REPORT:
MTIC Fraud Investigation and LEA´s cooperation improving
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Chapter 1: Introduction

1.1 Purpose and context

This report is produced within the framework of EMPACT\(^1\) MTIC\(^2\) by anti-fraud experts from six member states. The report is designed to assist a more collaborative approach to fighting fraud.

The conclusions and recommendations set out in this report are those of the experts who wrote the report and do not necessarily reflect the official opinion of the member states.

The purpose of this report is to identify the national, international and intra-agency obstacles which prohibit the sharing of information between the administrative tax authorities and criminal Law Enforcement Agencies (LEA) tackling Missing Trader Intra Community (MTIC) fraud. These bodies are responsible for successfully combatting Organised Criminal Gangs/Organised Crime Groups (OCGs) perpetrating this fraud and devising the most effective forms of interventions.

The report is also tasked with highlighting best practices and potential solutions to problems of cooperation to facilitate, optimise and promote interaction between the key civil administrations and criminal LEAs. In doing this, the report will contribute towards maximising closer working which in turn will provide more opportunities for successful interventions and the utilisation of the full range of tools at the disposal of the investigating authority.

1.2 Scope

This paper is focused upon providing strategic and operational recommendations to provide tax administrations and LEAs with a greater understanding of the problems caused by failures to cooperate. The report aims to encourage greater interaction through highlighting to the relevant agencies the benefits of working together and to demonstrate that the unified approach can, and does, work.

\(^1\) European Multidisciplinary Platform Against Criminal Threats

\(^2\) Missing Trader Intra Community
1.3 Methodology

The working methodology of the group was to collect and analyse the conclusions of already existing studies and reports on the topic from the European court of auditors, The European commission and OECD. Additionally, the group collected best practices on cooperation and information sharing between LEA and Tax agencies in several member states (MS), including the MS of the group.

The group had two meetings for completing the report. During the first meeting in October 2016 the participants gave a presentation about MTIC fraud investigations in their MS, authorities responsible for the investigation and the cooperation between them. The participants also demonstrated successful cases as result of good cooperation between tax administrations and LEA.

Between the two meetings, the participants worked on their contributions for the content of the draft report that was combined and distributed to all participants prior to the second meeting.

During the second meeting in May 2017 the first draft report, including input from all the participants, was discussed in details and agreed on. The participants considered possible solutions and selected best practices to be included in the report, identified further contributions and topics for the report and distributed new tasks. The report was finalised in July 2017.

1.4 Stakeholders

The report was produced by anti VAT fraud experts from:

- Sweden (chair/lead)
- Austria
- Belgium
- Bulgaria
- France
- United Kingdom

However, other key stakeholders for the distribution of the paper and as contributors through existing publications include:
Chapter 2: Background and problem

2.1 The significance of MTIC Fraud

MTIC Fraud remains one of the most significant Value Added Tax (VAT) frauds targeting all Member States across the EU. By its very nature, this is an international cross-border fraud which requires a unified approach (both domestically and internationally) to obtain a successful intervention or prosecution.

The EU Commission regularly issues reports surmising the levels of uncollected VAT across Europe. The most recent report published on 6th September 2016 calculates the current VAT gap across the EU to be approximately €159.5 billion. A breakdown of these figures by Member State (MS) is also available from this report3.

Although the figure of €159.5 billion represents a decrease from the previous report (€168 billion in September 2015), this remains a major loss of revenue across the EU. It should be noted that these figures do not exclusively apply to MTIC losses alone but this fraud does contribute significantly to these amounts.

Each MS does not necessarily publish their own figures for potential MTIC losses externally so the relevant tax authorities should be contacted for specific details. However, Europol’s home page on MTIC estimates that the current losses from MTIC fraud are in the region of

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3 https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/vat-gap_en
€60 billion per annum\(^4\). Similarly, the carbon credits fraud of 2009 was estimated by Europol to have cost the EU a minimum of €5 billion in stolen VAT\(^5\).

The above examples are supported by the numerous press releases published by domestic tax administrations/LEAs regarding interventions or threats and also by international agencies such as Europol and Eurojust. These detail the losses from specific frauds/operations.

2.2 Shortcomings of the measures currently in force to combat VAT fraud

Despite the various efforts made in certain MS and agencies in combating MTIC fraud, it is apparent that the threat remains significant.

Since 2010, The MS have been provided with additional tools to combat cross border VAT fraud e.g.:

- The Eurofisc network (Council Regulation (EU) 904/2010 chapter X)

- The optional and temporary application of anti-fraud measures under the Quick Reaction Mechanism (EC directive 2013/42/EU) to fight sudden and massive VAT fraud and the extension of the domestic Reverse Charge Mechanism (EC directive 2013/43/EU) as a tool to stop VAT fraud in the first instance.

Several MS have introduced sector specific reverse charge procedures over the last years, however, there are still no signs that the scale of VAT losses in the EU is diminishing. Although a reverse charge is beneficial to the MS to stop VAT fraud in a specific sector, it can lead to shifting the fraud to other Member States or into new markets.


The failure of the VAT gap to significantly decrease and the MTIC threat remaining a major contributory factor demonstrates that additional means to combat the fraud should be considered.

2.2.1 European court of auditors report

The European court of auditors highlighted in their report “Tackling intra-Community VAT fraud - more action is needed” 62015 that there is a lack of cooperation and overlapping competences of administrative, judicial and law enforcement authorities to fight against VAT fraud “VAT fraud is often linked with organised crime. The proceeds of MTIC fraud are usually reinvested in other criminal activities. This calls for the adoption of a common and multidisciplinary approach to tackle intra-Community VAT fraud”.

“Neither Europol nor OLAF has access to Eurofisc data. Member States invoke Articles 35 and 55 of Regulation No 904/2010 and national tax secrecy rules to deny such access. Eurofisc Working Fields 1-3 involve the exchange of data. This is not the case for Eurofisc Working Field 4, which is a fraud observatory where trends in fraud are looked at. Even though there is no exchange of data, Europol and OLAF are not allowed access to this information. They also do not have access to VIES.”

"Although this is in accordance with the regulation, it reduces Europol and OLAF’s ability to tackle VAT fraud through the identification and disruption of organised crime groups behind the carousels and even their ability to assess the real impact of intra-Community VAT fraud”.

“The overlapping competences and lack of efficient cooperation and exchange of information between the administrative, judicial and law enforcement authorities at national as well as at international level hamper the fight against intra-Community VAT fraud. In 2013 the situation between Europol, Eurojust, and OLAF was described as a ‘tangled web’ which contributes to the lack of a coordinated response to fraud”.

The ECA recommendation is that the Commission and Member States should “remove legal obstacles preventing the exchange of information between administrative, judicial and law enforcement authorities at national and EU level. In particular, OLAF and Europol should have access to VIES and Eurofisc data and Member States should benefit from intelligence information supplied by them”.

6 Tackling intra-Community VAT fraud: More action needed
7 VAT Information Exchange System
Furthermore, “The European Parliament and the Council should include VAT within the Directive on the fight against fraud and the European Public Prosecutor’s Office Regulation, and grant OLAF clear powers and tools to investigate intra-Community VAT fraud”.

2.2.2 The European Commission
The European Commission has frequently addressed the need for enhanced cooperation between tax administrations and LEA’s to fight fraud. Already in its 2012 Communication the EU Commission indicated that in order to enhance the efficiency of tax administrations in Member States there is a need for reinforced cooperation with other law enforcement bodies, see point 18 of the Communication:

“Stronger cooperation, making full use of EU agencies’ support, should also be promoted with other law enforcement bodies, in particular the authorities responsible for anti-money laundering, justice and social security. Inter-agency cooperation is essential to ensure an efficient fight against tax fraud, tax evasion and tax related crimes. Europol can play an important role in enhancing information exchange by contributing to the identification and dismantling of criminal networks/groups”. As stated by the European Commission “Administrative cooperation concerns not only cooperation between tax authorities, including tax administrations from non-EU countries but also involves cooperation with the customs administrations and law enforcement bodies of EU Member States, which is vital for the correct application of VAT rules in cross border transactions and to detect and reduce VAT fraud”.

On 7th April 2016, the EU Commission formally adopted an Action Plan on VAT. Point 5 of the “20 measures to tackle the VAT Gap” highlighted the need to unify the combatting of MTIC, stating:

“Support deeper cooperation between different authorities. Fighting organised crime networks engaged in carousel fraud requires joint efforts between tax administrations and law enforcement authorities within and between Member States. Missing trader fraud calls for a smooth exchange of information between tax and customs authorities. Proposed


9 http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/vat-administrative-cooperation_en#a1

actions include supporting Member States in implementing the recommendations of the report on enhancing tax-customs cooperation, a conference between authorities to explore possible cooperation and a partnership between Member States, Europol and OLAF on exchange of information, and achieving a positive outcome in the negotiations on the PIF Directive and the European Public Prosecutor Office".

2.3 Definition of organised crime groups

The need to enhance cooperation between tax and LEA is specially emphasised in relation to combatting organised crime and particularly MTIC VAT fraud.

Definitions of organised crime and criminal organisation exist in EU acts and other EU documents. For example, Council Decision 98/733 / JHA concerning participation in a criminal organisation, Framework Decision 2008/841 / JHA on the fight against organised crime and the document 6204297 Enfopol 35 Rev 2, define the criteria used in the EU to define organised crime.

The frameworks define a criminal organisation as a “structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit”.

Thus, MTIC fraud has always to be regarded by LEA as an offence committed by OCG referring to the criteria:

- Association of more than two persons (always the case); Active for a prolonged or indefinite period of time (nearly always the case);
- Offence punishable by imprisonment of at least four years (as to be checked according to the MS law)
- Their objective is to make a financial profit (always the case).

Another important criteria, not specified in the definition above, is the international level, MTIC fraud requires at least the involvement of two different MS.
The ECA states in its report\(^\text{11}\): “VAT fraud is often linked with organised crime. According to Europol's representatives, it is estimated that 40-60 billion euro of the annual VAT revenue losses of Member States are caused by organised crime groups and that 2 % of those groups are behind 80 % of the missing trader intra-community (MTIC) fraud”

2.4. What is MTIC VAT Fraud?

The relevant fiscal or criminal authority from each MS will have their own specific definition of MTIC fraud. There are also various international guides which provide a detailed overview of what MTIC VAT fraud is and how it works.

Europol describes MTIC VAT fraud as follow: \(^\text{12}\)

“The basic MTIC fraud model involves organised, sophisticated activities that seek to exploit differences in how VAT is treated in different EU Member States. The criminals create a structure of linked companies and individuals across these states in order to abuse both national and international trading and revenue-accounting procedures.

Also known as carousel fraud, this crime takes advantage of legislation that allows trading across Member State borders to be VAT free: VAT is applied only to sales within a Member State at the applicable domestic rate. Any VAT charged on sales should be declared and paid to the Member State’s revenue authority. In MTIC fraud, the first company in the domestic chain charges VAT to a customer, but does not pay this to the government, becoming what is known as a “missing trader”.

“Links between participants are disguised to make early detection more difficult. The initial entities responsible for the tax damage, the missing traders, may operate for only a few months before disappearing”

The activity is not a victimless, “white-collar” crime that affects only governments, however. By depriving EU Member States of tax revenue, the criminals are effectively robbing EU citizens of the means for governments to fund the provision of infrastructure such as schools and hospitals as well as vital public services. Fraudsters often use their profits to fund other forms of criminality, such as cigarette smuggling or drug trafficking.

The “Best practice guide for criminal investigation of MTIC fraud” provided to all members of EMPACT MTIC in 2016 further explains MTIC fraud as

“In its simplest terms, MTIC fraud requires:

- a company obtaining a VAT registration number (missing trader)

- buying goods or services (an intangible commodity) VAT free from a VAT registered entity in another EU member state
- selling those goods or services at a VAT inclusive price in the same member state

- Failing to send in the tax return and to pay the VAT due to the relevant fiscal authority.

- The most common and most abusive form of this fraud is where the goods or services are re-despatched/exported and where VAT has previously gone unpaid in the chain. This is known as Carousel Fraud.

- The goods or services are moved through the domestic supply chains and rather than going to an end user, these are re-despatched/exported to create large reclaims for the onward zero rated sales

- The facilitation of fraud in another member state is referred to as Conduit trading.

- Tax losses do not appear in the country making the enquiry but the transaction chains trace directly to unpaid VAT in another member state.

In many instances, the goods or services do not exist or are not transported at all. The entire supply chain is nothing more than a paper trail designed to enable the theft of VAT."

This guide also provides explanations of the various mutations of MTIC fraud including Acquisition, Carousel, Conduit and Offset. Each of these variants demonstrates the complexities of the fraud. By understanding what the fraud is and how it operates, there are greater opportunities to bring the interested groups together and identify the most effective solution to the activity.

2.5 The problems in sharing information between tax administrations and LEAs

Whilst tax administrations and LEAs continue to work exclusively or fail to collaborate fully, there is a significant risk that a more effective range of sanctions, against both the individuals and entities used to perpetrate this fraud, are not being deployed.

