
European Parliament Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA)

24 January 2017

Statement from the Council of Bars and Law Societies of Europe (CCBE)

Good morning.

I am here today on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE represents the Bars and Law Societies of all EU Member States, as well as Norway, Iceland, Liechtenstein and Switzerland, and a further 13 associate and observer countries, and through them more than 1 million European lawyers.

The CCBE is delighted to have the opportunity to assist the Committee of Inquiry. In the allotted time, I would like to provide you with a brief introduction on the CCBE, with a focus on the CCBE's work in the area of anti-money laundering, and comments on tax avoidance and tax evasion matters.

To begin, the CCBE supports the fight against money laundering and has been actively engaged in countering existing and potential risks. Lawyers are covered by the obligations included in the EU anti-money laundering Directive and the International standards set by the FATF. A legal professional is an "obliged entity" in the sense of the money laundering Directive, and required to have anti-money laundering systems in place. Lawyers are subject to customer due diligence, so called CDD requirements, and reporting obligations when they carry out a number of financially related activities. The current anti-money laundering Directive make it very clear under which circumstances a full CDD procedure must be carried out. Moreover, legal professionals use, for many reasons (such as liability, invoicing, communication with clients, banking requirements), formalistic client intake procedures to control their ongoing client relationship even in areas not covered by the EU Directive.

In addition, lawyers operate according to the "know your client" principle. A client is not anonymous to the lawyer. A lawyer has the duty to identify the client and is obliged to do so. This was a deontological duty before becoming a legal one. The lawyer will always know who the client is. If a lawyer is prevented from identifying a client, a lawyer must withdraw from professional activity.

Lawyers are subject to a set of European harmonised rules in the area of anti-money laundering. National legislation, as well as national Bars and Law Societies, have implemented the applicable EU Directive and apply the specified measures to address money laundering risks. The profession is making every effort to detect money laundering and to raise awareness amongst its members. As an example of a few of these measures:

- Bars and Law Societies have developed lists of indicators which illustrate risk situations which a lawyer should be aware of.
- Bars and Law Societies carry out onsite inspections of client accounts held by lawyers, and these accounts are usually subject to an annual audit (in the jurisdictions that have client accounts).

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- Bars and Law Societies provide training on anti-money laundering (AML) issues to both admitted and trainee lawyers.
- Up-to-date guidelines have been developed and promoted to assist lawyers in relation to complying with their AML obligations.
- AML Toolkits have been developed which provide lawyers and law firms with practical 'need to know' information and contain a mixture of draft policies and procedural checklists.
- Advice has been developed for new money laundering reporting officers.
- There are numerous email alerts about emerging money laundering typologies/red flags and AML-related policy developments.
- There are "Hotlines" whereby many jurisdictions have a dedicated AML support phone line for their members.
- There is engagement with the relevant national ministry and law enforcement agencies and many other actions.

I would like today to make it clear that the CCBE and its member Bars and Law Societies do not and never will condone the actions of any lawyer who knowingly participates in any criminal activity of a client, whether relating to money laundering, tax evasion or any other criminal activity.

Members of the legal profession are subject to strict sanctions (both civil and - in certain jurisdictions - criminal) for any failure to adhere to AML obligations. There are strict disciplinary procedures which can lead to being struck-off the list of lawyers, and severe fines for failure to adhere to AML procedures.

Lawyers are professionals, and yes, while there might exceptionally be some individual "crooked lawyers" as with other professions, this must be kept in context. Criminals exist in every profession and take part in money laundering schemes. There is a significant difference between a lawyer or any other professional being complicit in any illegal activity and a lawyer being unwittingly involved. Any lawyer that knowingly participates in illegal activity is treated like any other criminal. They are not acting as lawyers. This is a position which we the CCBE and Bars and Law Societies have always maintained and made very clear. In contrast, the low level of prosecutions across EU Member States of lawyers being unwittingly involved in money laundering activities is testament to the successful measures which Bars and Law Societies take.

It is also very important to understand that professional secrecy does not apply if a lawyer takes part in illegal actions of the client. Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence.

