



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 Chair

IPOL-A-PANA D (2016) 51005

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Prof. Edward SCICLUNA
Minister for Finance
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Ms. Tania BROWN
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Subject: Request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.

Dear Minister,

I am writing to you in my capacity as Chairman of the European Parliament 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 Committee is also known as the 'Panama papers inquiry Committee,' or by its acronym: "PANA."

As you may be aware, the European Parliament's PANA Committee was established on 8 June 2016, with a one year mandate to investigate, in particular, the alleged failure of the Commission to enforce, and of Member States to implement and to enforce, various relevant EU Directives. For reference, I have attached a copy of our detailed mandate.

The main output of my Committee's work will be a Report, based on which the European Parliament will adopt a Resolution sending a clear political signal to the European Commission and to the Council.

In the context of my Committee's work, the Coordinators have requested, by way of background briefing material for our Members, the production of a number of studies, which are also to be made publicly available. One of these is a *retrospective overview of the systems implemented by the Member States, and an ex-post evaluation of the performance of the competent administrative and judicial authorities to date, as regards investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.*

For this, I have been asked to request information at the highest political level of responsibility in EU Member States, about the relevant national legal definition(s) of tax-related crimes, about the organisation of tasks between national administrations and the

judiciary, and about staff resources and working methods, as well as about the results achieved to date.

All Member State contributions will then be made available to the Members of the PANA Committee, as they were submitted, in January 2017. Following this, an in-house summary analysis, produced by the Ex-Post Impact Assessment Unit of our Directorate General for Parliamentary Research Services, would then be worked up and published in March 2017. Accordingly, in detail, I would be grateful for your responsible authorities' coordinated input in relation to:

- The legal definitions of administrative and criminal tax-related offences in your Member State covering, as appropriate, avoidance, evasion, fraud and money laundering at both the individual and corporate levels, as well as the references to the national laws underpinning these definitions, as appropriate.
- The names, mission statements and powers of the entities in your Member State, which are responsible for the handling of Suspicious Transaction Reports (STRs), and, as appropriate, the name(s) of the Financial Intelligence Unit(s) (FIUs) required under European Union Law, including details on structures, staff resources, working practices and activities in tackling tax-related crimes. Furthermore, a paragraph explaining how the relevant national entities interact or an organogram would be especially helpful.
- Information on the national prosecution and penalties regime applicable and applied in your Member State in relation to tax-related offences, supported by an explanation on the state of play in relation to the number of cases (progress and outcomes, as appropriate), and a statement covering achievements and problems encountered to date. In particular, up-to-date information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities would be welcome, including statistics on the number of cases related to the offences covered in the first bullet point e.g. the types of companies involved, the types of offences sanctioned and the value of the penalties/fines issued. Furthermore, it would also be helpful to submit information on the number of ongoing and planned investigations pursuant to the Panama Papers and Bahamas leaks. If specific case-information may not be shared for legal reasons, the submission of consolidated anonymised data or analysis would nevertheless be helpful.

I would be grateful if you could also ensure that your Member State's consolidated reply follows the above structure and that the core contents does not exceed 5000 words (approximately 5 pages), excluding any Annexes, where the above mentioned details, for example on relevant cases, could be included. This is to better ensure that the key information provided by each EU Member State can be more easily compared, and especially to avoid the lack of transparency created by overwhelming submissions, for example comprising hundreds of pages of case law.

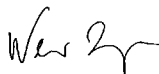
For follow up, the Head of Secretariat of the PANA Committee is Mrs. Anje Bultena Tel. +32-(0)2-28.42532, email: anje.bultena@ep.europa.eu) and the responsible administrator is Mr. Ron Korver, Tel. +32-(0)2-28.44659, email: ronnie.korver@ep.europa.eu.

The policy analyst in the European Parliamentary Research Service coordinating the examination of Member State submissions is Mr. Stephane Reynolds, +32-(0)2-28-42753, email: stephane.reynolds@ep.europa.eu.

I sincerely hope that you will be able to respond positively to this request, and to take the lead in coordinating this submission for Malta, and I look forward to discussing this matter with you if you require.

Finally, I fully appreciate that asking your authorities to respect a tight deadline of mid-January 2017 for submitting your Member State's contribution is demanding, but I am unfortunately also bound by the limited timespan of my Committee's mandate. With this in mind, in our preliminary research, we took note of the 2013 'ECOLEF' (Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy) study carried out for the European Commission.¹ As a suggestion, perhaps this study may constitute a helpful source for compiling the information which we are interested in. Your authorities may consider it most practical to extract, summarise, update and adjust the relevant content to focus on tax-related crimes in order to work up your submission to my Committee.

