

The Weekly Report from Brussels, provided by the European Affairs team at the City of London, provides an update on key developments relating to financial services in the EU.



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Welcome to the Weekly Report, prepared by the City of London European Affairs team.

This week includes:

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More information about the work of the City of London European Affairs team can be found [here](#).

Channel Islands and Gibraltar representatives speak at PANA Committee hearing

On 9 May, the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA) held a [public hearing](#) on Cooperation in Tax Matters with European Jurisdictions. During the Hearing, MEPs heard from representatives from Gibraltar, Guernsey and Jersey about the specifics of their tax regimes, how their governments cooperate with the EU and their role in combatting money laundering, tax evasion and avoidance.

Background:

The European Parliament's PANA Committee was established on 8 June 2016 following the revelations unearthed by the Panama Papers. The Committee was tasked with investigating alleged contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion, by organising hearings with experts, and requesting and scrutinising confidential information related to its mandate. The Committee will submit a report on its findings to the Commission for consideration by December 2017.

Latest Developments:

James Tipping (Finance Centre Director for the Government of Gibraltar) opened the hearing by highlighting that Gibraltar is a member of the Single Market for the purposes of free movement of people, capital and services, and therefore Gibraltar currently applies all EU regulations and Directives related to financial supervision, direct taxation and money laundering. He explained that a majority of bank deposits in Gibraltar come from domestic clients, and that Gibraltar's financial services sector is small in European terms, with the exception of its insurance sector whose services are passported predominantly to the UK.

Mr Tipping explained that Gibraltar was preparing for a 'hard Brexit', but the territory expects to maintain access to UK financial market after it leaves the EU, meaning that Gibraltar's financial services model should not have to change. He also informed MEPs that from September 2017, Gibraltar will automatically exchange comprehensive tax data with all EU Member States under the Directive on Administrative Cooperation (DAC) and Gibraltar is creating a Central Register of Beneficial Ownership which will come into force in June 2017.

Richard Walker (Director of Financial Crime Policy, Government of Guernsey) began by noting that, unlike Gibraltar, Guernsey is a part of the customs territory of the EU but is not a part of the Single Market for financial services. Additionally, Guernsey is a third country of the EU for the purposes of financial crime and tax legislation, but the Crown Dependency voluntarily chooses to adopt relevant legislation where appropriate. He informed MEPs that Guernsey meets every international standard of tax transparency and information exchange, and that Guernsey has 60 bilateral exchange agreements with other countries and 13 Double Taxation Agreements.

Regarding the revelations in the Panama Papers, Mr Walker was clear that the law firm from where the leaks came, Mossack Fonseca, had no presence in Guernsey, and stated that the Government of Guernsey had established a Panama Papers Working Group which will investigate whether the Papers indicate institutions in Guernsey being used for any criminal activity. He also informed MEPs that the Guernsey Law Enforcement has investigated and has currently found no activity of Guernsey entities being used for criminal activity.

Colin Powell (Advisor on International Affairs to the Chief Minister of Jersey) told the Committee that even prior to the revelations from the Panama Papers, Jersey had already taken to exchange information in tax matters and issues related to anti-money laundering. He said that Jersey has complied with the OECD standard on Exchange of Information on Request since 2002 and, as a result, more than 90 countries, including all EU Member States, can request tax information from the Crown Dependency. He also informed MEPs that Jersey has had a Central Register of Beneficial Ownership since 1989, demonstrating a long commitment to anti-money laundering and combatting the financing of terrorism.

Mr Powell said that the Jersey Government is confident that it will not appear on any EU list of non-cooperative tax jurisdictions, noting that the Crown Territory satisfies the OECD's criteria on tax transparency, Base Erosion and Profit Shifting (BEPS), and the EU's criteria on fair taxation. He also explained that there are many non-tax reasons why companies in Jersey are incorporated by non-residents, including taking advantage of the Crown Dependency's political stability, fiscal certainty and its base of professional expertise, and stressed that the Government ensures that the ultimate beneficial owner of any company formed in Jersey is identified and that information is passed on to partner jurisdictions.

