



Member States' capacity to fight tax crimes

Ex-post impact assessment

STUDY

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On 20 October 2016 the PANA Committee requested a study to investigate cases of tax evasion, tax avoidance, tax fraud and money laundering at EU Member State level, and to provide a retrospective overview of the systems implemented by the Member States and an ex-post evaluation of the performance of the competent administrative and judicial authorities. The resulting analysis is supported by contributions received from the Member States following the Committee Chair's request (late 2016) for information, sent to the minister(s) responsible in each Member State, on the relevant national legal definition(s) of tax-related crimes, the organisation of tasks between national administrations and the judiciary, staff resources and working methods, as well as the results achieved to date. The analytical work was carried out in house by the Directorate-General for Parliamentary Research Services (DG EPRS) Ex-Post Evaluation Unit.

Abstract

This study investigates national provisions to combat tax avoidance and tax evasion, plus money laundering laws and their enforcement. It furthermore examines the administrative capabilities of Member States to tackle these challenges. To conclude, the study reviews the specific interventions of Member States in response to the publication of the Panama Papers. The main aim of this analysis is to evaluate whether the legal framework and the institutional arrangements in place are adequate, what are the deficiencies and how they could be addressed.

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List of abbreviations and acronyms

AML	Anti-money-laundering
ATAD	Anti-Tax-Avoidance Directive
BEPS	Base erosion and profit shifting
CFATF	Caribbean Financial Action Task Force
CFC	Controlled foreign company
CJEU	Court of Justice of the European Union
EPPO	European Public Prosecutor's Office
EPRS	European Parliamentary Research Service
EU	European Union
FATF	Financial Action Task Force
FIS	Fraud investigation service
FIU	Financial intelligence unit
GAARs	General anti-avoidance rules
OECD	Organisation for Economic Cooperation and Development
STR	Suspicious transaction report
TAARs	Targeted anti-avoidance rules
UN	United Nations
VAT	Value added tax
AAFD	Protocol on the notification and settlement of fiscal offences, Netherlands
AEAT	Tax administration authority, Spain
AFCOS	Anti-Fraud Coordination Service, Belgium
AMLC	Anti-Money-Laundering Centre, Netherlands
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht, Germany
CIF	Commission des infractions fiscales, France
DNEF	Direction nationale d'enquêtes fiscales, France
DSIFAE	Tax Inspectorate's Fraud Investigation Services and Special Activities Directorate, Portugal
EBM	Economic Crime Authority, Sweden
FEC	Financial Expertise Centre, Netherlands
FIOD	Fiscal Information and Investigation Service, Netherlands
FPD	Financial Police Division, Greece
HMRC	Her Majesty's Revenue & Customs, United Kingdom
iCOV	Criminal and Unaccountable Assets Infobox, Netherlands
NAFA	National Agency for Fiscal Administration, Romania
NTCA	Tax and Customs Administration, Netherlands
OM	Public Prosecution Service, Netherlands
REAP	Risk evaluation, analysis and profiling system, Ireland
Sepblac	FIU, Spain
SKV	Skatteverket, Swedish Tax Agency, Sweden

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Executive summary

The 'Panama Papers' are a set of documents¹ shared by the International Consortium of Investigative Journalists (ICIJ). These documents have highlighted the practices and methods used by tax-payers and tax jurisdictions to render revenues and tax bases opaque and reduce tax bills. Following these revelations, the European Parliament decided on June 2016 to set up a committee of inquiry to investigate the alleged contraventions and maladministration in the application of European Union law in relation to money laundering, tax avoidance and tax evasion (the PANA Committee).

This study was requested by the PANA Committee with a view to investigating legal provisions and the implementation and enforcement of national tax avoidance, tax evasion, and money laundering rules. It is based mainly on contributions received from Member States.²

Starting by looking at the existing legal framework in place to prevent money laundering, tax evasion and tax avoidance, the study then analyses the organisational model of bodies in charge of combating tax fraud at Member State level. The third part assesses the extent to which the legal framework and administrative capabilities are effective in maximising tax compliance. Finally, the study presents the various responses from Member States to the Panama Papers leak.

