

TRADE AND INVESTMENT IN FINANCIAL SERVICES AND FREE CAPITAL MOVEMENT: THE EFFECTS ON MONEY LAUNDERING AND TAX AVOIDANCE

Assessing some of the trade related aspects five years after the free trade agreement between the EU and Colombia and Peru

Myriam Vander Stichele, SOMO



Studie Trade and investment in financial services and free capital movement: The effects on money laundering and tax avoidance.
Assessing some of the trade related aspects five years after the free trade agreement between the EU and Colombia and Peru

Author M. Vander Stichele
Senior Researcher

About SOMO: The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals.
<https://www.somo.nl/>



Commissioned and published by:

Editor:



Forschungs- und Dokumentationszentrum Chile-Lateinamerika e. V. – FDCL
Gneisenaustraße 2a, D -10961 Berlin, Germany
Fon: +49 30 693 40 29 / Fax: +49 30 692 65 90
E-Mail: info@fdcl.org / Internet: www.fdcl.org

Gefördert von Engagement Global im Auftrag des BMZ und der Landesstelle für Entwicklungszusammenarbeit Berlin (LEZ)



Senatsverwaltung
für Wirtschaft, Energie
und Betriebe



Diese Broschüre ist lizenziert unter einer Creative Commons Namensnennung – Nicht-kommerziell – Weitergabe unter gleichen Bedingungen 4.0 International Lizenz (CC BY-NC-SA 4.0).



FDCL-Verlag Berlin, September 2018 | ISBN: 978-3-923020-85-0

1.	Introduction	4
2.	Increased drug trafficking	5
	The risks for drug trafficking from making trade easier	5
	Mixed potential from trade to shift away from illicit cultivations	5
	New risks from reverse drug trade from EU to Latin America	6
	New areas of crime related to trade	7
3.	Money Laundering and tax avoidance related to trade agreements	8
4.	The EU still not fully equipped to deal with money laundering	10
5.	Money laundering and tax avoidance measures by Colombia – Peru	12
6.	Concerns about capital flows related to foreign investment	14
	Rules on cross-border movement of capital	14
	Colombia is open for foreign direct investment – also from tax havens	14
	Peru: foreign (direct) investment from corrupt companies via the EU (Luxembourg)	16
7.	EU analysis fails to take into account money laundering or tax dodging or corruption	20
8.	Financial Services liberalisation – What effects?	22
	Financial services assessments lacking	22
	Presence European banks in Colombia increased	23
	The banking sector in Peru: concentrated and many small financing institutions	23
9.	Trade in services: issues for consideration	25
	Reporting and assessment of the FTA and future TiSA	26
10.	Conclusions	27
11.	Recommendation to tackle money laundry and tax avoidance and evasion	29
	ANNEX	30

1. Introduction

The EU has a comprehensive trade agreement with Colombia and Peru¹ which has been provisionally applied with Peru since 1 March 2013 and with Colombia since 1 August 2013. Ecuador joined the free trade agreement (FTA) on 1 January 2017² but is not covered in this report.

At the time of ratification of the FTA by the European Parliament, in December 2012, a research report warned about the risks from particular aspects in the trade agreement, namely increased money laundering and tax avoidance, due to FTA provisions such as free movement of capital and liberalisation of financial services.³ A comprehensive research report on the inclusion of financial services in EU free trade and association agreements by the ex-post impact assessment unit of the European Parliament, confirmed those risks.⁴ In contrast, the EC's third report on the implementation of the EU – Colombia & Peru FTA⁵ does not mention any of these risks and issues that have an important impact on particular parts of society and economic sectors. A recent Parliamentary report to evaluate the EU - Colombia & Peru free trade agreement mentions different EU initiatives with Colombia and Peru on money laundering, drug trafficking and tax issues outside the FTA.⁶

This report intends to raise particular issues that need to be taken into consideration when the EU - Colombia & Peru FTA is being evaluated and discussed, in order to take action to reverse negative trends regarding illegal transactions, foreign investment and the financial sector.

Methodology of the report

This report is the result of a short assignment to research and update a few aspects that were raised in the report⁷ "Free Trade Agreement EU - Colombia & Peru: deregulation, illicit financial flows and money

laundering" (December 2012). The focus in this report is also limited to the role of the FTA's liberalisation of financial services and capital flows on the drug trafficking, money laundering and tax avoidance or evasion, which are interconnected issues. Within the scope of the short assignment, the research for this report provides some, but not complete, insights from this particular point of view regarding the impact of the FTA after five years in operation. This report often refers to the comprehensive research report⁸ on the inclusion of financial services in EU free trade and association agreements by the ex-post impact assessment unit of the European Parliament, which is a more comprehensive research that has the same focus and looks at the same issues of this report.

The research has been seriously hampered by lack of statistics and recent data, sometimes the most standard data such as portfolio investment data from the IMF, and evaluations of the financial system or the anti-money laundering system in those two countries have been lacking. The content of the report has also been determined by the information that was available. The lack of official data is a worrying aspect: there are not enough official studies, evaluations, information and data to provide means to monitor and assess the impact of the FTA and to deal with new and problematic trends. For this report, the draft findings of the research about the financial flows and subsidiaries of Odebrecht, the Brazilian construction company, were submitted for review to the company. The responses have been taken into account in the report (see box 1⁹).

Content of the report

The report first looks at the evolution of drugs trafficking between the EU, Colombia and Peru since 2013. The report then covers different aspects of money laundering and tax avoidance: its relationship with the FTA, with measures taken by the EU and measures taken by Colombia and Peru. In the following chapters, the report raises issues of concern about capital flows linked to foreign investment and how these concerns are not taken into account when the EU evaluates the FTA. Finally, the report indicates how the issue that trade in services have implications that are being ignored by the European Commission who negotiates FTAs.

¹ Trade Agreement between the European Union and Colombia and Peru, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691> (viewed 1 February 2018).

² EC, Andean Community, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/andean-community/> (viewed 1 February 2018); see also http://europa.eu/rapid/press-release_IP-13-173_en.htm, and http://europa.eu/rapid/press-release_IP-13-749_en.htm

³ M. Vander Stichele, Free Trade Agreement EU- Colombia & Peru: deregulation, illicit financial flows and money laundering, GUE/NGL, SOMO December 2012.

⁴ I. Ioannides, Comprehensive ex post trade impact assessment on the inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance, European Parliament, EP 579.326, June 2016, p. 35-50, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU\(2016\)579326_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU(2016)579326_EN.pdf) (viewed 23 February 2018).

⁵ EC, Third Annual Report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, COM(2017) 585 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0585&from=EN> (viewed 28 April 2018).

⁶ A. Zygierewicz (Ed.), Trade agreement between the European Union and Colombia and Peru - European Implementation assessment, European Parliament, PE 621.834, July 2018, p. 57-59, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621834/EPRS_STU%282018%29621834_EN.pdf (viewed 15 August 2018).

⁷ M. Vander Stichele, Free Trade Agreement EU- Colombia & Peru: deregulation, illicit financial flows and money laundering, GUE/NGL, SOMO December 2012.

⁸ I. Ioannides, Comprehensive ex post trade impact assessment on the inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance, European Parliament, EP 579.326, June 2016, p. 35-50, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU\(2016\)579326_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU(2016)579326_EN.pdf) (viewed 23 February 2018).

⁹ The response is referred to in the report's footnotes as "Odebrecht, response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO)".

2. Increased drug trafficking

The risks for drug trafficking from making trade easier

Free trade agreements aim to have fewer checking of goods at the border, especially by reducing tariffs on trade in goods to zero. In order to screen goods so as to intercept illicit goods, points of imports such as the port of Rotterdam are using selection criteria to identify and investigate potentially illicit goods' and drugs imports. However, that is a methodology that cannot stop all drugs trafficking from Colombia or Peru, since very inventive ways are being found by the traffickers. That things can go wrong was exposed when 140 kilo of cocaine were being found in banana boxes at different Aldi supermarkets (Germany, 2014).¹⁰ Also, the EU's import custom's infrastructure is vulnerable of being corrupted to Latin American drug trade related crime. As an example, in the Netherlands, a custom officer who was in charge of selecting the containers which potentially might contain cocaine was found corrupted by the drugs mafia, together with police officers. The custom officer was identified as having let especially containers with cocaine pass without inspection. In addition, it was discovered that, for many years, fishermen from the small community of Urk, known for its obedience to strict protestant values, were corrupted to pick up cocaine packages in the sea after they were thrown on purpose from ships.¹¹ The Dutch tolerant attitude to drug use and the well-developed infrastructure, including the port of Rotterdam and the nearby port of Antwerp, has allowed the creation of an important Dutch cocaine mafia that exports around the world, without much corruption is involved. The police and the Ministry of Justice know they cannot stop the drug trade because of too little capacity and a strategy to focus on excesses. However, the fight against the drug mafia has unfortunately a negative side-effect: more violence and killings e.g. in Amsterdam, after conflicts over seized drugs.¹²

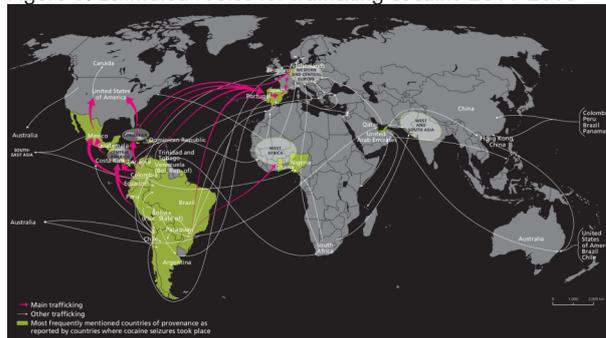
Figures about trafficking in cocaine, whose production and processing comes mostly from Peru and Colombia, show continuous export to the EU. Important trade in cocaine relates to drug uses in the EU and beyond. "Cocaine use appears to be increasing in the two largest markets, North America and Europe. In Europe, early signs of increases in

¹⁰ "140 kilo cocaïne tussen bananen bij Aldi", rtlNieuws, January 2014, <https://www.rtlNieuws.nl/nieuws/buitenland/140-kilo-cocaine-tussen-bananen-bij-aldi> (viewed 15 February 2018).

¹¹ J. Meeus, F. Schravessande, " 'Narcostaat' Nederland groeit bijna ongehinderd", NRC.nl, 23 February 2018, <https://www.nrc.nl/nieuws/2018/02/23/narcostaat-nederland-groeit-bijna-ongehinderd-a1593444> (viewed 25 February 2018).

¹² J. Meeus, F. Schravessande, Idem.

Figure 1: Estimated routes for trafficking cocaine 2011-2015



Source: UNODC, [Booklet 1], Executive Summary, Conclusions and Policy Implications, World Drug Report 2017, p. 17.

Figure 2: Cocaine trafficking routes



Source: <http://cocaineroute.eu>

cocaine consumption, based on wastewater analysis in selected cities, have been reported, with an increase of 30 per cent or more during the period 2011-2016."¹³

Mixed potential from trade to shift away from illicit cultivations

Often coca cultivation is related to the number of killings, for instance in Peru where killings diminished with decreasing coca production (which is also considered to be linked with the disappearance of Shining Path). However, the apparent connection between coca cultivation and violence has become less straightforward in recent years. In Colombia, cultivation doubled between 2013 and 2015 even as FARC-related killings declined further by more than half.¹⁴

Increased free trade could be an opportunity for farming products from Colombia and Peru to be increasingly exported and provide lawful incomes to replace income from coca production. On the

¹³ UNODC, [Booklet 1] Executive Summary, Conclusions and Policy Implications, World Drug Report 2017, 2018, p. 15, https://www.unodc.org/wdr2017/field/Booklet_1_EXSUM.pdf (viewed 19 February 2018).

¹⁴ UNODC, [Booklet 5] The drug problem and organized crime, illicit financial flows, corruption and terrorism, World Drug Report 2017, 2018, p. 41, https://www.unodc.org/wdr2017/field/Booklet_5_NEXUS.pdf (viewed 19 February 2018).

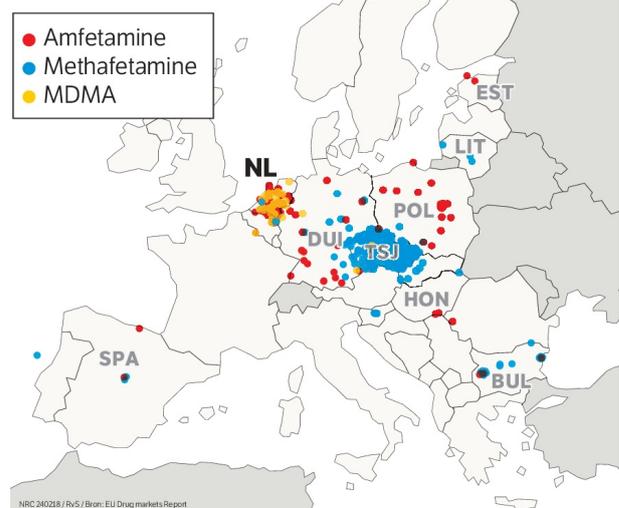
other hand, free trade often means that more EU agricultural products are imported at cheaper (and subsidised) prices, depriving farmers from an income from farming and making them (re)turn to coca production. The preliminary effect of the FTA during the first years provides arguments for both possible effects, while of course the political situation in the countries themselves play an important role and the direct relationship of the EU FTA on Colombia is very difficult to assess. One sector of concern is the increase of palm oil plantations for exports, which was promoted to switch away from illegal crops but has been linked to land grabbing and production systems that disadvantage local farmers.¹⁵

The Directorate General (DG) trade of the European Commission (EC) proudly reports that “in the case of the agreement with Colombia and Peru there was a 92% and 73% increase, respectively, in export of EU agricultural goods.”¹⁶ The EC does not refer to what the effects are in the two importing countries. Rather, the EC states that EU opportunities are underused with EU exporters only using 4.3% of the quota of cheese to export to Peru and 7.9% to Colombia.¹⁷ At the same time, total EU imports of agricultural products increased, from Colombia by 32.9% since 2012 (including fruits and coffee), and also from Peru (by 120% for fruits, 22% for vegetables).¹⁸ If the EU imports have reduced the market for small farmers in Colombia or Peru to sell their products because they cannot compete against cheap and/or subsidised EU agricultural products, farmers might turn (back) to illegal crops. While the illicit coca bush cultivation observed between 2013 and 2015 diminished in Peru from 49,800 ha. to 40,300 ha., in Colombia the illicit coca bush cultivation doubled from 48,000 to 96,000 ha. (which was almost as high as in 2007 when it was at its peak for the period 2005-2015).¹⁹ During the same years (2013, 2014 and 2015) the reported manual eradication of coca bush increased in Peru to its highest level since 2005, in Colombia the manual and spraying

¹⁵ T. Volckhausen, How Colombia became Latin America’s palm oil powerhouse, Mongabay, 31 May 2018, <https://news.mongabay.com/2018/05/how-colombia-became-latin-americas-palm-oil-powerhouse/> (viewed 1 June 2018).
¹⁶ EC, Report: EU trade agreements in place deliver tangible benefits, 9 November 2017.
¹⁷ EC, Report: EU trade agreements in place deliver tangible benefits, 9 November 2017.
¹⁸ EC, Third Annual Report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, p. 4-5, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0585&from=EN> (viewed 27 February 2018)
¹⁹ UNODC, [Booklet 2] Global overview of drug demand and supply -Latest trends, cross-cutting issues, World Drug Report 2017, p.58.

eradication continued its decreasing trend and was in 2015 at its lowest since 2006.²⁰ The potential manufacture of 100 percent pure cocaine in Colombia more than doubled between 2013 and 2015, from 290 tons to 646 tons while no figures are available for Peru.²¹

Figure 3: Locations of synthetic drugs in the EU (2013-2015)
Drugsproductielocaties in EU
 2013 - 2015

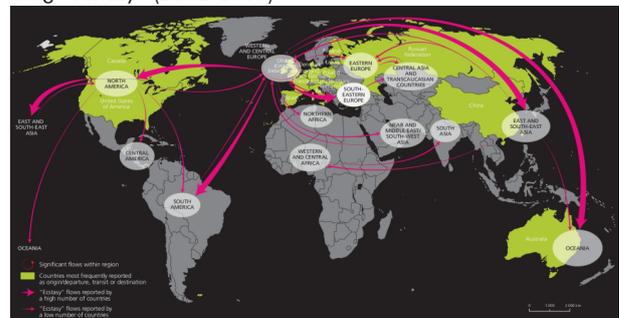


Source: J. Meeus, F. Schravessande, 'Narcostaat' Nederland groeit bijna ongehinderd, NRC.nl, 23 February 2018 <https://www.nrc.nl/nieuws/2018/02/23/narcostaat-nederland-groeit-bijna-ongehinderd-a1593444>

New risks from reverse drug trade from EU to Latin America

Drugs trade has now also been increased from the EU to Latin America, due to the increase in the production and trade in synthetic drugs such as “ecstasy”. The EU has important production locations, amongst others in The Netherlands for MDMA that is used for “ecstasy” pills, and in Czech Republic for methamphetamine.²²

Figure 4: Estimated trafficking between regions of the synthetic drug “ecstasy” (2012-2105)



Source: UNODC, [Booklet 1] Executive Summary, Conclusions and Policy Implications, World Drug Report 2017, p. 17.

