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The Special Report No 24/2015 – "Tackling intra-Community VAT fraud: More action needed" adopted by the European Court of Auditors on 15 December 2015 is set out in the Annex.

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NO 24

Special Report

Tackling intra-Community VAT fraud: More action needed

(pursuant to Article 287(4), second subparagraph, TFEU)

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Audit team

02

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber IV — headed by ECA Member Milan Martin Cvikl — which specialises in auditing revenue, research and internal policies, financial and economic governance and the European Union's institutions and bodies. The audit was led by ECA Member Neven Mates, supported by the head of his private office, Georgios Karakatsanis; Angela McCann, Head of Unit; Carlos Soler Ruiz, Team Leader; Dan Danielescu, Josef Edelmann, Maria Echanove, Maria Isabel Quintela, Timothy Upton, Wolfgang Hinnenkamp and Marko Mrkalj, auditors.

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Abbreviations 06

B2C: Business to consumer

CCIP: Customs Code Implementing Provisions

CCWP: Customs Cooperation Working Party

CP 42: Customs procedure 42

DG Taxation and Customs Union: Directorate-General for Taxation and Customs Union

EU: European Union

Empact: European Multidisciplinary Platform Against Crime Threats

EPPO: European Public Prosecutor's Office

FATF: Financial Action Task Force

IC: Intra-Community

JCO: Joint customs operation

MLCs: Multilateral controls

MTIC: Missing trader intra-community fraud

OAPs: Operational action plans

OECD: The Organisation for Economic Cooperation and Development

OCG: Organised crime groups

OLAF: European Commission European Anti-Fraud Office

PIF: Protection of the financial interests of the Union

SAD: Single administrative document

SCAC: The Standing Committee on Administrative Cooperation

VAT: Value added tax

VIES: VAT Information Exchange System

WF: Eurofisc Working Field

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Glossary 07

Administrative cooperation: Exchange of information between Member States whereby tax authorities assist each other and cooperate with the Commission pursuant to Council Regulation (EU) No 904/2010 of 7 October 2010 to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods. Exchanges of information between Member States cover all information that may lead to a correct assessment of VAT, including on specific cases.

Conduit company: A company which makes real or fictitious intra-Community supplies to missing or defaulting traders. It voluntarily takes part in the fraudulent scheme.

Customs declaration: The act whereby a person indicates a wish to place goods under a given customs procedure.

Customs procedure 42: The regime an importer uses in order to obtain a VAT exemption when the imported goods will be transported to another Member State. The VAT is due in the Member State of destination.

Eurofisc: A decentralised network of officials from the Member States' tax and customs administrations, who swiftly exchange targeted information about possible fraudulent companies and transactions.

Eurojust: The European Union's judicial cooperation agency, set up to strengthen the fight against serious organised crime. It is composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from Member States according to their own legal systems.

Europol: The European Union's law enforcement agency which assists law enforcement bodies in Member States in the fight against serious organised crime.

Fiscalis: An EU action programme to finance initiatives from tax administrations to improve the operation of the taxation systems in the internal market through communication and information-exchange systems, multilateral controls, seminars and project groups, working visits, training activities and other similar activities required to achieve the objectives of the programme.

Free circulation: The status of goods imported from third countries which have undergone all import formalities in order to be able to be sold or consumed on the EU market.

Intra-Community supply of goods: Supply of goods dispatched or transported to a destination outside their territory of origin but within the EU, by or on behalf of a vendor or a person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods has begun.

Intra-Community acquisition of goods: The acquisition of right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.

O_MCTL: A VIES control message generated upon reception of a VIES message and listing all inactive VAT numbers it contains.

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Member State of acquisition: Member State where the intra-Community acquisition takes place.

Member State of importation: Member State where the goods are physically imported into the EU and released for free circulation.

Member State of supply: Member State from which intra-Community supply takes place.

Member State of destination: The Member State to which the goods are dispatched or transported other than that in which the supply takes place.

Missing trader: A trader registered for VAT purposes who, potentially with a fraudulent intent, acquires or purports to acquire goods or services without paying VAT and supplies these goods or services with VAT, but does not remit the VAT collected to the national tax authority.

Recapitulative statement: A statement to be submitted by every taxable person identified for VAT purposes providing intra-Community supplies. The recapitulative statement shall be submitted, as a general rule, each month, recording the total value of goods or services supplied to each acquirer in other Member States, listed by its VAT identification number.

Release of goods: The act whereby the customs authorities make goods available for the purposes stipulated in the customs procedure.

SCAC: The Standing Committee on Administrative Cooperation is a regulatory committee pursuant to Article 58 of Council Regulation (EU) No 904/2010 assisting the Commission in matters as laid down in that regulation. It is composed of the representatives of Member States and chaired by a representative of the Commission.

Transfer: The dispatch or transport of goods by or on behalf of the supplier for the purposes of his business to a destination outside the territory of the Member State in which the supply takes place, but within the Community.

VAT identification number (VAT ID No): An individual number given to each taxable person intending to make supplies of goods or services, or to make acquisitions of goods for business purposes. Each number has a prefix of two letters by which the Member State of issue is identified.

VIES: The VAT Information Exchange System is an electronic network for transmitting information both on valid VAT identification numbers of companies registered in the Member States, and on tax-exempt intra-Community supplies. National tax administrations are responsible for feeding both types of information into the network.

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Executive summary

09

I
The single market, established on 1 January 1993, abolished border controls for intra-Community trade. As exports of goods and services to another Member State continued to be VAT-exempt, this has created a risk that these goods and services remain untaxed in both the supplying state and in the state of consumption. In addition to the revenue loss for Member States, uncollected VAT has an effect on the European Union's Own Resources.

II
This audit addressed the question of whether the EU is tackling intra-Community VAT fraud effectively. The Court found that the EU system is not sufficiently effective and that is adversely affected by the lack of comparable data and indicators on intra-Community VAT fraud at EU level.

III
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.

IV
The EU has put in place a battery of tools that Member States may use to fight against intra-Community VAT fraud but some of them need to be strengthened or more consistently applied. Namely:

(a) there are no effective cross-checks between customs and tax data in most of the Member States visited;

(b) the administrative cooperation framework allows sharing of VAT information between Member States' tax authorities but there are problems with the accuracy, completeness and timeliness of data; and

(c) there is a lack of cooperation and overlapping competences of administrative, judicial and law enforcement authorities.

Our main recommendations

V
While the authority to approve new legal measures and to implement them lies primarily with Member States, the Commission should:

(a) initiate a coordinated effort by Member States to establish a common system of collecting statistics on intra-Community VAT fraud;

(b) propose legislative amendments enabling effective cross-checks between customs and VAT data;

(c) provide initiative and encourage Member States to address weaknesses in Eurofisc;

(d) encourage Member States to better coordinate their policies on reverse charges;

(e) focus, in the context of its evaluation of the administrative cooperation arrangements, on improving the timeliness of Member States' replies to information requests, the reliability of VIES and the follow-up of the findings of its previous reports on administrative cooperation; and

(f) remove, together with Member States, 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 information supplied by them.

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VI

Member States should counter illegal activities affecting the financial interests of the European Union with effective deterrent measures, including legislative measures. In particular, the Council should:

(a) approve the Commission's proposal on joint and several liability;

(b) authorise the Commission to negotiate mutual assistance arrangements with the countries where most of the digital service providers are established and sign these arrangements; and

VII

In order to effectively protect the financial interests of the European Union, the European Parliament and the Council should:

(a) include VAT within the scope of the directive on the fight against fraud (the PIF directive) and the European Public Prosecutor's Office regulation;

(b) grant OLAF clear competences and tools to investigate intra-Community VAT fraud.

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Introduction

How intra-Community transactions are taxed

01

The single market, established on 1 January 1993, has abolished border controls for intra-Community trade. VAT-registered suppliers are entitled to apply a zero VAT rate on their sales to VAT-registered buyers in other Member States. In principle, the VAT should be paid in the Member State where the goods are consumed.

02

Tax authorities in the supplying Member State are obliged to grant the VAT exemption on the intra-Community supply of goods, under condition that goods are either supplied to a customer or directly transferred[1] to the supplier in another Member State. The VAT exemption becomes applicable only when the supplier can demonstrate that the goods have physically left the supplying Member State.

03

For intra-Community VAT purposes suppliers must be identified with a specific VAT identification (ID) and must regularly report their intra-community supplies or transfers in a recapitulative statement[2] submitted to the tax authorities of the supplying Member State. The EU has set up an electronic system (VIES)[3], through which Member States exchange information on traders registered for VAT purposes and on intra-Community supplies.

04

The tax authorities of the supplying Member State are obliged to enter the information from the recapitulative statements in the VIES database, making this data available to the tax authorities in the Member State of destination. The customer must declare an intra-Community acquisition to the tax authorities in the Member State of destination, a taxable event that makes the VAT chargeable in the Member State of final destination. ***Chart 1*** shows how intra-Community supplies of goods are reported and controlled using VIES.

1 Transfer in this context means the dispatch or transport of goods by or on behalf of the supplier for the purposes of his business to a destination outside the territory of the Member State in which the supply takes place, but within the EU, pursuant to Article 17(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive) (OJ L 347, 11.12.2006, p. 1).

2 A statement to be submitted by every taxable person identified for VAT purposes who makes intra-Community supplies. The recapitulative statement shall be drawn up each month and record the total value of goods supplied to each acquirer in other Member States, listed by VAT identification number. Member States may allow this statement to be submitted quarterly when the value of the goods supplied does not exceed 50 000 euro.

3 VAT Information Exchange System, pursuant to Article 17 of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast) (OJ L 268, 12.10.2010, p. 1).

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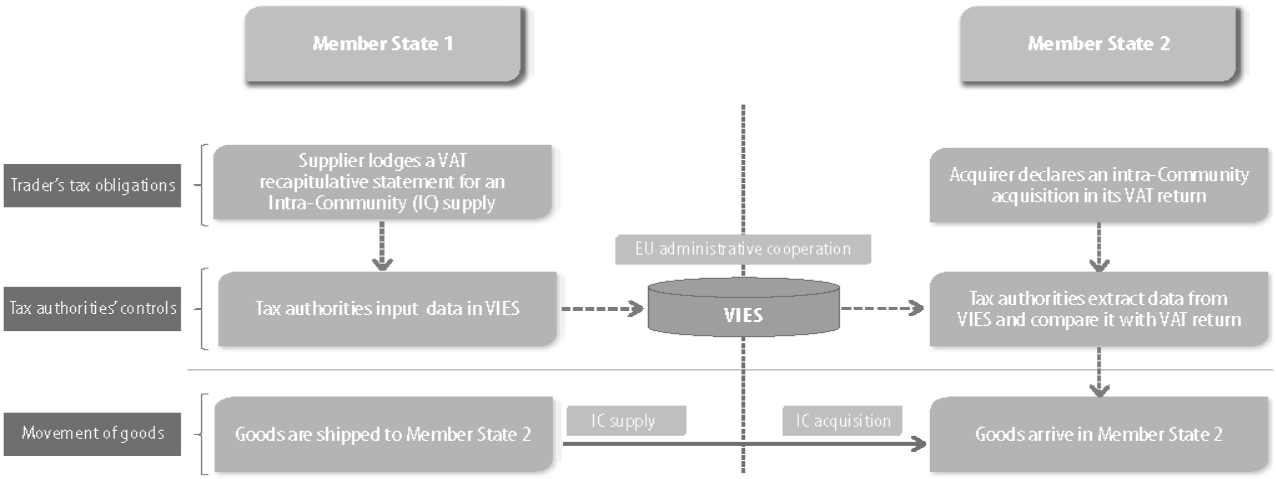
Chart 1

How VIES works



Source: ECA.

