

Request for the setting up of a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering and tax avoidance and tax evasion

We, Members of the European Parliament, hereby request to set up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion.

Subject of the inquiry:

The inquiry aims to investigate alleged contraventions of Union law and alleged maladministration in the application of Union law which appear to be the act of the Commission, and public administrative bodies of Member States. In particular, the inquiry shall:

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2005/60/EC, taking into account the obligation of timely and effective implementation of Directive (EU) 2015/849;
- investigate alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions found liable of serious breach of the national provisions adopted pursuant to Directive 2005/60/EC, as required by the Directive 2013/36/EU;
- investigate alleged failure of the Commission to enforce and of Member States authorities to implement effectively Directive 2011/16/EU especially regarding Article 9(1) on spontaneous communication of tax information to another member State in case of grounds for supposing that there may be a loss of tax, and taking into account the obligation of timely and effective implementation and enforcement of Directive (EU) 2014/107; for this purpose and for investigations on other legal bases regarding alleged contraventions or maladministration mentioned, make use of the access to all relevant documents, including to all relevant documents of the Code-of-Conduct group which have been obtained during the TAXE1 and TAXE2;
- investigate alleged failure of the Member States to enforce Article 107 and 108 TFEU, relevant to the scope of this inquiry;
- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2014/91/EU;
- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2011/61/EU and Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU;
- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2009/138/EU;
- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2006/43/EC, taking into account the obligation of timely and effective implementation of Regulation 537/2014 and Directive 2014/56/EU
- investigate alleged failure of Member States transpose Directive 2013/34/EU
- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2012/17/EU

- investigate potential breach of the duty of sincere cooperation principle enshrined in Article 4(3) TEU by any Member State and their associate and dependent territories; insofar as relevant to the scope of this inquiry; to that end, assess in particular whether any such breach may arise from the alleged failure to take the appropriate measures to prevent the operation of vehicles that allow to hide their ultimate beneficial owners from financial institutions and other intermediaries, lawyers, trust and company service providers or any other vehicles and intermediaries that allow the facilitation of money laundering, as well as tax evasion and tax avoidance in other Member States (including looking at the role of trusts, single-member private limited liability companies and virtual currencies); while taking also into account current ongoing work programmes taking place at member state level which seek to address these issues and mitigate their effect;

- make any recommendations that it deems necessary in this matter, including regarding the implementation by Member States of the Commission Recommendations of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and aggressive tax planning, as well as assess latest developments of the Commission's External strategy for effective taxation and assess the links between the EU and Member States' legal framework and third countries tax systems (e.g. Double Taxation Agreements and Information Exchange Agreements, Free Trade Agreements) as well as efforts made to promote at international level (OECD, G20, FATF and UN) transparency of beneficial ownership information.

Detailed statement of the grounds

On April 3rd 2016, the International Consortium for Investigative Journalism (ICIJ) uncovered 11.5 million documents from Mossack Fonseca, a global law firm based in Panama, also known as the "Panama Papers" scandal. Although thorough analysis of the documents is still needed, these records apparently show that Mossack Fonseca created more than 214,000 offshore entities in 21 jurisdictions considered as tax havens connected to people in more than 200 countries and territories. According to ICIJ, the first "Panama Papers" revelations involves at least 12 Heads of State (including six in activity), 128 politicians or high level civil servants and 29 members of the Forbes 500 list. More data should be published by ICIJ for consultation, facilitating the European Parliament's inquiry activity.

In addition to money laundering concerns, the revelations raise the importance of exchange of tax information between tax authorities and how European Member States act vis-a-vis non cooperative jurisdictions. Panama has so far been unwilling to implement the OECD's Common Reporting Standard on tax information exchange, considered the new international standard of automatic exchange of tax information. Currently, it is listed as a tax haven by 8 Member States (Bulgaria, Croatia, Greece, Latvia, Lithuania, Poland, Portugal and Slovenia). After the scandal, France decided on April 5 to re-include Panama in its national blacklist.

The revelations also show how major banks have driven the creation of these offshore companies in tax havens. Many banks' subsidiaries and their branches – including banks which previously appeared in front of the TAX2 committee have been mentioned in the Panama Papers.

The European Union is at the forefront of efforts to fight money laundering, tax evasion and tax avoidance. Jean-Claude Juncker, President of the European Commission, included taxation in its 10 priorities in 2014. In the recent years, just to name some, the European Union has adopted new legislation on money laundering (2015) including the creation of registries for companies; on administrative cooperation between tax administrations (2014) 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 has also presented the Transparency Package (March 2015) and the Anti-Tax Avoidance Package (2016).

