Parliamentary Assembly
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COUNCIL OF EUROPE
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Resolution 2130 (2016)[1]

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

Parliamentary Assembly

1. The "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 will no longer tolerate legal systems that 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" have weakened people's trust in democratic, financial and tax systems as a whole, posing a threat to the fundamental values of European society – particularly, fiscal and social justice.

2. The Parliamentary Assembly is very much concerned about the scope of tax avoidance, tax evasion, and even tax fraud in modern societies, which nowadays even involves 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. The Assembly calls for measures to ensure transparency in the business activities of politicians, since opaque relationships between business and politics undermine people's trust in democratic structures.

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 fraud.

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 fraud, tax evasion and tax avoidance requires new legal or technical standards; what is urgent, however, is the effective implementation of the existing standards. 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 implement the OECD's 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. *Assembly debate* on 11 October 2016 (31st Sitting) (see Doc. 14141 and Addendum, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Stefan Schennach; Doc. 14165, opinion of the Committee on Political Affairs and Democracy, rapporteur: Mr Dirk Van der Maelen; and opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Mart van de Ven). *Text adopted by the Assembly* on 11 October 2016 (31st Sitting).

5.3. provide sound, transparent, stable and fair national tax systems, limiting red tape 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 publicly accessible 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 ensure access to financial information at sufficiently early stages of investigations into criminal proceeds;

5.9. introduce stronger sanctions for banks and legal entities that assist in tax fraud, including the temporary suspension or withdrawal of operating licences and the freezing of accounts and assets;

5.10. make the OECD Base Erosion Profit Shifting (BEPS) Guidelines on tax challenges and tax standards, which have already been agreed by OECD countries and the G20, the new global norm;

5.11. encourage the OECD to review, together with the Council of Europe, their joint Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127) with the aim of facilitating the creation of an international tax co-ordinating body under the auspices of the OECD, capable of imposing sanctions;

5.12. also draft new international rules jointly with the OECD to enable the direct taxation of the income and assets of tax haven companies, thus bypassing the individuals and companies that set them up and overruling existing legal impediments to such direct taxation, either by a new convention or in the framework of the revision of the existing Convention on Mutual Administrative Assistance in Tax Matters;

5.13. sign and ratify the Convention on Mutual Administrative Assistance in Tax Matters and its 2010 Amending Protocol (CETS No. 208) if they have not yet done so.

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 opinions of compliance departments should be decisive during any decision-making processes;

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

7. The Assembly acknowledges the need to restore citizens' trust in the European democratic system by, among other things, preventing politically exposed persons from using secrecy jurisdictions, and therefore calls on member States to:

7.1. ensure that financial institutions and designated non-financial businesses and professions take particular care to identify politically exposed persons, their family members and close associates and that necessary enhanced measures are applied rigorously (including ascertaining the sources of wealth);

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

7.3. keep transactions involving politically exposed persons under enhanced surveillance for at least five years following the end of the duties justifying this status.