PUBLIC HEARING
COMMITTEE OF INQUIRY
INTO MONEY LAUNDERING, TAX AVOIDANCE
AND TAX EVASION (PANA)

Thursday 13.10.2016 – 09:00-12:30
PAUL-HENRI SPAAK BUILDING – ROOM 3C050

Anti-money laundering
and tax evasion: who sets the rules
and how?

PANAMA PAPERS

Chaired by Dr. Werner LANGEN
EUROPEAN PARLIAMENT
Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA)

Public Hearing
Anti-money laundering and tax evasion: Who sets the rules and how?
13 October 2016 - 9:00 - 12:30 (3:30)
Paul-Henri Spaak 3C050
Brussels

Draft PROGRAMME

09:00 - 09:10 Welcome by the PANA Chair

09:10 - 10:00 Presentations by speakers (at 7 min each)

➢ Michael Lennard, Chief, International Tax Cooperation Section U.N. Dept. of Economic and Social Affairs - United Nations (UN) (via videoconference)

➢ Caroline Malcolm, Senior Counsellor and Advisor to the Director and Deputy Director at the OECD’s Centre for Tax Policy and Administration (via videoconference)

➢ Daniel Thelesklaf, President of the Committee on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

➢ Isabelle Vaillant, Director for Regulations, European Banking Authority (EBA)

In addition a representative of the European Commission will be invited to take the floor.

10:00 - 12:25 Discussion with PANA Members
12:25 - 12:30 Conclusions by the PANA Chair

Secretariat of the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion
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PUBLIC HEARING
ANTI-MONEY LAUNDERING AND TAX EVASION:

WHO SETS THE RULES AND HOW?

THURSDAY, 13 OCTOBER 2016

9.00 - 12.30

Room: Paul-Henri Spaak (3C050)

CVs OF THE SPEAKERS
Michael Lennard

Michael Lennard is Chief of International Tax Cooperation and Trade in the Financing for Development Office (FiDO) of the United Nations. This work has a particular focus on ensuring the fairness and workability of international tax norms, including achieving greater developing country input into those norms, and encouraging cooperation to improve tax systems and administrations, as a spur to sustained development.

Previously Mr Lennard was a tax treaty adviser in the OECD Tax Treaty Secretariat in Paris for three years and prior to that he worked on tax treaty and other international tax matters at the Australian Tax Office. He had earlier worked in the Australian government’s Office of International Law.

He has led Australian negotiating teams on trade, investment, environmental and tax treaty matters and has prepared argument for matters before the Australian High Court, the US Supreme Court and the WTO. His published work on treaty interpretation has been cited before WTO panels and before the WTO Appellate Body. Mr Lennard has degrees from the University of Tasmania, the Australian National University and Cambridge.
Caroline Malcolm, Senior Counsellor and Advisor to the Director and Deputy Director of the Centre for Tax Policy and Administration, OECD

Caroline works with the Director & Deputy-Director to develop the strategic direction of the OECD’s Centre for Tax Policy & Administration, & manages implementation with the senior management team. Oversight of engagement with senior country delegates from OECD & non-OECD countries, external stakeholders (business community & civil society) as well as international organisations like the World Bank Group, IMF & UN, & regional groupings like ASEAN & ATAF forms an important part of her role. Caroline also works closely with the office of the OECD Secretary-General on G7 & G20 tax issues (such as the BEPS Project and tax transparency issues), and is responsible for managing the tax aspects of horizontal projects across OECD directorates. Caroline is a tax lawyer, graduating with an LLB and BA (Communications) as well as a Masters of Laws in International Taxation.
Daniel THELESKLAF

Daniel Thelesklaf, a Swiss national and a lawyer by profession, is the Director of the Financial Intelligence Unit (FIU) of Liechtenstein since 2012. In this capacity, he also chairs the national AML/CFT working group. He has 25 years of experience in Anti-Money Laundering (AML), Combatting the Financing of Terrorism (CFT) and Anti-Corruption work.

After a career in the private sector as Head of Legal and Compliance in a bank, he joined the Federal Office for Police in 1998 to become the first Director of the Swiss FIU. After that, he worked as consultant in various anti-money laundering, anti-terrorist financing and anti-corruption projects and technical assistance missions - mainly in the Caribbean, Eastern and Central Europe and in various Central Asian countries - for the Council of Europe, the IMF, the UN and the OECD. From 2008-2011, he was Executive Director of the Basel Institute on Governance and supervised the activities of the International Centre for Asset Recovery. From 2005-2015, he acted as Chair of the Anti-Corruption Network (ACN) of the OECD. From 2012-2015, he was also the Chair of the Egmont Training Working Group and a member of the Egmont Committee.