There are understandable concerns from the relevant authority relating to a range of issues which include:
• The legality of sharing material

• Knowledge of agreements (gateways/Memorandums of Understanding) to facilitate the exchange of information and the related restrictions upon usage

• The impact and definition of “Tax Secrecy” to cooperation

• Restrictions as to whether information obtained from an international source can be provided to other bodies (i.e. SCACs and Eurofisc)

• Fear of criminal enquiries being damaged or exposed by actions of civil colleagues

• Uncertainty over how enquiries can proceed where more than one organisation is involved (i.e. does the civil enquiry cease when a criminal LEA adopts the case)

The number of different organisations looking at fraud is also often seen as problematic to effective information sharing or joint working.

The concerns regarding cooperation are not new. Significant work has already been undertaken across the EU (and further afield) to emphasise the need to bring agencies together. Efforts to address such apprehensions have been ongoing within the MS for a number of years with some authorities being further advanced in establishing cooperation than others.

OECD has published a number of detailed reports directly analysing the necessity for tax administrations and LEAs to improve cooperation in order to combat complex tax crimes.13

13 The most recent and relevant OECD reports on this topic include:
The OECD September 2015 paper on cooperation between tax and anti-money laundering authorities’ executive summary states:

“Financial crimes, including tax crimes, threaten the strategic, political and economic interests of both developed and developing countries and undermine confidence in the global financial systems…….government authorities must work closely together in a “whole of government” approach to best address these challenges. This applies as much as anywhere to the authorities combatting serious financial crimes such as tax crimes…..money laundering…..Through each authority pooling their knowledge and skills, the fight against financial crimes will be more effective”

Similarly, the OECD report on effective co-operation of 2013 highlighted the importance of collaboration when it stated:

“Inter-agency co-operation can enhance financial integrity and good governance by improving the effectiveness of countries’ abilities to fight financial crimes. In a world where criminals operate in a complex financial environment and across geographic boundaries, effective domestic and international inter-agency co-operation is the only viable response”.

These reports conclude that most legal barriers and legislative obstacles can be overcome to ensure successful cooperation between the relevant bodies both domestically and internationally.

However, the fact that problems persist across the EU proves that work is required to ensure that collaboration can be achieved in the most efficient way.

**Chapter 3: Description of different national models in combating VAT-fraud**

The following part is mostly based on the second edition of the OECD-report 2013 on Effective Inter-Agencies Co-operation in fighting tax crimes and other financial crimes (OECD-report 2013).
Looking at the fight against VAT-fraud we face the following areas:

- Prevention
- Detection
- Investigation
- Prosecution
- Recovery

Depending on the national organisation the following agencies can be involved in the fight against VAT-fraud (MTIC)

- Tax-administration
- Customs-administration
- Financial intelligence unit (FIU)
- Police
- Prosecutor’s office
- Financial regulators

3.1 Models after responsibility for investigation.

According to the different responsibilities for investigating MTIC fraud in different countries, three national models can be identified:

1. Tax administration is responsible for conducting investigations with or without direction of the public prosecutor

The big advantage of this model is the direct access to all tax and customs data and the lack of a cutting line to a law enforcement agency. The disadvantage might be the lack of information on criminal intelligence in general, the obstacles on exchanging information with other agencies and the different training and equipment compared to the police.

2. Police with or without direction of the public prosecutor has the responsibility for investigations
The advantage of this model is the overall view on all criminal activity and information – not only focussed on tax and customs, the specialised training and equipment for law-enforcement bodies like the police. The disadvantage is the lack of training in tax-matters and the lack of direct access to tax and customs-data.

3. In some MS, a special (tax-) agency under supervision of the Ministry of Finance is responsible for conducting investigations.

The advantage might be the independence from any other agency. In case such a special agency is equipped with the necessary access to information, training and equipment and staff from all involved agencies this might be an advantage. Otherwise, the cutting-lines and obstacles to exchange information can be an enormous disadvantage.

3.2 Models for sharing information between different agencies

In all countries, included in the study in OECD report, there is the possibility for the tax-administration to share information with the agencies responsible for the investigation of tax-crime and customs-administration. There are however restrictions upon tax-administrations for sharing information with police and prosecution in cases of non-tax investigation. At the very least, there is no obligation to report suspicious non-tax offences.

Customs-administration is able to share information with tax-administration. There is a wide range of different approaches. Some countries have direct access vice versa others only give information on request.

It is very similar with the FIU- Information. Some countries have direct access and others have restrictions ending by prohibition of sharing information with tax or customs.

Police and public prosecutors can share information with tax-administration though often there is no obligation to do so.

Financial regulators are generally not obliged to provide information to tax administrations for assessing taxes. However, there are regulations in place that information can be shared in case of tax- or customs- offences.
3.3 Models for enhanced cooperation between different agencies

1. Joint investigation teams:
   Means that different agencies work together in an investigation. It is easy to share information and the use of different backgrounds and training can optimize the results.

2. Inter-agency centres of intelligence are used to centralise information gathering and analysis for different agencies. The results can be shared easily by all participating agencies and the involved officials gain experience of other areas. This approach is also cost efficient.

3. Secondments and co-location of personnel:
   Officials are seconded to other agencies to share their skills, knowledge and experience while working at the host and collect experience and information from the host to report back or not to their home-agencies.

4. Other models include shared databases, newsletters, joint committees, meetings and training.

Recommendations by OECD

- Review the models for sharing information among different agencies
  - Sharing information between tax administration, FIU and police
  - Obligation to report to relevant authorities in case of serious offences
  - Ability of any agency to give information to tax-administration for tax assessment purposes

- Review the models for enhanced co-operation (see above), introduce and adopt them and make cooperation more effective within the existing frameworks

- Review the examples for successful practices and find alternatives

- Evaluate the legal and operational ability of tax-administrations to be involved in tax-crime investigations
Evaluate the mechanisms for cooperation on a recurrent basis and make an objective assessment of the results achieved

Chapter 4: International organisations and networks tackling MTIC fraud.

4.1 The role of Eurojust

Eurojust’s key roles and powers include responding to requests for assistance from the competent national authorities of the Member States. In return, Eurojust can request Member States to undertake the investigation or prosecution of specific acts. National Members carry out Eurojust’s mandate to coordinate the work of the national authorities at every stage of criminal investigation and prosecution.

Coordination meetings are a unique and effective tool in judicial cooperation. They bring together judicial and law enforcement authorities from Member States and third States, and allow for informed and targeted operations in cross-border crime cases. During coordination meetings, legal and practical difficulties resulting from differences among the 30 existing legal systems in the European Union can be resolved.

Coordination centres play a highly relevant role in operations, fostering real-time support during joint action days, coordination and immediate follow-up of seizures, arrests, house/company searches, freezing orders and witness interviews.

Eurojust provides funding and expertise for the setting up and operational needs of Joint Investigation Teams (JIT). A JIT is a team consisting of prosecutors, judges and law enforcement authorities. Established for a fixed period and a specific purpose by way of a written agreement between the involved States, JITs allow criminal investigations to be carried out much more effectively in one or more of the involved States. See also chapter 6.2.2.

A concrete example of a case involving both Eurojust and Europol and combining the effective use of all of these tools is that of Operation Vertigo\(^\text{14}\). In this case, several

coordination meetings have taken place, in addition to four coordination centres (all at Eurojust), the most recent of which took place on 19 October 2016. This operation also benefitted from JIT funding from Eurojust.

4.2 Role of Europol

Europol provides analytical investigation and intelligence support to law enforcement agencies within and beyond the European Union, across the whole gamut of serious and organised crime in the field of MTIC fraud. The support extends to related activities such as combating money laundering and tracing proceeds of crime.

A specific analytical work file, Focal Point MTIC, was created in April 2008 with the aim to provide analytical and operational support to criminal investigators involved in combating serious and sophisticated case of VAT fraud.

There are presently (July 2016) 23 EU Member States (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, The Netherlands and The United Kingdom) and three associated third countries/agencies (Switzerland, Norway and Eurojust) participating in the Focal Point.

FP MTIC is an EU support centre for law enforcement operations as it is the only law enforcement agency at European level able to securely store all criminal information related to MTIC fraud.

4.3 European Multidisciplinary Platform against Criminal Threats (EMPACT) MTIC

In 2010, the EU established a multi-annual policy cycle to ensure that in the fight against serious international and organised crime there is an effective cooperation between Member States law enforcement agencies, EU Institutions, EU Agencies and relevant third parties targeting the most pressing criminal threats facing the EU. The full policy cycle last for four years.

The Serious and Organised Crime Threat Assessment (SOCTA) developed by Europol, delivers a set of recommendations based on an in-depth analysis of the major crime threats facing the EU. The Council of Justice and Home Affairs Ministers use these recommendations to define its priorities for the next four years (2013-2017).

The SOCTA 2013 priorities for 2013-2017 are translated into Multi-Annual Strategic Plans (MASP) defining the strategic goals to achieve. In order to achieve these Strategic Goals,
Operational Action Plans are designed, and nine EMPACT projects are launched to coordinate actions by Member States and EU organisations against the identified threats. One of nine EMPACT projects is Excise and MTIC Fraud – aiming to: disrupt the capacity of OCGs and specialists involved in excise fraud and MTIC fraud.

Some of the key findings in the descriptions of the scope of the MTIC problem are:

“MTIC fraud is a transnational crime by definition, forcing MS law enforcement to cooperate as part of a multi-national approach”.

“In a number of MS it is not the regular police who are responsible for investigating tax crimes and where the knowledge and expertise of dealing with tax fraud practices is located, but rather Governmental Tax and Revenues offices, Customs, Coast Guards or Border Guards. These agencies may not always cooperate fully at national levels with regular Police, let alone internationally”.

“There are also limits as to how these international organisations cooperate and share their knowledge. This is one cause of an overall lack of awareness within law enforcement of tax frauds in general and MTIC and Excise frauds in particular. The huge discrepancies between estimated tax losses as a result of tax fraud and estimated turn-over of identified OCGs that are engaged in MTIC and Excise frauds is another indication of an intelligence gap within law enforcement concerning tax frauds.”

MTIC will remain a priority project in EMPACT for the next four-year cycle commencing in 2018. Further details are being finalised at the time of writing.

4.4 The role of the Eurofisc network

In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, Chapter X of Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of value added tax establishes a network for the swift exchange of targeted information only between the participating Member States hereinafter called ‘Eurofisc’.

Within the framework of Eurofisc, the Member States shall:

a) Establish a multilateral early warning mechanism for combating VAT fraud;

b) Coordinate the swift multilateral exchange of targeted information in the subject areas in which Eurofisc will operate (hereinafter ‘Eurofisc Working Fields);

c) Coordinate the work of the Eurofisc liaison officials of the participating Member States in acting on warnings received.
All member states participate in the Eurofisc network, but not in all the working fields. The competent authorities of each Member State designate at least one Eurofisc liaison official (ELO) for each of the working fields who is an expert in the fight against VAT fraud. The ELOs designate a Eurofisc working field coordinator among the designated ELOs. This coordinator collates and disseminates the information received from the participating Eurofisc liaison officials.

Up to date there are six Working fields (WF) established within Eurofisc. WF6 is newly established and expected to be operational during 2018.

- WF 1 – MTIC fraud. In this working field all Member States join forces in the fight against MTIC fraud.
- WF 2 – Fraud with means of transport Cars-Boats-Planes.
- WF 3 – Fraud by abusing Customs procedure code 42 and by extension Customs procedure code 63.
- WF 4 – VAT Observatory. The main purpose is to exchange information, knowledge and results from national risk analysis regarding new trends and new typologies, the so-called early warnings, and to function as a study centre in which best practices, new methods for the prevention, detection and fight against VAT fraud are shared.
- WF 5 – Fraud in the sector of Ecommerce
- WF 6 – Joint transaction network analysis in Eurofisc (TNA)

TNA is a data analysis tool that, by using the existing software and existing data exchange channels and databases, could automate the working methods for detection of national or cross-border networks of fraudulent VAT transactions.

The aim of EUROFISC WF1, WF2, WF3 and WF5 is the exchange of targeted information on concrete suspect transactions. The receiving MS will send feedback through the Eurofisc channel to the participating Eurofisc liaison officials.

Information exchanged through the Eurofisc network shall be confidential, as provided for in Article 55 of the Council Regulation (EU) 904/2010.

The EU Commission provides Eurofisc with technical and logistical support but it does not participate in the daily operation of Eurofisc and it has no access to the information exchanged over Eurofisc.
Chapter 5: Exchange of information on VAT

In most countries usually the tax administration is responsible for the assessment and collection of VAT on behalf of the government and plays a central role in preventing and detecting tax crime. Once a suspected tax crime has been identified, the extent to which the tax administration is involved in the investigation and prosecution varies between the countries.

The majority of EU countries have a single national prosecution authority that is responsible for prosecuting most criminal offences, including tax crimes and other financial crimes.

There are separate information channels used for exchanging information between the different agencies in the EU involved in the fight against MTIC fraud. The possibility to share information received through these channels on national level between the agencies can also vary between the EU countries.

5.1 Exchange of information on VAT between the Tax administrations in the EU

Combating VAT evasion and fraud calls for close cooperation between the competent authorities in each MS responsible for the application of the provisions in that field.

The Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax sets out rules and procedures for cooperation and exchanges of information between competent authorities in the EU who are responsible for applying value added tax (VAT), with a view to:

- assessing VAT correctly;
- monitoring the correct application of VAT;
- combating VAT fraud;
- protecting VAT revenue.

It is stated in article 55 in the EU Regulation 904/2010 that Information communicated or collected in any form pursuant to regulation shall be:

- Be covered by the obligation of official secrecy
- Enjoy the protection extended to similar information under the national law of the Member State which received it

- Such information may be used for the purpose of establishing the assessment base or the collection or administrative control of tax for the purpose of establishing the assessment base.

- In addition, it may be used in connection with judicial proceedings that may involve penalties

The information exchanged via the regulation 904/2010 can subsequently directly be used in a criminal investigation, but information cannot be exchanged through this channel only for the purpose of a criminal investigation.

It is not always the same authorities and organisation structures in the MS who are competent authorities as regards of exchanging information according to the Regulation 904/2010. Normally it is the tax administration, but in some MS even LEA is considered to be competent authority.

This regulation also establishes the Eurofisc network in chapter X,

5.1.1 VAT Information Exchange system (VIES)

Taxable persons making intra-Community supplies have to report their total supplies, in the relevant quarter, to each taxable person in another MS in a recapitulative statements submitted to the tax administration. The information is stored in a database in the MS of the supplier, but the information is also accessible for the MS of the client trough the VIES. This information gives the MSs the capability to automatically identify divergences between the suppliers reported IC sales in VIES and the clients declared acquisition in the VAT return.

Tax administrations use this information for risk analysis to detect fraudulent chains, identify the missing trader and the conduit companies involved.

The information exchanged in the VIES is covered by secrecy according to article 55 in EU regulation 904/2010 and therefore usually not accessible for LEAs.
5.1.2 Administrative cooperation between the Member States

The Regulation 904/2010 sets out the rules and conditions for the exchange of information between the VAT authorities of MS where such information may help with the correct assessment of VAT.

1. General exchange of information, where there is no suspicion of VAT fraud.
2. Anti-Fraud exchange, where there are suspicions of VAT fraud or non-compliance.

The MS must provide requested information no later than three months following the date of receipt of the request. If the recipient authority is already in possession of the information, it must provide a response within one month.

The regulation also provides possibility of spontaneous exchange of information between the Member States where there is a risk of tax loss in another Member State.

The exchange of information, with or without prior request, is made using standard forms sent via secured Common Communication Network system interface CCN that is provided by the European Commission.

The information exchanged through this channel is essential for control purposes in the other MS, or where there has been a breach of VAT legislation in the other Member State.

It is highlighted in the ECA report 2015\(^{15}\), that the results of their survey “show that these exchanges of information are the most powerful tool to fight against fraud, since replies can be used as evidence before a Court. The e-forms for these exchanges, introduced in July 2013, are functioning in a satisfactory manner, leading to speedier processing of requests. Collecting evidence of the involvement of a trader in fraud improves VAT recovery. Moreover, tax authorities are using this information for refusing traders either the right to deduct the VAT paid for their purchases or the right to exempt VAT on intra-Community supplies.”

\(^{15}\) Tackling intra-Community VAT fraud: More action needed, page 15
5.2 Exchange information between the LEA’s in the EU

The Council Framework Decision 2006/960/JHA — exchange of information and intelligence between EU countries’ law enforcement authorities enables law enforcement authorities in the EU to share information and intelligence effectively when conducting criminal investigations or criminal intelligence operations.

Conditions for the sharing of information

- EU countries are not allowed to apply stricter rules for information disclosure at international level than would normally apply internally, for example by requiring judicial agreement.

- EU countries should normally respond within 7 days to requests concerning offences eligible for a European arrest warrant* and where the information is accessible to the law enforcement agency. A response should be made within 8 hours where the request is urgent. In other cases, countries should respond within 14 days. If the time limits cannot be met, the EU country receiving the request is required to provide reasons for not being able to comply.

- Information can also be provided spontaneously. In this case, only information necessary to detect, prevent and investigate the crime or criminal activity should be given.

- Information may be exchanged via any existing channel and must be shared with Europol or Eurojust if it falls within their scope, and under normal data protection rules.

Limits to information sharing

- Law enforcement authorities are not obliged to gather information in response to a request, or to obtain information through coercion. In addition:

  - Information cannot be used as evidence before the judicial authority without the consent of the country that provided it (this could be already indicated in the reply).
- Information that has been obtained from a non-EU country can only be shared with the consent of that country.

- A law enforcement authority may refuse to provide information if there is reason to think it would harm national security, an investigation, an operation, the safety of individuals, or is clearly disproportionate or irrelevant.

- A law enforcement authority can also refuse to provide information where the request relates to an offence carrying a prison term of 1 year or less, or where a judicial authority is opposed.

The use of information and intelligence which has been exchanged directly or bilaterally under this Framework Decision shall be subject to the national data protection provisions of the receiving MS, where the information and intelligence shall be subject to the same data protection rules as if they had been gathered in the receiving MS.

**Europol** also supports LEA’s in the MSs by providing information exchange and analysis capabilities, notably through its Secure Information Exchange Network Application (SIENA). SIENA enables MSs to exchange information in a swift, secure and user-friendly way with each other, with Europol, or with third parties that have a cooperation agreement with Europol.

Source: Europol

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Chapter 6: Tax secrecy, cooperation and exchange of information

6.1 Sharing information between LEA’s and Tax officers as respect to tax secrecy

In all EU MS the fiscal data is protected by tax secrecy, whether it belongs to natural or legal persons, but subsequently many MS, due to the necessity of sharing data between LEA’s and tax administrations have set up the possibility of lifting this secrecy for criminal investigation.

The OECD report (Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes) identifies four different gateways allowing LEA’s to access tax information, starting from the easiest accessibility:

1. Direct access to information,
2. obligation to share information spontaneously
3. ability to share information spontaneously :
4. information shared on request only :

It can be concluded that regarding the tax secrecy, all MS covered in the OECD report have organised legal access for LEAs, so that the lifting of tax secrecy should not be a brake nor a problem anymore, but usually only as long there is a criminal case in the MS.

Nevertheless, what is still to be considered and enhanced is the real accessibility (not only the legal) together with the delays in accessing the information. This regulates mostly how the sharing of information has to be organised between tax administration and LEA’s: means, treatment, storage, accessibility and feedback.

6.2 Operational cooperation between MS to fight organised fraud

The tax administrations and the Law enforcement agencies in EU have been provided with separate legal frameworks to conduct joint investigations in two or more MSs in a coordinated way.
The frameworks do not give possibility for TAX and LEA to jointly conduct investigations in other MS.

6.2.1 Multilateral control
Multilateral control (MLC) is an arrangement where Tax administrations agree to carry out a co-ordinated control of one or more related taxable persons (both legal entities and individuals) where the control has a common or complementary interest. MLC shall include at least two MS. At least two MS must be involved in the MLC and a third country can be invited to participate. Each of the participating MSs will carry out audits in its own territory. A MLC may relate to excise, direct taxes and/or VAT.

The information exchanged in MLC between the participating MS is regulated in EU regulation 904/2010 and covered by the secrecy rules in the MS, which regulate the possibility to exchange information with LEA's.

6.2.2 Joint investigation teams (JIT)
A joint investigation team (JIT) is established within the framework of Eurojust for a fixed period and a specific purpose by way of a written agreement between the States involved, to carry out criminal investigations in one or more of the involved States. The possibility of setting up JITs between MS is provided for in Article 13 of the 2000 MLA Convention. (See also chapter 4.1)

- A team of law enforcement officers, investigators & prosecutors;
- From 2 or more States and/or other parties;
- Based on a written agreement between the JIT partners;
- With the aim to investigate offences with cross border dimension;
- Established for a specific purpose;
- For a limited duration;
- There is no such thing as “standard JIT” - each JIT varies in size,

The benefits of JIT are:

- It can speed up investigations;
- enhances cooperation between different law enforcement agencies;
informal information exchange, sharing information directly between JIT members;
- Fast exchange of evidence without MLA requests;
- Presence of members at house searches, interviews, etc. in all jurisdictions covered;
- Coordination of efforts on the spot, continuous consultations;
- Building mutual trust between practitioners from different jurisdictions working together;
- Support and assistance from Europol and Eurojust (analytical support of Europol; clarifying differences between judicial systems by Eurojust);
- Funding;

A JIT is led by a person from the MS in which the JIT operates. Although the members of the JIT may originate from various jurisdictions, they are to carry out their duties in accordance with the national laws of the territory in which the investigation takes place.

6.2.3 Fiscal and criminal investigation - fraud in another MS
MTIC carousel fraud can occur in many different ways and include both goods and/or services. The VAT fraud schemes have become more complicated over time and including more companies and countries in the chain.

Carousel fraud will need the participation of different actors (companies) located in different MS such as:

- Missing trader
- Buffer
- Broker
- Conduit company

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17 More details about the role of the different participants in Carousel VAT fraud is described in the : Best practice guide, criminal investigation to tackle missing trader intra community VAT fraud.
The VAT losses will occur in only one MS in the chain, but all the MS involved should cooperate to jointly investigate the MTIC carousel fraud.

The tax administrations will normally detect the missing trader at an early stage, using information provided in the VIES and national risk analysis system, and send a request to the MS of the supplier (the conduit company) for complementary information. If the transaction is involved with carousel fraud, the tax administrations can decide to start up MLC.

As the VAT fraud is conducted in the MS of the missing trader, the tax administration normally has the possibility to share the information with LEA who will start up criminal investigation.

The conduit company is a trader that partakes in a transaction connected with the fraudulent evasion of VAT in the MS of the missing trader. As the conduit company is not involved in VAT fraud in the MS where the conduit company is established, the tax administration in this MS can have legal obstacles to share this information with LEA's due to secrecy law. Therefore, there might not be a criminal investigation initiated in the MS of the conduit company, but only fiscal investigation, sometimes without the possibility to make any tax assessment.
The MS of the conduit company will have to rely on the MS where VAT losses occur to start up criminal investigation and ask for legal assistance or participate in JIT in order to start up a criminal investigation.

Meanwhile, the information provided by the tax administration where the conduit company is established, to the tax administration in the MS of the missing trader, can be used for criminal investigation in the MS of the missing trader.

This procedure, and the obstacle to share information with LEA when there is no criminal investigation, can make it difficult to effectively address carousel fraud.

**Chapter 7: Good Practices in the Member states to tackle organised fraud**

Due to the seriousness of organised crimes such as MTIC fraud, some MS have established special units, teams or networks where tax officials and LEA’s have forum for exchanging operational and/or general information and share knowledge for being able to swiftly react and stop the fraudulent activities.

**7.1 The example of Austria**

In Austria, tax and customs are administered within the tax administration as a single agency. Whenever the term tax administration is used in this document it means tax and customs.

Tax administration has the responsibility for conducting investigations, under the direction of the public prosecutor. That means that tax/customs crime investigators have direct access to tax/customs data.

The tax administration may not provide any tax information spontaneously to the police or public prosecutor investigating non-tax offences, but may provide information on request where a criminal investigation has commenced. Otherwise, information held by the Austrian tax administration is covered by tax secrecy provisions and cannot be shared with law enforcement.

Tax officials are required to report suspicions of possible non-tax offences to the appropriate law enforcement authority.
The police or public prosecutor may spontaneously provide information to the tax administration where they obtain information relating to a possible tax offence and may share this spontaneously with tax crime investigators, but is not under an obligation to do so.

As measures for advanced cooperation Austria uses:

- Joint investigation teams
- Regular meetings and training sessions
- Secondments and co-location of personnel

More information about the Austrian solution can be found in Annex 1

### 7.2 The example of Belgium

In Belgium the Public action is carried out by the Prosecution.

Since the introduction on 01/02/1987 of the so-called “charter of the taxpayer” police and tax officers are no longer allowed to work together. Under penalty of nullity of the procedural act, tax officers in charge of the VAT, can normally only be heard as witnesses.

The Inquiry Commission of the Senate on organised crime in Belgium points out in its final report of 8 December 1998 that too many services stick to their own mission without worrying about the essential elements such as cooperation, assistance and data exchange.

Granting immediate effect to the conclusions of the Senate commission, the Ministers of Justice, Finance and Home Affairs have signed on July 20th, 2000 an interdepartmental Protocol on the fight against carousel fraud.

By this protocol, it was decided:

- To second tax officers to the OCDEFO "Economic and Financial Department of the Federal Judicial Police";

- To establish a multidisciplinary non-operational support cell (called OCS) comprising both police and tax officers. The added value of the cell lies in the way it analyses and
communicates information to the appropriate units. Where positive cases are identified, a distinction is made between the outcome of the analysis:

- When it highlights an offence, the judicial coordinator communicates the information to the head of the VAT section of OCDEFO (Federal Police DJSOC-OCDEFO). The information is supplemented by the data available within the police services. An initial report is then drawn up and sent to the competent Prosecutor.