How payment of VAT on intra-Community transactions is evaded

05

The intra-Community VAT system has frequently been abused under the so-called missing trader intra-community fraud (MTIC). Under this fraud scheme a supplier established in Member State 1, the so-called conduit company, supplies goods (VAT exempted) to a second company established in Member State 2, the so-called missing trader. This trader then takes advantage of the VAT-exempted intra-Community supply of goods and resells the same goods in the domestic market of Member State 2, offering very competitive prices. It can do this because, although the trader charges VAT to its customer, it does not remit this to the tax authorities, thereby increasing its profit margins. Subsequently, the missing trader disappears without trace, which makes the tax collection impossible in the state in which goods or services are consumed.

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06
Under a variant of this scheme, a customer of the missing trader (the broker) sells or pretends to sell the goods abroad, sometimes back to the conduit company, and claims back from its tax authorities the VAT that it paid to the missing trader. The same transaction can be repeated in a circular manner, and is thus known as 'carousel fraud'.

07
Sometimes goods do not even move, or exist only on paper. The fraud can be further complicated when the missing trader sells the goods to buffer traders, some of whom could be honest, to make it more difficult for tax authorities to trace the fraudulent scheme. When the circular flow includes a third country, customs procedure 42[4] can also be used to hamper the traceability of transactions.

08
Chart 2 shows a basic carousel fraud scheme assuming a VAT rate of 20 %. In the first step, the conduit company sells the goods to the missing trader for 1 000 000 euro without charging VAT as intra-Community supplies are VAT exempt. In the second step, the missing trader sells the goods to the buffer trader 1 at 1 080 000 euro (900 000 plus 180 000 euro of VAT). The missing trader does not remit this 180 000 euro of VAT to its tax authority and disappears. In the third step, the buffer trader 1, who may not be aware that it is taking part in a fraudulent chain, sells the goods to buffer trader 2 with a profit of 20 000 and pays to the tax authority 20 % of this profit as VAT (4 000 euro). Buffer trader 2 sells the goods to the broker with a profit of 30 000 euro and pays VAT of 20 % of this profit (6 000 euro). The broker, completes the fraudulent chain by selling back the goods to the conduit company with a profit of 20 000 euro. It does not charge VAT to the conduit company because intra-Community supplies are VAT exempt but it claims back the VAT it paid to buffer trader 2 (190 000 euro). Thus, the tax authorities of Member State 2 suffer a tax loss of 180 000 euro because they collect 10 000 from buffer traders 1 and 2, but refund 190 000 euro to the broker. The total profit obtained by the carousel is also 180 000 euro which is shared between the different parties to the fraud.

4 Customs procedure 42 is the regime an importer uses in order to obtain a VAT exemption when the imported goods will be transported to another Member State. The VAT is due in the Member State of destination.

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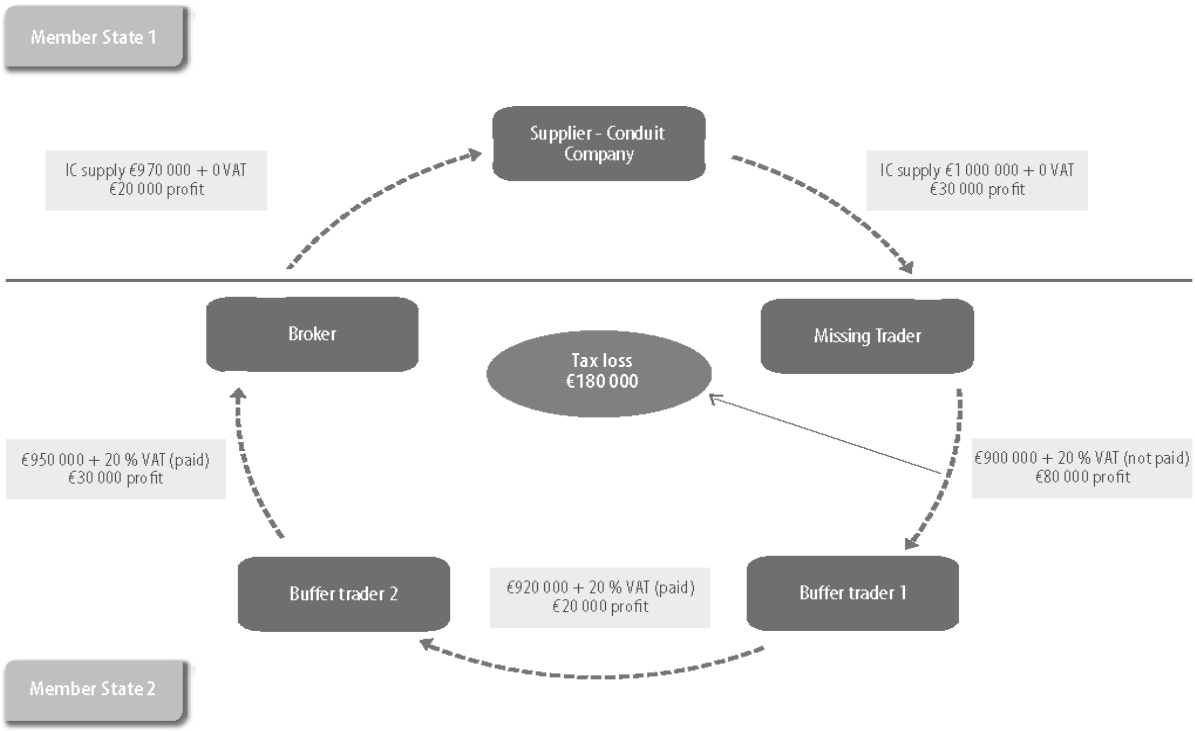
Chart 2

A carousel fraud scheme



Source: ECA, based on an example by the Financial Action Task Force.

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09
Missing trader and carousel fraud usually focus on high-value products such as mobile phones, computer chips and precious metals, but also include intangible items such as carbon credits, gas and electricity and green energy certificates[5].

10
As a result of the above, individual Member States cannot tackle intra-Community VAT fraud on their own, they have to work closely with the tax authorities of other EU Member States and non-EU countries[6].

How administrative cooperation to fight against intra-Community VAT fraud works

11
The single market abolished border controls on intra-Community trade. Since then, Member States depend on information received from other Member States concerning intra-Community trade to be able to collect VAT in their territory. Member States exchange this information using the administrative cooperation arrangements provided for in the EU legislation[7]. This legislation lays down the following administrative cooperation tools:

(a) exchanges of information on request and exchanges of information without prior request using the standard forms approved by the Standing Committee on Administrative Cooperation (SCAC);

(b) exchanges of information through the VIES electronic database (see paragraphs 3 and 4 above);

(c) controls conducted simultaneously in two or more Member States (multilateral controls — MLCs) and the presence of tax officials in other Member States allowing them to obtain access to documentation held there or to attend ongoing enquiries; and

(d) a decentralised network called Eurofisc for the swift exchange of targeted information between Member States about suspicious traders and similar issues. Its purpose is to promote and facilitate multilateral cooperation in the fight against VAT fraud. The network functions as a cooperation framework without legal personality.

12
Fiscalis is an EU action programme that finances activities such as communication and information-exchange systems, multilateral controls, seminars and project groups, working visits, training activities and other similar activities. Its purpose is to improve the proper functioning of the taxation systems in the internal market by increasing cooperation between participating countries, their administrations and officials.

5 House of Lords, European Union Committee's 12th Report of Session 2012–13 'The Fight Against Fraud on the EU's Finances', box 4, p. 22.

6 House of Commons, Committee of Public Accounts 'Standard Report on the Accounts of HM Revenue and Customs: VAT Missing Trader Fraud', Forty-fifth Report of Session 2006-07, Summary, p. 3. See also COM(2014) 71 final of 12 February 2014 'Report from the Commission to the Council and the European Parliament on the application of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax'.

7 Council Regulation (EU) No 904/2010.

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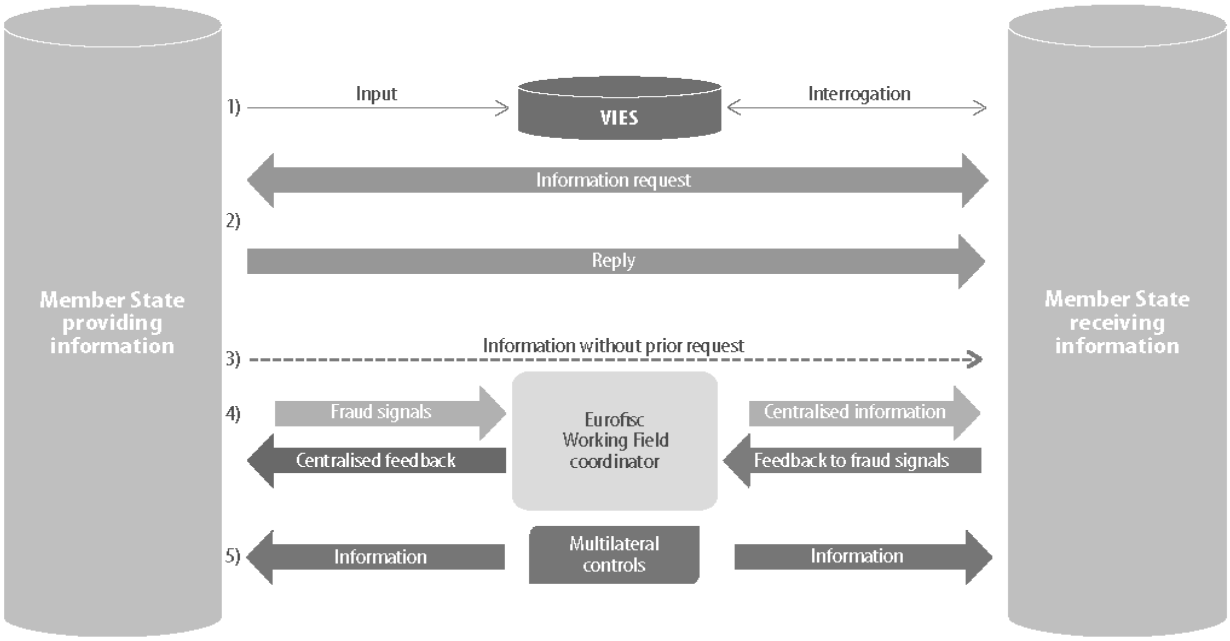
13

Chart 3 below shows how the different administrative cooperation tools work and ***Chart 4*** the ranking of them in terms of speed and level of detail of information provided.

Chart 3

Administrative cooperation tools



Source: ECA.

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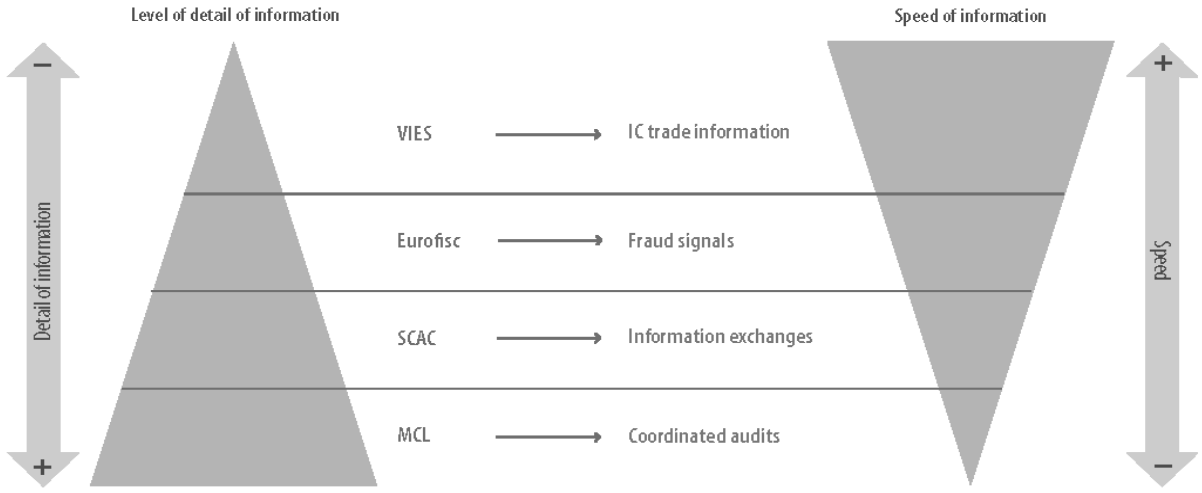
Chart 4

Ranking of administrative cooperation tools in terms of speed and level of detail of information supplied



Source: ECA based on information from Eurofisc.