Since December 2015, Daniel is Chair of Moneyval after having served nearly 3 years as Vice-Chair.
Isabelle Vaillant

Isabelle Vaillant, Director of Department Regulations at the European Banking Authority (EBA)

Ms Isabelle Vaillant was appointed as Director of Department Regulations at the European Banking Authority (EBA) where she took office on 1 October, 2011. Before that date, she was Head inspector for on-site examinations at the French Financial Markets Authority. Ms Vaillant was on secondment from the Banque de France where she spent most of her career holding several positions including Deputy Director of the European and International Relations Directorate (2007-2010), Head of the Large International Credit Institutions Supervisory Department (2005-2006), Head of the International Regulation Department (2001-2005), Head of the European Regulation Division (1996-2005), etc.

Ms Vaillant graduated from the Institut d'Etudes Politiques de Paris (Sciences Po - Paris Institute of Political Studies) and completed a postgraduate MSc in Economics and Econometrics at the Nanterre University Paris X. She published several research papers in English and French on different topics including Foreign currency risk in Eastern European banking sector (2009); How to efficiently reconcile FSAPS and article IV (2008); Emergency Liquidity Assistance and the backing of supervisory function by central banks (2001); Banks’ preparation for the Euro (1998); Banking crisis, resolution or liquidation (1996, Revue Banque et Stratégie), etc.

About the European Banking Authority

The European Banking Authority has officially come into being as of 1 January 2011, taking over tasks and responsibilities from the Committee of European Banking Supervisors (CEBS). The EBA acts as a hub and spoke network of EU and national bodies safeguarding public values such as the stability of the financial system, the transparency of markets and financial products and the protection of depositors and investors.

More information: http://www.eba.europa.eu
QUESTIONS SENT TO SPEAKERS
European Parliament
2014 - 2019

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

Public Hearing
Anti-money laundering and tax evasion: Who sets the rules and how?
Thursday, 13 October 2016 (9h00 - 12h30)
Paul-Henri Spaak 3C050
Brussels

Written questions
to the Organisation for Economic Co-operation and Development (OECD)

1. On tax transparency, and in particular with regard to automatic exchange of information for tax purposes, can you outline the latest state of play of implementation of the OECD’s global Common reporting Standard (CRS)?

2. Panama, in reaction to the Panama papers revelations, has committed to adhere to the automatic exchange of information for tax purposes. There are however still a few countries (among them the US) who have not yet adopted the CRS? How can OECD members put pressure on non-cooperative/ non-complying jurisdictions to adhere to the automatic exchange of information?

3. Many of the cases revealed by the Panama papers are cases of criminal behaviour and breaches of current legislation. Does the OECD consider that the priority should be on the implementation and enforcement of existing tax transparency standards (and better cooperation and information-sharing among its members), or to further strengthen/ tighten tax transparency standards? Does the OECD currently consider further countermeasures in response to the Panama papers revelations?
Public Hearing

Anti-money laundering and tax evasion: Who sets the rules and how?

Thursday, 13 October 2016 (9h00 - 12h30)

Paul-Henri Spaak 3C050
Brussels

Written questions to the Financial Action Task Force (FATF)

1. Can you explain the mechanism how FATF set AML standards, and how the ‘peer review’ works with regard to AML standards’ implementation and enforcement?

2. Can you explain, by means of illustration, how FATF could decide in the case of Panama to take the country of its ‘grey list’, i.e. to consider Panama compliant with its FATF standards, just a few weeks before the ‘Panama Papers’ revelations become public?

3. Can you explain, how the (non-)compliance of subnational entities with FATF standards (such as US states of Delaware or Nevada) affect the overall assessment/ peer review of a FATF member?

4. In the specific cases of the US states of Delaware and Nevada, with well-known obvious deficiencies with regard to transparency requirements of the ultimate beneficial owner, how does this affect the overall rating/ assessment of the US at federal level?
5. Does the FATF consider that its current ‘black’ and ‘grey’ lists of high-risk countries with deficiencies of their AML standards truly reflect the real risk countries of money-laundering?

6. Can FATF provide empirical evidence that the AML counter-measures taken by FATF members have led to a significant decrease of the ML risks?

7. Does FATF take into consideration the revelations of the Panama Papers for the (re-) assessment of compliance in particular of those countries featuring prominently in the Panama Papers?
Written question

to the Committee on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

1. As the body responsible for the country assessments for the Europe region, do you consider that your ‘peer reviews’ of European countries accurately reflect the real risk of ML? If this is the case, how do you explain the role of some European financial institutions and other intermediaries in the Panama Papers? Do you consider these to be individual cases of criminal behaviour, or do you see a systemic failure to implement and enforce AML standards?
Written questions
to the European Banking Authority (EBA)

1. The EBA plays an important role in promoting convergence of supervisory practices to ensure a harmonised application of EU rules for the financial sector. The EBA’s tasks is i.a. assess risks and vulnerabilities in the EU banking sector through, in particular, regular risk assessment reports. Furthermore, the EBA is mandated to investigate alleged incorrect or insufficient application of EU law by national authorities.

