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Mr. Werner Langen

Chair of the 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

Brussels, 09 March 2017

Dear Chair,
Dear Werner,

Following my oral request to you, which you mentioned at the last Committee meeting, that PANA should investigate the ongoing scandal of unscrutinised transfers into tax havens from Portugal, I am hereby submitting relevant information:

An investigation conducted by journalist Pedro Crisóstomo¹, of newspaper "Público", led recently to the disclosure that, in the years 2011-2014, statistics of cross border transfers of capital into tax havens were not published, contravening an order of publication given by the Vice Minister for Tax Affairs (under the Finance Minister) in 2010, in line with Law 25/2008, transposing Anti-Money Laundering Directive III. Furthermore, it was suspected that about 10 billion EUR in transfers to offshores declared by banks were left unscrutinised by the Tax Authority (TA) in that same period.

Mr Paulo Nuncio, the Vice-Minister for Tax Affairs in the years 2011-15 (PM Passos Coelho government), at first tried to shift responsibilities to his subordinates in the Tax Authority. But, at a hearing in the National Parliament last week, he finally admitted that it was his decision not to publish the data, claiming that "it would favour the infractor". He could neither confirm nor explain why transfers amounting to 10 billion EUR may have lacked scrutiny by the Tax Authority.

At the National Parliament, the current Vice-Minister for Tax Affairs, Mr. Rocha Andrade, confirmed that, in addition to the non-published 2011-2014 data, the Tax Authority had failed to analyse almost 10 billion EUR (9.8 billion EUR) of transfers from Portugal (excluding Madeira) to offshore jurisdictions, declared in 20 statements made by banks.

This means that the source of funds, their destination and beneficial owners in those transfers were left completely unchecked. The authorities have now 12 years to do so, according to the law. However, if the TA finds that the source of funds is illicit, there is a statute of limitation of 4 years, in addition to the tax amnesty of 2012 (RERT III), which might have granted impunity to the tax evaders (See Annex 1).

Vice-Minister Rocha Andrade informed Parliament that the 20 unchecked bank statements corresponded to 14.848 transfers², but he could not identify the financial institutions

¹ <https://www.publico.pt/2017/02/24/economia/noticia/perguntas-e-respostas-sobre-o-caso-das-transferencias-para-offshores-1763192>

² Later, the TA Director General rectified the numbers: 21.146 transfers instead of 14.848 - <http://www.jornaleconomico.sapo.pt/noticias/caso-offshores-quatro-declaracoes-ocultas-so-foram-comunicadas-ao-fisco-em-2016-130548>



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involved, due to advice given by Banco de Portugal, the Portuguese Central Bank, invoking bank secrecy. The Vice-Minister declared, nevertheless, that more than a quarter (amounting to 2.6 billion EUR) of the unverified transfers had Panama as destination³. And that 97% of the unchecked transfers made in 2014 alone went to Panama.⁴

The current TA Director-General, Ms. Helena Borges, explained in Parliament, on the 7th of March, that over 21.000 bank transfers into offshores, related to the period 2011-14, had escaped TA control, amounting to a total of 9,8 billion EUR and that part of those bank transfers had only been communicated to the TA in 2016. All in all, 5.8 billion EUR were reported belatedly by financial institutions (2015-2016), even though they refer to transfers that go back to 2011, in at least one of the cases, to 2012 in another case, and to 2013 in two other cases.⁵

The Vice-Minister had earlier explained that data on transfers communicated by the banks "had not been properly extracted" into the central TA system. The reason is still to be known: both current and former TA Director Generals point to a "cyber break down". A quite suspicious one, noted the President of the Tax Workers Union, Mr. Paulo Ralha, rather admitting human intervention in the very selective cyber system, choosing to ignore data on large tax paying corporations and individuals, while extremely demanding on small and middle class incomes.... An audit on this and other aspects was ordered, in the meantime, by the Vice-Minister and is being conducted by the Inspeção Geral das Finanças (General Inspectorate of Finance (IGF)).

