Information Note from the European Commission for the informal ECOFIN Meeting, 22/23 April 2016 on progress made on the EU agenda against Tax Evasion, Avoidance and Money Laundering

1. Introduction and purpose

The large-scale concealment of funds exposed in the "Panama Papers" highlights the urgent need for a strong and coordinated stance against tax evasion, avoidance and money laundering, within the EU and internationally. This note provides an overview of progress made so far at EU level, including proposals requiring urgent political attention in the Council, and identifying areas where further political reflection is needed.

2. Boosting Tax Transparency

Transparency is essential to tackle tax abuse effectively. The "Panama Papers" have also shown the extent to which it is possible to hide behind opaque structures and use offshore accounts to escape taxation. The EU continues to lead the way internationally when it comes to transparency on individuals' accounts. As of January 2016, Member States are applying binding new measures to ensure the automatic exchange of information on financial accounts in the EU[1]. Significant new tax transparency agreements have been signed with Switzerland, Liechtenstein, Andorra and San Marino, and a similar agreement will be signed with Monaco before the summer. In addition, the EU also has strict transparency requirements for banks, which were put in place in the wake of the financial crisis. Under the Capital Requirements Directive[2], financial institutions must publicly disclose key information on their activities, taxes, profits and public subsidies on a country-by-country basis, inside and outside the EU. The interconnection of EU business registers as of June 2017 will also increase transparency on EU companies at European level.

A number of landmark agreements have been concluded in recent months to further enhance tax transparency within the EU, and improve Member States' ability to protect their tax bases and clamp down on tax avoidance schemes. All Member States will automatically exchange information with each other as regards their cross-border tax rulings on a systematic basis as of 2017. Moreover, **based on the political agreement reached in March,** t**he Directive requiring tax authorities to automatically exchange country-by-country information concerning multinationals**[3] **should quickly be adopted formally**.

Despite recent progress, more transparency towards the public by large multinational enterprises (MNEs) is still needed. For this reason, the Commission has adopted on 12 April a proposal for mandatory public country-by-country reporting for groups with a turnover of more than EUR 750 million. Companies will have to provide a set of relevant information broken down in detail for every Member State in which they are active, and an aggregated report of the same information for their activities outside the EU. The proposal also requires detailed country reports for companies' activities in third country jurisdictions which do not respect international tax good governance standards and create particular

[1] Directive 2014/107, amending Directive 2011/16. The EU requirements effectively implement the OECD's Common Reporting Standard, which over 60 other countries have committed to adhere to globally. If fully and properly applied, this new Global Standard would severely restrict the opportunities for income to be hidden abroad.

[2] Directive 2013/36 and Regulation 575/2013

[3] Agreement on the so-called DAC4 Directive was reached in the Council in March 2006 and it will be formally adopted in May 2016. The opinion by the Parliament is expected soon.

opportunities for tax avoidance and tax evasion, thereby ensuring more targeted scrutiny of higher risk third countries. The relevance of the last point has been highlighted again by the Panama allegations. Public reporting by all large multinationals will encourage greater corporate responsibility, promote fairer tax competition and help restore public confidence in corporate tax systems. **The co-legislators should now make fast progress on the proposal on public tax transparency for multinationals so that it can enter into force within the shortest timeframe possible**.

3. Fighting Money Laundering and transparency on Beneficial Ownership

The EU has already put in place a number of measures to ensure authorities have strong powers to fight money laundering, and ensure suspicious transactions are reported to them. Among other things, the Fourth Anti-Money Laundering Directive provides for greater transparency on capital flows, through central registers of beneficial ownership information for legal entities (such as companies) and legal arrangements (such as trusts), with a view to combatting money laundering and terrorism financing.

As called for by the Commission in its Action Plan on Terrorist Financing, it is now essential that **Member States transpose this legislation and set up these central registers without delay, by the end of this year at the latest, and that national authorities apply the rules rigorously**. The Commission is ready to assist them in this process and will closely monitor transposition.

Further measures may be needed to address remaining loopholes. The Commission had already announced in its Action Plan on Terrorist Financing its intention to propose targeted amendments to the Fourth Anti-Money Laundering Directive by June at the latest and to present a legislative proposal harmonising money laundering criminal offences and sanctions, at the latest by the 4th quarter of 2016. The amendments to the Fourth Anti-Money Laundering Directive envisaged for June will primarily aim at addressing risks posed by terrorist financing. In their statement of 14 April 2016, the five EU Ministers of Finance attending the G20[4] stressed the need to ensure that significant steps were undertaken to improve the transparency of beneficial ownership information and in removing the veil of secrecy under which criminals operate. **The Commission is examining this matter and would be interested in Ministers' views on additional measures to strengthen the framework on anti-money laundering and its implementation, in order to further increase transparency and anti-money laundering requirements around corporate structures and arrangements.** In particular, it would be worth considering whether improvements are possible to enhance accessibility of beneficial ownership registers, to clarify the registration requirements for trusts, to speed up the interconnection of national beneficial ownership registers, promote automatic exchange of information on beneficial ownership, and strengthen customer due diligence rules.

4. Tackling Aggressive Tax Planning

Work to promote greater tax transparency needs to go hand in hand with a strong agenda to push for fairer and more effective taxation within the EU. Taxes must be paid where profits are generated.

