



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**



Economic and Monetary Affairs

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The Mandate of the Panama Inquiry Committee - an Assessment

Study for the PANA Committee

DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

The Mandate of the Panama Inquiry Committee - an Assessment

STUDY

Abstract

As of April 2016, the International Consortium of Investigative Journalists together with numerous reporting partners from around the world, started revealing more than 214,000 offshore entities, connected to people in more than 200 countries and territories, including EU Member States. Following these revelations, commonly known as the Panama Papers, the European Parliament decided to set up a special 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. This paper prepared by Policy Department A intends to serve as a preparatory document for the Committee's investigation.

This document was requested by the European Parliament's PANA Committee.

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LIST OF ABBREVIATIONS

- AIFMD** Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers
- AIFMR 231/2013** Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
- AMLD III** Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
- AMLD IV** Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC
- CRD IV** Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
- CRR** Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
- DAC I** Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC
- DAC II** Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

- FIU** financial intelligence unit
- FSD 2013** 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
- ICCCD** Directive 2012/17/EU of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers
- ICIJ** International Consortium of Investigative Journalists
- SAD 2006** Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts
- SAD 2014** Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
- SARPIE** Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities
- Solvency II** Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance
- TEU** Treaty on European Union
- TFEU** Treaty on the Functioning of the European Union
- UCITS V** Directive 2014/91/EU of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions

EXECUTIVE SUMMARY

- Building on the facts and findings that were revealed in or implied by the Panama Papers and taking into account the content, scope and implementation dates of the Union law within the scope of the Committee's mandate, the Committee's focus should probably lie on the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively the third anti money laundering directive, the 2011 directive on administrative cooperation in the field of taxation and the 2006 directive on statutory audits of annual accounts and consolidated accounts¹.
- With regard to state aid rules or the principle of sincere cooperation, at first glance, it seems that no alleged failures or potential breaches have been reported in the Panama Papers, which does not preclude however the Committee to investigate this further.
- It seems there are also no reported alleged failures to implement and/or enforce UCITS and AIFM rules, nor to implement and/or enforce rules on the interconnection of central, commercial and companies registers. Based on the facts and findings as they are revealed in or implied by the Panama Papers, it is moreover difficult to see how these rules would have been infringed or how the Commission would have failed to enforce and how Member States would have failed to implement and to enforce these rules.
- With regard to some Union law referred to in the Committee's mandate, the mandate seems to have less useful effect, because it:
 - is conceived rather narrow (CRD IV); or
 - relates to Union law that should not yet be implemented (the fourth anti money laundering directive); or
 - relates to Union law that should have been implemented only just yet (Solvency II, the 2014 directive on statutory audits of annual accounts and consolidated accounts and the 2014 regulation on specific requirements regarding statutory audit of public-interest entities); or
 - relates to Union law that should have been implemented just yet, but should not necessarily already be effective (the 2014 directive on administrative cooperation in the field of taxation and the 2013 directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings).
- However, since the Committee is empowered to make any recommendations deemed necessary, it is and remains relevant for the Commission to monitor the implementation process of the newest directives (e.g. AMLD 4, accounting directive

¹ It is understood that, for the sake of conciseness and clarity, some complex issues are exclusively addressed in the relevant sections and not in the summary. This, however, does not preclude the Committee from investigating them. Relevant sections in the mandate may be interpreted in a broader sense, if and when deemed necessary. For example, and based on the content of page 26, the Committee for Member States under Article 4 of the Treaty shall investigate whether the obligation of sincere cooperation for Member States under Article 4 of the Treaty was breached if there is Union law to take action against offshore companies. Please note that additional EP-studies will be addressing the Implementation by Member States of Commission Recommendations 2012/771/EU and 2012/772/EU of December 2012 and on the Commission's communication to the European Parliament and the Council of 28 January on an External Strategy for Effective Taxation, and the links between the legal framework of the Union and Member States and the tax systems of third countries.

from 2013) and to look at the implementation of international recommendations (e.g. FATF, OECD). In such cases, the analysis of the Committee should focus on whether such law would be effective in addressing potential illicit and harmful practices exposed in the Panama Papers.

1. BACKGROUND

1.1. The Panama Papers²

As of the beginning of April 2016, the International Consortium of Investigative Journalists (hereinafter ICIJ), together with numerous reporting partners from around the world, started revealing more than 214,000 offshore entities, connected to people in more than 200 countries and territories, including EU Member States. The vast majority were set up since the 1990s. These revelations are known as the Panama Papers, following the origin of the information on which they are based: a massive leak of offshore financial records from a Panama based law firm. The Panama Papers exposed that often offshore entities were set up as shell companies, without a real underlying economic rationale or substance within the country where they were set up, to hide the true ownership or origin of the assets held by it, under which money held on banks accounts around the world, including the EU. In this construction, the official owner of the assets is the offshore entity; the beneficial owner is the person behind that. The beneficial owner does not act at the forefront of the offshore: the offshore entities' books and corporate documentation are kept by local directors who act upon the instruction of the beneficial owners. The offshore entity's assets are used for various purposes ranging from the acquisition of luxury yachts or jets to cash injections in "real" companies, the Panama Papers report. The reported motivations for the establishment of offshore entities include the avoidance or evasion of taxes in the countries where the beneficial owners are residents, the evasion of sanctions, masking criminal activity and money laundering. The offshore financial centres involved include Panama, the Bahamas, the Seychelles, the British Virgin Islands, Anguilla, Niue (which counts less than 1,500 inhabitants), Belize, etc. These centres all have in common that they are known as tax havens with a great deal of banking secrecy, making the revealing of true ownership of entities established on their territory difficult to impossible. The use of bearer shares and the use of foundations that act as straw men shareholders adds to that.

The Panama Papers reveal that the set up of the offshore route was often driven by banks, sometimes even after being bailed out by the government following the financial crisis. Amongst the banks mentioned are various European banks. As far as the EU is concerned, banks involved often operated via Luxembourg' subsidiaries or branches, the Panama Papers state. Other reported hubs in Europe via which offshore entities were set up include Monaco, Guernsey, Jersey and the Isle of Man. It is reported that in some events it is likely that the bank's management and directors were aware of the offering of the offshore route to clients, at least that they could not be unaware of this. Also tax advisors and specialized law firms are named amongst the driving forces behind the offshore constructions. It is reported that in the process of setting up offshore, banks, tax advisors and/or law firms sometimes acted negligently, through not verifying the identity of the beneficial owners and/or the origin of the assets or not revealing that identity and/or origin to the other intervening persons or the authorities. Also on the supervisory side negligence was reported. Allegedly, in some instances where tax administrations and/or financial supervisors in the EU were confronted with the existence of the offshore route, they did not further investigate this thoroughly and sufficiently, sometimes by declaring themselves incompetent resulting in various supervisors and administrations pointing at each other and passing on responsibility. With regard to Luxembourg, it is even reported that the head of the Luxembourg banking supervisor prior

² This background section solely reflects the opinion and views of the author, and is implicitly based on partial information and available at the time of drafting. It is obvious that – with new information and additional analysis available - the spectrum of cases of activities may be wider and more complex.

to joining the supervisor was a Luxembourg banker involved in setting up offshore for bank clients³.

