



WHITE-COLLAR CRIME AS ECONOMIC CRIME IN THE ASPECT OF GLOBALIZATION

Marta Stanislawska

SWPS University of Social Sciences and Humanities, Poland

This paper aims to discuss the importance of the danger of economic crime in the aspect of globalization. The paper examines the basic principles of white-collar crimes, which are against commercial activity. The dynamic development of modern technology entails dangers of spreading not only the opportunities for broadening horizons but unfortunately also for crimes. The article presents the scale of white-collar criminal in Europe but also demonstrate the importance of changes the regulations of international legal systems due to the legal nature of the protection of economic development. Nowadays it is impossible to liquidate a free trading between states, but it realistic to prevent, detect and penalize fraudulent practices on the European scale. In this view, an analysis of the rules concerning the economic crime in the aspect of globalization seems necessary.

Keywords: White-collar crime, Economic crime, Globalization.

Introduction

Progressing globalization processes are conducive to the development of the activities of organized crime groups. The abolition of customs barriers, internal borders of countries belonging to the European Union, and above all the establishment of a free flow of not only goods and services, but also people, promotes the development of economic crime, which includes white collar crimes.

It is true, that there were no real measures of costs of white collar crime: job loss, court cost, jail time after conviction, consumer price increases (Graham, 2012).

Briloff points out that 184 disciplinary actions against accountants were initiated through the entire decade of 1970s, most of then for conviction of bribery or for conviction of grand larceny, embezzlement, misuse of found, extortion, theft, perjury, and corresponding high crimes. In summary, it should be noted that the activities of creative accounting are closely related to the person who uses its capabilities and principles. However, as Briloff is extremely uncertain about the boundary between creative accounting and economic crime, committed both by persons occupying the positions of accountants and managers of the company (Briloff, 1979).

White collar crime is a worldwide problem, which doesn't receive a lot of media attention or as much of budget as it deserves. Since the Enron has collapsed (2001), US and countries all over the world have started to be more aware of the seriousness of white collar crimes. The downfall of Enron was one of the most significant and most shocking affairs in the business world for decades. This company was admired not only for its innovation but also for the phenomenal growth rate. Enron was an energy giant

with revenues exceeding \$100 billion and cold by *Fortune* as *America's Most Innovative Company*. However its collapsed deals with the accountancy issue (illegal accounting procedures which were approved by Arthur Andersen Auditors Company). The mechanisms of creative accounting have become popular. That form of accountancy based on overinterpreting the traditional rules of accountancy to maximize the loopholes in existing financial and tax law. The creative accounting aims to bloat the balance sheet and present better results than they are in fact (Barreveld, 2002).

Literature Review

White collar crime identifies the perpetrator. The source of this concept comes from the common law system. E.H. Sutherland discussed as a first the concept of white collars. He separated from all economic crimes, crimes committed by people with high social and professional status, who are recognized as honest and respectful citizens of society. These people use their business positions to commit a crime. This group of crimes is distinguished by the lack of physical violence during their commission. The violation of the law is only as a result of imperfections and complexities of legal regulations. The actions of white-collar criminals consist primarily of making false financial statements, achieving property benefits, crimes against consumers, taking public property and tax evasion. Criminals belonging to the white-collar criminal group are characterized by intelligence, cleverness, good education, foreign language skills, extensive business contacts, high motivation in operation and a large financial background. Apart from that, nothing distinguishes them from honest businessmen. Only a thorough analysis of the character of such a person and its operation may lead to the conclusion that a crime has been committed (Sutherland, 1949).

Nowadays United States Department of Justice defines these type of crime as illegal acts, characterized by concealment, deceit, violation of trust with no physical force or violence. This type of crime is committed by both individuals and organizations with the aim of obtaining money, property or services, avoiding payment or losing of money or services, or securing personal or business advantage.

Federal Bureau of Investigation named white-collar crime as a synonymous with the frauds committed by business and government professionals. The motivation of the perpetrator is to obtain or avoid losing the property. This crime is not victimless. Mostly the victims are: companies which are destroyed, families which are devastated, investors who lost billions of dollars. Nowadays the scheme of this crime is very sophisticated and to improve that scams investigators need to use a dedicated, specialized skills. One of the most important aims of FBI is to predict and investigate of criminal activities like money laundering, corporate fraud, mortgage fraud, bank fraud, health care fraud.