²⁰ UNODC, [Booklet 2], World Report 2017, p.58.
²¹ UNODC, [Booklet 2], World Report 2017, p.59.
²² J. Meeus, F. Schravessande, Idem.

Data about how much of synthetic drugs are traded between the EU and Colombia-Peru were not found within the scope of this research. Preliminary desk research found figures by the World Drug Report 2017 about trade routes in “ecstasy”²³ between the EU and Latin America (see figure about Interregional trafficking flows of “ecstasy”), but not of methamphetamine (which has a larger market than for “ecstasy”).

New areas of crime related to trade

Europol identified some 5,000 international organised crime groups operating in countries in the European Union in 2017, and estimated that more than one third were involved in drug trafficking. This makes drug trafficking more widespread across organised crime than organised property crime, smuggling of migrants, trafficking in human beings, excise fraud or any other illicit activity.²⁴ However, “[o]rganized crime groups have widened their portfolio of illicit activities. New crime areas such as cybercrime and environmental crime have emerged. Fewer groups are exclusively dedicated to drug trafficking, while more are also operating in other illicit sectors. Almost two thirds of drug trafficking groups operating in countries in the European Union are involved in more than one crime area, according to research by the European Police Office (Europol), and that figure has been rising for years. Drug trafficking groups in Europe are frequently also involved in the counterfeiting of goods, trafficking in human beings, smuggling of migrants and trafficking in weapons.”²⁵ Moreover, organised crime in Europe has become more susceptible to connect to organised crime in Latin America.²⁶

Concluding, the EU – Colombia & Peru FTA, to which Ecuador has now joined, is currently taking place in a context with what seems to be increasing illicit activities related to trade and transport of goods, namely cocaine and synthetic drug trafficking hidden in imported goods, not only from Latin America to the EU but also from the EU into Latin America. There are insufficient data and research to conclude that the FTA has caused the increased illicit activities. However, the trend has to be taken into account and it should be assessed whether rules and areas in the FTA are susceptible to increasing these trends and what areas of the agreement could help prevent or reverse these trends.

²³ UNODC, [Booklet 1], World Drug Report 2017, p. 15: “the ecstasy’ market has grown in complexity and the variety of “ecstasy” products available to drug users has increased. The three main types are: (a) “ecstasy” tablets containing little or no MDMA (3,4-methylenedioxyamphetamine); (b) “ecstasy” tablets with an extremely high content of MDMA; and (c) “ecstasy” sold in powder or crystal form, under different street names. “Ecstasy” tablets with a high MDMA content are of particular concern in Europe, where law enforcement entities have also discovered industrial-scale MDMA manufacturing facilities.”

²⁴ See UNODC, [Booklet 5], World Drug Report 2017, p. 19 (viewed 19 February 2018).

²⁵ UNODC, [Booklet 1], World Drug Report 2017, p. 21.

²⁶ See UNODC, [Booklet 5], World Drug Report 2017, p. 19.

3. Money Laundering and tax avoidance related to trade agreements

“Drug profits are what drive traffickers, and identifying the flows related to those profits and the channels where they are invested and laundered can effectively counteract them. Strengthening international cooperation in combatting money-laundering also helps to reduce or eliminate the potential negative economic and social consequences from the outset.”²⁷

Cooperation and joint mechanisms to combat money laundering or tax avoidance or evasion are not included in the EU-Colombia & Peru FTA although other bilateral arrangements exist. The FTA stipulates vague commitments with respect to combatting money laundering and tax evasion, typically taking the form of ‘best endeavour’ clauses that are weaker than in other FTAs the EU has signed.²⁸ Given the known huge involvement of Peru and Colombia in drug trafficking and related money laundering, and given that the EU had some member states which made money laundering and tax avoidance easy in or through their jurisdictions²⁹, the FTA was criticised at the time of ratification by the European Parliament in 2012 for being too weak to support the fight against money laundering and tax avoidance or evasion, and actually increasing the potential for money laundering and tax avoidance or evasion.³⁰

A comprehensive research in 2015-2016 for the European Parliament (EP) about the impact of FTAs through their liberalisation of financial services and financial flows in FTAs, covered all measures against money laundering and tax evasion and avoidance both in the EU and third countries with which the EU has concluded FTAs, including a thorough analysis of the EU – Colombia & Peru FTA. Specifically regarding the EU – Colombia & Peru FTA, this European Parliament study (June, 2016) concluded³¹:

- “The Colombia/Peru FTA encompasses the far-reaching liberalisation of current account transfers, rather than limiting the liberalisation to financial transfers related to trade, loans and investments as the EU- Korea agreement does. Given the challenges in the two countries, a more prudent approach to liberalisation and/or

more safeguards or measures aimed at cooperating between the parties to the FTA on fighting money laundering and tax evasion seem necessary.

- The provision allowing for non-disclosure of information relating to the affairs and accounts of individual customers may not contribute to the fight against tax evasion.³² “It also seems to run counter to what is recommended in several of the international standards for regulation and supervision in the financial services sector that the parties promised to implement and apply.”³³
- “The FTA contains weak worded provisions in which parties ‘take note’ of international information exchange and transparency mechanisms, and make their ‘best endeavours to ensure’ that international AML [anti-money laundering] standards are implemented.”³⁴ “This wording is even weaker than a ‘best endeavour’ clause like the one included in other agreements.”³⁵

The general conclusions³⁶ of the EP study also applied to the EU – Colombia & Peru FTA, and are important warnings about potential problems that have not been specifically tackled while the FTA came into force:

- “At present there is no conclusive statistical evidence to prove a causal link between the operation of EU FTAs and an increase in illicit financial flows. This was confirmed by all the respondents involved in the study. However, the available data does provide a strong indication that the liberalisation of trade between the EU and developing countries increases the threat of money laundering, given three key factors: (a) the significant degree of trade openness envisaged by EU FTAs, (b) the already substantial and constantly rising illicit financial flows from developing countries, and (c) the attractiveness of the EU as a destination for money launderers from such countries.

²⁷ UNODC, [Booklet 1], World Drug Report 2017, p. 31.

²⁸ I. Ioannides, *idem*, p. 1164 – 182.

²⁹ See M. Vander Stichele, *idem*; this concern about increased potential of money laundering was endorsed by interviewees for the EP study edited by I. Ioannides, “Comprehensive ex post trade impact assessment on the inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance” (see below).

³⁰ M. Vander Stichele, *idem*.

³¹ I. Ioannides, *Idem*, p. 1-164, 1181-182.

³² I. Ioannides, *Idem*, p. 1-164.

³³ I. Ioannides, *Idem*, p. 1181-182.

³⁴ I. Ioannides, *Idem*, p. 1-164.

³⁵ I. Ioannides, *Idem*, p. 1181-182.

³⁶ I. Ioannides, *Idem*, p. 1-74.

- An increase in illicit financial flows may not only (or even primarily) be attributable to the liberalisation of financial services. While traditionally, illicit money has been laundered through the international financial system, nowadays trade-based money laundering – through fraudulent manipulation of the price, quantity and quality of goods and services in general – has become increasingly important as a means for illicit transfers of funds out of developing countries.³⁷ “[T]he operation of EU FTAs considerably intensifies the risk of mispricing goods and services in general – an important (if not the main) channel for money laundering from the developing world today. Trade-based money laundering could therefore be an important (if not a major) source of illicit financial flows from the developing countries to the EU.”³⁸
- “Illicit financial flows can have a profoundly negative impact on developing countries. Such an impact can be caused not only by outflows of illicit money from developing countries but also by inflows of illicit money into such countries. Substantial outflows of illicit funds severely undermine domestic resource mobilisation, imperilling sustainable development and economic growth. Significant inflows of illicit funds in turn strengthen crime and have major adverse socio-economic consequences.”³⁹

³⁷ I. Ioannides, *Idem*, p. 1-74.

³⁸ I. Ioannides, *Idem*, p. 58.

³⁹ I. Ioannides, *Idem*, p. 1-74.

4. The EU still not fully equipped to deal with money laundering

Separate from the FTA, there are various (cooperation) mechanisms in place to tackle cocaine trade, money laundering and tax avoidance,⁴⁰ in the EU, in Colombia, Peru and jointly. It was beyond the scope of this study to assess what the impact of these mechanisms has been.

In 2015, the EU introduced an updated EU anti-money laundering regulation. In June 2017, a first report⁴¹ on the supra-national risk assessment (SNRA) of the risks of money laundering (ML) and terrorist financing (TF) affecting the internal market and relating to cross-border activities concluded that “the EU internal market is still vulnerable to ML/TF risks. Terrorists use a wide range of methods to raise and move funds and criminals employ more complex schemes and take advantage of new opportunities to launder money offered by the appearance of new services and products. Preventing the misuse of the financial system is crucial to limit the capacity of terrorists and criminals to operate and to deprive organised crime of the economic benefits which are the ultimate goal of their illegal activities.” The financial services sector is being identified as significantly vulnerable notwithstanding decade long measures to decrease ML/TF, due to new technologies (e.g. virtual currencies) and new products (e.g. crowdfunding).⁴² “In order to be effective AML/CTF [anti-ML/counterTF] policies should adapt to the development of the financial services, the evolution of the threat, and the emergence of new risks.” The SNRA report concludes that “concerted action is more necessary than ever to combat money laundering and terrorism financing and thus reinforce the stability of the internal market and improve the security of EU citizens and society as a whole.”⁴³

Apart from “insufficiently strict anti-money laundering controls [...] in the EU and its Member States”, some “EU Member States – e.g. the United Kingdom, Luxembourg and the Netherlands – [...] are exposed to money laundering because of their relatively sophisticated financial markets (western financial institutions have both intentionally and unintentionally facilitated the absorption of illicit money from the developing world), their relatively high GDP per capita levels, their cultural links to a wide range of proceeds of crime-generating coun-

tries, and their trade.”⁴⁴ A recent case of potential money laundering by a Latvian bank in February 2018⁴⁵, exposed the fact that bank supervision in the EU related to anti-money laundering is by national authorities even though money laundering legislation and prudential supervision of big banks is done at EU level.⁴⁶ Another case of the German bank Berenberg that worked closely with the Panama trust company Mossack Fonseca (which offered worldwide tax evasion and avoidance mechanisms), was exposed by the ‘Panama papers’ for its huge network of tax avoidance and money laundering. It also indicated that German supervisors were insufficiently or even not willing to crack down on illicit money flows.⁴⁷

It is well known that money laundering practices are using the same structures and routes as tax avoidance or evasion strategies. The new threats and challenges analysed in the June 2017 SNRA assessment by the EC comes on top of the existing complex system by EU member states of doubled tax treaties combined with bilateral investment treaties, letterbox companies and special corporate tax regimes and tax ‘rulings’ for individual companies, which continue to make actions against money laundering and ‘tax dodging practices’ not really effective. This problem has been reinforced by the absence by (some) EU member states of strong political commitment to discontinue tax rulings or tax avoidance, due to ‘tax competition’ between governments to attract foreign direct investment with attractive tax reductions.⁴⁸ The revelations by the ‘Panama papers’ in April 2016 and the ‘Paradise papers’ in December 2017 following the earlier ‘Luxleaks’, together with civil society pressure and figures of increasing (tax) inequality, have increased the pressure to take action. The EU adopted in March 2018 an amendment to the Directive on mandatory automatic exchange of information in relation to reportable cross-border arrangements.⁴⁹

⁴⁴ I. Ioannides, *Idem*, June 2016, p. 58.

⁴⁵ See for instance: <http://www.dw.com/en/latvian-financial-sector-rocked-by-us-probe-and-bribery-charge/a-42647862> (seen 28 February 2018).

⁴⁶ Declaration of the representative Bafin at the European Parliament hearing organised by the Economic Committee on the Review of the European Supervisory Authorities, 27 February 2018 (declaration heard by the author of this report).

⁴⁷ GEU/NGL, Panama paper; Dirty money and tax tricks – How the rich, powerful and criminals rip us off, 2017, p. 19-20.

⁴⁸ Eurodad, Fifty Shades of Tax Dodging -The EU's role in supporting an unjust global tax system, November 2015, <http://www.eurodad.org/fiftysadesoftaxdodging> (viewed 15 February 2018).

⁴⁹ For more information see: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2017/0138\(CNS\)#tab-0](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2017/0138(CNS)#tab-0) (viewed 3 May 2018).

⁴⁰ For a comprehensive overview see for instance: I. Ioannides, *Idem*, p. 35-50, (last viewed 28 April 2018).

⁴¹ European Commission, Report from the Commission to the European Parliament and the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 26 June 2017, <https://publications.europa.eu/en/publication-detail/-/publication/ce3cb15d-5a5a-11e7-954d-01aa75ed71a1/language-en> (viewed 2 May 2018).

⁴² *Ibidem*, p. 4.

⁴³ *Ibidem*, p. 21.

