



## **Aspects Regarding the European Institutional Negotiations in the Matter of the Fight Against Money Laundering and Financing of Terrorism Activities and the Contextual Connection with the “Panama Papers” Scandal**

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**Abstract:** On 15 December 2017, the negotiations on the 4<sup>th</sup> Directive in the matter of the fight against money laundering and terrorism financing were complete. The resulting compromise text is worth analysing and approached from both the theoretical but especially the practical enforcement viewpoint, depending on each involved operator category. Initially regarded more as a tentative European pretence, the preoccupation of the European lawmaker in the matter of the fight against money laundering and the terrorism financing activity has become a community priority that found its place amongst the normative instruments applicable within each EU community member state. Within this context, the negotiations regarding the 4<sup>th</sup> directive in the matter arise a justified and concrete interest. This article, which approaches the subject from the descriptive perspective, sets out to highlight the aspects that need to be approached and analysed from the viewpoint of the legal professions in general, but especially from the viewpoint of the notarial activity in particular. Within this topic, this paper also approaches the community concerns generated by the so-called “Panama papers” scandal, which is considered by the European lawmaker to have shattered citizens’ faith in the European financial and fiscal systems.

**Keywords:** appeal in annulment; extraordinary appeal; cases

### **1. Important Aspects**

By consulting the comprise text resulting from the negotiations between the European Parliament, the European Council and the Commission<sup>3</sup> we might extract, in an applied and concise format, so as to highlight them, a few articles that state impactful texts in this activity. Article 32b:

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<sup>3</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_15849\\_2017\\_INIT&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_15849_2017_INIT&from=EN)

1. Member states shall provide FIU's and competent authorities the access to information that allows the timely identification of any natural or legal person owning real estate, also by means of the data recovery electronic registers or systems, where such registers or systems are available.

2. By 31 December 2020, the Commission shall submit a report to the European Parliament and Council, whereby it will analyse the necessity and proportionality of harmonising the information included in the registers, as well as the need of interconnecting them. If required, the report shall be accompanied by a legislative proposal.

Article 31.1: Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiduciaries, certain types of Treuhand or fideicomiso when having a structure or functions similar to trusts. Member States shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law.

The access to the information regarding the effective beneficiaries from EU has been limited to the persons having a legitimate interest, the interpretation of the legitimate interest being left to the decision of each member state.

There will be public access to the information regarding the actual beneficiaries of the companies. We specify that the compromise text must be approved by the European Parliament and the Council in order to be officially adopted.

Despite all this, on the other hand, on 7 December, the European Commission had already requested that Bulgaria, Cyprus, Romania, Poland, Greece, Luxemburg, Netherlands and Malta quickly transpose this fourth directive regarding the fight against the money laundering into the national legislation. All the member states should have transposed the directive by 26 June 2017. If the eight member states fail to transpose the directive within the next two months, the European Commission might decide to start the infringement procedure (further to the default of the obligations to enforce the EU legislation). We remind the fact that the European Commission has already opened procedures against Belgium and Spain, considering that the measures transposed until now are unconvincing and ineffective and do not constitute a full enforcement of the directive.

## **2. The “Panama Papers” Effects**

In the same context of preoccupations for the fight against money laundering, the European Parliament adopted on 13 December 2017 a report related to and caused by the “Panama Papers” scandal<sup>1</sup>.

Being essentially a recommendation generated by an inquiry regarding the money laundering, the avoidance of tax obligations and fiscal evasion, we might consider it to be a document practically addressed to the Council and the Commission<sup>2</sup>.

Based on a series of normative acts invoked in the very preamble to the recommendation, such as articles 116 and 226 from the Treaty on the Functioning of the European Union (TFEU), Decision 95/167/CE, Euratom, CECO of the European Parliament, of the Council and the Commission from 19 April 1995 regarding the ways of exerting the inquiry right of the European Parliament, its Decision from 8 June 2016 regarding the establishment of an Inquiry Commission for the examination of the alleged violation of the Union’s law and faulty administration of its enforcement in relation with the money laundering, the avoidance of tax obligations and fiscal evasion, as well as the commission’s competences, composition and mandate, its Resolution from 16 December 2015 comprising the recommendations addressed to the Commission related to the favouring of the transparency, coordination and convergence in the taxing policies of companies within the Union, article 198, par. (12) from the Procedure Regulation, which document arose further to the inquiry, underlines the imperious and urgent necessity to redesign the European taxing model with the purpose of limiting the unfair competition among the Community states, pointing out legislative vulnerabilities and formulating warnings and proposals.

