



European Parliament Plenary Debate on Malta - 14 June 2017
Follow-up of the Panama Papers and the rule of law in Malta

SUMMARY

The Panama Papers has been a blow on Malta's reputation to fight anti-money laundering and enable tax dumping, with revelations by the ICIJ consortium in April 2016 that politically exposed members of the Maltese government (Minister Konrad Mizzi and Chief of Staff of the Prime Minister, Keith Schembri) owned shell companies in tax havens.

We now have further evidence that the Financial Intelligence Unit in Malta - in charge of analysing money laundering risks in the country - has concluded to **reasonable suspicion of money laundering when it comes to the newly re-appointed Mr Schembri. Suspicions which to our current knowledge were never properly investigated by the Police Commissioner in Malta**, appointed by the Prime Minister and the only one empowered to open such investigation.

KEY REQUESTS

- Call on the European Commission to investigate whether Malta has breached the obligation to enforce the Anti-Money Laundering Directive and the Capital Requirement Directive;
- Call on the Maltese Parliament to set up an inquiry committee on the allegations and the Panama Papers revelations related to Malta;
- Call on the Maltese Police Commissioner to start investigations into the allegations of money laundering related to Mr Schembri and Mr Mizzi;
- Investigate the licensing process of Pilatus Bank, in particular regarding fulfilment of the fit & proper requirements for the management body of financial institutions as mentioned in the Capital Requirement Directive;
- Temporarily suspend the banking licence of Pilatus Bank until a proper supervision has been carried out and the bank is fully compliant with its anti-money laundering obligations;
- Investigate whether the Malta Financial Services Authority (MFSA), in charge of supervising banks in Malta, has taken all measures to ensure and monitor the Pilatus bank's compliance with the law;
- Mr Schembri, Mr Zammit, Brian Tonna and Karl Cini from Nexia BT must appear in front of the European Parliament Panama Papers inquiry committee

1. INVESTIGATIONS BY THE MALTESE FINANCIAL INTELLIGENCE ANALYSIS UNIT (FIAU)

The Maltese FIAU has conducted a series of analyses in 2016 and three of its reports were recently leaked, concluding to reasonable suspicion of money laundering and serious shortcomings by the Pilatus Bank. It is being reported that a [fourth \(longer\) report is apparently being finalised](#) regarding Mr Mizzi and Mr Schembri although the FIAU denied that there was any "conclusive report or conclusions".

A. Pilatus Bank not compliant with anti-money laundering obligations

A first report concerns the Pilatus Bank in Malta, [a bank which wants to "raise the bar and set new standards"](#). The report (see document IR-RAPPORT TAL-FIAU DWAR PILATUS BANK) provides the following interesting elements:

- The FIAU carried out an on-site examination in March 2016 to assess the bank's compliance with Malta legislation against money laundering, with a specific purpose to check the measures in place to deal with politically exposed persons (PEPs);

- The report notes that the Know Your Customer form for PEPs is never signed by the PEPs themselves, which seems contrary to Maltese law;
- **A number of companies with PEPs involvement appear not to have been classified as such by the bank, which would be contrary to Maltese law.** This would constitute a major failure from the bank if confirmed because it implies that enhanced due diligence and checks were then not carried for these companies;
- For those listed as PEPs, the bank gathered information on the source of wealth and source of funds but it was considered too generic and not meeting the minimum requirements foreseen in Maltese law according to the FIAU. **The report notes that even if the bank's director is on familiar terms with these clients, the obligation to obtain sufficient evidence remains.**
- In addition, the compliance officer within the bank seemed to lack essential information on some transaction requests carried out with high risk countries (like Azerbaijan), exposing Pilatus Bank to very high risks of money laundering and funding of terrorism.
- There are several cases where large sums were transferred but no documentation appeared to have been recorded. It seems that only a limited number of (high-level) officials in the banks were aware of clients' activities. The compliance officer was not in a position to ask probing questions as to certain transactions carried, although this is his/her primary role. In failing to obtain the necessary information and documentation, **the bank appears to have failed to meet its legal obligations.**
- Compared to the very high risk the bank is exposed to, the FIAU concludes that it does not have the appropriate mitigating measures in place (to assess and manage risks). Similarly, the bank seems not to have enough guidance as how to conduct enhanced due diligence for PEPs. The bank could not prove in all cases that enhanced due diligence was carefully conducted. And the bank has not carried a sufficient monitoring of ongoing clients' business.
- In conclusion, the bank is found not to have sound anti-money laundering policies to deal with its PEPs clients. The report mentioned that *"the veil of secrecy that has been created is in actual fact making it easier for banking transactions to be carried out by PEPs, their family members and their close associates without the level of scrutiny required by law"*. (...) *"The lack of adequate scrutiny gives the impression that a blind eye is being turned for these individuals to be able to invest their funds without appropriate questions being asked"*. **The bank is found to be in breach of several provisions of the Maltese anti-money laundering legislation.**