An effective fight against tax avoidance, tax evasion, and money laundering should comprise a wide range of regulatory provisions that include preventive measures, sanctions and investigative and prosecuting instruments. In that regard, this study concludes the following:

(1) All respondents³ have a functioning legal framework to fight tax avoidance, tax evasion and money laundering, including:

- national provisions for fighting tax avoidance and tax evasion; these national legal frameworks vary greatly from one Member State to the next: differing legal mechanisms (a mix of administrative and criminal offences and sanctions, differences in relation to natural/legal persons, different ways of tackling tax avoidance, etc.);
- implementation of the EU's legal framework; some Member States, such as Germany, the Netherlands, Slovenia, Croatia and Latvia, have anticipated the adoption of the latest EU framework (including the fourth AML Directive), and included in their national legislation some of the main provisions it contains; other Member States do not yet seem to have implemented the framework in its entirety;

¹ 11.5 million in total, including e-mails, shareholder registers, bank statements, internal reports, passport scans and company certificates.

² See annexes 1 and 2.

³ Despite repeated reminders, Denmark, Hungary and Malta have not answered the PANA Committee's request for information.

- participation in international action, such as the Financial Action Task Force (FATF), or the Warsaw Convention⁴ – although not all EU Member States have ratified this convention.

(2) All Member States have different national tax-collection set-ups and approaches to fraud. Despite similarities in the key institutional actors involved in this process, significant differences exist in the way they operate and how they share information and cooperate with one another:

- The role and powers of tax administrations vary across Member States. In the majority of Member States, the central prosecution authority is responsible for criminal investigations related to tax crimes. The tax administrations usually have some form of investigative power, but under the direction of the public prosecutor.
- All respondents have some kind of inter-institutional information and operational exchange system. This includes joint investigation teams, cooperation protocols across various administrations, and secondments of personnel. These various models are not necessarily mutually exclusive, and some Member States combine these strategies, thus maximising tax compliance efforts.

(3) Member States have put in place a wide range of preventive measures, sanctions and investigative and prosecuting instruments. Unfortunately, the lack of data from Member States did not permit a proper analysis of the enforcement of sanctions. However, analysis of the data available shows that compliance mechanisms vary greatly across the EU Member States, which have adopted different strategies, ranging from deterrence-based enforcement strategies to persuasive and cooperative models. Furthermore, the distinction between administrative tax offences and criminal tax offences is often blurred at Member State level and it is sometimes unclear whether these two types of sanction are complementary or conflicting.

(4) Almost all Member States mentioned the practical action they have taken in reaction to the Panama Papers:

- Some Member States identified more than 3 000 EU-based taxpayers and companies linked to the Panama Papers.
- The Member States concerned have collectively launched at least 1 300 inquiries, audits and investigations into Panama Papers revelations.

(5) Unfortunately, in most countries it is too early to report on fines and convictions relating to the Panama Papers data.

The study notes finally that, in addition to a regular update of the AML framework, the EU has started to work on specific measures in the areas of tax avoidance (with for example the adoption of a general anti-avoidance rule) and tax evasion (with a proposal to harmonise definition). Therefore, the EU framework in this particular area is evolving rapidly at time of writing.

⁴ [Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#), 2005.

Methodology

This analysis was carried out internally by the Directorate-General for Parliamentary Research Services (DG EPRS) Ex-Post Evaluation Unit (EVAL) of the European Parliament.

The analysis

The analysis of qualitative and quantitative data in this in-depth analysis is based almost exclusively on information communicated by the Member States in their submissions responding to the questionnaire sent out by the PANA Committee Chair, Werner Langen, enclosed in his information request letters to the finance and justice ministers responsible (sent late 2016).

However, when necessary, the EVAL team also took into account official reports and other sources of information to complement the Member States' submissions. These include the following:

- the ECOLEF final report of February 2013;⁵
- the 2013 OECD report on Effective inter-agency co-operation in fighting tax crimes and other financial crimes;⁶
- the EPRS study on Fighting tax crimes: Cooperation between Financial Intelligence Units, of March 2017;⁷
- Eurostat's updated report on money laundering;⁸ and
- the 2015 Typologies report on laundering the proceeds of organised crime by the Council of Europe's Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (Moneyval).⁹

Questionnaire to Member States

The questionnaire asked for details from Member States on their legal definitions of tax-related offences, details on the work of the authorities responsible for suspicious transaction reports, and on how the relevant competent Member State authorities coordinate their work. The questionnaire also included a request for information on the national prosecution and penalties regime applicable and applied in relation to tax offences. It also asked for details of the types of problem encountered, details on the activities of national financial supervisory authorities, and in particular, statistics on the types of company involved, the offences sanctioned, and on penalties and fines. Finally, the questionnaire asked for the state of play on Member State investigations relating to the Panama Papers and Bahamas leaks.