Moreover, the Portuguese media, citing unidentified sources from the TA, have been reporting this week that more than 5 billion EUR of transfers to offshores - i.e. more than half of the amount unscrutinised by the TA - were processed by Banco Espírito Santo (BES), prior to its collapse in 2014⁶. The links between Grupo Espírito Santo (GES) and Panama are well known, since it was in Panama that the holding "ES Entreprises" was registered - this was the holding company through which GES, for more than 20 years, made payments off the Group's official books. ES Entreprises is referred to in the Panama Papers.⁷

Many questions are also being asked on the role played by Banco de Portugal in all this process: last week, a 3 part TV investigation by journalist Pedro Coelho (SIC TV), under the title "Assalto ao Castelo"⁸ (Attack against the Castle) showed evidence that the Governor of Banco de Portugal knew, since early 2013, that GES was bankrupting BES and that BES was laundering huge amounts of money from Angolan PEPs via its Dubai Agency and engineering

³ <http://www.dn.pt/portugal/interior/26-mil-milhoes-parao-panama-fora-do-radar-do-fisco-5701442.html>

⁴ <http://www.dn.pt/portugal/interior/26-mil-milhoes-parao-panama-fora-do-radar-do-fisco-5701442.html>

⁵ <http://www.jornaleconomico.sapo.pt/noticias/caso-offshores-quatro-declaracoes-ocultas-so-foram-comunicadas-ao-fisco-em-2016-130548>

⁶ <http://www.jornaldenegocios.pt/empresas/banca---financas/detalhe/offshore-mais-de-metade-dos-10-mil-milhoes-transferidos-partiram-do-bes>

⁷ <http://www.dn.pt/portugal/interior/26-mil-milhoes-parao-panama-fora-do-radar-do-fisco-5701442.html>

⁸ <http://sicnoticias.sapo.pt/programas/reportagem-sic/2017-03-03-Assalto-ao-Castelo---a-serie-completa-de-reportagens>



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other misleading and improper ways to raise capital. Despite that, Banco de Portugal delayed withdrawing the "fit and proper" certification to GES/BES CEO Ricardo Salgado, thus allowing him to continue to raise capital by selling Group and bank commercial paper to investors, while the Central Bank, the Government and even the President of the Republic publicly endorsed the solidity of BES! As a result, thousands of middle income individuals now demand compensation for life savings investment losses incurred with the collapse of BES.

The latest news on the unscrutinised transfers into offshore jurisdictions are thus raising very serious questions about the role of Banco de Portugal and the Portuguese Ministers of Finance in the years 2011-15 (Mr. Vitor Gaspar and Ms. Maria Luis Albuquerque, still to be heard at the National Parliament), in affording time and room for the Espírito Santo family and its corporate universe to transfer into Panama and other offshore jurisdictions whatever assets they could amass, before the BES collapse and subsequent resolution. It should be noted that Mr. Ricardo Salgado tops the list of the 50 largest debtors responsible for non-performing loans saddling the Portuguese banking system.⁹

The scandal is shocking the Portuguese society: after all, this happened during a government which implemented a tough austerity programme under the Troika bailout, and brutally raised taxes on the middle and lower family incomes, mercilessly collecting them from people who lost homes, SMEs and lives (the priority and pride of Vice Minister for Tax Affairs Nuncio was the Tax Authority's so-called "E-invoice" Programme, by which hairdressers, coffeeshops and garage owners were not to escape paying taxes). The Portuguese now realize that no zeal was put into scrutinising large economic groups or high net worth individuals! They realise, also, that neither the government, nor the Troika, made efforts to ensure that capital did not leave the country while evading taxes, or with the purpose to launder the proceeds of corruption or other criminal activity.

The Portuguese Attorney General just announced an investigation into the case, looking at possible money laundering. But the press reports that the TA has been refusing to share with Public Prosecutors tax information related to money transfers into offshore companies in the context of money laundering prevention processes, alleging "tax secrecy".¹⁰

This scandal cannot be left to be investigated alone by the Portuguese State: it involves European responsibility at high level, since the country was at that time under Troika (EC, ECB and IMF) supervision, and it is since then regularly scrutinised under the European Semester. Moreover, it does not only involve State responsibility to collect taxes on cross border transfers and tax justice: it involves the Portuguese and European responsibility to implement anti-money laundering directives, which are also about combatting the financing of terrorism and associated criminality.

