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Article : **The unseen and unaccountable string of influence of Civil Society on taxation, and institutions within the EU, and Member States.**

27th June, 2014.

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"Civil Society" as an active contributor to the ECOFIN process has been established in the TFEU since 1993. As part of EESC, its influence on ECOFIN is rarely advertised, as it is by definition representative of a body of opinion in Europe alongside employers' federations, trade unions and other like movements of thought with influence. Included in this category are therefore university academics, lawyers, economists, NGOs and other bodies of influence, which may or may not have "democratic" validity as such, but which are accorded a voice of influence in proceedings. The question posed here, is "is that influence one which should be brought to account?" I do not pretend to have an answer, but propose some reasons why it might need to be, for what used to be known as the Greater Good.

This is not new. The German printing industry had a voice at the lower levels of the Vienna Conference of 1815 at which the retrenchment of the constitutional issues and political influences which had previously torn European - post Westphalian - states and society apart, were hammered out. As such, it is tempting to draw a comparison with the Internet providers of the present age, and to the present representatives of "civil society", as it is now known.

That body of influence has remained uncharted and unpublicised since, but has been recognised in its institutionalised inclusion in the European Economic and Social Committee by the TFEU:

Article 300

1. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions, exercising advisory functions.

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2. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio- economic, civic, professional and cultural areas..

What is also a parallel is the body of civil servants who have accompanied the European process since 1815, and have become adept at using European Institutions to further aims on a long term basis, despite the conflicts and other perturbations which have intervened. This undefined "body" of benign, stabilising functional influence is felt throughout the international institutions from the Bank of International Settlements, the G classification being the BIS classification, not that of the OECD through to others such as the IMF, the OECD and, inevitably, the European Institutions.

Perhaps it is now worth questioning whether the input of a vociferous minority which has secured a footing within this institution is actually a democratic influence or in effect oligocratic. There is certainly a place for the latter, the abolition of slavery within the United Kingdom, before most of Europe and the USA was obtained by an exercise of such influence. Does Taxation fall within this moral and ethical category?

Multi-national corporations have little or no voice at that level of influence, which probably explains their reduction to being castigated for lobbying, currently the bane of the new order of MEPs, who prefer lending an ear, and yielding their voices to the influence of this Civil Society as such, rather than perhaps the individuals corporations and businesses within their constituencies.

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This might appear to the outsider to be benign, and it might have been were it not for the fact that the ECOFIN Council, egged on by the EESC, decided to go beyond its Treaty prerogatives in relation to such matters as the Code of Conduct, and the questions of taxation. In so doing, it has managed to elude becoming "formally" tied into the system of European Treaty law which governs its institutional competence and behaviour, without its actions being treated as *ultra vires*, yet. This was under the undeniable influence of the Civil Society constituencies populating the EESC.

However, that has led to a potential clash with the Court of Justice in that most fiscal initiatives of a discriminatory nature will fall within the scope of the freedom of movement of capital which was radically overhauled and extended from the internal market to the worldwide capital market in 1993. The liberal approach, crudely put, rendered the exchange of fiscal information the palliative against arbitrary and unfocused fiscal discrimination by Member States tax administrations.

That notwithstanding, Civil Society did not stop there, and therein may lie the problem.

The members of the organisations represented at EESC, are the tip of the icebergs of their sphere of influence within the member states from which they originate. There has therefore been a substantial degree of emotional influence in both an upwards and a downwards direction, which has led to a degree of politicisation of taxation, and what is worse, its degeneration into a moral or an ethical issue, based on quasi-republican thinking.

It is therefore not surprising that the civil society in each member state rally to the call of "tax evasion" so vociferously, and with such scant regard to the actual law, which states clearly now, that there should be

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no arbitrary fiscal discrimination on capital movements where there is exchange of information or information availability to the tax administration concerned.

Another example: a cold analysis of the current scandalisation by Civil Society of tax issues will reveal that the Groups concerned have done no more, and no less than follow the laws in place, including the territorial allocations of profit and losses by the Tax Treaties in place under the OECD model.