Another vulnerability of the EU, which the EU and some particular member states (esp. UK, NL) do not want to eliminate, is the facilitation of money laundering and tax avoidance or evasion via the Overseas Countries and Territories (OCTs) of EU member states.⁵⁰ For instance, the 'Panama papers' revealed that half of the companies exposed by the information from the controversial law firm Mossack Fonseca was incorporated in the British Virgin Islands.⁵¹ The way how the continental authorities can impose legislation or control their OCTs is not similar for all OCTs, although where possible there is alignment with EU legislation. However, the implementation by the local authorities of the existing laws and standards remains unsatisfactory, especially for some UK and Dutch OCTs with smaller populations in the Caribbean⁵² (some of which are close to Colombia). In a change of policy, in the first week of May 2018, the UK government was forced to support a measure that will oblige many but not all of its overseas territories -- including the Cayman Islands, British Virgin Islands-- to be transparent and publish the names of the owners of all the companies that are registered in those jurisdictions by the end of 2020. This was proposed during the decision-making procedure about an amendment to a government anti-money laundering law beginning May 2018 even if the OCTs protested against it.⁵³

⁵⁰ I. Ioannides, J. Tymowski, Tax evasion, money laundering and tax transparency in the EU Overseas Countries and Territories Ex-Post Impact Assessment, Ex-Post Evaluation Unit of the European Parliament, April 2017, http://www.europarl.europa.eu/RegData/etudes/STUD/2017/593803/EPRS_STU%282017%29593803_EN.pdf (viewed 27 February 2018).

⁵¹ S. Bowers, "UK backs Panama Papers crackdown on 'dirty money' havens", 1 May 2018, <https://www.icij.org/investigations/panama-papers/uk-backs-panama-papers-crackdown-dirty-money-havens/> (viewed 3 May 2018).

⁵² I. Ioannides, J. Tymowski, Tax evasion, money laundering and tax transparency in the EU Overseas Countries and Territories Ex-Post Impact Assessment, Ex-Post Evaluation Unit of the European Parliament, April 2017.

⁵³ S. Bowers, *Ibidem*: the law was not voted yet by the time of researching this part of the report (3 May 2018). "The U.K.'s 14 overseas territories also include Anguilla, Gibraltar, Bermuda, Montserrat and the Turks & Caicos Islands. Their constitutional relationship with the U.K. is slightly different to that of the Crown Dependencies of Jersey, Guernsey and the Isle of Man — none of which will be subject to the new rules."

5. Money laundering and tax avoidance measures by Colombia and Peru⁵⁴

In Colombia, the laundering of money from primarily illicit drug trade and illegal mining, is happening through the formal financial system and the non-bank financial system. Notwithstanding that Colombia has quite some anti-money laundering laws and mechanisms in place, which are internationally recognised, the implementation and execution to investigate and prosecute complex financial crimes often fails. The lack of capacity, resources and training makes the mechanisms and instruments in place not fully effective.⁵⁵

All kind of financial instruments are being used by the money launderers, such as securities markets, smuggling of cash, wire transfers and remittances, electronic currencies, and prepaid debit cards. It happens amongst others through the connections of criminal organisations with financial institutions in other countries from where merchandise is smuggled using trade and the non-bank financial system in Colombia, thus also avoiding taxes and customs duties, after which the goods are sold and income goes to the formal financial system. This is possible amongst others with the complicity of corrupt Colombian customs authorities. Another trade based scheme for money laundering is the over- or under-invoicing of traded goods.⁵⁶

In Peru, different rules, laws and mechanisms are in place to deal with money laundering and tax avoidance, but many obstacles remain for an effective implementation and approach: there was no political will to eliminate tax secrecy (law proposal rejected in 2013) and aggressively recognize and prosecute money launderers although the US warned in 2015 for a “growing threat of money laundering and associated crimes” and insufficient resources for its anti-money laundering mechanisms.⁵⁷ According to a report of the Latin American regional anti-money laundering body (GAFILAT, 2015), 44% of reported suspicious transactions stem from banks, and 30% from notaries.⁵⁸ According to an analysis in 2011 of Peruvian know-your-customer rules, the “most common methods of money laundering in Peru involve real estate sales, casinos, business investments, high interest loans, construction, export businesses, hotels, and restaurants. Other factors which facilitate money laundering include Peru’s cash-based and

heavily dollarized economy, a large informal sector, pervasive corruption, and deficient regulatory supervision of designated non-financial businesses and professions (DNFBPs), such as the informal money exchange and wire transfer services. A large black market for pirated and smuggled goods exists. Corruption remains a serious concern.”⁵⁹

Colombia and Peru face the same key problems as other developing countries in combating illicit financial flows, namely “a significant discrepancy between the law on the books and the law in action. The effectiveness of anti-money laundering (AML) systems in such countries is undermined by two key factors: (a) structural weaknesses caused by poor implementation of good governance principles and deficiencies in the enforcement of the rule of law (e.g. corruption, large-scale organised crime, and substantial informal economy); and (b) major functional weaknesses related to the insufficient capacity of the authorities in fighting money laundering (e.g. shortage of financial and human resources, insufficient knowledge and experience, and a lack of coordination between the competent authorities). In addition, insufficiently strict anti-money laundering controls in the developed world, in particular the EU, have exacerbated the problem.”⁶⁰

Another way how the financial sector can be used for money laundering and tax dodging is via the stock market and other trading or financial investment activities (portfolio investment through trade in shares (equity securities) and bonds (debt securities)). Such financial flows from Colombia have been reported (2016) to go to UK overseas territories that are used as tax havens such as the Cayman Islands, as well as to EU member states such as Luxembourg and The Netherlands (see Table 2), which are known for being part of routes or strategies for tax dodging and money laundering. In The Netherlands, there has been no withholding tax on interests and royalties, and paid interests can be deducted from tax payments, which makes The Netherlands a conduit country from where money is being raised for companies worldwide via letterbox companies. Luxembourg is a well-known country from where investment funds are being issued for legal and tax exemption reasons.

⁵⁴ For recent updates, see amongst others: F. J. Warin, M.M. Farhang, Key 2017 developments in Latin American anti-corruption enforcement, Gibson Dunn, 15 March 2018, <https://www.gibsondunn.com/wp-content/uploads/2018/03/key-2017-developments-in-latin-american-anti-corruption-enforcement.pdf> (viewed 17 July 2018).

⁵⁵ US Department of State, Countries/Jurisdictions of Primary Concern – Colombia, 2016.

⁵⁶ US Department of State, Countries/Jurisdictions of Primary Concern – Colombia, 2016.

⁵⁷ I. Ioannides, *Idem*, p. 1-178.

⁵⁸ GAFILAT, Informe de Avance de la Evaluación del Perú. Seguimiento Intensificado, GAFILAT 15 I GTEM 4.5, 2015, p. 10 (quoted in I. Ioannides, *Idem*, p. 1-176).

⁵⁹ P. Renner, Peru – Know Your Customer (KYC) Rule, [sine datu], <http://kycmap.com/peru-know-your-customer-kyc-rules/> (viewed 26 April 2018).

⁶⁰ I. Ioannides, *Idem*, p. 174.

IMF total portfolio investment figures for Colombia indicate that total portfolio investments in US dollars to Colombia were \$ 29,979 m by June 2017, of which \$ 3,749 m were from Luxembourg, \$ 425 m from The Netherlands (a decrease of a year earlier), \$ 578 m from the UK, \$ 488 m from Germany and \$ 441 m from France, while from the US it was \$ 23,535 m and Mexico \$ 1101 m (more than double of June 2016).⁶¹ In comparison, the portfolio investments were much lower in June 2012 as available portfolio figures indicate they were from Luxembourg \$ 843 m (5% of total), from The Netherlands \$ 2 m (0.01% of total), from the UK \$ 118 m (0.7% of total), from Germany \$ 305 m (1.8% of total), and France \$ 68 m (0.4% of total), while from the US they were \$ 11,269 m (67%) on a total \$ 16,594 m. In other words, portfolio investments from key EU member states did increase after the FTA became operational, most notably from Luxembourg, The Netherlands and the UK, countries with important financial and investment centres, advantageous tax systems and letterbox companies.

In Peru, the government nor the central bank impose restrictions on foreign portfolio investment.⁶² The Security Markets Superintendence is in charge of supervising the securities and commodities markets to ensure an orderly transparent market, with an aim to prevent fraud.⁶³ Total of portfolio investment in Peru was US\$ 28,290 million by June 2017. Portfolio investment in US dollars from different EU countries stood by June 2017 from the UK at \$ 1,554 m (\$ 761 m in June 2016), from Spain \$ 304 m (\$297 m in June 2016), from Netherlands at \$ 188 m (209 m in June 2016), from Luxembourg \$ 2,592 m (\$ 2,199 m in June 2016), \$ 1,112 m from Ilse of Man (\$ 749 in June 2016), \$ 128 m from Germany (4,215 m in June 2016), \$ 584 m from France (\$ 498 in June 2016), \$ 895 m from Cayman Islands (1,196 m in June 2016), while from the US it was double of the total of these countries at \$ 14,660 m (\$ 12,518 m in June 2016).⁶⁴ There were no IMF figures on foreign portfolio investment to Peru before 2012 to compare the figures before the EU- Colombia & Peru FTA came into force.

Table 1: Portfolio investment into Colombia, assets by June 2016

Portfolio Investment Assets (June 2016)			Top Five Partners (Millions, US Dollars)					
Total			Equity Securities			Total Debt Securities		
All Countries	28552	100,00 %	All Countries	17410	100,00 %	All Countries	11142	100,00 %
United States	18637	65,00 %	United States	13075	75,00 %	United States	5584	50,00 %
Luxembourg	3385	12,00 %	Luxembourg	3191	18,00 %	International Organizations	828	7,00 %
International Organizations	841	3,00 %	Cayman Islands	237	1,00 %	Netherlands	533	5,00 %
Netherlands	533	2,00 %	United Kingdom	175	1,00 %	Mexico	474	4,00 %
Mexico	502	2,00 %	Panama	159	1,00 %	France	470	4,00 %

Source: Data from the Colombian Central Bank (<http://www.banrep.gov.co>).

Published by: US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Colombia, 29 June 2017.

⁶¹ IMF, Colombia - Reported Portfolio Investment Assets by Economy of Nonresident Issuer: Total Portfolio Investment, <http://data.imf.org/regular.aspx?key=60587804> (viewed 1 May 2018): IMF data confirm the figures mentioned in the table for 2016.

⁶² US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

⁶³ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

⁶⁴ IMF, Peru - Reported Portfolio Investment Assets by Economy of Nonresident Issuer: Total Portfolio Investment, <http://data.imf.org/regular.aspx?key=60587804> (viewed 1 May 2018).

6. Concerns about capital flows related to foreign investment

At the time of ratification of the EU – Colombia & Peru FTA, one of the criticisms was that the articles of the agreement (Title V) allowed too much freedom of money to flow without control by the FTA's provisions on liberalisation of the current account and capital account liberalisation.⁶⁵ This was not conducive to prevent and stop money laundering and tax avoidance. Five years later, a regime of a rather high level of free capital movement is still in place.

Rules on cross-border movement of capital

In Colombia, "The Central Bank respects IMF Article VIII and does not restrict payments and transfers for current international transactions". "If investments are officially registered, repatriations of profits are permitted without restrictions. The government permits full remittance of all net profits regardless of the type or amount of investment. Foreign investments must be channelled through the foreign exchange market and registered with the Central Bank's foreign exchange office within one year to be able to repatriate or reinvest the proceeds. There are no restrictions on the repatriation of revenues generated from the sale or closure of a business, reduction of investment, or transfer of a portfolio. Colombian law authorizes the government to restrict remittances in the event that international reserves fall below three months' worth of imports. International reserves have remained well above this threshold for decades."⁶⁶

In Peru, the central bank nor the government restrict international transactions.⁶⁷ The government guarantees the free convertibility of currencies and "the freedom to hold and dispose of foreign currency. It has eliminated all restrictions on remittances of profits, dividends, royalties, and capital, although foreign investors are advised to register their investments with ProInversion [the investment promotion agency] to ensure these guarantees. Exporters and importers are not required to channel foreign exchange transactions through the BCRP [central bank] and can conduct transactions freely on the open market. Anyone may open and maintain foreign currency accounts in Peruvian commercial banks."⁶⁸ Foreign investors have the legal right of free repatriation of capital including that derived

from investments, sale of shares or liquidation of companies. They also have the right to unrestricted access to local credit.⁶⁹

Colombia is open for foreign direct investment – also from tax havens

In the "establishment" or investment chapter in the EU – Colombia & Peru FTA, foreign investments that do not have substantial activities or presence in the host country, do not benefit from the provisions of the FTA. Investors originating in one of the three countries need to have real business operations in the territory of one of the other countries in order to qualify as a foreign investor under the FTA.⁷⁰ This should avoid 'letterbox companies', which are often used for tax dodging and money laundering, to be considered as foreign investment. Given the very liberal investment regimes in the two Latin American countries, foreign investment from EU countries and secrecy jurisdictions are flowing to Colombia and Peru, as explained below.

Colombia's foreign investment (FDI) regime was updated by the presidential Decree 119 of 26 January 2017. "Among the main changes are the facilitation of several procedures for investors and the improvement of mechanisms for the Central Bank (Banco de la Republica), the tax authority (DIAN) and other authorities to supervise investment inflows. The decree also eliminates deadlines and unnecessary classifications of registration by type of investment. The new regime also revised the concept of 'resident' and 'non-resident' for tax related purposes. To be considered a resident, investors must remain in national territory for 183 days during calendar year, including days of entry and exit of the country. Also, every foreign investor must have a representative in Colombia with legal powers to comply with tax and exchange rate rules and to satisfy other requests for information."⁷¹ Colombia has several bilateral investment agreements (BITs), including with Spain (the home country of the two Spanish banks operating in Colombia) so that even if there is no investor-to-state dispute settlement (ISDS) in the EU-Colombia &

⁶⁵ See also: I. Ioannides, *Idem*, p. 1-170.

⁶⁶ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Colombia, 29 June 2017.

⁶⁷ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

⁶⁸ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

⁶⁹ *Ibidem*.

⁷⁰ I. Ioannides, *Idem*, p. 34.

⁷¹ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Colombia, 29 June 2017 <http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dId=270056> (viewed 28 February 2018).

Peru FTA, Spanish investors can use, and have used, the ISDS dispute settlement system⁷² to which Colombia has subscribed.⁷³

Nevertheless, it needs to be observed that inward and outward FDI of Colombia is going to, or from, tax havens linked to EU member states. That is the case for Colombia according to statistics of the US State Department⁷⁴, namely FDI outflows are going to the British Virgin Islands (21%) and Bermuda (14%), while FDI from and to Spain is 11% and 10% respectively. FDI inflows come amongst others from Bermuda (11.2%) (see Table 2 on the next page).

Note that Colombia was part of 13 FTAs or cooperation agreements with investment chapters by mid-2017 while negotiations with other countries were ongoing. So it is difficult to detect the impact of the EU-Colombia & Peru FTA.

Peru: foreign (direct) investment from corrupt companies via the EU (Luxembourg)

Peru's Constitution gives foreign investors the same rights as national investors, including the right to benefit from investment incentives, such as tax exemptions. In addition, Peru has several laws that cover foreign direct investment (FDI) e.g. for a particular sector or related to privatisation. Foreign investment is permitted in almost all economic sectors and many measures are taken to attract foreign investment. To incentivise project financing, banking regulations were relaxed to enable more foreign participation in financial institutions.⁷⁵ Foreign investors have the "possibility to sign juridical stability agreements for their investments in Peru with the Peruvian State."⁷⁶ This means that investors can have contracts in which they are exempt from the application of certain or new laws.

⁷² Ibidem: "Colombia is a member of the New York Convention on Investment Disputes, the International Center for the Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency. Colombia is also party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The new National and International Arbitration Statute (Law 1563), modeled after the United Nations Commission on International Trade Law (UNCITRAL) Model Law, took effect in October 2012."

