



Strasbourg, 14 June 2017

Object: Enforcement of Anti-Money Laundering and Capital requirement Directives in Malta

Dear College of Commissioners,

We are writing to you regarding serious suspicions of money laundering reported by the Financial Intelligence and Analysis Unit (FIAU) in Malta involving politically exposed persons (PEPs). **We would like the European Commission to look into these serious allegations and open an infringement procedure against Malta if deemed necessary.**

Two reports¹ from the FIAU have been published recently concluding to reasonable suspicion of money laundering related to Mr Schembri, chief of staff of Maltese Prime Minister Joseph Muscat. A third report² details the on-site inspection carried by the FIAU to the Pilatus Bank and allegedly finds the banks in violation of the Maltese anti-money laundering legislation, implementing the third Anti-Money Laundering Directive (AMLD).

The FIAU seems to have evidence of transactions worth €100.000 transferred to Mr Schembri's account from an offshore company located in the British Virgin Islands, in relation to the Individual Investor Programme, a programme set up by the Maltese government ultimately providing Maltese nationality to foreign investors. According to the FIAU, these transactions, although involving a politically exposed person (PEP) have not triggered suspicious transaction reports by the Pilatus Bank to the competent authorities. Pilatus Bank is also flagged in these reports for other serious shortcomings in its implementation of the anti-money laundering obligations, including enhanced due diligence procedures related to PEPs.

We therefore would like the European Commission, as Guardian of the European Treaties and in charge of ensuring the adequate implementation of the third AMLD and the Capital Requirements Directive (CRD IV) to inquiry further on these matters.

We have reasons to believe that several provisions of the AMLD were not correctly implemented and/or enforced in Malta, in particular:

- Article 13(1) on enhanced due diligence for PEPs, creating an obligation to Member States to require that the institutions and persons covered apply, on a risk-sensitive basis, enhanced customer due diligence measures in situations which by their nature can present a higher risk of money laundering;
- Article 13(4) related to enhanced due diligence for PEPs residing outside Malta (this was reported in the FIAU report on the Pilatus Bank) obliging Member States to require institutions and persons covered to take adequate measures to establish the source of wealth and source of funds involved in the business relationship or transaction;
- Article 13(6) requiring Member States to ensure that the institutions and persons covered pay special attention to any money laundering or terrorist financing threat that may arise from

¹ See : <http://www.independent.com.mt/file.aspx?f=146942> and <http://www.independent.com.mt/file.aspx?f=146944>

² <http://www.independent.com.mt/file.aspx?f=146943>



products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes;

- Article 34(1) creating an obligation on Member States to require that the institutions and persons covered establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing;
- Article 37(1) obliging Member States to require the competent authorities at least to effectively monitor and take the necessary measures with a view to ensuring compliance with the requirements of the third anti-money laundering Directive by all the institutions and persons covered.
- Any other provision of the AMLD which is relevant to the matter mentioned above, especially related to the lack of police investigation after the reporting of the facts and of serious suspicion of money laundering by the FIAU more than a year ago to the Police Commissioner. We have indications that there are more reports by the FIAU which have not triggered prosecution processes although this might have been appropriate.

This adds to information we received while the European Parliament PANA committee visited Malta in February 2017. At this time, it was pointed out to us that Mr Mizzi and Mr Schembri used Nexia BT as an intermediary to get in contact with Mossack Fonseca. The owners of Nexia BT, Karl Cini and Brian Tonna provided reference letters to Mossack Fonseca for Mr Schembri as part of the due diligence process (see attached). In his letter, Mr Tonna confirmed that he knows Mr Schembri for 20 years as a personal friend and a client. However, answering written questions from the PANA committee in February, Brian Tonna claimed that he has not been in business with Mr Schembri, the Prime Minister's Chief of Staff. This raises questions as to the supervision of non-financial obliged entities in Malta and their compliance with anti-money laundering obligations.

In addition, we would like to ask the European Commission to look into whether the rules of the European Capital Requirements Directive (CRD IV) were respected. The FIAU report on Pilatus Bank raises questions as to whether the MFSA ensured compliance with the requirements for qualifying shareholders and the fit & proper requirements for the management bodies when granting a banking licence e.g. to Pilatus Bank.

- Article 14(2) of the CRD IV requires competent authorities to *"refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members, in particular where the criteria set out in Article 23(1) are not met."*
- Article 23(1) of the same directive stipulates that the competent authorities shall assess the suitability of the proposed acquirer in accordance with certain criteria, inter alia *"the reputation of the proposed acquirer"* and *"whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof."*
- Finally, the Commission could also check whether Article 91 of CRD IV regarding the fulfilment of the fit & proper requirements for the management body of financial institutions has been respected.



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The Greens will also bring these facts to the attention of the Members of the European Parliament inquiry committee on money laundering, tax evasion and tax avoidance (PANA) and we hope to take the opportunity of the exchange of views with Commissioner Jourova, on 3rd July 2017, to discuss this matter further.

Yours sincerely,
Sven Giegold
Eva Joly
Heidi Hautala
Ska Keller
Philippe Lamberts
Jordi Sole