For the avoidance of doubt, as is reported by the Panama Papers, there is nothing unlawful about offshore and advising on and assisting in the setting up and management of offshore as such. It is only when offshore are set up and used for illegitimate purposes that their legitimacy is at stake. The assessment of illegitimacy should be made on a case-by case basis, taking into account the specific circumstances. All this should also be assessed against the backdrop of the tax sovereignty of nations⁴ and the knowledge that choosing the most favourable tax route, while not contravening laws, is considered legitimate, both in a domestic and in an international context. Moreover, it should be noted that it is only recently that a significant number of offshore acceded to the OECD multilateral competent authority agreement to automatically exchange information. As a result, for example Anguilla, Belize, the British Virgin Islands, the Seychelles and Niue are intended to start exchanging information as of September 2017 (save for Belize, for which the intended first information

³ Sources for this overview are, in chronological order: B. Obermayer, G. Ryle, M. Walker Guevara, M. Hudson, J. Bernstein, W. Fitzgibbon, M. Cabra, M.M. Hamilton, F. Obermaier, R. Chittum, E. Diaz-Struck, R. Carvajal, C. Schilis-Gallego, M. G. Rey, D. Reuter, M. Caruana Galizia, H. Boland-Rudder, M. Fiandor and M. Torres, "Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption", 3 April 2016 (<https://panamapapers.icij.org/20160403-panama-papers-global-overview.html>); J. Garside, "A world of hidden wealth: why we are shining a light offshore", the guardian 3 April 2016; J. Bloom, "Panama Papers: How assets are hidden and taxes dodged", BBC News website, 3 April 2016; I. Albers, "Onhoudbare oneerlijkheid", De Tijd 3 April 2016; M.M. Hamilton, "Panamanian Law Firm Is Gatekeeper To Vast Flow of Murky Offshore Secrets", 3 April 2016 (<https://panamapapers.icij.org/20160403-mossack-fonseca-offshore-secrets.html>); R. Chittum, C. Schilis-Gallego and R. Carvajal, "Global Banks Team with Law Firms To Help the Wealthy Hide Assets", 4 April 2016 (<https://panamapapers.icij.org/20160404-banks-lawyers-hide-assets.html>); W. Fitzgibbon and M.M. Hamilton, "Law Firm's Files Include Dozens of Companies and People Blacklisted by U.S. Authorities", 4 April 2016 (<https://panamapapers.icij.org/20160404-sanctioned-blacklisted-offshore-clients.html>); L. Bové, "Belgen gebruiken nog massaal schermbedrijven in belastingparadijzen", De Tijd 4 April 2016; L. Bové, "Rijkste Belgische familie de Spoelberch duikt op in Panama Papers", De Tijd 4 April 2016; L. Bové, "Van Hongkong naar Peru, via de Britse Maagdeneilanden", De Tijd 5 April 2016; L. Dierckx, "Panama Papers zijn heksenjacht", De Tijd 5 April 2016; L. Bové, "Luxemburgse adviseurs helpen Belgen aan 'Panama Papers'", De Tijd 5 April 2016; L. Harding, "What are the Panama Papers? A guide to history's biggest data leak", the guardian 5 April 2016; L. Bové, "De drie miljardairs die België doen blozen", De Tijd 6 April 2016; K. Schoors, "Maak korte metten met fiscale vrijbuitelij", De Tijd 6 April 2016; J. Bernstein, "The Art of Secrecy" 7 April 2016 (<https://panamapapers.icij.org/20160407-art-secrecy-offshore.html>); L. Dierckx, "Panama belooft meer transparantie", De Tijd 7 April 2016; L. Bové, "Panamees advocatenkantoor hielp ook Belgische criminelen", De Tijd 8 April 2016; L. Bové, "Het mysterieuze spookbedrijf van een minister van Staat", De Tijd 9 April 2016; B. Moens, "Panama Papers: hoe kwamen ze tot stand?", De Tijd 9 April 2016; L. Bové, "De Panama-route van Dexia", De Tijd 9 April 2016; B. Haeck, "Haelterman: 'De laatste fiscale burchten vallen nu'", De Tijd 9 April 2016; L. Bové, "BBI: 'Intern onderzoek rond Panama'", De Tijd 11 April 2016; L. Bové and S. Michielsens, "Bankenwaakhond trad niet op tegen Panamaroute Dexia", De Tijd 12 April 2016; S. Michielsens, "Wie aan de tand voelen over Panamase praktijken Dexia", De Tijd 13 April 2016; L. Nijs, "Herteken het belastinglandschap in plaats van je blind te staren op ontwijking", De Tijd 19 April 2016; L. Dierckx, "VS lanceren strafrechtelijk onderzoek naar Panama Papers", De Tijd 20 April 2016; M. Verplancke, "Banken verplicht tot transparantie over belastingparadijzen", De Tijd 21 April 2016; L. Bové, "Fortis verborg massa rekeningen", De Tijd 23 April 2016; K. van Haver, "Europa werkt aan zwarte lijst belastingparadijzen", De Tijd 23 April 2016; L. Bové, "Bankenwaakhond fixe zelf jarenlang offshore", De Tijd 26 April 2016; L. Bové, "Alle internetjongens zitten in belastingparadijzen", De Tijd 30 April 2016; E. Diaz-Struck, C. Schilis-Gallego, "Beyond Panama: Unlocking the world's secrecy jurisdictions", 9 May 2016 (<https://panamapapers.icij.org/20160509-beyond-panama-secrecy-jurisdictions.html>); R. Chittum, J. Bernstein and M. Hudson, "The Malefactors of Mossack Fonseca", 9 May 2016 (<https://panamapapers.icij.org/20160509-malefactors-criminals-offshore.html>); L. Bové, "Panama Papers: zit uw huisbaas op de Bahama's?", De Tijd 28 May 2016; L. Bové, "117 Belgische adviseurs in Panama Papers", De Tijd 8 June 2016.

⁴ Also see on this J. Vella, "Are we Moving in the Right Direction? Public Disclosure of Tax Information & Other EC/EP Proposals to Reduce Aggressive Tax Planning", in Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, May 2016, p. 15 (available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578987/IPOL_IDA\(2016\)578987_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578987/IPOL_IDA(2016)578987_EN.pdf)).

exchange date is September 2018). Recently, it was announced that also Panama decided to accede to the OECD multilateral competent authority agreement.

1.2. The Committee of Inquiry

Following the revelations set out in the Panama Papers, the European Parliament decided on 8 June 2016 to set up a special 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. The exact scope of the Committee of Inquiry's mandate is:

1. to investigate:

- the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter AMLD III), taking into account the obligation of timely and effective implementation of Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereinafter AMLD IV);
- the alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions found liable of serious breach of the national provisions adopted pursuant to AMLD III, as required by the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (hereinafter CRD IV);
- the alleged failure of the Commission to enforce and of Member States authorities to implement effectively Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (hereinafter DAC I), especially Article 9(1) thereof on spontaneous communication of tax information to another Member State in cases where there are grounds for supposing that there may be a loss of tax, taking into account the obligation of timely and effective implementation and enforcement of Directive 2014/107/EU of 9 December 2014 amending DAC I (hereinafter DAC II); for this purpose and for investigations on other legal bases regarding alleged contraventions or maladministration mentioned, make use of access to all relevant documents, including to all relevant documents of the Code of Conduct Group which have been obtained by the TAXE 1 and TAXE 2 special committees;
- the alleged failure of the Member States to enforce Articles 107 and 108 of the Treaty on the Functioning of the European Union (hereinafter TFEU), relevant to the scope of the inquiry provided for in this decision;
- the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2014/91/EU of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (hereinafter UCITS V);

- the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (hereinafter AIFMD) and Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (hereinafter AIFMR 231/2013);
 - the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (hereinafter Solvency II);
 - the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (hereinafter SAD 2006), taking into account the obligation of timely and effective implementation of Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities (hereinafter SARPIE) and Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (hereinafter SAD 2014);
 - the alleged failure of Member States to transpose 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (hereinafter FSD 2013);
 - the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2012/17/EU of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers (hereinafter ICCCD);
 - the potential breach of the duty of sincere cooperation enshrined in Article 4 (3) of the Treaty on European Union (hereinafter TEU) by any Member State and their associate and dependent territories in so far as it is relevant to the scope of the inquiry provided for in this decision; to that end, assess in particular whether any such breach may arise from the alleged failure to take the appropriate measures to prevent the operation of vehicles that allow their ultimate beneficial owners to be hidden from financial institutions and other intermediaries, lawyers, trust and company service providers or the operation of any other vehicles and intermediaries that allow the facilitation of money laundering, as well as tax evasion and tax avoidance in other Member States (including looking at the role of trusts, single-member private limited liability companies and virtual currencies), while also taking into account current ongoing work programmes that are taking place at Member State level which seek to address these issues and mitigate their effect; and
2. to make any recommendations that it deems necessary in this matter, including on the implementation by Member States of Commission Recommendation 2012/771/EU of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and Commission

Recommendation 2012/772/EU of 6 December 2012 on aggressive tax planning, regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and aggressive tax planning, as well as assess latest developments of the Commission's External strategy for effective taxation and assess the links between the legal framework of the Union and Member States and the tax systems of third countries (e.g. Double Taxation Agreements and Information Exchange Agreements, Free Trade Agreements) as well as efforts made to promote, at international level (Organisation for Economic Co-operation and Development, G20, Financial Action Task Force and United Nations), the transparency of beneficial ownership information.

