



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

2016/3044(RSP)

28.06.2017

EUROPEAN PARLIAMENT DRAFT RECOMMENDATION TO THE COUNCIL AND THE COMMISSION

pursuant to the third subparagraph of Rule 198(10) of the Rules of Procedure

following the inquiry on Money Laundering, Tax Avoidance and Tax Evasion
(2016/3044(RSP))

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on behalf of the 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

European Parliament draft recommendation to the Council and the Commission following the inquiry on Money Laundering, Tax Avoidance and Tax Evasion (2016/3044(RSP))

The European Parliament,

- 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 its 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 evasion²,
- having regard to the draft recommendation of the Committee of Inquiry on Money Laundering, Tax Avoidance and Tax Evasion,
- having regard to the final report of the Committee of Inquiry on Money Laundering, Tax Avoidance and Tax Evasion (A8-XXXX/2017),
- having regard to the third subparagraph of Rule 198(10) of its Rules of Procedure,

1. General

1. Notes with concern that the Panama Papers have shaken citizens' trust in our financial and tax system; recalls how crucial it is to restore public confidence and ensure tax and social justice; calls to this end on the EU to properly implement and reinforce its legal tools to trade secrecy for transparency, counter money laundering and ensure more fairness in taxation;
2. Deplores the number of cases of maladministration regarding the implementation of EU legislation; urges both the Commission and the Member States to step up their efforts, commitments, and allocated resources to improve supervision and enforcement to prevent and fight money laundering, tax evasion and tax avoidance more efficiently and ensure that wrongdoers are held accountable;
3. Regrets that many loopholes still exist in the current legislation on tax evasion and anti-money laundering at the EU and national levels and considers that further strengthening of the legislation is needed; welcomes the increased efforts to come up with new legislative proposals since the Panama Papers have been revealed;

¹ OJ L 113, 19.5.1995, p. 1

² *Texts adopted*, P8_TA(2016)0253.

4. Notes that tax avoidance, tax evasion and money laundering continue to be global phenomena and therefore require a response based on increased cooperation at EU and global level;
5. Calls on the Commission and the Member States to be proactive and not wait for media revelations to address these issues on the top of the political agenda;

2. Tax evasion and tax avoidance

2.1 Offshore structures

6. Stresses the urgent need for a common international definition of what constitutes an Offshore Financial Centre (OFC), tax havens, secrecy havens, a non-cooperative tax jurisdictions and a high-risk country in terms of money laundering;
7. In seeking to promote greater international cooperation, believes that it is also crucial to retain the legal objectivity of these definitions, since some jurisdictions could sign up to internally agreed standards but without applying them in practice;

2.1.1. A common EU list of non-cooperative tax jurisdictions

8. Welcomes the leading role of the Commission in setting up a common EU list of non-cooperative tax jurisdictions; calls on the Council not to dilute the ambition of the criteria of said list; insists that the absence of corporate tax or a close to zero corporate tax rate should be considered as one of the criteria; in order for this list to be effective and credible, calls on the Council to put in place strong and deterrent sanctions against listed countries such as the suspension of third country equivalence regime in financial sector; underlines that the assessments of individual countries should be carried out in a transparent manner;
9. Regrets that several EU Member States featured in the Panama Papers; points out that there should be also a scrutiny mechanism established for EU Member States;

2.1.2. An EU anti-money laundering list of high risk third countries

10. Regrets that the Commission is not carrying out its own and independent assessment as foreseen by the AMLD provisions but relies instead on the FATF list; deplores that the Commission did not answer satisfactorily to the demands of the European Parliament in this regard;
11. Believes that it is of primary importance that the EU is more ambitious than the FATF on this issue; notes in this regard the need for more investment into human and financial resources or their allocation within the European Commission;

2.2 Other tax legislations

12. Calls for the need of an ambitious public country-by-country reporting in order to enhance tax transparency and public scrutiny of multinational enterprises (MNE's) as it would allow the wider public to have access to information about the profits made,

subsidies received and the taxes they pay in the jurisdictions where they operate;

