Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14141
26 September 2016

Lessons from the "Panama Papers" to ensure fiscal and social justice

Report[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Mr Stefan SCHENNACH, Austria, Socialist Group

Summary

In April 2016, an unparalleled leak of information, named the "Panama Papers", caught the attention of the whole world. The documents from the database of the world's fourth biggest offshore law firm, Mossack Fonseca, provided "behind the scenes" information on how wealthy people disguise their financial assets in order to avoid tax scrutiny.

Besides billionaires, celebrities and criminals, the names of 143 politicians and their associates from around 50 countries are mentioned in the documents as having used offshores for tax avoidance and tax evasion purposes. Even though legitimate ways of using tax havens exist, offshore jurisdictions are known for the creation of shell companies hiding the real beneficial owners. Such practices are common for aggressive tax avoidance, hiding illicit wealth and for the concealment of financing of terrorists, drug cartels, criminals and corrupt politicians.

The "Panama Papers" disclosures demonstrate that the fight against tax havens and the establishment of fiscal transparency has so far had only limited effect. This report explains how imperative it remains to find the proper means to ensure technical compliance with already existing international standards in the field of anti-tax evasion and anti-money laundering policies. Member States should ensure effective implementation of the standards in all sectors – financial, legal and law enforcement, while also encouraging stronger action at international level.

1. Reference to committee: Doc. 14034, Doc. 14045 and Doc. 14047, Reference 4210 of 27 May 2016, and Doc. 13150, Reference 3952 of 26 April 2013.

Contents **Page**

A. Draft resolution[2]

1. The so-called “Panama Papers” scandal exposed how shadow companies and secret accounts are used by many to hide taxable income and assets in tax havens. The revelations intensified public outrage which had been simmering for years: citizens no longer wish to tolerate legal systems which allow taxation to be easily avoided by major companies and very rich people as well as ill-gotten gains to be stashed away, while they pay taxes on stagnant or even falling incomes. The “Panama Papers” led to a fall in people’s trust in democratic, financial and tax systems as a whole, posing a threat to the fundamental values of European society – including fiscal and social justice.

2. The Parliamentary Assembly is very much concerned about the scope of tax avoidance and evasion in modern societies, now even demonstrably involving well-known companies and public personalities, who should be role models of ethical behaviour. The Assembly considers that a higher standard of ethics in politics and in the business world is essential to uphold our economic, social and democratic systems.

3. The right of access to information is a fundamental right applying to data held by government bodies and in certain circumstances by private bodies, as guaranteed by the Universal Declaration of Human Rights, and the European Convention on Human Rights (ETS No. 5). In this regard, the Assembly urges the investigators to make available all data, referred to as the “Panama Papers”, with a view to allowing the national law- enforcement bodies to launch their own national investigations and bring to justice those involved in illegal activities, including corruption and tax evasion.

4. The Assembly stresses the importance of “whistle-blowers”. Their protection is of paramount importance for reinforcing the fight against corruption. The Assembly recalls its Resolution 1729 (2010) and Resolution 2060 (2015) on the protection of “whistle-blowers”, and urges all Council of Europe member States to properly protect individuals who report any wrongdoing to the benefit of our societies.

5. The Assembly considers that the fight against tax evasion and tax avoidance does not necessarily require new legal or technical standards; what is lacking is the effective implementation of the existing ones. The Assembly, thus, recommends that the member States:

5.1. ensure an effective follow-up to its Resolution 1881 (2012) on promoting an appropriate policy on tax havens;

5.2. join the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Co-operation and Development (OECD), if they have not yet done so, and ensure a rapid and effective global implementation of the standard on Exchange of Information on Request and the Standard for Automatic Exchange of Financial Account Information in Tax Matters, which would allow for standardised tax reporting;

5.3. provide sound, transparent and stable national tax systems, limiting “red-tape” bureaucracy and fighting corruption to encourage companies and individuals to keep their assets in their country of residence;

5.4. increase transparency by setting up a central register of ultimate beneficial owners of all companies, foundations and trusts, requiring changes to the beneficial ownership structure to be reflected in this register within a reasonable period of time, subject to dissuasive penalties for non-compliance;

5.5. maintain close co-operation with the International Monetary Fund, the OECD, the United Nations and the European Commission on improving the existing tax models and addressing emerging challenges;

5.6. commit more resources to financial investigation at national level and strengthen the training in modern financial investigative techniques of relevant police officers, prosecutors and judges;

5.7. increase the international exchange of information and good practices on financial investigative techniques;

5.8. consider the need for legislative amendments to harmonise access to financial information at sufficiently early stages of investigations into criminal proceeds.

2. Draft resolution adopted unanimously by the committee on 21 September 2016.

6. With a view to effectively combating money laundering, the Assembly recommends that member States:

6.1. ratify, if they have not yet done so, and ensure an effective implementation of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, "Warsaw Convention");

6.2. ensure effective implementation and technical compliance with the existing anti-money laundering standards, such as the Recommendations adopted in 2012 by the Financial Action Task Force and Directive (EU) 2015/849 (the 4th European Directive) in the legal, law-enforcement and financial sectors;

6.3. pursue rigorously the process of anti-money laundering risk assessment and bring concerns about possible shortcomings to the attention of the relevant authorities;

6.4. ensure the existence of effective and independent national Financial Intelligence Units (FIUs), which are free of any political interference in their operational decision-making;

6.5. ensure that banks and other financial institutions apply the highest level of enhanced due diligence with regard to complex international business cases and potentially high-risk customers; the opinion of the Compliance Department should be decisive during the decision-making process;

6.6. acknowledge the importance of international co-operation and increase the amount of information that is spontaneously disclosed to foreign authorities without international co-operation requests.

