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European Parliament resolution on lessons learnt from the Pandora Papers and other revelations

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On June 15, 2023, the European Parliament adopted a [resolution](#) on lessons learnt from the Pandora Papers and other revelations (Resolution or Report).

The resolution calls for the adoption of measures to fight tax avoidance and money laundering. In particular, Members of the European Parliament (MEPs) request faster progress on pending files such as the SAFE initiative and the Unshell Directive proposal. In addition, the Report calls for strengthening of existing measures (e.g. mandatory disclosure rules under DAC6, the EU list of non-cooperative jurisdictions) as well as new regimes such as a common EU framework for withholding taxes.

Background

In October 2021, the International Consortium of Investigative Journalists disclosed a large volume of data that contained previously private information on the tax affairs of a number of high-net-worth individuals.

Since then, the FISC Subcommittee of the European Parliament (permanent Subcommittee on Tax Matters) has held a series of hearings on some of the conclusions that can be drawn from the information disclosed. The European Parliament's resolution was first discussed and adopted in the Parliament's Committee on Economic and Monetary Affairs (ECON Committee) in March 2023. For previous coverage, please refer to E-News [Issue 173](#).

[Resolution on the lessons learnt from the Pandora Papers and other revelations](#)

Following a [debate](#) attended by representatives of the Council and the European Commission, the European Parliament adopted a resolution on lessons learnt from the Pandora Papers and other revelations in its plenary meeting on June 15, 2023. Key takeaways and recommendations include:

Prevention of the misuse of shell companies

The Resolution welcomes the Commission's Unshell Directive proposal (ATAD3) and calls on the Council to swiftly adopt the proposal, taking into account the Parliament's opinion. MEPs regret that no agreement was found on the file under the Swedish Presidency during the first half of 2023 (see Euro Tax Flash [Issue 516](#)). The Report also calls on the Commission and the Member States to further promote global regulations on mandatory substance requirements for companies with a view to prevent tax avoidance.

Rules on the activity of enablers

The European Parliament endorses the Commission's preparation of a new legislative proposal on securing the activity framework of enablers (SAFE) (see Euro Tax Flash [Issue 488](#)). The Resolution recommends "including robust enforcement against those intermediaries that create and operate schemes which enable tax evasion and aggressive tax planning". In that regard, MEPs urge the Commission to continue to improve information-sharing among Member State tax administrations and cooperation on the global stage.

Coordinated WHT framework and additional anti-abuse measures

The Report notes that outbound dividends, royalties and interest across borders are not subject to withholding tax in all EU Member States. As such, MEPs consider that a common EU framework for withholding taxes should be developed that ensures the taxation of dividends, interest and royalties at an effective rate, while also preventing tax evasion, double taxation and double non-taxation. In addition, MEPs raise concerns in respect of new technologies (e.g. crypto-assets), with respect to which they note that new, appropriate and targeted anti-tax avoidance and anti-money laundering measures may be needed.

The Report further stresses that Member States should be able to take protective unilateral measures, including the non-deductibility or limited deductibility of costs, withholding tax measures, participation exemption limitations or special documentation requirements.

Access to beneficial ownership information

The European Parliament emphasizes that access to appropriate, accurate, and up-to-date beneficial ownership information is a valuable instrument in the fight against tax evasion and avoidance. Therefore, the Report calls on Member States to dedicate the appropriate resources, including sufficient staff and technology, to process and make full use of beneficial ownership data. The Report takes note of the CJEU ruling in joint cases C-37/20 and C-601/20, which held that the Anti-Money Laundering Directive requirement to provide access to beneficial ownership data to any member of the general public was invalid from an EU primary law perspective unless a legitimate interest in accessing the information can be claimed (for more information, please refer to Euro Tax Flash [Issue 494](#)). Where Member States have restricted the access to beneficial ownership data for financial intelligence units, competent authorities and obliged entities following the Court decision, the Report urges those Member States to restore this data without delay.

List of non-cooperative jurisdictions

The Parliament notes that several Member States have more comprehensive national lists of non-cooperative jurisdictions compared to the EU list. As such, MEPs urge the Council to relaunch discussions on a comprehensive reform of the EU listing exercise with the aim of establishing more stringent listing criteria. According to the Report, this would need to include the listing of non-EU jurisdictions with a zero percent corporate tax rate or no taxes on company profits or individuals.

The Report also urges the Council to agree on the pending fourth transparency criterion in relation to ultimate beneficial ownership information.

Taxation of (high-net worth) individuals

The Report calls on the Commission to take the necessary legislative measures to ensure legal certainty and tax fairness for cross-border workers and self-employed individuals in the EU.

In addition, MEPs reiterate their call to extend the mandate of the Code of Conduct Group (Business Taxation) to include preferential personal income and capital tax regimes and personal income and wealth tax regimes that are considered harmful. The Report also urges the Commission and the Member States to take the lead in the OECD/G20 Inclusive Framework in creating a level playing field in the taxation of capital gains and to limit harmful tax practices aimed at attracting foreign-earned income, wealth and assets.

Disclosure of cross-border arrangements

The European Parliament calls on the Commission to analyze possible shortcomings of mandatory disclosure rules in respect of cross-border arrangements under DAC6. In this context, MEPs raise concerns about regulatory measures such as investment schemes granting citizenship or residency that may be used to circumvent DAC6 disclosure obligations.

ETC Comment

Resolutions adopted by the European Parliament are not binding on the Council and European Commission but must be taken into account by the Commission and Member States when proposing or agreeing new rules. It therefore remains to be seen which of the additional reform proposals raised by MEPs in their resolution will result in new legislative initiatives from the European Commission or unilateral action by Member States.

While this resolution seeks to focus on measures to prevent tax avoidance and evasion, the European Parliament is simultaneously considering further reforms of corporate taxation rules in form of coordinated incentives as well as simplifications to reduce the burden of compliance on EU companies. It also calls for a sequenced implementation of new regulatory packages to allow European companies sufficient time to prepare and adapt to changing regulatory landscapes in light of the upcoming BEFIT proposal and the implementation of the OECD Pillar Two rules. A draft [report](#) focusing on those matters is currently being discussed at the level of the ECON Committee.

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