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*Committee on Civil Liberties, Justice and Home Affairs*  
*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*

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11.1.2018

## MISSION REPORT

following the ad-hoc Delegation to Malta (30 November - 1 December 2017)

Committee on Civil Liberties, Justice and Home Affairs

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

Members of the mission:

Ana Gomes	(S&D) (Leader of the mission)
David Casa	(PPE)
Maria Grapini	(S&D)
Monica Macovei	(ECR)
Ivan Jakovčić	(ALDE)
Takis Hadjigeorgiou	(GUE/NGL)
Sven Giegold	(Verts/ALE)

## **I. Background and objectives of the mission**

This mission was organised as a follow up of the Conference of Presidents decision that an 8 Member ad-hoc delegation, composed of 1 Member from each political group and preferably drawn from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), be sent to Malta for a fact-finding mission in the respective remit of the two committees.

The mission objectives were based also on the resolution adopted by the European Parliament on 15 November 2017 on the rule of law in Malta ((2017/2935(RSP)).

## **II. Summary of meetings**

### **30 November, 2017**

#### **1. Meeting with FIAU representatives**

The Members met with the following persons: Dr Peter GRECH, Chairman of the FIAU's Board of Governors and Malta's Attorney General; Dr Anton BARTOLO, Deputy Chairman of the FIAU's Board of Governors; Mr Kenneth FARRUGIA, Director of the FIAU; Mr Alfred ZAMMIT, Deputy Director of the FIAU; Dr Alexander MANGION, Head of the FIAU's Legal and International Relations Section

#### **Powers and competences**

An overview of the powers and competences of the FIAU can be found in the annex (answers to the questionnaire sent to Finance Minister Edward Scicluna, on 23 November 2016, received after the LIBE/PANA mission - Annex III)

#### **Questions relating to Pilatus Bank**

- In the meeting with the FIAU representatives, Members asked questions about their actions regarding Pilatus Bank, which was mentioned in media reports, as well as in two leaked FIAU reports related to the Prime Minister's Chief of Staff, Mr. Keith Schembri. Pilatus Bank allegedly provided bank accounts to offshore structures belonging to politically exposed persons (PEPS) in Malta, including Mr. Keith Schembri and Minister Konrad Mizzi.
- Dr Bartolo, the deputy Chairman of the Board, said the FIAU carried out an onsite-visit to Pilatus Bank between 15-22 March 2016, which resulted in a compliance report in April 2016 raising many concerns including alleged breaches of the Maltese legislation against money laundering, including regarding enhanced Customer Due Diligence for Politically Exposed Persons (missing documents and missing information in client files). This report was leaked to the media in May 2017.

- Pilatus Bank contested the content of the compliance report and hired KPMG to do an audit of the Bank’s compliance with money laundering obligations, an audit published in June 2016. A decision to conduct a second visit was, therefore, taken on 27 June and was carried out between 8 and 10 August. The missing documents were then available and the bank answered all questions from the FIAU and the MFSA. The result was that “all was clarified with some concerns”. In September 2016, the FIAU certified in a letter to Pilatus Bank its compliance with anti-money laundering obligations, and this despite other FIAU reports (involving Mr. Keith Schembri) concluding to serious suspicions of money laundering via accounts in Pilatus Bank (reports from April, June and November 2016). No sanctions were applied by MFSA, the Maltese financial supervisor.
- Following additional Panama Papers revelations by Mrs. Daphne Caruana Galizia in April 2017, a magisterial inquiry was initiated into the Panama-registered shell company “Egrant Inc” in 2017. “That inquiry was the reason we were asked to hold back and not to intervene in this inquiry“, Mr Bartolo explained. The FIAU got information from the magistrate to assist in its work. The FIAU and the MFSA work together on these aspects. According to Mr Bartolo, who is also the director of the enforcement unit of the MFSA, the MFSA started already in October 2015 with checks. “We grilled the Pilatus top-people“, he said. MFSA continues with “prudential supervision”. The magisterial inquiry, however, takes more time than was foreseen.
- Members also asked about the timing of the FIAU letter stating Pilatus was compliant, as it coincided with the resignation of the then head of the FIAU, Mr. Manfred Galdes.

### **About FIAU reports**

- Two FIAU reports, concluding to serious suspicions of money laundering, were passed on to the Police. One was sent to the Police in July 2016 (alleged kick-backs to Keith Schembri from Individual Investor Programme - sale of passports); the other, on 3 November 2016, (payments from Keith Schembri to Adrian Hillman, the managing director of Allied Newspapers Ltd - Times of Malta, The Sunday Times -via offshore companies whose owner is unknown). The Police did register the two reports, but did not start an official investigation. According to the FIAU, a third document of around 130 pages concerning an alleged offshore structure of Minister Konrad Mizzi had been written, however it “was not a report but a working document”. That document needed to be further checked with assistance of other FIU’s, Members were told. Four pages of this “non-report” were leaked to the press. “This document never reached the FIAU’s financial analysis committee. When the time comes and we have enough information, we make a report”, Members were told.
- Members asked the Attorney General (AG) why he had not launched an investigation and prosecution following the two FIAU reports on Mr. Schembri. Answer: The launch of an investigation and prosecution is in the remit of the

Police and the AG only comes in after that stage. It was also mentioned that no additional investigation was triggered by the worrying FIAU reports. The AG also said he “had never read the working document” (on Konrad Mizzi: PANA secretariat).

- Mr Bartolo said he cannot comment on individuals, but assured that the FIAU “is not deaf and blind and carries out its duties”.

For an overview of ongoing inquiries, see key findings.

### **About Pilatus-Azerbaijan:**

- Asked about the share of Azerbaijani capital and clients at Pilatus Bank, Mr Bartolo said the FIAU could not give this kind of information, adding that “the MFSA may give it to you”. “We don’t have precise information about all clients, but we are aware that the Bank has accounts directly or indirectly owned by Azerbaijani, and significant deposits by Azerbaijani nationals. On this basis, we continue to make verifications.”

### **Sale of Passports**

- The FIAU received very few STR’s related to applications for passports under the “citizenship for investments scheme” (IIP - Individual Investors Programme). The FIAU nonetheless acknowledges there is “an element of risk” in the scheme.
- The FIAU is sometimes asked for help with due diligence (DD) in relation to passport applications. Mr Bartolo added that there are additional DD checks by obliged entities. The money goes into a bank account and the bank - being an obliged entity under AML - has to do its own DD. The same goes for real estate agents if properties are being bought, he explained (recipients of Maltese passports under the scheme need to have a residence on Malta: PANA Secretariat).

### **Other FIAU related issues**

- Asked about high staff turnover, the FIAU representatives denied allegations that too many officers were leaving the FIAU - “There were no mass resignations. High turnover is normal, as the salaries in the private sector are more competitive.”
- Asked about the number of suspicious transaction reports (STR’s) by obliged entities, Mr Bartolo said there were 200 in 2016 and, in 2017, 600, so far. This number is expected to be over 1000 by the end of the year.
- Members asked if Mr John Dalli, the former EU Commissioner who was forced to resign in October 2012 for accusations of bribery and who was later nominated adviser to the PM, could have an account in Pilatus Bank and if the FIAU had established that he had received money from Dubai in that account, via a company called “17 black”. It was confirmed he could have an account with the Bank, as a national resident in Malta, but the other question was not answered.