2. Against this background, and the revealed breaches of AML obligations by EU financial institutions, how does the EBA assess its own and national regulator’s performance in enforcing EU AML legislation? Does it consider the revealed cases as individual criminal behaviour, or rather systemic failure to enforce existing legislation?

3. Does the EBA see the need for the legislator to further strengthen / sharpen AML rules across the EU, or rather to better enforce existing legislation?
CONTRIBUTIONS OF SPEAKERS
Michael Lennard

Distinguished Committee Members

Thank you for the opportunity to present to this important Committee on the international norm setting environment for international taxation, specifically exchange of information. It is a very topical issue, and how we respond to the calls for greater developing country roles in international tax norm setting in such areas will set the tone for international tax cooperation for some time to come.

The UN Tax Committee is a 25-person group of experts appointed by the United Nations Secretary-General to give guidance on international tax cooperation issues, with special reference to assisting developing countries. The Committee only used to meet once a year, for five days, but as of December this year it will meet twice a year for four days each. This is part of the response to a call, especially from developing countries, for greater support for the UN international tax cooperation work.

The work is seriously under-resourced, especially the central work of the Subcommittees feeding proposals into the Committee’s consideration, but it is important to note in this forum that the European Commission’s Directorate-General for International Cooperation and Development (DEVCO) has played an important role in strategically assisting some of these Subcommittees this year, especially to enable greater development country participation.

The UN Tax Committee’s work respects the sovereignty of individual countries, but recognition of sovereignty in the globally interconnected world also should recognize two concurrent and related threads. Firstly, in exercising their tax sovereignty, countries should take into account the impact of their actions more globally, especially in so far as they restrict the exercise of tax sovereignty of other countries. This is embodied in the concept of “tax spillovers” and it is unfortunate that more tax spillover analyses are not done by countries to assess the impact of their tax policies on other countries.
A second relevant thread is that to properly exercise their tax sovereignty in a globalized environment, countries need access to information, and the ability to process it; they need the capacity to make sense of it. Exchange of tax information is an important part of this response to globalization, and it also addresses the fact that the failures of governments to exchange tax information, or to enforce foreign tax judgments, have been leveraged to a great degree by those unwilling to meet their tax obligations. The competition between many governments on tax matters and investment and the desire to support national champion companies also is a related factor that can and has been leveraged by those wanting to avoid paying their proper taxes.

The Committee's work on exchange of information has largely focused on the Exchange of Information Article of the UN Model Double Taxation between Developed and Developing Countries and this Article has been updated to make it clearer and stronger in the 2011 update of the Model. This process will continue in the new version of that Model to be released next year.

In many areas the UN Model is very different from the OECD Model Taxation Convention, reflecting key differences between developing and developed countries. However, in terms of exchange of information the differences are not great. The commonalities in this area between developing and developing countries are much more apparent than the differences, and most of the strengthening provisions of the OECD Model have been picked up by the UN Model, as being in the interests of developing countries as least as much as they assist developed countries.

Sometimes, there are differences that are more of emphasis than of underlying policy. For example, the UN Model emphasizes especially that exchange of information is meant to address "tax avoidance" as well as "tax evasion". This is consistent with the OECD Model and its Commentary, but we emphasize the point because of the view that there is a fine line between aggressive tax avoidance and tax evasion and because the cost to the revenue of developing states is the same, whatever category is used.

On automatic exchange, the Committee has been very supportive of greater use of this, recognizing the great benefits that might potentially flow to all countries, including developing countries, from access to the necessary information. But there is also a recognition that there is a real need for assistance to developing countries setting up such systems, including the information technology, but also the capacity to analyze the information received so that it can be used to best effect.
In rolling out automatic exchange of information globally, we particularly have to avoid setting in place a world of information haves and have-nots that not only further entrenches information and capability gaps between developing and developed country tax administrations, but also entrenches the same gaps between developing countries and multinational enterprises.

We in the UN Secretariat wish you well in your considerations and look forward to the outcomes of your deliberations.
Thank you for giving the FATF Secretariat an opportunity to contribute today. I regret that I or a member of my team could not be with you on this occasion. In these remarks I will explain what FATF is, what we do and how we work. In doing so I hope to answer some of the questions you have.

The FATF is an intergovernmental body that sets the global standards for anti-money laundering, counter terrorist and proliferation financing. Tax evasion is a predicate offence for money laundering under these standards. That means that implementing the FATF standards supports efforts to stop tax evasion. The FATF does not set the global standards for tax crimes or other crimes.

Put simply, the FATF does three things

1. It exploits the skills and experience of member governments and their agencies to research how criminals launder the proceeds of crime, how terrorist organisations raise and access funds, and how the proliferation of weapons of mass destruction is financed.

2. Based on the evidence gathered, the FATF sets global standards for mitigating the risks identified.

3. Implementation of these standards is assessed and monitored through peer reviews. These are in-depth assessments conducted by a team of assessors drawn from member Governments.