The European Union has started activities related to combating the tax gap in VAT, because the difference between actual tax revenues and the amount that should be paid into the state budgets is enormous. In Poland, in the years 2006-2012, there was a drastic increase in the tax gap from PLN 10.6 billion to PLN 36.5 billion. The average level of tax gap in European countries is 10%, while in Poland. These are the sums of tax revenues lost to the budget. Interestingly, the abuse of tax laws through the actions of white collar crime outweighs their profits of the crime of theft and robberies. Tax and tax authorities operate in this area in an ineffective way, because there are no mechanisms for combating and penalizing tax fraud (PwC draft)

All over the world, this problem is well known, and many countries have started to counteract the white-collar crime. The Netherlands increased fines for committing a white-collar crime for economic offenses to 10% of annual turnover. In Germany there intensified levels of prosecution in the tax area. Belgium has increased emphasis on bribery prosecution, and France provided dual prosecution of market abuse by AMF and criminal authorities ruled unconstitutional. In Poland government issued an amendment to Criminal Code in 2016 with the tightening penalties of imprisonment for the white-collar crime (Allen, Overy). In the US according to FBI, cost of the white-collar crime is estimated at more than \$300 billion annually. Normally individuals are charged with these type of crime, not corporations who also commit these offenses. Sanctions for white-collar crime are: fines, home detention, paying the cost of

prosecution, imprisonment, but they can be lessened if the defendant takes the responsibility for the crime and cooperates in the investigation with the authorities (cornell.edu).

White-Collar Crime in Accounting

As Briloff noted, companies providing accounting services have evolved into corporations that offer a wide range of services, from tax consultancy, accounting, to financial and tax audit (Briloff, 1976). These companies aim to achieve maximum profits, regardless of the ethics of the provision services. It is worth paying attention to legal regulations concerning the pursuit of the accounting profession, but also legal professions regarding ethics.

Unfortunately, in the case of corporate laws in Poland, the provisions related to ethics are exclusive of a disciplinary nature and concern mainly the morality and the sense of honesty and impartiality in the performance of the accounting profession, auditor or lawyer. Therefore, people who have advanced knowledge of law, tax, economics, and accounting, manipulate information contained in financial statements, at the same time breaking the rules of ethics. Of course, not every action changing the economic result of an entity will be a crime, but it is not behavior consistent with the spirit of accounting principles.

Accounting activities that use mechanisms of creative or aggressive accounting, although in a short period can contribute to improving the presentation of the financial result of an individual, then, in the long run, can lead to the downsides of thriving enterprises. This was the case with the most spectacular financial scandals that have been reported so far, which concerned companies such as Enron, Sunbeam, Cedant or Waste Management. The crime of white-collar crime in accounting is popular and sophisticated. It is challenging to identify them and describe them as a crime, and not as an act of creative accounting that is legal. In recent years, there have been organized crime groups that extort VAT. For this reason, procedures were initiated not only in Poland but also in all countries belonging to the European Union, aimed at sealing tax systems.

Changes in Criminal Liability in Criminal Code in Poland in the Aspect of White-Collar Crime

Not without significance is the fact of the proposed legislative changes in the scope of introducing criminal liability of persons providing accounting services. In the justification to the draft amending the Criminal Code and some other acts, the intention, and purpose of introducing the above changes is tightening the criminal liability of persons who commit public debt reduction, has been recorded. It is mainly about limiting the practice of VAT fraud, which is committed primarily by organized criminal groups. As indicated in the explanatory memorandum, despite the introduction and planned regulations in the field of both tax law and administrative proceedings, it is necessary to introduce changes in criminal law, so that the phenomena related to illegal raising of funds from the state budget have been minimized and were unprofitable (Stanislawska, 2017).

The project has introduced criminal liability for people who are involved in the trading of invoices in business entities (exhibit them, use them). The issues raised are of such interest in the context of activities related to the white-collar crime that the recognition of certain activities regarding creative accounting after complying with the statutory prerequisites will result in committing a prohibited act and thus will be subject to criminal liability.

Observations regarding the proposed amendments of the Criminal Code and other laws as part of the public consultations were also published by the Confederation Lewiatan, who presented critical remarks regarding the proposed amendments to the Criminal Code's provisions due to their negative impact on the business of honest entrepreneurs who will often be exposed to unconscious participation in criminal activity. According to the Lewiatan Confederation, the changes proposed in the draft will have a significant impact on limiting the freedom of conducting business (Stanislawska, 2017).

Noteworthy are the criticisms of the Supreme Court regarding the act. The proposed amendments were accused of inconsistency with the remaining provisions of the Criminal Code because they do not correspond in any way to the principle of proportionality and rational responsibility for committed acts in the form of criminal sanctions (the Constitutional Tribunal also repeatedly spoke on this matter). It is impossible to introduce provisions that implement only the intentions of legislative and executive power because other assumptions underlie a democratic legal state that seeks to implement the principle of social justice. The goal itself is to defend a democratic state of law. Interestingly, the project does not include the necessity to recognize new types of offenses as crimes, or the need for such a high penalty of imprisonment. Given the above, such changes will violate the nature of the provisions of the Criminal Code and distort not only the way they are perceived, respected but also the valuation of individual legal and personal goods. How to imagine responsibility for deeds such as human trafficking, for which the same penalty will be imposed, what for committing offenses related to incorrect invoices, and in the case of a qualified act it will be a penalty of up to twenty-five years imprisonment? Responsibility for the above-prohibited acts will be the same, and in the case of an eligible act will have the maximum penalty in Polish criminal law. Meanwhile, due to the nature of the crime committed and the axiological assumptions of the Criminal Code's provisions, the above crimes have a completely different character and it is impossible to compare them to each other. It is unimaginable to introduce a more severe penalty for the crime of the so-called intellectual decency in qualified mode, rape or trafficking offenses (Stanislawska, 2017).

