committee builds on the work on taxation that came to prominence under the current legislature, in particular, on the resolutions adopted by the European Parliament, prepared by the special committees on tax rulings and other measures similar in nature or effect ([TAXE 1](#) and [TAXE 2](#)), as well as on the legislative resolution '[Bringing transparency, coordination and convergence to corporate tax policies](#)', which identified regulatory and monitoring challenges when addressing tax issues.

The [work](#) of the committee spans [18 months](#). The means used to research and ascertain facts are a mix of expertise gathered via studies commissioned for the committee (listed in part IV of the committee [report](#)), and [hearings](#) where experts and stakeholders provided insight on a wide range of issues (see parts III.2 and 3 of the report). The committee conducted exchanges of views with the European Commission and Member States' representatives. The committee also undertook specific fact-finding [missions](#) to countries of particular interest (see part III.3 of the report). Most of that information is [publicly](#) available and published on the [PANA committee's website](#).

Report and recommendation: remedies and space for improvements

The PANA committee adopted its final inquiry report and draft recommendation on 18 October 2017. The [report](#) provides facts, findings and provisions. Its main headings are: 'Tax evasion and tax avoidance' (offshore structures, common EU list of non-cooperative tax jurisdictions, exchange of information); 'Money laundering' (anti-money-laundering legislation, EU anti-money-laundering list of high-risk third countries, financial intelligence units (FIUs)); 'Intermediaries' (roles and responsibilities of banks, banking supervision, lawyers and law firms, accountants, accounting firms and auditors, trusts, other similar legal arrangements and fiduciaries); 'Third-country dimension'; 'Whistle-blowers'; and 'Interinstitutional cooperation'. The report ends with conclusions concerning the actors and countries involved, implementation and enforcement of legislation to date, and also identifies infringements.

Accompanying the report, the [draft recommendation](#) to the Council and the Commission for 'the adoption of legislation, the correct implementation of existing rules or any other measures' is submitted for adoption by the plenary (Rule 198 (12)). It calls for action by Member States, the Commission and the Council. It mainly requires improving enforcement when related to illegal activities (tax evasion and money laundering), improving legislation related to legal activities (tax avoidance), and finally addresses situations that arise from technological development. In a nutshell, it includes calls for:

- thorough implementation, effective enforcement and effective monitoring mechanisms, with reinforcement of the legal tools coupled with a leading role in the global fight against tax avoidance, tax evasion and money-laundering;
- increased and effective transparency (exchange of information on taxpayers and beneficial owners addressing non-transparent structures), reinforcement of the authorities (tax administrations and FIUs) standardised information and interconnection, access to or creation of registers;
- a push for the adoption of an effective and credible list of secretive jurisdictions;
- measures prompting compliance of tax jurisdictions, taxpayers and intermediaries (effective, proportionate and deterrent sanctions and due punishment of any breach of law);
- preventing tax avoidance and evasion, and shielding of beneficial owners;
- using international leverage tools (positive list principle) while supporting developing countries in the fight against tax dodging and money laundering;
- developing whistle-blower protection instruments;
- streamlining the EU's functioning with regard to the adoption of tax provisions; and
- strengthening the European Parliament's rights of inquiry, while [ensuring](#) in the meantime the follow-up of the recommendations.

The report is due to be considered, and the [draft recommendation](#) voted, during the December plenary session.

Own-initiative report: [2017/2013\(INI\)](#); Recommendation: [2016/3044\(RSP\)](#); Committee responsible: PANA; Rapporteurs: Petr Ježek (ALDE, Czech Republic), Jeppe Kofod (S&D, Denmark).