7. The Assembly acknowledges the need to restore citizens' trust in the European democratic system, *inter alia* by preventing Politically Exposed Persons from using secrecy jurisdictions, and therefore calls on member States to:

7.1. ensure that financial institutions and the Designated Non-Financial Business Professions take particular care to identify Politically Exposed Persons, their family members and close associates and that necessary enhanced measures are applied rigorously (including ascertainment of the sources of wealth);

7.2. ensure that such accounts are continuously subject to enhanced monitoring, and are actively followed up by regulators in supervisory visits, while applying proportionate dissuasive sanctions where failures are identified;

7.3. maintain Politically Exposed Persons transactions under enhanced surveillance for at least five years following the end of the duties justifying this status.

B. Explanatory memorandum by Mr Stefan, Schennach, rapporteur

1. Introduction

1. In April 2016, companies and individuals across the globe found their most sensitive financial dealings exposed in a massive leak of documents, obtained from a law firm in Panama called Mossack Fonseca. Amongst those identified as having assets stashed in tax havens are present and former world leaders, dictators, and their friends and relatives, business leaders, well-known show business personalities, as well as arms dealers and drug traffickers. The story of this massive leak fuelled the already heated debate about tax avoidance and evasion. The process of investigating the Panama Papers is now in full swing.

2. The Panama Papers revelations intensified public outrage which had been simmering for years: citizens no longer wish to tolerate legal systems which allow taxation to be easily avoided by the wealthiest "1%", as well as ill-gotten gains to be stashed away, while they pay taxes on stagnant or even falling incomes. European citizens look with increasing suspicion at their political and economic elites; they are calling for effective action aimed at combating international tax evasion and aggressive tax avoidance.[3]

3. The international efforts to address the legal and illegal use of tax havens[4] have so far had limited effect. The fight against tax havens requires not only national measures, but also stronger action at the international level. Co-ordinated action also at Council of Europe level is needed in order to resolve the issue of tax avoidance by finding the proper means to ensure technical compliance with already existing international standards, while promoting strong political commitment in this regard.

4. The Parliamentary Assembly has already dealt with the issue, most recently in Resolution 1887 (2012) "Promoting an appropriate policy on tax havens". During its meeting in June this year, the Committee on Social Affairs, Health and Sustainable Development decided to merge three motions concerning the "Panama Papers" (Doc. 14034, Doc. 14045 and Doc. 14047) with the motion on "Effectively combating the adverse consequences of dirty money" (Doc. 13150) and I was confirmed as rapporteur for the report. Following a hearing in Paris on 15 March 2016 with two experts (Mr John Ringguth and Mr Luc Recordon) the committee held an exchange of views in June 2016 in Strasbourg with Mr Boudewijn Van Looij, Tax Policy Analyst at the Organisation for Economic Co-operation and Development (OECD), in the context of the preparation of this report.

2. The roots of the Panama Papers scandal

2.1. Leaked documents

5. The Panama Papers consist of approximately 2.6 terabytes of data spread over 11.5 million files, containing sensitive information which has been collected over the past 40 years. The files were provided by an anonymous source to the German newspaper *Süddeutsche Zeitung*. The documents were leaked from Mossack Fonseca, a law firm, which offers "comprehensive legal and trust services".[5]

6. Mossack Fonseca is based in Panama. Founded in 1977, it is the world's fourth biggest provider of offshore services. The company sits at the heart of the global offshore industry and tax havens, and acts for about 300 000 companies and employs 500 staff members in 42 countries, in particular in jurisdictions with strict secrecy regulations.[6]

---

3. Tax avoidance occurs when companies/individuals use artificial but legal methods to minimise their tax burden. In contrast, tax evasion is an illegal activity which involves dishonest tax reporting aiming to reduce or escape tax liability.
4. It should be mentioned that owning an offshore company is not illegal in most countries, provided proper disclosure policies are followed. A number of practices are perfectly legitimate and can be seen as a logical step for a broad range of business transactions. Illegality only occurs when companies which are subject to certain regulations in Europe (or elsewhere), decide to channel their financial resources through offshore subsidiaries, in order to evade the regulations which they are legally bound to respect.
5. Kelly Phillips Erb, "What are Panama Papers?", Forbes, April 2016, www.forbes.com/sites/.
6. Mossack Fonseca: inside the firm that helps the super-rich hide their money, *The Guardian*, 8 April 2016, https://www.theguardian.com/news/2016/apr/08/mossack-fonseca-law-firm-hide-money-panama-papers.

7. According to the Mossack Fonseca website, the company specialises in trust services, wealth management, international business structures and commercial law, among other areas. The company offers research, advice and other services for the following jurisdictions: Belize, the Netherlands, Costa Rica, the United Kingdom, Malta, Hong Kong, Cyprus, the British Virgin Islands, Bahamas, Panama, British Anguilla, Seychelles, Samoa, Nevada, and Wyoming (United States).[7]

8. The Panama Papers data primarily comprise e-mails, PDF files, photo files, and excerpts from an internal Mossack Fonseca database. They cover a period spanning from the 1970s to the spring of 2016. The *Süddeutsche Zeitung* has been analysing the data in co-operation with the International Consortium of Investigative Journalists (ICIJ).[8] The database contains only a fraction of the Panama Papers leaked from the Panama-based offices of Mossack Fonseca. For now, the documents themselves are not publicly available, and the details remain relatively sparse.[9]

9. The documents made public so far mention 143 politicians, including 12 national leaders, elected officials and their associates[10] from around 50 countries, together with several billionaires from the Forbes list,[11] celebrities and criminals, who are now known to have been using offshore tax havens. Hence, the Panama Papers case provides a rare insight into how rich and famous people "hide" their money, mostly to avoid having to pay taxes. The documents also expose bribery scandals, involving corrupt government officials. Following the revelations, several politicians had to resign, in the face of public pressure.[12]

10. The Panama Papers are not the first scandal of this kind. The "Luxembourg Leaks" (or LuxLeaks), for example, were revealed in November 2014, following a journalistic investigation conducted by the International Consortium of Investigative Journalists. Offshore Leaks and Swiss Leaks complete the list of recent scandalous revelations related to shady tax practices.

