Delegation to Luxembourg
2-3 March 2017

MISSION REPORT
1. **PROGRAMME**

### 2 March 2017

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>15:30 - 17:00</td>
<td>Exchange of views with Finance Minister Gramegna and Justice Minister</td>
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<td></td>
<td>Braz</td>
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<td>17:15-18:45</td>
<td>Exchange of views with Members of the Finance Committee</td>
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### 3 March 2017

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>9:30 - 12:30</td>
<td>Panel with the participation of:</td>
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<td></td>
<td><strong>Journalists</strong></td>
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<tr>
<td>09:30-10:00</td>
<td>Fabien Grasser, Le Quotidien Luxembourg</td>
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<td>10:00-10:30</td>
<td><strong>Banks</strong></td>
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<td>Anthony A Simcic - Managing Director Head of Private Banking HSBC</td>
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<td>Luxembourg</td>
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<td>10:30-11:00</td>
<td><strong>Financial Institutions</strong></td>
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<td>Claude Marx, Director-General, Claude Simon, Member of the management</td>
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<td>Board and Member of SSM Board of Supervisors - Financial Sector</td>
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<td>Surveillance Commission / Commission de Surveillance du Secteur</td>
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<td>Financier (CSSF)</td>
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<td>11:15-11:45</td>
<td><strong>Lawyers</strong></td>
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<td>François Prum, head of Luxembourgish Bar</td>
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<td>11:45-12:15</td>
<td><strong>Accountants</strong></td>
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<td>Wim Piot, Managing Partner and Tax Leader of PwC Luxembourg</td>
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<td>Elizabeth Jane McCormick, Global Head of Tax KPMG</td>
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<td>12:30</td>
<td><strong>Press conference by chair</strong></td>
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1. LIST OF PARTICIPANTS

Members

Werner LANGEN, Chair  PPE
Frank ENGEL           PPE
Georgios KYRTSOS      PPE
Elly SCHLEIN          S&D
Cătălin Sorin IVAN    S&D
Bernd LUCKE           ECR
Maïte PAGAZAURTUNDÚA RUIZ ALDE
Miguel URBAN CRESPO   GUE
Molly SCOTT CATO      VERTS/Ale
Barbara KAPPEL        ENF

Accompanying Members

Sven GIEGOLD (coordinator)  VERTS/ALE
Ana GOMES, Vice Chair       S&D

2. KEY MESSAGES:

- Members acknowledged that Luxembourg has made progress towards compliance with international reporting and transparency standards, although the cooperation could be improved. Luxembourg public authorities have reacted proactively to LuxLeaks and the Panama Papers. Many legislations have been adopted during the past two years.
- Members regretted that Council documents related to Luxembourg’s tax positions in the Council’s Code of Conduct Group were redacted (marked black).
- Members regretted that relevant bankers, lawyers, tax advisors and accountants did not accept the invitation to attend the meetings and agreed to re-invite them to hearings in Brussels.
Luxembourg has a new penalty regime for tax related offenses since January 2017 and penalises 6 types of tax crimes, including aggravated tax evasion and tax fraud, but only for frauds above € 200,000.

The public opinion is changing following the recent tax scandals.

The number of STRs filed by law firms seems very low in comparison with the banking sector.

There is a need for enhanced international cooperation, as well as for increased transparency.
EU Commission should monitor the situation in third countries regarding transparency and exchange of information.

Meeting with Minister for Finance Gramegna and Minister for Justice Braz: key messages

Subsequent written questions to both Ministers by the European Parliament delegation have not yet been answered at the time of publication of this report.

- There is a peak in the establishment of offshore companies from Luxembourg in 2009. Since 2009, when Luxembourg started to exchange tax information upon request, the number of offshore structures has substantially decreased.

- Since then, a lot of legislation has been put into place and the Panama Papers revelations are more a phenomenon of the past, according to the government.

- The Ministers referred to the FATCA agreement with the US (in force since 29/7/2015), on the exchange of tax information under DAC 2 and the AMLD 3 and 4.

- Luxembourg is an early adapter of international standards. In order to fight tax evasion and money laundering, “enhanced international cooperation and transparency are key”. Luxembourg has implemented the “Common Reporting Standard” between EU Member States since 2015 and will start exchanging information as of 2017.

- Asked why the committee opted for Luxembourg as one of the countries to visit, Chairman Werner Langen explained that Luxembourg is the largest private banking centre (‘finanz plats’) in Europe and No 6 worldwide and that after the Bahamas and the Seychelles, Luxembourg came high on the list of countries involved in the Panama Papers, especially regarding the number of intermediaries mentioned that are located in Luxembourg (second country in the European Union after the UK).

- Members acknowledged that Luxembourg was making steps in the right direction, but were less impressed by the Luxembourgish efforts to increase transparency.