The FATF is a forum of its member countries that are represented by senior officials who are normally from ministries of finance, justice or home affairs. It meets three times a year and is supported by a small secretariat based in the OECD in Paris. The global standards and other products of FATF, such as typology reports, guidance, best practice and peer reviews, are the result of technical discussions and consensus between 37 FATF members, which includes the European Commission and 15 EU Member States. In practice that means the answer to the question ‘Who sets the rules?’ is that you do.

The FATF oversees a global network of 9 FATF-Style Regional Bodies that are associate members. This includes MONEYVAL for the Council of Europe, who I understand will be represented directly in this inquiry. In order to be a member of the FATF or one of these regional bodies, Governments must commit at the highest level to fully implementing the FATF standards and to being assessed by
their peers for this. The FATF has agreed a common methodology for these assessments, which are also conducted by the IMF and World Bank, as well as universal procedures for ensuring the quality and consistency of these assessments. 198 jurisdictions are currently part of the FATF Global Network.

In implementing the FATF standards, the high-level objective of FATF members is that “financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security”.

As a result, and through FATF peer reviews, we know that most countries have the legal, regulatory and operational tools to make life harder for criminals. Money laundering and terrorist financing investigations are now commonplace in many countries and lead to successful prosecutions on a daily basis. Organised crime groups are being disrupted, terrorist networks identified through financial intelligence and terrorist organisations increasingly cut off from the financial system.

In addition, the FATF identifies those countries with strategic deficiencies which present a risk to the global financial system. These countries are subject to special scrutiny which can lead to public identification. The FATF has identified many such countries, most of which have since made the necessary reforms.

This includes Panama, who having been identified by the FATF as a jurisdiction with serious deficiencies, agreed an action plan with the FATF two years before the Panama papers were leaked. In the following two years, Panama took quick and robust action to address these deficiencies which led to members concluding that they had achieved their action plan and could be removed from our public list.

This shows that the FATF does not rely on leaks through the media to identify deficiencies or to take action, and that countries are responsive to this. The actions taken by Panama include, among others, introducing beneficial ownership requirements and regulation of lawyers and accountants. They, like all other countries, now need to show they are making effective use of these measures to prevent the kind of abuse highlighted by the Panama papers. In the case of Panama, they are a member of one of the 9 FATF-Style Regional Bodies, GAFILAT, who will next assess them in 2017.

Having built a solid foundation of legal and regulatory frameworks, FATF was the first global standard-setter to turn its attention to assessing whether countries are using these measures effectively. Since 2013, FATF has put the burden of proof on countries to demonstrate through peer reviews, that they are using these measures effectively, including enforcing laws and regulations, and to what extent they are achieving our common objectives.

Through the work of the FATF, we have a comprehensive and up-to-date set of global standards that almost all countries globally are agreed are necessary and have committed to implementing. We have raised understanding and awareness of the risks and are successfully holding countries to account for failing to take appropriate action to mitigate these risks. While there are many examples of success, there is a lot of work to do by many countries to implement the standards both technically and effectively.

The work of the EU should help ensure that EU Member States play their role in protecting the financial system from these risks and in contributing to safety and security.
Can you explain the mechanism how FATF set AML standards, and how the ‘peer review’ works with regard to AML standards’ implementation and enforcement?

The FATF published its first set of Recommendations in 1990, a year after its creation. These Recommendations set out the legal and regulatory measures that countries should take to enable them to detect, prevent and punish the misuse of their financial system for money laundering. These measures were the turning point in the fight against money laundering. Up until then, most countries had no legal or regulatory provisions that were specifically targeted at detecting and punishing money laundering. For the first time, countries had powerful and effective tools at their disposal and an international consensus on how to fight money laundering on a global scale. Since then, as a result of its proven success as a global standard-setter on measures to combat money laundering, the FATF saw its mandate expand to include the financing of terrorism and proliferation of weapons of mass destruction.

The methods used to move illicit funds or to move funds in support of terrorist activities constantly evolve. As countries put in place measures to protect the financial system, criminals look for different and new ways to avoid detection. In order for the FATF to develop an effective policy response, it must understand these methods and techniques.

Since its creation, the FATF has carried out research on the money laundering and terrorist financing vulnerabilities of many sectors and activities, as well as on more important criminal threats.

Based on this research, as well as the results of FATF’s country assessments, the FATF reviews whether its standards continue to provide an effective response to current threats to the financial system. FATF will determine whether additional policy guidance is needed or whether the FATF Recommendations themselves need to be further refined and strengthened. In 2012, the FATF completed a full revision of the FATF Recommendations, with input from many relevant stakeholders, including private sector. These Recommendations incorporated many new provisions, for example on measures to combat the financing of the proliferation of weapons of mass destructions; to improve transparency; stronger requirements when dealing with politically exposed persons and expanded the scope of predicate offences for money laundering to include tax crimes.