11. In this regard, it is worth mentioning that the role of whistle-blowers in society has become not only desirable, but vital. There exists a paramount public interest in the work of these individuals that cannot be effectively achieved without special protection. States have an obligation to protect whistle-blowers: a vulnerable group subject to systematic stigmatisation as a result of exercising fundamental rights to access and obtain information.[13] Unfortunately, most member States of the Council of Europe have no comprehensive laws for the protection of whistle-blowers, as was lamented in the Assembly's Resolution 2060 (2015) on improving the protection of whistle-blowers.

12. The recent outcome of the national trial following the LuxLeaks demonstrates the appalling lack of protection for whistle-blowers. The LuxLeaks revelations shed light on hundreds of controversial tax deals granted by the Luxembourg tax office, including tax arrangements helping 340 big companies such as Burberry, Pepsi, Ikea, Heinz, Shire Pharmaceuticals and others, to minimise their tax payments. Following a long trial process, the whistle-blower received a 12-month suspended sentence and was fined €1 500. He was found guilty on charges including theft and violating Luxembourg's strict professional secrecy laws.[14]

2.2. Tax havens – at the heart of the Panama Papers scandal

13. The history of tax havens is as old as taxation itself. The development of modern offshore centres is normally associated with rising taxation in the 1960s. However, the process had already started during the 1920s and 1930s when a few small countries led by Switzerland were beginning to make a name for themselves as tax havens.

14. Luxembourg was among the first countries to introduce the concept of the holding company. Under the law of 31 July 1929, such companies became exempt from income taxes. There is evidence also that Bermuda, the Bahamas and Jersey were all used to a limited extent as tax havens in the interwar years. Panama is one of the oldest tax havens in the world. At the height of the cocaine trade at the end of the last

---

7. Mossack Fonseca website, www.mossfon.com/about_service/mf-group/.
8. "Panama papers, the secrets of dirty money", *Süddeutsche Zeitung*, http://panamapapers.sueddeutsche.de/.
9. "What's On the Panama Papers' Database, What's Not, and Why?" Organised Crime and Corruption Reporting Project, 10 May 2016. https://www.occrp.org/en/daily/5217-what-s-on-the-panama-papers-database-what-s-not-and-why.
10. International Consortium of Investigative Journalists (ICIJ) official website, https://panamapapers.icij.org/the_power_players/.
11. "Panama tax papers: the taxonomy of the leak", *The Economist*, 14 April 2016.
12. International Consortium of Investigative Journalists (ICIJ) official website, https://panamapapers.icij.org/the_power_players/.
13. www.ohchr.org/Documents/Issues/Opinion/Protection/CenterConstitutionalRights.pdf.
14. "LuxLeaks whistleblower avoids jail after guilty verdict", *The Guardian*, 29 June 2016, https://www.theguardian.com/world/2016/jun/29/luxleaks-pwc-antoine-deltour-avoids-jail-but-is-convicted-of-theft.

century, Panama was facilitating money laundering for Latin American drug lords, offering a full range of financial services. Meanwhile, Switzerland's famous banking secrecy law of 1934 was triggered by a French tax-evasion scandal involving several wealthy elites. Thus, since their very creation, tax havens were designed to shield the money of wealthy and powerful people.[15]

15. In recent years, there has been an increased recognition of the need to improve the understanding of the activities conducted by offshore financial centres. Some offshores have captured a significant part of global financial flows, and their linkages with other financial centres create the potential for their activities to affect the financial stability of many countries.[16] According to a recent study, 8% of the world's financial wealth is held offshore, costing governments at least US$200 billion in tax income each year. 10% of the European financial wealth is held in tax havens, which generates a loss of US$75 billion in tax revenue each year.[17] The Tax Justice Network estimates that some US$21-32 trillion is stashed offshore, in conditions of low or zero tax and substantial secrecy.[18]

16. Until now, there has been no precise definition of a tax haven. The International Monetary Fund (IMF), for instance, defined the following features of tax havens: the primary orientation of business towards non-residents; a favourable regulatory environment (low supervisory requirements and minimal information disclosure); and low-or zero-taxation schemes.[19] The IMF proposed the following definition of tax havens: "a country or jurisdiction that provides financial services to non-residents on a scale that is incommensurate with the size and the financing of its domestic economy." However, there are other definitions of offshores used by different international bodies.

17. One of the ways to address the tax havens problem comprehensively is to directly confront offshore secrecy and the global infrastructure that creates it. A first step towards this goal is to identify as accurately as possible the jurisdictions that make it their business to provide offshore secrecy. For this purpose, the Financial Secrecy Index calculated by the Tax Justice Network ranks jurisdictions according to their secrecy and the scale of their offshore financial activities. This ranking is a tool for understanding global financial secrecy, and illicit financial flows or capital flight.[20] According to the 2015 Secrecy Ranking, Switzerland is ranked in first position, with $6.5 trillion in assets under management, of which 51% originated from abroad. Luxembourg, Germany, the United Kingdom and Panama are among the 15 countries with the highest Financial Secrecy Index. If the United Kingdom's network of overseas territories or crown dependencies were assessed together, it would be at the top.