## 2. Meeting with Attorney General, Dr Peter GRECH

- The Attorney General, in reply to questions by Members why he did not press charges against the persons exposed in Panama Papers and confirmed by FIAU reports as involved in suspicious money laundering activities, sought to bring clarifications regarding his competences to prosecute. He said that according to the Maltese legal system, the Attorney General does not have the power to start a criminal investigation. It is in his competence to start, undertake and/or discontinue criminal proceedings, but only when a person has already been charged. According to him, it is the sole competence of the Police to initiate an investigation which can lead to criminal charges. When the Police does not press charges, then there is the possibility for the interested person to challenge the Police decision not to bring a case before the courts and this is submitted to a magistrate decision. The Court of magistrates then decides on this claim and can order to initiate proceedings. In case there is a magisterial inquiry initiated, the inquiry is sent to the Attorney General and to the Police and then there is a legal obligation to initiate proceedings.
- However, Members of the Delegation heard from different other authorities (including the Chief Justice) that, according to art. 4 of the Maltese Prevention of Money Laundering Act, the Attorney General has the right to issue an investigation order, which would request the Police to start a criminal investigation. The AG argued that to issue such investigation order, one must be in possession of concrete evidence in order to stand before the courts. When asked by Members if several media reports about serious suspicions of money laundering by Politically Exposed Persons, including one Member of the Government and the Chief of Staff of the Prime Minister, were not enough to request such an investigation order, he answered “No”.
- The Attorney General explained his different roles, being at the same time legal adviser of the Government, public prosecutor, and also the Chair of the Board of Governors of the FIAU. The AG is appointed by the Maltese Prime Minister. Questions were asked regarding the risk of possible conflicts of interest if the AG is both in charge of advising the government and possibly prosecuting PEPs connected to the Prime Minister.
- On specific questions related to his competences to initiate proceedings based on the Prevention of Money Laundering Act, the AG noted that he needs a reasonable suspicion in a money laundering case to ask the Court to issue an investigation order. The same powers are vested in FIAU also and they can in their report conclude that there is a reasonable suspicion of money laundering.
- As regards the reports of the FIAU, the AG mentioned that all 5 reports are now subject to a magistrate inquiry (initiated in 2017 only, about one year after the raising of suspicions by the FIAU). He reiterated that, in order to commence the

prosecution, the standard is higher and it is needed a certain level of proof, which is also a safeguard.

- On the specific question why Malta was not joining the EPPO (European Public Prosecutor Office), the AG mentioned that Malta decided not to join immediately, as it is not known how the powers of EPPO will be interpreted, at this stage.

### **3. Meeting with Police Commissioner Lawrence CUTAJAR, assisted by his Deputy Mr. Silvio Valletta and other assistants**

- The Police Commissioner read a statement at the beginning of the meeting. He also briefly presented the actions that Police is taking in investigating the assassination of Mrs. Daphne Caruana Galizia, expressing the intention to put all efforts in view of finalising the investigation, mentioning also the cooperation with Europol, FBI and other criminal investigation agencies. Members asked whether effective protection was offered by Police before the murder, given the risks she was running. The Police Commissioner said it would have been regarded as intrusive to enact such protection against her will.
- Following questions on the rotation of 5 Police Commissioners in the last 4 years, Commissioner Cutajar gave a short overview of the different reasons that led to either resignation or removal of successive persons holding the office.
- The Police Commissioner answered questions regarding the cooperation of Police with FIAU, on the staffing of Police forces (7 investigators, 32 people support staff), on the level of competence in financial matters of the investigators (only 1 person with specific studies in this field).
- The Police Commissioner never started investigations into serious suspicions of money laundering related to the Prime Minister's chief of staff, despite clear reports by the FIAU submitted to them in April, July and November 2016. The Police Commissioner confirmed to Members that several FIAU reports were sent to the police and registered (under the same file number) but no investigation was started. Given the fact that the Police Commissioner is directly appointed by the Prime Minister, questions were raised as to why investigations related to the Prime Minister's chief of staff were not investigated. Members were reminded that only police forces can start an investigation in Malta.
- In the Police Commissioner's answers it was underlined that FIAU compliance reports never reached formally the Malta Police and that those reports that have fallen into the public domain were never formally reported to the Police; following questions from Members on why these reports that were leaked and are in the public domain did not enable the Police to start investigations, the answers were not conclusive: Police Commissioner and aides underlined the limited competences of the Police to start investigations and argued that the leaked FIAU reports were not backed by subsequent reports.
- Members also raised why, then, the prosecution of the Russian whistle-blower Ms. Maria Efimova, upon complaints from Pilatus Bank, moved so fast, while in the same time there is a very slow pace of investigations concerning senior Government officials named in Panama Papers and under suspicions sustained by the Maltese FIAU reports leaked to the public.

- Members asked why the Police had never pressed charges against the former EU Commissioner John Dalli, upon his return to Malta, since there were OLAF and FIAU reports detailing serious accusations against him, and whether there was any connection of his activities with the indictment of his daughters for heading a Ponzi Scheme. Police Commissioner Cutajar said those investigations against Mr. Dalli had occurred before he headed the Police and indicated that the investigation on the Ponzi scheme run by the daughters would soon lead to further charges against others.
- Specific questions were raised on the 425 cases of corruption investigated by the Permanent Commission against Corruption, which did not lead to criminal proceedings; also concrete questions were asked on investigations that the Police might have initiated in connection with Panama Papers and more general questions on why the Police has not investigated PEPS accused of corruption and money laundering. In the answers, the limited competences of the Police to start investigations were repeatedly underlined by Mr. Cutajar and his assistants; there was confirmation that there are investigations in connection with Panama Papers, but no more information was provided: the confidentiality of these procedures was invoked.
- Questions were raised regarding the possible conflict of interests between the Deputy Chief of the Police, Mr. Silvio Valletta, conducting the investigation on the assassination of Ms. Daphne Caruana Galizia, and the fact that his wife is a minister in the current Government. The Deputy Police Chief denied such conflict and stressed the independence of his professional activities from those of his wife.

The Police Commissioner committed to provide a written copy of his introductory statement and to provide more information about their investigations into the Panama Papers revelations.

#### **4. Lunch Meeting with journalists**

Members had an exchange during this working lunch with:

- Jacob BORG, Senior Journalist with the Times of Malta
  - David LINDSAY, Senior Journalist with the Malta Independent.
  - James DEBONO, Senior Journalist with The Shift News.
- One of the topics discussed was the defamation and libel cases (libel damages are around 11 000 EUR) brought against the journalists, the fact that to file a case against a journalist is an easy procedure without consequences for those who file unjustified cases; the libel cases brought to justice tend to last a very long time (even 6 years) and are costly for the journalists, who need to hire lawyers to defend their position; the new proposed Media and Defamation Bill was also mentioned: progress on the content of this law was acknowledged, but it was also noted that its initial version was much worse and harmful.



- It was also mentioned the situation of investigative journalists, the limited time and resources available to pursue their work and the pressure to which they are submitted; the fact that there is no real protection for investigative journalists was underlined; in this context, concerns on the absence of protection measures for Daphne Caruana Galizia were also mentioned.
- Following questions on whether there is media that takes out from the published versions the names of politicians involved in corruption case or names of financial institutions or banks involved, as a consequence of threats of legal actions against the journalists/media concerned, it was underlined that this practice exists and several newspapers are affected;
- It was also discussed the issue of the independence of broadcasting TV stations and of newspapers and the fact that the media are aligned, private broadcasters being owned by political parties and the national broadcaster being under the control of the government;
- Specific questions were raised by Members on issues such as the situation in the country and its impact in the independence of the judiciary (e.g. the system of appointment of judges), the many corruption and money laundering cases that are investigated by journalists, including those that involve high ranking officials; suspicions of cases of clientelism in relation to public contracts; recent developments regarding the Panama Papers exposed cases; the IIP passports schemes sale and the contracts passed by the Government with Henley and Partner Co and other companies that take the PM and Ministers in road shows around the world to advertise the Programme; certain practices to influence voting in elections, including allegations of potential increase of employment in the public offices in Gozo and soldiers pay raise just before the elections; concerns raised by the high amount of buildings and constructions permits, as well as legalizations of irregular constructions before elections, in the last years; but Members did not have further opportunity to clarify these allegations.

## **5. Meeting with Jonathan Ferris, former police inspector and former FIAU investigator**

Mr Ferris worked in the Economic Crimes Unit within the Police for several years, where he investigated various serious cases, including the one related to former Commissioner John Dalli. Mr Ferris said “he left the Police with regret, because of direct interference from the government in his work”. He resigned and was subsequently employed by the FIAU.