Following this, the representatives received questions from the Committee. Petr Jezeek MEP (ALDE, Czech Republic) asked what will likely be the future cooperation of the Channel Islands with the EU after the UK leaves the EU in the fight against Money Laundering and Tax Evasion. Mr Powell responded that Jersey has always followed a 'good neighbour' policy in its relations with the EU, and this is reflected in its voluntary support to many EU initiatives, such as Savings Directive. He added that in areas of Money Laundering, the Channel Islands have followed international standards, and often implements these standards ahead of the EU.

Evelyn Regner MEP (S&D, Austria) asked how the Channel Islands could claim to be a leading jurisdiction on fighting against tax avoidance whilst they offer a 0% corporation tax rate. Rob Gray (Director of International Tax Policy, Guernsey) responded that the 0% rate of tax is not designed to attract nefarious transactions, but to avoid the risk of applying a double taxation to businesses that make financial transactions on their territory, as Guernsey has few double taxation agreements with EU Member States. Mr Powell agreed, noting that Jersey's tax structures were assessed by the OECD and found not to be harmful. The reasoning behind the zero rates is that the Channel Islands are a gateway to the EU for financial market funds from outside of Europe and this allows the taxation to take place at the place where the value is created.

Turning to Gibraltar, Mr Jezeek noted that the gambling industry accounts for 25% the local economy and subsequently 40% of tax revenues, and asked if this could be vulnerable to money laundering. Mr Tipping responded that all online gaming firms in Gibraltar have physical presences, the largest ones with 400-500 employees based in Gibraltar, which demonstrates that they are not 'brass plate operations'. Mr Tipping also disagreed with Mr Jezeek's assertion that that Gibraltar firms had a 'huge presence' in the Panama Papers, and highlighted that the Gibraltar Government has only received a handful of tax information requests from other jurisdictions related to revelations in the Panama Papers.

In a heated exchange, Gabriel Mato MEP (EPP, Spain) described Gibraltar as a "colony of the UK" and argued that, as such, it would be unable to receive special access to the EU once the UK exits. Mr Tipping responded that it was 'delusional' to describe Gibraltar as a colony today, as it is fully self-governing and self-financing. He also said Gibraltar is planning on the basis of a 'hard Brexit', resigned to the fact that it will receive no concessions.

Mr Matto also accused Gibraltar of making dubious tax rulings which allowed 'criminal' firms to hide their money in Gibraltar and withholding relevant tax information from the EU. Mr Tipping responded that Gibraltar already responds to Spain's requests for tax data and will start automatically sharing tax data to all EU Member States, from September 2017. Regarding the tax rulings of Gibraltar which are being investigated by the European Commission, he is confident it will be found that Gibraltar Tax Authorities has never exonerated any unpaid tax obligations.

Ernest Urtasun MEP (Greens/EFA, Spain) accused all the jurisdictions of having aggressive tax regimes and asked, in the context of the UK leaving the EU, would either territory be willing to dramatically alter its tax regime in order to retain access to the Single Market. Mr Powell responded that he expects that the EU will consider what it's in its own interest during the upcoming negotiations, but highlighted that the Channel Islands attracted capital from all over the world, which then flowed into the EU and called on the EU to take decisions

which are fair and evidence-based, noting that Jersey intends to continue following its 'good neighbour' policy with the EU.

Hearing on the rights of EU citizens in the UK

On 11 May, the Civil Liberties, Justice and Home Affairs (LIBE) Committee held a **public hearing** on 'The Situation and Rights of EU Citizens in the UK'. During the Hearing, MEPs heard from a range of experts on the uncertainty caused by the referendum result for EU citizens residing in the UK (and vice-versa), the best way forward to deliver guarantees to these citizens during the upcoming negotiations on the UK's exit from the EU, as well as the impact of failing to reach an agreement on citizens rights.