## **3. Certain Concrete Elements of the Recommendation**

As conclusions, the document sets out a few guidelines:

- „it underlines the urgent need to formulate a common international definition of what an offshore financial centre (OFC) is, a fiscal paradise, an opaque jurisdiction, a non-cooperating fiscal jurisdiction and a high-risk country as to the money laundering;

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0491+0+DOC+XML+V0//RO>

<sup>2</sup> 2016/3044(RSP)

- It requests that an international agreement be reached as to these definitions, without harming the immediate publication of EU's common black list;
- It underlines the fact that such definitions assume the establishment of clear and objectives"<sup>1</sup> and considers that the EU states should ban trading relations with the legal entities established in fiscal paradises in the event that the final beneficiary cannot be identified;
- It proposes the Commission to publish an annual report regarding the utilisation of the EU funds, as well as all the money transfers from the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) to offshore structures;
- The creation of a common "black list" of the European space to identify the non-cooperating fiscal jurisdictions, a list of the European Union that would comprise the Community's third-party countries that present high risk as to the money laundering;
- It invites the Commission to start procedures that would lead to the acknowledgement of the default of the EU member states' obligations, such as the Panama Papers case proves;
- It condemns the abusive utilisation of fiduciaries, trusts as instruments for money laundering and requests clear norms whereby to identify the actual direct beneficiaries;
- It reminds that, in December 2015, the ECOFIN Council invited the high-level Work group to draw conclusions as to the need to consolidate the general governance, transparency and working methods and to finalise the Work group's reform for the conduct code and reminds that in March 2016, the ECOFIN Council invited the high-level Work council for fiscal matters to examine the new governance, transparency and the working methods, especially in what concerns the efficiency of the decision-making process and also, in relation to the utilisation of the norm as to the broad consensus in 2017;
- It welcomes the establishment, as first measure, of a unique and independent European Public Prosecutor's Office (EPPO) and requests the member states to participate in this initiative.

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<sup>1</sup> [europarl.europa.eu](http://europarl.europa.eu)

#### **4. Conclusions**

On 20 December 2017, the political agreement of the European Presidency and Parliament was confirmed as to the consolidated EU norms regarding the prevention of money laundering and terrorism financing.

The directive project has two main objectives:

1. prevention of the use of the financial system to prevent criminal activities;
2. consolidation of the norms regarding the transparency in order to dissimulate large scale funds.

Within this context we remind that the main modifications to Directive 2015/849 consisting in: enhanced access to the registers of the real beneficiaries, in order to improve the transparency as to the owners of the fiduciaries and trusts. The interconnection of the registers in order to facilitate the cooperation between the member states; public access to information regarding the real beneficiaries of the companies; the access based on “legitimate interest” to the information pertaining to the real beneficiaries of the fiduciaries and similar legal establishments; public access based on a written application to the information regarding the real beneficiaries of fiduciaries who own a company that is not registered in the EU . It was also established that the threshold for identifying the holders of prepaid cards be lowered from 250 EUR to 150 EUR, and the customers’ verification requirements are extended. The virtual currency exchange platforms and the digital wallets suppliers must apply precautionary check-ups as to the customer base, putting an end to the anonymity associated with such changes; improved verifications are due as to the high-risk **third-party countries**<sup>1</sup>.

More than a press scandal, the “Panama papers” causes a global earthquake with political, financial-fiscal and legal effects.

Besides the findings meant to reveal vulnerabilities, debate topics, legislative proposals and especially a more concrete approach of the fiscal avoidance phenomenon must be organised.

In the same time, there are suggested debate topics outside the fiscal sphere, which bring to the centre of the analyses the morality, legality, investigation power of the journalist, limitations or extension of rights, professional or banking secret, prohibitive or excessive impositions.

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<sup>1</sup> consilium.europa.eu

The data presented in this paper are meant to draw more attention to the subject, which should lead to research, identification of vulnerabilities and solutions.

## **5. Online Sources**

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_15849\\_2017\\_INIT&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_15849_2017_INIT&from=EN)

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