Yours sincerely,



Dr. Werner Langen

C.c. HE Ms. Marlene BONNICI, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Malta (COREPER II).

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Annex: detailed mandate

¹ [http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20\(digital%20version\).pdf](http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf)



TEXTS ADOPTED

Provisional edition

P8_TA-PROV(2016)0253

Setting up of a 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, its powers, numerical strength and term of office

European Parliament decision of 8 June 2016 on setting up a 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, its powers, numerical strength and term of office (2016/2726(RSO))

The European Parliament,

- having regard to the request presented by 337 Members for a committee of inquiry to be set up to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion,
- having regard to the proposal by the Conference of Presidents,
- having regard to Article 226 of the Treaty on the Functioning of the European Union,
- having regard to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry¹,
- having regard to Article 4(3) of the Treaty on European Union,
- having regard to Articles 107 and 108 of the Treaty on the Functioning of the European Union,
- having regard to Article 325 of the Treaty on the Functioning of the European Union,
- having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing²,

¹ OJ L 113, 19.5.1995, p. 1.

² OJ L 309, 25.11.2005, p. 15.

- having regard to Directive (EU) 2015/849 of the European Parliament and of the Council 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/EC¹,
- having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 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/EC²,
- having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC³,
- having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation⁴,
- having regard to Directive 2014/91/EU of the European Parliament and of the Council 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 (UCITS) as regards depositary functions, remuneration policies and sanctions⁵,
- having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁶,
- having regard to Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision⁷,
- having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁸,
- having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC⁹,

¹ OJ L 141, 5.6.2015, p. 73.

² OJ L 176, 27.6.2013, p. 338.

³ OJ L 64, 11.3.2011, p. 1.

⁴ OJ L 359, 16.12.2014, p. 1.

⁵ OJ L 257, 28.8.2014, p. 186.

⁶ OJ L 174, 1.7.2011, p. 1.

⁷ OJ L 83, 22.3.2013, p. 1.

⁸ OJ L 335, 17.12.2009, p. 1.

⁹ OJ L 157, 9.6.2006, p. 87.

- having regard to Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC¹,
 - having regard to Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts²,
 - having regard to Directive 2013/34/EU of the European Parliament and of the Council 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/EEC³,
 - having regard to Directive 2012/17/EU of the European Parliament and of the Council 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 registers⁴,
 - having regard to 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 matters⁵ and Commission Recommendation 2012/772/EU of 6 December 2012 on aggressive tax planning⁶,
 - having regard to the Commission communication of 28 January 2016 to the European Parliament and the Council on an External Strategy for Effective Taxation (COM(2016)0024),
 - having regard to Rule 198 of its Rules of Procedure,
1. Decides to set up a 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;
 2. Decides that the Committee of Inquiry shall:
 - investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2005/60/EC, taking into account the obligation of timely and effective implementation of Directive (EU) 2015/849;
 - investigate 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 Directive 2005/60/EC, as required by the Directive 2013/36/EU;

¹ OJ L 158, 27.5.2014, p. 77.

² OJ L 158, 27.5.2014, p. 196.

³ OJ L 182, 29.6.2013, p. 19.

⁴ OJ L 156, 16.6.2012, p. 1.

⁵ OJ L 338, 12.12.2012, p. 37.

⁶ OJ L 338, 12.12.2012, p. 41.

- investigate the alleged failure of the Commission to enforce and of Member States authorities to implement effectively Directive 2011/16/EU 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; 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;
- investigate the alleged failure of the Member States to enforce Articles 107 and 108 of the Treaty on the Functioning of the European Union, relevant to the scope of the inquiry provided for in this decision;
- investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2014/91/EU;
- investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2011/61/EU and Commission Delegated Regulation (EU) No 231/2013;
- investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2009/138/EC;
- investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2006/43/EC, taking into account the obligation of timely and effective implementation of Regulation (EU) No 537/2014 and Directive 2014/56/EU;
- investigate the alleged failure of Member States to transpose Directive 2013/34/EU;
- investigate the alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2012/17/EU;
- investigate potential breach of the duty of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union 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;
- make any recommendations that it deems necessary in this matter, including on the implementation by Member States of the abovementioned Commission Recommendations of 6 December 2012 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;

3. Decides that the Committee of Inquiry shall submit its final report within 12 months of the adoption of this decision;
4. Decides that the Committee of Inquiry should take account in its work of any relevant developments within the remit of the Committee that emerge during its term;
5. Decides that any recommendations drawn up by the Committee of Inquiry and by the TAXE 2 special committee should be dealt with by the relevant standing committees;
6. Decides that the Committee of Inquiry shall have 65 members;
7. Instructs its President to arrange for publication of this decision in the *Official Journal of the European Union*.