18. A wide range of individuals and organisations use tax havens for legal and illegal purposes: to avoid regulation, reduce tax liabilities through transfer pricing, launder money, engage in various criminal activities, and evade tax. Offshore companies are often used by multinational companies, which can artificially shift profits from high-tax to low-tax jurisdictions using a variety of techniques, such as shifting debt to high-tax jurisdictions. Corporations use tax havens, perfectly legally, in order to minimise tax liabilities (tax avoidance) through so-called "aggressive tax planning" and, in the case of corporations, shell companies to facilitate transfer pricing.

19. Individuals can evade taxes on passive income, such as interest, dividends and capital gains, by not reporting income earned abroad. As long as secrecy is maintained, not only potential tax avoiders and evaders, but also money launderers, criminals and corrupt politicians are likely to take advantage of these countries to hide their assets. The key issue, therefore, is secrecy, and more generally, opacity.

20. Behind the Panama Papers there are real victims. One shocking example covered by the papers shows how Mossack Fonseca incorporated three companies for Andrew Mogilyansky, a wealthy Russian-American businessman, before the firm's compliance department belatedly found out, in 2014, that Mogilyansky was a convicted paedophile. The law firm decided, however, that it was not their legal responsibility to report his offshore business activities to the authorities. By the same token, offshores apparently played a part in financing war crimes in Syria. Companies which have used the services provided by the Panamanian firm

15. Sébastien Guex, "The Origins of the Swiss Banking Secrecy Law and Its Repercussions for Swiss Federal Policy", *The Business History Review*, Vol. 74, No. 2 (Summer, 2000).
16. Offshore Financial Centers (OFCs): IMF Staff Assessments, International Monetary Fund, https://www.imf.org/external/NP/ofca/OFCA.aspx.
17. Gabriel Zucman, "*The Hidden Wealth of Nations: The Scourge of Tax Havens*", University of Chicago Press.
18. James S. Henry, "The Price of Offshore Revisited" Tax Justice Network, July 2012, www.taxjustice.net/wp-content/uploads/2014/04/Price_of_Offshore_Revisited_120722.pdf.
19. Zoromé A., IMF Working Paper: "Concept of Offshore Financial Centers: In Search of an Operational Definition", April 2007.
20. Financial Secrecy Index, Tax Justice Network, www.financialsecrecyindex.com/introduction/introducing-the-fsi.

have been accused of supplying fuel to the Syrian Air Force. Furthermore, a company in Uganda paid Mossack Fonseca to help it avoid paying $4 million in taxes. It is worth mentioning that $4 million represents more than the government's health budget for the whole country.

21. As far as corruption is concerned, various major banks and financial institutions have been involved in providing secret accounts for various politically exposed persons (PEPs), allowing them to enrich themselves at the cost of their people's well-being, and to hide their ill-gotten gains.[21] When banks operate accounts for allegedly corrupt politicians or State officials, known as "kleptocrats", they play an important role in facilitating illicit financial flows.[22]

22. Oxfam, a confederation of non-governmental organisations (NGOs) working in more than 90 countries around the world to fight poverty, has recently drawn attention to income inequalities which have reached new extremes. According to its study, the richest 1% have now accumulated more wealth than the rest of the world put together. In 2015, 62 individuals had the same wealth as 3.6 billion people – the bottom half of humanity.[23] A global network of tax havens, which enables the richest individuals to hide 7.6 trillion dollars, is one of the main causes of this social injustice. Oxfam calls on governments to commit to a second generation of tax reforms to effectively put an end to harmful tax practices in a way that benefits all countries.

23. Fighting tax avoidance and evasion by companies and individuals requires an internationally agreed code of conduct which ensures the transparency of ownership and the traceability of assets to their ultimate owners. In order to ensure transparency, it is important to reinforce anti-money laundering legislation and look at the solidity of international action.

2.3. Money laundering

24. Dirty money is the lifeblood of the underground economy and crime. It is "ill-gotten money that needs money laundering for it to be used in normal business transactions".[24] Most often it is understood as "criminal proceeds" from various covert activities (trafficking, fraud, theft, corruption, etc.), with a step of white-washing needed to transform such money into clean, or neutral, funds. The available gross estimates of the volume of dirty money flows cross-border globally are in the range of US$1.1-1.6 trillion per year.[25]

25. Although the international community has equipped itself with the necessary legal means to root out money laundering in the last two decades, the effectiveness of action at both international and national levels is questionable. Moreover, financial institutions sometimes turn a blind eye to such practices. Then there are also borderline practices concerning methods or activities which are not necessarily illegal but which are unethical and harmful to society (for instance tax avoidance, smoke-screen companies, certain real estate transactions and some over-engineered financial products). The creation and circulation of dirty money corrupts the real European economy, causes severe human tragedies, threatens security in society and encourages the formation of mafia-type economic powers which undermine democracy.

26. Anti-money laundering measures impact on an enormous range of national actors:

– government ministries, particularly finance, justice and interior;

– law enforcement, including the investigatory arms of the police, customs and border guards as well as the security services, prosecutors and the judiciary;

– central banks and financial regulators, the whole of the financial sector, including credit and other financial institutions, the insurance sector, the securities market, money remitters and exchange houses;

– Designated Non-Financial Businesses and Professions (DNFBPs): lawyers, accountants, trust and company service providers, casinos, real estate agents and notaries;

– the non-profit and charity sectors.