1.3. Scope of this paper

This paper intends to serve as a preparatory document for the Committee of Inquiry's investigation of the alleged failures and potential breach mentioned under 1 above. To that end, within the scope of the Committee of Inquiry's mandate the paper will provide an overview of Union law provisions that are allegedly infringed by Member States and/or the Commission. Only Union law that is explicitly referred to in the Committee's mandate is scrutinized; implementing, execution or other measures or documents referred to in this Union law, but not in the Committee's mandate, are out of scope. It is not the intention of the paper to be exhaustive, but only to identify the most important provisions of Union law that are allegedly not implemented or not (effectively) enforced. Where Union law provisions allow Member States or the Commission to take certain action, but not legally require them to do so, a Member States alleged inaction will not be considered an alleged failure or breach for the purposes of this paper and, therefore, exceeds the scope of this paper⁵.

The paper does not purport to anticipate the work of the Committee of Inquiry in any way. Therefore, under no circumstances this paper intends to assess whether there were actual failures to implement and/or (effectively) enforce Union law or actual breaches of Union law by Member States and/or the Commission. Along the same lines, it is not the intention of the paper to scrutinize which Member States allegedly not implemented or not (effectively) enforced or breached Union law. This should be investigated on a case-by-case basis.

Furthermore, the paper builds upon the facts and findings as they are revealed or implied by the ICIJ and its reporting partners in the Panama Papers, as summarized above⁶. These facts and findings have not been verified. If these facts and findings would prove to be inaccurate in any way, the content of this paper could have been different.

This paper will not deal with the Committee of Inquiry's mandate referred to under 2 above to make any recommendations that it deems necessary in this matter, including on the implementation by Member States of Commission Recommendations 2012/771/EU and 2012/772/EU of 6 December 2012 and on the Commission's communication to the European Parliament and the Council of 28 January 2016 on an External Strategy for Effective Taxation.

⁵ Examples of such provisions are:

- Article 55 CRD IV on the basis of which Member States *may* conclude cooperation agreements, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries; and
- Article 24 DAC I according to which Member State authorities that receive information from a third country that is foreseeably relevant to the administration and enforcement of the domestic tax laws of that Member State *may*, in so far as this is allowed pursuant to an agreement with that third country, provide that information to the competent authorities of Member States for which that information might be useful and to any requesting authorities.

⁶ Please note that as regards reporting partners this paper starts from the articles available in Belgian newspaper De Tijd and articles made available publicly by BBC News and the guardian, as listed in footnote 1 above. Articles from other reporting partners were not investigated because they were either not publicly available or not accessible because of language restrictions. Articles by non-EU reporting partners were not included in the research.

Nevertheless, as a preliminary note, it is worth noticing here that from a legal perspective there cannot be failures to implement and/or enforce these recommendations or communication by Member States, because these recommendations and communication by their nature are not legally binding.

The paper does not purport to scrutinize procedural and substantive rules relating to the Committee of Inquiry's competence and functioning, nor to the validity of its mandate.

2. OVERVIEW OF UNION LAW THAT WAS ALLEGEDLY NOT IMPLEMENTED (TIMELY) OR ENFORCED (EFFECTIVELY)

2.1. Alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively AMLD III, taking into account the obligation of timely and effective implementation of AMLD IV

First, it should be noted that AMLD IV should be implemented by the Member States only by 26 June 2017. Therefore, there can be no failure to implement timely and effectively AMLD IV.

As regards AMLD III, which should have been implemented by 15 December 2007, the following provisions allegedly have been infringed or could have been infringed in the context of the events that were revealed or implied by the ICIJ and its reporting partners in the Panama Papers:

- Article 7: this requires that the institutions and persons covered by it (under which credit institutions, insurance companies, investment firms, collective investment undertakings, insurance intermediaries, auditors, tax advisors, external accountants, notaries, lawyers (within certain limits)) apply customer due diligence measures when:
 - a) establishing a business relationship;
 - b) carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
 - c) there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
 - d) there are doubts about the veracity or adequacy of previously obtained customer identification data.
- Article 8 (1): this requires that such customer due diligence measures comprises:
 - a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
 - b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by the directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;
 - c) obtaining information on the purpose and intended nature of the business relationship;
 - d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.
- Article 9: according to (1) of this Article, Member States have to require that the verification of the identity of the customer and the beneficial owner takes place *before the establishment of a business relationship or the carrying-out of the transaction*; Article 9 (2) allows the verification of the identity of the customer and the beneficial

owner to be completed *during the establishment of a business relationship* if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In relation to life insurance business, on the basis of Article 9 (3), Member States may allow the verification of the identity of the beneficiary under the policy to take place *after the business relationship* has been established. In that case, verification shall take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy. According to Article 9 (4), Member States may allow the opening of a bank account provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the aforementioned provisions is obtained. On the basis of Article 9 (5), Member States have to require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 8(1), it may not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit (hereinafter FIU) in relation to the customer. According to Article 9 (6) Member States have to require that institutions and persons covered by AMLD III apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.

- Article 13: on the basis of (1) of this Article, Member States must require the institutions and persons covered by AMLD III to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), in situations which by their nature can present a higher risk of money laundering or terrorist financing. This includes the following situations. On the basis of Article 13 (2), where the customer has not been physically present for identification purposes, Member States have to require those institutions and persons to take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures:
 - a) ensuring that the customer's identity is established by additional documents, data or information;
 - b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by AMLD III;
 - c) ensuring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

According to Article 13 (4), in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country, Member States have to require those institutions and persons covered by AMLD III to:

- a) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- b) have senior management approval for establishing business relationships with such customers;
- c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
- d) conduct enhanced ongoing monitoring of the business relationship.

On the basis of Article 13 (6), Member States have to ensure that the institutions and persons covered by AMLD III pay special attention to any money laundering or

terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

- Article 14: this states that Member States may permit the institutions and persons covered by the Directive to rely on third parties to meet the requirements laid down in Article 8(1)(a) to (c) but that in such event the ultimate responsibility for meeting those requirements shall remain with the institution or person covered by AMLD III which relies on the third party.
- Article 20: according to which Member States have to require that the institutions and persons covered by AMLD III pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.
- Article 22 (1): on the basis of which Member States have to require the institutions and persons covered by AMLD III, and where applicable their directors and employees, to cooperate fully:
 - a) by promptly informing the FIU, on their own initiative, where the institution or person covered by AMLD III knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted;
 - b) by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.
- Article 24: on the basis of (1) of this Article, Member States must require the institutions and persons covered by AMLD III to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 22(1)(a). In conformity with the legislation of the Member States, instructions may be given not to carry out the transaction. Article 24 (2) requires that, where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the institutions and persons concerned inform the FIU immediately afterwards.
- Article 25: according to which Member States have to ensure that if, in the course of inspections carried out in the institutions and persons covered by AMLD III by the competent authorities referred to in Article 37, or in any other way, those authorities discover facts that could be related to money laundering or terrorist financing, they shall promptly inform the FIU. In addition, Member States have to ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the FIU if they discover facts that could be related to money laundering or terrorist financing.
- Article 30: according to which Member States have to require the institutions and persons covered by AMLD III to keep the following documents and information for use in any investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law:
 - a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of at least five years after the business relationship with their customer has ended;

- b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following the carrying-out of the transactions or the end of the business relationship.

Article 31 (1): this states that Member States have to require the credit and financial institutions covered by AMLD III to apply, where applicable, in their branches and majority-owned subsidiaries located in third countries measures at least equivalent to those laid down in AMLD III with regard to customer due diligence and record keeping.

- Article 37 (1): on this basis Member States have to require the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of AMLD III by all the institutions and persons covered by it.