B. Keith Schembri involved in suspicion of money laundering

The two other reports from the FIAU are related to the Chief of Staff of the Prime Minister (see documents: IR-RAPPORT TAL-FIAU LI JIKXEF IL-KORRUZZJONI TA' KEITH SCHEMBRI MILLBEJGH TAL-PASSAPORTI and IR-RAPPORT TAL-FIAU DWAR IL-PAGAMENTI LI GĦADDEW MINN KEITH SCHEMBRI LIL ADRIAN HILLMAN)

In a first report, presented to the (former) Commissioner of Police on 7th April 2016 (a few days after the Panama Papers), the FIAU highlights:

- How 3 wealthy Russians applied for the government "Individual Investor Programme" in order to be granted Maltese nationality. For this purpose, the report mentioned that they transferred over €166.000 to Willerby Trade Inc, a shell company created by Mossack Fonseca in the British Virgin Islands, owned by Brian Tonna and which is not listed as an accredited agent under the Individual Investor Programme.
- BT International, also owned by Brian Tonna is however an accredited agent and seems to have paid Willerby Trade Inc a fee for every prospective client who would engage the services of BT international in relation to the Individual Investor Programme. However, the money was paid directly on the bank account of Willerby, bank account opened at the Pilatus Bank.

- **Part of the money paid on the Willerby account (twice €50.000) was transferred to a bank account held in the name of Mr Schembri (also held at the Pilatus Bank) the report adds.** The FIAU noticed that there is very little activity on these bank accounts except these transactions.
- **The alleged purpose for the transfers of €100.000 is the repayment of a loan to Willerby made to assist Mr Tonna during his divorce. But the FIAU seems to doubt the justification provided as Mr Tonna had the financial means to deal with his divorce and the sum is much higher than what can normally be expected in such situation.** The FIAU also wonders why such a complex structure via BVI and a special bank is necessary if it is to only repay a loan. The FIAU also couldn't find evidence of the alleged original loan.
- **The FIAU reports that it cannot be excluded that the agreement might have been drawn up more recently and backdated in order to justify the transfers to Mr Schembri, a PEP.** The FIAU believes that a police investigation could clarify this matter.
- In addition, the FIAU provides unconfirmed evidence that Mr Schembri knows the director of the Pilatus Bank and he took a personal interest in the licencing process of the Bank under the Banking Act. (But this information could not be confirmed through official channels). In any case, **Pilatus bank chose not to file a suspicious transaction report with the FIAU despite the risks presented by these transactions.**
- **The FIAU concludes that this case merits further examination.** The information available was deemed sufficient to conclude that a **reasonable suspicion of money laundering and/or the existence of proceeds of crime subsists.** The report was then transmitted to the Police for any action it may consider appropriate. To our knowledge, there has not been a police investigation opened afterwards.

The second report related to Mr Schembri also concludes to reasonable suspicion of money laundering.