---

21. Moran Harari, Markus Meinzer and Richard Murphy, "Key Data Report: Financial Secrecy, Banks and the Big 4 Firms of Accountants", Tax Justice Network, October 2012, www.taxjustice.net/cms/upload/pdf/FSI2012_BanksBig4.pdf.
22. Robert Palmer, "Profiting from corruption: The role and responsibility of financial institutions", Anti-Corruption Resource Centre, December 2009, www.cmi.no/publications/file/3537-profiting-from-corruption.pdf.
23. Oxfam GB, "An economy for the 1%", Oxfam International, ISBN 978-1-78077-993-5, January 2016.
24. www.businessdictionary.com/definition/dirty-money.html#ixzz3d7ThUmKq.
25. Raymond Baker, "Capitalism's Achilles Heel", 2004; and Gabriel Zucman, "The Missing Wealth of Nations", 2013.

27. The central anti-money laundering institutions at the national level are usually called the Financial Intelligence Units (FIUs) (or similar). They primarily serve as the national centre for the receipt and analysis of suspicious transaction reports or suspicious activity reports from the banks and other reporting entities. Most FIUs have some accountability to the government or to the President or parliament. Whatever the domestic arrangements are for accountability, the international standards require the FIU's independence of political interference in operational decision-making.

28. Many, but not all, FIUs have the power to order the suspension of transactions – usually for short periods – to allow for further analysis without funds disappearing. Where the FIU considers a suspicion to be founded, it disseminates the results of its analysis to law enforcement (or prosecutors) for investigation and prosecution. In urgent cases, there will be co-ordination with prosecutors to ensure early application to the courts to convert FIU suspension orders into judicial freezing orders.

2.3.1. National anti-money laundering risk issues

29. Financial institutions and the DNFBPs need to understand their anti-money laundering risks at the level of the clients with which they are dealing and take steps to mitigate those risks. The preventative standards require financial institutions and DNFBPs to undertake Customer Due Diligence (CDD) measures when:

– establishing business relations;

– carrying out occasional transactions above the applicable threshold;

– there is a suspicion of money laundering (or terrorist financing);

– there are doubts about the veracity or adequacy of previously obtained customer identification data.

30. The basic CDD measures to be taken by financial institutions and DNFBPs are as follows:

– identifying and verifying the customer's identity (the person with whom they are dealing);

– identifying the beneficial owner[26] and taking reasonable measures to verify the identification of the beneficial owner;

– understanding and obtaining information on the purpose and intended nature of the business relationship;

– conducting ongoing due diligence with regard to the business relationship to ensure that transactions are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

31. The business proposal may involve a complex structure, including the use of nominees, bearer shares and possibly a discretionary trust in yet another jurisdiction. Such schemes may simply be intended to conceal illegal proceeds. In many situations (and not simply those involving complex international business), commercial decisions to accept profitable business still override compliance departments' concerns about risk (assuming compliance departments are even consulted, which is not always the case). In making its decisions to take on potentially high risk customers and businesses, the opinion of the compliance department on money laundering risk should always be obtained and its view should be decisive. Non-resident customers should always be treated as high risk, requiring enhanced CDD measures.

32. The global anti-money laundering evaluation process can result in the public identification of jurisdictions with major deficiencies (on black lists) and of jurisdictions with lesser deficiencies (on so-called dark grey and grey lists). A similar process of public identification has been used by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes in its assessments to leverage better compliance on the sharing of tax information. Such lists have reputational and economic consequences for the countries concerned. Parliamentarians should be encouraged to pursue the process of anti-money laundering national risk assessment rigorously, and to keep the assessments up-to-date, while bringing concerns about possible gaps to the attention of the responsible authorities through appropriate channels.

---

26. Under the Financial Action Task Force (FATF) standards, the beneficial owner refers to "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement". The references to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

2.3.2. Law enforcement issues

33. Financial investigative techniques are skills that need to be learned by law-enforcement agencies. The financial aspects of investigations cannot usually be undertaken with any real chance of success by the officers investigating the predicate crime itself unless they are fully trained in modern financial investigative techniques. For big cases involving large sums of money, financial investigators may also need dedicated accountancy support, and expertise in financial profiling of suspects (to identify discrepancies between income and apparent wealth). It would be important for parliamentarians to ask for estimates of the level of serious proceeds-generating crimes in their jurisdictions and obtain the numbers of trained and operational financial investigators in their jurisdictions.

34. The numbers of trained financial investigators can be worryingly low. Very often, law enforcement decides that the resources involved in financial investigation, particularly where tracing assets which have been moved abroad is concerned, is simply not cost effective. Financial investigation takes time and perseverance to trace money that has moved offshore through various layers of shell companies, (legitimate) corporate structures and trusts. Historically, many police enquiries into the proceeds of organised criminality and corruption have run into the ground because of the inability to track the ultimate beneficial owners of the accounts abroad. Either that evidence was simply not available – because it was not asked for by the financial institutions holding the funds, or it was not kept by the lawyers (or other company service providers) who formed the companies or trusts abroad. Even if this beneficial ownership information had been asked for, it was not necessarily verified or kept up-to-date.

35. More professional training in financial investigation is generally required at national levels, and countries need to commit more resources to financial investigation. Parliamentarians should review domestically with the competent authorities their law-enforcement capacity to access financial secrecy information at sufficiently early stages in all money laundering and related confiscation enquiries, as well as in major proceeds-generating offences. Law enforcement and prosecutors should test relevant legal provisions in this area more frequently, and where they identify difficulties with the legislation, these problems should be raised with those who have political accountability for the legislation. Legislative amendments should be pursued where necessary to amend or harmonise access to financial secrecy information at sufficiently early stages in enquiries into criminal proceeds.