Allegedly these provisions were infringed as follows. EU banks⁷, tax advisors, lawyers and/or other persons involved in the set up and/or management of offshore constructions for their clients, in the context of which offshore shell companies opened bank accounts with EU banks, allegedly were negligent in performing (enhanced) customer due diligence measures, both as at the establishment of the business relationship with their clients⁸ and during that business relationship⁹, even when there was a suspicion of money laundering or terrorist financing. Allegedly, no or insufficient research was done to identify the beneficial owners of the offshore entities, to understand the ownership and control structure of the customer and/or to obtain information on the purpose and intended nature of the business relationship. Allegedly, this relates both to politically exposed persons and others. As a result, no sufficient documentation was gathered for use in any investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law. Allegedly, the same holds true in some cases for life insurance policies granted by insurance companies and offered to clients via insurance intermediaries - and potentially also in some cases for investments in investment firms or collective investment undertakings (which are all financial institutions for the purposes of AMLD III) or even for investments in corporates (these are not included in the scope of AMLD III; under AMLD IV they will however be required to obtain and hold adequate, accurate and current info on their own beneficial owners). In addition and more in general, allegedly, the banks, tax advisors, lawyers, insurers and/or other persons involved in the set up and/or management of offshore constructions did not pay sufficient special attention to this, whereas they should have, because offshores by their nature favour anonymity and are particularly likely to be related to money laundering or terrorist financing. Moreover, allegedly, actual knowledge, suspicions or reasonable grounds to suspect that money laundering or terrorist financing was being or has been committed or attempted, were not or not on time reported to the competent FIU and, allegedly, transactions were carried out from accounts held by offshore entities which were or were suspected to be related to money laundering or terrorist financing. Allegedly, in some instances, tax or other administrations or supervisory bodies discovered the existence of the offshore constructions, but this was not adequately reported to the FIU.

By allegedly not responding adequately to these alleged infringements, Member States allegedly failed to enforce effectively the aforementioned provisions of AMLD III. In so far as Member States would have actually failed to enforce effectively the aforementioned provisions of AMLD III, as a result the Commission potentially also failed to enforce these

⁷ Whether or not acting via third parties to which they outsourced activities and AML compliance and whether or not acting via branches or subsidiaries in third countries.

⁸ Whether or not they were physically present at that time.

⁹ No or insufficient ongoing monitoring of the business relationship.

provisions by not initiating infringement procedures, albeit that the Commission's power to initiate an infringement procedure is a discretionary one.

2.2. Alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions found liable of serious breach of the national provisions adopted pursuant to AMLD III, as required by CRD IV

CRD IV should have been implemented by 31 December 2013.

As regards CRD IV, the Committee of Inquiry's mandate relates to the alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions found liable of serious breach of the national provisions adopted pursuant to AMLD III. Within that mandate, understood as such, the provisions of CRD IV that are allegedly infringed in the context of the events that were revealed or implied by the ICIJ and its reporting partners in the Panama Papers are the following:

- Article 64 (1): this Article requires that competent authorities shall be given all supervisory powers to intervene in the activity of institutions that are necessary for the exercise of their function, including in particular the right to withdraw an authorisation, supervisory measures and powers and specific liquidity requirements.
- Article 65: (1) of this Article requires that, without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing CRD IV and Regulation (EU) No 575/2013 (hereinafter CRR) and shall take all measures necessary to ensure that they are implemented. On the basis of Article 65 (2), Member States have to ensure that where obligations apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing CRD IV or CRR, penalties may be applied to the members of the management body and to other natural persons who under national law are responsible for the breach.
- Article 67: on the basis of this Article, Member States have to ensure *inter alia* that in the case wherein an institution is found liable for a serious breach of the national provisions adopted pursuant to AMLD III (Article 67 (1)(o)), the administrative penalties and other administrative measures that can be applied include at least:
 - a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
 - b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
 - c) in the case of an institution, withdrawal of the authorization of the institution;
 - d) a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;
 - e) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 CRR of the undertaking in the preceding business year;

- f) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;
- g) administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

Allegedly, Member States authorities failed to apply these provisions because they did not adequately sanction the institutions subject to CRD IV that were found liable of serious breach of the national provisions adopted pursuant to AMLD III. To assess whether there were actual failures in this respect it is crucial to find out: (1) whether institutions were actually found liable of serious breaches of AML laws; and that (2) where this was the case, the competent domestic supervisor failed to impose sanctions¹⁰.

Interesting to note is that the Committee of Inquiry's mandate seems to be limited to the alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions that *were found liable* of serious breach of the national provisions adopted pursuant to AMLD III. Therefore, the investigation of alleged failures of Member States authorities *to adequately assess under CRD IV whether institutions were liable* of serious breach of the national provisions adopted pursuant to AMLD III seems to be excluded from the scope of the mandate and will therefore not be further elaborated in this paper¹¹.

¹⁰ This is a key element of the Committee's Mandate.

¹¹ If the mandate could be interpreted more broadly and could include also this, then the alleged failure to enforce the following provisions of CRD IV in the context of the events that were revealed or implied by the ICIJ and its reporting partners in the Panama Papers could also be scrutinized:

Article 4: (2) of this Article requires Member States to ensure that the competent authorities monitor the activities of institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of CRD IV and CRR. On the basis of Article 4 (4), Member States have to require that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in CRD IV and CRR. Article 4 (5) requires Member States to require that institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with CRD IV and CRR. Article 4 (6) states that Member States shall ensure that institutions register all their transactions and document systems and processes, which are subject to CRD IV and CRR in such a manner that the competent authorities are able to check compliance with CRD IV and CRR at all times.

Article 49 (1): according to which the prudential supervision of an institution, including that of the activities it carries out, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of CRD IV which give responsibility to the competent authorities of the host Member State.

Article 50 (1): on the basis of which the competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated.

Article 63 (1): on the basis of which Member States have to provide that the auditor shall at least have a duty to report promptly to the competent authorities any fact or decision concerning that institution (or an undertaking having close links resulting from a control relationship with the institution) of which that person has become aware while carrying out that task, which is liable to constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of institutions or affect the ongoing functioning of the institution.

Article 71 (1): stating that Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing CRD IV and CRR to competent authorities.

Article 88 (1) (b): requiring Member States to ensure that the management body defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of an institution. Those arrangements shall comply *inter alia* with the principle that the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards.

Article 91 (8): which states that each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

Article 97: stating that the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with CRD IV and CRR and evaluate the risks to

2.3. Alleged failure of the Commission to enforce and of Member States authorities to implement effectively DAC I especially Article 9(1) thereof, taking into account the obligation of timely and effective implementation and enforcement of DAC II

The below overview of commented provisions is limited to provisions of DAC I and DAC II; other documents referred in the mandate, such as the documents of the Code of Conduct Group which have been obtained by the TAXE 1 and TAXE 2 special committees, have not been scrutinized.

DAC I should have been implemented by 1 January 2013, with the exception of Article 8 which should have been implemented by 1 January 2015. DAC II should have been implemented only by 1 January 2016.

As regards DAC I, the following provisions allegedly have been infringed or could have been infringed in the context of the events that were revealed or implied by the ICIJ and its reporting partners in the Panama Papers:

- Articles 1 and 2: stating as a principle that the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning all taxes of any kind (with certain exceptions, such as value added tax) levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities, and levied within the territory to which the Treaties apply by virtue of Article 52 of the Treaty on the European Union.
- Article 8 (1): according to which the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:
 - a) income from employment;
 - b) director's fees;
 - c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;

which the institutions are or might be exposed. The scope of the review and evaluation shall cover all requirements of CRD IV and CRR. On the basis of the review and evaluation, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

Article 102: on the basis of which competent authorities have to require an institution to take the necessary measures at an early stage to address relevant problems when the institution does not meet the requirements of CRD IV and CRR or when the competent authorities have evidence that the institution is likely to breach the requirements of CRD IV and CRR within the following 12 months.

Article 116: on the basis of which the consolidating supervisor has to establish colleges of supervisors which, amongst others, has to ensure appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate and in the context of which information shall be exchanged.

Article 117: requiring that the competent authorities shall cooperate closely with each other and shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under CRD IV and CRR. In that regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

- d) pensions;
- e) ownership of and income from immovable property.

As aforementioned, this provision entered into force with effect from 1 January 2015.

- Article 8 is amended by DAC II. According to new section (3) a, each Member State must take the necessary measures to require its Reporting Financial Institutions to perform the reporting and due diligence rules included in Annexes I and II to DAC II (definitions used are those used in the Annexes to DAC II). Pursuant thereto, the competent authority of each Member State is required to, by automatic exchange, communicate to the competent authority of any other Member State within nine months following the end of the calendar year or other appropriate reporting period to which the information relates, the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account:
 - a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
 - b) the account number (or functional equivalent in the absence of an account number);
 - c) the name and identifying number (if any) of the Reporting Financial Institution;
 - d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
 - e) in the case of any Custodial Account:
 - 1. the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - 2. the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
 - f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
 - g) in the case of any account not described in point (e) or point (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

With regard to due diligence for Pre-existing Entity Accounts, under which possibly accounts held by offshore entities with institutions subject to DAC, it should be noted that:

- the review of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250000, must be completed by 31 December 2017;
- the review of Pre-existing Entity Accounts with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250000, but exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount;
- a Pre-existing Entity Account with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250000, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.