### **Two FIAU reports related to Mr Keith Schembri**

- Regarding the Panama Papers revelations, Mr Ferris said he did not work on the two FIAU reports (both related to the Prime Minister’s Chief of Staff Keith Schembri), which leaked to the media. He claimed he only signed the last report (from November 2016) after “a grammatical proofreading”
- On the Schembri/Tonna report, he backed the suspicions raised by the FIAU and identified the reason provided by Mr. Tonna for justifying the reimbursement of a loan to Mr. Schembri as a breach of ethics - no such thing can exist between an auditor and his/her client (see leaked report on Schembri/Tonna bribery scheme involving €166000 transfer from 3 Russians applying for MT passports in the IIP passport scheme, transferred through secret offshore companies ending up on Mr. Schembri’s bank account in Pilatus Bank). He emphasized several times that the Police is expected to prevent money laundering and wrongdoing, not just prosecuting. Once information is public, the Police is informed and is bound to act.

### **E-grant**

- About the offshore company E-grant, which Mrs. Daphne Caruana Galizia attributed to Prime Minister Muscat’s wife on 28 April 2017, he made the following statement: “The bank accounts were held in Dubai, but Dubai is a black hole. From the United Arab Emirates we get nothing. From Panama we did receive information, though”. “I was working on a Saturday morning and received phone calls from ex-colleagues (police inspectors), who were harassed by Police and the Attorney General with regard to the case of the Pilatus Bank whistle-blower (Maria Efimova), which we had investigated together. I was asked to re-testify on the case. The Russian whistle-blower had reported to the Police. Tuesday 2nd May I went to the Police and said I did not have anything new to report.”
- Mr Ferris said he was then dismissed from all investigations related to the Panama Papers at the end of April 2017, because the FIAU director and deputy-director argued that he had a conflict of interest (“because I had arrested Ms Efimova in my previous job.”)

### **Konrad Mizzi**

- On the Konrad Mizzi allegations, he affirmed that the FIAU prepared a 130 page report which was finished on 30 March 2017. He wasn’t himself the person writing the report (just overseeing this job performed by another analyst). The FIAU director and Mr. Ferris had an argument about the report, as the director wanted to review 4 pages related to his analysis. They had reviewed it together and agreed to send it to the Police (in March). 4 pages of this report were later

leaked to the press by an unknown source. Mr. Ferris was heard by the end of May by the Magistrate appointed to investigate the allegations regarding e-grant.

## **Other**

- Mr. Ferris was fired on 16th June 2017, during his probation period. Mr Ferris is now contesting to court his dismissal from the FIAU. In order to justify why his dismissal is illegal, he needs to give evidence about the cases he was supervising. The AG filed a motion in court, to ask for trial to be behind closed doors, and for Mr. Ferris' affidavit to be removed from the act of the proceedings.
  
- Mr. Ferris has applied for whistleblowers' status under Maltese law and should receive a reply within 28 days. Mr Ferris said he feared for his family but did not get police protection, although he had been told that there were patrols in his street.
  
- Mr Ferris contested that the Police cannot do much when they receive information about suspicion of money laundering. He says the Police has all the legal conditions in place to investigate after a complaint, the filing of a report or information brought to their attention.
  
- Mr. Ferris reminded the Members that just a few days after Panama Papers revelations, on 7th April 2016, the then FIAU Director Mr. Manfred Galdes went to the then Police Commissioner with a 7 page report (a preliminary report) mentioning suspicion of money laundering involving Political Exposed Persons close to the Prime Minister to start investigations. Soon after that, the then Police Commissioner resigned. And Mr. Galdes himself resigned as head of FIAU three months later.

## **6. Round table with non-governmental organizations active in the field of Rule of law and the fight against corruption**

The Members of the delegation met with the following representatives of the civil society: Pia Zammit, Clemence Dujardin, Anika Psaila Savona and Philippa Gingell Littlejohn (Occupy Justice); Andrew Borg Cardona (Lawyer and anti-corruption Activist); Manuel Delia (Blogger and anti-corruption activist); Karl Camilleri, Monique Agius (Civil Society Network); Neil Falzon, Helena Claire Agathangelou (Aditus) Emma Paris, Martina Urso (Kenniesa) and Josef Vella, CEO and Edwin Balzan (UHM - Voice of Workers).

In the exchange with the representatives of civil society, the following aspects were underlined:

- the tensed atmosphere in the society after the assassination of Daphne Caruana Galizia and the perception that not all efforts are done by authorities regarding the investigation of her murder;
- concerns over the politicization of the Police forces, in relation with the non-action after FIAU reports were brought to the Police by the FIAU, a general perception of weaker public of institutions and the inability to take action;
- the need for scrutiny as regards the implementation of the laws in Malta, problems in the separation of powers, concerns about the possible collapse of the rule of law and over human rights violations; the need for an independent judiciary, that is not controlled by the executive; nevertheless, trust was expressed in the judiciary system and in particular in magistrates and courts; it was also emphasised the need for the system of appointment of magistrates to be changed, in order to ensure independence and meritocracy;
- concerns regarding the Panama Papers revelations on corruption cases and the culture of resignation of public officials; the perception of impunity for criminals was deepening, as a consequence; also a perception of lack of capacity to investigate the financial crimes; the need for a system of selection and appointment of key public officials positions based on meritocracy and professional competence;
- concerns over the possible conflicts of interest when the same person acts in different capacities: the fact that the Attorney General is the Chairman of the FIAU's Board of Governors, the legal adviser of the Government and also the Public Prosecutor was several times underlined;

- concerns over the autonomy of the University of Malta, and the proposal of the University Act that aims to concentrate more power of decision in a board appointed by the Government;
- intimidation and threats against civil society and journalists feed a culture of fear, aggravated in the last years;
- the lack of a real dialogue between civil society and the authorities;
- concerns about the rule of law were raised long before the murder of Daphne Caruana Galizia; the concentration of powers granted by the Constitution is a systemic problem, existing long before the current government entered into function.
- Aditus Human Rights representative noted that they had commented on the violations to the rule of law long before Daphne’s assassination, and before the current government, as the legislation allows the appointment of party affiliates in judicial positions, determining excessive politicization of courts. Every single body in Malta is politicised. Parliament has kept this system for the last 25 years: the problem is structural. Threats received today are similar to those received in the past.

## **7. Meeting with Pilatus Bank representatives**

Delegation Members met with Mr. Hamidreza Ghanbari, Chief Executive Officer; Dr. Claude-Anne Sant Fournier, Head of Legal and Compliance and Mr Luis Felipe Rivera, Chief Operating Officer.