3. The international toolkit to fight money laundering and tax evasion.

36. At this stage in the development of anti-money laundering and anti-tax evasion measures, there exists a plethora of international standards. For most countries, the political commitment to enact them and to ensure compliance is not in doubt: it is generally a question of timing and legislative calendars as to when this happens. The biggest challenges for jurisdictions today is the effective implementation of the standards in all sectors (legal, law enforcement and financial). When States have completed the necessary legislative changes in response to current international initiatives, theoretically there should be sound measures broadly available in most European countries at the repressive (criminal) level, as well as at the preventative level.

37. The continuous anti-money laundering standard setting by the United Nations, the OECD, the European institutions and the Financial Action Task Force (FAFT) requires countries to regularly update their anti-money laundering regimes in order to create optimal legal bases, systems and tools to fight money laundering more effectively. European countries are currently amending their regimes to reflect the revised FATF Recommendations 2012 and Directive (EU) 2015/849 (the 4th European Directive).[27]

3.1. Parliamentary Assembly Resolution 1881 (2012)

38. As mentioned above, the Parliamentary Assembly addressed the issue of tax havens in its Resolution 1881 (2012) on promoting an appropriate policy on tax havens. A substantial list of measures was proposed, including stepping up pressure over secrecy jurisdictions and tax havens to phase out fiscal bank secrecy, country-by-country reporting by multinationals wherever they operate, across all business sectors, a ban on anonymous accounts, off-balance-sheet bookkeeping and bearer shares. The importance of disclosure of the ultimate beneficial ownership of all business entities, notably trusts and funds, was stressed alongside harmonisation of tax practices across Europe and beyond. Furthermore, it was recommended that the

27. Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

member States move towards the automatic exchange of all tax information. Finally, the Parliamentary Assembly called for more pressure to be brought to bear on those States which have direct influence over secrecy jurisdictions and tax havens, with a view to enhancing their co-operation in tax matters.

3.2. G20 and OECD

39. International bodies such as the G20 (Group of 20 leaders and finance ministers and central bank governors) and the OECD have stepped up co-ordinated efforts to gain a truer picture of income and assets worldwide. In 2009 the leaders of the G20 put transparency at the centre of their wider response to the global economic crisis. Today, most governments have committed themselves to ensuring that financial information is readily available.

40. The G20 statement of 18 April 2016 calls on the FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes to make proposals to improve the implementation of the existing international standards on transparency, including on the availability of beneficial ownership information, and its international exchange.

41. The G20 Finance Ministers met in Washington on 14 and 15 April 2016 and urged all relevant countries, including all financial centres and jurisdictions, to commit to the Automatic Exchange of Information standard (AEOI) with exchanges beginning in 2017 and 2018; the OECD was invited to establish objective criteria to identify non-co-operative jurisdictions. In this regard, G20 countries are asked to consider defensive measures if progress, as assessed by the Global Forum, is not made.

42. The Global Forum reviews countries' laws on information exchange, assesses how effective the information exchange is and issues compliance ratings. The OECD has developed standards for exchange of information on request (EOIR) and, more recently, the Common Reporting Standard (CRS) which provides for automatic exchange of financial account information between tax authorities (AEOI).[28] To date, 135 member jurisdictions, including 43 of the 47 Council of Europe member States (all except Bosnia and Herzegovina, the Republic of Moldova, Montenegro and Serbia) are members of the Global Forum.

43. The 132 members of the Global Forum have committed themselves to the tax transparency standard for EOIR, and 94 jurisdictions have so far been reviewed for compliance with this standard through a vigorous peer review process. The first round of reviews will be completed by the end of 2016. The second round will evaluate jurisdictions in line with the updated terms of reference, including the requirements on availability of beneficial ownership information. The OECD welcomes the fact that 98 jurisdictions have already committed to the CRS on AEOI, most recently Nauru and Vanuatu. However, two financial centres – Panama and Bahrain – have yet to do so (in May 2016, Panama also committed to implementing the CRS with first exchanges in 2018).[29]

44. Almost 100 countries and jurisdictions are now covered by the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127) which provides the most comprehensive legal instrument to streamline the implementation of commitments to tax transparency. The convention was developed jointly by the OECD and the Council of Europe in 1988 and amended by a Protocol in 2010 (CETS No. 208).

45. Another important initiative is the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, which promotes transparency and exchange of information among jurisdictions for tax purposes. "Base erosion and profit shifting" refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Under the inclusive framework, over 100 countries and jurisdictions are collaborating to implement the BEPS measures.

46. The standards developed by the OECD and endorsed by the G20 and the rest of the international community are robust. Progress has been important and has already translated into more than half a million taxpayers disclosing their assets held offshore to the tax administrations of their countries of residence, with at least €50 billion in additional revenues has been identified in countries that have put in place voluntary disclosure programmes and similar initiatives.

47. Nevertheless, it is clear that progress still needs to be made to ensure effective and global implementation of the OECD standards. We must note that although much reliance is placed on the work of the Global Forum, it is not a policing body and it does not provide assurance of continuing compliance.[30]

---

28. OECD Secretary-General Report to G20 Finance Ministers – Update on tax transparency, Washington D.C., United States, April 2016, https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-april-2016.pdf.
29. Exchange of views with Mr Boudewijn Van Looij, Tax Policy Analyst, OECD, 23 June 2016.