- Asked about the Luxembourgish position on public country-by-country reporting for multinational companies, Minister Gramegna replied that he is in favour of country-by-country reporting as such, as long as they are not made public and “unless this is done worldwide”. Luxembourg has also agreed to exchange information based on the OECD’s BEPS Action 13, starting this year.
- Members asked further questions about the ‘Freeport Luxembourg’, which, according to the Ministers, operates under very high control from the custom authority (goods) and the indirect tax authority.

- Members also asked about the pending court cases (at the European Court of Justice) over the tax ruling with Fiat Finance, which the Commission considers unlawful and incompatible state aid, which Luxembourg appealed. Minister Gramegna referred to the European Court of Justice “that now has to do its work”.

- On the question of beneficial ownership registers, Minister Braz assured Members that Luxembourg will fulfil all requirements of the 4 AMLD.

- Members also underlined that in the Panama Papers, 403 Luxembourgish intermediaries were involved in the setting-up of 15,025 offshore firms. They asked whether client-attorney privilege also applies to beneficial ownership questions in Luxembourg. The answer was that lawyers have to report suspicious transactions related to possible tax crimes to the FIU. The government and the Luxembourg Bar Association are currently exchanging information on the scope of ‘professional secrecy’ that lawyers can apply, in order not to communicate information related to the Panama papers to the Luxembourgish tax administration. Some lawyers have cooperated but several haven’t so far.

- The tax administration assured that they applied exchange of information on rulings, even when contrasted with comments by MEP on the lack of evidence of such exchange in practice.

- After the Panama Papers revelations, the CSSF (Luxembourg supervisors for banks) sent to banks a detailed questionnaire concerning their compliance with AMLD provisions and capital market requirements, in order to access the bank compliance with the ICMA charter. Investigation is still under way and it needs more analysis and scrutiny.

- The tax administration sent around 100 requests for information to intermediaries about clients appearing in the Panama Papers, in order to identify beneficial owners of offshore structures in the Panama Papers, focusing on tax issue (scope). The tax administration and the Luxembourg Bar are currently discussing the interpretation of the lawyer-client privilege. Some lawyers have responded to the requests but the procedure is still ongoing.

- The Minister claimed that Luxembourg has shown a very strong commitment against tax evasion and money laundering in the last couple of years after LuxLeaks. Luxembourg and the EU as a whole are making progress. The Minister insisted however, that it should now be looked at what others are doing and how other countries are implementing BEPS, because a level-playing field is needed.

- In the new tax reform (since 1 January 2017), a distinction has been made among tax evasion, aggravated tax evasion and tax fraud, in order to be able to tackle the different aspects of tax crime and money laundering. Criminal cooperation is granted to other Member States only for tax fraud and aggravated tax evasion. Tax evasion is punishable by an administrative fine.

- Legislation to strengthen the fight against money laundering: mandatory declaration to customs, mutual legal assistance, freezing of assets, immobilisation of bearer shares.
Luxembourg is also involved in the FIU.net project regarding cooperation on cross-border exchanges of suspicious actions.

- Provisions regarding national cooperation among tax authorities, judicial authorities and FIU have been strengthened.

- The Luxembourg judicial authorities have received 5 mutual legal assistance requests in relation to the Panama Papers. 2 have already been executed, 2 others are currently being executed and the last one has been withdrawn by the requesting authority.

- Members expressed their disappointment on the fact that Mr Carlos Zeyen, who was President of 15 offshore companies and vice-President of Eurojust, refused to meet with the PANA delegation. The Ministers pointed out that they cannot force anyone to come, since Luxembourg is a free country. They also asked questions on FIU competences, the Luxembourg Freeport, on the way the government questions lawyers and on their definition of tax havens.

**Meeting with Committee of Finance: key messages**

- In the late 2000s, Luxembourg decided to take some governmental actions in order to be radiated from the blacklist of countries.

- Control on Mossack Fonseca is not in the remit of the Committee.

- Cooperating on pursuing tax crimes.

- Tax rates on companies went from 12% to 15%.

- Political dynamics changed after pressure from citizens: The issue of tax competition and competitiveness is a sensitive topic in Luxembourg, but the leaks helped to slowly change mentalities.

- Members asked questions about the criteria for considering a firm to have “economic substance”. Members also expressed concerns that the new legal framework that is being put into place to combat money laundering and tax evasion does not fit lawyers and accountants and that they might be looking for further loopholes to exploit, so as to assure maximum secrecy for clients.

- The Luxembourgish prosecutor informed Members that the investigative judge is handling 5 cases, as a result of the revelations and that they on average take 183 days (whereas it is 290 days for fiscal matters). He explained that the Luxembourgish FIU operates fully independently and that they can start investigations independently if a crime is detected. They cannot do house searches, but they can ask for further information.

