

Current state of AML and future developments

The Role of Legal Professions in EU AML/CFT

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Javier Doz, member of the EESC

EESC in the AML-CFT fight: some Opinions

- [ECO/408: Revision of anti- money-laundering directive \(2016\)](#)
- [ECO/510: Combat tax fraud, tax avoidance and money laundering \(2020\)](#)
- [ECO/555: Anti-Money Laundering Legislative Package \(2021\)](#)
- [ECO/572: Fight the use of shell entities \(2022\)](#)

The EESC and EU AML-CT legislation

- The EESC has supported the EC's AML-CT legislative proposals in recent years. It has considered them, in general, as steps in the right direction, but clearly insufficient.
- The implementation of the European directives has been poor -in many aspects - and long delayed (AMLD 5th).
- In the four opinions mentioned above the EESC made some 40 additional proposals for a more effective fight against AML-CT.
- The AML-CF legislative package of July 2021 could partly remedy the major legislative and policy shortcomings, but full implementation is delayed to 2026.
- Will the European Council respect the contents of the first EU AML-CF Regulation and the creation and competences of the AMLA?

Main EESC proposals in the AML-CFT fight (I)

- In the 4 opinions mentioned above, the EESC has made more than 40 proposals not included in the EC initiatives. The most important ones:
- Promote a European Pact (political and social and civic) to effectively combat tax fraud, evasion and avoidance and money laundering. Involve: European and national political institutions, political parties, social partners, civil society organisations, academic and think-tank institutions,...
- The creation of a civil society advisory body, within AMLA, or under the European Commission and with AMLA participation.
- More competences and resources for the European Public Prosecutor's Office and Europol for AML-CT. Close coordination with AMLA

Main EESC proposals in the AML-CFT fight (II)

- Specific legislation to prevent the illegal actions of "professional enablers" (some law firms, tax consultancies, consultancies) in the management of shell companies, following the OECD approach to the subject matter.
- Essential reading: "Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes" (OECD, 2021). approved by the OECD Committee on Fiscal Affairs on 16 November 2020
- The cooperation of professional regulatory or supervisory bodies in the fight against malpractice and possible criminal activities of "professional enablers" would be an interesting line of development of AML-CT... Pact

Main EESC proposals in the AML-CFT fight (III)

- Establish a legal obligation on the part of professional enablers to identify the beneficial owners of shell companies and the transactions they carry out
- Implement the legislative package, or promote specific legislation, to money laundering channels outside the financial system: the market in works of art and high-value assets; free ports, customs warehouses and special economic zones; certain commercial or trade transactions, real estate investments, gambling, etc.

Main EESC proposals in the AML-CFT fight (IV)

- Provide sufficient human, IT and financial resources to the FIU and Member States' tax authorities, connect and coordinate them. Coordinate police, prosecution and judicial systems in the AML-CT
- European harmonisation of the legal treatment - definitions and penalties - of all offences related to money laundering, tax fraud, corruption and terrorist financing and their links. Also, harmonisation of penalties for non-compliance with the provisions of the AML Directives and Regulations.

Main EESC proposals in the AML-CFT fight (V)

- Strictly update the lists of countries with strategic deficiencies in AML-FT (EC:8/03/2022) and Non-cooperative countries and territories for tax purposes (Council:24/02/2022). Unify or articulate both lists
- Monitoring and, where appropriate, sanctioning of transactions that companies and individuals carry out with the countries on the list(s).
- To include a chapter on cooperation against tax fraud and avoidance, AML-FT in the EU's free trade and economic association treaties.

What to do with the EU's internal tax havens and those of the US?

- Of the estimated \$15 trillion that passes through shell companies, 85% of it goes through shell companies based in Europe. 7.5 trillion through companies based in Luxembourg and the Netherlands (IMF: F&D; 09/2019)
- There is a growing number of shell companies and capital flows, domestic and foreign, in various US states: Delaware, Nevada, Montana, Wyoming, South Dakota, etc. They are not, nor are they expected to be, on any EU or FATF list.
- How can we ensure that the AFL-FT fight is not the work of Penelope, the wife of Ulysses?

