



PANA

Committee of Inquiry into Money laundering, tax avoidance and tax evasion

Delegation to Valletta, Malta 20 February 2017



MISSION REPORT





1. PROGRAMME

09.00 - 10.00 **Meeting with Minister of Finances, Mr Edward Scicluna**

10:00- 11:00 **Meeting with the tax administration (Tax Compliance Unit)**

11.00 - 12:00 **Meeting with Malta Financial Service Authority**

- Prof. Joe V. Bannister [Chair], Ms Marianne Scicluna [Director General] and Dr Anton Bartolo [Director Enforcement]

12.15 - 13.30 **Meeting with the Financial Intelligence Analysis Unit (FIAU) and police commissioner Lawrence Cutajar**

13:45 - 15:15 **Lunch Meeting with journalists**

- Daphne Caruana Galizia, recently named by Politico as one of the 28 movers and shakers of Europe for her work on Panama Papers
- Ivan Camilleri - journalist at the Times of Malta.
- Matthew Vella, Malta Today editor
- Aleander Balzan, Editor One News

15:15 - 16:15 **Meeting with intermediaries, Law firms/tax advisor and banks**

- Pierre Mifsud, partner at EMD Advisory
- Malcolm Booker, CEO of Deloitte Malta
- Nexia BT : Mr Brian Tonna (Managing Partner) or Mr Karl Cini (Tax Partner) (invited- Refuse to appear in person but is ready to reply in writing to any question Members might have)
- Dr Manfred Galdes, former director of FIU, Director of ARQ Risk and Compliance Ltd.
- Paul Mifsud, Managing Director of Sparkasse Bank

16.30 - 17:30 **Meeting with Politically Exposed Persons**

- Konrad Mizzi, Minister
- Keith Schembri, Prime Minister's chief of staff (declined and transmitted to the chairman a letter on the day of the visit)

17.35 - 18:30 **Meeting with Politically Exposed Persons**

- Ninu Zammit, Former Minister of Energy (did not reply to the invitation)
- Beppe Fenech Adami, Member of the Parliament (confirmed)

18.30 **Press conference**



2. LIST OF PARTICIPANTS

Members

Werner LANGEN, Chair	PPE
Ana GOMES, Vice Chair	S&D
Jeppe KOFOD, co-rapporteur	S&D
Dariusz ROSATI (coordinator)	PPE
Sven SCHULZE	PPE
Sven GIEGOLD (coordinator)	Verts/ALE
Paul TANG	S&D
Roberts ZILE	ECR
Nils TORVALDS	ALDE
Miguel VIEGAS	GUE
Mario BORGHEZIO	ENF

Accompanying Members

Therese COMODINI CACHIA	PPE
Roberta METSOLA	PPE
Alfred SANT	S&D
David CASA	PPE
Miriam DALLI	S&D



3. KEY FINDINGS

KEY FINDINGS FROM DELEGATION VISIT:

- The delegation could meet with most of the relevant persons (Minister of Finances, tax authorities, Financial Intelligence Analysis Unit (FIAU), police ...). However, Keith Schembri, Prime Minister's Chief of Staff, refused at the last minute (at 2 p.m.) to meet the delegation and questioned the mandate of the Committee. Ninno Zammit, former Minister of Energy, did not reply to the invitation of the Chair of the Committee.
- The Maltese tax system is very attractive and in line with current international and EU standards as regards harmful tax competition. The Finance Minister however admitted that the Maltese tax system can be prone to abuse and confirmed that Malta disagreed with Commission proposals on specific tax issues (e.g. public CBCR, CCCTB).
- There is a high number of intermediaries from Malta involved in the Panama papers, with some intermediaries having worked with politically exposed persons in Malta. One intermediary in particular - Nexia BT - refused to appear and didn't satisfactorily answered the questions raised in written.
- Malta has transposed EU rules and respects OECD standards in terms of transparency, fight against tax fraud and money laundering.
- The institutions in charge of implementing and enforcing rules as regards tax fraud and money laundering are highly politicized. The press is also highly politicized.
- The police is in charge of prosecuting the investigations carried out by the FIAU. There are reasons to believe that it is not well equipped to fulfil its task optimally, possibly suggesting a case of maladministration. Especially, the number of convictions and confiscations seems extremely low in relation to the on average number of reports sent to the police by the FIAU (during the period 2013-2015).
- The tax compliance unit mentioned a lack of resources to comply with the spontaneous exchange of information required by the EU Directive on Administrative Cooperation.