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Audit scope and approach

14

The objective of the audit was to answer the question 'is the EU tackling intra-Community VAT fraud effectively?' This was done by addressing the following sub-questions:

(a) Is the Commission effectively using the tools at its disposal to tackle intra-Community VAT fraud and are these tools sufficient? To answer this question, we examined whether:

(i) the Commission had made a reliable estimate of the volume of fraud in this area, and whether it had set relevant performance indicators, so that the magnitude of the problem and the effectiveness of the regulatory and control measures adopted to overcome it can be assessed;

(ii) the Commission had put in place effective administrative cooperation arrangements between Member States so that VAT information could be shared between tax authorities;

(iii) the Commission had contributed to setting up a sound regulatory framework by putting forward pertinent legislative proposals likely to lead to a reduction in VAT fraud in Member States.

(b) Are Member States cooperating effectively to tackle intra-Community VAT fraud? In order to answer this question, we examined whether there were proper mechanisms in place ensuring effective communication of the necessary information and administrative cooperation between the authorities of different Member States and within Member States.

15

We carried out the audit at both the Commission and Member State level. At the Commission level we examined whether the specific regulatory and control framework set up by the Commission follows international best practice on cross-border taxation. In addition, we conducted information visits to OECD, Europol, Eurojust, and to the chair of Eurofisc. See more details about the audit approach in the Commission in ***Annex I***.

16

We sent a survey to all Member States' tax authorities on the effectiveness of the administrative cooperation arrangements in the fight against intra-community VAT fraud. In addition, we carried out audit visits to the relevant authorities in five Member States (Germany, Italy, Hungary, Latvia and the United Kingdom). These were selected based upon a risk analysis taking into account the importance of their VAT base and their vulnerability to VAT fraud.

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17
In the selected Member States attention was paid to the flow of information between the tax authorities of the supplying Member States and those of the Member State of final consumption with a view to ensuring that tax authorities are aware of the intra-Community transactions.

18
In each Member State we have audited a sample of administrative cooperation tools: 20 exchanges of information on request, 10 new VIES registrations, 20 VIES error messages, 10 MLCs and 20 messages about risky traders (fraud signals) exchanged through Eurofisc working field 1. In the case of customs procedure 42 transactions, we analysed the exchange of information between customs and tax authorities of the supplying Member State in respect of a sample of 30 imports. In addition, we followed up the status of the implementation of the recommendations of our report on customs procedure 42[8]. See more details about the audit approach in Member States in ***Annex II***.

8 Special Report No 13/2011 'Does the control of customs procedure 42 prevent and detect VAT evasion?' (http://eca.europa.eu).

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Lack of comparable data and indicators on intra-Community VAT fraud

19

To fight effectively against VAT fraud, tax authorities need to establish systems to estimate it and then set operational targets to reduce it. As the Court pointed out in 2008, 'Having comparable data on intra-Community VAT fraud would contribute to a better targeted cooperation between Member States. A common approach needs to be developed by the Commission together with the Member States to quantifying and analysing VAT fraud'[9].

Lack of estimates of intra-Community VAT fraud at EU level

20

As only two Member States, Belgium and the United Kingdom, publish estimates about VAT losses due to intra-Community fraud, the Commission does not have estimates for the EU as a whole. (see ***Box 1***)

21

In the absence of direct information about VAT fraud, the Commission has regularly contracted studies to estimate the difference between the amount of VAT actually collected and the VAT total tax liability, known as the compliance VAT gap. The latest study estimated a VAT gap of 168 billion euro in the EU-26[10], or 15.2 % of the total tax liability in 2013[11].

22

The compliance VAT gap is not a reliable estimate of intra-Community VAT fraud, because apart from the fact that it includes both domestic and cross-border VAT fraud, it also includes other revenue losses, including those due to legal tax avoidance, traders' insolvency and tax administrations' practices of tolerating tax arrears by companies in difficulties. Moreover, the VAT gap is very sensitive to estimates of the grey economy that are included in GDP data.

9 Paragraph 110 of Special Report No 8/2007 concerning administrative cooperation in the field of value added tax (OJ C 20, 25.1.2008, p. 1).

10 The studies have not included estimates for Croatia and Cyprus, due to as-yet-incomplete national account statistics for the two countries.

11 European Commission, 'Study to quantify and analyse the VAT Gap in the EU Member States. 2015 Report' (http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm).

Box 1

Available estimates of MTIC fraud

The United Kingdom on 22 October 2015 quantified intra-Community VAT fraud at between GBP 0.5-GBP 1 billion for 2013-14[12]. The published figures show a decline of GBP 0.5 billion over the past 5 years.

The latest estimate published by the Belgian Supreme Audit Institution quantified missing trader fraud of 94 million euro for 2009, 29 million euro for 2010, and 28 million euro for 2011[13].

12 https://www.gov.uk/government/statistics/measuring-tax-gaps
In the United Kingdom the financial year runs from 1 April to 31 March for the purposes of government financial statements.

13 *'Fraude intracommunautaire à la TVA. Audit de suivi réalisé en collaboration avec les cours des comptes des Pays-Bas et d'Allemagne. Rapport de la Cour des comptes transmis à la Chambre des représentants Bruxelles, septembre 2012'.*

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Lack of performance indicators on intra-Community VAT fraud

23
The Commission does not set performance indicators or operational targets relating to the reduction of intra-Community VAT fraud and, with the exception of the United Kingdom, neither do Member States' tax administrations.

24
The United Kingdom regularly sets performance indicators in terms of accumulated additional revenue arising from VAT information exchanges, number of assessments and number of fraud cases.

25
The absence of EU-wide estimates of intra-Community VAT fraud and performance indicators to monitor progress, creates obstacles for assessing whether the EU's efforts to tackle VAT fraud are effective.

The administrative cooperation framework in place allows Member States' tax authorities to share VAT information

26
To collect VAT in their territory Member States depend on information received from other Member States concerning intra-Community trade. The survey we conducted has shown that 26 out of 28 Member States' tax authorities consider that the current framework for administrative cooperation is sufficient to fight against intra-Community VAT fraud effectively.

Member States considered information exchanges using electronic standard forms to be the most effective tool but the timeliness of replies is poor

27
The results of our 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[14] or the right to exempt VAT on intra-Community supplies[15] (i.e. apply the zero rate) on the basis that the trader knew or ought to have known that its transactions were connected with fraudulent tax losses.

14 Judgment of the Court of 6 July 2006 in Joint Cases C-439/04 and C-440/04 Kittel and Recolta Recycling [2006] ECR I -6177, paragraphs 60 and 61.

15 Judgment of the Court of 6 September 2012 in Case C-273/11 Mecsek-Gabona, paragraph 55.

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28
There are two types of information exchange using standard forms: Exchanges of information on request and exchanges of information without prior request.

Exchanges of information on request

29
Member State authorities are supposed to provide the information requested as quickly as possible but no later than 3 months following the date of receipt of the request. Where the requested authority is already in possession of that information, the time limit is reduced to a maximum period of 1 month.

30
However, the timeliness of replies was unsatisfactory. Statistics sent by Member States to the Commission show that, in total, Member States replied late to 41 % of the requests received in 2013. Moreover, six Member States replied late more than 50 % of the time. An analysis of the number of requests received per Member State shows that the delays were not always proportionate to the workload caused by the number of requests.

31
Except for the United Kingdom, none of the audited Member States' tax authorities have set operational targets for reducing the percentage of late replies, collecting additional revenue arising from VAT information exchanges or for the number of assessments/ fraud cases. Moreover, the impact of this administrative cooperation tool in terms of VAT collection is largely unknown.

32
However, the survey showed that all but one respondent was happy with the quality of replies. The Commission set performance indicators regarding the number of exchanges of information and the target it set of increasing the baseline figure of exchanges of information on request by 13 % was achieved in 2013.

33
The electronic exchange of information on request is a useful tool appreciated by the Member States. However, there is a lack of information regarding its effectiveness in terms of VAT collection. In addition, late replies hinder the effectiveness of the collection of VAT.

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Exchanges of information without prior request

34

Under EU law, 'the competent authority of each Member State shall, without prior request, forward… information… to the competent authority of any other Member State concerned, in the following cases:

(a) where taxation is deemed to take place in the Member State of destination and the information provided by the Member State of origin is necessary for the effectiveness of the control system of the Member State of destination;

(b) where a Member State has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other Member State; and

(c) where there is a risk of tax loss in the other Member State[16].

35

The Commission set performance indicators regarding the number of exchanges of information between Member States and its target of increasing the baseline figure by 10 % was achieved in 2013.

36

The survey showed that Member States clearly found the tool useful. They provided many examples (additional VAT assessments, information about missing traders, corrections in VIES) in which the exchange of information without prior request had been valuable to them.

VIES provides information on intra-Community transactions with occasional reliability problems

37

The EU has set up an electronic system (VIES), under which Member States exchange information on traders registered for VAT purposes and on intra-Community supplies. Member States are responsible for ensuring the quality and reliability of the information included in VIES and they should implement procedures for checking this data following their risk assessment. These checks should be carried out, in principle, prior to issuing identification numbers for VAT purposes or, where only preliminary checks are conducted before such identification, no later than 6 months from such identification.

16 Article 13(1) of Council Regulation (EU) No 904/2010.

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38
Although our survey only indicated occasional problems with the reliability of the system (four respondents out of 28), (i) 17 problems concerning unavailability and late availability of data were mentioned; (ii) responses to the survey also highlighted difficulties in accessing the data of 11 Member States; (iii) problems with timely cancellation of VAT ID Numbers were reported by the respondents in respect of 10 Member States; and (iv) data on VAT ID Numbers was also not up-to-date in seven Member States.

39
These findings were confirmed by the audit tests we carried out in the five visited Member States. In addition, our tests showed that new VAT ID numbers are allocated in VIES without triggering risk-based checks and 'proper education'[17] of traders already registered for tax purposes. For Member States' risk management systems to be effective and reduce the problem of missing traders, it is important that high-risk traders are checked immediately upon VIES registration.

40
On the positive side, a two-tier VAT number system, i.e. a separate VAT ID number for domestic activity and another VAT ID number used for intra-Community supplies has been set up in Portugal. In addition, some Member States such as Spain, Portugal and Croatia have additional controls in place to check taxable persons seeking to make intra-Community supplies.

41
We selected a sample of VIES error messages about incorrect VAT numbers[18] and found that tax authorities in most of the visited Member States[19] did not react to these messages. This increases the risk that some supplies remain untaxed. In addition, the Member State receiving the recapitulative statements must inform the sender within two working days if VAT numbers are incorrect. However, in one case, a Member State sent the error message more than 2 years and 5 months late. If the error message is received after the time barring[20] period, VAT collection is impossible.

42
In carousel fraud, conduit companies make fictitious or real intra-Community supplies to missing or defaulting traders. This is why their trade partners in other Member States need to be identified, monitored and, if necessary, deregistered without delay. However, legislation in some Member States does not allow the deregistration of a conduit company just because it has business relations with missing or defaulting traders.

17 According to the 'Compliance Risk Management Guide For Tax Administrations' produced by the Fiscalis Project Group No 32, if the reason for traders' non-compliance is the complexity of a specific part of the tax legislation, the possible treatment could be that tax authorities provide free advice to traders or suggest a change of the legislation to remove the complexity.

18 When a Member State sends a VAT recapitulative statement through VIES, the Member State receiving the information sends back an error message listing all the incorrect VAT ID Nos detected.