The European Parliament estimates that tax evasion and avoidance costs the European Union between EUR 50 and 70 billion a year while estimations for money laundering activities' costs vary but put the numbers on a huge scale. In times when the European Union is still coping with the consequences of the crisis from the end 2000s, European institutions have a duty to ensure that the fight against tax fraud, avoidance and illegal activities is given priority and has the best legislative framework possible.

The Panama Papers revelations puts into question whether the European legislation for these priorities is adequate and whether Member States and the European Commission, as well as financial institutions as entities empowered and obliged by Union law to identify and report on their account holders have mal-administered or have contravened provisions in their implementation of the aforementioned directives. These revelations and an opportunity for the European Union to advance in its agenda to fight tax evasion, tax avoidance and money laundering.

Moral hazard that arises from situations where some tax payers contribute all tax payments which are foreseen by tax legislation, while others can abuse loopholes of the different tax systems undermines citizens trust democratic system, therefore it is imperative to investigate alleged failure by the Commission and Member States to act proactively in order to obtain relevant documents and information from the jurisdictions, where Mossack Fonseca operated, concerning Member States tax payers with regards financial transactions which are suspected to be used in relation to money laundering, tax avoidance and tax evasion.

The European Parliament, representing the Union's citizens, has to react and set up an inquiry committee to investigate the scale of the revelations and to provide any recommendation it deems necessary to improve the relevant legislative framework in the future.

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 (hereinafter - Directive 2005/60/EC) requires several categories of natural and legal persons, such as credit and financial institutions, to identify beneficial owners in the context of customer due diligence. It also requires that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.

Directive (EU) 2015/849 requires Member States to create registries of beneficial owners for companies and provides additional measures to held natural and legal persons liable for infringements of the national provisions adopted pursuant to this Directive.

Directive 2013/36/EU requires Member States authorities to apply administrative penalties and other administrative measures to credit institutions and investment firms found liable of serious breach of the national provisions adopted pursuant to Directive 2005/60/EC.

Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation requires the competent authority of each Member State to communicate the information referred to in Article 1(1) to the competent authority of any other Member State concerned, in case the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State.

Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation creates enhanced obligations for mutual assistance between Member States' authorities so as to enable them to better assess taxes due.

Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions requires that a third party located in a third-country has to ensure that the assets it is entrusted with are safe in case it becomes insolvent.

Directive 2011/61/EU and the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU on Alternative Investment Fund Managers requires detailed reporting to the competent authorities, including information in relation to principal markets on which an AIFM trades, instruments traded, principal exposures, important concentrations, illiquid assets, special arrangements, risk profiles, risk management systems

Directive 2009/138/EU on the taking-up and pursuit of the business of Insurance and Reinsurance allows the Commission to submit proposals to the Council for the negotiation of agreements with one or more third countries which shall in particular seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, requires Member States to ensure that auditors and audit firms are subject to principles of professional ethics and that auditors and audit firms carry out statutory audits in compliance with international auditing standards adopted by the European Commission, under penalty of effective, proportionate and dissuasive sanctions.

Regulation 537/2014 of the European Parliament and the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 on statutory audits of annual accounts and consolidated accounts includes a list of prohibited non-audit services applicable to all audit firms providing audit services to public-interest entities in the EU, in order to avoid conflicts of interest.

Directive 2013/34/EU of the European Parliament and the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings requires large undertakings and public-interest entities to disclose information regarding fees charged by each statutory auditor or audit firm for the statutory audit of the annual financial statements, and fees charged by each statutory auditor or audit firm for other assurance services, for tax advisory services and for other non-audit services.

Directive 2012/17/EU concerns the interconnection of central, commercial and companies registers to improve access to up-to-date and trustworthy information on companies and raises the question whether a European wide business register would prove useful in order to enhance legal certainty and set common European standards for minimum information to be disclosed.

Article 4(3) of the Treaty on the Functioning of the European Union requires Member States to respect the principles of the sincere cooperation, such as the obligations to facilitate the achievement of the Union's task and to refrain from any measure which could jeopardise the attainment of the Union's objectives.