Since then, the FATF has continued to review the FATF Standards to ensure that they provide countries with the strongest possible tools to protect the financial system and has further strengthened them. For example in October 2015 to address the foreign terrorist fighters threat or in June 2016 to clarify the application of anti-money laundering (AML) countering the financing of terrorism (CFT) measures to the non-profit sector.

The FATF not only sets the standards, it also assesses how well countries have implemented them. The FATF is currently in its fourth cycle of country assessments. The assessment process grew from a modest self-reporting method on existing AML measures to a robust assessment process that looks at whether the necessary legal, regulatory and operational
framework is in place and whether the actions that the assessed country is taking, are delivering the effective results.

The cornerstone of the current FATF standards is the identification, understanding and assessment of national money laundering and terrorist financing risks. The extent to which a country has properly understood and mitigated these risks plays an important role in how effectively it can protect its financial system from abuse. The assessment provides each country with targeted recommendations on how to strengthen its AML/CFT framework.

A rigorous follow-up process will ensure that countries take the necessary action to address the weaknesses identified during their assessments. Failure to make meaningful progress could ultimately result in public warnings and the threat of inclusion in FATF’s lists of high-risk and non-cooperative countries. This process has proven very successful, putting pressure on countries to implement the necessary reforms or face the risk of seeing a negative impact on their international reputation and economy.

2. Can you explain, by means of illustration, how FATF could decide in the case of Panama to take the country of its ‘grey list’, i.e. to consider Panama compliant with its FATF standards, just a few weeks before the ‘Panama Papers’ revelations become public?

The FATF removed Panama from its special monitoring process in February 2016. Following the 2014 assessment by the IMF of Panama’s implementation of the FATF Recommendations, the FATF publicly identified the country as a result of the strategic weaknesses in its legal, operational, and regulatory framework to combat money laundering and terrorist financing. As a result of the special scrutiny from FATF, Panama took substantial action to address these weaknesses. The Panama government introduced a range of measures, as recently as January this year, to implement the FATF standards on beneficial ownership and regulation of non-financial professions and businesses, among other measures. At the February 2016 Plenary meeting, the FATF concluded that the country had met the commitments from its June 2014 action plan by establishing the required legal and regulatory framework. The FATF did not conclude that Panama was fully compliant with the full range of the FATF standards – this will be the purview of the mutual evaluation process described below – the FATF special monitoring process focused on the strategic deficiencies identified during the 2014 assessment of Panama.

The documents from the Panama Papers stretch back over many years from before Panama implemented the most important FATF standards as a result of FATF scrutiny. It will naturally take time and additional efforts from Panama to start making effective use of these measures.

As all other countries in the Global Network, Panama must demonstrate that the measures it has implemented deliver the right results. FATF assessments look at the effectiveness of a country AML/CFT framework, as well as its technical compliance with the FATF Recommendations.

Panama is expected to work with the FATF-Style Regional Body GAFILAT, of which it is a member, to further strengthen its AML/CFT regime. The assessment next year by GAFILAT will test whether the country has properly implemented and enforced these new measures.
3. Can you explain, how the (non-)compliance of subnational entities with FATF standards (such as US states of Delaware or Nevada) affect the overall assessment/ peer review of a FATF member?

All assessments consider the relevant legal and institutional frameworks in place (regardless of whether they are at the national, supranational, state or provincial level). The extent to which deficiencies in one area impact the overall assessment will depend on the particular risks, materiality, structural or contextual factors facing the country.

4. In the specific cases of the US states of Delaware and Nevada, with well-known obvious deficiencies with regard to transparency requirements of the ultimate beneficial owner, how does this affect the overall rating/ assessment of the US at federal level?

The mutual evaluation of the United States is ongoing, and we are therefore not able to comment on possible outcomes at this time. The final report is expected to be published at the end of 2016.

5. Does the FATF consider that its current ‘black’ and ‘grey’ lists of high-risk countries with deficiencies of their AML standards truly reflect the real risk countries of money-laundering?

Between 2007 and 2016, the FATF has reviewed over 80 potentially high-risk and non-cooperative jurisdictions and publicly identified 59 of them. Of these 59, 48 have since made the necessary reforms to address their AML/CFT weaknesses, safeguarding the integrity of the global financial system, which is only as strong as the country with the weakest measures.

The current list of high-risk and non-cooperative countries reflects the countries with the most serious deficiencies that pose a real threat to the integrity of the international financial system. Currently, the Democratic People's Republic of Korea (DPRK) and Iran are at the top of the list.

The financial system evolves, as do methods used to launder illicit funds or move assets in support of terrorism. Now, more than ever, sound AML/CFT measures need to be in place and they need to deliver results. The current process of peer reviews places a greater emphasis on the effectiveness of measures to protect the financial system. Countries that have paid lip service to implementing the FATF Recommendations without ensuring that these measures are truly effective, create weaknesses in the financial system. As the fourth round of mutual evaluations progresses, the FATF will refer countries to this special scrutiny for the most serious failures to achieve effective outcomes, as well as for failures to achieve technical compliance. This could ultimately lead to a country's inclusion in these public lists if it fails to take sufficient action and ensure these lists reflect the countries with the most work to do and that present real risks.