19 Italy (10 out of 10), Hungary (7 out of 10 cases), Latvia (1 out of 10) and the United Kingdom (10 out of 10).

20 The period after which VAT collection is impossible, as defined by Member States' tax legislation.

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43
The Commission does not carry out monitoring visits to Member States to assess whether they have adopted 'the measures necessary to ensure that the data provided for VAT identification purposes is complete and accurate'[21]. Without such visits it is difficult for the Commission to monitor any improvements in such measures.

44
VIES is a very useful tool for exchanging data on intra-Community supplies between Member States. However, there are weaknesses in its use by Member States which occasionally affect the reliability, accuracy, completeness and timeliness of VIES data and therefore its effectiveness in tackling fraud.

Multilateral controls are an effective tool but are being carried out less frequently

45
Two or more Member States can agree to conduct coordinated controls of the tax liability of one or more related traders if they consider such controls to be more effective than controls carried out by only one Member State.

46
The survey showed that 27 Member States consider multilateral controls (MLCs) a useful tool for combating VAT fraud. However, the tool is not fully exploited and its use is decreasing. Commission statistics show that MLCs initiated by Member States have decreased from 52 in 2011, to 42 in 2012 and only 33 in 2013. MLCs are often slow: our audit showed that they were in most cases not finished within the intended period of 1 year. Moreover, the Commission's target of increasing the baseline figure of initiated MLCs by 7 %, i.e. up to 46, was not achieved in 2013. This shows that the recommendation made by the Commission of increasing the number of MLCs initiated by Member States to around 75 in 2014 was not realistic.

47
The tax authorities of the visited Member States do not have performance indicators with the exception of the United Kingdom, which has set an operational target for VAT collections arising from participation in MLCs. Other Member States do not follow up the recovery of the VAT assessments made as a result of the MLCs in which they participate, which reduces incentives for them to increase their participation in MLCs.

21 Article 22 of Council Regulation (EU) No 904/2010.

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Eurofisc: a promising tool that needs improvement

48
Eurofisc is a decentralised network of officials from the Member States' tax and customs administrations, who swiftly exchange targeted information about possible fraudulent companies and transactions. There are four working fields (WF) currently operating within Eurofisc (see ***Box 2***).

49
The 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. The liaison officials of the Member States participating in a particular Eurofisc WF have experience in the fight against VAT fraud. They designate a Eurofisc working field coordinator among them. This coordinator collates and disseminates the information received from the participating Eurofisc liaison officials.

50
Once a Member State has categorised a company as a conduit, making fictitious or real intra-Community supplies to missing or defaulting traders, the information related to its current and intended partners should be sent through Eurofisc without delay so that they can be identified, monitored and, if necessary, deregistered promptly. Otherwise, Member States' ability to tackle MTIC fraud before it takes place is restricted. Without a quick feedback mechanism on the usefulness of the fraud signals received Member States cannot improve the quality of their risk analysis.

51
Our survey showed that 27 Member States consider Eurofisc to be an efficient early warning system for fraud prevention, but they still pointed out the following weaknesses, which were also confirmed by the audit tests in Member States: (i) feedback was not frequent enough; (ii) data exchanged was not always well targeted; (iii) not all Member States participate in all Eurofisc working fields; (iv) exchanges of information are not user friendly; and (v) data exchanges are too slow.

Box 2

Eurofisc working fields

- WF 1: Missing Trader Intra Community fraud (MTIC).
- WF2: Fraud concerning means of transport (cars, boats and airplanes).
- WF 3: Fraud connected to the abuse of customs procedure 42.
- WF 4: VAT fraud observatory for trends and developments.

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52
In all the visited Member States the processing and upload of fraud signals was a lengthy and cumbersome process. The examination of a sample of 20 fraud signals per visited Member State confirmed that the information exchange is to some extent rudimentary, slow, not user-friendly and takes place using Excel spreadsheets. The Eurofisc WF coordinator manually compiles and disseminates these spreadsheets among the liaison officers of each Member State participating in Eurofisc. This runs the risk of transmitting incomplete or wrong information.

53
Our audit has shown that each Member State carries out its own risk analysis. There are no common criteria or sources of information to perform this risk analysis. Furthermore, feedback on the usefulness of the data exchanged is scarce. As a result, Member States participating in different working fields often exchange information that includes non-dubious traders, thereby wasting resources[22].

54
There are no quality indicators for the feedback provided/received or for timeliness. Although statistics are provided regarding the number of companies reported through the network and their classification in various categories, no other performance indicators have been established by the Member States to assess the effectiveness of the different Eurofisc working fields. In addition, there are no global statistics available on the timeliness of the supplied feedback.

55
The results of the sample tests carried out in the visited Member States show that most of them take longer than 3 months to supply feedback to incoming fraud signals. In many cases the information provided is not complete and, in some, is not provided in a standard format, leading to further delays in processing.

The Commission provides valuable assistance to the Member States but does not carry out visits to Member States

56
The Member States and the Commission examine and evaluate how the administrative cooperation arrangements work. The Commission pools the Member States' experience with the aim of improving the operation of those arrangements.

57
Our survey indicates that 25 respondents out of 28 consider that the Commission provides valuable assistance to the Member States. On 12 February 2014 the Commission published its report evaluating administrative cooperation[23]. The Commission emphasised that Member States can only address tax fraud and tax evasion effectively if they work together and that improving administrative cooperation between Member States' tax administrations was therefore a key objective.

22 For the period 2011-2014, a total of 30 493 signals were uploaded in WF1 for monitored companies. Out of the total uploaded signals, 11 028 (36 %) feedback was not provided by the requested Member States. Of the remaining 19 465 signals, 11 127 companies (57 %) were qualified as normal traders without any fraud risk. In WF 3, 83 301 signals were uploaded in 2013, an 80 % increase compared with 2012. Although the number of information exchanges increased significantly, the targeting of the information decreased: almost 83 % of the traders uploaded in 2013 were qualified as not dubious, compared with 70 % in 2012.

23 COM(2014) 71 final of 12 February 2014.

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58
The Commission's report highlighted areas where administrative cooperation can still be intensified. 'Overall, there must be a quicker reply to requests for information, since the lateness of the replies is a critical issue… feedback, provided spontaneously or on request, is an approach that must be encouraged in the context of good cooperation and best practices, as it is the best way to inform tax officials that their work was (to a certain extent) beneficial'.

59
The Commission's report was based inter alia on a questionnaire it sent to Member States. However, since its publication up to the time of the audit no visits have been made to Member States. Without on-the-spot visits to Member States' tax authorities, the Commission cannot be fully aware of how the administrative cooperation arrangements actually work and thus be effective in improving their operation.

Information received from non-EU countries is not being exchanged between Member States

60
Under EU law, when the competent authority of a Member State receives information from a non-EU country, it may pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it[24].

61
Only 13 respondents consider that the Member States are using this possibility for exchanging information received from non-EU countries. At the same time, nine respondents suggested signing a mutual assistance arrangement on VAT with the United States and eight respondents suggested agreements with Turkey and China, which confirms the importance of such information.

62
Information from non-EU countries is particularly relevant to enforce VAT collection on digital services and intangibles supplied from remote locations to European consumers without any direct or indirect physical presence of the supplier in the consumer's jurisdiction (see paragraphs 90 to 92).

24 Article 50(1) of Council Regulation (EU) no 904/2010.

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Fiscalis is an important EU instrument for strengthening administrative cooperation

63
The EU established a multiannual EU action programme, Fiscalis 2013, to finance initiatives by tax administrations to improve the operation of the taxation systems in the internal market. It has recently been extended to 2020[25]. Fiscalis 2013 covered the period 2008-13 with an allocation of 156.9 million euros, while the financial envelope devoted to Fiscalis 2020 amounts to 223.4 million euro. The regulation setting up Fiscalis 2020 redefines the specific objective, putting more clearly the emphasis on supporting the fight against tax fraud, tax evasion and aggressive tax planning[26].

64
We have examined the mid-term[27] and final evaluations[28] of the Fiscalis 2013 Programme, the output of certain Fiscalis Project Groups, and interviewed Member States' officers in charge of Fiscalis. In each Member State audited, we selected a sample of administrative cooperation tools financed by Fiscalis: 20 exchanges of information on request, 20 VIES error messages, 10 MLCs and 20 fraud signals exchanged through Eurofisc working field 1.

65
Although the decision establishing Fiscalis 2013 stated that 'the work programme shall contain indicators for the specific objectives of the Programme', by the time of the mid-term evaluation no indicators had been set by the Commission. Indeed, the mid-term evaluation recommended that the Commission and Member States should set up a results-based monitoring and evaluation system, including a set of key output and outcome indicators and where possible, baselines and targets against which progress could be measured annually. The Commission did set up a performance monitoring system but it only became operational in April 2014 and the same criticism was repeated in the final evaluation of June 2014.

66
In the absence of baseline figures and indicators, it was not possible to quantify the effectiveness of the Fiscalis 2013 programme. On the other hand the qualitative evidence reported in the evaluations or by practitioners in the visited Member States is largely positive. For example, according to the mid-term evaluation of Fiscalis 2013 'survey participants and interviewees consider that Fiscalis contributes to a more effective fight against fraud in terms of reduced incidence of fraud, increased detection of fraud and increased amount of tax collected following the detection of fraud (tax recovery)'. However, none of the five tax authorities of the visited Member States measure the outcome of its participation in Fiscalis in these terms.

25 Decision No 1482/2007/EC of the European Parliament and of the Council of 11 December 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) and repealing Decision No 2235/2002/EC (OJ L 330, 15.12.2007, p. 1). Activities include communication and information-exchange systems, MLCs, seminars and project groups, working visits, training activities and other similar activities.

26 Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25).

27 http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/fiscalis2013_mid_term_report_en.pdf.

28 http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/fiscalis2013_final_evaluation.pdf.

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Funding administrative cooperation tools

67

About 22 % of the budget went towards joint actions, consisting of MLCs, working visits, seminars and project groups and the final evaluation judged the costs to be 'very reasonable'. The mid-term evaluation found that at the level of specific objectives the Programme had contributed 'to a large extent' to improving administrative cooperation between participating national tax administrations.

Ensuring an adequate IT infrastructure

68

Almost 75 % of the budget was devoted to communication and information exchange systems. The final evaluation looked specifically at IT systems, as they accounted for such a high share of the Fiscalis 2013 expenditure. These costs were considered justified due to their high levels of usage. Moreover stakeholders appeared 'widely convinced' of their value. In the Member States audited, users were generally positive about the IT systems.

Fostering expertise through Fiscalis project groups

69

Fiscalis project groups are made up of experts from Member States. They worked inter alia on updating the Good Practice Guide to tackle intra-Community VAT fraud[29]. Member States' tax authorities are satisfied with their participation in these groups and believe that they have contributed to the dissemination of good administrative practice and increased the knowledge of EU tax law among tax officers. We consider the recommendations of best practice produced by the Fiscalis project group No 29[30] to be sound and used them as the basis of our control model for customs procedure 42 (see ***Annex III***).

70

According to the mid-term evaluation, the Fiscalis Programme has contributed 'to a high extent' to enabling tax officials to achieve a high standard of understanding of the Union's laws and its implementation, particularly in the areas of VAT and excise. The Programme has also contributed 'to a very high extent' to the development of good administrative practice.

29 The Good Practice Guide is published on Member States' websites.

30 Fiscalis Project Group No 29 on the abuse of the VAT rules upon importation.

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VAT legislation has been adapted to tackle VAT fraud

71
An effective anti-VAT fraud strategy calls for the adoption of pertinent legislative measures to tackle intra-Community VAT fraud. In its Communication in 2008 the Commission set out an action plan on a coordinated strategy to improve the fight against VAT fraud in the European Union, which included 11 legislative proposals[31] aiming at enhancing the prevention of VAT fraud[32], detection of VAT fraud[33] and capacity of tax administration to collect and recover taxes[34].

72
Most of these proposals were accepted by the Council, except for joint and several responsibility and shared responsibility for the protection of all Member States' revenues.