In June 2015, the Commission presented an Action Plan for Fair and Effective Taxation, setting out a series of measures to fundamentally reform corporate taxation in the EU. Work is already well advanced on many of the actions proposed to clamp down on aggressive tax planning and the regimes that encourage it, not least the preparation of a proposal to re-

[4] France, Germany, Italy, United Kingdom and Spain.

launch the Common Consolidated Corporate Tax Base, which the Commission will present before the end of the year. In addition, the Commission will continue addressing aggressive tax planning under State aid rules, in cases where there is a selective advantage conferred by the Member States' tax authorities to certain undertakings.

(a) Measures against aggressive tax planning

It is vital that the Council and the Dutch Presidency maintain the momentum and ensure a rapid agreement of the Anti-Tax Avoidance Directive, which sets out concrete measures to counteract some of the pervasive corporate tax planning schemes and deter the use of artificial arrangements in low and no tax jurisdictions. **The Anti-Tax Avoidance Directive should be agreed in May, allowing for swift implementation by Member States.**

For its part, the Commission is delivering on the commitment made in the External Strategy to review the EU's Financial Regulation, in order to prevent EU public funds from being routed through problematic tax jurisdictions. It will present a proposal on this matter by the summer. In addition, discussions have started to review the internal rulebooks of the EU International Financial Institutions (IFIs), to ensure that they take full account of third countries' tax good governance standards when deciding where to invest EU funds.

(b) Responsibility of banks and advisors

The Panama Papers have highlighted how certain European financial intermediaries and other providers of tax advice appear to have actively helped their clients to conceal money offshore. Whilst some complex transactions and corporate structures may have entirely legitimate purposes, it is also clear that some offshore activities may be less legitimate and in some cases even illegal, aiming for example for complete tax avoidance.

The European Parliament has called for tougher measures against intermediaries who assist in tax evasion schemes. OECD BEPS Action 12 also recommends that countries require tax advisors to disclose any aggressive tax planning schemes that they use or promote.

Under the Capital Requirements Directive, significant sanctions, including financial penalties and the withdrawal of authorisations, can already be imposed if credit institutions breach anti-money-laundering rules.

The Commission would like to gather Ministers' views on whether there is potential to reinforce EU action in this area, in order to introduce more effective disincentives for promoters and enablers, such as advisors engaged in such operations.

5. International developments

The fight for transparency must be carried out at global level. The EU must therefore continue its efforts within the G20 to ensure that third countries honour their transparency commitments, and insist on a rigorous peer review process through the OECD's Global Forum. Some third countries – including a number of other important financial centres – have not signed up to the global standard. The G20 Finance Ministers and Central Bank Governors meeting on 14-15 April 2016 in Washington D.C. reiterated their commitment to timely and widespread implementation of the G20/OECD BEPS package, and asked to implement the standard on automatic exchange of information by 2017 or 2018 and to sign the Multilateral Convention. They mandated the OECD to work with G20 countries to establish objective criteria by July to identify non-cooperative jurisdictions with respect to tax transparency, and indicated that defensive measures will be considered by G20 members against non-cooperative jurisdictions if progress as assessed by the Global Forum is not made.

The EU should therefore continue to push for the full and timely implementation of the OECD/G20 BEPS monitoring framework. In the External Strategy for Effective Taxation, the Commission proposed a new EU listing process to identify and act against third countries that willingly enable tax abuse. This common EU list will replace the current "pan-EU list", first published in June 2015, which simply amalgamated Member States' diverse national lists for tax purposes. The common EU list will be based on clear and internationally justifiable objective criteria and a robust screening process involving a dialogue with the country concerned and will be backed by countermeasures. In parallel, the proposal on country-by-country reporting by multinationals presented by the Commission on 12 April uses the same listing criteria as the basis for requiring MNEs to disaggregate data reflecting their activities in problematic tax jurisdictions.

The Panama Papers have highlighted the relevance of such lists and their potential to target problematic tax jurisdictions, if properly employed. Most of the third countries in which the offshore firms were located already feature on the pan-EU list. The Commission invites Member States to provide swift and unequivocal political support for the new EU listing process, so that it can be taken forward without delay. As a next step, the Commission will discuss with Member States a pre-assessment of all third countries' tax systems from a good governance perspective by the summer, as set out in the External Strategy. On this basis, and taking into account the developments within the OECD, **Member States should rapidly agree on the third countries to be prioritised for screening, so that this process can begin before the end of the year.**

Finally, the post-BEPS agenda should be set out quickly and the G20 should push forward the work on country-by-country-reporting.

Similarly, the fight against money-laundering requires coordinated efforts at the international level. Cooperation should also be intensified with the Financial Action Task Force (FATF) on the international review of jurisdictions' anti-money-laundering standards, to ensure that they are rigorously applied by all jurisdictions. The G20 Finance Ministers reiterated their call for full implementation of the FATF standards on transparency and beneficial ownership, and asked the FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes to make initial proposals by October on ways to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information, and its international exchange.

As set out in the External Strategy, the EU should make full use of the appropriate bilateral and regional agreements to ensure that third countries commit to complying with international tax good governance and anti-money laundering standards. **The Commission calls on Member States to endorse the new approach to good governance clauses in the Strategy as quickly as possible, and to give full political support to such clauses in negotiations with third countries.**