6. Can FATF provide empirical evidence that the AML counter-measures taken by FATF members have led to a significant decrease of the ML risks?

When FATF was created in 1989, few countries understood or were even aware of the risks and did not have measures that allowed them to directly target the laundering of illicit assets.
Today, 198 countries have committed at the highest political level to take effective action to combat money laundering and terrorist financing.

FATF has published over 50 typologies reports that identify money laundering and terrorist financing methods and trends. This research has raised awareness about the methods that criminals and terrorist use to abuse the financial system and has allowed the FATF to further strengthen its standards to combat money laundering and terrorist financing.

151 countries have set up financial intelligence units that are responsible for analysing suspicious financial transactions.

Failure to detect and help prevent money laundering and implement financial sanctions, through the implementation of the FATF Standards, has led to significant fines of financial institutions for egregious wrong doing as well as the successful investigation, prosecution and disruption of criminals in countries all over the world.

7. Does FATF take into consideration the revelations of the Panama Papers for the (re-) assessment of compliance in particular of those countries featuring prominently in the Panama Papers?

The Panama papers highlighted what the first assessments in the fourth round mutual evaluations also started to reveal: that many countries have not yet fully and effectively implemented measures to prevent the abuse of companies, trusts and other corporate vehicles. The FATF is currently considering how it can help and accelerate implementation of the FATF standards by countries in this area, working in close collaboration with the Global Forum on Transparency and Exchange of Information for Tax Purposes.  

Additional questions

1. Based on the studies that FATF has performed, can you provide examples of structures that could be thought of having been used for money laundering or other illicit purposes in the cases revealed in the Panama Papers? If applicable, please quote relevant FATF studies that should be incorporated to the Panama Papers Committee of Inquiry’s documentation package for analysis.

The FATF itself is not an investigative body. It researches risks, sets standards and evaluates countries against those standards. Investigations of individual cases are a matter for the countries involved. However all information, public and confidential, may inform the assessments FATF conducts.

FATF has published a number of relevant studies in this area, that include case studies. This includes a report on the money laundering and terrorist financing vulnerabilities of legal professionals, and on trust and company service providers. The FATF has also issued guidance to countries in areas including beneficial ownership.

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2. What EU AML regulations do you consider to have been potentially breached? What FATF standards have been allegedly breached?

FATF is not a regulator or investigative body. FATF does identify vulnerabilities in countries’ AML regimes through its peer reviews. The EU is not evaluated separately to its Member States or other FATF members.

FATF recommends that countries take measures to prevent the misuse of companies and trusts (legal persons and arrangements) for money laundering and terrorist financing.

In particular, countries should ensure that there is adequate, accurate and up to date information on beneficial ownership and control of these entities available in a timely way to law enforcement and other relevant authorities.

They require that additional steps should be taken where countries allow bearer shares, nominee shareholders and nominee directors.

The Panama papers demonstrate that many countries have not fully and effectively implemented the FATF standards, in particular in relation to beneficial ownership. The Panama papers show that countries must deliver on their political commitments and effectively implement and enforce these measures.

3. Does the FATF consider that its current ‘black’ and ‘grey’ lists of high-risk countries with deficiencies of their AML standards truly reflect the real risk countries of money-laundering?

See above.

4. What additional indicators have been discussed at FATF level, but not eventually been retained, with a view to covering more secrecy jurisdictions on those lists?

FATF publishes a statement a Chairman’s statement by the President following each plenary meeting. Details of internal FATF discussions are confidential between members. All countries are assessed on the same basis.5

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3 FATF (2010), Money Laundering Using Trusts and Company Services Providers, FATF, Paris

4 FATF (2014), Guidance on Transparency and Beneficial Ownership, FATF, Paris,

5 For further information on the lists see http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)
Daniel Thelesklaf, Chair, Moneyval, Council of Europe

Speaking notes – public hearing of EP (PANA Committee) on 13 October 2016, Brussels

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL - is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance of its members1 with the international standard to counter money laundering and the financing of terrorism (FATF Standard) and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

1. A number of countries are referred to in the “Panama Papers”: large countries and small Islands; developed countries and developing countries; and “onshore” and “offshore” jurisdictions. Some of these are members of MONEYVAL, a few of which are referred to under “key figures” published by the ICI2.

2. Promotion of “offshore” corporate structures by intermediaries is not itself a problem. There are legitimate reasons for intermediaries to promote the use of such structures to businesses, high net worth and internationally mobile individuals. A 2010 FATF report says that it is likely that a majority of sophisticated/complex structures established by TCSPs for their clients are set up for legitimate purposes3.