- When it tends to prove there is no offence but only fiscal administrative infringements, the data is sent by the fiscal coordinator to the FPS Finance. The Administration of the Special Tax Inspectorate is informed and requested to plan an administrative audit as soon as possible.

- This strategy has allowed to counterwork the limits of administrative procedure in investigations of this type (late intervention, impossibility to prove collusion and therefore to track the organiser, almost no recoverability, ...) and secondly, to address the judicial investigations in a new light:

  - by identifying precisely the fraud (forget the sprawling investigation)
  - by focusing on “flagranto delicto” through a rapid intervention
  - by clarifying the difficulties related to tax issues
  - by taking action on the assets of the fraudsters
  - by aiming the peak of the pyramid

The OCS is essentially a central point of access to information and a place for analysis. More information about the Belgian solution can be found in Annex 2.

7.3 The example of Bulgaria

In Bulgaria, tax and bank secrecy is stated in the Tax Insurance procedure code and the Credit Institutions act. They are identified as great obstacle for LEA’s to access the necessary information, on a national level. It is difficult for the directorate of the Ministry of Interior to receive in time information for cases connected with MTIC frauds, because there has to be a court approval. In most cases, this takes great effort and is time consuming, so it affects the results of an ongoing investigation and operational work. The whole procedure might take one or two weeks, sometimes a month, to get to the information needed from the tax administration. Despite the abovementioned, there are some measures that have been taken for enhancing the effectiveness of information sharing between tax and LEA further described in chapter 8.2.
One of the steps was creating a coordination centre, based in the building of the General Directorate for Combating Organised Crime. The centre consists of representatives of several institutions, who are competent enough to use all of their databases, make analyses and inform the competent units in the effort to combat more effectively excise and MTIC frauds. The institutions involved are police, State Agency for National Security, Transportation agency, Tax administration and Customs. This centre has the means to effectively track vehicles, which carry goods that are suspected to be a subject of some type of criminal activity. Furthermore, the gathering of all databases in one place makes access to all kinds of information possible within reasonable time limits.

Another positive practice that enhances institutional synchronization is the creation of specialized units, consisting of police, prosecutors and tax administration. Roughly said, each unit consists of one representative of the abovementioned and they work together, helping each other in creating a harmonized strategy in particular cases. The prosecutor oversees the whole process and navigates the team into legally effective and purposeful actions. The tax representative provides information and helps figuring out the criminal scheme and the participating companies. If the unit needs additional help from other institutions, it can turn for help to the coordination centre.

Additionally, the parliament of Bulgaria recently approved the law for a common bank register in the National bank. It is due to start functioning in 2017 and will be of great help in identifying criminal assets. The register would eliminate the long lasting process of communication with all banks and other financial institutions in effort to locate those assets.

On international level, police communication usually goes through Europol and SIENA channel. The biggest disadvantage is that information often comes too late and is usually not complete and purposeful. For instance, one of the most popular MTIC schemes in Bulgaria is MTIC acquisition fraud where a company or a group of companies (missing traders) perform an intracommunity acquisition of goods from another MS and fail to pay the due VAT after reselling the goods to the local market. The other variant of the scheme is that the company declares purchases from other local missing traders and fraudulently reduces the result of due VAT. Having in mind that all the owners and representatives of the companies are strawmen, one of the few possibilities for police authorities to receive adequate information on people in the OCG controlling the scheme, is to contact the supplier from the other MS. Most of the times, the supplier is a well-established company with good reputation on the market, legal assets and Staff. Mostly, the people who order the goods from the supplier are participants in the OCG that controls the companies in the fraud. Receiving information from the supplier about them (names, emails, phone numbers etc.) is a helpful tool for police authorities in combating the fraudsters. Despite this, such data is almost impossible to receive through Europol. Most of the times, it is limited only to the company's registration info and details. It would be very positive if police units in different countries could gather more
information from their domestic companies on request of other MSs and this info is then transferred through Europol.

7.4 The example of Czech Republic

“Tax Cobra” is a joint team comprising of the Unit for Combating Corruption and Financial Crimes (ÚOKFK), the General Financial Directorate and the General Directorate of Customs. Team members work together to fight tax evasion and tax crimes, especially in the field of value added tax and excise tax. Representatives of the Tax Cobra operatively exchange information within legal limits, which makes possible to quickly identify tax frauds and to perfectly coordinate the individual proceedings.

The established cooperation among the Tax Cobra team members enables prompt identifying, detecting and combating of tax evasions. The Tax Cobra’s principal objectives are ensuring of the proper collection of taxes, recovery of illegally acquired financial means to the state budget and prosecution of offenders. The inspiration came from project Cobra in Slovak Republic.

- Tax Cobra is not a unit, it’s a platform for cooperation (= Tax Cobra has no seat/staff, no single head/headquarters); it is possible to count the manpower of Cobra with respect to an individual operation only, of course in Cobra operations are used e.g. S.W.A.T. teams that are not regular part of Cobra

- No new legislation needed – there were means of sharing information in existing laws, however the application of those ways of information exchange was difficult in real life before Cobra. The ministry of finance and of interior signed the agreement establishing Cobra team to improve the situation. More detailed rules of communications are set up in the agreement

- Two levels of Tax Cobra 1) central Cobra since 1.7.2014 - Unit for Combating Corruption and Financial Crimes – Tax Fraud Division, the General Financial Directorate and the General Directorate of Customs, 2) regional Cobras since 1.1.2015 – designated parts of economic crime divisions of regional police directorates, taxation offices and custom offices in respective region (after some time of successful functioning of so called “pilot project”, which in fact was later central Cobra, the method was launched to all over the CZ)

- Information exchange works on the basis of regular joint meetings once a month plus operative meetings when needed

- Examples of cooperation: the police gives the intelligence to tax administration to prevent the tax loss; tax administration gives the info about potentially fraudulent activities and helps to gather evidence; tax officers take part in house searches as consultants; joint police-
customs operations; coordination of administrative and law enforcement actions in order to prevent disclosure of such actions and to prevent the possibility of destroying of evidence or selling the property.

After one year Tax Cobra prevented almost 2 billion CZK of tax loss, over 200 people were charged with crimes. This form of cooperative investigation is more effective than single authority enquiries. Tax Cobra method is applied to carousel (MTIC) frauds quite often, recently we had e.g. cases CUPRAL and CUPRA – commodity copper and cathode copper, cooperation with Slovakia, case PŘEHRADA – prepaid phone cards, case SAXO – steel, case KENIZ – non-ferrous metal, Poland involved, cooperation with Slovakia, cases PRIBINA and KOTEL – frozen foodstuff, mainly chicken meat, Slovakia, case MASO (=meat) – chicken meat from Poland.

Joint training (seminars) for staff members from all three Cobra parts are being organised when appropriate, usually police officers are trained in tax law, customs officers in criminal law.

7.5 The example of Estonia

In Estonia the Tax and Customs Board performs the functions of an investigative body. Pre-trial proceedings are conducted by the Tax and Customs Board in the case of tax fraud and criminal offences involving violation of customs rules. Tax and Customs Board has access both to tax information and information on criminal proceedings as an investigation authority.

A tax authority may disclose information subject to tax secrecy:

- To preliminary investigators and prosecutors for the purposes of preventing detecting criminal offences, apprehending criminal offenders, investigating hearing matters subject to criminal proceedings, preparing the court hearing of matters subject to criminal proceedings, as well as for conducting security check
- Performing other duties for security authority

Disclosure of information concerning pre-trial proceedings is permitted in the interests of criminal proceedings, the public or the data subject if this, in avoidance of excess does not:

- induce crime or prejudice the detection of a criminal offence
- damage the interests of the Republic of Estonia or the criminal matter;
- endanger a business secret or violate the activities of a legal person;
- violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data.
Cooperation agreement between the Police and Border Guard Board and Tax and Customs Board sets supervisory and investigative cooperation and exchange of information.

- They can Cross-usage of shared databanks:
- Law enforcement authorities have access to a part of tax data in order to detect and prevent crime and to conduct criminal proceedings as prescribed by law
- Tax and Customs Board has access to the Police database.

More information about the Estonian solution can be found in Annex 3.

7.6 The example of Finland

There are no obstacles to exchange information between the tax administration and Customs in Finland. The police has power to obtain information from the tax administration to prevent and investigate tax crimes. Even though the police cannot freely give information to the tax administration such as criminal data/information, they can provide specific information on cases where there is suspicion on tax fraud/attempt.

Finland has established operational teams (Teams tracing criminal benefit,) for the purpose of more efficiently tackle organised fraud consisting of officers from the Police, Tax offices and Recovery and Customs, who have joint meetings on regular bases. They also have close contacts by installing tax officers in premises of the police (differs by region), and by having special contact persons for taxes in the National Bureau of Investigation (Central Criminal Police).

7.7 The example of France

In France, tax officers are bound to professional secrecy meaning that any information they encounter during their task are covered by secret. It is a severe penal offence to break this rule by revealing this type of information. For improving and enhancing collaboration between LEAs and fiscal authorities two concrete procedures to facilitate networking and exchange of information have been established in France

1. Multilateral networking : the VAT TASK FORCE

Early 2014, in order to tackle and fight any type of VAT fraud, the French fiscal administration (DGFIP) decided to set up a central committee which would gather administrations (fiscal, customs, anti-fraud...), LEAs (Judicial Customs – SNDJ, Judicial Police- OCLCIFF and
BNRDF, gendarmerie…), FIU (TRACFIN) and magistrates (National Financial Prosecutor - PNF - and Ministry of Justice) all specialised, dedicated or involved at any stage in the fight against these frauds or scams.

The Vat Task Force aims at:

- sharing information, improving early detection and enhancing coordination between all the relevant authorities;
- preventing huge fiscal losses and alerting officials a soon as possible (even abroad);
- assessing the results of the actions led by the committee.

At a national level, this committee meets every month and is structured in two configurations:

- A strategic level: global overview, legal supervision, trends, exchanges and contacts with EUROFISC officials and EUROPOL.

- Operational level: coordination of operations and conduct of parallel investigations (fiscal and criminal), direct exchange of information on targets, exchange of best practices…

At a local level, in every French department, at least one dedicated fiscal agent is in charge of collecting, identifying, enriching and reporting immediately any information that could be of the interest of the VAT TF. Hence this form of networking, which is a light and non-permanent organisation, has allowed to bring together all the authorities, civil, criminal and even justice, to improve the French answer to this matter

2. Bilateral networking : The example of the Directorate of National Fiscal Investigation (DNEF) and the National Judicial Customs Service (SNDJ)

Regarding the strategical and financial issues represented by fiscal, customs and economic offences, the National Directorate for Fiscal Investigation (DNEF) and the National Judicial Customs Service decided to sign a memorandum of understanding on 18 December 2014. VAT fraud is one of the major subject due to the amount encountered in this matter and the damages caused to the National and European budgets.

The purpose of this agreement is to strengthen cooperation between fiscal and criminal investigation units, keeping within the framework of the French law.

Concretely, both administrations agreed to:
- identify for DNEF: one dedicated liaison officer and for SNDJ: a central contact point (the analyst cell);

- share knowledge and exchange strategic and operational information, in order to react faster and more efficiently;

- set up common formation and training sessions;

- promote their common action towards the judicial authorities and particularly the PNF;

- conduct parallel investigations regarding the best practices and the easiest way to collect the necessary evidences…

A monitoring committee is responsible for following the process, assessing the results and proposing improvement. Thanks to this agreement, several judicial investigations on MTIC fraud have been started much earlier than before. This early reaction of the DNEF allowed SNDJ officers to investigate during the ongoing frauds and to identify all the fraudsters, buffers, straw men… and to arrest them. It has also improved the seizing of criminal assets.

3. Moreover, in order to identify, fight and to prosecute more efficiently financial and tax offences, France has also implemented a special jurisdiction: The French National Financial Prosecutor (PNF)

The French National public prosecutor office was created in December 2013. It has national jurisdiction over economic and financial crimes but on a limited and listed matters.

Thus the PNF has exclusive jurisdiction over stock market offences and shared jurisdiction with the other regional Prosecutor's offices, including Paris, and the JIRS for listed offences based on the criterion of ‘the very large complexity of the case’.

Bribery of foreign public officials, large and complex fiscal frauds, money laundering are examples of its ability to lead investigations and sue fraudsters and OCG.

VAT fraud or scam, and particularly MTIC fraud, is one of the field of expertise acquired by the magistrates of this quite new jurisdiction.

In this manner, France has created and offered a strong partnership to the fiscal administration and specialised LEA in VAT fraud. It facilitates exchange of information,
increases mutual comprehension and awareness and develops offensive strategies and skills. This partnership is all the more effective since it is accompanied by stronger powers derived by the Code of Criminal Procedure to fight criminal organisations.

7.8 The example of Sweden

The Swedish Secrecy Act states that tax secrecy applies to information concerning individual's personal or financial circumstances in the activities of public authorities, which relates to the determination of tax or pension entitlement income or which relates to the assessment of tax or otherwise relates to the determination of the basis for tax assessment. On the other hand, suspicions of criminal activity must be reported to the public prosecutor. The tax administration may also provide information to the prosecutor and police that is required in a preliminary investigation.