⁷³ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017: "a Spanish energy company which is the majority owner of a Colombian utility company initiated arbitration proceedings before UNCITRAL in March 2017 after the government ordered the liquidation of the electricity supplier. The company asserted that the move constituted expropriation without compensation, though the government cited mismanagement, an inability to service its debts, and failure to provide reliable electricity to the northern coast of Colombia as justification for its actions."

⁷⁴ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017

⁷⁵ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Peru, 2017, <http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dId=270090> (viewed 1 May 2018).

⁷⁶ Ibidem

Table 2: Colombia – sources and destinations of foreign direct investment (FDI)

Direct Investment from/in Counterpart Economy Data

From Top Five Sources/To Top Five Destinations (US Dollars, Millions)

Inward Direct Investment			Outward Direct Investment		
Total Inward	13593	100,0%	Total Outward	4516	100,0%
Canada	2163	16.1%	British Virgin Isl.	940	21,0%
United States	2140	15.7%	Chile	630	14,0%
Spain	1527	11.2%	Bermuda	328	13,0%
Bermuda	1520	11.2%	Mexico	488	11,0%
Panama	1387	10.2%	Spain	457	10,0%

*0" reflects amounts rounded to +/- USD 500,000.

Source: US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017.

NB: Bermuda and the British Virgin Islands are tax havens who are and operate quite independently but are ultimately under the UK governance. The 'Panama Papers' have exposed that Panama, Bermuda and the British Virgin Islands have been an important route for tax evasion and tax avoidance

Peru has many BITs, including with EU member states: Belgium-Luxembourg, Bolivia, Czech Republic, Denmark, Finland, France, Germany, Italy, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.⁷⁷ Since Peru has signed the international treaties⁷⁸ to allow for ISDS (investor-to-state dispute settlement), the investors from above mentioned EU member states can ask for protection and compensation for maltreatment under those treaties.

Peru has signed a few bilateral tax treaties, including one with Portugal (and no other EU member state). Beginning of January 2017, real estate income tax for foreigners decreased from 30 % to 5 % and taxes on dividends and other forms of distribution decreased from 6.8 % to 5 %.⁷⁹

FDI of Peru is very much influenced by the commodity prices whereby FDI increases or decreases according to the increase or drop of commodity prices. There was continued downward trend after 2012, which obviously was not stemmed by the FTA with the EU (or the US or that matter). The total FDI flows (in US dollars) was \$ 6,863 million (m) in 2016, which was \$ 1,409 m less than in 2015, and was estimated to further decrease in 2017 and 2018, according to the central bank of Peru and the information it receives from investors.⁸⁰ The sectors that attracted the most investment in 2016

⁷⁷ Ibidem

⁷⁸ Ibidem; namely: the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and to the International Center for the Settlement of Investment Disputes (ICSID convention)

⁷⁹ Ibidem

⁸⁰ ProInversión, Estadísticas de Inversión Extranjera, <http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652> (viewed 28 April 2018).

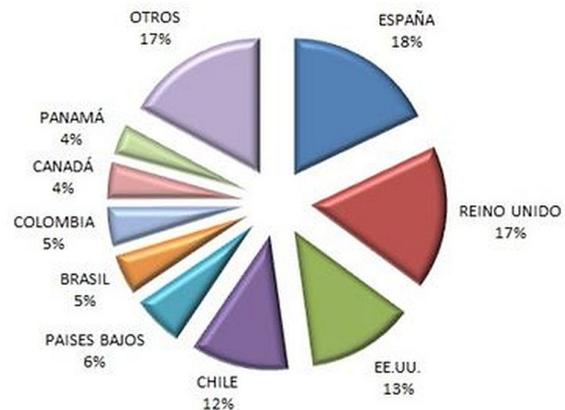
were the mining sector (23 %), the communications sector (20%), the financial sector (17%), energy (14 %) and industry (13 %).⁸¹

By June 2017, Spain (18%), the United Kingdom (17%) and the US (13%) were the largest sources of investment flows to Peru, and 6% coming from The Netherlands.⁸² IMF data based on data of FDI outflows from the originating countries show quite other figures for 2016. The biggest FDI positions in 2016 from EU member states was the Spain (US\$ 5,178 m), Luxembourg (US\$ 2,687 m), Netherlands (US\$ 1,570 m), France (US\$ 1,474 m), while the UK report FDI US\$ 375 m and the US US\$ 6,187 m.⁸³

By 30 June 2017, the foreign investment stock as capital contributions amounted to US\$ 25,203 m. The most important foreign investors who “made capital movements, through contributions or share purchases” (which includes foreign investment through portfolio investment) in the period 2011-2016 from the EU, were Telefonica Latinoamerica Holding, S.L. (Spain), Peru Copper Syndicate Ltd. (U.K.), Odebrecht Latin Finance S.a.r.l. (Luxembourg), Ecopetrol Global Energy S.L.U. (Spain), NII Mercosur Telecom, S.L. (Spain).⁸⁴ Other major foreign investments from the EU have been Endesa Latinoamericana (Spain), Repsol (Spain), Anglo American (U.K.), Asa Iberoamerica (Spain) and Fraport AG Frankfurt Airport Services Worldwide (Germany).⁸⁵

The above mentioned ‘Odebrecht Latin Finance S.a.r.l.’ (a company with limited responsibility), was incorporated in Luxembourg and a holding company of the Brazilian construction conglomerate Odebrecht, (see box 1 for more details).⁸⁶ Odebrecht has been involved in well published corruption scandals worldwide, including bribes paid over many years to high level

Table 3: Peru - Foreign (direct) investment stock by country of origin (June 2017)



Source: ProlInversión, Estadísticas de Inversión Extranjera, <http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652> (viewed 28 April 2018).

politicians in Peru and Colombia.⁸⁷ In April 2017, Odebrecht had to pay \$ 2.6 bn in fines to Brazilian, US and Swiss prosecutors for having paid bribes by using a complex structure of off shore companies and US and Swiss banks, not for activities in Luxembourg.⁸⁸

The research for this report has exposed (see box 1 for more details) that ‘Odebrecht Latin Finance S.a.r.l.’ has changed its name, the amount of capital and ownership within the Odebrecht corporate structure, which makes it difficult to trace the money flows. Odebrecht’s investment and constructions in the highways in Peru was done via the company’s finance and operations’ division Latinvest. These investment and operations have been financed through the different financial companies Odebrecht owned in Luxembourg. Research has found (see box 1) that the financial company ‘Latinvest S.A.’ was first based in Panama. This Panamanian company Odebrecht Latinvest S.A. was dissolved officially on 7 July 2015,⁸⁹ which was after the CEO of Odebrecht

⁸¹ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017: based on information from ProlInversión.

⁸² ProlInversión, Estadísticas de Inversión Extranjera, <http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652> (viewed 28 April 2018).

⁸³ Outward direct investment positions as reported by counterpart economic as of end 2016, <http://data.imf.org/regular.aspx?key=60564262> (viewed 1 May 2018). The latest figures of inward investment reported by Peru itself was 2012 and these figures were quite different than the outward investment figures reported by the countries of origin, this difference often being considered as flows by special purpose financial companies often used for tax avoidance/

⁸⁴ ProlInversión, Estadísticas de Inversión Extranjera, <http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652> (viewed 28 April 2018).

⁸⁵ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

⁸⁶ Some of the questions in the draft research report were answered by the legal team of Latinvest S.A. (abbreviated “OLI”), called “LEGAL AREA OLI”, after a request for review of draft report via the email of M. A. Cardenas Molina (communication officer at Odebrecht Peru), on 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

⁸⁷ See among the many reports: F. J. Warin, M.M. Farhang, Key 2017 developments in Latin American anti-corruption enforcement, Gibson Dunn, 15 March 2018, <https://www.gibsondunn.com/wp-content/uploads/2018/03/key-2017-developments-in-latin-american-anti-corruption-enforcement.pdf> (viewed 25 July 2018); R. Jelmayer, S. Pearson, Brazil’s Petrobras Plans to Claim Part of Odebrecht’s Anticorruption Settlement, 23 December 2016, <https://www.wsj.com/articles/brazils-petrobras-plans-to-claim-part-of-odebrechts-anticorruption-settlement-1482506950> (viewed 25 July 2018); US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Colombia, 29 June 2017: “President Santos acknowledged that Odebrecht illegally donated funds to his 2010 campaign. Two high-priority infrastructure projects are on hold as a result of the corruption revelations”.

⁸⁸ See amongst others: EFE, Brazil’s Odebrecht to pay \$2.6bn fine for corruption, Al Dia, 18 April 2017, <http://aldianews.com/articles/politics/brazils-odebrecht-pay-26bn-fine-corruption/4745> (viewed 25 July 2018).

⁸⁹ Panama, Gaceta Oficial Digital, nr 27 844, 12 August 2015, https://www.gacetadigital.gob.pa/pdfTemp/27844/GacetaNo_27844_20150812.pdf (viewed 2 May 2018).

was arrested for corruption and bribery on 19 June 2015⁹⁰. However, a company named 'Odebrecht Latinvest S.A.' was created on 16 October 2015 in Luxembourg via the intermediate construction of an anonymous company by Intertrust – the global trust and tax service company involved in secrecy and tax avoidance mechanisms. Linked to many of the Odebrecht companies in Panama and Luxembourg was Jayme Gomes da Fonseca Junior, who had held many financial posts within Odebrecht since 1993, including Tax Planning Manager and Chief Financial Officer but has never been subject to any investigation or crime conviction.⁹¹

The founders of the trust service company Mossack Fonseca, which was at the centre of the Panama Papers' scandal that revealed money laundering and tax evasion and avoidance in dozens of countries around the world, were arrested as part of a an investigation regarding its involvement in the payment of bribes by the construction group Odebrecht.⁹² Just some days before their arrest, Mossack Fonseca closed one of its Luxembourg offices on 2 February 2017.⁹³ Mossack Fonseca had also many establishments in EU member states (Cyprus, Latvia, Luxembourg, Malta, Netherlands, Spain, and the United Kingdom, as well as in UK dependencies and overseas territories (Bahamas, Gibraltar, Guernsey, Isle of Man, Jersey)).⁹⁴

This shows that the FTA provisions for market opening and liberalisation of trust services, financial services and capital flows among EU member states and Peru and Colombia⁹⁵, allows capital flows from companies involved in corruption, money laundering, secrecy and tax avoidance constructions. The EU - Colombia & Peru FTA does not provide for cooperation among these countries and standard supervision whether money laundering, corrupt companies, tax avoidance or tax evasion might be involved in the capital flows or in what is officially mentioned as

foreign investment. Before the leak of the 'Panama papers' by a whistle blower, none of the anti-money laundering and anti-corruption mechanisms in the EU or in Colombia and Peru had detected any wrongdoing. The Lux leaks revealed that Luxembourg officially allowed companies to reduce their tax payments.⁹⁶ Luxembourg has been called one of the world leading jurisdictions where corporations can keep their profits without incurring much tax.⁹⁷ Tax avoidance structures using many jurisdictions, laws (and its loopholes) and treaties (double tax treaties, bilateral investment treaties), often called 'tax planning', can therefore be legal but result in less taxes being paid in the country where the headquarters of the corporation is based or where the activities take place, which has been denounced in many public and political debates in the EU.

⁹⁰ C. Stauffer, "Timeline: Key moments in Brazil corruption probe", 22 February 2016, <https://www.reuters.com/article/us-brazil-petrobras-timeline/timeline-key-moments-in-brazil-corruption-probe-idUSKCN0V2E3> (viewed 25 July 2018)

⁹¹ Odebrecht, response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO): Mr. Jayme Gomes da Fonseca Junior has not been related illegal activities and is not in any way linked to the Mossack Fonseca partners and company.

⁹² "Mossack Fonseca closes Luxembourg office days before bosses arrested", Luxembourg Times, 13 February 2017, <https://luxtimes.lu/archives/3249-mossack-fonseca-closes-luxembourg-office-days-before-bosses-arrested> (viewed 28 April 2017).

⁹³ "Mossack Fonseca closes Luxembourg office days before bosses arrested", Luxembourg Herald, 13 February 2017, <http://luxherald.com/1309-mossack-fonseca-closes-luxembourg-office.html> (viewed 28 April 2017).

⁹⁴ As identified by Opencorporates.com: <https://opencorporates.com/companies?page=2&q=Mossack+Fonseca+%E2%99%A3#> : Filter by jurisdiction (viewed 2 May 2018).

⁹⁵ For more explanation about how these financial services and capital flows were liberalised, see: I. Ioannides, Idem; M. Vander Stichele, Idem.

⁹⁶ Consortium of Investigative Journalists, "Lux Leaks' Revelations Bring Swift Response Around World", 7 November 2017, <https://www.cij.org/investigations/luxembourg-leaks/lux-leaks-revelations-bring-swift-response-around-world/> (viewed 25 July 2014).

⁹⁷ Eurodad (Ed.), Tax games: the race to the bottom - Europe's role in supporting an unjust global tax system – 2017 – Summary, 8 November 2017, p. 6.

BOX 1: Odebrecht from Brazil invests in Peru via Luxembourg

Odebrecht Latin Finance S.à r.l. was one of the main investors officially mentioned by the Peruvian investment promotion agency to have “made capital movements, through contributions or share purchases” between 2011-2016 from Luxembourg in the Peruvian energy sector.⁹⁸

Odebrecht Latin Finance S.à r.l. was one of the many holding companies of the Brazilian construction conglomerate Odebrecht that has been involved in a well-published huge and sophisticated worldwide bribery scandal linked to up to the highest politicians in many countries, including in Peru and Colombia.⁹⁹ Odebrecht admitted to have paid bribes in Colombia for an estimated US\$ 11 million or \$ 27 million, and for an estimated \$ 29 million in Peru.¹⁰⁰ The CEO of Odebrecht, Marcello Odebrecht, amongst other 76 Odebrecht executives, was arrested on 19 June 2015 and was then sentenced to 19 years in prison.¹⁰¹ In April 2017, Odebrecht, including the companies Odebrecht S.A. and Construtora Norberto Odebrecht S.A., had to pay \$ 2.6 bn in fines to Brazilian, US and Swiss prosecutors for having used a complex structure of off shore companies and US and Swiss banks to pay bribes.¹⁰² Odebrecht denies that Odebrecht Latin Finance S.à r.l. or Odebrecht Latininvest S.A. was used to funnel bribes in Peru or Colombia, to evade taxes or for any illegal activities.¹⁰³