- Mr Ghanbari was asked about the veracity of allegations that the process of the bank obtaining its license had been speeded up with the help of Mr. Keith Schembri, the Chief of Staff of the Prime Minister. He explained that Pilatus Bank (PB) started as an asset management company in Switzerland. The promoter, by the end of 2011/early 2012 wanted to set up a bank in the EU and enlisted assistance from KPMG in 3 different jurisdictions that could be convenient, for language reasons mainly: UK, IE or MT. “If you want to set up a new bank, you need to have enough capital, according to CRD IV”. The process started in July 2012 in MT with the then Minister for Finance and, later, with Professor Bannister (Chairman of the Board of MFSA) in August 2012. KPMG MT was engaged in August to handle the licensing process for PB. The first presentation was in September 2012. Till October 2013, various communications between KPMG and MFSA took place. In January 2014, PB got the licence, in practice received it by February 2014. The licensing process was not rushed, took around a year and a half. It went according to the normal licensing process in MT: in October 2013, a pre-approval with some conditions was issued: “register your company and incorporate PB. We incorporated the Bank in December 2013 and the license came in February 2014. “

- The annual accounts are audited by KPMG. Mr Ghanbari agreed to send information about the ownership of equity and the proportion of Azerbaijani clients, as well as the proportion of their clients being PEPs in writing, adding that “the entire client list had been provided to the FIAU and MFSA, including an electronic audit track.”
- Asked to comment about the leaked FIAU compliance report, Mr Ghanbari said the MFSA and the FIAU conducted an on-site inspection in March 2016. They stayed 5 days and sent a report in April 2016 to the Bank’s board of directors, who were asked to comment on factual mistakes. “Pilatus Bank then engaged KPMG MT for an audit of their activities which concluded only to the need of minor corrections regarding their obligations to prevent money laundering. Following the KPMG Malta audit, transmitted to the FIAU in June 2016, a second onsite visit was planned for August. Pilatus Bank received a letter in September 2016 confirming all issues raised were closed and there were no shortcomings regarding the DD for new costumers and the ongoing monitoring of existing clients.
- Asked about the allegations about Azerbaijani clients of the Bank, Mr. Ganbhari explained that Azerbaijan is not considered a high risk country by FATF, but they nonetheless apply enhanced DD to clients from this country. Every transaction is monitored live.
- Asked about the number of STR’s filed to the FIAU, the CEO said there were 0 in 2016 and in 2017, 4 or 5, but several were related to one client.
- Members also asked questions about the video of the Bank’s beneficial owner, Mr. Ali Sadr Hasheminejad, leaving the building by a back door with a suitcase, in the middle of the night, just after allegations by Mrs. Daphne Caruana Galizia that the beneficial owner of the e-grant company was the wife of Maltese Prime Minister Muscat and that evidence of this were in the Pilatus Bank. The representatives of the Bank explained that Mr. Ali Sadr came to Malta for a board meeting of the Pilatus Bank, arrived the day before and worked until late that day. As there was a lot of agitation because of media reports on the e-grant company, Mr. Ali Sadr was advised to leave the building by the backdoor. They claimed that nothing was taken from the Pilatus Bank office, that Mr. Ali Sadr was only carrying his suitcase and he was in Malta the next day for the board meeting (had not left for Baku the next day, as was reported in the press).
- Members asked about the business model of the Bank, given that it only has 130 clients, EUR 300 million in deposits, but a staff of 15 in Malta and seven employees in the UK. PB’s representatives answered the following: “We are a one-stop-shop for private banking, we get fees and commissions, we carry out custody services for clients and we are active in commercial lending.” They qualified their banking activities as “plain vanilla banking”. (Ms. Efimova, a

former PB employee, later talking to Members by video conference<sup>1</sup>, said that she had been told that the money was made on the money markets).

- Members asked several questions related to the sustainability of the Pilatus Bank model, given the high competitiveness in this sector and the Bank's low number of clients; and also asked how documents, which couldn't be produced during the first onsite visit in March 2016, were then available in August.
- On Ms. Maria Efimova, the Russian ex-employee of Pilatus Bank and a source to Daphne Caruana Galizia regarding the allegations on the ownership of the e-grant company, representatives from the Pilatus Bank insisted that she was an intern at Pilatus Bank (Ms Efimova claims she was hired as an executive assistant to the CEO of the bank). They qualified Ms Efimova's conduct inappropriate for an employee leading to the termination of her contract (after three months) and alleged that they discovered only after her dismissal that she was defrauding the bank (expenses related to a business trip involving her family). The Board of the Bank decided to file a criminal complaint and the Police decided to investigate. (Ms Efimova claims that the disputed expenses were authorized by the Bank's CEO and she has filed a complaint against PB, as she was never paid for her work at the Bank)
- Pilatus representatives were asked about the annual accounts of their bank. They promised to send them to the delegation.

## **8. Meeting with "Advocates for the Rule of Law"**

The Members had the opportunity to have an exchange with Dr. Conrad Portanier and Dr. Damien Degiorgio, from "Advocates for the Rule of Law".

The main points underlined, as regards the background situation for Malta, were:

- the very politicised and divided society in Malta;
- the constitutional system, based on Malta history as a former British colony, that provides for much power to be concentrated in the hands of the Prime Minister, in particular as regards appointment to key posts, with few check and balances;
- the lower salaries in the public sector, compared to the private sector;
- the judiciary is respected as independent in the country, but the concentration of powers in the Prime Minister, enabling him to appoint new members of the judiciary, could be a risk for such independence;

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<sup>1</sup> See point 13.

- The perceived failure of the state to bring certain criminals to trial in Malta and a general problem of white collar crime, with very few cases of prosecution for market abuse or insider dealing, for example;
- the Offices of Ombudsman and of the Auditor General (both appointed with a majority of 2/3 in Parliament) have produced sound reports with criticism on successive administrations;
- the debate on taxation and rule of law should not be confused: Malta, as a small country, needs to perform in the field of taxation, its financial sector is an important source of income;

The following recommendations were put forward in order to strengthen independence, transparency and accountability for all institutions;

- a reform of the office of the Attorney General (as he has overlapping competences, as legal adviser of the Government and also as prosecutor) and the establishment of the office of an independent prosecutor general. Independence should be guaranteed (the Final Report of Commission for the Holistic Reform of Justice, published in 2013, was mentioned);
- a revision of the procedures for the appointment of judiciary (despite a revision recently, still the process of selection and nomination could be improved), as well as of other key official positions, to ensure checks and balances;
- an overhaul of remuneration structures for public officials and judiciary;

## **9. Meeting with representatives from KPMG**

Ms Juanita Bencini and Senior Partner of the firm, Tonio Zarb, were invited in view of the involvement of Ms Bencini as a consultant in the application for the Pilatus Bank banking license.

- Asked about the Iranian origin of the owner and his use of a St Kitts & Nevis passport and whether that was an obstacle in the application, Ms Bencini said she could not talk about particular clients. Ms Bencini said she had worked for KPMG for 18 years and had gone through six licensing processes for clients: “They all went through a proper process with the MFSA”, she said. Specifically asked whether the Prime Minister’s Office had intervened in the licensing process of PB, she said she had never received any communication from that Office.
- KPMG explained that they have their own global due diligence process, which needs to be satisfied before they can take on board new clients. MFSA has their own system of due diligence based on personal questionnaires and background checks.



- They referred to a 23 June 2016 KPMG auditors' report, produced for Pilatus Bank, with the objective to look into certain allegations made against the Bank after an on-site visit. KPMG's report is public and available online. KPMG was not able to answer more specific questions about Pilatus Bank, beyond what is in the public domain, otherwise it would be a breach of client confidentiality.

**1 December, 2017**

## **10. Meeting with Chief of Justice, Mr. Silvio CAMILLERI**

During the exchange with the Chief of Justice (CJ), the following aspects were underlined:

- recalling his recent public comments on the deterioration of rule of law in Malta, the CJ emphasized that the tragic assassination of Mrs. Daphne Caruana Galizia had a chilling effect on the Maltese society; but it also had a galvanizing effect, waking up ordinary citizens to understand the real importance of the rule of law for the daily life of all.
- the CJ noted the importance of clear criteria for selecting persons holding public offices, arguing that they should be assertive enough against political interference; an improvement in legislation to appoint members of the judiciary (earlier appointed at the discretion of the government) resulted from the recent creation of a selection board (the “ Judicial Appointments Committee” ), chaired by the Chief of Justice, with composition drawn from the judiciary and clear selection criteria; this board is to assess the suitability of the candidates, while the Government retains the discretion over the appointment to be proposed to the President of Malta;
- the CJ underlined the need for separating the roles of the AG, as legal counsellor of the government and as public prosecutor; he believed that, according to the constitutional system, the AG was able, over the years, to distinguish between roles. But admitted that this combination of functions may no longer be suitable;
- following questions on the low number of investigations and prosecutions concerning financial crime and corruption, the Chief Justice acknowledged that a culture of impunity is fostered when the rule of law is weakened and law enforcement is perceived as weak: then the criminality rises; he made reference to Moneyval evaluations criticizing Malta for its low level of prosecution of money laundering cases.
- following questions on investigations of money laundering suspicions and the alleged limited competences of the authorities in this field, the CJ underlined that “reasonable suspicion” is not needed for the Police to start a criminal investigation. Investigations can be started by the Police with simple information of a crime brought to their attention, in any form. He noted that for court prosecution or for measures restricting freedoms, such as an arrest warrant, then the legislation requires “reasonable suspicion”;