Given these timeframes, there cannot be failures at present in respect of due diligence requirements for Pre-existing Entity Accounts under DAC II, as a result of which these requirements will normally not be relevant for the Committee's inquiry.

With respect to New Entity Accounts, the procedures for purposes of identifying Reportable Accounts should be applied as of the implementation of DAC II, hence 1 January 2016.

- Article 9 (1): which states that the competent authority of each Member State has to communicate the information referred to in Article 1(1) to the competent authority of any other Member State concerned, in any of the following circumstances:
 - a) the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
 - b) a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
 - c) business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
 - d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e) information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

According to Article 9 (2), the competent authorities of each Member State may communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States.

Article 10 (1): according to which the competent authority to which information referred to in Article 9(1) becomes available, has to forward that information to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available.

Allegedly, and in so far they were applicable *ratione temporis*, these provisions were not implemented effectively in that competent authorities of a Member State that had grounds for supposing that there may have been a loss of tax in another Member State and thus had reportable tax information regarding reportable persons who set up and managed offshore constructions (or for whom offshore constructions were set up and managed) and that were residents of another Member State, did not pass on this tax information to that other Member State. To assess whether the alleged failure effectively constitutes a failure it is crucial to find out whether competent authorities of Member States actually possessed reportable tax information regarding reportable persons that should have been shared according to DAC I.

In so far as Member States authorities would have actually failed to implement effectively the aforementioned provisions of DAC I, as a result the Commission potentially also failed to enforce these provisions by not initiating infringement procedures, albeit that the Commission's power to initiate an infringement procedure is a discretionary one.

2.4. Alleged failure of the Member States to enforce Articles 107 and 108 TFEU, relevant to the scope of the inquiry

Articles 107 and 108 relate to state aid. The basic rule there is that, save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

At first glance, it seems that no alleged failures of Member States to enforce state aid rules have been reported. Nonetheless, an allegation could be that Member States favoured persons that set up and managed offshore entities or for whom offshore entities were set up and managed to evade taxes by not responding adequately to them. Therefore, these persons were given a more favourable tax treatment than others, and, hence, received state aid. Without having done any further substantive research on this, it seems that one of the key points to be assessed here is whether or not the Member States inaction could be considered to constitute aid and if so whether this aid could be considered to be of a general nature or of a selective nature¹².

Articles 107 & 108 are relevant legal basis for our mandate. The Committee is about money laundering, tax evasion and tax avoidance. As recently demonstrated with the Apple case, tax avoidance by large companies can constitute illegal state aid. The TAX2 coordinators expressed their willingness to ensure the unfinished business of the special committee would be carried forward and there were discussions on and support for this during the negotiations for the PANA committee. Moreover, one can debate whether public targeted bail-out received

¹² On the legality of state aid see e.g. K. Lenaerts and P. Van Nuffel, *Europees recht*, Antwerp, Intersentia, 2011, 254-260; P.-M. Sabbadini, *Les aides d'état. Aspects juridiques et économiques*, Brussel, Larcier, 2015, 47-48. See recently on state aid in tax matters: R. Luja, "EU State Aid Law and National Tax Rulings: 2015-2016 Update", in Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, May 2016, (available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578987/IPOL_IDA\(2016\)578987_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578987/IPOL_IDA(2016)578987_EN.pdf)) and W. Geursen, "Influence of EU Law on Taxation in the EU Member States' Overseas Territories and Crown Dependencies", in Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, June 2016, (available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578989/IPOL_IDA\(2016\)578989_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578989/IPOL_IDA(2016)578989_EN.pdf)).

by some banks during the financial crisis could not be considered a form of state aid, while banks are helping their clients evade taxes. This why we believe articles 107 & 108 to still be relevant for the PANA committee.

2.5. Alleged failure of the Commission to enforce and of Member States to implement and to enforce UCITS V

First, it should be noted that the Committee of Inquiry's mandate seems to relate only to the alleged failure of the Commission to enforce and of Member States to implement and to enforce *Directive 2014/91/EU*, hence, to the changes brought to the UCITS regime by UCITS V. We assume, however, that the intention is to have a broader conception of the Committee's mandate so that it includes the UCITS regime as a whole, as amended by UCITS V and as included in the coordinated version of Directive 2009/65/EC (recast).

Second, the amendments brought to the UCITS regime by UCITS V should have been implemented only by 18 March 2016 and will thus be of lesser relevance to assess alleged failures in the past.

Third, and most important, at first glance it seems that no allegations of failures to implement and/or enforce UCITS rules have been reported. Furthermore, based on the facts and findings as they are revealed or implied by the ICIJ and its reporting partners in the Panama Papers, it is difficult to see how UCITS rules would have been infringed by undertakings for collective investment in transferable securities or how the Commission would have failed to enforce and how Member States would have failed to implement and to enforce the UCITS rules. Therefore, no provisions that the Commission allegedly failed to enforce and Member States allegedly failed to implement and to enforce are listed here.

2.6. Alleged failure of the Commission to enforce and of Member States to implement and to enforce AIFMD and AIFMR 231/2013

AIFMD and AIFMR 231/2013 should have been implemented by 22 July 2013 and will thus only be relevant to assess alleged failures as of that date.

Second, and most important, at first glance¹³ it seems that no allegations of failures to implement and/or enforce AIFMD and AIFMR 231/2013 have been reported. Furthermore, based on the facts and findings as they are revealed or implied by the ICIJ and its reporting partners in the Panama Papers, it is difficult to see how AIFMD and AIFMR 231/2013 would have been infringed by alternative investment fund managers or how the Commission would have failed to enforce and how Member States would have failed to implement and to enforce AIFMD and AIFMR 231/2013. Therefore, no provisions that the Commission allegedly failed to enforce and Member States allegedly failed to implement and to enforce are listed here.

2.7. Alleged failure of the Commission to enforce and of Member States to implement and to enforce Solvency II

Solvency II should have been implemented only by 1 January 2016 and will thus be of no relevance to assess alleged failures prior to this date. The relevant framework to assess alleged failures prior to 1 January 2016 is the Solvency I framework, consisting of Directive 2002/83/EC of 5 November 2002 *concerning life assurance* and Council Directive 73/239/EEC of 24 July 1973 *on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance*, as

¹³ See: Footnote 1: It is obvious that – with new information and in-depth analysis - the spectrum of cases of activities may be wider and more complex.

amended by Directive 2002/13/EC of 5 March 2002 *amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings*. The Solvency I framework seems however out of the Committee's mandate scope and will therefore not be dealt with in this paper.

As the Committee's work with regard to alleged failures will be focused to a large extent to the period prior to 1 January 2016, it seems of lesser relevance to elaborate in great detail on provisions of Solvency II that potentially could have been infringed¹⁴.

2.8. Alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively SAD 2006, taking into account the obligation of timely and effective implementation of SARPIE and SAD 2014

SAD 2014 and SARPIE should have been implemented only by 17 June 2016, with the exception of Article 16(6) which should be implemented by 17 June 2017 and will thus only be relevant to assess alleged failures as of that date. SAD 2006 should have been implemented by 29 June 2008.

As regards SAD 2006, the following provisions allegedly have been infringed or could have been infringed in the context of the events that were revealed or implied by the ICIJ and its reporting partners in the Panama Papers:

- Article 21 (1): which states that Member States must ensure that all statutory auditors and audit firms are subject to principles of professional ethics, covering at least their public-interest function, their integrity and objectivity and their professional competence and due care.

¹⁴ Assuming Solvency II would be applicable (i.e. only as of 1 January 2016) a short selection of provisions that could have been infringed includes:

Article 34: according to (1) of this Article Member States have to ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply in each Member State. (2) of this Article states that the supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body. According to (3) of this Article, Member States are required to ensure that supervisory authorities have the power to require all information necessary to conduct supervision.

Article 35 (1): according to which Member States have to require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision. Such information shall include the information necessary to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management.