⁵ B Unger et al., [Project 'ECOLEF' – The economic and legal effectiveness of anti-money laundering and combating terrorist financing policy](#), February 2013.

⁶ [Effective inter-agency co-operation in fighting tax crimes and other financial crimes](#), second edition, OECD, 2013.

⁷ A Scherrer, [Fighting tax crimes: Cooperation between Financial Intelligence Units](#), DG EPRS, European Parliament, March 2017.

⁸ [Money Laundering in Europe](#), 2013 edition, Eurostat, 2013.

⁹ [Typologies report on laundering the proceeds of organised crime](#), Moneyval, Council of Europe, April 2015.

The PANA Chair also asked for the main submissions to fit within a recommended 'readable' length, and for more detailed information to be supplied in annexes.

A deadline of 15 January 2017 was set for all Member States to respond. The vast majority of Member States did not respect that deadline for forwarding their submissions to the European Parliament.

Despite repeated reminders, Denmark, Hungary and Malta have not responded to the PANA Committee's request for information.

Processing of answers and related documents

Member State submissions¹⁰ fall broadly into three categories:

- Some Member States (about one quarter of submissions) sent back minimal responses and their contributions were below expectations. These submissions include little to no statistical data and very limited analysis.
- The majority of the contributions were made up of satisfactory responses. For these contributions, which meet initial expectations, useful data and analytical elements are provided despite some fairly significant gaps.
- A smaller number of high quality responses exceeded expectations. They addressed all or the vast majority of questions raised in detail.

In addition to the formal submissions, information contained in official Member State government or authority reports (typically annual reports) quoted or referred to in the aforementioned submissions are also assessed and taken into account.

Although the main responses of Member State submissions were returned in an EU working language, a number of submissions contained annexes in the original national language. Some have been translated. These indicative translations are also published on the PANA website alongside the original versions of these annexes.

The processing of the Member States' submissions has encountered significant challenges: submissions vary significantly in format, in length, in the number and content of annexes, and in the degree of information provided.

Outputs

The EVAL team analysed information received from Member States as to how, from a legal and structural perspective, the fight against tax avoidance, tax evasion and money laundering works in each Member State.

To support the analytical work, in light of the varied structure and content of submissions, all submissions were condensed into their core message, core content and core data submitted. This exercise produced one file per Member State. The aim was to harmonise

¹⁰ All the submissions are available on the [PANA Committee website](#).

the presentation of the information received, and to simplify it for the purposes of transparency and facilitating comparison.

The information contained in these files (to be found in Annex 2 of this study) is based entirely on Member State submissions, their annexes and any material quoted within these submissions.

To address some of the gaps and to improve exactitude, the files have been referred back to the relevant Member State authorities, for a fact check and any comments. In total, 15 Member States (Austria, Cyprus, Czech Republic, Germany, Estonia, Spain, Croatia, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia and the United Kingdom) added valuable comments and information.

Peer review

For the purpose of quality control, Professor Brigitte Unger from the University of Utrecht has peer-reviewed this analysis. Professor Unger led the above-mentioned ECOLEF project for the European Commission (2013), and recently produced an update of this project for the European Parliament's Directorate-General for Internal Policies, focusing on offshore activities and money laundering.

Part I: Legal analysis of national definitions, national laws, and the implementing provisions of EU laws relating to tax avoidance, tax evasion and money laundering

Key findings

- (1) A large number of Member States have a functioning legal framework to fight tax avoidance, tax evasion and money laundering and have signed and ratified the relevant international conventions – even if they are not yet fully implemented.
- (2) The fourth AML Directive should have been transposed by 26 June 2017. Given this very recent date, it is not yet possible to analyse the implementation situation in all the Member States properly. According to the submissions, it seems that many Member States anticipated the adoption of the fourth AML Directive and that some of the main provisions of the directive are already in place. However, it seems that others have not yet implemented it in its entirety.
- (3) The national legal frameworks for fighting tax avoidance and tax evasion vary greatly and weaken a coherent EU framework in this field. However, it should be noted that the EU has only recently begun to develop its action in the area of tax avoidance (for example with the adoption of a mandatory general anti-avoidance rule – GAAR) and tax evasion (with a proposal to harmonise definitions at EU level).