The reporting period of VAT recapitulative statements and their transmission times have been reduced

73
One of the accepted proposals[35] introduced mandatory monthly submission of information on intra-Community supplies of goods if total transactions exceed the threshold of 50 000 euro, with a view to allow faster detection of fraud. However, Member States are allowed to maintain quarterly reporting for supplies of goods below the threshold and for supplies of services.

74
The Commission asked an external contractor to assess the impact on businesses of changing recapitulative statements from quarterly to monthly and of the options for thresholds and derogations. The study[36] showed that implementation was not uniform[37] which leads to extra costs for business. Submitting recapitulative statements more frequently leads to extra costs for businesses, both one-off and recurring. One source of costs is the lack of harmonisation by tax authorities in the various Member States in which a company operates. Recurring costs arise from going through the procedure every month instead of quarterly. Where differing deadlines apply for submitting VAT returns and recapitulative statements, extra controls are needed. In addition, different reporting requirements mean that there is not a level playing field among traders operating in the internal market.

75
All Member States have adapted their VAT legislation to the VAT directive. However, in Germany, the results of the audit showed that even though the VAT legislation aligns with the VAT directive, traders are still submitting quarterly or annual recapitulative statements despite exceeding the 50 000 euro threshold for compulsory monthly recapitulative statements.

31 COM(2008) 807 final of 1 December 2008 on a coordinated strategy to improve the fight against VAT fraud in the European Union.

32 Chapters V and IX of Council Regulation (EU) No 904/2010, concerning VIES, Chapter 3 of Title XI of VAT directive, namely Article 226, concerning invoicing rules, and Title VI of the VAT Directive, concerning chargeability of intra-Community transactions.

33 Council Directive 2008/117/EC of 16 December 2008 amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions (OJ L 14, 20.1.2009, p. 7) amending Article 263(1) of the VAT Directive and Article 20 of Council Regulation (EU) No 904/2010 to reduce time frames for submitting and exchanging information on recapitulative statements, Council Directive 2009/69/EC of 25 June 2009 amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to imports (OJ L 175, 4.7.2009, p. 12) amending Article 143 of the VAT Directive, Chapter V of Regulation (EU) No 904/2010, concerning automated access to data, Chapter X of Regulation EU) No 904/2010, concerning Eurofisc.

34 Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions, concerning the proposal for joint and several liability (not adopted), Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1) entering into force on 1 January 2012, and the proposal for a shared responsibility for the protection of all Member States' revenues not adopted in the administrative cooperation Regulation.

35 Directive 2008/117/EC amending Article 263(1) of the VAT Directive.

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Customs procedure 42: Most of the ECA recommendations have been accepted by the Commission but they have not been implemented by Member States

76

Customs procedure 42 (CP42) is the regime an importer uses in order to obtain a VAT exemption when the imported goods will be transported to another Member State. The VAT is due in the Member State of destination. Getting customs procedure 42 right depends on:

(a) the importer providing complete and valid VAT information[38] in the import declaration;

(b) customs authorities checking this information before releasing the goods and then sending the information to the tax authorities;

(c) tax authorities comparing this information with that included in the VAT recapitulative statement submitted by the importer;

(d) the information therein being made available to other Member States' tax authorities using VIES; and

(e) tax authorities in the Member State of destination ensuring that VAT is charged there by comparing the acquirer's VAT return with the information available in VIES. See ECA control model on customs procedure 42 in ***Annex III***.

77

As a follow-up of our previous audit on customs procedure 42[39] and to test how customs and tax authorities are cooperating with each other and with other Member States' authorities, e.g. by using, when needed, Eurofisc WF3 (see ***Box 2***), and to check the completeness of VIES data, we have selected a risk-based sample of 30 imports under CP 42 per visited Member State. We also followed up the status of the implementation by the Commission of our recommendations made in Special Report No 13/2011.

Cross-checks between customs and VAT data are not effective in most of the visited Member States

78

Missing information related to goods imported under the CP 42 procedure may lead to abuses of the procedure and, consequently, to underpayments of the Member States' VAT. Our current audit in Member States showed a lack of completeness of VIES data concerning imports under CP 42. We found that the customs authorities of Germany and the United Kingdom do not send data on imports under CP 42 to tax authorities. We also found that traders do not report separately in the VAT recapitulative statement the onward intra-Community supplies following imports under CP 42 in Germany, Italy and the United Kingdom.

36 'Expert study on the issues arising from a reduced time frame and the options allowed for submitting recapitulative statements. Final report, 28 October 2011' (http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm).

37 17 Member States have implemented the derogation to file recapitulative statements quarterly and 10 have chosen not to implement the derogation; 5 Member States have made the application for the derogation mandatory and 12 have made it optional; 2 Member States have a separate recapitulative statement for goods and services and the other 25 have a recapitulative statement combining goods and services; 22 Member States require electronic filing (with, however, 10 exceptions). 5 provide for optional electronic filing.

38 Articles 143(2) and 85 to 89 of Council Directive 2006/112/EC, and Annexes II and III of Commission Implementing Regulation (EU) No 756/2012 of 20 August 2012 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 223, 21.8.2012, p. 8).

39 ECA Special Report No 13/2011.

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79
Therefore tax authorities are not able to cross-check customs data on imports under CP 42 and the VAT recapitulative statements submitted by the importer. These cross-checks are the key for ensuring that tax authorities of other Member States are aware of the respective onward supplies of goods, so they do not remain untaxed in the territory of the Member State of consumption of the goods. In Latvia, automatic cross-checks were available but did not prevent a case of under-reporting in the VAT recapitulative statement[40].

80
The result of the audit tests we carried out in the selected Member States showed cases of undervaluation, non-submission of VAT recapitulative statements, inclusion of invalid VAT ID Nos in the import declaration and unreported triangular transactions. Only 22 Member States exchange information through Eurofisc working field 3.

81
Except in Italy, no automatic checking of the VAT numbers was available in the customs electronic clearance systems of the visited Member States. We found no evidence that the customs officers had verified the validity of the VAT ID Nos before the release of goods for free circulation[41]. We found no evidence of transport of goods to the Member State of destination[42]. In one case the goods supplied were not identical to the goods imported. Only in Hungary did the customs authorities verify *ex post* that the importer had fulfilled all the VAT exemption conditions in respect of all the 30 imports of the sample selected.

82
The French Supreme Audit Institution considers[43] that the lack of a swift electronic system allowing verification that the exemption at the Customs in the Member State of import is compensated by taxation in the Member State of acquisition is the main cause of VAT fraud in Europe.

83
Another important cause of fraud is the undervaluation and misclassification of imported goods. OLAF has co-ordinated a joint customs operation[44] (JCO) concerning the undervaluation of goods of textiles and shoes from China. It found that 40 % of the goods released into free circulation under CP 42 were undervalued. We found in the United Kingdom two cases of undervalued imports under CP 42, which had been already identified by HMRC as a result of OLAF's JCO. HRMC estimated the impact on VAT collection in the United Kingdom to be GBP 0.5 million and GBP 10.6 million in other Member States. The estimated impact on customs collection in the United Kingdom amounts to GBP 81 million. These impacts have been estimated by HMRC for all items imported by the two traders identified in the sample in a 3-year period.

40 A Fiscalis project group is tackling the cooperation between customs and tax authorities and the Commission has agreed to reconsider the issue of cross-checks between customs declarations and recapitulative statements in the light of the recommendations made by the Fiscalis project group.

41 24 in Germany, 30 in Latvia and 20 in the United Kingdom.

42 13 in Germany, 23 in Italy, 29 in Latvia, and 20 in the United Kingdom.

43 *'L'action de La Douane dans la lutte contre les fraudes et trafics. Communication au Président de l'Assemblée nationale pour le Comité d'évaluation et de contrôle des politiques publiques. Janvier 2015'.*

44 Provided for in the Naples II Convention drawn up on the basis of Article K.3 of the EU Treaty, on mutual assistance and cooperation between customs administrations.

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84
The Commission accepted and implemented five of the seven recommendations we made in our 2011 report. However, the Council has not taken on board the recommendation concerning the holding of the importer jointly and severally liable for the VAT loss in the Member State of destination (see paragraph 72).

85
The legislative improvements made by the Commission relating to CP 42 and the follow-up of our recommendations in Special Report No 13/2011 is positive but the fight against fraud is hindered by poor implementation and cases of non-compliance detected in the Member States during the current audit.

Reverse charge: a useful tool to fight against MTIC fraud that is not consistently applied

86
The principle of the reverse charge rule is that it shifts the liability to account for the VAT from the supplier to the customer. This means that the customer, when identified as a taxable person, would be liable to pay the VAT to tax authorities instead of to the supplier. In this case a missing trader cannot default on payment to the Treasury as it does not collect VAT from its customer.

87
The reverse charge rule is a temporary measure that can be applied until December 2018[45]. It is applied only in specific circumstances to certain sectors vulnerable to carousel fraud and does not have a general application. ***Box 3*** shows some examples of sectors to which Member States can apply the reverse charge.

88
We consider that the reverse charge is a useful tool to fight against fraud when it is applied consistently by all Member States to these risky sectors. Otherwise, fraudsters move to the Member State in which the reverse charge is not applied thereby limiting the capacity to tackle VAT fraud at EU level (See ECA Special Report No 6/2015 on the integrity and implementation of the EU Emissions Trading Scheme).

89
At this stage, the Commission does not consider that a generalised reverse charge, i.e. extending the reverse charge to all sectors of the economy, would be effective in fighting fraud as it will shift fraud to the retailing phase where VAT evasion risks are higher. The results of our survey corroborate this as only one of the survey's respondents suggested such a generalised application of the reverse charge.

45 Council Directive 2013/43/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (OJ L 201, 26.7.2013, p. 4).

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Box 3

Examples of sectors where reverse charge can be applied

- Construction including repair, cleaning, maintenance, alteration and demolition services.
- Transfer of allowances to emit greenhouse gases.
- Supply of integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products.
- Supplies of gas and electricity to a taxable dealer.
- Supply of gas and electricity certificates.
- Supply of telecommunication services.
- Supplies of game consoles, tablet PC's and laptops.
- Supply of cereals and industrial crops including oil seeds and sugar beet.
- Supply of raw and semi-finished metals, including precious metals.
- Supply of mobile telephones.
- Certain types of timber (logs, planks, girders).

Legislation on e-commerce follows international best practice but it is difficult to enforce

90

Remote supplies of services and intangibles present challenges to VAT systems, as they often result in no, or an inappropriately low amount, of collected VAT. The EU applies the destination principle to cross-border supplies of electronically supplied services and intangibles to final customers, Business to consumer (B2C), in accordance with the international best practices identified by the OECD.

91

The destination principle means that the place of consumption for cross-border supplies of services and intangible property that are capable of delivery from a remote location made to a non-resident private recipient should be the jurisdiction in which the recipient has their usual residence[46].

46 OECD 'Consumption Taxation of Cross-Border Services and Intangible Property in the Context of E-Commerce', 2001.

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92
The enforcement of the rules on e-commerce is difficult and VAT collection is at risk if Member States lack information on B2C services and intangibles supplied from third countries via the internet. According to the German Court of Auditors[47], in Germany VAT collected due to the supply of B2C e-services from a third country amounted to only 23.7 million euro in 2011 and decreased to 22.8 million euro in 2012, whereas e-commerce is in a rapid expansion phase. Therefore the German SAI concluded that there are many unregistered traders.

Lack of cooperation and overlapping competences of administrative, judicial and law enforcement authorities to fight against VAT fraud

93
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. According to Europol's representatives[48], it is estimated that 40-60 billion euro of the annual VAT revenue losses are caused by organised crime groups and that 2 % of those groups are behind 80 % of the MTIC fraud.

94
The European Council has often pointed out the lack of cooperation between administrative authorities, judicial and law enforcement authorities[49]. This is a challenge for effectively fighting against tax fraud.