CCBE's (European Lawyers) position

- “The new proposals for oversight by national authorities and a supranational European body will erode the independence of lawyers from governments and other state actors. This independence is an essential protection for citizens as it maintains the rule of law for all. The CCBE therefore calls on all political actors to abandon plans to create a "terrible beauty" in the form of the proposed rules for national and European supervision which will undermine lawyers' independence and the rule of law...” (From the Summary of: "CCBE position on the European Commission's 2021 anti-money laundering package" 10/12/2021)
- This is a surprisingly unfocused and corporatist position of the CCBE. The ECO/555 rapporteurs had a meeting with the CCBE Presidency (22/01/2022);...

Rise of ML and Tax Havens. Political Factors

- 80s and 90s (XX Century) Globalisation neoliberal model: free movement of capital, little or no regulation
- Financialisation of the economy: Absence or extreme weakness of global regulatory frameworks: financial, fiscal, economic,...
- And weakness of European ones...EU: Single Market: Full freedom of movement of capital (and goods) without common fiscal policy, with disharmonious tax systems and unfair tax competition.

The Fiscal Policy Turnaround of the 1980': Reagan & Thatcher

- Washington Consensus: Consequences
- Fiscal insufficiency of states - erosion of the progressivity of tax systems
- Deterioration of welfare states in Western post-industrial countries: The reversal of historical progress towards equality from the 18th century to 80'-90'. The rise of inequality since the 1980s. (US, France,...)

Tax rates - tax evasion and avoidance -Money laundering

<u>The case of the USA :</u>	<u>1910-1950</u>	<u>1950-1990</u>	<u>1990-2020</u>
• GDP per capita (average growth rate)	2,1%	2,2%	1,1%
• Average of maximum marginal personal income tax rates	67%	72%	35%
• tax evasion and avoidance: % of tax base (estimation)		5%	30%/35%
Saez& Zucman (2019), Piketty (2021)			

Some bibliographical references (I)

- Saez E., Zucman G: (2019): *The Triumph of Injustice: How the Rich Dodge Taxes and How To Make Them Pay*
- Piketty T. (2021): *Une brève histoire de l'égalité*
- De Larosière, J. (2022): *En finir avec le règne de l'illusion financière*
- Torslow T, Wier L. and Zucman G. (The Review of Economic Studies, July 2022) : *The Missing Profits of Nations*

Some bibliographical references (II)

- OECD (2021): *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes*
- International Tax Studies (Pistone, Nogueira, Turina and Lazarov, 2021): *Abuse through the Use of Shell Companies and Arrangements for Tax Purposes in the European Union: Feedback on the EU Consultation by the IBFD Task Force on EU Law.*
- Damgaard J., Elkjaer T. and Jahannesen N.: (a) [*Piercing The Veil: Some \\$12 Trillion Worldwide Is Just Phantom Corporate Investment*](#) (Finance&Development, IMF, June of 2018); (b) *The Rise of Phantom Investments Empty corporate shells in tax havens undermine tax collection* (F&D, IMF, September of 2019)

Conclusions (I)

- There has been, in the developed countries since 1980' (with differences between them, of course), a decrease in income and corporate tax rates that has coincided with a notable increase in tax fraud and avoidance, money laundering and the proliferation of tax havens.
- This has been made possible and, in part, promoted by the 'tax avoidance and money laundering industry'; professional enablers through law firms and tax consultancies expanding in the same period.

Conclusions (II)

- The neo-liberal globalisation model we have experienced has allowed the proliferation, growth and strengthening of the criminal economy and its organisations that use the same networks of shell companies to money launder profits.
- Legal action against these economic and tax crimes -often linked to the criminal economy organisations- has to be taken simultaneously at national, European and international levels and target both the natural and legal persons who benefit from them and the professionals who run the shell companies.
- The consequences of not acting decisively against this scourge on the basis of ethical and civic democratic principles can be socially and politically devastating. We are beginning to see it