- The Luxembourgish counterparts said that a lot of the problems had to do with former legislation under which fiscal fraud was not considered an aggravated crime and was therefore not prosecuted. Moreover, they mentioned that there was no exchange of information in the past.
Fabien Grasser mentioned that:

- For journalists it is not easy to find out what happened, especially when entering into contact with the tax administration, due to lack of transparency. He said that in Luxembourg there are also people quite happy that the country is not more transparent. What is needed is a change in mentality.

- When asked by MEPs about the role of PwC exposed by Raphael Halet, who had mentioned that PwC wrote the response letter on rulings for the government, he mentioned that PwC replied that this was a service provided for their clients. However, the government denied it then and so does now. Therefore, the tax administration seems to be less transparent than the companies.

- Efforts against money laundering and tax evasion should be global and harmonised. It should be all about banning loopholes.

- Size matters (reputation risk).

- There is a legislation on whistleblower protection in Luxembourg, which can be improved, according to Mr Grasser. Similarly, Luxembourg is one of the 3 European countries not having a law on access to information (only a circular).

HSBC representative stressed that:

- They apply the idea of customer diligence: periodic review of knowing your customer. He explained that they are very intrusive on source of wealth and source of funds of their clients, having moved from ‘no question asked’ to ‘let’s ask questions’. If clients do not provide information, it will raise suspicions.

- To open an account with HSBC it takes a month -100 pages to fill in.

- 3 compliance officers for 2 bankers, use a lot of 1/3 party system.

- Banks have to go through a lot of checks but payment platforms are not supervised that much.

- There is a dichotomy between credit risk and financial crime risk. Analysis made by the banks.

- The last conversation and meeting with Mossack Fonseca was in 2009.

- He was contacted by the association of Luxembourg banks in view of his meeting with the PANA delegation.
Meeting with CSSF - Key messages from Claude Marx - Director General: key messages

As a follow-up to the Panama Papers, letters were sent to all the banks active in private banking or wealth management, 73 in total. 80% of their accounts were checked and 20% of the corporate non-Luxembourghish company accounts were controlled as well. The aim was to check if they know their customers and their transactions. CSSF following up through letters to the banks concerned. When no satisfactory explanation provided, there may be enforcement actions or sanctions.

- Annually, the CSSF receives around 2500 suspicious transaction reports from banks. The CSSF said they do not receive STRs directly. It is sent to the FIU and the CSSF is informed about them.

- Supervision authorities can do on-risk checks in case of money laundering suspicion.

- 100 requests for information were sent as a result of the Panama Papers, while the investigation on Panama Papers information is still ongoing.

- 252 on-risk visits were carried out, with sanctions imposed in some cases. On-site inspections were carried out in 30 banks (2016).

- Most banks operate in compliance with the rules.

- Breaches are classified as low / medium / severe. Before 2015, sanctions were available up to €250,000, now there is a possibility to fine up to 10% of the turnover.

- Underlined that the Luxembourg Bar Association is not in the remit of the CSSF.

- Since January 2017, regarding to aggravated fiscal fraud, banks have to make a suspicious transaction report.

Meeting with Luxembourg Bar Association: key messages

- Lawyers respect EU legislation on AML.

- Conseil de l’Ordre is the control authority for lawyers having breached any legislation on AML and/or financing of terrorist activities

- When dealing with third parties, lawyers need to have a specific account opened in a Luxembourg bank to deal with it and any financial transaction should appear on this account.

- There is in place a special committee of the Conseil de l’Ordre, which is directly related to AML, as well as a special committee related to third parties accounts.

- Disciplinary sanctions in case of breach.

- The new tax reform of criminal offences also applies to lawyers.

- MEPs asked about the fact that the Luxembourg Bar replied to the request of information from Luxembourg’s tax administration on the Panama Papers, questioning the legal basis
for such requests of information. The Bar Association replied that professional secrecy is a legal right.

Mr Francois Prum, Head of the Luxembourgish Bar, said he represents 2400 lawyers. He underlined that they have to report suspicious transactions. The following numbers of suspicious transaction reports were received over the last 5 years:

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<tbody>
<tr>
<td>Number of STRs</td>
<td>17</td>
<td>22</td>
<td>22</td>
<td>27</td>
<td>11 so far</td>
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**Meeting with accountants-PwC and KPMG : key messages**

- Tax practice driven by compliance.
- Tax payers are able to ask for clarification - abuse of laws creates uncertainty.
- PwC supports the country-by-country reporting.
- Underlined that the growth in staff in PwC is not driven by the rulings practice in Luxembourg. 400 people are dealing with tax in Luxembourg, 200 on compliance.
- Regarding conflict of interest, PwC declared that they have never been paid for advice to the Luxembourg government.