13. Urges the Council to rapidly agree on the two steps of the Common Corporate Consolidated Tax Base to solve the issue of transfer pricing and to ensure a more fair competition in the single market by greater harmonisation of the corporate tax bases in the EU;
14. Calls on the Commission to initiate a comprehensive evaluation of the 19 years of work of the Code of Conduct Group of Business Taxation focusing on the results achieved regarding the prevention of cross-border harmful corporate tax regimes;
15. Calls on the Commission to launch a broad evaluation on harmful tax measures in the Member States and the counter measures in place;
16. Calls on the Member States to stop the use of any form of tax amnesties that can lead to money laundering and tax evasion;
17. Deplores the lack of statistics on the magnitude of tax avoidance and evasion; stresses the importance of developing methods to quantify the impact of these activities on countries' public finances and economic activities;
18. Calls on the Commission to clarify what is illegal and what is legal, even if immoral, in the framework of tax evasion and tax avoidance practices;
19. Reiterates the call from the TAX2 Committee for the creation of a new Union Tax Policy Coherence and Coordination Centre (TPCCC) within the structure of the Commission that can assess and monitor Member States' tax policies at Union level and ensure that no new harmful tax measures are implemented by Member States; furthermore the TPCCC would be able to monitor compliance of Member States with the common Union list of uncooperative jurisdictions in addition to ensuring and fostering cooperation between national tax administrations (e.g. training and exchange of best practises);

2.3. Exchange of information

20. Regrets that DAC provisions were not implemented effectively and that the amount of information exchanged was very low; recalls that automatic exchange of information between tax authorities is key for the Member States to ensure mutual assistance in collecting tax revenues and to create a level-playing field;
21. Insists that the Commission should have access to all the information exchanged under DAC in order to properly monitor the implementation thereof;
22. Calls for a more effective global exchange of information and urges for proper implementation of the Common Reporting Standards (CRS) provisions; calls on the need for reciprocity in the exchange of information between OECD and participating Members;
23. Calls on the Commission to put forward a legislative proposal for an EU FATCA ensuring reciprocity regarding exchange of information between the EU and third

countries; underlines the need for sanctions on financial institutions having European clients and not complying with automatic information exchange standards;

3. Money laundering

3.1. Anti-Money Laundering legislation

24. Stresses that AMLD provisions should be effectively implemented by the Member States and the Commission should ensure a proper enforcement;
25. Stresses the need for publically accessible beneficial ownership (BO) registers and standardised registers of BOs to prevent anonymity of ultimate beneficial owners (UBOs); calls furthermore for the creation of an EU BO register;
26. Calls furthermore for the creation of a global company register and of a central register of bank accounts accessible to FIUs and national law enforcement bodies;
27. Underlines the need to improve the enforcement of customer due diligence (CDD) checks to make sure that a proper assessment of the risks linked to the client profile is carried out; calls on the Commission to make it illegal to outsource CDD procedures to third parties; believes furthermore that the scope for obliged entities should be included to amongst others real estate agents to ensure that CDD provisions apply equally to regulated and non-regulated actors;
28. Believes that sanctions in answer to money laundering and tax evasion should be more severe and that Member States should involve more resources for their enforcement; notes however that in parallel, the EU and its Member States should develop incentives for each category of obliged entities to discourage them and make it unprofitable to engage in such activities;
29. Stresses the need to agree on a common understanding and definition at the EU level of a Politically Exposed Person;
30. Calls for a harmonised definition of tax crime at the EU level; calls for the definition of predicate offences to be harmonised within the EU;
31. Calls for increased political and regulatory focus on emerging risks related to new technologies and financial products, such as derivatives, SWAPS and virtual currencies¹;
32. Underlines the need for use of new technologies such as unique digital identities to facilitate the identification of serious cases of financial crime;
33. Urges that assets generated by criminal activities be confiscated; calls to this end for a swift adoption of the regulation on the mutual recognition of freezing and confiscation orders to facilitate cross-border recovery of criminal assets;

¹ PANA Committee hearing with Brooke Harrington and other experts on 24 January 2017