Article 249 (1): this states that the authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties. With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under Solvency II. In that regard, the supervisory authorities concerned and the group supervisor shall communicate to one another without delay all relevant information as soon as it becomes available, or exchange information on request. The information includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.

These provisions could have been infringed / not implemented or enforced if undertakings subject to Solvency II as of 1 January 2016 would have assisted in the set up and continuation of illegal offshore constructions, e.g. in the context of offering life insurance products to clients, whereas Member States authorities would have been negligent in supervising and sanctioning those institutions and/or would have been negligent in sharing information (if any) on malpractices with other competent supervisors, assuming the undertaking would have belonged to an insurance or reinsurance group.

- Article 32: according to which all statutory auditors and audit firms must be subject to an effective system of public oversight, which must have the right, where necessary, to conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action.
- Article 33: on the basis of which Member States have to ensure that regulatory arrangements for public oversight systems permit effective cooperation at EU level in respect of Member States' oversight activities.

Article 36 (1): stating that the competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their respective responsibilities under SAD 2006 and render each other assistance. In particular, competent authorities shall exchange information and cooperate in investigations related to the carrying-out of statutory audits.

Allegedly, these provisions were infringed to the extent that statutory auditors and/or audit firms knew or should have known about offshore entities set up for illegitimate purposes by or through the intermediation of their clients and failed to put a stop to this and/or report this to the competent authorities and more in general failed to act in accordance with the principles of professional ethics. Allegedly, statutory auditors and audit firms even assisted in or advised on the setting up and continuation of offshores for illegitimate purposes themselves. In the framework hereof it is alleged that Member States authorities were negligent in performing *effective* oversight and/or in the requirement to share information and cooperate with competent authorities of other Member States to the extent they would have had information to be shared.

In so far as Member States authorities would have actually failed to enforce effectively the aforementioned provisions of SAD 2006, as a result the Commission potentially also failed to enforce these provisions by not initiating infringement procedures, albeit that the Commission's power to initiate an infringement procedure is a discretionary one.

If SARPIE would have already been applicable (for the avoidance of any doubt, it is only applicable as of 17 June 2016 and only to public-interest entities (such as banks and insurance undertakings and related parties thereof)), the situation would be much clearer: all tax services, including tax advice, and legal services would have constituted a prohibited non-audit service (Article 5 (1)). Hence, every tax and legal advice relating to offshores (whether or not a legitimate set-up) in those circumstances would be contrary to the law and an infringement of SARPIE. Furthermore, according to Article 7 SARPIE when a statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity suspects or has reasonable grounds to suspect that irregularities, including fraud with regard to the financial statements of the audited entity, may occur or have occurred, he, she or it is required to inform the audited entity and invite it to investigate the matter and take appropriate measures to deal with such irregularities and to prevent any recurrence of such irregularities in the future. Where the audited entity does not investigate the matter, the statutory auditor or the audit firm shall inform the competent authorities. Along the same lines, Article 12 SARPIE requires that the statutory auditor or the audit firm carrying out the statutory audit of a public-interest entity must have a duty to report promptly to the competent authorities supervising that public-interest entity or, where so determined by the Member State concerned, to the competent authority responsible for the oversight of the statutory auditor or audit firm, any information concerning that public-interest entity of which he, she or it has become aware while carrying out that statutory audit and which may bring about a material breach of the laws, regulations or administrative provisions which lay down, where appropriate, the conditions governing authorization or which specifically govern pursuit of the activities of such public-interest entity. Statutory auditors or audit firms shall also have a duty to report such information of which they become aware in the course of

carrying out the statutory audit of an undertaking having close links with the public-interest entity for which they are also carrying out the statutory audit. According to Article 25 SARPIE, for the purposes of supervision, competent authorities shall cooperate at national level with the financial intelligence units established in the context of AMLD.

In addition to SARPIE, SAD 2014 sharpens more generally the oversight of statutory auditors and audit firms as of 17 June 2016. An example is that a second paragraph will be added to Article 21, according to which Member States have to ensure that, when the statutory auditor or the audit firm carries out the statutory audit, he, she or it maintains *professional scepticism* throughout the audit, recognizing the possibility of a material misstatement due to facts or behavior indicating irregularities, including fraud or error, notwithstanding the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance. Under "professional scepticism" is understood an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.

2.9. Alleged failure of Member States to transpose FSD 2013

FSD 2013 should have been implemented by 20 July 2015. Moreover, Member States may provide that the national laws transposing FSD 2013 are first to apply to financial statements for financial years beginning on 1 January 2016 or during the calendar year 2016 (hence to the financial statements drawn up in 2017 relating to financial year 2016). To the extent Member States would have done so there can be no failure to transpose FSD 2013 at present.

As the Committee's mandate seems to relate only to the Member States alleged failure to transpose FSD 2013 and not to alleged failures to enforce FSD 2013 or its predecessors Council Directive 78/660/EEC of 25 July 1978 *on the annual accounts of certain types of companies* and Council Directive 83/349/EEC of 13 June 1983 *on consolidated accounts*, this paper will not elaborate on provisions of FSD 2013 or its predecessors that potentially could have been infringed and/or allegedly were not implemented and/or enforced.

2.10. Alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively ICCCD

ICCCD should have been implemented by 7 July 2014.

It seems that no allegations of failures to implement and/or enforce ICCCD have been reported. Furthermore, based on the facts and findings as they are revealed or implied by the ICIJ and its reporting partners in the Panama Papers, it is difficult to see how ICCCD would have been infringed or how the Commission would have failed to enforce and how Member States would have failed to implement and to enforce ICCCD. Therefore, no provisions that the Commission allegedly failed to enforce and Member States allegedly failed to implement and to enforce are listed here.

2.11. Potential breach of the duty of sincere cooperation enshrined in Article 4(3) TEU by any Member State and their associate and dependent territories in so far as it is relevant to the scope of the inquiry provided for in this decision

According to Article 4 (3) TEU, pursuant to the principle of sincere cooperation, the Union and the Member States are required, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties. Furthermore, the Member States must take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. Also, the Member

States have to facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

According to the wording of the Committee's mandate itself, potentially Article 4 (3) TEU is breached in that Member States and their associate and dependent territories failed to take the appropriate measures to prevent:

- the operation of vehicles that allow their ultimate beneficial owners to be hidden from financial institutions and other intermediaries, lawyers, trusts and company service providers; or
- the operation of any other vehicles and intermediaries;

that allow the facilitation of money laundering, as well as tax evasion and tax avoidance in other Member States (including looking at the role of trusts, single-member private limited liability companies and virtual currencies), while also taking into account current ongoing work programmes that are taking place at Member State level which seek to address these issues and mitigate their effect.

The mandate refers to breaches by Member States *and their associate and dependent territories*. It is clear from the facts that by this reference predominantly the British dependent territories, such as the British Virgin Islands and Anguilla, and the British crown dependencies, *i.e.* Guernsey, Jersey and the Isle of Man, are envisaged. It is out of the scope of this paper to assess if the UK could be held accountable for the treatment of offshore entities by the British dependent territories and crown dependencies¹⁵.

More substantively, without making any statement whatsoever on whether or not there would actually be a breach of Article 4 (3) TEU, it is worth noting that the principle of sincere cooperation includes a requirement for the Member States to take all appropriate measures to preserve the scope and effectivity of Union law¹⁶. Furthermore, this principle entails that during the term available to Member States to implement Union directives, Member States should refrain from measures that could seriously jeopardize the accomplishment of the result prescribed by the directive. Taking these things into account, for a potential breach by a Member State to exist, it should probably be evidenced that Union law as is would already require Member States to take action against offshore entities and would already require Member States to refrain from measures facilitating offshore entities.

¹⁵ On the territorial scope of EU law with regard to the overseas see recently W. Geursen, "Influence of EU Law on Taxation in the EU Member States' Overseas Territories and Crown Dependencies", in Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, June 2016, (available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578989/IPOL_IDA\(2016\)578989_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578989/IPOL_IDA(2016)578989_EN.pdf)).

¹⁶ On this e.g. K. Lenaerts and P. Van Nuffel, *Europees recht*, Antwerp, Intersentia, 2011, 103-109; R. Barents and L.J. Brinkhorst, *Grondlijnen van Europees Recht*, Deventer, W.E.J. Tjeenk Willink, 2001, 59-62.