- It involves a company called Lester Holdings Group Limited created by Mossack Fonseca in April 2011 in BVI and owned by Adrian Hillman. In 2013, Hillman gave a power of attorney for all operations related to Lester Holdings to Karl Cini and Brian Tonna from Nexia BT (those who advised Mr Mizzi and Schembri and liaise with Mossack Fonseca to create offshore companies).
- Both Lester Holding and Hillman are reported to have accounts at the MFSP bank, which receive USD 169.000 from Mr Schembri's Swiss bank account (for Mr Hillman) between 2010 and 2014.
- In addition Adrian Hillman received USD 135.000 and Lester Holdings €125.000 from a company called Malmos Limited, registered in Gibraltar and owned by Mr Schembri. The FIAU couldn't find information on the purpose of these transactions. Malmos is registered as a wholesaler of paper products, acting as a stockist, merchant and agent whose products are then distributed to the printing industry. The FIAU raises question as to why Malmos would transfer money to Mr Hillman's investment bank account, given that the beneficiary is not a paper mill or a supplier of similar products.
- **The FIAU concludes that the circumstances surrounding the purpose of these payments merit further examination and wonders why such a complex structure via BVI was necessary if Mr Schembri did pay Mr Hillman for services rendered or for the provision of goods.** The report was transmitted to the police for any action it may consider appropriate. To our knowledge, there has not been a police investigation opened afterwards.

2. LACK OF INDEPENDENCE OF THE POLICE COMMISSIONER, NOT OPENING CRIMINAL INVESTIGATIONS?

The Police Commissioner in Malta is directly appointed by the Prime Minister. In April 2016, Michael Cassar, Malta's Police Commissioner resigned citing health reasons. [Press articles](#) have mentioned that this took place just after the FIAU handed over its confidential reports related to Mr Schembri. Under Maltese law, the police commissioner has the final say over whether or not to prosecute in cases relating to money laundering. **But before Mr Cassar could take any action, he announced his resignation.** Soon after, the head of the FIAU Mr Manfred Galdes also resigned.

Mr Lawrence Cutajar was appointed by the Prime Minister to replace Mr Cassar. He appears to be a support of Prime Minister Muscat, as evidenced by the following Facebook post: "*Good morning dear Inter fans and Maltese friends. This morning I am happy for two reasons. Firstly, because of Inter since despite all our limitations we showed those others that sometimes make some noise that they won't beat us not even through cheating (swear word used here), and secondly because I continued to confirm that finally in Malta we have our own prime minister who REALLY HAS BA__S.*" This post is dated 7th August 2013. Mr Muscat was elected Prime Minister in March 2013.



The Police Commissioner and the Attorney General appeared to have been informed a year ago of the suspicion of money laundering against Mr Schembri but it looks like no criminal charges have been filed against Mr Mizzi or Mr Schembri until now. See this press article for more information: <https://www.timesofmalta.com/articles/view/20170430/local/police-chief-ag-knew-of-kickbacks.646603>

3. QUESTIONABLE LICENSING OF PILATUS BANK AND MONITORING BY MALTA FINANCIAL SERVICES AUTHORITY

In one of the leaked reports, the FIAU provides unconfirmed evidence that Mr Schembri knows the director of the Pilatus Bank and he took a personal interest in the licencing process of the Bank under the Banking Act. Although this information could not be confirmed through official channels, this raises questions as to the licensing process of Pilatus Bank which was said to be done in only 12 weeks. The fit & proper requirements set out in Article 91 of the Capital Requirement Directive (CRD IV) require that "*Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties*". The same article adds: "*Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making*".