Lack of exchange of data between customs and tax, police and prosecuting authorities

95
There is no integrated policy or strategy at EU level for investigating and prosecuting fraud. Many times the law enforcement and judicial authorities work independently and very often they do not involve all affected Member States[50].

47 Bundesrechnungshof, 2013 Bemerkungen — Weitere Prüfungsergebnisse Nr. 11 'Ausländische Internetanbieter zutreffend besteuern'.

48 Statement of Mr Van Heuckelom at the Conference on VAT Fraud hosted by MEP Ingeborg Grässle and MEP Benedek Javor on 4 February 2015 in the European Parliament in Brussels (http://antikorrupcio.hu/en/vat-fraud-in-the-eu-member-states/).

49 European Council documents 12623/5/13 of 16 September 2013; 16071/1/14 of 20 March 2015; and 9368/15 of 1 June 2015.

50 Strategic meeting on VAT fraud held by Eurojust in March 2011, Cfr. Council document 11570/11 of 17 June 2011.

96
The European Council has set up a Customs Cooperation Working Party (CCWP). This expert group handles work regarding operational cooperation among national customs administrations with a view to increasing their enforcement capabilities, and in particular to identify the need for new models of cooperation between customs and other agencies/joint customs operations[51].

97
This working party concluded that cooperation between Customs and Police and between Customs and tax authorities is quite good, but that some obstacles to cooperation remain. The most important are restrictions on sharing information, lack of structured systems and connected databases, information being not timely or of a poor quality, and a lack of proper feedback. The report also highlights that there is a recurring risk of overlapping and duplication.

98
Not all Member States participate in all the Eurofisc Working Fields (see paragraph 51). Working Field 3 is devoted to MTIC fraud connected to imports under CP 42. Twenty-two Member States are involved but it is the tax authorities rather than the customs authorities that participate[52]. Out of the five Member States visited, only the Hungarian and Italian customs authorities participate in Working Field 3.

99
Our audit has also shown that the customs authorities of Germany and the United Kingdom do not send data on imports under CP 42 to tax authorities, and that traders do not report separately in the VAT recapitulative statement the onward intra-Community supplies following imports under CP 42 in Germany, Italy and the United Kingdom (see paragraph 78).

100
The lack of exchange of data between customs and tax, police and prosecuting authorities reduces the effectiveness of the fight against fraud. Belgium succeeded in reducing the losses related to fraud by 85 % in only 2 years by adopting a 'joined up' approach with better cooperation between authorities which allowed a focus on the disruption of organisers rather than targeting missing traders[53].

51 Council Document 12978/14 of 22 September 2014.

52 A report of the CCWP recommends that customs authorities take a more active role in Eurofisc WF 3. See Council document 16071/1/14 of 20 March 2015.

53 From 1.1 billion in 2001 to 159 million euro in 2003. *Source*: Ondersteuningscel (BTW fraude) — Cellule de soutien (Fraude TVA). See 'Rapport annuel des Finances 2003'. See also 'Fraude intracommunautaire à la TVA. Audit de suivi réalisé en collaboration avec les cours des comptes des Pays-Bas et d'Allemagne. Rapport de la Cour des comptes transmis à la Chambre des représentants'. Brussels, September 2012.

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Europol and OLAF have no access to VIES and Eurofisc data

101
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.

102
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.

103
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[54].

Empact: a good initiative but its sustainability is at risk

104
The EU set up a multiannual policy cycle in 2010 to fight against serious international and organised crime[55], aiming at:

(a) effective cooperation between Member States' law enforcement agencies, EU institutions, EU agencies and others; and

(b) coherent and robust operational action targeting the most pressing criminal threats facing the EU.

105
Based on a threat assessment prepared by Europol[56] representatives of Member States defined nine priority areas including Excise and MTIC fraud. For each priority area the Council drew up a multiannual strategic plan, covering the years 2014 to 2017. The plan's goal is to disrupt the capacity of organised crime groups (OCG) and specialists involved in excise fraud and MTIC fraud.

106
The 2014 to 2017 plan mentioned 10 potential vulnerabilities. Apart from emphasising the high level of expertise and flexibility of OCGs, it pinpointed a lack of systemic cooperation between law enforcement authorities and tax authorities at national and EU level. It also noted legal obstacles blocking the exchange of information between Europol and Member States represented in Eurofisc.

54 House of Lords, European Union Committee's 12th Report of Session 2012–13 The Fight Against Fraud on the EU's Finances.

55 Draft Council Conclusions on the creation and implementation of an EU policy cycle for organised and serious international crime, doc. 15358/10 COSI 69 ENFOPOL 298 CRIMORG 185 ENFOCUSTOM 94.

56 Serious and Organised Crime Threat Assessment (SOCTA) carried out in 2013.

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107
The plan contained six strategic goals. One of these goals concerns the sharing of available intelligence at EU level on the most threatening OCGs. These actions overlap with information being shared on risky companies under Eurofisc WF 1. In addition, at a SCAC meeting some Member States opposed the use of the full Good Practice Guide to tackling Intra-Community VAT fraud drafted by Fiscalis Project Group No 82 by law enforcement authorities because most of the chapters would be relevant for tax administrations and not for law enforcement authorities.

108
For the purpose of measuring the achievement of each goal certain operational action plans (OAPs) were developed under the umbrella of the European Multidisciplinary Platform against Criminal Threats (Empact). Member States had to fund activities of the OAP 2014 from their national budgets. Progress reports on the OAP 2014 show that 2 out of 11 operational actions were not finalised and were postponed to 2015 due to lack of funding. This lack of funding puts at risk the achievement of Empact's goals and the sustainability of the OAPs.

109
In 2015, the Commission allocated seven million euro to Europol to fund operational actions in 2015 and 2016. However, given the fact that this envelope covers nine priority areas, it remains to be seen whether it will ensure the financial sustainability of Empact concerning the priority area of MTIC fraud.

Member States are against the proposals to include VAT within the scope of the protection of financial interests directive and European Public Prosecutor's Office regulation

110
In March 2011 experts from all Member States in a meeting organised by Eurojust called for a more efficient cooperation between the administrative, judicial and law enforcement authorities at the national and international level[57]. They recommended drawing up rules of exclusive jurisdiction for intra community VAT fraud or entrusting the investigation and prosecution of such offences to a European Public Prosecutor's Office (EPPO).

111
However, a majority of Member States are against the proposal of the Commission to include VAT within the scope of the directive on the fight against fraud (the PIF directive)[58] or in the regulation establishing an EPPO. Excluding VAT from the scope of these proposals would represent a major step backwards, since as recently recalled by the European Court of Justice (case C-105/14 of 8 September 2015, Taricco), VAT fraud is covered by the current legal framework, namely, the PIF Convention[59] which the PIF directive should replace. In addition, no secondary legislation has provided OLAF with investigative powers in the field of VAT.

57 Strategic meeting on VAT fraud held by Eurojust in March 2011, Cfr. Council of the EU document 11570/11 of 17 June 2011.

58 COM(2012) 363 final of 11 July 2012 'Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law'.

59 Convention of 26 July 1995 on the protection of the European Communities' financial interests and its two protocols (Council Act of 19 June 1997 and Council Act of 27 September 1996).

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Conclusions and recommendations

40

112

This audit addressed the question of whether the EU is tackling intra-Community VAT fraud effectively. A large majority of Member States, who are the main beneficiaries of VAT revenue, have expressed satisfaction with how the current system has been set up and they appreciate benefits from mutual cooperation. However, Member States have indicated areas of the system that require further improvement. Moreover, the audit has found important weaknesses which indicate that the system is insufficiently effective. These weaknesses need to be addressed. The Commission has in the past proposed several legislative measures allowing Member States to improve the framework for exchanging information between their tax authorities to fight against intra-Community VAT fraud[60], but Member States have not yet accepted all of them. There is therefore a need for new legislative and other initiatives as suggested in the following recommendations:

Measuring the effectiveness of the system

113

The lack of comparable data and the lack of adequate relevant indicators to measure Member States' performance adversely affects the effectiveness of the EU system to tackle intra-Community VAT fraud (see paragraphs 19 to 25).

Recommendation 1

The Commission should initiate a coordinated effort of Member States to establish a common system of estimating the size of intra-Community VAT fraud, which would allow Member States to evaluate their performance in terms of reducing the incidence of intra-Community VAT fraud, increasing detection of fraud and increasing tax recovery following the detection of fraud. This system could build upon the already-used practices in some Member States.

Cross-checking customs with VAT data is crucial

114

The audit showed that cross-checks between imports under CP 42 and VAT recapitulative statements is not possible because customs authorities do not send this data to tax authorities and traders are not obliged to report separately the intra-Community supplies following these imports in the VAT recapitulative statements. In addition not all Member States exchange data on risky imports under CP 42 through Eurofisc working field 3. (See paragraphs 76 to 85).

Recommendation 2

Member States' customs authorities should send data on imports under customs procedure 42 to tax authorities and implement other measures of our control model on customs procedure 42 (see ***Annex III***).

60 For example, the Commission proposal of 20.7.2004 for a regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities (proposal COM(2004) 509 amended by proposal COM(2006) 473 final).

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Recommendation 3

The Commission should propose legislative amendments enabling effective cross-checks between customs and tax data.

Improving the Eurofisc early-warning system to better target high-risk traders

115

Member States consider Eurofisc to be an efficient early-warning system, but complained that exchange of information is not user friendly, data exchanges are slow, and not always well targeted. The audit in selected Member States also found that data processing and access to information was a lengthy and cumbersome process, relying on Excel spreadsheets which are distributed to liaison officers of Member States, with risks of transmitting incomplete or wrong information. The feedback is often provided to the originating country with substantial delays (see paragraphs 48 to 55).

Recommendation 4

The Commission should recommend to Member States to:

(a) introduce a common risk analysis including the use of social network analysis to ensure that the information exchanged through Eurofisc is well targeted to fraud;

(b) improve the speed and frequency of these information exchanges;

(c) use a reliable and user-friendly IT environment for these information exchanges;

(d) set up relevant indicators and targets to measure the performance of the different working fields; and

(e) participate in all Eurofisc working fields.

Improving the existing legal framework

116

The proposal of the Commission about joint and several liability in cases of cross-border trade has not been adopted by the Council. This reduces the deterrence against doing business with fraudulent traders. The implementation of the VAT directive concerning the period of submission of recapitulative statements is not uniform among Member States, thus increasing the administrative burden on traders operating in more than one Member State (see paragraphs 73 to 75).

Recommendation 5

The Council should approve the Commission's proposal on joint and several liability.

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Recommendation 6

The Commission should propose to amend the VAT directive with a view to achieving further harmonisation of Member States' VAT reporting requirements for intra-Community supplies of goods and services.

117
Evidence shows that upon introduction of reverse charge in one or more Member States, fraudsters move to the Member State in which the reverse charge is not applied. (See paragraphs 86 to 89).

Recommendation 7

The Commission should encourage Member States to better coordinate their policies on reverse charges, as already done, for example, in the emissions trading scheme.

Improving the administrative cooperation arrangements

118
The Commission has proposed several legislative measures allowing Member States to set up an adequate framework for exchanging information between their tax authorities to fight against intra-Community VAT fraud but their use among Member States is still poor and some of them need to be strengthened or more consistently applied (see paragraphs 26 to 47 and 56 to 70).

Recommendation 8

The Commission in the context of its evaluation of the administrative cooperation arrangements should carry out monitoring visits to Member States selected on a risk basis. These monitoring visits should focus on improving the timeliness of Member States' replies to information requests, the reliability of VIES, the speed of multilateral controls, and the follow-up of the findings of its previous reports on administrative cooperation.

Recommendation 9

Member States which have not already done so, should implement a *two-tier* VAT ID No (VAT ID No allocated to traders wishing to take part on intra-Community trade which is different than domestic VAT ID No) and conduct the checks foreseen in Article 22 of Regulation No 904/2010 while providing free advice to traders.