In the secrecy act there are rules that override secrecy.

- Information about suspected criminal offence may be reported by a government agency to the public prosecutor, police or any other authority to take action against crime. The requirement for this is that imprisonment is prescribed for the offence and that the authority has reason to believe that the sanction for the crime is more than a fine.

- Secret information can be provided to another agency if it is obvious that the interest in disclosure the information overrides the interest of the confidentiality. The provision must be applied restrictively. (the so-called general clause)

- Secrecy does not prevent information provided to an individual or to another agency / operational, if it is necessary for the authority to fulfil their activity. The provision must be applied restrictively.

- Confidentiality does not prevent information being provided to another authority, if the information is required by law or regulation.

An important part in the fight against organised crime is that authorities can interact and exchange information with each other. In such co-operation, it is sometimes difficult to assess whether classified information can be exchanged between the authorities. This is an obstacle for cooperation.

Therefore a new law has entered into force in Sweden in 2016 aiming to facilitate the exchange of information between authorities that cooperate to prevent or detect certain
organised crime. The information exchanged should be limited to only cases where the need for efficient exchange of information is extra strong and therefore particularly motivated.

The act applies to specially agreed cooperation between authorities to prevent, prevent or detect criminal activities such as:

1. Is of a serious or comprehensive nature, and
2. Is conducted in organised form or systematically by a group of individuals.

Within the framework of cooperation under the act, an authority shall, in spite of confidentiality provide information to another authority if necessary for the receiving authority's participation in cooperation.

7.9 The example of the United Kingdom

1. Domestic exchange of Information Teams

HMRC has developed a set of centrally agreed standards and processes in respect of its information sharing with external public sector bodies. These have been designed to ensure that any information transfers to UK or international partners are legal, secure and in accordance with the protocols specified by each party that are designed to protect each other's information. HMRC's data exchanges are independently assured on an annual basis.

Whilst many business areas within HMRC manage and undertake information exchanges with their own key external partners, the Risk and Intelligence Service (RIS) leads in the exchange of intelligence and also transfers between HMRC and the UK Law Enforcement Agencies. These include UK Police Forces, Home Office (Border Force and Enforcement Immigration) and the National Crime Agency. This is managed via a dedicated team who are involved in developing the overarching Memoranda of Understanding (MOUs) in conjunction with legal and policy areas, which sets out the exchange process between the LEAs and other public sector bodies.

Specific teams within RIS facilitate the actual day-to-day requests for HMRC information and where required, witness statements to enable LEAs readily adduce then department's information as evidence in their own investigations. RIS also acts as the gateway to receive and disseminate incoming intelligence from UK LEAs to the appropriate compliance areas across HMRC.

The exchange of information is supported by formalized cross agency strategies. This is further reflected in multi-agency groups which discuss key areas of cooperation and educate
on emerging threats. Cooperation is also enhanced by having officers from one LEA embedded in another.

2. **International Mutual Assistance Team (IMAT)**
HMRC also has a dedicated RIS team for coordinating and facilitating mutual assistance requests between HMRC and international LEAs (both incoming and outgoing) where the investigation is of a criminal nature. This covers everything in relation to HMRC’s functions on tax fraud and other customs related duties.

Each enquiry is made within the remit of the framework of domestic law, bi-lateral/multi-lateral treaties and agreements to which the UK has signed up or the relevant EU legislation and regulations.

IMAT ensure that that the legal frameworks are adhered to whilst also gathering the evidence and obtaining witness statements from a trader or individuals subject to the criminal enquiry and the material is gathered in an evidential format. This is done through an interviewing the relevant person either as a witness or suspect. Should there be a requirement for a more forceful measure (i.e. Production Orders and interviewing suspects), this will be done in conjunction with the Fraud Investigation Service (FIS) and National Crime Agency (NCA) where European Arrest Warrants have been issued to provide assistance.

The requests are broken down into two main categories which are:

i) Mutual Administrative Assistance requests (MAA), both incoming and outgoing. These originate from overseas Customs departments, Police or LEAs covered by the relevant agreements and

ii) Incoming Mutual Legal Assistance (MLA) requests. These requests are referred from the relevant central authority (for example HMRCs Solicitors Officer or the Home Office UK Central Authority) with the focus often being on direct or indirect tax matters including PAYE, MTIC, VAT, excise and money laundering offences. These requests usually relate to the provision of or need for intelligence and information. MLA requests from foreign agencies require information to be provided to an evidential standard. This often involves the team visiting witnesses, interviewing them and drafting statements.

Having a designated body to fully coordinate domestic and international exchanges of information between LEAs provides HMRC the best opportunity to successfully facilitate any request. Because these dedicated teams are fully versed in the relevant gateways and framework for the exchanges, this ensures that any queries regarding the legality and process of the exchanges are handled by experts in this area.
3. The creation of Fraud Investigation Service (FIS)

In 2015, HMRC brought together the work of civil and criminal Organised Crime teams into a new directorate called the Fraud Investigation Service (FIS). The goal of FIS is to ensure that the most appropriate and earliest intervention, whether civil or criminal, is undertaken against companies or individuals perpetrating fraud.

Teams are collocated (or in the process of being collocated) under joint command structures to facilitate greater opportunities for swift and effective interaction between civil and criminal experts. This does not mean that every case or even the majority of cases are worked jointly. However, because there is a clearly defined “triage” process which ensures cases are discussed, all possible civil and criminal interventions are considered. The process and structure directly lends itself to the facilitation of information sharing and cooperation. This is made easier in the UK by virtue of HMRC being both the domestic tax authority and LEA responsible for criminal investigations.

HMRC have processes in place to ensure all exchanges adhere to the correct legal guidelines/gateways for the exchange of data. Where there is any doubt or concern that criminal cannot provide civil or vice versa, HMRC are able to consult with the relevant legal teams and positively resolve the matter prior to any direct exchanges.

Chapter 8: Success stories

8.1 The United Kingdom approach - joint civil and criminal interventions

Where appropriate, HMRC have and continue to progress joint criminal and civil cases. These cases are not necessarily straightforward but if required, joint action can and will be deployed. Ensuring that this is not a “double jeopardy” approach where HMRC try to have two attempts at intervention is a significant part of this work. However, it has been proved that a civil action can support criminal action and that they are not in fact mutually exclusive when worked correctly.

Success in jointly worked interventions/cases relies upon:

- Use of expert operational teams who understand the fraud and interventions being used (civil, criminal, legal, insolvency, accountants etc.)
- Continuous and regular dialogue between parties within the agreed and legal frameworks
- Use of legal experts to ensure the correct process is followed and external solicitors/legal counsel where appropriate to provide specific advice.

- Where appropriate, utilising “firewalls” between the civil and criminal teams. This is either a person or a team who have can work between the two sides of an investigation, to ensure intelligence and sensitive material was only available to the relevant parties from civil and did not endanger the criminal case/evidence. They also facilitate the meetings and dialogue which are key to the successful outcome of cases.

- Small and controlled teams with set parameters

- When problems arise, the ability to call upon the relevant “experts” to discuss and find resolution through continual dialogue.

An example of such work can be seen in the first civil and criminal case worked concurrently with civil and criminal intervention coordinated for maximum impact.

Civil: two companies whom were subject to on-going monitoring of transactions chains and who were trading in a new high risk intangible commodity (VoIP and Airtime). The directors/those behind them had been subject to several interventions and assessments yet continued to come back and attack the UK exchequer (they had been linked to in excess of £40m denials of input tax). Civil teams needed to change their approach to have a more significant impact.

Criminal: an on-going criminal enquiry was already underway into the key players within this fraud who were part of a well-established OCG. The fraud was based upon an offset model where the money that would have been payable to the UK exchequer (output tax due on physical commodities trading) was offset by fictitious trade in the intangible products.

A specialist “firewall” officer was tasked with bringing the two parties together to discuss the possibilities of joint action.

The principles outlined above including use of legal teams, firewalls, and relevant discussions led to:

- The arrest of in excess of 20 individuals across the UK and the EU
- Seizure of significant funds in worldwide bank accounts
- The High Court in London agreeing to the Provisional Liquidation of five key companies which were the main vehicles used to perpetrate the frauds.
- Significant damage to the OCG and the wider threat from this intangible sector
- Reporting up to Ministers and the heads of all civil and criminal teams as a new way of working.
Such cases demonstrate that when approached correctly, civil and criminal teams can exchange information and enable joint interventions. It also proves that a criminal investigation does not preclude a concurrent civil enquiry. However, due to the legal systems in each country, it is down to the individual authority to establish exactly how this process works.

8.2 Belgium - the new approach

In Belgium, the VAT carousel fraud is a major concern and various means have been developed both internally and within the framework of international cooperation in the fight against fraudulent constructions. In this context and in view of the reduction of the damage suffered by the Treasury in recent years, the integrated and coordinated approach, which was launched in 2001, proved to be fruitful.

It appears therefore that an effective fight is only possible if it meets several conditions:

- be based on a in depth knowledge of the phenomenon to fight;
- be based on an active policy staff in which each concerned department is involved;
- be based on a coherent set of laws and regulations;
- benefit from a network of information exchange, at least at European level;
- use modern automated control means (datamining) for early detection of risks;
- and finally, have a quick and appropriate reaction.

In just two year the implemented measures had a strong impact on the fraud phenomenon:

- Big drop in term of defrauded VAT amounts (€ 1.1 billion in 2001, € 232 million in 2002 and € 159 million in 2003);
- Better circulation of interdepartmental information but also within departments;
- Quick and easy access to information as OCS acts as central contact point;
- Discouragement of the organisers of the fraudulent chains and mistrust of the straw men now thinking twice (less profit to be expected, while the chance of getting caught is huge);
- Development of a dynamic risk analysis model for automated detection of the fraudster;
- An international "aura" in term of strategic and tactical analysis methods.

In a word, success generated success and the drop in defrauded amounts was exponential as was their increase in the past.

More detailed description of the “Belgium success story” is found in annex 2.

**Chapter 9: Conclusion and recommendations**

**9.1 Conclusions**

MTIC VAT fraud is often linked with international organised criminal structures that requires multidisciplinary approach to effectively combat the fraud. Despite the various measures taken in the MS, the scale of the VAT loss due to organised VAT fraud remains substantial in the EU. Organised MTIC VAT fraud can also contribute to finance other types of serious organised crimes, which are a threat to the society. This demonstrates that additional measures to combat the fraud need to be taken.

Various agencies may be involved in the prevention, detection, investigation and prosecution of MTIC VAT fraud in the MS. Which of the agencies has responsibility for specific actions can also differ. The lack of cooperation between the agencies can be a major contributory factor in some MS efforts to tackle the fraud. In most countries, the tax administration and LEA are the key agencies responsible for combating MTIC VAT fraud. The necessity to enhance cooperation between these administrations is therefore essential.

The findings of this report establish that the main obstacles for cooperation between LEA and tax administrations, for successfully fight VAT fraud in the EU, are:
• The tax secrecy law in the MS, i.e.
  - when rules overriding the secrecy law only apply in case of criminal investigation or strong suspicion of fraud in the MS.
  - other rules overriding secrecy are strictly open for interpretation and therefore not clear
  - when relevant information cannot spontaneously be provided to LEA

• The various agencies in the MS fighting VAT fraud and the lack of cooperation between them

• Lack of knowledge about organised MTIC VAT fraud.

• Lack of possibility to share information obtained through the international information exchange channels between tax administrations and LEAs

• Lack of cooperation between international bodies and networks

The purpose of tax secrecy law in the MS is to protect details about the identity and personal circumstances of taxpayers in general, but due to the necessity of sharing data between LEAs and tax administrations, many MS have set up legal possibility of lifting this secrecy when there is strong suspicion of tax fraud or an ongoing criminal investigation.

In most countries, usually the tax administration will initially detect and investigate the VAT fraud. During the investigation process, until the suspicion of fraud is established, it can be difficult for the tax administrations to evaluate whether classified information can be shared with LEAs, although the LEAs might have valuable information for the tax administration for their investigation. Therefore, information related to VAT fraud is often shared with LEAs considerably late after detection, which consequently can result in additional VAT losses for the MS treasury.

MTIC is an international cross-border fraud that requires cooperation and swift exchange of information between the MS concerned. On international level, tax agencies and LEA combating VAT fraud in their MS have legal frameworks for exchanging information between corresponding agencies in other MS. These channels are considered by the MS to be
effective, but the information can normally not be exchanged between LEA and tax administrations on national level unless there is an ongoing criminal investigation.

If established, by sharing information with other tax administrations in the EU via SCAC or Eurofisc, that the investigated company is a conduit company involved in a fraud committed in another MS, there often will not be a criminal investigation initiated in the MS of the conduit. Therefore, information about the involvement of the conduit company in the fraudulent transactions will often not be exchanged with LEA or consequently Europol. However, the information provided to the tax administration in the MS where the fraud takes place, can be used by LEA in criminal investigation in the receiving MS which can request legal assistance from the LEA in the MS of the conduit which can take considerable time.