⁹ "Lucros privados, prejuízos públicos", Revista E, Expresso, March 4th 2017, <http://expresso.sapo.pt/Capas/2017-03-03-Lucros-privados-prejuizos-publicos-na-Revista-E>

¹⁰ <http://www.dn.pt/portugal/interior/financas-recusam-partilhar-dados-com-mp-sobre-dinheiro-enviado-para-offshores-5704049.html>



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I request, therefore, that an investigation be conducted by the PANA Inquiry on this scandal involving massive capital transfers into Panama and other tax havens, without any national controls.

The following questions, among others, ought to be clarified by the Portuguese authorities:

1. Who are the taxpayers who made those unscrutinised transfers into offshore jurisdictions in the years 2011-14? And who were the beneficiaries? What was the justification given for those transfers?
2. Cross border transfers into tax havens made in 2015, amounting to 8.9 billion EUR¹¹, (according to aggregated data published in 2016) - were they ever scrutinised, either from the tax angle, or from the AML\FT angle?
3. Was there an order from any State authority to prevent these bank statements from being scrutinised? What exactly happened in the Tax Authority which prevented processing of these data? Is there a relation between the decision not to publish the statistics and the omission of the data in the system relating to the 10 billion EUR? How many people had access to the data? What is the internal procedure in the TA after it receives the communications on transfers from the banks?
4. Who is in charge of ensuring AML\FT controls in Portugal and bank supervision? Why is there no exchange of information between Tax Authorities and Public Prosecutors on AML/ FT controls?
5. Why is Banco de Portugal preventing disclosure by the current Government of the entities and banks who operated the cross border unscrutinised transfers? If they are related to bankrupted BES/GES, why are details not made public?
6. Have data been published on cross border transfers made from Madeira into offshore jurisdictions, as ordered by the Vice Minister of TAX Affairs in 2010? If not, why not? Is it accurate the estimation that those transfers in the period 2011-2014 amounted to another 12 billion EUR? And to how much they amounted in 2015? Have cross border transfers from Madeira into tax haven jurisdictions been controlled for tax purposes or AML/FT by any authority in the Portuguese State? Who have been the entities ordering such transfers, who have been their beneficiaries, their justification and the banks operating them?

I am available to provide more detailed information on this case, should you or any other Member of the PANA Committee require.

Best regards,
Ana Gomes

¹¹ <https://www.publico.pt/2017/03/01/politica/noticia/sigilo-impede-governo-de-revelar-bancos-com-mais-transferencias-para-offshores-1763734>



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ANNEX 1 - Tax amnesties in Portugal (2005, 2010, 2012)

The schemes introduced in Portugal (Regime Excecional de Regularização Tributária - RERT) were adopted first by the Socialist government of José Sócrates in 2005 (Lei n.º 39-A/2005) and repeated in 2010 (Lei 3-B/2010), by the second Sócrates government, and again in 2012 (Lei 64-B/2011), already with Social-Democrat Passos Coelho as Prime Minister and with the country under the EC/ECB/IMF (Troika) financial rescue programme. All were adopted in the context of the yearly budget and never were truly discussed in the National Parliament.

These laws allowed "hidden" assets abroad to be regularised at a lower rate (5 % in the governments of Sócrates and 7.5% in the government of Passos Coelho). Whoever adhered to these schemes would be free of any criminal responsibility over tax issues and would be pardoned the late interest payments to the State. The information gathered is delivered to the Central Bank of Portugal, where complete confidentiality is granted, and it cannot be used in other criminal proceedings.

Both companies and individuals could use the RERT programmes to regularize their tax situation. In addition to bank deposits and certificates of deposits, assets which could be declared included securities, insurance policies, capitalization and other operations.

In order to adhere, one had to deliver a statement to the Central Bank, which listed the assets previously undocumented, and pay the single tax rate.

In the first two RERTs, the capital had to be repatriated to Portugal. In the last one in 2012, there was no such obligation, under the pretext that the Court of Justice of the EU declared, in ruling C-20/09, that the obligation to repatriate the capital to Portugal under the first RERT violated the EU Treaties (freedom of movement of capital).

So, under the Troika supervision, the 2012 RERT represented a legalised scheme of "money laundering" with the Portuguese State unable even to repatriate criminally obtained assets - the origin of the assets did not have to be disclosed to the Central Bank when the regularisation was made.