Recommendation 10

Member States should send letters of formal notice to traders involved in fraudulent chains to facilitate the application of the case-law of the Court of Justice of the EU (CJEU) in Cases *Kittel/Mecsek* and refuse either the right to deduct input tax or the right to supply with zero rate on the basis that the trader knew or ought to have known its transactions were connected with fraudulent tax losses.

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119
Member States need information from non-EU countries to enforce VAT collection of e-commerce B2C services and intangibles supplied via internet. (See paragraphs 90 to 92).

Recommendation 11

To strengthen cooperation with non-EU countries and enforce VAT collection on e-commerce B2C services and intangibles supplied from them, Member States should:

(a) authorise the Commission to negotiate mutual assistance arrangements with the countries where most of the digital service providers are established and sign these arrangements; and

(b) for those Member States which belong to the OECD, sign and implement the OECD's Convention on Mutual Administrative Assistance in Tax Matters in order to exchange information on digital services providers with third countries.

Improving cooperation between administrative, judicial and law enforcement authorities

120
Intra-Community VAT fraud is often linked with organised criminal structures. This calls for the adoption of a better common and multidisciplinary approach to tackle intra-Community VAT fraud. However, there are a number of authorities and bodies with overlapping competences to fight against intra-Community VAT fraud who are not fully cooperating and exchanging information with each other due to legal constraints (see paragraphs 93 to 102).

Recommendation 12

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.

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121

One of the existing elements of a multidisciplinary approach at EU level is the operational action plans (OAPs) set up by Member States and ratified by the Council under the umbrella of the Empact initiative, which cover the period 2014-2017. However, the viability and sustainability of the OAPs is at risk because of a lack of EU funding (see paragraphs 104 to 109).

Recommendation 13

The Commission should ensure the sustainability of the OAPs under the Empact initiative by providing sufficient financial resources.

122

VAT fraud could go unpunished due to negative conflicts of jurisdiction if the PIF directive and the EPPO regulation do not include VAT within their scope (see paragraphs 110 to 111). VAT fraud can also go unpunished because of too short limitation periods, as emphasised by the Court of Justice in its judgment of 8 September 2015 (case C-105/14 *Taricco*). As ruled by the Court of Justice of the EU, VAT fraud affects the financial interests of the EU.

Recommendation 14

The European Parliament and the Council should:

(a) include VAT within the scope of the proposed directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF directive) and the regulation on the establishment of the European Public Prosecutor's Office; and

(b) grant OLAF clear competences and tools to investigate intra-Community VAT fraud.

This report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 15 December 2015.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

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Annex I

Audit approach at the level of the Commission

We performed the audit at the Commission in two stages, a preparatory stage and the audit fieldwork.

1 During the preparatory stage, we carried out information-gathering visits to DG Taxation and Customs Union and OLAF. We discussed the audit methodology (audit questions, criteria and standards), including the audit methodology in the Member States, and received the Commission's feedback and suggestions. DG Taxation and Customs Union granted the auditors access to the main database on imports, the web-surveillance 2 database. We discussed the main roles and challenges of each directorate-general in the fight against VAT fraud and collected relevant documents.

We examined pertinent performance information, such as DG Taxation and Customs Union's activity statement accompanying the 2013 preliminary draft budget and DG Taxation and Customs Union's 2013 Annual Activity Report, together with the status of the implementation of the EU anti-VAT fraud strategy and the 2014 Commission reports on administrative cooperation in the field of VAT and on the effectiveness of VAT collection.

We also carried out information-gathering visits to the chair of Eurofisc, to Europol and to Eurojust, where we presented the audit, discussed their respective roles, responsibilities and challenges in the fight against VAT fraud and collected relevant documents and information.

We made an information-gathering visit to the OECD and discussed questions relevant to the audit, such as the VAT revenue ratio, mutual assistance and exchanges of information on tax matters, missing trader fraud, MLCs, joint audits, and taxation of digitally supplied services and intangibles (e-commerce). We examined the most recent OECD reports and guidelines relevant for VAT.

We examined and discussed with representatives of the VAT Working Group of the EU Supreme Audit Institutions their latest and ongoing audit activities on VAT.

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Annex I

2 During the audit fieldwork we presented to the Commission the results of the survey to Member States. We also presented the general questionnaire addressed to the Commission. This general questionnaire handled the current developments and gathered evidence of the Commission's activities in the areas of administrative cooperation, the follow-up of our Special Report on customs procedure 42, reverse charge, e-commerce and effectiveness of VAT collection, including the cooperation between administrative, judicial and law enforcement authorities among Member States and European bodies. This general questionnaire was replied to by DG Budget, DG Migration and Home Affairs, DG Justice and Consumers, OLAF and DG Taxation and Customs Union.

To assess the effectiveness of cooperation between administrative, judicial and law enforcement authorities we addressed the Council and examined its main documents concerning Empact, OAPs and customs procedure 42.

We sent a second questionnaire to DG Taxation and Customs Union to verify whether the Commission had duly followed up the transposition by Member States of the different amendments to the VAT directive addressing VAT fraud.

We discussed with DG Taxation and Customs Union the methodology followed by the Commission's contractor in the available studies to estimate the VAT gap. We also sent a third questionnaire to DG Taxation and Customs Union to assess this methodology and put relevant questions on this topic to the tax authorities of Italy, Latvia and the United Kingdom.

At OLAF we collected audit evidence concerning the relevant JCOs and investigations on customs procedure 42 and undervaluation.

In the visited Member States we interviewed the Fiscalis liaison officers. We also examined the mid-term and final reports on the evaluation of Fiscalis 2013, together with the output of the Fiscalis project groups relevant to the fight against VAT fraud, and carried out tests in the visited Member States on a sample of administrative tools financed by Fiscalis (see ***Annex II***).

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Annex II

Audit approach at the level of customs and tax authorities in Member States

We also carried out the audit in Member States in two stages, a preparatory stage and the audit fieldwork.

1 During the preparatory stage we sent a survey to all 28 Member States' Central Liaison Officers in charge of administrative cooperation. With this survey we learned Member States' views on the effectiveness of administrative cooperation in the area of tackling VAT fraud related to intra-Community transactions.

We also examined the available Eurofisc annual activity reports, the statistics on administrative cooperation, Eurofisc fraud signals, O_MCTL messages and imports under customs procedure 42.

2 During the audit field work, we visited the tax and customs authorities of Germany, Hungary, Italy, Latvia and the United Kingdom, interviewing the Central Liaison Officers and other authorities in charge of VIES, Eurofisc, Fiscalis and MLCs, using a questionnaire to gather evidence on these areas.

In each Member State we selected a sample of VIES registrations, administrative cooperation tools and intra-Community transactions. A total of 110 items was selected in each Member State with the following approach:

(a) to verify whether VIES meets the requirements of completeness, accuracy and timeliness laid down in Articles 22 and 23 of Council Regulation No 904/2010, we selected two samples:

(i) a random sample of O_MCTL messages sent (10) and received (10) by the Member State in the first half of 2014; and

(ii) a random sample of 10 files of traders newly registered in VIES in 2013;

(b) to verify both the effectiveness of exchanges of information on request and their compliance with Articles 7 to 12, we selected a random sample of SCAC requests sent (10) and received (10) in 2013;

(c) to check both how effectively Member States are cooperating with each other and their compliance with Articles 29 and 30, we selected a risk-based sample of five MLCs in which the tax authorities of the visited Member State took the initiative and five MLCs in which the tax authorities of the visited Member State participated at the request of other Member States. The sample referred to the year 2013 and, if the minimum sample size was not reached, to the previous and following years;

(d) to check the effectiveness of Eurofisc WF1 we selected a risk-based sample of 10 fraud signals sent and received by each visited Member State in 2013; and

(e) as a follow-up of our previous audit on customs procedure 42 and to test how customs and tax authorities are cooperating with each other and with other Member States' authorities, e.g. by using, when needed, Eurofisc WF3, and to check the completeness of VIES data, we selected a risk-based sample of 30 imports under CP.

Finally, we examined the available reports of audits on Eurofisc carried out by the Supreme Audit Institutions of Germany, Hungary and Austria.

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Annex III

ECA control model on customs procedure 42

This control model was adopted by the Court in its Special Report No 13/2011.

1 Compulsory indication in box 44 of the SAD of a valid VAT ID No of both the importer (or his tax representative) and the customer or the importer himself in the case of transfers in the Member State of destination. VIES verification of the validity of these VAT ID Nos prior to the release of goods for free circulation. Otherwise, VAT is due upon importation.

2 A reference to the evidence of the intended transport to the Member State of destination, e.g. transport document No, and the country of destination code are shown, respectively, in boxes No 44 and 17(a) of the SAD. Otherwise the customs declaration should be corrected.

3 Customs authorities verify *ex post* using proper risk management techniques that transport to the Member State of destination indicated in box 17(a) of the SAD was actually carried out shortly after the import, that the goods supplied to the Member State of destination are the same as the goods imported, that the importer and the supplier of goods are the same person, and that the customs valuation and the VAT taxable amount are correct. If the requirements above are not fulfilled VAT is recovered *ex post*. When there is an understatement of the taxable amount, tax authorities request the trader to correct the value of the corresponding intra-Community supplies or transfers of goods in the recapitulative statement, if necessary.

4 Automatic exchange of information between the customs and tax authorities of the Member State of importation concerning these imports.

5 Tax authorities of the Member State of importation notify as soon as possible risky imports to the Member State of destination through Eurofisc working field three.

6 Tax authorities compare the information received from the customs authorities with the VAT recapitulative statement lodged by the importer (or his tax representative) in order to ensure the completeness/accuracy of the latter. If the amounts reported herein are less than the VAT taxable amount of the imports, the tax risk management system should decide whether further investigation of the difference is needed having regard to the risk factors arising in the case.

7 Where the recapitulative statement is not submitted or the information therein is not complete/accurate, tax authorities in the Member State of destination are informed using administrative cooperation arrangements.

8 Tax authorities in the Member State of destination compare the information received from other Member States with the VAT returns submitted by the customer (acquirer) or the importer itself in the case of transfers.

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Reply of the Commission

49

Executive summary

IV (a)
See Commission reply to paragraph V(b).

The Commission considers that the detailed arrangements concerning the checks to implement the relevant Union legislation fall under the Member States' (MS') responsibility. The Commission has drawn MS' attention in a general manner to the importance of effective checks on the collection of VAT.

V (a)
The Commission accepts this recommendation.

The Commission notes that there is very limited information available in Member States on the size of intra-Community VAT fraud. There are very few countries which estimate the size of intra-Community fraud; even these countries do not publish the methodology used, and the estimates themselves are mostly confidential.

The Commission has taken specific actions in order to improve estimations:

— The Commission services (Eurostat and DG Taxation and Customs Union) are working on a memorandum of understanding (MoU) to better define the areas of future cooperation with the goal to explore data and methods for tax gap estimations and for other indicators of tax evasion and avoidance.

— The Tax Gap Project Group was established under the Fiscalis 2020 programme to pool knowledge and exchange information on the methodologies of tax gap estimations. Hereby also the aspects of estimating tax fraud are considered.

V (b)
The Commission does not accept this recommendation.

The Commission has provided for legislation that ensures that the information referred to in Article 143(2) of Directive 2006/112/EC is available in the customs declaration[1]. The Commission considers that Member States have sufficient information and competent MS authorities have access to these data in order to carry out the effective cross-checks between customs and VAT data.

For the cross-border exchange of information there are clear legal frameworks established for both tax and customs competent authorities. An additional layer of information exchange between customs and tax authorities in the context of the customs 42 procedure is dealt with within the Eurofisc network.

It is the responsibility of Member States to provide for the implementation of Union legislation and to collect taxes legally due. Therefore the Commission does not recognise the need for additional legislation.

V (c)
The Commission accepts the recommendation. It already participates in the meetings of Eurofisc working fields and it will continue to encourage Member States to improve the functioning of the network and enhance its efficiency.

V (d)
The Commission does not accept the recommendation.

See reply under Recommendation 7.