As regards the national legal provisions on tax avoidance, tax evasion and money laundering, not all respondents included the same degree of precision in their answers. In addition, as the term 'tax' was not defined in the questionnaire, information from Member States relates indiscriminately to tax (VAT, etc.), customs (excise duties, etc.) and/or social security taxes. This lack of a common definition caused great divergence in the data and information collected. Some included answers concerning all payments of money required by law to finance public expenditure, covering both taxes and other payments (such as health insurance contributions, employment pension contributions, employer's health insurance contributions, etc.), while others included almost no information.

To enable the assessment, the study endorsed the definitions already introduced in the EPRS study on 'The inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance':¹¹

- Tax avoidance is understood as the legal act – unless deemed illegal by the tax authorities or, ultimately, by the courts – of using tax regimes to one's own advantage to reduce one's tax burden.
- Tax evasion is defined as the illegal act of evading taxes by concealing income, earned either legally or illegally, from detection and collection by the tax authorities.
- Money laundering refers to acts involving the processing of the proceeds of crime to conceal their illegal origin and bring them back into the legal economy.

This study does not focus on the rules of independence and responsibility of three main intermediaries – lawyers, accountants/auditors, and tax advisors – in relation to money laundering, tax avoidance and tax evasion as this was tackled in another independent study.¹² It does not explore the concepts and roles of tax havens and offshore financial centres either, as this was part of another study commissioned by the PANA Committee of the European Parliament.¹³

Both collecting taxes and combating tax fraud and evasion are competences of EU Member States. However, European and international cooperation is critical in this field (See section 1). On the other hand, the analysis of national frameworks at Member State level shows a great variety of legal provisions (See section 2).

¹¹ I Ioannides, [The inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance](#), DG EPRS, European Parliament, June 2016, p.9.

¹² [Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services](#), DG IPOL, European Parliament, 2017.

¹³ [The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States](#), DG IPOL, European Parliament, 2017.

1. Developing international and EU legal frameworks

With increasing cross-border flows of money around the world, international cooperation is essential in the fight against tax crimes. The EU has developed instruments and a binding legal framework to handle cross-border tax issues effectively.

1.1. International action

Many Member States mentioned in their answers their participation in international action to fight money laundering, and underlined the importance of their participation in such networks. Indeed, there has been an international framework to tackle money laundering since the late 1980s.

The **Financial Action Task Force (FATF)** is an inter-governmental body established in 1989. It was organised to develop and promote policies to combat money laundering and terrorist financing and now comprises 35 member countries and territories and two international organisations.¹⁴ Indirectly, through associate membership (regional groups such as Moneyval for Eastern European countries, or the Asian Pacific Group for Asian countries) all the countries of the world are formally accepting the standards of the FATF. The FATF is a 'policy-making body' that has developed a series of recommendations that are recognised as the international standards for combating money laundering and the financing of terrorism and proliferation of weapons of mass destruction.¹⁵ First issued in 1990, the FATF recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant.

More specifically, FATF Recommendation 3 calls on countries to criminalise money laundering on the basis of the 1988 Vienna Convention¹⁶ and the 2001 Palermo Convention.¹⁷ The recommendation asks countries to criminalise the laundering of proceeds of all serious offences, with a view to including the widest range of predicate offences – including terrorist financing, trafficking in human beings and migrant smuggling, illicit arms trafficking, environmental crime, fraud, corruption or tax crimes – while leaving countries discretion in how to achieve this. This extension of the list of predicate offences for money laundering to include serious tax crimes brings the proceeds of tax crimes within the scope of the powers and authorities used to investigate money laundering. The recommendation allows countries to exclude self-laundering and requires them to ensure effective, proportionate and dissuasive criminal sanctions for natural persons, criminal (or civil or administrative) liability and sanctions for legal persons.

¹⁴ [FATF members and observers](#), FATF website.