Background:

On 29 March, the UK Government formally invoked Article 50, triggering the process of the UK negotiating its exit from the EU. Following this, guidelines were set out by the **European Parliament** and the **European Council** for the upcoming negotiations and both documents set out to achieve reciprocal guarantees protecting the legal status of EU citizens residing in the UK (and vice-versa), and their families, as the first priority for the negotiations. Donald Tusk, President of the European Council, called for the UK Government to offer a "serious and real response" on citizens' rights, stating that significant progress would need to be achieved before any negotiations can begin with the EU on a future trade agreement.

Latest Developments:

Guy Verhofstadt MEP (ALDE, Belgium), the lead negotiator for the European Parliament on the UK's withdrawal from the EU, told the Committee that it is imperative that the UK Government and the EU reach a deal on citizens' rights, describing the ideal outcome as one where EU citizens who moved to the UK (and vice-versa) are able to continue with their lives "as if Brexit had never happened". He reiterated that this will be a key determining factor in whether the European Parliament will approve the final agreement, suggesting that the European Parliament may block a final agreement which contains insufficient protections for EU citizens in the UK.

Mr Verhofstadt called for the outcome of the negotiations between the UK and the EU on citizens' rights to be made public, even if the deal cannot be formally approved until a later date. He also stated that MEPs should not accept a cut-off date for determining who should retain rights that is earlier the date of the UK's actual withdrawal from the EU.

However, he also said it was important not to focus solely on UK and EU citizens who have exercised their right to free movement, as he argues the "real victims" of the UK's decision to leave the EU are UK citizens who will lose their EU Citizenship. He acknowledged that

previous proposals offering 'associated citizenship' for UK citizens would be unfeasible (as EU citizenship is dependent on being a citizen of an EU Member State), but proposed a special agreement allowing UK citizens to retain certain EU rights after the exit date (such as the right to use consular services or vote in European Parliament elections should a UK citizen reside in an EU Member State).

Anne-Laure Donskoy, representative of 'The 3 Million' campaign group, told MEPs that there are more than three million EU nationals living in the UK and over one million UK nationals living in the EU, and there have been many anecdotal cases of discrimination faced by these citizens since the referendum. She went on to explain that the current process of EU citizens applying for permanent residency in the UK is not fit for purpose. For example, the process requires they fulfil certain criteria, such as a minimum income threshold or having Comprehensive Sickness Insurance, during a continuous period of five years to be eligible for permanent residency, but as these have not been necessary for EU citizens, many cannot meet these criteria.

Ms Donskoy explained that she fundamentally disagrees with the argument that a final deal on the status of citizens cannot be reached until the entire agreement has been negotiated, and the campaign group was calling for separate agreement on citizens' rights to be agreed quickly, which should be ring-fenced from all other disputes, so that citizens can be guaranteed assurances quickly. She also called for the UK to urgently adopt a new and simplified registration process which would allow EU citizens to apply for permanent residency, recognising the specific difficulties the current system poses for EU citizens.

Julia Onslow-Cole (Partner, Legal Markets Leader and Head of Global Immigration, PwC) explained the findings of a recent [PwC report](#), which discusses the impact that migration from inside and outside the EU has had on London's economy. The report finds that EU citizens offer a significant contribution to London's economy, as well as the wider UK economy, and immigration plays a crucial role in workforce of the NHS, as well as in the financial services, construction and hospitality industries. It concludes that EU and non-EU migrants contribute £83 billion to London's economy.

Ms Onslow-Cole told MEPs that a restrictive migration policy could have a heavy impact on the British economy. She cited the construction sector, where the UK-born construction workforce is aging and 50% of the workforce are non-UK born, and argued that following the UK's exit from the EU, the sector could face a labour shortage of 230,000 people within five years. She argues that it is in the UK's interest to reach an agreement on citizens' rights in order to mitigate the impact that the UK's exit from the EU will have on its workforce and economy.