1 See Commission Implementing Regulation (EU) No 756/2012 of 20 August 2012 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (O.J. L 223 of 21 August 2012, page 8).

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Reply of the Commission

50

V (e)
The Commission accepts the recommendation. It already looks at these issues during its evaluation reports presented in different fora, where it continuously encourages and urges Member States to improve the timeliness of the replies and the reliability of the VIES data. In the next reports the Commission intends to follow up on its recommendations and on the recommendations following from the Fiscalis project groups.

V (f)
The Commission accepts the recommendation to the extent that it is addressed to its services.

See Commission reply to recommendation 12.

Observations

19
Upon the initiative of the Commission, the Tax Gap Project Group was established under the Fiscalis 2020 programme to pool knowledge and exchange information on the methodologies of tax gap estimations. This project group also considers the aspects of estimating tax fraud.

20
There is limited information available in Member States on the size of intra-Community VAT fraud. The very few countries which estimate the size of intra-Community fraud do not usually make this data publicly available and the applied methodology is mostly confidential.

22
The methodology employed in the studies is based on a top-down approach, as the Commission does not have access to any data which could be used to produce estimates with the bottom-up approach. The disadvantage of the top-down approach is that the results cannot be deconstructed according to industrial sectors or other criteria (e.g. fraud).

23
The Commission requests annually data on the benefits and results of the administrative cooperation with the statistical model.

25
As mentioned before, the Commission has taken specific actions in order improve estimations:

— The Commission services (Eurostat and DG Taxation and Customs Union) are working on a memorandum of understanding (MoU) to better define the areas of future cooperation with the goal to explore data and methods for tax gap estimations and for other indicators of tax evasion and avoidance;

— the Tax Gap Project Group was established under the Fiscalis 2020 programme to pool knowledge and exchange information on the methodologies of tax gap estimations. This project group also considers the aspects of estimating tax fraud.

30
The Commission believes that there has to be a balance found between the timeliness of the replies and their quality. Nevertheless, the Commission has already raised this issue with the Member States and invited those with the highest record of late replies to improve the situation.

43
The Commission does not have access to operational data that Member States put at the disposal of other Member States' competent authorities through VIES which limits the possibilities for the Commission to monitor the improvement of such measures.

59
The Commission is considering the opportunity of carrying out targeted visits to Member States to assess the national implementation of the EU administrative cooperation arrangements, in view of the future reports.

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Reply of the Commission 51

Common Commission reply to paragraphs 65 and 66

The Commission believes that the new performance measurement framework put in place in April 2014 with the new iteration of the Fiscalis 2020 programme should facilitate the monitoring of the programme and of its activities. As such, the data collected during the lifetime of the programme should constitute an improved basis for assessing and evaluating the programme's effectiveness.

Common Commission reply to paragraphs 78 and 79

The Commission considers that the detailed arrangements concerning the checks to implement the relevant Union legislation fall under the MS' responsibility. This includes the organisation of the cooperation between national customs and tax authorities. The Commission will draw Member States' attention to the importance of the information given by declarants in box 44 of the customs declaration being complete and correct. 81

Customs controls are based on a risk analysis[2]. The Commission will draw Member States' attention to the importance of checks relating to the information given by declarants in the customs declaration.

2 Article 13(2) of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code

83

The Commission underlines that, while undervaluation causes serious problems for the collection of customs duties, the loss of VAT linked to such undervaluation at the time the goods are imported is definite only when the importer has no full right to deduct the input VAT. In other cases the VAT is intermediate and calculated on the subsequent sales price, i.e. the original customs value at importation is no longer relevant for the amount of VAT due. The Commission acknowledges that goods (e.g. textiles and shoes) can be diverted to the black market of the importing Member State.

85

The Commission has drawn MS' attention in a general manner to the importance of effective implementation of Union legislation with a view to the collection of VAT. Cases of possible non-compliance will be followed up adequately.

90

The Commission firmly believes that a simplified system for registration and payment of tax, such as the Mini-One-Stop-Shop (MOSS), is essential for ensuring taxation from non-resident suppliers. Such a system means that compliance checks can be focused initially on businesses who are not registered (either through the Mini-One-Stop-Shop or directly registered in the country of destination).

In respect of the 2015 changes, early results indicate that the Mini-One-Stop-Shop, applicable since 1/1/2015, is likely to generate EUR 3 billion in 2015; representing EUR 18 billion in sales. Currently more than 11 000 businesses are registered in MOSS (there could be a further 100 000 smaller businesses covered by the provision that market places such as the online application/music/movie stores account for the VAT on behalf of the developer/artist).

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Reply of the Commission 52

92
In advance of the 2015 changes, the Commission undertook an intensive communication campaign. It is estimated that revenues from 3rd countries will have at least tripled in 2015 compared to previous years (e.g. DE reported that they received EUR 24.2 million in Q1 2015 alone from non-EU suppliers). Nevertheless, the Commission recognises the compliance challenges and has therefore established a Fiscalis project group (FPG38) which is currently finalising a report with recommendations to improve control in the field of e-commerce.

95
The Commission recalls that it has proposed to create a European Public Prosecutor's Office which would be tasked with investigating and prosecuting fraud affecting the EU budget. The proposed regulation for a European Public Prosecutor's Office is currently under discussion in the Council of the EU.

99
See Commission's reply to par 78.

101
The Commission supports access for Europol and OLAF to VIES and Eurofisc data as a vital tool to enable both organisations to better fulfil their task of supporting investigations by Member States and, in OLAF's case, to conduct investigations into intra-Community VAT fraud.

The multiannual strategic plan related to the EU crime priority 'MTIC/Excise fraud' specifically identifies the '**lack of a systemic cooperation between the law enforcement authorities and tax authorities at national and EU level**' as a potential vulnerability in the MTIC frauds.

103
Regarding OLAF, the problem lies in the absence of clear legal base and tools rather than in the lack of coordination with other EU bodies.

108
The problem was solved to a large extent by the conclusion of a delegation agreement between the Commission and Europol in December 2014, allocating the necessary amounts currently needed for the Empact initiative for the OAPs of 2015 and 2016. Beyond 2016, the financing of OAPs will fall within the statutory tasks of Europol and hence within the regular budget (provided the new regulation is adopted). The amendment of the legal financial statement, including this aspect, is ongoing.

109
Given the high absorption rate in 2015 the Commission is considering topping up the 7 million euros with an additional 2 million euros. Beyond 2016, the financing of OAPs will fall within the statutory tasks of Europol and hence within the regular budget (provided the new regulation is adopted). The amendment of the legal financial statement, including this aspect, is ongoing.

Conclusions and recommendations

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The Commission is constantly discussing with Member States possible new initiatives to enhance the effectiveness of the administrative cooperation and fight against VAT fraud. It supports initiatives taken by Member States to enhance the Eurofisc network efficiency. The Commission is currently negotiating an agreement with Norway to allow for better and targeted cooperation and other countries with important commercial relations with the EU may follow in the future.

Recommendation 1
The Commission accepts the recommendation.
The Commission notes that there is very limited information available in Member States on the size of intra-Community VAT fraud. There are very few countries which estimate the size of intra-Community fraud; even these countries do not publish the methodology used, and the estimates themselves are mostly confidential.

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However, the Commission services (Eurostat and DG TAXUD) are working on a memorandum of understanding (MoU) to better define the areas of future cooperation with the goal to explore data and methods for tax gap estimations and for other indicators of tax evasion and avoidance.

The Tax Gap Project Group was established under the Fiscalis 2020 programme to pool knowledge and exchange information on the methodologies of tax gap estimations. Hereby also the aspects of estimating tax fraud are considered.

Recommendation 2
The Commission notes that this recommendation is addressed to the Member States.

Recommendation 3
The Commission does not accept this recommendation. The Commission has provided for legislation that ensures that the information referred to in Article 143(2) of Directive 2006/112/EC is available in the customs declaration[3]. The Commission considers that Member States have sufficient information and competent MS authorities have access to these data in order to carry out the effective cross-checks between customs and VAT data. However, to be effective, these national cross-checks need to be combined with VIES cross-checks.

For the cross-border exchange of information there are clear legal frameworks established for both tax and customs competent authorities. An additional layer of information exchange between customs and tax authorities in the context of the customs 42 procedure is dealt with within the Eurofisc network.

It is the responsibility of Member States to provide for the implementation of Union legislation and to collect taxes legally due. The Commission has drawn MSs' attention in a general manner to the importance of effective checks on the collection of VAT.

3 See Commission Implementing Regulation (EU) No 756/2012 of 20 August 2012 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (O.J. L 223 of 21 August 2012, page 8).

However, the Commission will reconsider the issue of cross-checks between customs declarations and recapitulative statements in the light of the recommendations to be made by the Fiscalis 2020 project group.

Recommendation 4 (a)
The Commission accepts the recommendation.

The Commission concluded in its report that within Eurofisc, common risk analysis and an effective feedback mechanism would be an appropriate response to the need to have more targeted information available and to make better use of the information that is already available in the network. It would allow the network to further enhance its role as a quick reaction from tax administrations against cross-border VAT frauds.

Recommendation 4 (b)
The Commission accepts the recommendation.

Recommendation 4 (c)
The Commission accepts the recommendation..

Recommendation 4 (d)
The Commission accepts the recommendation.

Recommendation 4 (e)
The Commission accepts the recommendation.

Recommendation 5
The Commission notes that this recommendation is addressed to the Council.

Recommendation 6
The Commission does not accept the recommendation.

As set out in the Commission work programme 2016, a VAT action plan to be adopted in 2016 will aim at delivering an efficient and fraud-proof VAT regime.

This will include a review of reporting obligations such as for intra-EU trade.

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Before the outcome of this exercise, the Commission does not envisage to propose an amendment to the VAT directive in this respect.

Recommendation 7
The Commission does not accept the recommendation.

The application of the reverse charge mechanism as an anti-fraud measure is optional as it is mainly oriented towards specific fraud problems at national level.

However, the Commission is aware that the sectorial application creates problems and intends to discuss the issue of reverse charge in the context of the VAT action plan that will be adopted in 2016.

Recommendation 8
The Commission accepts the recommendation. The Commission is considering the opportunity of carrying out targeted visits to MS to assess the national implementation of the EU administrative cooperation arrangements, in view of the future reports.

Recommendation 9
The Commission notes that this recommendation is addressed to the MS.

Recommendation 10
The Commission notes that this recommendation is addressed to the MS.

Recommendation 11
The Commission notes that this part of the recommendation is addressed to the MS.

Recommendation 11 (b)
The Commission believes that such information exchange could be better achieved and guaranteed through an EU approach and the conclusion of bilateral agreements between the EU and third countries, as is being experienced with Norway.

Recommendation 12
The Commission accepts the recommendation to the extent that it is addressed to its services. It notes at the same time that the recommendation is also addressed to the Member States and implies the mutual responsibility of the legislative authority.

The Commission is committed to continue its efforts to remove the remaining legal obstacles preventing the exchange of information between authorities at national and EU level.

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See Commission reply to paragraph 109.

Recommendation 13
The Commission accepts this recommendation and it is already implementing it. A delegation agreement was signed between the Commission and Europol at the end of 2014 allocating the necessary amounts currently needed for the Empact initiative for the OAPS of 2015 and 2016. Beyond 2016, the financing of OAPs will fall within the statutory tasks of Europol and hence within the regular budget (provided that the new regulation is adopted). The amendment of the legal financial statement, including this aspect, is ongoing.

Recommendation 14
The Commission notes that this recommendation is addressed to the European Parliament and the Council.

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Every year, the European Union loses billions of its VAT revenues through the activities of organised crime. Because exports of goods and services from one EU Member State to another are exempt from VAT, criminals can fraudulently evade VAT in the Member State of destination. The result is lost revenue for the countries concerned as well as for the EU. This report examines how well the EU is tackling intra-Community VAT fraud. We found weaknesses which indicate that the current system is not effective enough. These weaknesses need to be addressed. It is time to be tough and take more decisive action.

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