3.2. Financial Intelligence Units (FIU)

34. Believes that by harmonising the status and functioning of European FIUs, exchange of information would be strengthened;
35. Believes that to be more efficient, all EU FIUs should have unlimited access to information from obliged entities as this would allow all FIUs to request information from reporting entities on behalf of foreign FIUs;
36. Stresses the need for more effective communication between different competent authorities at national level but also between FIUs in different Member States; calls on the Commission to set up an EU benchmarking system as a tool to standardise the information to be collected and exchanged and to enhance cooperation between FIUs; this should include the strengthening of FIU.net under Europol, but also Europol and Eurojust competences and resources to deal with money laundering and tax evasion; calls furthermore on the Member States to increase human resources in FIUs to strengthen the investigation capacities and to properly process the increased number of STRs;
37. Insists that the appointment for managerial positions in FIUs needs to be neutral; stresses the need for common rules on the independency of institutions in charge of enforcing rules as regards tax fraud and money laundering as well as the need for full independence of law enforcement bodies in the follow-up of FIU reports;
38. Calls for an EU FIU to ensure an effective and coordinated system of exchange of information as well as centralised databases;

4. Intermediaries

39. Regrets that intermediaries currently are regulated in a non-homogenous manner across the EU, calls on the Council to swiftly adopt the Commission proposal on mandatory exchange of information by intermediaries with the aim of strengthening the reporting obligations of intermediaries;
40. Urges the need for this proposal to close the loopholes allowing for aggressive tax planning by designing new rules for all those who contribute to it such as lawyers, consultants, wealth managers, banks and agents;
41. Notes that wealth management remains a largely unregulated profession and that binding international rules and standards should be established to better regulate and define this profession; calls in this respect on the European Commission to take the initiative in all relevant international fora for the creation of such standards and rules;
42. Urges for a shift from self-regulation to appropriate supervision and state controlled regulation for currently self-regulated professions via a separate and independent national regulator/supervisor;
43. Calls for regulation for tax intermediaries with incentives to refrain from engaging in

tax evasion and tax avoidance and shielding beneficial owners;

44. Calls for stronger sanctions at both EU and MS level against banks and intermediaries that are knowingly, wilfully and systematically implicated in illegal tax schemes targeting both the companies themselves as well as responsible senior management level employees and board members; believes that the use of a public shaming regime could discourage intermediaries to circumvent their obligations and to encourage compliance;
45. Calls on the creation of an EU framework for compulsory codes of conduct for intermediaries;
46. Calls for better enforcement of rules related to money laundering and tax evasion and its deterrent effect by increasing public visibility, particularly through improved public statistics on enforcement measures regarding professionals advising on tax;
47. Underlines the need for an EU certification of intermediaries to practice as tax professionals; calls in this connection for the possibility to withdraw licences if they are proved to promote or enable tax evasion, aggressive tax planning and money laundering;

Banks

48. Recommends the creation of an EU standardised and interconnected national bank account register containing all accounts linked to legal or natural persons with the purpose of easy access to competent authorities and FIUs;
49. Underlines the importance of better coordination between bank headquarters and subsidiaries both within the EU and with third countries so as to ensure full compliance with internal codes of conduct and AML legislation;
50. Points out that national banking supervision checks should be systematic and not based on random checks to ensure the adequacy of anti-money laundering rules;
51. Calls for increased powers to the European Banking authority (EBA) to carry out regular compliance checks across the EU banking sector instead of the current system of checks carried out only when a specific case is under investigation or has become public;
52. Calls for a thorough analysis identifying new technologies and financial products which could be potentially used as a vehicle for money laundering; based on this analysis, calls for money laundering provisions to be included in all new proposals addressing such new technologies, including FinTech;

Lawyers

53. Urges that while waiting for the phasing out of self-regulation of obliged entities at the EU level, the law profession is to adapt a methodology whereby the client-attorney privilege principle does not impede adequate STR or reporting of other potentially

illegal activities;

54. Underlines that lawyers advising non-residents should be legally responsible when designing tax-planning and money laundering schemes;

Accounting

55. Stresses that with a view to improve international cooperation, audit and accounting requirements should be coordinated at the global level, so as to discourage accounting and auditing firms in designing offshore structures; believes in this respect that a better implementation of international accounting standards should be regarded as an efficient tool;

Trusts and fiduciaries

56. Strongly condemns the misuse of trusts and fiduciaries as vehicles to launder money; calls therefore for clear rules facilitating a straight forward identification of the BO;
57. Calls for a fully public BO register on trusts and fiduciaries at EU level, to form the basis of a global register;

