Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14165
11 October 2016

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

Committee Opinion[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Dirk Van der MAELEN, Belgium, Socialist Group

A. Conclusions of the committee

1. The Committee on Political Affairs and Democracy considers the report "Lessons from the 'Panama Papers' to ensure fiscal and social justice", presented by the Committee on Social Affairs, Health and Sustainable Development, as being very timely and relevant and it congratulates Mr Stefan Schennach, the rapporteur.

2. This report results from the grouping of three motions: Doc. 14034 "The 'Panama Papers' – an opportunity to expose corruption and organised crime", Doc. 14045 "The 'Panama papers' and the concern about fiscal, social justice and public trust in our democratic system", and Doc. 14047 "Panama Papers: what lessons for the state of democracy in Council of Europe member States?", regrouped, by the Bureau, under Reference 4210 of 27 May 2016. In addition, the Committee on Social Affairs, Health and Sustainable Development decided to merge into this report the motion on "Effectively combating the adverse consequences of dirty money" (Doc. 13150, Reference 3952 of 26 April 2013).

3. Welcoming the general findings of this report, the committee proposes to further clarify and refine the draft resolution contained in the main report through a number of amendments.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 5, replace the words "does not necessarily require new legal or technical standards; what is lacking" by "requires new legal or technical standards; what is urgent however"

Amendment B (to the draft resolution)

In paragraph 5.2, replace the words "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", by the words "implement Automatic Exchange of Financial Account Information in Tax Matters on a multilateral basis and via multilateral instead of bilateral agreements".

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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. Reporting committee: Committee on Social Affairs, Health and Sustainable Development, see Doc. 14141 and Addendum. Opinion approved by the committee on 11 October 2016.

Amendment C (to the draft resolution)

In paragraph 5.3, replace the words “and stable”, by the words: “, stable and fair”.

Amendment D (to the draft resolution)

In paragraph 5.4, after the words “setting up a”, insert the words “publicly accessible”.

Amendment E (to the draft resolution)

After paragraph 5.8, add the following new paragraph: “develop stronger sanctions for banks, and legal entities that assist in tax fraud, including the temporary suspension or lifting of operating licenses as well as the freezing of accounts and assets;”.

Amendment F (to the draft resolution)

After paragraph 5.8, add the following new paragraph: “make the OECD Base Erosion Profit Shifting (BEPS) Guidelines on tax challenges and tax standards, that have already been agreed by OECD countries and the G20, the new Global norm.”

Amendment G (to the draft resolution)

After paragraph 5.8, add the following new paragraph: “encourage the OECD to review, together with the Council of Europe, their joint Convention on Mutual Administrative Assistance in Tax Matters with the aim of facilitating the creation of an international tax co-ordinating body under the auspices of the OECD, capable of imposing sanctions.”

C. Explanatory memorandum by Mr Dirk Van der Maelen, rapporteur for opinion

1. One of the three motions which led to the report by the Committee on Social Affairs, Health and Sustainable Development was tabled by me, on 27 April 2016, on “Panama Papers: what lessons for the state of democracy in Council of Europe member States?”.

2. In early April 2016, the world was confronted with the Panama Papers scandal: a leaked set of 11.5 million confidential documents that provide detailed information about more than 214 000 offshore companies listed by the Panamanian corporate service provider Mossack Fonseca, including the identities of shareholders and directors of the companies. The documents show how wealthy individuals, including public officials, hid their assets from public scrutiny.

3. At the time of publication, the papers identified five heads of State or government from Argentina, Iceland, Saudi Arabia, Ukraine, and the United Arab Emirates, as well as government officials, close relatives, and close associates of various heads of government of more than 40 other countries. The Prime Minister of Iceland was forced by demonstrators to resign over his involvement.