Early warnings about suspect companies in MTIC fraud and their transactions are frequently exchanged through the Eurofisc network followed by feedback from the receiving MS. The information exchanged through the network is accessible to all participating MS’s, but as for now, there is no joint analysis of the data or official database containing Eurofisc information. However, this will probably be the case when the new working field 6 on TNA in Eurofisc will be operational.

The information exchanged through Eurofisc network is often followed up by SCAC requests in order to establish evidence for tax assessment and possible fraud, but the channel cannot be used only for collecting information for criminal investigations.

The information exchanged between tax administrations via the Eurofisc network and/or via SCAC related to VAT fraud, is usually shared between the MS at an early stage after detection. However, it is usually not until the information has resulted in a criminal investigation that the information can be shared with LEA to Europol. Therefore, information exchanged via the Europol SIENA channel is often not up to date and not complete.

However, Europol is involved in combating only the most serious and sophisticated cases of VAT fraud. According to Europol officials, only 2% of the OCG’s in MTIC fraud are responsible for 80% of the MTIC fraud. Eurofisc WF 6 for TNA could be extremely useful to select those 2% of OCG’s responsible for the highest MTIC fraud. Therefore, it would without a doubt benefit Europol to gain access to Eurofisc information, limited to the appropriate selection of cross-border networks of fraudulent VAT transactions for analysis purposes. Europol does not have independent investigative capabilities and is not in charge of operational law enforcement activities. This remains the responsibility of EU Member States.
The tax administrations and the law enforcement agencies in EU have distinct legal frameworks to conduct joint investigations in two or more MSs in a coordinated way, MLC and JIT. MLC is a legal instrument provided for tax administrations to co-ordinate control of one or more related taxable persons, physical or legal, in two or several MS where the control has a common or complementary interest. MLC’s are used for both direct and indirect taxes and not only in relation to fraud. LEA’s have the possibility to jointly carry out criminal investigations in one or more of the involved countries within a JIT framework supported by Eurojust. Investigations related to OCG’s conducted within these frameworks are not coordinated between tax administrations and LEA. MLCs often takes place before a JIT is launched, but the results of an MLC cannot be shared with LEA’s, Europol or Eurojust.

The purpose of the EMPACT policy cycle is to enhance cooperation between MS law enforcement agencies, EU institutions, EU agencies and for more efficiently targeting the most pressing criminal threats facing the EU including MTIC fraud. However, the information exchanged between tax administrations and LEA on national and international level, even within the EMPACT MTIC, is bound by applicable secrecy rules in the MS. Therefore, although if the purpose of the EMPACT MTIC is to enhance cooperation between all agencies involved on national level, the secrecy rules and lack of structures for cooperation can be an obstacle.

Sharing information and knowledge is a necessity for efficiently fight MTIC fraud, but due to number of reasons, the various agencies involved in combatting the fraud on national level may fail to collaborate fully. Many MS have therefore recognised the need to establish special units, operational teams or networks for closer cooperation and sharing knowledge between relevant agencies to combat OCG’s, which have given positive results as further described in chapter 7, Best practices.

9.2 Recommendations

Based on the conclusion of this report, recommendations for closer cooperation between tax administrations and LEA’s are dived into two groups, legal (political) and operational structures for more effective cooperation.

1. Obstacles, caused by legal restrictions preventing an agency to obtain access to significant information, could be solved by:

   • Implementing exception in the tax secrecy rules in the MS permitting the tax administration, LEA and other relevant agencies in spite of confidentiality, to spontaneously share information related to MTIC VAT fraud and OCG.
• Establish a legal base for tax administrations to communicate serious MTIC VAT fraud cases to Europol focal point MTIC.

• Establish legal framework for joint investigation team on international level to investigate tax fraud, involving tax administrations, LEAs and other relevant agencies.

2. By bringing the agencies responsible for combatting MTIC fraud together, there are greater opportunities to identify the most effective solution to addressing the fraud

• Establish special platforms for increased cooperation between experts in the fight against VAT fraud from all relevant agencies, based on best practices in chapter 7:
  - Develop contacts between the key experts
  - Coordination centre, networks or teams
  - Cooperation agreement
  - Regular meetings
  - Joint training sessions
  - Secondments of officers and co-location of personnel
  - Joint investigation teams
Annexes

Annex 1 - Key agencies in combating tax crimes and other financial crimes in Austria

The Federal Ministry of Finance Anti-Fraud Unit is responsible for the detection of different patterns of tax fraud. Moreover this unit is in charge of developing strategies to prevent tax fraud including international cooperation and coordination.

The Predictive Analytic Competence Centre (PACC) supports this unit. Its main responsibilities are the development of risk analysis programmes, filtering out risk indicators, risk grading of enterprises and global analysis for detection of irregularities and tax evasion.

The financial police is a unit of the tax administration in charge of tax supervision conducted through on the spot controls, establishing the bases for tax collection, and assessing and collecting taxes. This unit also investigates cases of illegal employment.

Tax offices carry out tax audits. If there is a suspicion that a tax offence was committed the tax official will submit the case to the fiscal penal authority which is part of the tax office responsible for the application of the Fiscal Penal Code. The fiscal penal authority works also as judicial police on behalf of the public prosecutor in criminal tax offences and can ask the federal tax investigation service for support. With respect to non-criminal tax offences, the fiscal penal unit of the tax offices is competent to carry out investigations and apply penal sanctions.

The federal tax investigation unit is competent for matters of investigation in cases of organised and systematic tax fraud under the supervision of the anti-fraud unit of the Federal Ministry of Finance. Within the federal tax investigation unit, the Central Liaison Office (CLO) is responsible for international mutual assistance in any tax matter.

The general benefit of a tax investigation service working as judicial police on behalf of the public prosecutor is the high qualification of its investigators having undergone a full tax auditor’s training. Further advantages are that this federal organisation has budgetary and personal sovereignty, so it can allocate resources quickly when necessary, and that this unit is not involved in the day-to-day business of a tax office, so the teams can concentrate on
Customs administration is part of the joint tax and customs authority under the federal Ministry of Finance. There is one unit responsible for anti-fraud and enforcement regarding taxes, customs and excise, including international cooperation. There are nine customs offices throughout the country. Each customs office includes at least one investigations team. These teams investigate all kinds of customs fraud, including: the smuggling of cigarettes and other goods; illegal cigarette manufacturing; and the illegal transportation of mineral oil, alcohol and other excise goods. Customs investigators serve as judicial officers for the public prosecutor in cases of criminal customs investigations. The customs administration is also responsible for monitoring cross-border cash movements.

Police
The Federal Bureau of Criminal Investigation is located in the Federal Ministry of the Interior, and is responsible for investigating financial crimes other than tax crimes. In cases of social fraud (economic fraud linked with evasion of payroll taxes and social contributions), investigations are carried out in close cooperation with the tax investigation service.

Prosecution authority
The public prosecutor’s office is responsible for conducting prosecutions of criminal tax offences. Tax investigations are conducted by fiscal penal authorities within local tax offices on behalf of the public prosecutor. A tax offence is considered a criminal offence one if the evaded tax exceeds EUR 100,000.
A special public prosecutor’s office for corruption and economic fraud was established with responsibility for the investigation of fiscal law felonies concerning social fraud, companies with share capital exceeding EUR 5,000,000 or where the damage exceeds EUR 5,000,000.

Financial Intelligence Unit
The Austrian FIU is established within the Federal Bureau of Criminal Investigation, within the Federal Ministry of the Interior (Police). Its main tasks comprise receiving suspicious transaction reports concerning possible money laundering or terrorist financing, analysing these reports and initiating investigations.

Being a unit within the federal police, the FIU is able to access various law enforcement databases, making its activities more speedy, efficient and effective. FIU are responsible for conducting analyses of possible money laundering and terrorist financing, which may be used by law enforcement agencies in combating crime. These
analyses may themselves be informed by information obtained by the FIU from the police or prosecutors, either where any agency has obtained evidence of a possible predicate offence, or where it holds other information relevant to the FIU’s work. The FIU is able to share information spontaneously with the tax administration - especially in cases of supposed tax-fraud as a predicate offence and is obliged to give information on request. The FIU co-operates closely with financial regulators.

Financial regulator
The job of supervising the financial markets is carried out by three institutions. In outline form, the tasks are as follows:

- The Federal Ministry of Finance (BMF) develops and defines the legislative framework, which is then adopted by the Austrian parliament (legislative process).

- The Oesterreichische Nationalbank (Central Bank of the Republic of Austria) monitors the stability of the financial market at a macro level. It is responsible for the supervision of payment systems, and is also involved in the supervision of banks.

- The Financial Market Authority (FMA) represents an integrated supervisory institution. The FMA supervises banks, insurance undertakings, Pensionskassen (pension companies), corporate provision funds, investment firms and investment service providers, investment funds, financial conglomerates and exchange operating companies. The FMA monitors and checks the individual financial institutions and participants in the financial markets (micro level). As supervisory authority the FMA supervises compliance with legal provisions and due diligence obligations in the area money laundering and terrorist financing and takes appropriate steps in case of violation of these responsibilities.

All three institutions cooperate closely, and form the Austrian system of supervision of the financial market but there is a prohibition on financial regulators providing information to the tax administration for purposes of administering taxes.

Opportunities of the Austrian model
Austrian tax administration administers tax and customs as a single agency and has responsibility for conducting investigations, under the direction of the public prosecutor.
This directly influences sharing information held by the tax administration for the purposes of assessing taxes with tax crime investigators. That means that tax/customs crime investigators have direct access to tax data.

Attempts were made to allow reciprocal direct access to information between the tax and customs arms of the administration. In practice it proved difficult for one division to conduct effective data searches of the other division’s databases and obtain useful information. In daily life the organisations support each other by spontaneous information or answering requests for information.

The tax administration may not provide any information spontaneously to the police or public prosecutor investigating non-tax offences, but may provide information on request. As tax administrations holds significant information about taxpayers which is often valuable to police and public prosecutors conducting criminal investigations.

But anyway officials in the tax administration are required to report suspicions of possible non-tax offences to the appropriate law enforcement authority.

Where a criminal investigation has commenced, tax administration is obligated to provide the police with any information it holds relevant to the case. Otherwise, information held by the Austrian tax administration is covered by tax secrecy provisions and cannot be shared with law enforcement.

The police or public prosecutor may spontaneously provide information to the tax administration where they obtain information relating to a possible tax offence and may share this spontaneously with tax crime investigators, but is not under an obligation to do so.

**Measures used for advanced cooperation**

**Joint investigation teams**
these enable agencies to work together in an investigation. In addition to sharing information, this enables an investigation team to draw on a wider range of skills and experience from investigators with different backgrounds and training. Joint investigations may avoid duplication arising from parallel investigations, and increase efficiency by enabling officials from each agency to focus on different aspects of an investigation, depending upon their experience and legal powers. In some cases, gateways for sharing information are wider when agencies are engaged in a joint investigation than they would be in other circumstances.
In Austria, the public prosecutor may authorise joint police and tax investigations into major cases of corruption and social or economic fraud. Joint investigations may also be authorised between police and customs.

**Secondments and co-location of personnel**

this is an effective way of enabling skills to be transferred while allowing personnel to build contacts with their counterparts in another agency. Seconded officials share their skills, experience and specialist knowledge while participating directly in the work of the host agency. Countries report that arrangements to co-locate and second staff have wider benefits for inter-agency co-operation, by encouraging officials to be more proactive in engaging with counterparts from other agencies and improving the effectiveness of co-operation that does take place.

- In Austria, a co-operation agreement between the tax administration and federal prosecutor’s office on economic crime and corruption provides for one person per year from the tax administration’s large taxpayer’s unit to be seconded to the prosecution service.

- Furthermore due to an Agreement of the Minister of Finance and the Minister of Justice the prosecutor office has the right to call for one auditor’s annual working capacity for complicated cases.

- In Austria, a liaison tax officer is posted to the FIU for 2-3 weeks per year.

**Regular meetings and training sessions**

are also held including officers from different agencies. This enables staff to develop and maintain personal contacts and have proved effective in improving the efficiency of joint working and information sharing. Inter-agency meetings to share strategic information relating to trends in financial crime, guidance on investigative techniques and best practice in managing cases, as well as cross-agency training sessions and conferences.
Annex 2 - Best practices in the fight against fraud in Belgium

Obstacles/opportunities and practical solutions: BELGIUM

In Belgium the Public action is carried out by the Prosecution.

Since the introduction on 01/02/1987 of the so-called “charter of the taxpayer” police and tax officers are no longer allowed to work together. Under penalty of nullity of the procedural act, tax officers in charge of the VAT, can normally only be heard as witnesses.

There are some exceptions for tax officers seconded to the Prosecution or to the Federal Police.

A. INTRODUCTION

Any approach to fraud raises several questions. How was this phenomenon considered before?
What initiatives have already been taken? Should we see a change in mentality?
Will an innovative approach to fraud have a wide public acceptance? Should we focus on pro-active action or on repressive measures? Are the political, judicial and administrative authorities convinced of the need for fundamental changes? Do the different administrations have the necessary equipment, and how can they perpetuate their expertise?