The legal profession is highly regulated at a national level in all EU Member States. There is no European Regulator or Supervisor like that which exists, for example, for the financial services sector, as the tasks of lawyers vary across EU Member States. Differences exist between common and civil law systems regarding how lawyers are regulated at a national level. However, each Member State's legal profession is governed by national law, and is well regulated by national law and national supervisory or self-regulatory bodies. Those bodies issue very clear and encompassing guidance, take their regulatory duties seriously and provide extensive training. Moreover, there is also guidance and ethical rules at a national, European and international level.

The profession is united in efforts to educate its membership regarding money laundering risks and assist them with meeting their AML obligations. The legal profession is alert to the threat of money laundering and is actively taking it on. We support any clear, workable and proportionate measures and will continue to do so. No profession wants its members to be involved in illegal activity. The legal profession is no different. It is in our interest to protect

the reputation of the legal profession, and any lawyer that is involved in illegal activity hurts the reputation of the entire profession. That is why we are so committed to fighting money laundering.

We understand the inquiry is focusing on a number of issues, including the use of trusts. The formation of companies and trusts can be an area of vulnerability for legal professionals, as criminals may seek to abuse their professional services by involving them in the management of those companies and trusts in order to give the appearance of respectability and legitimacy to the entity and its activities. This is why the creation or management of trusts and companies by lawyers is an AML regulated activity across the EU, and also one of the reasons why in some European countries lawyers are not permitted to act in the management of companies. This is an area of potential risk that is well recognised and regulated by FATF, EU and Member State rules, and an area on which we have provided much guidance to our profession. In this regard, we have already identified and communicated situations where red flags should be raised.

It is worth highlighting that trusts are an accepted way of managing assets (money, investments or property) by enabling a third party or trustee to hold those assets on behalf of one or more beneficiaries. Under all common law, including that of England & Wales, Ireland, Australia and most of the states of the United States of America, trusts play an intrinsic role in virtually all transactions.

In the UK, for example, domestic life policies are very commonly held in trust in a way that mirrors the effects of assurance via in France. In England & Wales, the Land Registry does not record beneficial ownership and thus most land in England & Wales is held in express trust. Problems which confront ordinary EU citizens, which under the laws of Germany or France may be dealt with under the laws of obligations or contract are commonly dealt with under common law by the imposition of a trust.

It should be acknowledged that the creation of a trust is therefore not, in common law, necessarily an indication of risk. In order to further clarify many commonly held misconceptions about trusts we have decided to make a trusts expert available to the Committee this morning.

The CCBE actively promotes the understanding of FATF red-flag indicators and advises legal professionals to be alert to the risk of money laundering whenever clients are instructing them from a distance about transactions without legitimate reason, or engage them although they do not have the requisite competence, or are inexperienced in providing services in complicated or especially large transactions. Our members are also on alert when clients are prepared to pay substantially higher fees than usual. The changing of legal advisor a number of times within a short space of time, engagement of multiple legal advisers without good reason, or the termination or refusal by another legal professional are also red flags that the legal professional is aware of. These are but just a few of the “red flag” situations that legal professions are acquainted with, and there are many more. But it is our job to identify these risks and to educate our profession.

The legal profession is in favour of clear, workable and proportionate rules to fight money laundering and tax evasion. But the legal profession is also aware that fundamental rights and the rule of law are the cornerstone of democracy. The Union is – above all – an area of freedom and a beacon of justice. It is very important to find the right balance between regulation and transparency on the one hand, and fundamental rights and liberties, including the right to a private life, on the other hand. Neither fear nor financial interests should lead to the creation of a Union of surveillance. I am sure, that you, members, share the same concerns about fundamental rights and liberties as foundations of our democracy as lawyers do.

I would like to conclude by saying that

- The legal profession is making every effort to detect money laundering and to raise awareness amongst its members.
- The legal profession has an extensive number of measures in place to address money laundering risks.
- Members of the legal profession are subject to strict sanctions for any failure to adhere to AML obligations.
- Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence.
- The legal profession is highly and effectively regulated at a national level in all EU Member States.
- The legal profession is also actively engaged in protecting fundamental rights and liberties.

Thank you