3. CONCLUSION

As of the beginning of April 2016, the International Consortium of Investigative Journalists together with numerous reporting partners from around the world, started revealing more than 214,000 offshore entities, connected to people in more than 200 countries and territories, including EU Member States. Following these revelations, commonly known as the Panama Papers, the European Parliament decided on 8 June 2016 to set up a special 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. This paper intends to serve as a preparatory document for the Committee's investigation.

Building on the facts and findings that were revealed in or implied by the Panama Papers and taking into account the content, scope and implementation dates of the Union law within the scope of the Committee's mandate, this paper shows that the Committee's focus should probably lie on the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively the third anti money laundering directive, the 2011 directive on administrative cooperation in the field of taxation and the 2006 directive on statutory audits of annual accounts and consolidated accounts.

With regard to state aid rules or the principle of sincere cooperation, at first glance, it seems that no alleged failures or potential breaches have been reported in the Panama Papers, which does not preclude however the Committee to investigate this further.

It seems there are also no reported alleged failures to implement and/or enforce UCITS and AIFM rules, nor to implement and/or enforce rules on the interconnection of central, commercial and companies registers. Based on the facts and findings as they are revealed in or implied by the Panama Papers, it is moreover difficult to see how these rules would have been infringed or how the Commission would have failed to enforce and how Member States would have failed to implement and to enforce these rules.

4. NATIONAL PARLIAMENTS AND AUTHORITIES¹⁷

Reactions of EU Member States' National Parliaments and authorities to the Panama papers' revelations varied widely. Most Member States only held debates in Parliament, while full-fledged new and tailored bodies were created only in few countries (Netherlands, Belgium, United Kingdom). The various national responses are summarised below.

4.1. Parliamentary Investigation and Interrogation Initiatives

In **the Netherlands**, a number of MP proposed to hold a “**parliamentary interrogation**” related to the Panama papers. This is a new investigation tool that is situated between the parliamentary inquiry and a hearing. It has the advantage that people can be questioned under oath without a preceding and extensive investigation. The Panama case would be the first case in which this new parliamentary investigation instrument is applied.¹⁸ The procedure for setting up the “parliamentary interrogation” focused on the scope of the investigation and the link with criminal law.

In **Belgium** - in April 2016 - several MP made a proposal to establish a **parliamentary investigative commission** to update the recommendations in the fight against the largest tax fraud in the light of major fraud cases uncovered including Panama papers. A [special commission](#) was established on 3 May 2016. The Committee meets weekly and has already interviewed representatives from a range of stakeholders, such as banks, the press, the government controls (including the national bank and the authority of financial services and markets authority), etc. The hearings are public, but the reports are not yet published and probably will as an appendix to the final report of the commission that is expected by the end of the year.

4.2. Parliamentary questions and follow-up action.

In April 2016 the **Dutch MPs** issued a number of Parliamentary requests to the Government¹⁹, which the Government addressed in May²⁰. Special meetings of the Committee for Finances of the Dutch House of Representatives took place, such as a meeting with experts on tax avoidance constructions.²¹ The Committee discussed various topics for instance [the proposals of the European Commission against tax avoidance, legal treatment of whistle-blowers](#), how to tackle tax avoidance and fraud with the [French Minister of Finance](#)).

On 18 April 2016, the National Council of the **Austrian Parliament** held a special meeting about the Panama papers and political consequences. A motion for a resolution was put

¹⁷ This section was drafted by Policy Department A based on input provided by the European Parliament Research Service – EPRS.

¹⁸ See: [Evaluatie Wet op de parlementaire enquête](#).

¹⁹ See: [Reactie op de verzoeken van de leden Koolmees en Merkies, gedaan tijdens de Regeling van Werkzaamheden van 5 en 12 april 2016, om een kabinetsreactie over de zogenoemde Panama Papers en om een kabinetsreactie op het bericht “dat ABN AMRO eigenaren van bedrijven in belastingparadijzen verhuut”](#). [Parliamentary questions](#) about the inquiry of the tax authorities for criminal offences brought forward by the Panama Papers, 29/4/2016. [Parliamentary questions](#) about the disclosure in the Panama Papers that a notary would have helped to set up questionable financial constructions. [Parliamentary questions](#) about a newspaper article in the Financieel Dagblad regarding the departure of a member from the council of commissioners at ABN AMRO. [Parliamentary questions](#) about the package anti-tax avoidance.

²⁰ See: [Brief van de Minister en Staatssecretaris van Financiën aan de Voorzitter van de Tweede Kamer der Staten-Generaal](#).

²¹ See: [Conceptverslag expertmeeting fiscale constructies](#).

forward (regarding the lack of measures of the federal government concerning the fight against money laundering and tax evasion on European and international level), which did not pass.

Panama papers issues have been debated in the **Finnish Parliament's** plenary twice in April on the initiative of the Green Party. Although declarations of private interests of Ministers are not usually discussed, the MPs used the opportunity to [discuss](#) Panama papers already in the context of the announcement of the declaration of private interests of the Prime Minister. The Audit Committee and the Finance Committee and the Commerce Committee, held a [hearing](#) in May 2016 on 'Tax havens, tax evasion and international tax avoidance'.

The **Cypriot Parliamentary Committee** on Institutions, Merit and the Commissioner for Administration (Ombudsman) discussed the topic during two sessions at end June 2016. MPs have convened that the stakeholders invited would meet for a third time, for an informative follow-up session in October 2016.

Both the **Bundestag and several state parliaments of Germany** filed three Parliamentary requests²² between April and June 2016. In June a debate on Panama papers took place in the Finance Committee. According to a [press release](#) by the Bundestag, the representative of the Federal Government stated that both the Ministry of Finance and the Länder would be examining measures as a consequence of the Panama leaks. This would include widening the disclosure obligations of taxpayers and credit institutions and examining whether the [Fiscal Code](#) on Protection of bank customers should be repealed.

In **Slovenia** the Committee for Finance and Monetary Policy and the Committee for Justice following the Panama papers revelations discussed the issue of tax havens. They adopted [conclusions](#) that call for scrutinising State companies having bank account abroad; submission of a report on tax havens and amendments to the Act on Money Laundering and Financing of Terrorism in order to introduce a register of the real company owners and make it publicly accessible.

In the course of April-May the **Danish** Parliament launched a number of [questions](#) to the Government regarding the Panama Papers²³ and held a hearing on the matter.

In **Italy** a [draft Law](#) was approved on the ratification and implementation of the Convention between Panama and Italy to avoid double taxation and prevent tax evasion. The Department of Studies of the Chamber of Deputies prepared a [factsheet](#) on this Convention. The project was transferred to the Senate which later ratified the Convention.²⁴ A review of this Convention [was concluded](#) on 28 September 2016. A number of parliamentary questions were imposed to the Government.²⁵

²² [Parliamentary request](#) to the Bundestag 18/8274 of 27 April 2016 by the Green Party (Bündnis 90/Die Grünen) and [answer](#) 18/8480 by the Federal Government; [Parliamentary request](#) 18/8447 to the Bundestag of 11 May 2016 by the Green Party (Bündnis 90/Die Grünen) and [answer](#) 18/8943 by the Federal Government; [Parliamentary request](#) 17/101 to the Landtag Rhineland-Palatine of 13 June 2016 by the Green Party (Bündnis 90/Die Grünen) (includes the answer by the Federal Ministry of Finance).

²³ On 4 April 2016 (2015-16, SAU, Alm. del, Spm. [327](#)); On 5 April 2016 (2015-16, SAU, Alm. del, [Spm. 329](#)); On 29 April 2016 (2015-16, [S 1048](#)); On 2 May 2016 (2015-16, SAU, L 123, [Spm. 15](#)); On 9 May 2016 (2015-16, [SAU, F 39](#)); On 11 May 2016 (2015-16).

²⁴ Rapporteur [M. Zin](#).

²⁵ Parliamentary question by [Giovanni Paglia](#) on initiatives with regard to repatriation of capital and use of data contained in the Panama Papers; Parliamentary question by [Pietro Laffranco](#) on the initiatives taken with regard to information provided by the Panama Papers; [Question time answers](#) of [Enrico Zanetti](#), Vice-Ministry of Economy and Finance to Parliamentary **Questions** on initiatives subsequent to the publication of the Panama Papers and use of data contained in these Papers; [Written question](#) of [Girgis Giorgio SORIAL](#) on information

In **Poland** there was a parliamentary question²⁶ directly linked to Panama leaks in April 2016 that triggered further questions about tax optimization, transfer of revenues, terrorism financing etc. The Income Tax Department at the Ministry of Finance [replied](#) in May.