## **11. Meeting with Prime Minister Joseph MUSCAT and the Minister for Justice, Culture and Local Government Dr. Owen BONNICI**

To this meeting the Chief of Staff of the Prime Minister, Mr. Keith Schembri, was also present. **(Mr. Schembri was invited to speak with Members in a separate session, earlier in the day, but he never confirmed his presence and did not appear).**

The main aspects underlined in this meeting were:

- The Prime Minister read a statement ; the Prime Minister reassured Members of the total involvement of all authorities to investigate the murder of Mrs. Daphne Caruana Galizia; all possible resources are dedicated to the investigation, with the involvement of Europol and other international intelligence agencies; in this context, he mentioned the letter that her family had sent to the competent minister, asking that information should not be disclosed that could bring prejudice to the investigation;
- as regards the rule of law, he pointed out that the Maltese judicial system and legislative framework were assessed by the European Commission before the country became a Member State of the European Union, in 2004;
- the Prime Minister made an overview of the recent reforms introduced by his government, including the scrutiny system for the appointment of the members of the judiciary, parliament's scrutiny for regulators and more administrative autonomy for the Parliament;
- the Minister of Justice pointed out that Malta has a Justice Reform Commission that presented an extensive report, and improvements sector by sector are starting, from a quantitative point of view, making procedures more efficient, but also qualitative, with the new system for the appointment of judges; more efforts will be done to strengthen the independence of judiciary and improve the working conditions;
- Members expressed to the Prime Minister their concern on the lack of efforts to combat corruption and money laundering in Malta and noted the shadow cast over the credibility of reforms undertaken by the Government when two individuals under serious suspicions of money laundering and bribery, as per the Panama Papers and leaked FIAU reports, were still retained by the Prime Minister in his Government;
- The Prime Minister noted the “partisan, almost tribal nature” of the political debate in Malta, with accusations of corruption thrown at members of his Government. There had been elections in June, with clear results for the ruling Labour Party. There were judicial inquiries ongoing focusing on specific allegations. He had decided, on his own authority, to retain those persons in the

Government;

- Members noted an example which countered the partisan antagonism around the fight against corruption, but in a rather disturbing manner: the fact that the ex-Commissioner John Dalli, a PN former minister, who, upon returning to Malta after having been forced to resign from the EC, was made an advisor to the Labour Party Prime Minister, instead of being prosecuted for bribery and corruption charges, despite substantial evidence in investigations and reports by OLAF and Malta's own FIAU;
- Members raised their serious concerns with the protection of Mr Jonathan Ferris, as a whistle-blower. The Head of the Mission informed that, after the meeting with Mr. Ferris, she had contacted the Police Commissioner to ask that special protection be afforded to him and his family. The Prime Minister responded that since Mr Ferris filed for protection as whistle blower, protection would be offered in accordance with the law; other whistle blowers were being protected;
- on the overlapping powers of the Attorney General, the Minister of Justice explained that the AG does not have the competence to investigate and that his competences as adviser of the government are limited. In his capacity as Chair of the Board of Governors of FIAU, the AG has no executive powers. On the fact that there were 5 police commissioners in 4 years, a brief description of the reasons for either removal or resignation for each commissioner was provided; the Prime Minister acknowledged, nevertheless, that there is an issue with the low level of prosecution of financial crimes and that solutions are being sought to resource the FIAU and to decouple the functions of the AG;
- as regards the low level of investigations and prosecutions for white collar crimes in Malta, it was reiterated that for a prosecution to be initiated it is needed to reach a certain level of proof, prosecutions can only take place in cases with a reasonable suspicion; this was the explanation given for why the Police did not initiate prosecutions in the case of the leaked FIAU reports; the Prime Minister underlined that, as a follow up of the leaked FIAU reports, magistrates had been appointed to investigate suspicions raised by the FIAU and these appointments were also supported by the opposition;
- on organized crime, it was acknowledged that such organisations are operating on Maltese territory, the main problem being that victims do not want to cooperate with the Police; in this context, it was mentioned that the Police budget was increased constantly during the last 5 years;
- as regards the possibility for Malta to join the EPPO, it was pointed out that the position not to join was agreed by Parliament on issues of subsidiarity and that the Maltese authorities want to see how the EPPO operates, before deciding whether to join such initiative;
- following specific questions addressed to the Chief of Staff, Mr. Keith Schembri read a statement noting that he is subject to a magisterial investigation, that he is

fully cooperating in this investigation and that he gave testimonies in front of the inquiry magistrate, therefore he could not disclose the content, due to the confidentiality of these proceedings;

- following a question on the non-answer by Malta to the specific questionnaire sent by PANA committee, it was emphasized that at that time Malta had the Council Presidency and the Council's legal service had advised the Maltese Presidency against cooperating with the PANA Committee, as it questioned its mandate; (answers were nonetheless received via the Maltese permanent representative a few days after the mission: PANA secretariat - Annex III)
- Members also raised questions on the IPP passport schemes and the issue of citizenship, asking for statistics on the countries of origin and the number of passports issued, besides the contract passed by the Government with the Henley and Partners Co to manage the IPP; they underlined the need for an exchange of information with the Commission and the European Parliament. The Prime Minister told Members the contract for the IPP is publicly available since 2015, although partly redacted for commercial secrecy. He denied that Government Members are contractually obliged to participate in international conferences to promote the scheme, their participation was rather due to the need to ensure good explanations about the IIP. As regards the question of NEXIA BT in the passports schemes, the Prime Minister said: "they have no role"<sup>1</sup>. The Prime Minister said additional information as to who benefitted from the IIP passports could be communicated later to Members of the Delegation, as those data were made public together with all data on people gaining Maltese citizenship via other forms of naturalization (marriage, etc...). He argued, however, that names of the people benefitting from this scheme cannot be made public for data protection reasons.
- Answering questions about the future of the MFSA, the Prime Minister said a public consultation was launched to consult on the reform of MFSA and on the European Parliaments' critic on the need to separate between the MFSA Chair's promotion function and his supervisory function will be taken into account. The Prime Minister ensured that the new Chair of the MFSA (5to be appointed early 2018) will be subject to parliament scrutiny and a person with high level standards should be selected.
- Specific questions were also addressed to the Chief of Staff on his relations to owners of Nexia BT, including Mr. Tonna. He admitted that, having exercised in the private sector in Malta, he is friendly with many actors in the financial sector and admitted to have a bank account in the Pilatus Bank, precising he has also accounts with other banks in Malta.
- Members asked for the information sent by the Maltese government to the EU

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<sup>1</sup> Extrait of the advertisement of Nexia BT, <https://www.nexiabt.com/en/relocation-services>

Commission in the framework of an exchange concerning money laundering legislation and financial services legislation, which was mentioned by Frans Timmermans during the recent plenary debate on the rule of law in Malta. The Prime Minister promised to examine whether this information can be made available to the delegation.