Otherwise the tax administrations, and the Finance Ministries concerned would have had no difficulty in collecting the taxation alleged to have been eluded, and which legally is not due.

The less than benign effects

That has effectively led to the French Government feeling able without contradiction to illegally blacklist Bermuda and the British Virgin Islands, both OCTs governed by an EU freedom of movement of capital provision Union, and what is worse a British Crown Dependency, Jersey, and slapping a 75% expropriative level of taxation on their residents, without respecting the caselaw of the CJEU, or for that matter the EC Treaties which in fact forbid such blacklistings within the scope of the European Treaties. The BVI have yet to take any initiative to have their blacklisting removed, which may mean simply that they have other fish to fry.

Information exchange is one thing, levelling a 75% charge on innocent residents of these jurisdictions in an attempt to secure political change, is entirely another. None of these jurisdictions have a voice within the European Parliament, or at the EESC or for that matter at ECOFIN.

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The inelegant haste with which the French blacklisting of Jersey was withdrawn, retrospectively was due to two things, firstly the fact that there were no objectionable obstacles to the exchange of information under the TIEA , and secondly that the French blacklisting power was limited to states and territories outside the EC - Jersey is not outside the EC but within it, and thirdly the overriding protection against such arbitrary and hostile acts granted by the Treaties both to Member States their Dependencies and OCTs. This arrogant bullying was the result of civil societies' pressure in France inflaming the debate and validating illegal actions by the politicians controlling their administration.

Portugal's continuing illegal blacklisting of Jersey is another case where an EU government has acted in breach of this fundamental principle.

How can this be?

The answer may be a simple one, the civil society in each of the member states, is accountable only to itself not democratically, and will therefore use its influence, politically and informally , whether they be academics, lawyers, judges, examining magistrates, trade unionists, or other members of this set of influencers.

The barrage of unceasing and ill-informed criticism levelled at other Member State's territories is rarely directed against their own dependent territories or OCTs. Madeira being one example, for Portugal, and the Canary Islands and Spain being another example of jurisdictions at threat of similar reactions from other, fiscally aggressive, Member States such as France. As a humorous aside, Nicholas Sarkozy threatened to resign as co-prince of Andorra, the other co-prince being a Spanish Bishop when reminded

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tactfully of his position as head of state of a tax haven by Angela Merkel, which contrary to Jersey is definitely a European Territory outside the EC and the EU. François Hollande has succeeded in remaining unembarrassed by this situation.

Has France blacklisted Andorra, or Monaco or Switzerland? Not yet, and probably never will. The British dependencies and OCTs were easy targets for illegal but politically motivated action. This action was greeted by cheers from French Civil Society, and doubtless echoed in EESC and ECOFIN. The despair of that section of opinion when the blacklisting had to be lifted was interesting.

Can this unlawful and disproportionately bullying behaviour be tolerated by a legal system that is meant to provide legal security, particularly when it is directed against individual residents and companies working and living in these communities?

Even the most uncivil member of civil society, and one can count several chairpersons of NGOs and pressure groups within that category, would have some difficulty in justifying that ethically, even more so were they to have more formal civil functions such as be academic, judicial or investigating magistrate.

The effect of these generally uninformed, and therefore by definition, attacks in ignorance on issues whose practical use and benefit is ignored is more than quixotic. For example, European Civil Society, egged on by certain British extremists, has in effect called for a definition of "beneficial ownership", which in essence is foreign to the legal systems in which they are accustomed to operate. In so doing, with the current and contradictory philosophy behind FATCA style US initiatives, they appear unwittingly to be intent on rendering inefficient the property law mechanisms by which Stock Markets in the US and

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the UK function efficiently. Can one argue seriously that any European Stock Market has managed to equal the sophistication and effectiveness of the London markets or those of New York and Chicago, based on trustee and nominee arrangements? Ignorant criticism of institutions working in another language and with different legal concepts is hardly productive, is it not rather destructive?

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