Odebrecht Latin Finance S.à r.l. is registered in the Luxembourg Trade and Companies Register (Registre de Commerce et des Sociétés) with the same company code as Odebrecht Energy Luxembourg S.à r.l., namely number B 175583.¹⁰⁴ Odebrecht Energy Luxembourg S.à r.l. was created on 19 February 2013, had a capital of capital was USD 20,000 in shares, and had as sole shareholder Odebrecht Energia S.A., a company incorporated in Brazil.¹⁰⁵ The capital was increased several times up to USD 236.070.000 on 12 September 2013, with one share being valued one dollar.¹⁰⁶ By 22 April 2014, Odebrecht Energia had transferred the ownerships of the shares of Odebrecht Energy Luxembourg S.à r.l. to Odebrecht S.A. (incorporated in Brazil and the main Odebrecht company¹⁰⁷).¹⁰⁸ Odebrecht Energy Luxembourg S.à r.l., having a capital of USD 236.070.000 in shares and having as sole shareholder Odebrecht S.A., officially changed its name to Odebrecht Latin Finance S.à r.l. on 26 June 2014.¹⁰⁹ On 9 July 2014, Odebrecht Energia S.A., owner of the 236.070.000 shares of Odebrecht Latin Finance S.à r.l. transferred the ownership of all its shares to Odebrecht Participações e Investimentos S.A. (incorporated in Brazil).¹¹⁰ However, Odebrecht Energia had already transferred the shares to Odebrecht S.A. on 22 April 2014 as mentioned above. On 24 July 2014, a company named “Odebrecht Energy Luxembourg S.à r.l. Intertrust (Luxembourg) S.à r.l.” deposited its annual report of 2013.¹¹¹ On 26 August 2015, Jayme Gomes da Fonseca Junior, was one of the managers of Odebrecht Latin Finance S.à r.l.¹¹² and had remained one of the managers of Odebrecht Energy Luxembourg S.à r.l. on 3 February 2014 while other managers were replaced.¹¹³ Mr. da Fonseca, has been educated in finance and accounting and has been with Odebrecht since 1993, where he held various posts within different Odebrecht companies, including its Tax Planning Manager and Chief Financial Officer of Constructora Norberto Odebrecht S.A.¹¹⁴ He was not part of the Odebrecht executives who were convicted.¹¹⁵

The change of names and ownerships was part of a corporate restructuring of the Odebrecht company’s energy and Latin American divisions.¹¹⁶ This happened at a time that Odebrecht and 77 of its executives were under investigation and arrest for corruption in 2014 and 2015 and the company’s operations diminished.¹¹⁷

Odebrecht Energy Luxembourg S.à r.l. was involved in the project to build a hydroelectric plant to be located in the Changuinola

river, Bocas del Toro province, Panama. Beginning June 2014, Odebrecht Energy Luxembourg was given the responsibility to structure the financing of, and to contribute, to 77% of the investment for the hydroelectric plant.¹¹⁸ However, the concession to Odebrecht Energy Luxembourg, under its new name¹¹⁹, was withdrawn in January 2017¹²⁰ because the communities refused to allow the access road to be built, so that the dam could not start to be built.¹²¹

The reasons for the Odebrecht holding company to be based in Luxembourg was according to Odebrecht’s lawyers¹²²:

- attracting co-investors, which is done easily in Luxembourg;
- being able to use dollar as functional currency for accounting and tax purposes, since Odebrecht’s Energy Division partially financed one of its investments in Peru by way of a dollar-denominated equity loan;
- the bilateral investment agreement between Luxembourg and Peru; and
- the double tax treaty between Luxembourg and Brazil that is the country of incorporation of the shareholders of Odebrecht Latin Finance S.à r.l. (OLF).

Odebrecht’s lawyers explain¹²³ that “the recipient of sums that the Latin America Division invested in some of its Peruvian subsidiaries, whose shares, of course, are held, either directly or indirectly, by OLF [i.e. Odebrecht Latin Finance S.à r.l.] – hence the holding company. To give you a little bit more color, whenever the Latin America Division decided to make an investment in its Peruvian subsidiaries, it would enter into a loan agreement or a contribution agreement with OLF, and then wire OLF the money pursuant to such agreements; OLF would in turn wire the money to the relevant Peruvian subsidiary, either by way of a loan or, more commonly, a capital contribution.”

Odebrecht invests in Peru and Colombia via its business entity Latininvest Division, which was created in 2012 to carry out projects, mobilizes capital and invests in highways, rapid transit and pipelines, with priority to Colombia, Peru, Panama and Mexico. In addition, Latininvest does business as a capital investor and operator of concessions.¹²⁴ Odebrecht had three highway concessions in Peru (IIRSA North, IIRSA South and Rutas de Lima) which lead to the creation of subsidiaries of its Odebrecht Latininvest (Latininvest Peru, Odebrecht Latininvest Operations and Maintenance, and Rutas de Lima subsidiaries) according to Odebrecht’s website.¹²⁵ In Colombia, Odebrecht Latininvest was involved¹²⁶ in the Ruta del Sol Highway.

Odebrecht had a company Latininvest S.A. that was first established in Panama on 3 December 2009. One of its directors was Jayme Gomes Da Fonseca Junior (the same person mentioned above).¹²⁷ The Panamanian company Odebrecht Latininvest S.A. was dissolved officially on 7 July 2015.¹²⁸ But a company named ‘Odebrecht Latininvest S.A. was created on 16 October 2015 in Luxembourg and again, Jayme Gomes da Fonseca Junior, was one of the Directors.¹²⁹ It was created by changing the name of a company called ‘Luxembourg Investment Company 68 S.A.’ that was created on 10 March 2015 in Luxembourg, by Intertrust – a globalised trust and tax services company known for its trust services in tax havens, creation of shelf companies for sale by corporations, and tax avoidance facilitation¹³⁰. When ‘Luxembourg Investment Company 68 S.A.’ was bought by Odebrecht¹³¹, it changed its name to ‘Odebrecht Latininvest S.A.’ and the capital of EUR 31,000 was converted into to USD 35,460, and the equivalent shares (1 USD being one share).¹³² Odebrecht Latininvest S.A.’ changed its address in Luxembourg on 3 March 2016.¹³³

The change of names, ownership and addresses seems to make it hard to trace the money flows and their purpose. The involvement of Intertrust and the financial route via Panama and Luxem-

bour provides an indication that at least tax avoidance may have been involved, which can be done in a legal way using laws, a double tax treaty (Luxembourg-Brazil) and bilateral investment treaty (Luxembourg-Peru) and the EU-Colombia & Peru free trade agreement that guarantees transfer of capital and liberalisation of trust services. Odebrecht's Latininvest S.A. legal team denies that tax evasion or illegal activities took place.¹³⁴

Odebrecht owned some other companies established in Luxembourg: Odebrecht Financing International S.à r.l., Odebrecht International Participations S.à r.l., and Odebrecht Services S.à r.l.

(Odebrecht Mining Services Investments S.à r.l. has been closed).¹³⁵ It is likely that the Luxembourg entities were used to raise money by for instance issuing debt¹³⁶. The Luxembourg stock exchange¹³⁷ which was the trading platform for Odebrecht's unsecured oil and gas debt securities, had to stop such trade on 21 April 2016 after the company defaulted on paying US\$9.6m interest payment due 30 days earlier.¹³⁸

⁹⁸ Estadísticas de Inversión Extranjera, <http://www.investinperu.pe/modulos/IER/PlantillaStandard.aspx?are=0&prf=0&jer=5652> (viewed 27 April 2018); includes figures of foreign investment up to June 2017, while the English version has data up to end 2015 (see: <https://www.investinperu.pe/modulos/IER/PlantillaStandard.aspx?are=1&prf=0&jer=6037&sec=17>)

⁹⁹ "Odebrecht case. Politicians worldwide suspected in bribery scandal", BBC News, 15 December 2017, <http://www.bbc.com/news/world-latin-america-41109132> (viewed 28 April 2017); "In Colombia has already charged a former vice-minister for transport and a former senator. The man who ran the election campaign of the current president, Juan Manuel Santos, has alleged it was financed with irregular Odebrecht payments. Mr Santos, who is a Nobel Peace Prize winner, said he did not authorise any payments or know about them." "In Peru, two ex-presidents are under investigation. Ollanta Humala and his wife Nadine Heredia have been put in pre-trial detention for 18 months while charges are prepared against them for allegedly receiving payments to fund his presidential campaigns in 2006 and 2011. Former President Alejandro Toledo, accused of taking \$20m in bribes, is thought to be living in the US and the Peruvian government has put up a \$30,000 reward for information leading to his arrest. Staying with Peru, opposition leader Keiko Fujimori has come under preliminary investigation. The attorney general says a note found on Marcelo Odebrecht's mobile phone implicates her. She denied receiving money from the company."

¹⁰⁰ "Odebrecht case. Politicians worldwide suspected in bribery scandal", BBC News, 15 December 2017, <http://www.bbc.com/news/world-latin-america-41109132> (viewed 28 April 2017).

¹⁰¹ C. Stauffer, "Timeline: Key moments in Brazil corruption probe", Reuters, 22 February 2016, <https://www.reuters.com/article/us-brazil-petrobras-timeline/timeline-key-moments-in-brazil-corruption-probe-idUSKNOV2E3> (viewed 25 July 2018); B. Gallos, "Brazil's Odebrecht corruption scandal", 7 March 2017, <https://www.bbc.com/news/business-39194395> (viewed 25 July 2018).

¹⁰² See amongst others: EFE, "Brazil's Odebrecht to pay \$2.6bn fine for corruption", Al Dia, 18 April 2017, <http://oldianews.com/articles/politics/brazils-odebrecht-pay-26bn-fine-corruption/47451> (viewed 25 July 2018); Office of the Attorney General of Switzerland, "Petrobras - Odebrecht Affair: The Office of the Attorney General of Switzerland convicts Brazilian companies and demands payment of over CHF 200 million", Media release, 21 December 2016, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html>; "Odebrecht SA and its subsidiary Construtora Norberto Odebrecht SA (CNO) were found guilty by the Swiss court of a violation of corporate criminal law (Art. 102 para. 2 Swiss Criminal Code (SCC)), in that they did not take all reasonable organisational measures required to prevent the offences of bribing foreign public officials (Art. 322 septies SCC, CNO) and money laundering (Art. 305bis SCC, Odebrecht SA and CNO). The two companies have been held jointly and severally liable to pay Switzerland the sum of CHF 117 million."

¹⁰³ Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹⁰⁴ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 29 April 2013, <https://opencorporates.com/statements/32997645> (viewed 30 April 2018); the statutes explain that 1 share is valued at 1 dollar and that the "purpose of the Company is the holding of participations, in any form whatsoever, in Luxembourg and foreign companies exploiting, whether directly or indirectly, the businesses of generation and marketing of electric power and any other form of investment, the acquisition by purchase, subscription or in any other manner as well as the transfer by sale, exchange or otherwise of securities of any kind and the administration, control and development of its portfolio, with the exception of any banking activities. The Company may further guarantee, grant loans or otherwise assist the companies in which it holds a direct or indirect participation or which form part of the same group of companies as the Company."

¹⁰⁵ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 12 November 2013, <http://www.etat.lu/memorial/2013/C/Pdf/282712B.pdf> and <https://opencorporates.com/statements/32997645> (viewed 30 April 2018); <https://opencorporates.com/statements/330056355> (viewed 20 August 2018); <https://opencorporates.com/statements/32997645> (viewed 30 April 2018).

¹⁰⁶ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 12 November 2013, <https://opencorporates.com/statements/330056355> (viewed 30 April 2018).

¹⁰⁷ Odebrecht, Odebrecht 2017 - A great transformation, [Annual report 2017], 2018, p. 18-19.

¹⁰⁸ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 24 July 2014, p. 92599; publication reference 2014071600/17 <http://www.etat.lu/memorial/2014/C/Pdf/c1930247.pdf> (viewed 30 April 2018); "Avec effet au 22 avril 2014, Odebrecht Energia S.A. [sic], associé unique de la Société, a cédé la totalité des parts sociales qu'il détenait dans la Société à Odebrecht S.A., société de droit brésilien ayant son siège social au Av. Luis Viana, n° 2841, Ed. Odebrecht, Paralelo, Salvador, Brésil, et immatriculée auprès de Junta Comercial do Estado da Bahia - JUCEBA sous le numéro 2930002559-3."

¹⁰⁹ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 9 September 2014, <https://opencorporates.com/statements/377456475> (viewed 30 April 2018) and according to: Odebrecht, response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹¹⁰ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 30 October 2014, <https://opencorporates.com/statements/377501491> (viewed 30 April 2018).

¹¹¹ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 1 October 2014, <https://opencorporates.com/statements/377481470> (viewed 30 April 2018).

¹¹² MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 30 October 2015, <https://opencorporates.com/statements/331516175> (viewed 30 April 2018).

¹¹³ MEMORIAL C - Journal Officiel du Grand-Duché de Luxembourg, 11 April 2014, <https://opencorporates.com/statements/377278712> (viewed 1 May 2018).

¹¹⁴ "Jayme Gomes da Fonseca Junior", Bloomberg, 30 April 2018, <https://www.bloomberg.com/research/stocks/private/person.asp?personid=131348013&privcapId=45984138> (viewed 30 April 2018).

¹¹⁵ Odebrecht, response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO): Mr Jayme Gomes da Fonseca Junior has no links with the Panamanian tax avoidance conglomerate Mossack Fonseca which was at the centre of the "Panama papers" scandal. He "has not been convicted of any crime nor is he the subject of any know investigation, be it in Brazil, Luxembourg or any other country." He "has been with ODB since 1993, and that he has held different positions within the group, including serving as CFO of ODB's subsidiary Construtora Norberto Odebrecht."

¹¹⁶ Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹¹⁷ B. Gallos, "Brazil's Odebrecht corruption scandal", 7 March 2017, <https://www.bbc.com/news/business-39194395> (viewed 25 July 2018).

¹¹⁸ M. Lasso, "Adjudican Chan II a Odebrecht Energy", La Estrella, 6 June 2014, <http://laestrella.com.pa/economia/adjudican-chan-odebrecht-energy/23776690> (viewed 28 April 2018).

¹¹⁹ "Hydroelectric Station in Bocas del Toro", CentralAmericaData.com, 6 September 2016, https://www.centralamericadata.com/en/article/home/Hydroelectric_Station_in_Bocas_del_Toro (viewed 29 April and 17 July 2018); the article mentions that Odebrecht Energy Luxembourg was "now called Odebrecht Latin Fund".

¹²⁰ "Company Interested in Chan II Hydroelectric Station", CentralAmericaData.com, 26 June 2017, https://www.centralamericadata.com/en/article/home/Company_Interested_in_Chan_II_Hydroelectric_Station (viewed 29 April 2018).

¹²¹ "Hydroelectric Station in Bocas del Toro", ibidem.

¹²² Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹²³ Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO): the letter also explains that projects by Latininvest S.A. and Odebrecht Latin Finance S.à.r.l. were financed by "a mix of equity and corporate and project loans by commercial and development banks as well as in the capital markets. Needless to say, pretty much any private investment in the world is financed this way." "OLF borrowed US\$300,000,000 from two US-based banks in connection with one [of] the Latin America's Division's investment in Peru. The proceeds from the loan were used mainly to make equity contributions to the Peruvian subsidiary and to pay fees, interest, and expenses relating to the loan. But a portion of the proceeds was also used by OLF's to pay its day-to-day expenses."

¹²⁴ Odebrecht, "Our business", <https://www.odebrecht.com/en/businesses/our-businesses/latininvest> (viewed 30 April 2018).

¹²⁵ Odebrecht, libidem; see also: <https://www.oecd.org/site/govgfy/39612365.pdf>.

¹²⁶ "Odebrecht also allegedly made \$6.5 million USD in payments to former Vice Minister of Transportation Gabriel García Morales in exchange for a contract to construct a section of the Ruta del Sol highway", according to: F. J. Warin, M.M. Farhang, Key 2017 developments in Latin American anti-corruption enforcement, Gibson Dunn, 15 March 2018, p. 11, <https://www.gibsondunn.com/wp-content/uploads/2018/03/key-2017-developments-in-latin-american-anti-corruption-enforcement.pdf> (viewed 17 July 2018).