4. KEY MESSAGES

➤ Meeting with Minister Scicluna

- The Minister contested that Malta is a tax haven. Its tax system has its own specificities due to its location and lack of natural resources. Malta must therefore turn to and be attractive for international companies.
- Malta has implemented the EU legislation. It removed the bank secrecy back in 1992-1993. Malta removed the rules concerning “International trade companies” which were letterbox companies. It is implementing BEPS although it is not an OECD member. In addressing tax fraud, tax avoidance and money laundering, Malta considers that the global dimension needs to be taken into account to protect business. The Minister said that Malta alone never blocked a tax initiative at EU level
- The “tax imputation system” was screened and accepted by the Code of Conduct group, DG Comp and the OECD. He claims it is not true that this system leads to 5% taxation. It is available to everyone, without discrimination. The Minister referred to a report published on 11 January 2017 by the Greens¹, claimed that it was incorrect and accepted to justify why in written. He admitted that the system is prone to abuse but as it is often the case with other European countries.
- The Minister said that, as every system, it can be opened to abuses, and therefore Malta committed to the Anti-Tax Avoidance Directive, and was about to reach an agreement on ATAD2 (hybrid mismatches with third countries) with the aim of closing loopholes in order to ensure that big companies pay their corporate taxes. He also insisted on the track record of Malta until now, since they never accepted the requests to set up Russian banks on the island.
- Malta’s objective is to make progress on the CCCTB during its Presidency. The Minister considers that it will be difficult to find the right apportionment formula for the CCCTB. According to him, it is better to close loopholes one by one (Anti Tax Avoidance Directive) instead of introducing a comprehensive solution such as the CCCTB.
- On the question on the reason of the high number of Maltese intermediaries involved in the Panama Papers, he replied that it is not illegal to give advice. Malta is moving in the right direction. Bank start refusing opening bank accounts. However, the right balance needs to be found between on the one hand an economic activity and on the other hand the fight between tax evasion and money laundering.
- On the reason of the high number of online gaming companies in Malta, the Minister said that they have no indication of any involvement of the mafia. When there was a problem, Malta reacted very quickly and withdrew licences.
- The IMF and Moneyval will soon come to Malta to assess its rules and practices on anti-money laundering.
- The Minister confirmed that the relevant authorities launched investigations following the revelations of the Panama Papers, including concerning politically exposed persons. He cannot, however, comment on individual cases.

¹ <http://www.greens-efa.eu/files/doc/docs/bf40d4e12d67574f0bbcecf067325a03.pdf>



- The Minister expressed his personal opposition to introducing tax amnesties but defended the tax amnesty that was introduced in Malta under previous government because it was a “one shot” measure.
- On a question related to the high number of letterbox companies in Malta, the Minister disagreed with what is written in the press. He said that only an educated opinion (from a neutral institution) would put the reality into figures.
- The Minister defended the citizenship programme according to which non EU-residents can be granted Maltese citizenship by contributing with 650 000 Euro to the National Development and Social Fund and by, in addition, investing in property in the Country.
- The Minister is ready to reply in written to any follow-up question.

➤ Meeting with the Tax Authorities

- The Tax Compliance Unit (in charge of tax evasion) opened investigations concerning 237 persons in 2016 related to the Panama papers; €2,8 million taxes was recovered. Following Swiss leaks, they received data from the French authorities, 96 taxpayers were requested to pay €7,1 million taxes.
- The Tax Authority explained that they use risk assessment tools to detect tax fraud. Since Maltese citizens have to declare their worldwide revenue the tax authorities rely on their tax cooperation agreement with other countries. However, the burden of proof of tax fraud lies on the tax administration and it is not always easy for them to evidence the claim.
- The Tax Authorities informed that they have not received yet information from the tax authorities from Nord Rhein Westphalia.
- Malta only started last year with spontaneous exchange of information despite the fact that it is encouraged at EU level since 1977; they sent 3 messages and have not received anything so far. To a question on why they never sent spontaneously information, they raised the issue of lack of resources.
- The Authorities agreed to send information in written on the number of cases opened following the Panama Papers and the amount of tax recovered.

