

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:

In the field of money laundering

- investigate alleged failure of Member States authorities to act upon the evidence of serious and persistent failure to identify beneficial owners in the context of customer due diligence, as required by Article 8(1)(b) 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;
- investigate alleged failure of Member States authorities to require 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, as required by Article 9(1) of Directive 2005/60/EC;
- investigate alleged failure of Member States authorities to ensure that natural and legal persons covered by Directive 2005/60/EC can be held liable for infringements of the national provisions, including reporting of beneficial ownership information to competent authorities, adopted pursuant to this Directive, laying down the provisions on effective, proportionate and dissuasive penalties, as required by Article 39(1) of Directive 2005/60/EC;
- investigate alleged failure of the Commission to enforce effectively Directive 2005/60/EC;
- assess the implementation by Member States of international recommendations in the field of money laundering, including of the Financial Action Task Force (FATF) and of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

In the field of activity of credit institutions

- 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 Article 67(1)(o) and Article 67(2) of 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;

In the field of cooperation between member states

- investigate alleged failure of Member States authorities to communicate spontaneously tax information to another Member State in case of grounds for supposing that there may be a loss of tax in the other Member States, as required by Article 9(1) of Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation;

In the field of tax rulings and other measures similar in nature or effect

- investigate possible contraventions of obligations set out in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, regarding the obligation to cooperate and provide all necessary documents by any Member State since 1 January 1991;
- investigate possible contraventions of obligations set out in Council Directive 2011/16/EU, and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, regarding communication of information

on tax rulings, by spontaneous exchange, to other Member States, by any Member State since 1 January 1991;

- assess the Commission's practices to ensure the proper application of Council Directive 2011/16/EU, and Council Directive 77/799/EEC, regarding communication of information on tax rulings, by spontaneous exchange, to other Member States, which allegedly resulted in the lack of such information contrary to EU taxation rules;

- assess possible breach by any Member State and their associate and dependent territories of the sincere cooperation principles enshrined in Article 4(3) TEU, 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, given the alleged large scale of aggressive tax planning facilitated by Member States and their associate and dependent territories, and the likely significant consequences this has had on public finances of and in the EU;

- make any proposals that it deems necessary in this matter.

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. These records show that Mossack Fonseca created more than 214,000 offshore entities in 21 tax havens connected to people in more than 200 countries and territories. Most of these shell companies do not seem to have an economic activity and can be abused for the sole purpose of hiding their beneficial owners, for individuals or companies willing to hide money from tax authorities or deriving from illegal activities. Unprecedented in scale, the "Panama Papers" revelations involves, according to preliminary revelations, 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 in a couple of weeks, facilitating the European Parliament's inquiry activity.

In addition to money laundering concerns, the scandal raises 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 agree to implement the new international standard of automatic exchange of tax information but is only 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 scandal also shows how major banks have driven the creation of these offshore companies in 21 tax havens. More than 350 banks' subsidiaries and their branches – including banks which previously appeared in front of the TAX2 committee like HSBC, UBS or RBS – created more than 15,000 offshore companies for their customers or themselves through Mossack Fonseca.

After the scandals of OffshoreLeaks (2013), LuxLeaks (2014) and SwissLeaks (2015), the "Panama Papers" revelations demonstrate that existing legislation to fight money laundering as well as tax evasion and avoidance are not fit for purpose.

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, 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.

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 financial 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 persons empowered 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.

The European Parliament, representing elected citizens, has a duty to set up an inquiry committee to investigate the scale of the scandal and continue the work of its current special committee on tax rulings and other measures similar in nature or effect, to report on the alleged contraventions and maladministration by the Commission and the Member States and to provide any recommendation it deems necessary to improve the relevant legislative framework in the future.

Article 8(1)(b) 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 (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.

Article 9(1) of Directive 2005/60/EC 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.

Article 39(1) of Directive 2005/60/EC requires Member States to ensure that natural and legal persons covered by Directive 2005/60/EC can be held liable for infringements of the national provisions adopted pursuant to this Directive and lay down the provisions on effective, proportionate and dissuasive penalties.

Article 67(1)(o) and 67(2) of 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.

Article 9(1) of Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation (hereinafter – Directive 2011/16/EU) 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 2011/16/EU requires member states authorities to mutually assist each other in the field of direct taxation, regarding communication of information on tax rulings, by spontaneous exchange, since 1 January 1991.

Article 108 of the Treaty of the Functioning of the European Union requires the Commission, in cooperation with Member States, to keep under constant review all systems of aid existing in those States and to take any appropriate measures required for the latter.

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.

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 226 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 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 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union,
- 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 Member States authorities to act upon the evidence of serious and persistent failure to identify beneficial owners, as required by Directive 2005/60/EC;
- investigate alleged failure of Member States authorities to require 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, as required by Directive 2005/60/EC;
- investigate alleged failure of Member States authorities to ensure that natural and legal persons covered by Directive 2005/60/EC can be held liable for infringements of the national provisions, including reporting of beneficial ownership information to competent authorities, adopted pursuant to this Directive, laying down the provisions on effective, proportionate and dissuasive penalties, as required by Article 39(1) of Directive 2005/60/EC;
- investigate alleged failure of the Commission to enforce effectively Directive 2005/60/EC;
- assess the implementation by Member States of international recommendations in the field of money laundering, including of the Financial Action Task Force (FATF) and of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

- 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 Member States authorities to spontaneously communicate tax information to another Member State in case of grounds for supposing that there may be a loss of tax in the other Member States, as required by Directive 2011/16/EU;
- investigate possible contraventions of obligations set out in Council Directive 2011/16/EU and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, regarding communication of information on tax rulings, by spontaneous exchange, to other Member States, by any Member State since 1 January 1991;
- assess the Commission's practices to ensure the proper application of Council Directive 2011/16/EU and Council Directive 77/799/EEC, regarding communication of information on tax rulings, by spontaneous exchange, to other Member States which allegedly resulted in the lack of such information contrary to EU taxation rules;
- investigate possible contraventions of obligations set out in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 TFEU, regarding the obligation to cooperate and provide all necessary documents by any Member State since 1 January 1991;
- assess possible breach by any Member State and their associate and dependent territories of the sincere cooperation principles enshrined in Article 4(3) TEU, 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, given the alleged scale of aggressive tax avoidance and evasion facilitated by Member States and through their associate and dependent territories, and the likely significant consequences on public finances of and in the EU;
- assess the implementation, by the Member States and the competent European institutions, of the recommendations contained in the resolution of 25 November 2015 of its Special Committee on tax rulings and other measures similar in nature or effect and follow-up on on-going work of international institutions, including the Organisation for Economic Co-operation and Development and the G20, while fully respecting the competences of the Committee on Economic and Monetary Affairs regarding taxation matters;
- assess the implementation by Member States of Commission Recommendation of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and Commission Recommendation of 6 December 2012 on aggressive tax planning;
- make any proposals that it deems necessary in this matter.

3. Decides that the Committee of Inquiry shall present an interim report to Parliament within 6 months of starting its work, with a view to presenting a final report to Parliament within 12 months of the adoption of this decision.
4. Decides that the Committee of Inquiry will be composed of X Members of the European Parliament.
5. Instructs its President to arrange for publication of this decision in the Official Journal of the European Union.