¹²⁷ Registro Público de Panamá, company number 684017, accessed via: <https://opencorporates.com/companies/pa/684017> (viewed 2 May 2018); see also: <https://www.panadota.net/es/organizaciones/377762> (viewed 2 May 2018).

¹²⁸ Panama, Gaceta Oficial Digital, nr 27 844, 12 August 2015, https://www.gacetaoficial.gob.pa/pdfTemp/27844/GacetaNo_27844_20150812.pdf (viewed 2 May 2018).

¹²⁹ Memorial C - Journal Officiel du Grand-Duché de Luxembourg, 8 January 2016: Company nr B195784, <https://opencorporates.com/statements/361692564> (viewed 2 May 2018).

¹³⁰ Memorial C - Journal Officiel du Grand-Duché de Luxembourg, 19 May 2015: company nr B195784, <https://opencorporates.com/statements/329735488> (viewed 2 May 2018); Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹³¹ Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹³² Memorial C - Journal Officiel du Grand-Duché de Luxembourg, 8 January 2016: Company nr B195784, <https://opencorporates.com/statements/361692564> (viewed 2 May 2018).

¹³³ Memorial C - Journal Officiel du Grand-Duché de Luxembourg, 2 June 2016, <https://opencorporates.com/statements/384094885> (viewed 2 May 2018).

¹³⁴ Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹³⁵ See: Odebrecht [search term], opencorporates, <https://opencorporates.com/companies/lu?q=Odebrecht&inf8=%E2%9C%93> (viewed 2 May 2018).

¹³⁶ See also: Odebrecht, Response by Legal Area OLI to the request for review of the Odebrecht information in the draft report, email of 24 July 2018 to M. Vander Stichele (Senior Researcher at SOMO).

¹³⁷ Bourse de Luxembourg, Listed in Luxembourg, [sine data], http://www.luxembourgforfinance.com/sites/luxembourgforfinance/files/listed_in_luxembourg.pdf (viewed 25 July 2018); large Latin American bond issuers are using the Luxembourg exchange for listing their bonds, including Odebrecht and Petrobras.

¹³⁸ E. Padigo, "Luxembourg Exchange Suspends Odebrecht Oil And Gas Bond On Default", Oil and Gas Investor, 21 April 2016, <https://www.oilandgasinvestor.com/luxembourg-exchange-suspends-odebrecht-oil-and-gas-bond-default-846201> (viewed 28 April 2018).

7. EU analysis fails to take into account money laundering or tax dodging or corruption

The EU's report in October 2017 about the implementation of the EU – Colombia & Peru FTA¹³⁹ only reports on flows and stock for FDI (see Box 2) without mentioning the sectors or the EU countries involved. FDI investment stock from the EU to Colombia and Peru increased but the FDI between the EU and the two countries were very unstable and not always positive for either side.

The EC 2017 report, for instance, does not mention that “[c]orruption is a serious obstacle for companies operating or planning to invest in Colombia. According to the World Economic Forum (WEF) Global Competitiveness Index (2016-2017), corruption is the second most problematic factor affecting competitiveness, following high tax rates. The NGO Transparency International reported that Colombian citizens’ perception of the level of corruption in the country remained high in 2016, and a February 2017 Gallup poll showed it as the number one problem facing Colombia according to Colombians polled. In 2016 Colombia ties for 90 out of 176 countries in the Transparency International rankings, falling from 83 in 2015.”¹⁴⁰ As mentioned above, one of the biggest corruption scandals was the case of the Brazilian construction company Odebrecht who also paid bribes for contract, “including USD 11 million in Colombia, in order to win infrastructure contracts. Several senior members of both the Santos and Uribe administrations have come under investigation. President Santos acknowledged that Odebrecht illegally donated funds to his 2010 campaign. Two high-priority infrastructure projects are on hold as a result of the corruption revelations.”¹⁴¹ Odebrecht mentioned that one of its highways (Ruta del Sol) in Colombia was constructed in cooperation with its Latinvest division, which is linked to the Latinvest S.a.r.l. and perhaps other financial vehicles in Luxembourg (see above box 1).

The EC 2017 report on the Implementation of the EU – Colombia & Peru FTA does not mention Peru's similar problems as indicated by the US' official analysis: “Corruption and civil unrest around ex-

BOX 2: How the EU reports on FTA implementation regarding investment

Table 5: EU-Colombia investment flows and stocks 2013-2015 (million EUR)

	Inward			Outward		
	2013	2014	2015	2013	2014	2015
Stocks	4,788	4,248	4,418	17,528	16,258	18,163
Flows	1,365	-192	371	-278	183	1,458

Source: Eurostat

The EU is the first foreign investor in Colombia. EU FDI stocks in Colombia increased by 4% between 2013 and 2015, totalling 18.2 billion EUR in 2015. Colombian FDI stocks in the EU decreased by 8% since 2013, totalling 4.4 billion EUR in 2015.

Table 6: EU-Peru investment flows and stocks 2013-2015 (million EUR)

	Inward			Outward		
	2013	2014	2015	2013	2014	2015
Stocks	243	245	1,536	9,135	9,512	10,465
Flows	129	264	672	4	618	1,473

Source: Eurostat

The EU is the first foreign investor in Peru. EU FDI stocks in Peru increased by 15% between 2013 and 2015, totalling 10.4 billion EUR in 2015. Peru's FDI stocks in the EU increased to 1.5 billion EUR in 2015, a 533% increase compared to 2013.

Source: EC, Third Annual Report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, p. 6.

tractive projects continue to negatively affect Peru's investment climate. Transparency International ranked Peru 101st out of 176 countries in its 2016 Corruption Perceptions Index. In December 2016, Brazilian company Odebrecht admitted it had paid USD 29 million in bribes in Peru, leading to investigations involving high level officials of the last three Peruvian administrations and halting progress on major infrastructure projects.¹⁴² According to the Ombudsman, there were 155 active social conflicts in Peru as of February 2017, of which 78 befell mining projects.”¹⁴³

Corruption scandals happened although corruption is illegal and Peru has ratified several multilateral anti-corruption conventions.¹⁴⁴ Nevertheless, Peru has been listed as a compliant country under the Extractive Industries Transparency Initiative (EITI) since February 2012. “The [government] and extractive industries openly publish all company payments and government revenues from oil, gas, and mining. Peru is one of two EITI-compliant countries in Latin America.”¹⁴⁵

¹³⁹ EC, Third Annual Report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, COM(2017) 585 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0585&from=EN> (viewed 28 April 2018).

¹⁴⁰ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017.

¹⁴¹ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017: Note that regarding investment priorities, “[t]he Colombian government prioritized a fourth generation infrastructure program focused on highway construction with PPP opportunities valued at USD 17 billion. In order to attract investment and promote PPPs, on November 22, 2013, the Colombian government signed a new infrastructure law clarifying provisions for frequently cited obstacles to participate in PPPs including environmental licensing, land acquisition, and the displacement of public utilities. The law puts in place a civil procedure that facilitates land expropriation during court cases [and] allows for expedited environmental licensing”.

¹⁴² “In December 2016, Brazilian company Odebrecht admitted in a settlement with the United States, Brazil, and Switzerland that it had paid USD 29 million in bribes in Peru between 2004 and 2015. Peru issued an arrest warrant for former President Alejandro Toledo on February 9, 2016. Prosecutors allege Toledo received USD 20 million in bribes from Odebrecht in exchange for facilitating Odebrecht's winning bid to build the Inter-Oceanic Highway.”

¹⁴³ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Peru, 2017.

¹⁴⁴ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Peru, 2017.

¹⁴⁵ U.S. Department of Commerce, Peru - 8-Responsible Business Conduct, 20 September 2017, <https://www.export.gov/article?id=Peru-Corporate-Social-Responsibility> (viewed 25 April 2018).

The EC also provides statistics about investments between the EU and Colombia and Peru, again without details such as the EU member state of origin nor data about the sectors involved (see table 4a and 4b).

Table 4: EU statistics about EU FDI in Colombia and Peru

EU Foreign direct investment with Colombia

indicator	unit	2013	2014	2015	2016	2017	Annual average growth
stocks: inward	Billions of euros	4.8	3.8	3.4	2.8		-16.8
stocks: outward	Billions of euros	17.8	16.6	17.0	14.7		-6.2
stocks: balance	Billions of euros	13.0	12.7	13.6	12.0		
flows: in	Billions of euros	1.4	-0.2	1.9	-0.4		
flows: out	Billions of euros	-0.3	0.0	0.6	-1.0		
flows: balance	Billions of euros	-1.6	0.3	-1.3	-0.6		

EU Foreign direct investment with Peru

indicator	unit	2013	2014	2015	2016	2017	Annual average growth
stocks: inward	Billions of euros	0.2	0.2	1.5	2.0		100.7
stocks: outward	Billions of euros	9.4	9.4	10.1	13.1		12.0
stocks: balance	Billions of euros	9.1	9.2	8.7	11.2		
flows: in	Billions of euros	0.1	-0.4	0.6	0.4		51.7
flows: out	Billions of euros	0.3	-1.5	1.4	3.7		130.2
flows: balance	Billions of euros	0.2	-1.2	0.8	3.3		

Source: EC, DG Trade, Colombia statistics, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111494.pdf (viewed 5 May 2018) and EC, DG Trade, Peru [statistics], http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf (viewed 5 May 2018)

A recent study (July 2018) of the European Parliament provides the following statistics (see Table 5a and 5b) and details of a selection of investments from the EU in 2017.¹⁴⁶

Table 5a: EU-Colombia and EU-Peru FDI Stocks and Balassa Index¹⁴⁷ of FDI

	Pre-Agreement (*)				Post-Agreement (**)			
	2009	2010	2011	2012	2013	2014	2015	2016
Inward stock	12 461	13 872	11 902	n. a.	17 824	16 566	16 957	14 732
Outward stock	856	804	3 497	n. a.	4 789	3 828	3 379	2 756
Balassa Index Colombia	-0.87	-0.89	-0.55	n. a.	-0.58	-0.62	-0.67	-0.68

Notes: The reference economy for the position of inflows and outflows is Colombia.
(*) USD millions; (**) EUR millions; (n.a.) not available

	Pre-Agreement (1) (*)				Post-Agreement (**)			
	2009	2010	2011	2012	2013	2014	2015	2016
Inward stock	9 926	10 623	11 053	11 274	9 360	9 384	10 146	13 149
Outward stock	21	51	n. a.	n. a.	244	159	1 493	1 971
Balassa Index	-0.99	-0.99	n. a.	n. a.	-0.95	-0.97	-0.74	-0.74

Notes: the reference economy for inward and outward position is Peru. (1) There is no data available regarding cumulative stock from Peru to the EU in 2011 and 2012. (**) USD millions; (**) EUR millions; (n.a.) not available

Source: A. Zygierewicz (Ed.), Trade agreement between the European Union and Colombia and Peru - European Implementation Assessment, European Parliament, PE 621.834, July 2018, p. 57, 59: tables produced by the authors based on Bilateral FDI Statistics, UNCTAD (Pre-Agreement) and EU Direct Investments Eurostat (Post-Agreement)

¹⁴⁶ A. Zygierewicz (Ed.), Trade agreement between the European Union and Colombia and Peru - European Implementation Assessment, European Parliament, PE 621.834, July 2018, p. 57-59, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621834/EPRS_STU%282018%29621834_EN.pdf (viewed 15 August 2018).

¹⁴⁷ The Balassa Index is calculated by ascertaining the ratio between the difference between cumulative outward and inward investment and the sum of these investment variables (stock), as follows: Relative investor position = (Outward Stock - Inward Stock) / (Outward Stock + Inward Stock), where: index values between -1 and -0.33 indicate that the country is predominantly a recipient of investment

8. Financial Services liberalisation – What effects?

Since money laundering and tax dodging strategies and routes partly use the financial services sector both in the EU and in Colombia and Peru (see above), the liberalisation of financial services in the EU-Colombia & Peru FTA increased the threat of more money laundering and tax dodging. This assumption is supported by the comprehensive European Parliament research (2016) and related interviewees.¹⁴⁸ Although there is not sufficient information available to state that increased free trade and investment in financial services has contributed to more money laundering and tax dodging, the above mentioned EP research concludes that the increased threat to money laundering is likely, also due to lack of aggressive fighting against money laundering and tax dodging as mentioned above.¹⁴⁹

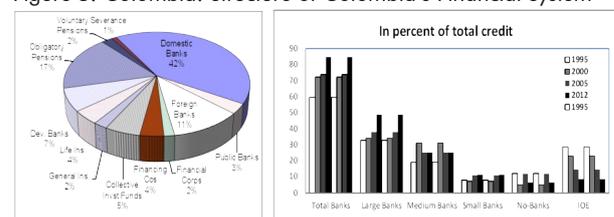
Financial services assessments lacking

Due to the lack of standard international statistics and publically available information, it is hardly possible to assess what the impact has been of the FTA on the Colombian and Peruvian financial sector, e.g. recent trade figures on financial services are missing. There are no recent external assessments of the financial sector available.¹⁵⁰ The joint IMF-World Bank Financial Sector Assessment Program (FSAP) that evaluates country's resilience to macroeconomic shocks and to cross-border contagion only reviewed Colombia's financial sector in 2013 --the date of entry of the FTA with the EU--, and not Peru. Available financial sector assessments do not report on how much money laundering or tax dodging is facilitated by the sector. At the same time, money laundering through other trade related strategies, such as manipulating invoices of trade in goods and services (called 'transfer pricing'), is on the rise.

According to the 2013 FSAP Colombia report¹⁵¹, the broad financial sector (from banks to non-bank financial intermediaries¹⁵², see table) appeared to be healthy, although dominated by complex financial conglomerates. The whole financial sector is supervised by one supervisory authority, the Finan-

cial Superintendency of Colombia (Superintendencia Financiera de Colombia, SFC), which was effective but had organisational challenges. Weaknesses in the financial system included the high concentration of commercial loans, independence of the SFC, no law yet to extend full supervisory and regulatory powers over holding companies of financial institutions and to intervene according to each bank's profile, as well as too weak supervision of broker-dealers, collective investment schemes and non-bank financial intermediaries.

Figure 5. Colombia: Structure of Colombia's Financial System



Source: IMF, Colombia - Financial System Stability Assessment, 9 January 2013, p. 8.

The US Department of State report of June 2017 considers that Colombia's financial system is "strong by regional standards" while credit rating agencies (Fitch and Standard & Poor's) give Colombia a BBB investment grade, which is not high.¹⁵³ The financial sector has been part of earlier privatisation programmes. As of December 2016, the Colombian financial sector was still dominated by "two private financial groups, the Sarmiento Group (Grupo Aval) and the Business Group of Antioquia (BanColombia), together own over half of all Colombian banking assets. The Sarmiento Group (Grupo Aval) controls about 27 percent of the sector and the Business Group of Antioquia (Bancolombia) about 26 percent".¹⁵⁴ In contrast, micro-lending accounted for 2.8% of lending in January 2017 and its growth has been very volatile.¹⁵⁵

¹⁴⁸ I. Ioannides, Idem, p. 1 203-204.

¹⁴⁹ I. Ioannides, Idem, p. 1 214 215.