➤ Meeting with the Malta Financial Service Authority (MFSA)

- The MFSA stated that they are an autonomous body that received no instructions from government.
- The MFSA has delegated power from FIU to supervise obliged entities in the financial sector. 360 persons work within MFSA with 120 more to be hired in the coming year. However the MFSA does not receive the suspicious transaction reports done by obliged entities which are dealt with by the FIAU.
- The banking sector (24 banks) contributes to 7,3% of GDP which is comparable to Ireland and the USA.



- The MFSA does not supervise the accountants, tax advisers, other similar intermediaries which are not in the financial sector. The MFSA could not say which institutions supervises these intermediaries.
- On the question of what should be done to stop advisers assisting evading fraud, the MFSA said that it should be a question to politicians. There are no international rules to stop that. If it is not done in Malta, it will be done elsewhere. There is enough regulation.
- In general terms, the MFSA experience shows that the financial industry complies with the rules.
- The MFSA will give additional figures in written: number of fines, amount of fines, number of licenses withdrawn, number of field visits, breakdown by sector.
- The Chair of the Board neglected any potential conflict of interest between his role in MFSA and his activities in FinanceMalta which promotes financial activity in Malta. He said that he does not participate in meetings of FinanceMalta and he is personally not promoting anything.
- The MFSA insisted on the fact that Malta has transposed all EU legislation and is subject to a peer review, notably by ESMA.

➤ Meeting with the FIAU

Key messages from the FIAU:

- The FIAU is an autonomous agency within the Ministry of Finances. FIAU's policy is determined by the board of governors and the Director has to implement that policy. The FIAU is composed of 50 persons and staff is growing year after year (13 persons in 2013, 20 in 2015). The FIAU starts investigations when it receives a report from an obliged entity but can also take initiative to launch an investigation, notably when information circulates publicly. The number of investigations has increased in the last years because the FIAU is working better than in the past.
- The FIAU said that it does not face any obstacle in its work. In 2016, the FIAU received 565 STRs, opened 57 cases of its own initiative and forwarded around 50 cases to the police for further investigation. They received 162 foreign requests for information and replied with an average timing of one month. They carried 60 on-site compliance visits (with 36 additional by MFSA) and imposed 167 penalties in 2016.
- The FIAU agreed to give in written the number of suspicious transactions reports (STRs) in relation to the Panama papers they have received, the number of investigations they have concluded by year, the number of cases that were transmitted to the police, the number of sanctions (and the amount of the fines), a breakdown of the files by types of investigated cases. They will also report on the number of Politically Exposed Persons investigated.
- The FIAU also agreed to send their contribution to the "Mapping exercise and gap analysis on FIU's powers and obstacles for obtaining and exchanging information" by the EU FIU's platform.
- The FIAU is not in a position to comment on and does not publish outcomes of an individual investigation. It is for the police to do so. The data regarding convictions is not available.
- On the question related to the number of cases of Maltese opening a bank account offshore that were reported to them, the FIAU replied that the opening of a bank account does not trigger suspicion per se. It is for the reporting entity to assess whether there is suspicion of ML.



- The FIAU has excellent relations and cooperation with other EU FIU's. They have not received a lot of report linked to the Mafia.
- The FIAU recognised that it started investigations on cases linked to Angola, on the basis of information circulating in the press.

Key messages from the Police Commissioner:

- The role of the Police in AML is to prosecute cases that are investigated by the FIAU. They claimed they investigate all reports received from the FIU or other sources.
- The police refused to indicate whether they are investigating politically exposed persons named in the Panama papers.

➤ Meeting with the Journalists

- Mr Camilleri (Times of Malta) blamed Mr Schembri and Mr Mizzi for using politics to make their own business. He provided to the Chair copies of emails from the company Nexia BT as regards the setting up of complex tax structures for these two persons.
 - Matthew Vella (Malta Today editor) gave an overview of the Maltese tax system; recognised that the imputation system is very interesting; He however said that there is a cross party agreement that the tax system should not change. He outlined that MS are in a race to the bottom as regards taxation but that there is no public debate on tax fairness within Malta.
 - Daphne Caruana Galizia (blogster) said that the Panama Papers reveal much more than tax evasion; they reveal crimes and corruption. She was opposed to the facilities offered by the Maltese law, such as the citizenship programme (possibility to buy 'suspicious' Maltese citizenship) or the possibility to have nominee shareholders, directors,...
- She said that politicians from both sides blamed her because she "damages" the image of the country with her articles.
- Mr Aleander Balzan (Editor One News) defended the government's line on taxation: Malta is not a tax haven; there is no secrecy in Malta. He attacked the Opposition for alleged wrongdoing.