Also noteworthy is the issue of the system of sanctioning activities related to invoices in the business market from the perspective of the entrepreneur. None of the proposed provisions determine in a sufficient way who and for what action will be responsible. The formulations used are out of focus and raise a number of doubts. It is worth considering how the liability for invoices issued or received will be borne by those who work in accounting, people providing accounting services, tax advisers and auditors. If the invoice for a high amount of purchase of a good will contain an incorrect VAT rate or will be charged with a substantive error as to the quantity of goods or its name, will the liability be sanctioned from the proposed provisions? Further, should the invoices be uncanceled or the circumstances of the use of blank invoices, persons issuing, processing, archiving such invoices, in connection with the formulation of the invoice, will be exposed to criminal liability in this respect? If so, although it seems completely irrational, should the limits of liability and rights in connection with invoicing be specified in the company's invoicing rules? What liability will be placed on persons providing professional accounting services and tax advisory services? Will they be responsible for their content for the processing of such documents and for their inclusion in the accounting books of the entity, as for the use of a document burdened with an error. In addition, if in the case of receiving an invoice containing a factual error for the purchase of a fixed asset, accepting it for use, determining the amortization method (appropriate due to the strategy adopted by the entity in the creation of the financial result), the persons who issued the invoice accepted or used it to accept a fixed asset for use? In the situation of understanding the proposed changes in a general way, each action, even within the unit (also based on internal documents) would be exposed to criminal sanctions due to the so-called falsification of a material or intellectual document (Stanislawska, 2017).

It also seems necessary to define the limits of criminal responsibility for the acts indicated in the project, the manner of their determination and control. The proposed changes constitute a good start in attempts to counteract economic crimes, however, they can not punish both entrepreneurs and people cooperating with them in a drastic way, using general and imprecise wording (Stanislawska, 2017).

Conclusions

In this study was demonstrated that white-collar crime is one of the most developed forms of modern economic crime. It has negative economic effects in almost all countries of the world, and its development has accelerated the processes of globalization. Organized economic crime benefits from the

imperfections of the current legal system in the area of carousel activities and tax frauds. Bodies of individual states as well as EU institutions were obliged to take actions that would minimize the possibilities of illegal actions to extort taxes. Despite some actions taken, the solutions implemented so far have not brought the intended results.

Currently, in Poland, provisions have been introduced to tighten criminal liability for white-collar crime. Although this is an action in the right direction, the legislator, by amending the provisions of the Criminal Code, introduced disproportionately high prison sentences for economic crimes about the other regulations of the Code.

Representatives of the doctrine note that the introduction of such solutions will have negative effects on the development of entrepreneurship in Poland, and also will limit the freedom of doing business.

The solutions proposed by the legislator raise doubts not only as to the purpose of the above provisions but also as to the content, as they contain deadlines and cover broad-based activities.

The introduction of more severe penalties for offenses related to empty and unreliable invoices is not in any way commensurate with criminal liability for committing crimes of human trafficking or rape. In summary, the direction of changes proposed by the project provider is just as well as its purpose and motivation to introduce them. However, it requires a greater clarification of the actual content of the regulations and a thorough rethinking of the circumstances and the amount of the penalty for the acts committed.

References

1. Allen, Overy (2015). *White Collar Crime in Europe Themes and Trends*.
2. Barrevel, D. J. (2002). *The ENRON Collapse. Creative Accounting, Wrong Economics or Criminal Acts?* Writers Club Press, iUniverse.
3. Briloff, A.J. (1976). *More debits than credits. The Burnt Investor's Guide to Financial statements*. Harper & Row, Publishers, New York.
4. Graham M. (2012). *White Collar Crime and the United States' Economy*. University of New Hampshire Scholars' Repository.
5. Pwc (2016). *Tax gap in VAT – how to combat it*.
6. Stanislawska M. (2017), *Handling Financial Data As An Element Of Creative Accounting*, Phd thesis, Wroclaw University of Economics, not published.
7. Sutherland E. H. (1949). *White collar crime*. New York: Dryden.
8. *White-Collar Crime*, <https://www.fbi.gov/investigate/white-collar-crime>.
9. *White-collar crime*, https://www.law.cornell.edu/wex/white-collar_crime.