5. Third countries dimension

58. Underlines the need for enhanced global cooperation with regards to taxation and money laundering matters due to the international nature of these; highlights that only cooperative, coordinated and global responses will provide efficient solutions;
59. Believes that the EU should speak with one voice only when negotiating tax agreements with third countries instead of continuing the practice of bilateral negotiations producing sub-optimal results; believes that the same approach should be adopted by the EU when negotiating future free trade agreement by ensuring tax good governance clauses, transparency requirements and including anti-money laundering provisions;
60. Calls for strong enforcement measures on all international agreements to exchange information between tax authorities to ensure the proper implementation by all jurisdictions and clear, automatic sanctions to apply in the case of non-implementation;
61. Underlines the importance of full reciprocity in the framework of the FATCA agreement and other similar agreements;
62. Calls on relevant Member States to use the opportunity of their direct relations with the relevant countries to pressure their overseas countries and territories (OCTs) that do not respect international standards of tax cooperation, transparency and anti-money laundering;
63. Believes that privacy and data protection laws should not be a hindrance to counter unlawful or unethical behaviours;
64. Calls for a Global Summit on ending secrecy to enhance international cooperation and force third countries, and in particular their financial centres, to comply with global standards and for the European Commission to organise such a summit;

65. Stresses the importance of a productive bilateral exchange of information between third countries and EU FIUs;

Developing countries

66. Calls on the EU to take into account specific legal features and corresponding vulnerabilities of developing countries;
67. Calls on all Member States to conduct spillover effect studies on the developing countries regarding agreed tax treaties and economic partnership agreements;
68. Calls for more international support to developing countries to fight corruption and secrecy which facilitates Illicit Financial Flows (IFFs);
69. Regrets that the current OECD tax committee is not inclusive; calls therefore for the creation of a stronger intergovernmental UN tax body that could ensure a voice for developing countries;

Whistle-blowers

70. Fears that the prosecution of whistle-blowers to maintain secrecy can discourage the revelation of malpractices; underlines that such protection should be designed to serve the public interest;
71. Calls on the Commission to propose EU-wide legislation on the protection of whistle-blowers; insists that this legislation be horizontal and covers both the public and private sectors;
72. Recommends that the EU institutions lead by example by swiftly installing an internal whistle-blowing protection framework;
73. Underlines the importance of awareness-raising amongst employees and other individuals of already existing whistle-blowing legal frameworks;

Interinstitutional cooperation

Cooperation with PANA

74. Reiterates the importance of respecting the principle of sincere cooperation between the EU institutions;
75. Believes that the exchange of information between the EU institutions should be enhanced, in particular regarding the provision of relevant information to be made available to inquiry committees;
76. Regrets that the Council, its Code of Conduct Group on Business Taxation and some Member States showed little commitment towards the PANA Committee requests for cooperation; believes that a stronger commitment by the Member States is key in order to join efforts and achieve better results;

European Parliament right of inquiry

77. Stresses that the current legal framework for the operation of committees of inquiry in the European Parliament is outdated and falls short of providing the necessary conditions under which the exercise of Parliament's right of inquiry can effectively take place;
78. Stresses that the lack of powers significantly hampered and delayed the work of the inquiry in view of the temporary nature of its investigation and precluded a full assessment of potential breach of EU law;
79. Calls on the EU institutions to strengthen the EP's rights of inquiry on the basis of Art. 226 of the Treaty; is of the firm opinion that the ability to subpoena persons of interest is vital for the proper functioning of parliamentary inquiry committees;
80. Urges the Member States to improve the transparency, accountability and effectiveness of the working methods of the Code of Conduct Group;
81. Asks the Code of Conduct Group to produce a publicly accessible annual report identifying and describing the most harmful tax measures used in the Member States;

Other institutions

82. Welcomes the establishment of a single independent European Public Prosecutor's Office (EPPO); and calls on all EU Member States to join the initiative;
83. Calls for stronger enforcement powers for the Commission to ensure proper implementation of EU legislation in Member States;
84. Calls for the creation of a new Union Tax Policy Coherence and Coordination Centre (TPCCC) within the structure of the Commission to address systemic weaknesses in cooperation among competent authorities across the EU;
85. Furthermore, calls for a significant strengthening of the FIU.net cooperation within the framework of Europol and suggest linking the activities with the proposed TPCCC in the hopes of creating a Tax Europol capable of both coordinating MS tax policies and strengthening member states' authorities in investigating and uncovering illegal international tax schemes;

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86. Instructs its President to forward this recommendation and the final report of the Committee of Inquiry to the Council and the Commission and to the parliaments of the Member States.