On the question whether the prosecutor continued the work of FIU related to the Panama Papers, one journalist said that the prosecution of files is too politicized without possibility for recourse in case of inaction. He also pointed out that one of the problem is that there are purges at every change of administration.

The fact that the names of the persons who buy citizenship under the citizenship programme (see above) are not public poses problem. Several journalists raised the issue of the lack of investigation capacities from the Maltese institutions (related to money laundering). No inquiry magistrate can act independently to start legal proceeding on money laundering in Malta, it always needs to go through the police commissioner.



➤ Meeting with the Intermediaries

- Malcolm Booker, CEO of Deloitte Malta, explained that the imputation tax system in Malta cannot be seen as an automatic tax rate of 5 %. It is more complex: some pensioners might get a 5 % tax rate but not all economic operators can benefit from such advantageous tax rate. When requested what he thinks about the case of Mr Mizzi, he stated he would probably not have made that deal. There is no obligation for a tax practitioner to be a member of the Tax Institute in Malta, which can create an unlevel playing field.
- Dr Manfred Galdes, former director of FIU and Director of ARQ Risk and Compliance Ltd, was forbidden by law to give information on specific cases. He said that the FIAU annually provides the police with 25 reports. He admitted that the police who is in charge of prosecuting the cases investigated by the FIAU does not seem well equipped to do its job properly. He said that the problem is more a lack of resources rather than the “politisation” of the function.
- Paul Mifsud, Managing Director of Sparkasse Bank, said that the bank does not provide services such as those mentioned in the Panama Papers. Pierre Mifsud, partner at EMD Advisory, also wanted to clarify that his company should not be associated with names that are prominent in the Panama papers (such as Nexia BT). Both said that only a few STRs were made by their companies in the last years (EMD filed only one STR in the past).

To be noted that Mr Brian Tonna (Managing Partner Nexia BT) or Mr Karl Cini (Tax Partner Nexia BT) refused to appear in person but replied in writing to the questions of the Members: due to ongoing investigations, they refused to give any information on Mr Mizzi and Mr Schembri. Their written replies did not always provide the adequate information to the questions raised.

➤ Meeting with the Minister Konrad Mizzi

- Mr Mizzi explained that he opened a trust in New Zealand, managed by a company in Panama, for family reasons. The assets are located in London where he used to work. He insisted that the trust never opened a bank account. He claimed that the whole structure is legitimate and legal. He justified the complexity of the structure by its cost-effectiveness (New Zealand has a double taxation agreement with Malta). He regretted the attacks by the Maltese opposition based on “fake news”. He published on the day of the PANA-delegation visit (a few hours after his appearance before the Committee) a so called independent audit to show that his trust is legal. The independent audit was handed over to the Chair of the PANA Committee.
- In his defence, Minister Mizzi attacked a member of the opposition.
- He refuted the validity of the emails between Mossack Fonseca and Nexia BT where the latter discussed the structure (including opening a bank account where 1 million dollars would be transferred annually). He said that he was not the sender neither the recipient of these emails and he choose not to follow the advices from Nexia BT as regards opening a bank account.
- He said that he asked ICIJ to receive the above-mentioned emails but he was refused access.
- He justified the source of the funding of his trust by his commercial activities. However, he claimed that the trust and the offshore company were never intended for commercial activities, despite the fact that Nexia BT mentioned to Mossack Fonseca that the offshore company was created to work on waste management in Asia.



- The Chair outlined that the mandate of the PANA Committee is not to investigate individual cases and not to enter into national politics in Malta.

➤ **8. Meeting with the Mr Beppe Fenech Adami**

- Mr Beppe Fenech Adami is a part-time Member of Parliament and runs a business as lawyer. In this context, he said he was in the past a non-executive director of a company called Baltimore which was the nominee director of Capital One (which is linked to money laundering in the Netherlands).
- To a question whether it is correct that there was a lack of cooperation between the Dutch and Maltese authorities, he answered that no investigation was going on anymore and that he never met the person involved in the drug trafficking story.
- He is very vocal against corruption and the government's Citizenship Programme which allows foreigners to buy citizenship. He said that for these reasons he is permanently attacked by the government.

Report drafted by the secretariat of PANA committee, with contributions of political advisers.