¹⁵⁰ By end of June 2017, the US reports that "In the past three years, the government has not undergone any third-party investment policy reviews through a multilateral organization such as the Organization for Economic Co-operation and Development (OECD), World Trade Organization (WTO), or the United Nations Conference on Trade and Development (UNCTAD)". US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017, <http://www.state.gov/e/eb/rls/oth/ics/investmentclimatestatements/index.htm?year=2017&dclid=270056> (viewed 28 February 2018); According to the WTO website, the latest trade review of Colombia dates from 2012, and from Peru in 2014: https://www.wto.org/english/tratop_e/tp_rep_e.htm.

¹⁵¹ IMF, Colombia - Financial System Stability Assessment, 9 January 2013, https://www.imf.org/~/media/Websites/IMF/imported-full-text-pdf/external/pubs/ft/scr/2013/_cr1350.aspx (viewed 26 February 2018): the FSAP does not cover risks that are specific to individual institutions such as asset quality, operational or legal risks, or fraud.

¹⁵² The principal nonbank financial intermediaries are the private pension funds, with total assets equivalent to almost 20 percent of GDP. Trusts companies comprise a wide range of institutions, including pension funds for unionized employees and mutual funds. Together their assets amounted to 20 percent of GDP at end-June 2012.

¹⁵³ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017 <http://www.state.gov/e/eb/rls/oth/ics/investmentclimatestatements/index.htm?year=2017&dclid=270056> (viewed 28 February 2018); More info could be obtained from the Economy Intelligence consultancies, which are however to be paid for, e.g. Colombia: Banking sector risk, December 15th 2017 (Colombia | Financial markets and instruments), http://www.eiu.com/public/subscriber_only.aspx (viewed 30 April 2018).

¹⁵⁴ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 - Colombia, 29 June 2017.

¹⁵⁵ Oxford Business Group, "Increased lending, greater consolidation and improved regulation drive banking in Colombia", 2017, 23 October 2017,

Presence European banks in Colombia increased

Between December 2012 and December 2017, the Spanish bank BBVA had remained in Colombia and one other Spanish bank, Santander¹⁵⁶, had entered Colombia in 2013.¹⁵⁷ HSBC left Colombia after it was involved in a major money laundering scandal in 2012 and was bought by Banco GNB Sudameris¹⁵⁸, which was still in Colombia at the end of 2017. Another EU based financial institution has remained present after 2012, namely BNP Paribas Colombia.¹⁵⁹ In June 2017, “[f]oreign-owned bank assets account for approximately 28 percent of the sector.”¹⁶⁰ BBVA (Spain) is the largest foreign bank, accounting for 25.8% of private banking lending at the end of 2016.¹⁶¹ Most of the foreign banks target a particular sector or niche. They find it difficult to grow due to the dominant domestic banks.¹⁶² However, BBVA can operate with quite less regulatory capital buffers than the domestic Colombian banks, as BBVA could call for capital of its parent bank, so having some operation profit advantage over its rivals in the Colombian market.

In addition to the opening of the banking sector by the FTAs with the EU and the US, the legal requirements now provide that foreign investors may own 100 percent of financial institutions in Colombia, but “are required to obtain approval from the Financial Superintendency before making a direct investment of ten percent or more in any one entity. Portfolio investments used to acquire more than five percent of an entity also require authorization. Foreign banks must establish a local commercial presence and comply with the same capital and other requirements as local financial institutions. Foreign banks may establish a subsidiary or office in Colombia, but not a branch” (because branches are supervised only by the home country). “Every investment of foreign capital in portfolios must be through a Colombian administrator company, in-

¹⁵⁶ Banco Santander de Negocios Colombia S.A.: was created in Colombia in 2013 : <https://www.bnamericas.com/company-profile/es/banco-santander-de-negocios-colombia-sa-banco-santander-colombia> and <http://www.santander.com.co/> (viewed 28 February 2018).

¹⁵⁷ Author’s comparison (27 February 2018) of figures from the Supervisory authority, between December 2012 (banks 2012 Dec : <https://www.superfinanciera.gov.co/jsp/10081322>) and December 2017 (<https://www.superfinanciera.gov.co/publicacion/10096805>).

¹⁵⁸ “HSBC en Colombia será GNB”, [elespectador.com](http://elespectador.com/noticias/economia/hsbc-colombia-sera-gnb-articulo-346087), 14 May 2012, <https://www.elespectador.com/noticias/economia/hsbc-colombia-sera-gnb-articulo-346087> : Banco GNB Sudameris also has presence in Peru, Uruguay and Paraguay.

¹⁵⁹ Author’s comparison (27 February 2018) of figures from the Supervisory authority, between December 2012 (banks 2012 Dec : <https://www.superfinanciera.gov.co/jsp/10081322>) and December 2017 (<https://www.superfinanciera.gov.co/publicacion/10096805>).

¹⁶⁰ More or less the same figures can be found in the study: Increased lending, greater consolidation and improved regulation drive banking in Colombia, 23 October 2017.

¹⁶¹ Oxford Business Group, “Increased lending, greater consolidation and improved regulation drive banking in Colombia”, 23 October 2017.

¹⁶² Ibidem.

cluding brokerage firms, trust companies, and investment management companies. All foreign investments must be registered with the Central Bank.”¹⁶³

Some high profile cases of fraud and mismanagement have occurred in the non-supervised lending segment of Colombia but a law (Ley de Libranza) was being proposed at the end of 2016 to deal with the problems.¹⁶⁴ A new law to increase the supervisory powers of the SFC over financial conglomerates (Ley de Conglomeratos Financieros) and the finalising of the international standard ‘Basel III’ is planned to be finalised between 2019 and 2021.

The banking sector in Peru: concentrated and many small financing institutions

Information and analysis about Peru’s financial sector, and especially about the evolution and behaviour of foreign banks, is difficult to obtain and a thorough research beyond the scope of this report. A recent IMF study about the limited financial inclusion in Peru does not analyse the influence of foreign banks.¹⁶⁵ A general assessment by the US investment department, and the Economic Intelligence Unit, consider Peru’s banking system as “generally sound.”¹⁶⁶ Bank regulation and implementation are assessed to be adequate, and measures and capital reserves to ensure financial stability in case of shocks are above the legal minimum and international standards. The banks have a surplus in foreign-assets but the fact that most external liabilities are long term loans makes the banking system less vulnerable to swings in the value of currencies.¹⁶⁷ Since 2013, particular measures have increased lending in the local currency and reduced dollarisation in the financial sector even if it is still strong. For instance, “in August [2017] around 32% of banks’ loan portfolios were dollar-denominated.”¹⁶⁸ A dollarised financial sector might not be of much interest to European banks. According to one analysis in 2017, the banking sector has become more concentrated since the 1990s, amongst others due to competition among the banks. “Sixteen commercial banks comprise the

¹⁶³ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Colombia, 29 June 2017.

¹⁶⁴ Oxford Business Group, “Increased lending, greater consolidation and improved regulation drive banking in Colombia”, 23 October 2017.

¹⁶⁵ IMF, “Financial deepening in Peru—Do regional characteristics matter?”, Peru – selected issues, 1 June 2017, <file:///C:/Users/myriams/Downloads/cr17167.pdf> (viewed 28 April 2018).

¹⁶⁶ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

¹⁶⁷ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

¹⁶⁸ The Economist Intelligence Unit, “Peru: Banking sector risk”, 12 October 2017, <http://www.eiu.com/industry/article/916011875/peru-banking-sector-risk/2017-10-12> (viewed 3 May 2018).

system, with [banking] assets accounting for 84.6 percent of Peru's financial system. In 2014, three banks accounted for 73 percent of local loans and deposits among commercial banks. Of US\$ 105.1 billion in total banking assets at the end of January 2016, assets of the three largest commercial banks amounted to US\$ 74.36 billion." "Peru's financial system has 11 specialized institutions ("financier-as"), 31 thriving micro-lenders and savings banks (although several large banks also lend to small enterprises), two leasing institutions, two state-owned banks, and one state-owned development bank" in 2017.¹⁶⁹

Foreign banks have the right to freely establish banks in the country but are "subject to the supervision of Peru's Superintendent of Banks and Securities (SBS)".¹⁷⁰ Deutsche Bank decided in November 2015 to stop its trade related banking services in Peru, as it did for other Latin American countries, due to its global repositioning and huge losses in 2015.¹⁷¹ In 2015, the high level of concentration "continued despite the entrance of new players. The top four institutions are Banco de Crédito del Perú (BCP), BBVA Continental, Scotiabank Peru and Interbank. BCP and Interbank are locally owned, while BBVA Continental and Scotiabank are subsidiaries of global banks based in Spain and Canada, respectively. These four are the dominant players in their shares of total loans, total deposits and total assets. At the end of September 2015 the top four accounted for 83.1% of total loans in the Peruvian banking system, with BCP accounting for 33.9%, followed by Banco Continental (21.7%), Scotiabank (16.4%) and Interbank (11.2%). These banks also held a combined 82.3% of total deposits and 80.3% of total assets, representing the vast majority of banking deposits in Peru."¹⁷²

¹⁶⁹ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

¹⁷⁰ US Department of State, Bureau of Economic and Business Affairs - Investment Climate Statements for 2017 – Peru, 2017.

¹⁷¹ Oxford Business Group, "Peru leads region with range of banking services", The Report: Peru 2016 (Banking chapter), <https://oxfordbusinessgroup.com/overview/branching-out-wide-range-services-make-sector-regional-leader> (viewed 28 April 2018).

¹⁷² Oxford Business Group, Idem.

9. Trade in services: issues for consideration

It is important to note that new research exposed that intra-corporate trade in services with tax havens showed increasing patterns of mispricing for profit shifting and tax avoidance in service categories such as intellectual property (services related to patents and trademarks), headquarter services (administration, management and advertising) and sea transport (shipping).¹⁷³ Not all services trade with tax havens are considered as being for tax avoidance or evasion reasons (secrecy or specific expertise at tax havens might be other reasons). Nevertheless, the research estimates that transfer pricing for tax avoidance through intra company trade in services with tax havens is not resulting in massive missed income by the most developed countries

It is difficult to assess what the influence of the EU FTA with Colombia and Peru has been on the trade and investment in services, let alone financial services, as the EC recognises in 2017,¹⁷⁴ amongst others due to lack of recent trade statistics. A major influence could have come from the US. The US-Colombia FTA entered into force in May 2012 and is known as the U.S.-Colombia Trade Promotion Agreement. The US is Colombia's largest trading partner, accounting for ca. 34 percent of Colombia's total trade. The US estimated that Colombia's services market was valued \$166 billion.¹⁷⁵ The Trade Promotion Agreement between the US and Peru was already in force since 1 February 2009. The US claims that this agreement provided advantageous access to financial services because the "Agreement eliminates Peruvian measures that required U.S. firms to hire national rather than U.S. professionals and measures requiring the purchase of local goods. Peru also agreed that both mutual funds and pension funds in Peru will be allowed to use portfolio managers in the United States."¹⁷⁶

Trade in services between the EU and Colombia continued to show an export surplus for the EU since the start of the FTA up to end 2016 (the ex-

port – import balance was the same in 2012 and 2015). The EU exported services to Colombia worth € 2.6 bn in 2013, and € 2.9 bn in 2016, while importing € 1.4 bn and € 1.3 bn in the same years.¹⁷⁷

Table 6: EU Trade in services with Colombia and Peru
EU Trade in services with Colombia

indicator	unit	2013	2014	2015	2016	2017	Annual average growth
imports	Billions of euros	1.4	1.5	1.4	1.3		-2.2
exports	Billions of euros	2.6	2.4	2.8	2.9		4.3
balance	Billions of euros	1.1	0.9	1.4	1.6		

EU Trade in services with Peru

indicator	unit	2013	2014	2015	2016	2017	Annual average growth
imports	Billions of euros	0.8	0.9	0.9	0.9		1.1
exports	Billions of euros	1.7	2.0	1.7	1.5		-3.3
balance	Billions of euros	0.9	1.1	0.8	0.7		

Source: European Commission, Directorate-General Trade, Colombia [trade statistics], sine datu, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111494.pdf (viewed 4 May 2018). and Peru [trade statistics], sine datu, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf (viewed 4 May 2018).

The EU Trade in services with Peru remained constant in 2013 and 2016, with the EU export surplus decreasing from € 0.9 bn in 2013 to € 0,7 bn in 2016¹⁷⁸, which was still higher than in 2012 (€ 0.6 bn).¹⁷⁹

The EC's third report on the implementation of the EU-Colombia & Peru in October 2017 reported some details¹⁸⁰. Bilateral trade in services with Colombia remained stable in 2015 at 4.3 billion EUR, and "according to Colombian statistics, EU share in Colombia's total trade in services accounted for 16.2% in 2016." "For Peru, bilateral trade in services increased by 5% in 2015 compared to 2012. While EU exports increased by 11%, Peru exports decreased by 6% over this period. Based on Peru's statistics, EU share in Peru's total trade in services represented almost 30% in 2015."

Notwithstanding that the EU in 2012¹⁸¹ stated that more market opening for services was "very significant and respond to specific EU interest" specially

¹⁷³ S. Hebaus, N. Johannesen, "At Your Service! The Role of Tax Havens in International Trade with Services", 31 March 2018, http://nielsjohannesen.net/wp-content/uploads/AtYourService_March2016_FullPaper.pdf (viewed 27 February 2018); the research was based on detailed information from German multinationals, and aggregate data from OECD countries.

¹⁷⁴ EC, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements 1 January 2016 - 31 December 2016, 9 November 2017, p. 35, <http://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-654-F1-EN-MAIN-PART-1.PDF> (viewed 28 February 2018): "Services and investment are part of all "new generation" FTAs and DCFTAs, but it is difficult to see the link between the FTAs and developments in these areas. More time is needed to see the real impact." The review included the EU – Colombia and Peru FTA.

¹⁷⁵ US Department of State, Colombia Free Trade Agreement, <https://www.state.gov/e/eb/tpn/bta/fta/c76139.htm> (viewed 28 February 2018).

¹⁷⁶ Office of the US Trade Representative, Peru Trade Promotion Agreement, [sine datu], <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa> (viewed 5 May 2018).

¹⁷⁷ EC, Colombia - [Statistical Overview] EU trade in services with Colombia, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111494.pdf (viewed 28 February 2018): by end of 2017, the EC had no figures published on EU trade in services to Colombia in 2016 and 2017; by 3 May 2018, figures for 2016 were available: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111494.pdf.

¹⁷⁸ European Commission, Peru – [Statistical Overview] [trade statistics], http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf (viewed 4 May 2018).

¹⁷⁹ EC, Peru - [Statistical Overview] EU trade in services with Peru, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf (viewed 28 February 2018): by end of 2017, the EC had no figures published on EU trade in services to Colombia in 2016 and 2017; by 3 May 2018, figures for 2016 were available: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf.

¹⁸⁰ EC, Third Annual Report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, p. 5, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0585&from=EN> (viewed 27 February 2018).

¹⁸¹ EC, Highlights of the Trade Agreement between Colombia, Peru and the European Union, 26 June 2012, p. 2, http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149598.pdf.

regarding financial services, professional services, maritime transport and telecommunication services, no details are being published by the EU in what services sectors the EU's services trade had increased by 2017.