## 12. Meeting with the Maltese Financial Services Authority (MFSA)

Present in the meeting were: Professor Joe Bannister, Chairman of the Board; Ms. Marianne Sciclun, Director General; Ms Angele Galea St John, Director, Authorisation Unit; Dr Anton Bartolo, Director, Enforcement Unit; Ms Catherine Galea, Deputy Director, Authorisation Unit; Mr Andrew Portelli, Deputy Director, Banking Supervision Unit

- Pilatus Bank is owned by Iranian-born Mr. Seyed Ali Sadr Hasheminejad, who holds a passport from St Kitts & Nevis. His registered address in the records of the MFSA is Bethesda, Washington, USA, but records for his UK companies – Pilatus Capital Ltd and Pilatus Trade & Finance Ltd – state he is living in Dubai, the United Arab Emirates (PANA secretariat).
- Members asked questions about the issuance of the bank license to Pilatus Bank. “An application for a bank license has to be determined within 6 months. This can be extended by 6 months (CRD IV requirement). The application started in 2012, a formal request was received in 2013, the license was provided in 2014. So this was not a matter of a few weeks”.
- About the owner of Pilatus Bank: The MFSA has a severe DD process, Members were told. The “fit and proper assessment” was carried out, which is a standard assessment for all applicants. The MFSA looks at personal details and information submitted by the applicant, by each key person, each director. In a personal questionnaire they ask a number of questions about involvement, personal details, employment history, as well as certain declarations. All information in this questionnaire is verified with open sources, completed with checks with non-open sources (at a substantial cost). MFSA makes contacts with regulators to check the information. In this specific case, the conclusion was that the owner of Pilatus Bank was considered to be a fit and proper person in 2014, when the Bank was licensed to operate. MFSA is carrying out on-going due diligence on the Bank. MFSA explained that the simple fact that the bank’s owner is Iranian does not mean he is not fit for licensing.
- Members asked if the MFSA had inquired on the origin of Mr Ali Sadr Hasheminejad ‘s capital, in view of reports linking it to a conviction for embezzlement in Iran and noted that Iran is considered a high-risk country by FATF\* , requiring enhanced DD and that the Commission pointed at the risks of PEPS’ involvement in Pilatus Bank. The MFSA did not know about a conviction.
- MFSA said they used intelligence sources and that the assessment was taken very seriously. They answered specifically “Being Iranian does not disqualify or qualify to be fit and proper. Yes, Iran is on FATF list and we did enhanced due diligence. At the time, result of our checks did not show any conviction, and the owner was not on any sanction list. We carry out ongoing DD on all of our licensees. When allegations of this sort are brought up, we take them very seriously”. About the Commission criticism, expressed in a letter about Pilatus Bank: “The Commission mentions deficiencies but we don’t know what they

mention. We have not met with the Commission ourselves (only the government did). We do accept that everyone can improve; we are not perfect. If the Commission suspects anything, they should talk to us directly.”

- The MFSA explained that Pilatus Bank didn’t start operating on the first day they were granted the licence. MFSA immediately carried out an on-site visit in 2015 (within one year of licensing). MFSA compliance reports are confidential, so, they they could not comment on the content of the visit. But MFSA was part of a second on-site visit in March 2016, together with the FIAU (which led to a compliance report raising suspicions of breach of Maltese anti-money laundering legislation by the bank, a report modified in September 2016). MFSA argued they didn’t have findings strong enough to withdraw the bank’s licence. They added that their supervision of the Bank has intensified since 2016.
- The MFSA explains that, in general, they need systemic prove of money laundering to be able to revoke a license but this is not a one-off decision, rather a process, based on a series of information. MFSA argued that they cannot rely on journalists’ revelations or leaked FIAU reports in such cases, but need to find concrete evidence, otherwise the bank could appeal the decision. MFSA added it is working intensively with the bank, but admitted this may not be seen by the Maltese population. Asked about the share of PEPs in the Pilatus clientele, the MFSA said it has the information, but cannot share it. “We have an ongoing investigation and we don’t want to provide information which can lead to confusion. We never disclose any information about the client profiles of banks, of any bank. We know the names of the BOs and the amount of deposits. This is not because we have something to hide, there are rules we cannot breach.”
- Members asked about the Pilatus Bank business model: Given that they only have 130 clients, and they mostly rely on fees, such fees should be much higher than any other bank in Malta. If clients are willing to pay such fees, does this not come together with a counterpart and a higher risk? MFSA answered: “It is a small private bank, not a large retail bank. A small private bank that attracts business from high net worth individuals. Private banks work that way. In itself, there is nothing wrong. What is important is that the bank has strong internal measures to deal with this risk and strong supervision. I suppose they charge high fees.”
- Members also asked about the capital of the Bank. MFSA replied: “Their statement of origin of the funds was checked and there was no sign of criminal origin, at that point in time (when granting licence), verified by our sources and other sources. We checked the source of funds (current wealth of the person), as well as where it comes from. We checked the funds: they were transferred from a bank, but not an Iranian bank.”
- The MFSA told Members Pilatus Bank was in the process of setting up a branch in the UK, but Members informed that they had been told by Pilatus Bank that the branch was already set up and active (MFSA seemed to have only partial information, aware about a possible set up of a UK branch in the future).



- Members asked about Nexia BT, which allegedly is involved in setting-up of offshore structures for PEPs via, inter alia, Mossack Fonseca: “They are under supervisory attention by the MFSA together with the FIAU. An onsite inspection was carried out recently and we are looking into the findings. (There is also an ongoing magisterial inquiry). We are looking at what type of actions we need to make.”
- Members also asked about the peer review process of MFSA and MFSA promised to come back to Members about ESAs peer reviews and to share more information. In addition, several questions were asked as to Mr Joseph Bannister (the Chairman of the MFSA Board) mentions in the Panama Papers and the Paradise Papers (being linked to several offshore entities). He explained his participation and mentioned that MFSA has an ethic code prohibiting conflicts of interest.

### **11 December, 2017 (follow -up meeting)**

#### **13. Video-Conference with Ms. Maria Efimova, a former employee of Pilatus Bank in Malta. Members were in Strasbourg, Ms. Efimova spoke from an undisclosed location**

Members spoke via video-conference with Ms. Efimova, the Russian national who was employed by Pilatus Bank and later was reported by the Bank to the Police for breach of duties. Ms Efimova was in contact with Ms. Daphne Caruana Galizia, as a source on the activities of Pilatus Bank and specifically on allegations linking the E-grant account with the Prime Minister’s wife.

Ms. Efimova replied to questions from Members on the reasons she decided to flee Malta, fearing for her personal and her family’s safety. She described questioning and intimidation by detectives that her parents in Russia had been subjected to, in the meantime. She had been to the Police in Malta and had also seen the Magistrate in charge of the egrant inquiry and was therefore bound to not disclose certain elements she had discussed with the Magistrate.

She indicated she was not the original source who had provided information on egrant to Ms. Daphne Caruana Galizia.

She provided Members with information about the business model of the Bank, where she had worked as a PA of the CEO, Mr. Ali Sadr, but also was in charge of certain clients. She informed the Bank was mainly operating on the basis of deposits of 2 or 3 Azerbaijani clients, among other PEPs.

### III. Key findings

#### Rule of law

From the exchanges with different stakeholders, the following aspects have been underlined by the Members of the delegation:

- the need to strengthen independence, transparency and accountability for all institutions in Malta; the need to address the potential conflict of interests for key public or elected offices and the unclear separation of powers which has been the source of the perceived lack of independence of the judiciary and law enforcement authorities;
- the need for reform of the office of the Attorney General (as he acts in different capacities, e.g. as legal adviser of the Government and also as prosecutor) and the establishment of the office of an independent prosecutor general;
- the need for concrete steps towards a transparent system of selection and appointment of the judiciary and of other key public officials positions, as appointments by the government create risks for the independence of the judiciary and of law enforcement; to counter the general perception that the Police is highly politicised, the selection system must enact criteria focusing on merits and competence; recent changes to the legislation to appoint the members of the judiciary by creating a selection board (the “ Judicial Appointments Committee” ) with clear composition and selection criteria is welcomed, while the Government retains the discretion over the appointment to be proposed to the President of Malta;
- the perception of impunity is linked also to the low number of investigations and prosecutions in relation to money laundering and corruption allegations, namely the inaction in connection with Panama Papers and reports of the FIAU ;
- of particular concern is the finding that no Police investigation was ever started focusing on suspicions of corruption and money laundering by a Cabinet Minister and by the Prime Minister’s Chief of Staff, who, by being kept in office, may be continuing the criminal activity.
- concerns on the effectiveness of the fight against corruption, as only very few of the 425 corruption cases investigated by the Permanent Commission Against Corruption had resulted in criminal proceedings in court;
- the perceived culture of fear, dramatically escalated with the assassination of Mrs. Daphne Caruana Galizia, demands that the law is properly enforced and is seen as being properly enforced, and that includes ensuring that investigators really investigate and that there is effective protection for investigative journalists and whistle-blowers;