Additionally, the fit & proper test has not only be carried out for the management body but also for qualifying shareholders. The FIAU report on Pilatus Bank also raises questions as to whether the MFSA

ensured compliance with the requirements for qualifying shareholders when granting a banking licence to Pilatus Bank. Article 14 §2 CRD IV requires competent authorities to *“refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members, in particular where the criteria set out in Article 23(1) are not met.”* Article 23 §1 CRD IV stipulates that the competent authorities shall assess the suitability of the proposed acquirer in accordance with the certain criteria, inter alia *“the reputation of the proposed acquirer”* and *“whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.”*

Finally, it seems warranted to investigate whether the supervisor of Pilatus Bank, the Malta Financial Services Authority (MFSA), has taken seriously its role to monitor the bank’s compliance with the law and has taken any action if needed, in particular with regard to anti-money laundering obligations (Customer Due Diligence, Monitoring of transactions of Politically Exposed Persons, Filing of Suspicious Transaction Reports).

4. JOBS CREATED JUST BEFORE THE ELECTIONS

Prime Minister Muscat called for snap elections a few weeks ago which took place on June 3rd. He and his party won the elections and he was reconfirmed as Prime Minister. Several articles in Maltese press raised concerns that a large number of jobs linked to public companies were created just before the elections, which raises suspicions on whether this was done for electoral motives.

For example, [over 1,000 Gozitans of voting age appeared to have been recruited into jobs with the government](#) or subcontracted agencies on the island of Gozo just weeks before the June 3 election. [Another example is the alleged creation of 150 new jobs at the Water Services Corporation](#), a company falling into Mr Mizzi’s energy and water supply portfolio (Mr Mizzi is officially a Minister without portfolio since 2016 but has been chairing EU Energy Council during the Malta Presidency). The Times of Malta details how *“About 150 prospective employees, mainly residing in Fgura, Paola, Sta Lucija and Tarxien – Dr Mizzi’s electoral district – received letters from the WSC informing them that they have been selected to start working at the government entity as fitters and to report for work last week.”* This would increase the WSC workforce by 15% in only a few weeks and there was apparently no public call for the creation of these jobs. The Times of Malta called it *“what appears to be a vote mobilisation campaign for embattled Minister Konrad Mizzi”*.

5. ISSUES WITH ONLINE GAMING IN MALTA

Malta is the European country with the most online gaming operators (compared to the size of the countries). It has awarded around 500 online gaming licences to around 400 operators who are then allowed to operate in the 28 Member states (thanks to the EU internal market). This sector accounts for around 12% of the country’s GDP.

Non-Maltese press articles have reported cases of operators operating from Malta but without having properly received a licence by the Malta Gaming Authority (MGA), in charge of supervising the sector. [The online giant Betsson for example has allegedly been operating for years without a licence](#) and was even granted an extension period to apply and comply with the legislation. In addition, [it seems that several people who were working at the MGA have then moved to the private sector](#), in the business

of helping clients to get online gaming licences, raising questions on possible conflicts of interest on the small island.

There is also an issue of allocation of resources at the MGA, in charge of both supervising landline casinos operating in Malta and dealing with Maltese clients' money and online gaming operators, operating everywhere in Europe. It seems like more resources are being allocated to monitoring landline casinos (less than 20 of them on the islands) than supervising much more numerous online gaming companies registered there.

6. MALTA TAX REGIME AND BLOCKAGES OF EU TAX REFORMS IN THE COUNCIL

Malta is known in Brussels to be among the "less enthusiastic" group of European States when it comes to tax reforms. Arguing that the European Union should not go further than what the OECD has already agreed, it has objected to some proposals from the European Commission in the past.

In December 2016 for example, Malta was among a minority of European Member States criticising the legal base of the European Commission's proposal for greater transparency on large companies' activities and tax payments (also known as public country-by-country reporting). Supporting other countries like Sweden or Germany against France, Spain and Italy, Malta supported the opinion of the Council legal service to discuss such transparency proposal under article 115 of the Lisbon Treaty. A possible change of legal base would not have been harmless: in such case, the European Parliament would have lost its co-legislator role (to be only consulted) and the proposal would have to be adopted unanimously in the Council, making it a much harder task if only one of the 28 Member States could veto the entire reform. In the end, the Maltese Presidency started the negotiations in the Council according to the same legal basis as the one proposed by the European Commission but hasn't given real priority to this file.