Nevertheless, an effective fight against fraud is based on a consistent set of laws, regulations and specific provisions related to modern means of control and active personnel policy.
But this arsenal of means must also take into account the protection of privacy.
Fraud of any kind as it is, is by its nature a fashionable topic that is constantly evolving in terms of opportunities, the introduction of new products, market adaptation and social perception. Each technological, legislative and fundamental innovation automatically creates inventive fiscal behavior in a specific population.

Indeed, these parties have not only ingenuity but also demonstrate great flexibility and an ability to adapt to changing circumstances. If necessary, they change completely their field of activity and structure as their only goal is optimizing their illicit profits.

Indeed, national, international, deontological, ethical or procedural rules do not constitute an obstacle to fraudsters and certain categories of advisors. In addition, they benefit from any confrontation with the authorities. For cons, investigators and auditors must strictly observe the regulations in force, starting with the preparation of an investigation or audit and for the duration thereof. The result is that the authorities suffer from the start of a "handicap".

An integrated anti-fraud strategy involves firstly a carefully selection of the cases in the appropriate timing. It goes without saying that good priorities must be set not only in the selection but also as regards the facts to be examined.

We speak of risk management in the most varied fields. So security plans, health, restructuring, insurance policies, training plans and internal audit procedures, among others, have specific tags to identify as quickly as possible the likely risks in order to minimize the damage. In addition, some national and multinational policy documents in recent years highlight the need to apply modern techniques of risk analysis in the fight against all types of fraud.

B. AWARENESS

Like many other forms of criminality, the tax fraud approach was also characterized in the past by a total lack of vision and coordination between all relevant services.

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18 For example, the development of electronic commerce and telecommunications
19 For example, the introduction of the « Quick Reaction Mechanism ».
20 For example, the abolition of internal borders on 1 January 1993
The Inquiry Commission of the Senate on organised crime in Belgium points out in its final report of 8 December 1998 that too many services stick to their own mission without worrying about the essential elements such as cooperation, assistance and data exchange.

The lack of consultation and transparency between the various units can only result in a loss of revenue, a waste of energy, a frustration for investigators and a general satisfaction for fraudsters. The main recommendation of this Commission is therefore a multidisciplinary approach to organised crime.

Granting immediate effect to the conclusions of that Senate commission, the Ministers of Justice, Finance and Home Affairs have signed on July 20th, 2000 an interdepartmental Protocol on the fight against carousel fraud.

This initiative has undoubtedly been a turning point in the fight against organised VAT fraud.

C. PROTOCOL FINANCES-JUSTICE-HOME AFFAIRS

On November 6th, 2001, in front of a representative audience of high officials from Finance, Justice, Police and journalists from the written press and television media, the first tax officers join the OCDEFO “Economic and Financial Department” of the Federal Judicial Police. It was agreed to actually provide 12 tax officers (16 at present), to this central office by a special selection procedure.

These tax officers are integrated in mixed teams with police investigators. It should be clarified that, since the law of 10 April 2003, the tax officers are made available to the DJF Directorate of the Federal Judicial Police - OCDEFO Service – for the period of their presence in the federal police. For the last 2 years the name of this unit was changed in DJSOC. They bear the quality of “OPJ” (judicial police officer, auxiliary to the public prosecutor), and have meanwhile been specially trained for this purpose, within the Federal Police Academy.

Since 2003, the quality of “OPJ” allowed quickly to maximize the operability of these officers in the context of search and ascertainment of criminal offences and that, as regards of both tax fraud and other economic or financial crimes. Indeed, they are divided into different sections (VAT, other organised tax fraud and money laundering).

Henceforth they are actively involved, along with their colleagues “OPJ” from Police in operations, interrogations, house searches and other duties. Like their colleagues from Police, the tax officers “OPJ” have their own investigations to conduct or support their direct colleagues
from Police, but they can also be requested to support Police in the federal judicial districts and even, but more occasionally, local Police. In the context of these support missions, their skills and experience were also quickly unanimously acknowledged and appreciated.

The only limit to their action remains recourse to force and violence mastering (arrests, armed operations,...) which remain police issues. Indeed, although bearing the quality of “OPJ”, they have not so far been endorsed with the legally required quality of Police officer for the use of public force, when other methods of action prove ineffective and that “force must remain in the law”. But in everyday life, this restriction does not affect the fact that, in this framework, their know-how, their specific tax acquis and experience will quickly make them valuable partners in investigations which may be conducted even more rigorously and more efficiently.

Differentiation of tax officers at the federal police - the tax officers of the VAT carousel support cell (OCS)

Apart from tax officers bearing the quality of “OPJ”, it turned out that it was equally important to establish a mixed support cell which would not be operational but would aim to provide useful information and analysis to investigators by being in some way - while remaining within the limits of the law - an "interface" between on one hand the FPS Finance, on the other hand police investigators and judicial authorities.

Due to their mission, the tax officers in VAT carousel support cell (abbreviated to OCS) have access to all databases of FPS Finance. It is important to note that, to act legally, the tax officers in the support cell are not seconded to the federal police. They are physically installed in the premises of the Federal Police but remain fully fledged Finance officials and are as such, subject to the charter of the taxpayer. They draw up no judicial reports, do not attend hearings, or searches, or any other investigation duties.

The diagram below, in which the wide line down the middle of the diagram symbolizes the charter of the taxpayer, gives a fairly accurate view of the above. The “OPJ” tax officers and police work to the left of this line, tax officers from OCS to the right.

This clear division of tasks was also endorsed by the COL1 Circular / 2005 of the College of General Prosecutors.
The "Coordination Structure"

In order to set up the tasks of the OCS and to ensure its supervision, a coordination structure was put in place from January 8, 2001. It consists of:

For tax administrations (according to ranks in force in 2001):
- The Administrator General of Taxes or a person delegated by him
- The Director General of the administration of the ISI or his representative
- The Director General of Customs & Excise or his representative
- The Director General of Recovery or his representative
- The Director General of AFER (Corporate & Income Tax and VAT) or his representative
- A member of the CAF (Anti-Fraud Committee) Secretariat

For judicial authorities (prosecutors and Federal Police):
- The Federal Magistrate in charge of financial crime
- The Support Magistrate for economic crime
- The Director of the Economic and Financial Department of the Federal Police.

Attend also the regular meetings of the coordination structure:

- Representatives from the OCS
- Representatives from DJF/OCDEFO

The role of this structure includes:

- Give the necessary impulses for achieving the strategic and operational analysis by the support cell;
- Ensure monitoring of the protocol;
- Evaluate the recommendations and investigative project proposals and differentiate those covered, in administrative matters, by the jurisdiction of the tax authorities of those covered in criminal law, by Public Ministry.

**Establishment of the VAT carousel support cell**

The formal establishment of the OCS took place on 24 October 2001. As shown, the respective processes of establishing a VAT carousel support cell and seconding tax officers to the Federal Police were conducted almost together and were completed almost simultaneously.

The VAT carousel support cell (abbreviated to OCS) is a multidisciplinary body composed of members of the FPS Finance and the Federal Police (OCDEFO). It is established on the basis of Article 6 of the aforementioned Protocol.

This is a purely administrative cell. It is therefore not an operational unit nor for the police nor for tax authorities.
Its added value compared to other existing structures at the time comes precisely from the way available information is analysed and transmitted to the competent services. It conducts therefore no tax audit and has thus no direct contact with taxpayers and their advisors.

Specifically, the OCS has established since its start a mapping of the carousel fraud phenomenon in all its aspects, it developed automated methods for detection as well as evaluation techniques. But above all, the OCS convinced all departments of the need for a new approach to carousel fraud, both at preventive and at repressive level.

D. ROLE OF THE VAT CAROUSEL SUPPORT CELL (OCS)

The Protocol defines in rather laconic terms the objectives to achieve:

- Stop ongoing carousel fraud,
- Prevent new carousels.

It was undoubtedly an ambitious program, but everything was to be done. Indeed, despite some laudable initiatives taken previously, there was no question of a truly integrated strategy involving, on the one hand, all of the units and defining on the other hand, true risk profiles based on reality.

Without daring to argue that carousel fraud has at present been completely eradicated in our country, we can still move forward without fear, nineteen years after the political awareness of the disastrous consequences of this fraud; it was in 2000 and 2001 that the revenue losses experienced their heyday. They amounted at that time to about 1.1 billion € and the available data show that this phenomenon grew exponentially since 1986.

EXPLORATION STAGE

To determine the direction to take, it was essential to know where we came from and where we actually were. All tax auditors and judicial investigators knew the phenomenon of carousel fraud. But each gave his own definition and each had developed its own method to explain its operation. The only information available was related to the volume and the modus operandi of this kind of fraud.
Upon its installation, the VAT carousel support cell (abbreviated to OCS) conducted an in-depth analysis of the phenomenon of carousel fraud. In concrete, it examined 1519 taxations in the field of carousel fraud conducted by the tax administration (ISI) over the years 2000 to 2003. 320 tax files represented 92% of the amounts involved. This meant that less than 20% of cases accounted for 92% of the defrauded amounts.

Eight modus operandi were identified and analyzed in depth. All cases of large VAT fraud could exhaustively be classified into one of these eight categories. This classification is used today to describe carrousel protagonists.

- MO 1: the missing trader,
- MO 2: the cross-invoicer,
- MO 3: the buffer,
- MO 4: fictitious IC-deliveries,
- MO 5: conduit companies,
- MO 6: fake invoices,
- MO 7: fictitious export,
- MO 8: margin fraud.

These basic typologies are now utilized by not only the tax authorities and law enforcement of our country but also those of the entire European Union. This helped to make a huge step forward. All European units dealing with carousel use now the same language, which is undoubtedly a benefit to a structured international approach.

**CHARACTERISTICS OF THE FRAUD**

The analysis performed on the 320 Carousel files revealed a lot of information on fraud typologies, such as:

- flows of transactions,
- physical flows of goods,
- financial movements,
- geographical distribution based on the typology,
- sensitive sectors,
• linguistic regimes according to typologies,
• …

Description variables highlighted by this study, in particular flows of transactions, which form the basis of profiles for datamining, were fundamentally different from traditional indicators used previously, such as:

- simplistic layout of invoices in relation to the importance of the transactions,
- sales at loss,
- amazing directors for companies not fulfilling their fiscal obligations,
- absence of any accountancy,
- sudden and inexplicable raise of turnover,
- unexplainable shift of national markets to international markets,
- …

These new features have been converted into structured data that can be used directly as such in genuine risk analysis. Automated detection of carousel fraud became a fact.

**MULTIDISCIPLINARY PLATFORM**

The authorities dealing with VAT carousel fraud have followed their own strategy for years. But they didn’t take into consideration the crucial cooperation and awareness, both at interdepartmental and international level.

The support cell is not an operational police service nor is it an audit section of the Special Tax Inspectorate. The added value of the cell lies in the way it analyses and communicates information to the appropriate services. It does not start investigations of its own, allowing it not to be overwhelmed by cases and remain a non-operational administrative cell.

Where positive cases are identified, a distinction is made between:

- When the analysis highlights an offence, the judicial coordinator communicates the information to the head of the VAT section of OCDEFO (Federal Police DJSOC-OCDEFO). The information are supplemented by the data available within the police services. An initial report is then drawn up and sent to the competent Prosecutor.

- When the analysis tends to prove there is no offence but only fiscal administrative infringements, the data is sent by the fiscal coordinator to the FPS Finance. The
Administration of the Special Tax Inspectorate is informed and requested to plan an administrative audit as soon as possible.

- If offences come to light during this audit, the regional Director in charge is committed to give notice immediately to the competent Prosecutor as foreseen in article 29 §2 of the Code of Criminal Procedure (see also article 8 of the Protocol).

**THE NEW APPROACH**

The saying "time is money" applies more than anywhere else in the field of fight against organised VAT fraud. The speed for reacting is decisive on two levels. Firstly, it limits the financial losses and, secondly, it allows the investigators to catch red handed criminals.

At the time of a focused intervention, there is money on the accounts, the goods are being shipped and invoices are issued. This is a situation quite different from the approach of a case investigated for years allowing the organiser to enjoy in peace his booty hidden in a tax haven. It is precisely the development of early detection that enables prompt reactions with the aim to put an end to the fraud committed (or considered).

This radical change of strategy has induced an immediate effect: give new motivation to investigators. Nevertheless, for the fraudster the expected profit is highly reduced.
It is obvious that the modernization of computer systems and a faster availability of key data have largely contributed to the success. But what is and remains essential is to apply new tools such as data mining and to develop European information networks working almost in "real time."

Let it be clear, however: the fight against carousel fraud in our country is not definitively won. Indeed, continued vigilance with regard to new mechanisms and the immediate development of an adequate reaction remains therefore without restrictions needed.

This strategy has allowed:

- to counterwork the limits of administrative procedure in investigations of this type: late intervention, impossibility to prove collusion and therefore go to track the organiser, almost no recoverability, ...
- and secondly, to address the judicial investigations in a new light:
  - by identifying precisely the fraud (forget the sprawling investigation)
  - by focusing on “flagranto delicto” through a rapid intervention
  - by clarifying the difficulties related to tax issues
  - by taking action on the assets of the fraudsters
  - by aiming the peak of the pyramid

The OCS is essentially a central point of access to information and a place for analysis.