3.3. European Union

48. The European Union is at the forefront of efforts to fight money laundering, tax evasion and tax avoidance. In recent years, the European Union has adopted new legislation on money laundering, including the creation of registries for companies, on co-operation between tax administrations to implement the new international standard of automatic exchange of tax information and on the banking sector (Capital Requirement Directive IV 2013), obliging major European banks to disclose information about their tax payments and to comply with due diligence rules regarding the identification of their customers. Furthermore, the European Commission also presented the Transparency Package in 2015 and the Anti-Tax Avoidance Package in 2016.[31]

49. The Anti-Tax Avoidance Package contains a series of initiatives for a stronger and more co-ordinated European Union stance against corporate tax abuse within the single market and beyond. It rests on three key pillars: effective taxation, tax transparency and addressing the risk of double taxation.

50. The Package contains a number of legislative and non-legislative initiatives to help member States protect their tax bases, create a fair and stable environment for businesses and preserve EU competitiveness vis-à-vis third countries. The Package consists of an Anti-Tax Avoidance Directive, which proposes a set of legally binding anti-avoidance measures, which all member States should implement to shut off major areas of aggressive tax planning and a Recommendation on Tax Treaties, which advises member States on how to reinforce their tax treaties against abuse by aggressive tax planners, in an EU-law compliant way. The Package also contains a revision of the Administrative Cooperation Directive, which introduces country-by-country reporting between tax authorities on key tax-related information on multinationals.[32]

51. Since the Panama Papers scandal, the European Union has begun the process of analysing the evidence and translating it into real policy. In July 2016, the special committee (PANA), established to investigate whether EU law was broken by anyone mentioned in the Panama Papers, met for its first meeting.[33] The committee will have to establish which member States have not transposed EU regulations into national law, thus allowing tax fugitives to carry out their illicit practices. The committee is composed of 65 members and has been given 12 months to carry out its work. The committee will be able to inspect files related to the issue and call high-ranking members of the European Commission and member State governments to its hearings, at which attendance will be mandatory. A final report will be published in order to summarise the committee's findings.

52. Directive (EU) 2015/849 aims to strengthen EU rules on anti-money laundering and terrorist financing. It focuses on risk assessment and takes a risk-based approach, imposing rules on due diligence which vary according to the level of risk. The directive imposes minimum requirements, however member States are free to impose stricter requirements if they consider it necessary.

53. The 4th European Money Laundering Directive requires EU member States, in line with FATF standards, to ensure that corporate and legal entities incorporated in their territories hold adequate, accurate and current information on both their legal ownership and their beneficial ownership. The directive goes further than the FATF, requiring legal persons to provide this information to a central register. Member States are required to ensure that their competent authorities and FIUs provide this information to the competent authorities and FIUs of other member States in a timely manner, though no time frame has been set as yet for law enforcement to gain access to the register.

54. At the same time the directive widens the scope of the due diligence requirements. The threshold for cash transactions for traders in goods is lowered to €10 000 and domestic, as well as foreign, politically exposed persons (PEPS) are subject to enhanced vigilance measures. All EU member States must transpose the directive into national law by July 2017.[34]

---

30. European initiatives on eliminating tax havens and offshore financial transactions and the impact of these constructions on the Union's own resources and budget, 2013: www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/staes_study/staes_studyen.pdf.

31. www.greens-efa.eu/fileadmin/dam/Documents/TAXE_committee/Outome_of_the_political_meeting_with_the_presence_of_LS__24052016_CLEAN.pdf.

32. European Commission – Fact Sheet: The Anti-Tax Avoidance Package – Questions and Answers (Updated), Brussels, 21 June 2016, http://europa.eu/rapid/press-release_MEMO-16-2265_en.htm.

33. Daniel Mützel, "Panama Papers parliament committee keen to avoid LuxLeaks mistakes", 13 July 2016 www.euractiv.com/section/euro-finance/news/.

34. A Guide to Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, www.cepi-cei.eu/.

3.4. The Council of Europe Warsaw Convention

55. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, "Warsaw Convention') was opened for signature in 2005. This convention has 26 ratifications so far and thus still has to be ratified by 21 Council of Europe member States.

56. More and more European countries are looking for creative legislative solutions to attack unexplained wealth in their societies. They recognise that trust in their national authorities' ability to uphold the rule of law is undermined when citizens see people with significant wealth and no visible explanation for it. The Warsaw Convention provides an important article regarding the use of reverse onuses. It provides for the adoption by States Parties of such legislative or other measures as may be necessary to require that, in respect of a serious offence as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law. It is also interesting to note that the performance of countries on achieving the types of significant confiscation orders that make a real difference in the fight against organised crime and corruption is much better in the countries which have adopted reverse onus provisions in serious cases.

57. Most countries are able, under appropriate court orders, to access historic bank records in investigations. One other particularly useful technique in financial investigations, which is not available to law enforcement in some jurisdictions, is "prospective" financial monitoring orders. Under such orders future activity on an account can be monitored in real time for defined periods in the investigative stage. It is a mandatory requirement of the Warsaw Convention that States adopt measures to make this investigative technique available in relation to banking information both for domestic investigations and for international co-operation with other States Parties.

58. Moreover, it should be noted that national performance in many European countries in achieving serious money laundering convictions, and significant asset recovery remains sub-optimal. Some of the powers set out in the Warsaw Convention go beyond current international standards and are designed to assist law enforcement and prosecutors in achieving better results in this area. For this reason the convention needs to be ratified by all Council of Europe member States rapidly.

3.5. The Financial Action Task Force

59. The Financial Action Task Force (FATF) is an intergovernmental body established in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, its purpose expanded to act on terrorism financing.

60. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF Standards comprise the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the Glossary.[35] The body monitors countries' progress in implementing the FATF Recommendations by "peer reviews" (mutual evaluations) of member countries.