Articles 107 and 108 of the Treaty on the Functioning of the European Union clarify what are compatible and incompatible aids granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort and requires Member States to notify any state aid measure and for the Commission to keep under constant review all systems of aid existing in the Member States. Commission recommendations of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and aggressive tax planning, as well as the Commission's External strategy require Member States to take a stronger and more coordinated stance against companies that seek to avoid paying tax and to implement the international standards against base erosion and profit shifting.

Annex

Draft proposal to set up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion, its powers, numerical strength and term of office

The European Parliament,

- having regard to the request presented by X Members for a committee of inquiry to be set up to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion,
- having regard to the proposal by the Conference of Presidents,
- having regard to Article 4.3 TFEU,
- having regard to Article 107 and 108 TFEU,
- having regard to Article 226 TFEU,
- having regard to Article 325 TFEU,
- having regard to Decision of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry,
- having regard to 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,
- having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing,
- having regard to Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,
- having regard to Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation,
- having regard to Directive 2014/107/EU of the Council of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation
- having regard to Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;
- having regard to Directive 2011/61/EU and the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU;
- having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance;
- having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts;
- having regard to Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and Directive

2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts;

- having regard to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;

- having regard to Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;

-having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 on supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision;

- having regard to the Commission Recommendations of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and aggressive tax planning ;

- having regard to the Commission communication of 28 January 2016 to the European Parliament and the Council on an External Strategy for Effective Taxation;

– having regard to Rule 198 of its Rules of Procedure,

1. Decides to set up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion.

2. Decides that the Committee of Inquiry shall:

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2005/60/EC, taking into account the obligation of timely and effective implementation of Directive (EU) 2015/849;

- investigate alleged failure of Member States authorities to apply administrative penalties and other administrative measures to institutions found liable of serious breach of the national provisions adopted pursuant to Directive 2005/60/EC, as required by the Directive 2013/36/EU;

- investigate alleged failure of the Commission to enforce and of Member States authorities to implement effectively Directive 2011/16/EU especially regarding Article 9 (1) on spontaneous communication of tax information to another member State in case of grounds for supposing that there may be a loss of tax, and taking into account the obligation of timely and effective implementation and enforcement of Directive (EU) 2014/107; for this purpose and for investigations on other legal bases regarding alleged contraventions or maladministration mentioned, make use of the access to all relevant documents, including to all relevant documents of the Code-of-Conduct group which have been obtained during the TAXE1 and TAXE2;

- investigate alleged failure of the Member States to enforce Article 107 and 108 TFEU, relevant to the scope of this inquiry;

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2014/91/EU;

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2011/61/EU and Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU;

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce Directive 2009/138/EU;

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2006/43/EC, taking into account the obligation of timely and effective implementation of Regulation 537/2014 and Directive 2014/56/EU;

- investigate alleged failure of Member States to transpose Directive 2013/34/EU;

- investigate alleged failure of the Commission to enforce and of Member States to implement and to enforce effectively Directive 2012/17/EU

- investigate potential breach of the duty of sincere cooperation principle enshrined in Article 4(3) TEU by any Member State and their associate and dependent territories insofar as relevant to the scope of this inquiry; to that end, assess in particular whether any such breach may arise from the alleged failure to take the appropriate measures to prevent the operation of vehicles that allow to hide their ultimate beneficial owners from financial institutions and other intermediaries, lawyers, trust and company service providers or any other vehicles and intermediaries that allow the facilitation of money laundering, as well as tax evasion and tax avoidance in other Member States (including looking at the role of trusts, single-member private limited liability companies and virtual currencies); while taking also into account current ongoing work programmes taking place at member state level which seek to address these issues and mitigate their effect;

- make any recommendations that it deems necessary in this matter, including regarding the implementation by Member States of the Commission Recommendations of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and aggressive tax planning, as well as assess latest developments of the Commission's External strategy for effective taxation and assess the links between the EU and Member States' legal framework and third countries tax systems (e.g. Double Taxation Agreements and Information Exchange Agreements, Free Trade Agreements) as well as efforts made to promote at international level (OECD, G20, FATF and UN) transparency of beneficial ownership information;

3. Decides that the Committee of Inquiry shall present its final report to Parliament within 12 months of the adoption of this decision.

4. Decides that the Committee of Inquiry should take account in its work any relevant evolutions within the remit of the Committee that emerge during its term;

5. Decides that any recommendations drawn up by this Committee and by TAXE2 should be dealt with by the relevant permanent committees.

6. Decides that the Committee of Inquiry will be composed of 65 Members of the European Parliament.

7. Instructs its President to arrange for publication of this decision in the Official Journal of the European Union.