4. The Parliamentary Assembly held a current affairs debate on “Panama papers” on 18 April 2016. It is obvious that it should continue following the political consequences of this issue and, in particular, its implications on the functioning of democratic institutions in Council of Europe member States. We should learn from this scandal and propose measures such as the open ownership of companies, sanctions for un-co-operative tax havens and sanctions for the intermediaries in the financial service sector including banks, lawyers and accountants.

5. Four years ago, in April 2012, I presented to the Assembly a report on “Promoting an appropriate policy on tax havens”. In its Resolution 1881 (2012), the Assembly stated its concern “about the extent of the offshore financial system, in particular tax havens, and its impact on public finances, the stability of financial markets and society at large”.

6. One year later, in my report on “The activities of the Organisation for Economic Co-operation and Development (OECD) in 2012-2013”, I pointed out that tax evasion and aggressive tax avoidance practices of multinational companies were a threat to democratic institutions. In its Resolution 1951 (2013), the Assembly listed concrete measures to ensure tax fairness by cracking down on aggressive tax evasion.

7. It welcomed “the OECD’s work on Base Erosion and Profit Shifting (BEPS)”, urged “the OECD to continue to take a determined lead in reforming international rules for the taxation of multinational corporations so as to adequately reflect production and trading practices in today’s global economy” and recognised “the importance of governmental collaboration to co-ordinate tax systems and thereby ensure that tax payers have confidence in them”.

8. More needs to be done, however, both to crack down on illegal tax evasion and to promote far-reaching reforms of tax systems in order to combat aggressive tax avoidance. Governments have a duty to ensure that taxes are levied both fairly and efficiently. Much of today’s tax legislation is based on an outdated vision of economic activity dominated by fixed assets and with limited cross-border exchange. A digital economy, based on intangible assets and rapid cross-border transfers, requires radical new approaches to taxation. The OECD, given its mission to develop rules supporting the efficient operation of global markets, provides an appropriate forum for the elaboration of new approaches. What is needed now is forceful new thinking, backed by the determination to act.

9. I view this as a matter of extreme urgency. In Europe, leaked documents and e-mails concerning funds allegedly hidden in secret accounts in tax havens by politicians, business people and other wealthy individuals have undermined confidence in democratic institutions. Tax evasion and tax avoidance deprive European Union governments of around one trillion euros in annual revenue, according to the European Commission. This exceeds the total amount that European Union member States spend on health care and it amounts to four times the amount of money spent on education.

10. The issue is not just a matter of illegal tax evasion. It also concerns fully legal practices that are used by multinational companies to minimise their tax bills. In Great Britain, companies like Amazon, Google and Starbucks have come under fire for accounting arrangements that enable them to minimise legitimately the amount of tax they pay to the United Kingdom Treasury, despite buoyant sales on British soil.

11. Last August, the European Union ordered Ireland to collect 13 billion euros in unpaid taxes from Apple, a record penalty. In the United States, Apple has been criticised in Congress for avoiding taxes on tens of billions of dollars in revenue from its international operations that were channelled through offshore entities. In other countries, concerns are also growing that multinational corporations are unfairly exploiting cross-border accounting opportunities to maximise their profits by reducing the amount of taxes that they pay.

12. At the same time, it is to be noted that tax avoidance cannot just be blamed on the aggressive strategies of individual companies; it is also the result of the tax policies of national governments, including those designed to attract investment by foreign corporations.

13. In parallel, I believe that we should step up the fight against the widespread illegal tax evasion that continues to be encouraged by tax havens. In particular, we should support the OECD’s efforts to press internationally for the implementation of arrangements for automatic exchange of information for tax purposes in order to combat illegal tax evasion.

14. In this respect, the OECD is working on the Standard for Automatic Exchange of Financial Account Information in Tax Matters as an essential step for effectively tackling evasion. Automatic exchange of information can help to counter offshore non-compliance in a number of ways. It can provide timely information in cases where tax has been evaded either on an investment return or the underlying capital sum. It can also help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance. Finally, it has a deterrent effect, increasing voluntary compliance and encouraging taxpayers to report all relevant information.