The support cell (OCS) can be accessed by police forces. In this case, the data is provided on presentation of the letter of the requesting magistrate (as reminded in Article 11 of the Protocol).

In some cases, the OCS suggests administrative improvements that could lead to a more effective fight against organised VAT fraud (as provided for in Article 9 of the Protocol). A key success factor also involves the designation of local contact points, both in the police units and in the ISI Inspections.

The establishment of this multidisciplinary cell, consisting of a reasonably limited number of motivated staff members with extensive field experience, proved to be really effective with time.
This flexible structure based on the right priorities is ensuring a quick reaction. Moreover, centralizing all information on a specific topic in the hands of a specialized team contributes to the optimization of their use.

The educational aspect also plays a significant role at the launch of new working methods. The support cell has therefore taken various initiatives in this field. Concretely, the OCS has organised seminars and workshops to explain the new approach to the ISI, to customs, to financial sections of the police districts and the anti-money laundering unit (FIU). The objective was to further expand the expertise of these officials.

**SOURCES OF INFORMATION**

The VAT carousel support cell (OCS) collects information that can arise from:

1. VAT returns and other fiscal returns
2. Fiscal databases
3. National and IC recapitulative statements filed by taxpayers
4. Results of fiscal audits including VAT audits
5. International administrative cooperation
6. Reports from the FIU (Financial Intelligence Unit)
7. The Federal Police
8. The inspections of the ISI
9. The Prosecutors (see article 8 §2 of the Protocol)
10. The FPS Mobility (Direction Registration Vehicles)
11. The database OCS which gather the memory of the fight against carousel fraud from the last 10 years (article 10 of the Protocol).
12. Business associations (public/private cooperation)
13. Companies in risks areas
14. Public sources (press,…)
15. Business information providers (Infobase, Graydon, Eurodb, Dun & Bradstreet,…)
16. Outcome of rapid intervention brigades constituted by ISI on a proposal of OCS
17. Others…

The information circulates strictly according to the legal constraints foreseen in the Protocol. The flow of information was the subject of a legal analysis within the OCS since its establishment.

**INTERNATIONAL ADMINISTRATIVE COOPERATION**
Tax officers have at international level an impressive array of instruments, ranging from guidelines and regulations to specific agreements with several countries. The question is though whether this arsenal of possibilities is sufficiently known and wisely used.

The concentration of the carousel phenomenon highlighted the need to develop new specialized means. Several recent audits have shown the inadequacy of the traditional international administrative cooperation. The black spots mainly concern the speed, the functioning, the accuracy and the structuring of the mutual assistance. Yet these are all essential elements for the fight against cross-border fraud to be successful.

The European anti-fraud units need therefore other means better suited to their specific "core business". Knowing that the speed and the quality of international cooperation are crucial to dismantle carousel structures, innovative concepts had to be found. The challenge was to develop a new type of administrative assistance, whose main objectives were to shorten time and make a better targeting for VAT carousel fraud.

Based on this assumption, the OCS launched at the end of 2004 the “EUROCANET” system. Specifically, it is a system of spontaneous exchange of targeted information based on the Council Regulation (EC) N°1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) N°218/92.

Unlike “VIES” (VAT information exchange system), “EUROCANET” is not a real database, but rather a network for the exchange of data between competent authorities of the participating Member States.

This system allowed the participating Member States to place under surveillance, at own initiative or at the request of another participating Member State, taxpayers suspected to participate in VAT carousel fraud. This method allowed to eradicate more quickly new carousels and to prevent significant financial losses for the Member States and the European Union.

21 European Carousel Network
22 See juridical advice of the Commission
We can summarize by saying that the success of this initiative is based on two key points: speed and the targeting. The targeting is done using a concept of risk analysis "a priori", i.e. before the transmission of information.

This method is essential. The Member State providing the spontaneous information has indeed all the indicators to determine if a given transaction is at risk or not. Goodwill, reciprocity and confidentiality are the parameters to take into account for this purpose. VAT is a tax based on Community rules, the anti-fraud units of the various Member States know exactly what is really interesting for their colleagues in other Member States to tackle fraud. And therein lies the difference with the "VIES" which is not enough targeted (too much information kills information).

The Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast) confirms this way of working by setting up "EUROFISC" which incorporates "Eurocanet" with the advantage that all Member States are now participating to at least one of the working fields of this project.

E. RESULTS OF THIS POLICY

In just two year time those measures had following impact on the phenomenon:

- Big drop in term of defrauded VAT amounts (€ 1.1 billion in 2001, € 232 million in 2002 and € 159 million in 2003);
- No mammoth files with incredible huge amounts of defrauded VAT anymore;
- Motivation again among police investigators (in comparison with unsuccessful previous cases), and the opportunity to work on flagrante delicto offences;
- Growing interest of the judiciary for the phenomenon;
- Speed: the moment of detection is advanced, the time of reaction is almost instantaneous, the file is monitored and the results will enrich our data;
- Better circulation of interdepartmental information but also within departments;
- A welcome support for ISI investigators;
- Quick and easy access to information as OCS acts as central contact point;
- Discouragement of the organisers of the fraudulent chains and mistrust of the straw men now thinking twice (less profit to be expected, while the chance of getting caught is huge);
- Development of a dynamic risk analysis model for automated detection of the fraudster;
- Creation of a relatively accurate assessment tool to measure the impact of the actions on the phenomenon within a short time;
Writing a summary document entitled "An inventory of organised VAT fraud in Belgium - Years 2000 to 2003" which summarizes the investigations made and the assessment method developed;

An international "aura" in term of strategic and tactical analysis methods.

In a word, success generated success and the drop in defrauded amounts was exponential as was their increase in previous years.

In Belgium, the VAT carousel fraud is a major concern and various means have been developed both internally and within the framework of international cooperation in the fight against fraudulent constructions. In this context and in view of the reduction of the damage suffered by the Treasury in recent years, the integrated and coordinated approach which was launched in 2001 is really fruitful.

It appears therefore that an effective fight is only possible if it meets several conditions:

- be based on a in depth knowledge of the phenomenon to fight;
- be based on an active policy staff in which each concerned department is involved;
- be based on a coherent set of laws and regulations;
- benefit from the a network of information exchange, at least at European level;
- use modern automated control means for early detection of risks;
- and finally, have a quick and appropriate reaction.

F. THE “UNA VIA” PRINCIPLE


The legislator chose for the « Una via » principle or for just one way proceedings: a case of tax fraud will be handled either as an administrative case or as a criminal case.

At the same time, this law also significantly increased the amount of the already existing criminal tax fines.

The reason why this law was introduced.
Criminal law is much faster involved when a tax rule has been violated as might appear at first sight.

All violations of tax rules, when they are committed deliberately or with the purpose to damage, can be considered as a criminal violation. Tracing and prosecuting of these violations remains the competence of the police and the Public Prosecutor.

However, also tracing, including laying down tax fraud and tax debt, and the recovery is a task of tax administration.

This basically signifies that two institutions are able to treat the same file regarding tax fraud.

Therefore a violation of a tax rule could, until recently, lead to both a criminal sanction (for example a prison sentence or a fine) as well as to an administrative sanction (for example a tax raise). A double punishment in tax fraud cases therefore was possible.

This however conflicts, according to the legislator, with the « non bis in idem » principle, which is embedded in the European Convention on Human Rights (the so-called « ECHR »). According to that principle, a person may not be prosecuted and penalized twice for the same offence.

This law wants to end double punishment in tax cases. This law, which fits within the framework of the fight against tax fraud, aims to organise this fight in an efficient way and to avoid double use of government resources.

Achievement aimed by this law.

From now on a tax fraud file will either lead to an administrative procedure either a criminal procedure.

In practice, in a tax fraud case a consultation on the approach of this specific file will take place between the tax administration and the Public Prosecutor’s office. Afterwards and in line with the « Una via » principle, an administrative procedure or a criminal procedure will be initiated.

No thresholds are foreseen by the legislator for the way forward between an administrative or criminal procedure.
Simple tax fraud and / or for which the legal means of the tax administration are sufficient will be treated by the tax administration.

For complex tax fraud (= serious and / or organised tax fraud and / or requiring the use of investigative and research resources provided by the Code of Criminal Procedure):

- discovered by the Tax Administration, the regional director of the competent local tax authority has the choice between reporting the case to the Public Prosecutor or arrange a consultation

- discovered by police, the Public Prosecutor has the choice between prosecuting the criminal facts and informing the Fraud Coordination Service of the Federal Public Service Finance which will only be responsible for the tax adjustment, or arrange a consultation with the local tax authority.

For the organisation of the consultation a written procedure is foreseen with full identification of the incriminated persons (physical and legal persons) and criminal tax offences. The operational consultation is led by a magistrate specialized in tax matters. The decision on the way forward (administrative or criminal) must be made whether the day of consultation or at the latest within the 2 following working days. The public prosecutor may prosecute criminally punishable acts which he became aware during the consultation. The participation in the consultation of police officers and / or tax administration employees in charge of the case is optional.
Annex 3 - Exchange of information and cooperation between the law enforcement authorities and tax administration in Estonia

1. The exchange of information and cooperation between the law enforcement authorities and tax administration in Estonia has been settled as follows:

1.1 The limits of competence of the Tax and Customs Board: the Tax and Customs Board performs the functions of an investigative body as stipulated by § 31 of the Code of Criminal Procedure.

Pre-trial proceedings are conducted by the Tax and Customs Board in the case of tax fraud and criminal offences involving violation of customs rules (§ 212). So Tax and Customs Board has access both to tax information and information on criminal proceedings as an investigation authority.

1.2 Legislation: sharing of information

Taxation Act § 29. Disclosure of information to state, rural municipality and city agencies and to persons performing public law functions. A tax authority may disclose information subject to tax secrecy:

- to preliminary investigators and prosecutors for the purposes of preventing and detecting criminal offences, apprehending criminal offenders, investigating and hearing matters subject to criminal proceedings, preparing the court hearing of matters subject to criminal proceedings, as well as for conducting security checks and performing other duties for security authorities provided for in the Security Authorities Act.

Taxation Act § 30. Disclosure of information by way of international professional assistance. The Tax and Customs Board may disclose information subject to tax secrecy without the consent or without having informed a taxable person or a third person:

1) to a competent authority of a foreign state pursuant to the procedure prescribed by a treaty.
2) to the authorities of the European Union and the Member States thereof that are competent to exchange information relating to taxable persons pursuant to the procedure prescribed in the legislation of the European Union.

Code of Criminal Procedure § 214. Conditions for disclosure of information concerning pre-trial proceedings

(1) Information concerning pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by a Prosecutor's Office and under the conditions provided for in subsection (2) of this section.

(2) Disclosure of information concerning pre-trial proceedings is permitted in the interests of criminal proceedings, the public or the data subject if this, in avoidance of excess:

- does not induce crime or prejudice the detection of a criminal offence;
- does not damage the interests of the Republic of Estonia or the criminal matter;
- does not endanger a business secret or violate the activities of a legal person;
- does not violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data.

Money Laundering and Terrorist Financing Prevention Act

§ 42. Interphase cross-usage of data in order to perform the functions arising from law, the Financial Intelligence Unit has the right to make enquiries to and to receive data from state and local government databases and databases maintained by persons in public law, pursuant to the procedure provided by legislation.

§ 43. Restrictions on use of information

(1) Only officials of the Financial Intelligence Unit shall have access to the information in the Financial Intelligence Unit database and the right to process such information.

(2) In order to prevent or identify money laundering or terrorist financing or criminal offences related thereto and in order to facilitate pre-trial investigation thereof, the Financial Intelligence Unit is required to transmit significant information, including information subject to tax and banking secrecy to the prosecutor, the investigative body and the courts in connection with court proceedings.

(3) Information registered in the Financial Intelligence Unit shall only be transmitted to the authority engaged in a pre-trial procedure, a prosecutor or a court in connection with criminal proceedings on the basis of a written request of the preliminary investigation authority, the Prosecutor's Office or the court or on the initiative of the Financial Intelligence Unit if the
information is significant for the prevention, identification or investigation of money laundering, terrorist financing or a criminal offence related thereto. The Financial Intelligence Unit has the right to establish restrictions on the use of the data transmitted on its initiative, which the user of the data must adhere to.

Annex 4 - Countries and agencies who produced the report

Experts from six countries and agencies who participate in the EMPACT MTIC produced this report.

The task of the group was to identify obstacles and propose suitable solutions for enhanced cooperation between relevant agencies responsible for combatting MTIC VAT fraud in the MS analyse the key elements of such cooperation and distribute a consolidated report to the MS participating in EMPACT MTIC.

Sweden as the group leader was responsible for the delivery of the content of the report and was in charge of professional organisation of operational meetings. The other participants in the group supported the task by being actively participating in the meetings; contribute to the content and finalising the report. In addition, The Czech Republic, Finland and Estonia contributed also with best practices for the report.

The report was finalised and distributed to EMPACT MTIC in July 2017.

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<tr>
<th>Country</th>
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<td>VAT Carousel Support Cel (OCS)</td>
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<td>Bulgaria</td>
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