Jonathan Portes (Professor of Economics and Public Policy, King's College, London) began by arguing that the uncertainties which are now faced by EU citizens in the UK (and vice-versa) was predictable, calling the assurances offered by the Leave campaign during the UK

referendum to be “ignorant, deceptive, or both”. He also noted that the decision by the EU not to enter into discussions on citizens’ rights before the UK formally triggered Article 50 was regrettable, as it gave the UK cover to say that nothing could be done and to avoid addressing the complexities which have been raised in this hearing.

Mr Portes said that, whilst the UK Government position on citizens’ rights has been unclear, he called on MEPs to recognise the UK Government’s legitimate concerns with the EU’s proposal; namely, the fact that currently EU citizens possess greater rights than UK citizens when it comes to awarding permanent residency to their non-EEA spouses; and that any continuing jurisdiction of the European Court of Justice to settle disputes regarding EU citizens in the UK would be inappropriate once the UK has no representation in the court.

With this in mind, Mr Portes called for a joint agreement by the UK Government and the EU to guarantee permanent residency to each other’s citizens on the day the UK withdraws from the EU, to decouple the agreement on citizens’ rights from the rest of the exit agreement and for the UK Government to unilaterally abandon its unfair and burdensome system for EU citizens applying for permanent residency. Additionally, he called for a new class of residency for UK citizens in the EU (and vice-versa) and proposed setting up a new arbitration system to settle the disputes related to EU citizens in the UK, which would include representatives from both the UK and the EU and recognised the specificities of these cases. This will ensure that EU citizens are offered greater security, whilst the UK will not be subject to rulings from a court on which it no longer has any representation.

Sophie in 't Veld MEP (ALDE, Netherlands) welcomed the contributions from the experts, and said that the people affected by the UK’s decision to leave the EU shouldn’t be forced to leave their homes by law or by circumstances. She argued that this is not simply a legal issue, but the EU and the UK Government have a moral imperative to settle the issue of citizens’ rights.

Richard Corbett MEP (S&D, UK) argued that the evidence from this hearing demonstrates that the consequences for citizens of the UK’s decision to leave the EU are dramatic, and said that the only way of retaining rights of residency is to stop Brexit. However, if it cannot be stopped, he called for any agreement to be compatible with the treaties and the charter of fundamental human rights, and anything that falls short of this should be subject to challenge at the ECJ.

In other news

- The Commission has published a **Reflection Paper** on Harnessing Globalisation
 - The Commission published its final **report** on e-commerce sector inquiry
 - The Commission published the **mid-term review** of its Digital Single Market strategy
 - The Commission published the **Spring Economic Forecasts**
 - Commission Vice President Valdis Dombrovskis delivered a **speech** at the European Court of Auditors Conference on Youth Employment
 - The Council approves a **programme** to involve consumers in policy-making
 - The ECB announces a **consultation** on the future RTGS services
 - Freshfields Bruckhaus Deringer published a **report** on 'The Legal Impact of Brexit on the UK-Based Financial Services Sector'
 - The BBA published a **briefing** on 'External trade policy and a UK exit from the EU – the UK's WTO profile and beyond'
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Upcoming EU Institutions events and consultations

16 May: Deadline for responses to EBA **consultation** on Guidelines on procedures for complaints of alleged infringements of the PSD2

24 May: Deadline for responses to EIOPA **consultation** on Technical Advice on the treatment of unlisted equity and debt without an ECAI rating in the standard formula

29 May: Deadline for responses to EBA **consultation** on RTS on the specification of the nature, severity and duration of an economic downturn

2 June: Deadline for responses to EBA **consultation** on the coverage of entities in a group recovery plan

5 June: Deadline for responses to EBA **consultation** on Guidelines to prevent transfers of funds can be abused for ML and TF

City of London Research

The City of London produces regular research on EU Financial Services which can be accessed **here**.

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