15. The draft resolution states that “[t]he Assembly considers that the fight against tax evasion and tax avoidance does not necessarily require new legal or technical standards”. While it is correct to state that effective implementation of existing legal and technical standards is lacking, the Assembly should not give the message that new legal or technical standards are not necessary or desirable to improve the fight against tax evasion and tax avoidance.

16. Since 2009, tax transparency has improved greatly. This happened in different steps, and after every step, it became clear that another step was necessary. In 2009, bank secrecy was being abandoned by enforcing exchange of financial information for tax purposes on demand. At that time, the agreed international standard was “exchange of information on demand”.

17. Until 2012 or even 2013, automatic exchange of information (AEOI) was deemed undesirable. Since then, the consensus changed and automatic exchange of information became the new international standard, which led to the agreement on the OECD common reporting standard. In the same way anti-money laundering standards have changed over time and they will keep improving in the coming years.

18. Therefore, I would like to stress the importance of continuing change, and propose in Amendment A that paragraph 5 of the draft resolution reads as follows: "The Assembly considers that the fight against tax evasion and tax avoidance requires new legal or technical standards; what is urgent however is the effective implementation of the existing ones. …"

19. Concerning the automatic exchange of information, member States should not only be encouraged to join the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, if they have not yet done so, to ensure a rapid and effective implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters, member States should also be encouraged to implement AEOI on a multilateral basis and via multilateral agreements (*Multilateral Competent Authority Agreement*, MCAA) instead of bilateral agreements, hence my proposed Amendment B.

20. Many countries are likely to opt out of the multilateral framework (MCAA) and have expressed an interest instead in signing (or amending) bilateral treaties as their way of implementing AEOI. The multilateral approach saves time and resources for everyone and guarantees rapid worldwide implementation and a level playing field for everyone. Finally, the AEOI project lacks sanctions for recalcitrant jurisdictions.

21. Although many developing countries will not be able to join the Common Reporting Standard (CRS) any time soon, the Parliamentary Assembly should propose that financial centres publish aggregated AEOI statistics. That would at least let everyone know where their money is being hidden, without compromising any confidentiality. Until developing countries participate actively in the AEOI project, all participating countries should start exchanging some information spontaneously with these countries, at least regarding high value accounts.

22. An important loophole in the CRS is the lack of measures to tackle sham residency certificates. The CRS is based on determining the residence of each account holder so that the account information will be sent to their corresponding country. However, any account holder can avoid reporting (to its real country of residence) by pretending to be a resident of a tax haven which sells residency certificates. Some jurisdictions already issue a certificate of residence in exchange for money. The Assembly should recommend that member States ensure that a blacklist of "residence-for-sale" jurisdictions be created by the OECD.

23. Concerning the recommendation on tax systems, the Assembly should recommend not only sound, transparent and stable national tax systems, but fair tax systems as well, hence my proposed Amendment C.

24. Concerning the recommendation on setting up a central register of ultimate beneficial owners (UBO), the Assembly should stress the importance that these registers are publicly accessible, hence my proposed Amendment D.

25. To complement the recommendations mentioned in the draft resolution, I am convinced that the following recommendations should be added (as proposed in Amendments E, F and G):

– develop stronger sanctions for banks, and legal entities that assist in tax fraud, these could include the temporary suspension or lifting of operating licenses as well as the freezing of accounts and assets;

– make the OECD Base Erosion Profit Shifting (BEPS) Guidelines on tax challenges and tax standards, that have already been agreed by OECD countries and the G20, the new Global norm;

– encourage the OECD, together with the Council of Europe, to review their joint Convention on Mutual Administrative Assistance in Tax Matters with the aim of facilitating the creation of an international tax co-ordinating body under the auspices of the OECD, capable of imposing sanctions. In this respect, I should like to welcome the recent ratification by Switzerland of this convention.