3. Problems arise when: (i) intermediaries, e.g. TCSPs and lawyers, that establish and administer legal persons and legal arrangements are not properly regulated or overseen for compliance with requirements; and (ii) where the beneficial ownership of such legal persons is not transparent and information not available to competent authorities.

4. The FATF Recommendations address the latter problem and partly address the former. Whereas the FATF Recommendations are designed to ensure that criminals are prevented from managing and owning DNFBPs, including law firms and TCSPs, this is not enough. There is a need for those that run DNFBPs to be “fit and proper” in a more general sense, in the same way that international standards require those running banks, insurance companies and securities firms to be.

1 Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Holy See, Hungary, Israel, Latvia, Liechtenstein, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, “the former Republic of Macedonia”, Ukraine, UK Crown Dependencies of Jersey, Guernsey and Isle of Man, UK Overseas Territory of Gibraltar
2 https://panamapapers.icij.org/graphics/
5. The Group of International Finance Centre Supervisors (which includes a number of Moneyval members) has published a Standard on the Regulation of Trust and Corporate Service Providers\(^4\). Inter alia, this standard calls for a regulator to assess whether: (i) controllers of a TCSP are at the time of licensing, and remain, fit and proper to hold those interests and/or positions; and (ii) key Persons of a TCSP are at the time of licensing, and remain, fit and proper to hold those positions. Other countries should consider adoption of this standard for intermediaries.

6. Like other countries, MONEYVAL’s members are working to improve the transparency of legal persons and legal arrangements that may be established in their jurisdictions. The standards do not prescribe what model should be followed, but focus rather on the outcome of that model: timely access to adequate, accurate and current information on beneficial ownership. Accordingly, a number of models are in use in MONEYVAL territories.

7. What ever model is chosen (including the model of public registries), such models will not be effective where reliance is placed predominantly on non-resident registered shareholders to disclose beneficial ownership, and where the registry to which disclosure is made does not have the capacity to verify the accuracy of the information that is provided.

8. MONEYVAL assesses all members against the international (FATF) standard. These assessments have identified some good practice amongst its membership:

   a. A number of members apply the Standard on the Regulation of Trust and Corporate Service Providers in order to hold intermediaries to account.

   b. One member collects, and holds centrally, beneficial ownership information at the time that a legal person is formed, and limits who may apply to form a legal person to: (i) a TCSP that is regulated and supervised by its financial services regulator (which triggers CDD requirements); and (ii) resident individuals who present evidence of identity to the Registry (face-to-face) at the time of application.

   c. One member requires all companies to be formed through a TCSP that is regulated and supervised by its financial services regulator (which triggers CDD requirements).

   d. Two members require all legal persons to maintain at least one bank account in the country, which means that information on beneficial ownership is available from banks.

   e. One member requires non-commercially active persons (e.g. asset-holding companies) to appoint as a director a person who is licenced by the financial services regulator (which triggers CDD requirements).

\(^4\) [http://www.gifcs.org/images/GIFCSStandardonTCSPs.pdf](http://www.gifcs.org/images/GIFCSStandardonTCSPs.pdf)
f. One member has immobilised bearer shares for many types of company through a requirement to deposit certificates with a custodian. Others prohibit bearer shares or do not recognise in law the transfer of legal ownership except through entry in a register.

g. One member operates a “visualised” business register which allows queries regarding persons related to companies and displays the results as a structure chart or diagram giving a connection between legal persons and natural persons.

9. However, all members face challenges and a number of key points and/or themes have been noted in late fourth and early fifth round MONEYVAL MERs:

a. Lack of understanding of risks presented by misuse of legal persons and legal arrangements;

b. Lack of understanding of beneficial ownership within the context of legal arrangements, e.g. trusts;

c. Lack of supervision of maintenance of shareholder registers;

d. Reliance on self-declaration of beneficial ownership information,

e. Absence of formal mechanism for monitoring whether basic and/or beneficial ownership information provided to authorities is accurate or current;

f. Lack of transparency of ownership of collective investment schemes due to application of CDD exemptions by fund or fund manager;

g. Gaps in implementation of CDD, e.g. by notaries, lawyers, and non-professional trustees;

h. Over-reliance on information on beneficial ownership provided by intermediaries in other countries – the risk being that those intermediaries provide incomplete or false information;

i. Lack of accountability when things go wrong, because sanctions are not applied or are not proportionate or dissuasive;

Moneyval is a Committee of technical experts from Council of Europe member states and it covers 34 European jurisdictions (all European states apart from the European FATF countries). For Moneyval, the implementation and effective application of stringent transparency requirements is and remains of great importance. We can bring added value by regularly and rigorously assessing countries against the FATF standard – and by making shortcomings public. This publicity will have huge impact on financial institutions worldwide when they decide whether they make business with a certain jurisdiction or not.
We also have an effective compliance enhancement process – and we can and do exercise peer pressure on members where we detected shortcomings. This may even include a black listing of the country concerned. But we also have a number of members with rather low capacities. In these cases, we can help them by training, raising awareness and by peer learning.
Dear Chairman, dear Members of the PANA Committee of the European Parliament,

On behalf of the European Banking Authority, I would like to thank you for inviting me to take part in this public hearing.