Reporting and assessment of the FTA and future TiSA

The problem is that the EC reporting methodology¹⁸² on the FTAs only looks at trade figures, and especially whether the EU exports and investments have increased, without any assessment on the effect in the EU (who benefits?) and in the host countries (who wins, who loses?). Worse, the EU's assessment of its many FTAs in November 2017¹⁸³ ignores the June 2016 EP's comprehensive ex post-trade impact assessment on the inclusion of financial services in EU free trade and association agreements and its effects on money laundering, tax evasion and avoidance.¹⁸⁴

The EC's reporting on the evolution of trade in services after an FTA has been in place, ignores that a substantive aspect of the trade in services chapters is about 'disciplining' existing and future regulations, laws, standard setting and licencing, and that such measures are considered as non-tariff barriers that FTAs need to remove or to limit. This relates amongst others to the FTA articles on market access, domestic regulation, MFN and national treatment rules in the FTA chapters on trade in services and all kind of 'establishments' (i.e. investments), without consideration of what public interest is at stake. This approach can have significant risks and restrictions in services sectors that are having systemic impact, such as financial services.¹⁸⁵ No mentioning either of the threat of money laundering or tax dodging through the financial sector or through mispricing¹⁸⁶ of intra-corporate trade in services with tax havens.

Trade in Services Agreement (TiSA)

The EU has continued this simplistic approach and limitation of regulatory measures when starting to negotiate a Trade in Services Agreement (TiSA) with a group of WTO members, including Colombia and Peru (and also Panama). When assessing¹⁸⁷ the potential impact of TiSA, through a so-called sustainable impact assessment (SIA), the economic benefits for the EU were considered to be minimal (0.1% increase in GDP and 0.2% increase in exports during the period until 2025). The average of all the 23 participating countries is 0.05% increase in GDP. However, these figures did not incorporate how the 'enhanced regulatory disciplines', such as a stand still clause or a ratchet clause, are included in addition to the traditional services regulation disciplines such as in the market access rules of FTAs. A research commissioned by the Chamber of Labour Vienna highlighted in its evaluation of the SIA of TiSA negotiations, amongst other wrong assumptions, that the positive impact of regulations on the public interest and on citizens was completely missing and would actually be higher than the economic costs.¹⁸⁸

¹⁸² EC, Third annual report on the Implementation of the EU - Colombia/Peru Trade Agreement, 10 October 2017, p. 2.

¹⁸³ EC, Report from the Commission to the European Parliament, The Council, The European Economic And Social Committee and The Committee Of The Regions on Implementation of Free Trade Agreements 1 January 2016 - 31 December 2016, 9 November 2017, <http://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-654-F1-EN-MAIN-PART-1.PDF> (viewed 28 February 2018).

¹⁸⁴ To be downloaded from: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU\(2016\)579326_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579326/EPRS_STU(2016)579326_EN.pdf).

¹⁸⁵ See M. Vander Stichele, Free Trade Agreement EU- Colombia & Peru: deregulation, illicit financial flows and money laundering, December 2012, p. 16-23.

¹⁸⁶ S. Hebus, N. Johannesen, At Your Service! The Role of Tax Havens in International Trade with Services, 31 March 2018, http://nielsjohannesen.net/wp-content/uploads/AtYourService_March2016_FullPaper.pdf (viewed 27 February 2018); the research was based on detailed information from German multinationals, and aggregate data from OECD countries.

¹⁸⁷ See the interesting research report: W. Raza, B. Tröster, R. von Arnim, Assess TiSA: Assessing the claimed benefits of the Trade in Services Agreement (TiSA), Austrian Foundation for Development Research, January 2018, https://media.arbeiterkammer.at/wien/PDF/studien/Assess_TiSA_2018.pdf (viewed 25 February 2018).

¹⁸⁸ W. Raza, B. Tröster, R. von Arnim, Idem.

9. Conclusions

This report focused on particular issues of the trade and investment relationships between the EU and Colombia & Peru, namely the role of the FTA's liberalisation of financial services and capital flows on the drug trafficking, money laundering and tax avoidance or evasion, which are interconnected issues. These issues relate to effects of the FTA but also the context in which the free trade agreement operates. This context is not always being taken into account. Conclusions within the assignment of the research for this report, and the limitations of the available data, are as follows:

- The lack of recent statistics, including the most standard ones that are normally reported by the IMF, do not allow to make a thorough and effective analysis of the impact of the EU-Colombia & Peru FTA on the financial services sector in those two Latin America countries.
- Since the 2013, when the FTA came into force, two new trends that pose a risk to the societies of both EU countries and the two Latin – America societies are: 1) the trade of synthetic drugs from the EU to Latin America has increased, which is facilitated through open borders; 2) tax avoidance and evasion happens increasingly through transfer pricing, i.e. mispricing of invoice of trade within and between companies.
- The trafficking of cocaine between Peru and Colombia with the EU has continued and most probably increased since consumption figures in the EU indicate increased use. This means also more risks for money laundering.
- The cocaine trafficking to the EU has led to corruption taking place at the border of the EU, with cases being detected in The Netherlands, for instance. It has been reported that organised crime in Europe has become more susceptible to connect to organised crime in Latin America.¹⁸⁹
- Cocaine production in Colombia has increased since 2013, which means that in general it cannot be concluded that the FTA with the EU has provided opportunities to farmers to shift to legal forms of agriculture. The increased exports of agricultural products of the EU to Colombia might actually increase the risk that farmers do not find legal forms of farming. The scope of this research for this report could not find what the direct impact of the EU – Colombia & Peru FTA has been on farming in the two Latin American countries, since those two countries have FTAs with other countries, notably the US.
- The EU and some of its member states still do not have sufficient and effective measures in place to combat money laundering and tax avoidance or evasion, although some measures were updated to become more strict.
- Major flows of foreign direct investment from and to Colombia are channelled through tax havens and countries with low taxation.
- Portfolio investments from key EU member states did increase after the FTA became operational, most notably from Luxembourg, The Netherlands and the UK, countries with important financial and investment centres, advantageous tax systems and location of letterbox companies.
- This research report identified that trust companies were used to transfer money from the corrupt Brazilian company Odebrecht, via financial shelf and holding companies as offshore vehicles, and numerous changes in names, ownership and addresses, and several money transfers within Luxembourg, to Peru and Colombia. Both Latin American countries' highest political levels were accused and convicted for bribery from Odebrecht, although there was no proof of involvement by Luxembourg subsidiaries were used for bribery. However, it is likely that the Odebrecht's financial subsidiaries were involved in tax avoidance by using Luxembourg laws, the Luxembourg – Brazil double tax treaty, the Luxembourg – Peru bilateral investment treaty, and the EU-Colombia & Peru FTA that guarantees transfer of capital. The trust company Mossack-Fonseca, that has been exposed as being a major instrument for tax evasion around the world, was involved in the Odebrecht bribery scandal in Peru. Mossack-Fonseca had offices in Luxembourg as well as other EU member states. This shows that the free movement of capital, with secrecy guarantees and no cooperation on monitoring financial flows, as inscribed in the EU-Colombia & Peru free trade agreement, and liberalisation of trust services and financial services, gives the possibility for tax avoidance for corrupt companies, tax evasion, and money laundering. It supports the analysis by other reports that the anti-money laundering, anti-corruption and anti-tax avoidance or evasion measures in Colombia and Peru are not effectively implemented due to weaknesses in the capacity and political endeavour to tackle the problems, combines with insufficient measures and implementation in EU member states.

¹⁸⁹ See UNODC, [Booklet 5], World Drug Report 2017, p. 19.

- The EC's reporting on the implementation of the EU-Colombia & Peru FTA completely ignores the risks and new trends in money laundering, tax avoidance or evasion, and corruption that can be related to foreign direct and portfolio investment. The EU's reporting also focuses on data of exports and imports, and ignores that the FTA also includes rules and disciplines on what countries regulate, especially in the services sector, which can have an effect on how the domestic economy operates or how citizens are protected.
- The research for this report supports findings of an earlier more comprehensive study for the EP that it "does not find conclusive statistical data to support a causal link between the EU FTAs that are in force and an increase in illicit financial flows. It deduces nonetheless that the far-reaching commitments made by the EU and developing countries in the selected EU FTAs on access to the markets for goods and services, including in the financial services sector, translate into such agreements significantly increasing trade openness, and hence also the threat of money laundering facing developing countries."¹⁹⁰
- The FTA opened up the market of Peru and Colombia for financial services, and Colombia experienced new entrance of an EU financial service provider. It has been difficult within the scope of this research to assess the impact of the FTA on those countries' financial sector.
- The surplus of the trade in services, and foreign investment to Colombia and Peru by EU companies, has increased during the years of implementation of the FTA, more to Colombia than to Peru.

¹⁹⁰ I. Ioannides, *Comprehensive ex post trade impact assessment on the inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance*, European Parliament, June 2016, p. 2.

10. Recommendation to tackle money laundry and tax avoidance and evasion

The comprehensive research (2015-2016) about all measures against money laundering and tax avoidance both in the EU and third countries with which the EU has concluded FTAs, including a thorough analysis of the EU – Colombia & Peru agreement, made the following policy recommendations.¹⁹¹ The findings within the scope of the research of this report, underscore these recommendations.

- “Given that the liberalisation of trade in goods and services, including financial services, between the EU and developing countries increases the risk of money laundering and tax evasion in these countries, the extent of trade liberalisation under EU FTAs should be made conditional on the partner country’s respect for international and European standards in this area.
- Instead of producing ‘Trade Sustainability Impact Assessments’ just before the finalisation of negotiations or even afterwards, these assessments should be finalised well in advance of the end of the negotiations in order to enable the negotiators to take such recommendations into account.
- In view of the rise of trade-based money laundering, in future FTAs the EU should consider including provisions aimed at combating the mispricing of internationally traded goods and services, both between two different companies and companies of the same group or holding.
- In order to increase transparency and combat tax evasion, future EU FTAs should incorporate provisions on cooperation in tax matters. In particular, these provisions could address country-by-country reporting of payments made to governments by firms operating under the jurisdiction of one of the States Parties.
- In line with EU Treaty obligations and the new Trade for All strategy, future FTAs should include provisions on the establishment of mechanisms for monitoring the trading partner’s compliance with the anti-money laundering and anti-tax evasion commitments that they undertook under these FTAs.

- The EU should also develop means to: continuously monitor the effects of the liberalisation of trade in goods and services, including financial services; carry out evaluations; and, where necessary, develop proposals to amend FTAs to address any concerns that may result from these evaluations.
- Efforts to foster international cooperation between EU partner countries and regional and global bodies in charge of developing international standards in the areas of banking, insurance, money laundering and tax evasion should be improved in order to provide for a greater exchange of information and best practices.
- Increasing the effectiveness of the law on the books in developing countries requires the EU to widen its approach to external trade by linking it to the overarching EU goals of international promotion of the rule of law and sustainable development, as well as the fight against poverty.
- The EU should invest more resources in studying and eliminating the causes of illicit financial flows from and into developing countries.
- In light of the post-Lisbon Treaty enhancement of the prerogatives of the European Parliament, the European Parliament should have a stronger role in EU trade negotiations to enable political contestation and debate on the choices to be made and directions to be followed in EU external trade, as well as to ensure a more effective monitoring of their implementation.”

In addition, the findings of the research for this document lead to the following recommendations:

- There should be much more human and financial resources to put trade controls at the border of the EU and that of its trading partners to stop drugs trafficking from and to the EU.
- Much efforts, political will and resources are needed to tackle the increasing criminal activities that combine different kinds of illegal trade.
- The EU should improve its analysis and sustainable impact assessments of trade agreements that are already operational, and combine the studies made by the different EU and international institutions, member states, and by civil society.

¹⁹¹ I. Ioannides, *Idem*, p. 1-75.

ANNEX

Concluding remarks regarding the assessment of the EU– Colombia & Peru FTA regarding financial services and impacts on money laundering and tax avoidance/evasion¹⁹²

“The scope of the services provisions in the EU-Colombia/Peru Trade Agreement is broad. Services in general are broadly defined, and so are financial services. Virtually all services are included with a few selected exceptions, such as services provided by public entities. It was noted that in some aspects, more services are liberalised in this agreement than in some other EU agreements with trade partners, notably with Korea. This is because of the fact that the latter agreement only liberalises financial transfers related to trade, loans and investments, whereas the EU-Colombia/Peru Agreement liberalises all current account transfers. Given the challenges related to effectively implementing FATF recommendations in Colombia and Peru, and the low number of convictions for money laundering in these countries, a more prudent approach to liberalisation and/or more safeguards or measures aimed at encouraging cooperation between the parties to the agreement would seem necessary.

Where tax evasion and elusion are concerned, the Trade Agreement contains a clause allowing parties not to disclose information about customers in the financial sectors. This does not seem supportive of actions to tackle money laundering, tax evasion and avoidance, for which (automatic) information exchange across borders is essential. It also seems to run counter to what is recommended in several of the international standards for regulation and supervision in the financial services sector that the parties promised to implement and apply. The latter promise is worded in a rather weak manner. Parties are merely required to ‘take note’ of the relevant international principles and standards of the G7, G20 and OECD. This wording is even weaker than a ‘best endeavour’ clause like the one included in other agreements. Article 155 does demand that parties make their ‘best endeavours to ensure’ that international standards for regulation and supervision in the financial services sector and for the fight against money laundering and the financing of terrorism are implemented and applied in its territory.

Furthermore, Colombia and Peru both allow for the establishment and cross-border supply of tax advisory services from EU countries. In Colombia, the tax law seems to have deficiencies, notably where it concerns the absence of general tax-avoidance rules and the reliance on a limited number of anti-avoidance provisions addressing specific situations. Furthermore, a systemic lack of effectiveness seems to be at hand. Reforms to remedy these deficiencies are ongoing. In Peru, tax law probably could also be improved and similarly seems to suffer from a systematic lack of effectiveness.

Despite the willingness of Colombia’s government to fight AML/CFT, the law seems to experience a lack of effectiveness. The challenges are still acute, although slightly decreasing since 2000, through, inter alia, the help of U.S. support. The 2010-2013 numbers of prosecutions and convictions for money laundering crimes in Colombia showed a declining number of convictions: 2010 – 115 prosecutions, 95 convictions; 2012 - 97 prosecutions, 80 convictions; and 2013 - 67 prosecutions, 8 convictions. Convictions picked up in 2014 - 46 prosecutions, 57 convictions.

In Peru, the situation seems even more challenging. While the AML/CFT infrastructure is taking shape, it lacks resources, knowledge and the political will to recognise, investigate and prosecute money launderers. As a result, prior to 2012 there had been no convictions for money laundering crimes in Peru. The situation has improved only slightly since then. In 2013, 238 money laundering prosecutions were reported (though no convictions), while in 2014 the first two money laundering convictions were reported, in addition to 158 prosecutions. The issues of effectiveness and enforcement are dealt with in more detail in the empirical part of this study.”

¹⁹² I. Ioannides, *Idem*, p. I 181-182.



Herausgegeben von:

Forschungs- und Dokumentationszentrum Chile-Lateinamerika e. V. – FDCL

Gneisenaustraße 2a, D -10961 Berlin, Germany

Fon: +49 30 693 40 29 / Fax: +49 30 692 65 90

E-Mail: info@fdcl.org / Internet: www.fycl.org

TTTRADE AND INVESTMENT IN FINANCIAL SERVICES AND FREEDOM OF CAPITAL MOVEMENT IN THE FTA: THE EFFECTS ON MONEY LAUNDERING, TAX AVOIDANCE | Assessing some the trade related aspects at the time of 5 years of the free trade agreement between the EU and Colombia & Peru | Myriam Vander Stichele
FDCL-Verlag Berlin, Mai 2018
ISBN: 978-3-923020--85-0