- concerns over the weak implementation of the anti -money laundering legislation, as Malta is not yet implementing the 4th anti Money Laundering Directive, despite the deadline for transposition of 26 June 2017;
- concerns linked to the legal framework on media, including the proposed Media and Defamation Bill and concerns regarding in general the media freedom and independence, given the pressure and threats that were reported in connection with investigations led by journalists, the numerous libel and defamation cases that journalists are charged with, and the instrumentalization of the TV broadcasters, which are either controlled by political parties or by government;
- concerns on the current decision of Malta not to join the European Public Prosecutor Office at this stage;

### **On AML**

- None of the FIAU reports regarding Maltese PEPs were investigated by the Police, even though the FIAU concluded that “a reasonable suspicion of money laundering and/or the existence of proceeds on crime subsists” in the case of the Prime Minister’s Chief of Staff, Mr Keith Schembri, in relation to the Individual Investor Programme and his link to NEXIA BT’s Brian Tonna. The reports had been forwarded to the Police “for any action the Police may consider appropriate”.
- The only investigations that have been initiated in the wake of the scandals are conducted by magistrates - what means that they can take years to come to any conclusions - and were triggered only more than one year after first suspicions were raised. They are the following:
  1. 22/4/17 – Magistrate Aaron Bugeja, appointed to lead the Egrant ownership inquiry (allegations focusing on Mrs. Michelle Muscat, the Prime Minister’s wife).
  2. 9/5/17 – Magistrate Natasha Galea Sciberras, appointed to lead the Schembri/Tonna kickbacks for passports inquiry
  3. 17/5/17 – Magistrate Consuelo Scerri Herrera, appointed to lead the Pilatus Bank complaints about the leaking of their documents. Ms Herrera was initially assigned to investigate Daphne’s murder.
  4. 25/5/17 – Magistrate Josette Demicoli, appointed to lead the inquiry of alleged transactions between Keith Schrembri and Adrian Hillman through Pilatus Bank
  5. 26/7/17 – Magistrate Ian Farrugia refers a request by Simon Busuttil (former opposition leader) for an investigation as to whether Mr Mizzi and Mr Schembri broke Malta’s AML laws by setting up Panama Companies. The case was referred to Judge Antonio Mizzi, asked to recuse himself because his wife is a Labour MEP (Marlene Mizzi). Judge Antonio Mizzi decided to continue.

- The leaked +/- 130 pages “working document” of the FIAU on Minister Konrad Mizzi (of which 4 pages of conclusions were leaked) did not yet lead to an investigation.
- It seems to be impossible for the Maltese FIAU to receive information concerning Maltese citizens from the United Arab Emirates (UAE).

#### **IV. Follow up**

During this mission, the members of the delegation addressed invitations to have exchanges of views in Brussels to the Chief of Justice, Mr. Silvio CAMILLERI (possibly in a committee meeting), and to the CEO of Pilatus Bank (possibly by video-conference).

Also it was brought to the attention of the Members participating in the mission, that the German federal crime police (BKA) handed information related to Panama Papers to Maltese authorities. The Chair of the delegation has sent a letter to the BKA President, asking to share information with delegation Members.

The Members of the delegation were promised to receive:

- a written copy of the Police Commissioner introductory statement (not received at this date);
- the annual accounts of Pilatus Bank; (after the mission the Chair of the delegation sent a letter to the CEO of Pilatus Bank asking for further information;)
- answer by Malta to the specific questionnaire sent by PANA committee ( answers were received via the Maltese permanent representative a few days after the mission: PANA secretariat - Annex III);
- additional information as to who benefitted from the IIP passports (further information individual investor programme was sent by Maltese authorities one week after the mission);

#### **V. Recommendations**

During the meetings, the MEPs expressed serious concerns about the unclear separation of powers, which has been the source for the perceived lack of independence of the judiciary and the police, the weak implementation of anti-money laundering legislation, the serious problems deriving from the ‘investments for citizenship programme’, and the mentions of Maltese politically exposed persons in the Panama Papers and their continuing presence in government. Members noted the low rate of investigations and absence of prosecution by the Maltese authorities on these cases, as well as with regards to private sector actors involved, such as Nexia BT and Pilatus Bank.

The delegation underlined that the rule of law in the Member States, whether it is Malta or any other EU country, is of great concern to all: “The rule of law is a matter of collective security. The brutal assassination of Daphne Caruana Galizia was aimed at instilling fear in everyone, especially those involved in investigating and prosecuting cases of money laundering and corruption.”<sup>1</sup>

#### AT THE EUROPEAN LEVEL:

- The European Commission should assess whether Maltese authorities are fully compliant with the European Anti-Money Laundering directive and the Capital Requirements Directive, especially regarding the application of customer due diligence provisions;
- The European Banking Authority should assess whether the MFSA is fully equipped and free from conflicts of interest to perform its supervisory duties;
- The European Banking Authority should assess whether the MFSA has fulfilled its obligations as national supervisory authority in view of the apparent lack of action against Pilatus Bank and Nexia BT that continue to hold a license to provide services in the EU;
- The European Central Bank and the European Banking Authority should investigate whether the fact that Pilatus Bank continues to hold a license to operate in the EU warrants ECB/EBA intervention;
- The European Commission should take note of the recent report made by Mapping Media Freedom with regard to SLAPP practices currently being used by Pilatus Bank and Henley & Partners and actively ensure the protection of media freedom and journalism across the EU by proposing legislation that would curtail these abusive practices;
- "The European Commission should assess the implications of the IIP (Individual Investors Programme) through which Malta sells European citizenship and Schengen Residence permits, for distortion of the Internal Market and attempt against the security of the European Union, fomenting corruption, importation of organized crime and money laundering. The Commission should also assess fiscal incentives which treat local income of individuals or corporations differently than international income."

#### AT THE NATIONAL LEVEL:

- Persons perceived to be implicated in serious acts of corruption and money laundering, as a result of Panama Papers revelations and FIAU reports, should not be kept in public office and must be swiftly and formally investigated and

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<sup>1</sup> Extrait from the press release of this mission published on 1 December 2017.

brought to justice. Keeping them in office affects the credibility of the Government, fuels the perception of impunity and may result in further damage to State interests by enabling the continuation of criminal activity.

- Work is needed to ensure stronger checks and balances in the Maltese legislative framework to better separate powers and to limit possible interference of the Prime Minister in the judiciary and the media; an assessment of media pluralism and independence from political power should be conducted.
- The functions of Chairman of the MFSA and the function of promoting investments into Malta should be decoupled;
- Reform the Attorney General functions, to decouple the role of advisory to the government from the role of prosecution;
- Reform the Judiciary, namely on the basis of recommendations made in 2013, in order to reinforce the separation of powers and the independence of the Judiciary;
- The Police Commissioner should no longer be appointed by the Prime Minister but by an appropriate independent body. Similarly, the veto power of the Prime Minister should no longer exist regarding the nomination of the Maltese Chief Justice;
- The Whistleblower Protection Act should be revised to cover workers in the public sector. Mr Ferris should be granted police protection and serious consideration should be given to his application for protection under the Whistleblower Protection Act;
- The Maltese Government should separately publish the list of persons being granted Maltese Citizenship under the Individual Investment Programme and should start an independent assessment of this programme and of the anti-money laundering procedures applied to it;
- The Maltese Government should start an action programme against corruption and financial crime and increase the number of investigations and prosecutions. This should include special units in police and judiciary with sufficient and highly qualified staff;
- Civil society organisations and any Maltese citizens should be encouraged to provide evidence and bring formal complaints to the Police forces, FIAU and MFSA, regarding white collar crimes and money laundering in Malta, in order to trigger criminal investigations.
- An investigation is needed over the alleged influence of elections through increased hirings in the public sector, issuance of construction permits and regularisations of irregular constructions, as well as pay increases and promotions in the military

- An investigation is needed on allegations of the smuggling of Libyan petrol;
- Reassess the importance for Malta joining the EPPO in order to work together with participating MS against EU fraud and other crimes affecting the Union' financial interests.