The widespread and systemic abuse of the financial system by the so-called ‘Panama Papers’ undermines the integrity and stability of the financial system we are here to protect. It is, therefore, important that steps are taken to understand what went wrong, and what we need to do to enhance the safeguards.

I thought it would be helpful to briefly explain the EBA’s interest in anti-money laundering and wider financial crime issues. I will then provide you with an overview of what the EBA has done
since the Panama Papers scandal first broke. I would like to conclude with some thoughts on how to improve the effectiveness of Europe’s approach to tackling financial crime.

**The EBA’s role**

The EBA is an independent EU Authority. Its statutory objective is to maintain the stability and effectiveness of the EU financial system, including by promoting sound, effective and consistent regulation and supervision and by safeguarding the integrity, transparency and orderly functioning of financial markets.

The EBA’s scope of activity explicitly includes anti-money laundering and counter-terrorist financing (AML/CFT). We work closely with ESMA and EIOPA to foster a consistent approach to tackling financial crime across the European financial services industry.

**The EBA’s powers**

In order to carry out these duties, the EBA may issue opinions, recommendations or guidelines and, in the areas mandated by EU legislation, draft legally binding standards. Competent authorities have a legal duty to do whatever they can to comply with our guidelines.

The EBA is above all a standard-setter. Its powers and resources to enforce the standards it sets are limited. But where the EBA becomes aware of malpractice or suggestions that a competent authority may have failed to adhere to the standards it has committed to implementing, it will investigate.

**The EBA’s action following the Panama Paper leaks**

The EBA has followed the Panama Paper scandal with great concern. From a supervisory point of view, it is important to understand

- Whether the revelations point to a systemic problem with institutions’ compliance with applicable AML/CFT and wider internal control requirements;

- Whether the revelations suggest that competent authorities may have failed effectively to supervise institutions’ compliance with these requirements; and

- What the prudential impact of these revelations might be.

To this end, the EBA has

- Asked competent authorities to consider whether supervisory action is warranted and to keep the EBA informed as findings from that action are beginning to emerge;

- Asked competent authorities to cooperate with their foreign counterparts, including, where relevant, in supervisory colleges;

- Assessed whether immediate changes to the EBA’s existing approach are warranted.
It is clearly too early to draw conclusions.

However, as a first step, following in-depth discussions at the EBA’s Board of Supervisors and the Joint Committee’s AML Sub-Committee, the EBA has concluded that although its existing guidelines on AML/CFT and internal governance already address many of the issues at stake, more can be done to further clarify and strengthen the expectations in this field. Work is now underway to update two guidelines, namely the EBA’s 2011 guidelines on internal governance and the 2015 draft Joint Committee’s guidelines on AML/CFT. Both guidelines explicitly highlighted the financial crime risk associated with doing business in jurisdictions with high levels of opacity and lower levels of compliance with international tax transparency standards long before the Panama Paper scandal broke. We are now adding further details, where warranted, to make these Guidelines even more specific.

The EBA will also continue to assess the situation as supervisory findings begin to emerge and will consider the implications for its work based on the information obtained. For example, there are indications that there may be some real or perceived legal obstacles to the exchange of information between different competent authorities, and between different parts of a same financial group. The EBA has begun working on ways to enhance cooperation in AML/CFT issues, but legal obstacles to the exchange of information between authorities have to be removed.

**To conclude**

I would like to take the opportunity to stress once again how important the work of this Committee will be.

More rules may not necessarily be the answer: from a financial services supervision perspective at least, the EU already has a comprehensive legal framework in place to make sure that institutions act with integrity and do not facilitate or commit financial crime.

That said, as you will be aware, there are two areas where we believe change is not only warranted, but also a prerequisite for a more effective counter-financial crime regime going forward:

- There is a need to ensure, through amendments to relevant Level 1 texts, that AML/CFT competent authorities - which are highly numerous and very diverse in nature across the EU - are clearly enabled to exchange confidential information and cooperate effectively in the supervision of financial institutions that operate on a cross-border basis. The EBA’s chairman, Andrea Enria, has written to the legislators about this; and

- There is a need to provide for greater harmonisation of Member States’ approaches to fighting financial crime, including by taking measures to strengthen the convergence of supervisory practices. This may involve equipping the EBA with stronger tools and resources to test and, where necessary, enforce compliance with EU legislation and its own standards.
In other words, the real challenge lies in effectively implementing the EU AML/CFT legislation and making sure that this is done consistently across the EU. This is particularly important in light of the cross-border nature of financial crime, which calls for a coherent and robust response.

Thank you very much for your attention.