In May 2016 the **Lithuanian Parliament** invited²⁷ the Chairman of the Bank of Lithuania to answer questions related to his previous professional activities linked to persons mentioned in the Panama papers and in particular to businesses close to the Russian President Putin.

In **Romania** the Committee for Budget, Finance and Banks organised a [hearing](#) with the heads of the National Office for Prevention and Fight against Money Laundering and of the National Agency for Tax Administration in early April. Further during the Plenary both authorities were criticized for the lack of communication. It was also [discussed](#) the establishment of an additional tax for offshore transactions. The Minister of Public Finances was [asked](#) to present measures taken to fight tax evasion in a Parliamentary request.

The **Swedish** Riksdag [debated](#) the issue of international tax evasion and the behavior of Swedish banks. The debate was preceded by the Swedish Government's [publication](#) of a 10-point program on "[Counteracting tax evasion, tax avoidance and money laundering](#)".

In **Estonia** there were any related debates at a Plenary or Committee meetings. However the Parliament [asked](#) whether there are cases from Estonia involved in the leaks. The Minister of the Interior informed that Estonian investigative bodies have not launched any investigations and that the investigative bodies are ready to start them if necessary.

Since the Panama leaks, **the Irish** parliament asked in written five questions of the Minister of Finance related to tax avoidance²⁸, [Banking Sector Regulation](#), [Revenue Commissioners Staff](#) and [Revenue Commissioners Enforcement Activity](#). The issue of Panama papers has not been directly discussed at [committee level](#). There was a debate on the [Proposal for a directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches](#) by the Select Committee.

The **Spanish** Parliament proposed 17 initiatives related directly to the "Panama Papers" (see full list in [Initiatives-XI&XII Legislature](#)). Only the Non-legislative proposal on tax reform and fight against tax fraud and tax evasion was approved on the 19 of April 2016, which includes the following main measures: Establish a Special investigative Committee on the Panama Papers issue; Revise the current corporate tax system; Modify the Tax Law to be able to identify tax payers that benefitted from the 2012 "fiscal amnesty program" and Support the EU plan to establish a common Financial Transaction Tax. The Parliament tabled 8 written

relating to companies which, according to the Panama leaks, "would be close" to the Prime Minister; [Written question](#) of [Girgis Giorgio SORIAL](#) to the Minister of Economy and Finance on companies linked to UBI bank.

²⁶ See:

<http://www.sejm.gov.pl/sejm8.nsf/interpelacjaTresc.xsp?documentId=97744AF867DFFCAEC1257FA40047D909&view=1t>

²⁷ See:

http://www.lrs.lt/sip/portal.show?p_r=15593&p_k=1&p_t=163646,
http://www.lrs.lt/sip/portal.show?p_r=15593&p_k=1&p_t=163635,
 and http://www3.lrs.lt/pls/inter/dokpaieska.showdoc_l?p_id=1147122

²⁸ See:

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016041400049?opendocument&highlight=panama%20papers#WRF01550> and
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016051800060?opendocument&highlight=panama%20papers#WRA00450>

questions. Two Members of the Regional Parliaments and the acting Minister of Industry energy and tourism resigned due to their association with the Panama leaks.

The **UK Parliament** [published a report](#) concluding that the UK's tax collection authority is not doing enough to tackle tax fraud. In preparation for a UK government anti-corruption summit on 12 May, the House of Commons holds [a debate on the issues](#). The Panama Papers are cited in this context. Also [written question](#) was sent to the Minister of Finance, with reference to the launch of cross-government taskforce on the Panama Papers, in particularly asking, how many full-time equivalent staff from each agency have been allocated to that taskforce; and whether any staff in that taskforce (a) have the power of arrest, (b) are authorised to access directly the contents of Suspicious Activity Reports, (c) are able to request data on companies incorporated in foreign countries and (d) have powers to fully investigate any allegations of (i) non-compliance with sanctions, (ii) money laundering and (iii) terrorist financing.

Subsequently, the **UK Government** [established](#) a **cross-government taskforce** on the Panama papers case, and assigned initial new funding of up to £10 million to support the taskforce's work. The taskforce will be jointly led by the tax collection authorities and the National Crime Agency and draws on investigators, compliance specialists and analysts from tax authorities, the National Crime Agency, the Serious Fraud Office and the Financial Conduct Authority. The Government believes that these agencies have some of the most sophisticated technology, experts and resources to tackle money laundering and tax evasion anywhere in the world.

In April 2016 several debates took place in the **Hungarian Parliament** between the Government and the opposition parties but no legislative proposal has been tabled on this topic. **Hungary** also announced the formation of **special teams** to examine the Panama leaks.²⁹ The police and the National Tax Authority will be involved in analyzing any information that has emerged from the leak with relevance to Hungarian taxpayers. Hungary's Prosecutor's Office would also take part in the investigations.

The **Portuguese Government** set a target to transpose AMLD IV by the end of 2016. It expressed commitment to use all legal means to make sure that all income due to pay taxes will be charged and collect information on Portuguese individuals and/or companies involved in the Panama case.

In response to parliamentary questions on the Panama leaks the **Bulgarian Finance Minister** announced average budget losses between 2008 and 2013 from the transfer abroad of corporate taxes at approximately BGN 260 million (EUR 132 million) annually. He stressed that authorities are preparing a strategy to counter the risks of transferring company gains abroad, aiming at implementing it still this year. In addition the authorities investigate citizens revealed in the leaks.

In May 2016 the **Croatian Ministry of Finance** reported that the relevant departments shall take all legal measures to combat tax evasion and fraud, and related money laundering and terrorist financing. One concrete target is the establishment of the Registry of beneficial owners.

In parallel to the Bundestag the **German Minister of Finance** on 10 April 2016 gave an [overview](#) of the measures taken in response to the Panama leaks. He announced a [10-point](#)

²⁹ See: http://www.tax-news.com/news/Hungary_To_Investigate_Panama_Papers_70947.html#sthash.1w5BO3fA.dpuf

[action plan](#) against tax fraud, cunning tax avoidance and money laundering. An article on the national measures against tax havens and letterbox companies was published on the Ministry's [website](#) in September 2016. According to this information, the Federal Ministry of Finance has achieved basic agreement with the Länder on concrete measures to strengthen tax law. Specifically, it is proposed to modify the [Fiscal Code](#) to strengthen taxpayers' and banks' to disclose information as well as the investigative powers of the tax authorities.

Immediately following the news on the leaked documents, **the Danish Financial Supervisory Authority** (FSA) took the following [steps](#): (i) initiated discussions with regulators in several other countries and the European Banking Authority (EBA). The FSA held several meetings with the Tax Administration concerning co-operation and exchange of information for investigation of specific cases. FSA sent a letter to the eight selected banks with a request for a statement of their possible involvement in the case and published a [status report](#) on Danish banks' involvement in the matter in June 2016. Following a [hearing](#) in the Danish Parliament (Folketinget) in April 2016 on the Panama Papers and subsequent consultation with all political parties, the **Danish Minister for Taxation** [announced](#) on 7 September 2016 his decision to buy data leaked as a measure to catch tax evaders. Mr. the Minister explained that an anonymous offer to sell data on some 320 cases, involving approximately 500-600 Danish citizens was made to Denmark's tax authorities over the summer. The proposal by the centre-right Venstre party - which rules in a minority government with the Conservative Party - has broad support in Folketinget, including from the Social Democrats and anti-immigration Danish People's Party. However, the Liberal Alliance, Venstre's former coalition partner, sharply criticised the idea. Tax spokesman Joachim Olsen said it might encourage the theft of private information to sell it on to the Danish authorities. Reacting to the Taxation Minister's announcement, a Danish lawyer has now [reported](#) the Parliament and the government to the police for receiving stolen goods.

The **Swedish** Government's [publication](#) of a program on "[Counteracting tax evasion, tax avoidance and money laundering](#)".

British Ex-Prime Minister David Cameron, who was implicated in the affair through financial links to his father, who is alleged to have benefited from Panama tax arrangements, makes a [statement to the House of Commons](#) on the Panama Papers and his tax affairs. He then [faced questions from MPs](#).

NOTES

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