On the European discussions to create a common blacklist of third countries non-cooperative jurisdictions, Malta was initially amongst a small group of EU countries who refused to use low tax rates as a criterion to determine whether third countries should be considered as tax havens and therefore blacklisted. As European Taxation Commissioner Pierre Moscovici was pushing for the EU to go well beyond the OECD "transparency criteria" approach for screening countries and include "fair taxation" criteria such as rates and preferential regimes for the EU to "protect its tax base", Wendy Borg, a spokeswoman for Malta, said that tax rates are sacrosanct: *"Whilst Malta supports anti-avoidance rules to address BEPS to ensure that profits are not artificially shifted to other jurisdictions, as far as corporate tax rates are concerned, we believe that no jurisdiction should ever be challenged about its general tax rate or be required to justify the tax rate that it chooses to adopt"*.

This is not surprising considering that Malta appears to have a very generous tax system, allowing a rebate of up to 6/7 of the amount paid and leading de facto to a corporate tax rate of 5% for foreign incomes. The [Malta Files](#), published in May 2017, confirmed this evidence outlined in a [Greens report published in January 2017](#) already, at the start of the Maltese Presidency.

The Maltese Presidency is currently leading the negotiations (on behalf of the Council) with the European Parliament for the revision of the Anti-Money Laundering Directive (AMLD), proposed after the Panama Papers. One key aspects of the reform - defended by the European Commission and Parliament - is to create public registries for those who owns (beneficial owners) companies and trusts. This is, we believe, a necessary step to prevent the use of shell companies, numerous found in the Panama Papers scandal. However, the Maltese Presidency still believe - especially for trusts - that only restricted access to this information should be granted, for those who have a legitimate interest to know only. In addition, the Maltese Presidency is not favourable to the European Parliament to create

national lists of PEPs in order to know to whom to apply enhanced anti-money laundering checks, which is hard to accept for us knowing the alleged involvements of some Maltese PEPs in the Panama Papers and other scandals as demonstrated above.

7. CONFLICT OF INTEREST WITH THE HEAD OF THE MALTESE FINANCIAL SERVICES AUTHORITY

Joseph Bannister is the current chair of the Malta Financial Services Authority (MFSA) and has been so for the past 20 years. In this job, he is head of the authority responsible for the supervision of banks, insurance companies, investments firms, collective investment schemes, trustees and company service providers operating in and from Malta.

However, Mr Bannister is also the Vice-Chair of Finance Malta, the public-private initiative set up to promote Malta as an international financial centre. In addition, he is apparently listed as director of a number of collective investment schemes registered in the Cayman Islands.

[The Greens have already raised in the past the serious risk of conflict of interest](#) given different professions held by Mr Bannister. When the European Parliament Panama Papers inquiry committee met him in Malta, he didn't deny the allegations and affirmed he wanted to retire but a replacement was not easy to find. Mr Bannister is now set to leave his position in December (rather than in 2019 as initially foreseen) but this raises the question as to why is he not leaving immediately, if conflict of interest is the reason for his early departure.

8. CONCLUSIONS

For all the reasons highlighted above, the Greens in the European Parliament requested Mr Muscat to come to our plenary session to provide more information on the Panama Papers' follow-up and the rule of law in Malta.

While requesting answers today on key money laundering allegations made over the past months, **the Greens are also sending a letter to the European Commission, asking it to check whether Malta has always been compliant with the Anti-Money Laundering and the Capital Requirement Directives.** If not, we believe the European Commission should open an infringement procedure against Malta.

In parallel, the Greens in Malta (Alternativa Democratica) have requested **the opening of a formal inquiry in the Maltese Parliament as soon as possible, to shed light on all allegations** as it was done in other countries like Belgium or the Netherlands. We hope the Prime Minister will answer positively to this request in the debate today.