61. Countries have diverse legal, administrative and operational frameworks and different financial systems, and thus cannot all take identical measures to counter these threats. The FATF Recommendations therefore set an international standard which countries should implement through measures adapted to their particular circumstances. They set out the essential measures that countries should have in place to:

– identify the risks and develop policies and domestic co-ordination;

– tackle money laundering, terrorist financing and the financing of proliferation;

– apply preventive measures for the financial sector and other designated sectors;

– establish powers and responsibilities for the competent authorities (e.g., investigative, law-enforcement and supervisory authorities) and other institutional measures;

– enhance the transparency and availability of beneficial ownership information of legal persons and arrangements;

35. International standards on combating money laundering and the financing of terrorism & proliferation (The FAFT Recommendations), February 2012 (updated June 2016): www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

– facilitate international co-operation.

62. The FATF calls on all countries to implement effective measures to bring their national systems for combating money laundering into compliance with the revised FATF Recommendations.

3.6. Politically Exposed Persons

63. As defined by the FAFT, foreign Politically Exposed Persons (PEPs) are individuals who have been entrusted with prominent public functions by a foreign country. Since 2003, the FATF has required all financial institutions and DNFBP to take enhanced due diligence measures for all foreign PEPs, their family members and close associates. The FATF puts no time limit on when a person who ceases to occupy his or her prominent public function should cease to be considered as a PEP.

64. Many PEPs with official functions outside Europe have been investigated for, or have been proved to have been involved in receiving corrupt payments and plundering assets from their own States. Such funds have found their way into European banks on too many occasions. In its 2013 Annual Report, the UK Financial Conduct Authority (FCA) noted that one third of the banks visited failed to identify PEPs. Three quarters of the banks they examined also failed to establish the source of wealth of PEPs, and in the regulator's view placed too much reliance on the customers' own explanations. The situation in the United Kingdom regarding failure to properly identify sources of wealth of PEPs is mirrored in many countries.

65. The 4th Directive requires reporting entities to take into account the continuing risk posed by PEPs who are no longer entrusted with prominent public functions for at least 12 months. It is considered that a rigid application of a 12-month period is not in line with FATF standards and that States should encourage their financial institutions to establish the duration of enhanced CDD measures for former PEPs on a case-by-case basis taking into account continuing risks.

66. Enhanced due diligence measures include: having risk-management systems to determine whether customers or beneficial owners are PEPs and obtaining senior management approval for such relationships; taking reasonable measures to establish both the source of wealth and the source of funds of such customers and beneficial owners and to conduct enhanced ongoing monitoring of the business relationship.

67. Countries need to ensure that financial institutions and DNFBP take particular care to identify PEPs, their family members and close associates and that necessary enhanced measures are applied rigorously (including ascertainment of the sources of wealth) and that such accounts are continuously subject to enhanced monitoring. These enhanced measures should be actively followed up by regulators in supervisory visits and proportionate and dissuasive sanctions should be applied where failures are identified. It is also recommended that States do not fix a "one-size fits all" limit on the length of time a PEP should continue to be considered as a PEP once he or she has ceased to exercise public functions. Financial institutions need to be responsive to requests for preservation of banking records in cases involving PEPs to ensure their availability in prosecutions. The general time limit for record keeping by financial institutions handling accounts involving PEPs cases could usefully be extended (currently a minimum 5-year period) to 8-10 years.

4. Conclusions and recommendations

68. Taxes are the lifeblood of a democratic State. Most citizens care about fair taxation not least because they are law-abiding taxpayers. In many countries around the world, tax policies are shaped by very powerful lobbies on behalf of the wealthiest people, which deprive governments of the resources needed to fulfil obligations such as upholding their citizens' rights to essential public services. Paying taxes has almost become a voluntary activity for the better-off – the wealthiest individuals and companies can afford to use tax havens to avoid paying what they owe to the rest of the society.

69. We can all agree that building universally acceptable tax solutions would be pointless without global implementation. The Panama Papers scandal demonstrated that in spite of the advances over the past years in the establishment of robust international standards on tax transparency, the veil of secrecy continues to damage our societies, whether by "legitimate" aggressive tax planning and tax avoidance, by concealing earnings to evade taxes, or by committing other serious financial crimes like money laundering. Therefore, the issue of tax transparency has never been higher on the political agenda.

70. As highlighted in the present report, the issue is not an absence of standards, but the lack of their effective implementation. The Parliamentary Assembly should call on the international bodies such as the OECD, the International Monetary Fund, the European Commission and the G20 to conduct a thorough

analysis and identification of deficiencies in legislation and practices, in order to help countries to reach technical compliance with international standards, while also promoting the tools and practical guidance necessary for a globally consistent implementation.

71. All economic crime is committed for profit. Money laundering ensures that those profits are retained and increased, whether the crimes are committed by lone individuals, or by highly organised criminal groups. Money laundering provides such crimes as corruption, human trafficking or drug trafficking with cash flow and investment capital, and the incentive to commit further proceeds-generating crimes. The Parliamentary Assembly should encourage member States to step up efforts to meet international standards, and put more pressure on national authorities to achieve better anti-money laundering results.

72. Corruption undermines democratic accountability and the rule of law, unfairly limits access to public resources and services, drains national wealth, and subverts lawful economic activity. Besides, it also represents a serious affront to human rights. Restoring integrity and fostering confidence in our financial, tax and government systems has become a question of survival for our democratic institutions. For this reason we must recommend urgently addressing the issue of Politically Exposed Persons using tax havens in order to avoid taxes and launder their illegal proceeds.