## Annex I - Final programme

### Programme

#### Thursday, 30 November 2017

<b>8:30</b>	<i>Informal briefing by EP liaison office (meeting in the hotel) , followed by bus pick up from hotel and transfer to the Europe House</i>
<b>9:00 - 10:00</b>	<b>Meeting with representatives of the Financial Intelligence Analysis Unit (FIAU)</b> <i>Venue : Europe House</i> <ul style="list-style-type: none"><li>• <b>Dr Peter GRECH</b>, Chairman of the FIAU's Board of Governors and Malta's Attorney General</li><li>• <b>Dr Anton BARTOLO</b>, Deputy Chairman of the FIAU's Board of Governors</li><li>• <b>Mr Kenneth FARRUGIA</b>, Director of the FIAU</li><li>• <b>Mr Alfred ZAMMIT</b>, Deputy Director of the FIAU</li><li>• <b>Dr Alexander MANGION</b>, Head of the FIAU's Legal and International Relations Section</li></ul>
<b>10:00 -10:30</b>	<b>Meeting with Attorney General Dr Peter GRECH</b> <i>Venue: Europe House</i>
<b>10:45</b>	<i>Transport from Europe House to Police Head Quarters</i>
<b>11:00- 12:00</b>	Meeting with <b>Police Commissioner Lawrence CUTAJAR</b> <ul style="list-style-type: none"><li>• <b>Mr Lawrence CUTAJAR</b>, Police Commissioner</li><li>• <b>Mr Silvio VALLETTA</b>, Deputy Commissioner in charge of the Crimes Investigation Department</li><li>• <b>Dr Antoine CASHA</b>, Deputy Commissioner in Charge of the Police Legal Office</li><li>• <b>Mr Ian ABDILLA</b>, Assistant Commissioner in charge of the Economical Crimes and Money Laundering Units <b>and</b></li><li>• <b>Mr Andrew SEYCHELL</b>, Police Consultant</li></ul> <i>Venue: Police Head Quarters, St. Calcedonius Square Floriana FRN 1530</i>
<b>12:15</b>	<i>Transport from Police Head Quarters to Europe House</i>



<b>12:45 - 14:00</b>	<p>Lunch Meeting with journalists</p> <ul style="list-style-type: none"> <li>• <b>Jacob BORG</b>, Senior Journalist with the Times of Malta</li> <li>• <b>David LINDSAY</b>, Senior Journalist with the Malta Independent.</li> <li>• <b>James DEBONO</b>, Senior Journalist with The Shift News.</li> </ul> <p><i>Venue : Europe House</i></p>
<b>14:30 - 15:30</b>	<p>Meeting with <b>Jonathan FERRIS</b>, Former Police inspector, Former Employee FIAU</p>
<b>15:30 - 17:30</b>	<p>Round table with non-governmental organizations active in the field of Rule of law and Fight against corruption</p> <ul style="list-style-type: none"> <li>• <b>Civil Society Network</b>, Organisation of Civil Society Network activists</li> <li>• <b>Manuel DELIA</b>, Blogger and anti-corruption activist</li> <li>• <b>Kenniesa</b>, Anti-Corruption Group of activists</li> <li>• <b>Aditus</b>, Human Rights NGO</li> <li>• <b>Andrew Borg Cardona</b>, Lawyer and anti-corruption Activist</li> <li>• <b>Occupy Justice</b>, activists</li> <li>• <b>UHM - Voice of the workers</b></li> </ul> <p><i>Venue : Europe House</i></p>
<b>17:30 - 18:15</b>	<p><b>Meeting with intermediaries, Pilatus Bank</b></p> <ul style="list-style-type: none"> <li>• <b>Mr. Hamidreza GHANBARI</b>, Chief Executive Officer</li> <li>• <b>Dr. Claude-Anne SANT FOURNIER</b>, Head of Legal and Compliance</li> <li>• <b>Mr. Luis FELIPE RIVERA</b>, Chief Operating Officer</li> </ul> <p><i>Venue : Europe House</i></p>
<b>18:15- 19:00</b>	<p>Meeting with organisation active in the field of Rule of law</p> <ul style="list-style-type: none"> <li>• <b>Advocates for the Rule of Law</b></li> </ul> <p><i>Venue : Europe House</i></p>
<b>19:00 - 20.00</b>	<p><b>Meeting representatives KPMG</b></p>
<b>20:00</b>	<p><i>Transport from the Europe House to the hotel</i></p>

**Friday, 1 December 2017**

<b>8:15</b>	<i>Bus pick up and transfer to the National Parliament (Freedom Square Valletta)</i>
<b>9:00 - 9:45</b>	<b>Meeting with Chief of Justice Silvio CAMILLERI</b> <i>Venue: Courts of Law, Republic St, Valletta, Conference Room</i>
<b>9:45</b>	<i>Transport to Auberge de Castile</i>
<b>10:00 - 11:00</b>	<b>Meeting with Prime Minister Joseph MUSCAT</b> <b>the Minister for Justice, Culture and Local Government Dr. Owen BONNICI</b> <i>Venue : Auberge de Castile</i>
<b>11:30</b>	<i>Transport from Auberge de Castille to the MFSA</i>
<b>11:45- 13:00</b>	<b>Meeting with Malta Financial Services Authority (MFSA)</b> <ul style="list-style-type: none"><li>• <b>Professor Joe Bannister</b>, Chairman of the Board</li><li>• <b>Ms Marianne Sciclun</b>, Director General</li><li>• <b>Ms Angele Galea St John</b>, Director, Authorisation Unit</li><li>• <b>Dr Anton Bartolo</b>, Director, Enforcement Unit</li><li>• <b>Ms Catherine Galea</b>, Deputy Director, Authorisation Unit</li><li>• <b>Mr Andrew Portelli</b>, Deputy Director, Banking Supervision Unit</li></ul> <i>Venue: Malta Financial Services Authority, Notabile Road BKR3000, Attard</i>
<b>13: 00</b>	<i>Transport from the MFSA to the Europe House</i>
<b>13: 30</b>	<b>Press conference (Chair only)</b>
<b>14: 00</b>	<i>Transport to the airport</i>

## Annex II - Final list of participants

### OFFICIAL MEMBERS OF THE EUROPEAN PARLIAMENT

	<b>Name</b>	<b>Group</b>	<b>Full Member/ Substitute</b>	<b>Country</b>
	<b>Ana GOMES</b> Vice-Chair of the PANA Committee/LIBE Member Head of the Delegation	S&D	F	PT
	<b>David CASA</b> PANA Member	EPP	F	MT
	<b>Maria GRAPINI</b> LIBE Member	S&D	S	RO
	<b>Monica MACOVEI</b> LIBE Member	ECR	F	RO
	<b>Ivan JAKOVČIĆA</b>	ALDE		HR
	<b>Takis HADJIGEORGIOU</b> PANA Member	GUE	S	CY
	<b>Sven GIEGOLD</b> PANA Coordinator	Greens/ALE	F	DE

**Annex III** - answers to the questionnaire sent to Finance minister Edward Scicluna on 23 November 2016, received after the LIBE/PANA mission

<http://www.europarl.europa.eu/cmsdata/134320/PANA%20Committee%20Replies%20Consolidated.pdf>