¹⁵ [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations](#), 2012.

¹⁶ [UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#), 1988.

¹⁷ [UN Convention Against Transnational Organized Crime](#), 2001.

In addition, the Council of Europe (CoE) **Warsaw Convention**¹⁸ (opened to signatures in 2005) constitutes the most comprehensive international convention on money laundering. It asks parties to adopt legislative measures to facilitate the prevention, investigation and prosecution of money laundering as well as the effective freezing and confiscation of proceeds and instrumentalities of crime. The Warsaw Convention has been signed by 25 EU Member States, of which only 18 have so far ratified it.¹⁹ The EU has also signed, but not yet ratified.

Finally, several Member States, including Cyprus and Luxembourg, underlined their contribution to the agreement on the early application of the new OECD global standard (GS) on the automatic exchange of information (AEOI). The agreement has been signed by 50 countries (including the 28 EU Member States), and provides a comprehensive overview of the work of the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes in the area of the automatic exchange of information, with respect in particular to the common reporting standard.

1.2. EU instruments and main EU legal acts

The EU has set up a non-legislative framework, specifically to coordinate the Member States' actions in their fight against tax avoidance and tax evasion. A set of legally binding instruments is also in place, containing the main provisions to fight money laundering effectively at EU level.

1.2.1. EU non-legislative framework

The main EU non-legislative initiatives to help Member States in their fight against tax avoidance and tax evasion, are the following:

- The multiannual **Fiscalis** programme was launched in 1993. It is an EU action programme that finances initiatives by tax administrations to improve the operation of the taxation systems through communication and information-exchange systems.
- The Code of Conduct Group on Business Taxation was set up by Ecofin on 9 March 1998.²⁰ It deals mainly with assessing tax measures for business taxation and overseeing the provision of information on those measures. The code of conduct is not a legally binding instrument but its adoption requires the

¹⁸ [Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#), 2005.

¹⁹ Member States that have signed and ratified: Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Hungary, Italy, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and the United Kingdom.

Member States that have signed but not yet ratified: Austria, Denmark, Estonia, Finland, Greece, Lithuania, and Luxembourg.

Information extracted on 29 June 2017 from the [Chart of signatures and ratifications](#).

²⁰ [Code of Conduct for business taxation](#), European Commission.

commitment of Member States to abolish existing tax measures that constitute harmful tax competition and refrain from introducing new ones in the future. The European Commission has repeatedly stated that it intends to work with Member States to review the code of conduct.²¹

- The **Eurofisc** network was established by a regulation on administrative cooperation and combating VAT fraud²² and officially launched on 10 November 2010. It is a decentralised network of representatives of Member States' tax and customs administrations, which swiftly exchange targeted information about possible fraudulent companies and transactions.
- The exchange of information provides national tax authorities with elements that help to identify and track evasion and fraud. It requires proper and usable identification of taxpayers. To that end, the EU **tax identification number** (TIN) contributes to automatic identification of taxpayers for direct taxes.²³ Most of EU Member States use TIN to identify taxpayers. To improve the exchange of tax information between Member States, the EU has developed a web portal where Member States gather general information related to their national TINs (if the Member State has agreed to participate).
- The European Commission presented an **EU action plan** on aggressive tax planning and good tax governance in December 2012.²⁴ The plan covers, in particular, actions designed to increase the exchange of information within the EU, fight VAT fraud more effectively, provide disincentives to commit fraud and step up the coordination of international tax agreements at EU level. On the same day, the European Commission announced the creation of the **Platform for Tax Good Governance**,²⁵ designed to assist the European Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation. It brings together expert representatives from business, tax professional and civil society organisations and enables a structured dialogue and exchange of expertise that can feed into a more coordinated and effective EU approach to tax avoidance and evasion.

²¹ See, for instance, point 5.2 of the Commission [action plan](#) for a fair and efficient corporate tax system in the EU, and the [hearing](#) of Pierre Moscovici before the PANA Committee on 4 May 2017.

²² [Council Regulation 904/2010](#) on administrative cooperation and combating fraud in the field of value added tax.

²³ This is one of the measures of the 2012 action plan to strengthen the fight against tax fraud and tax evasion.

²⁴ An action plan to strengthen the fight against tax fraud and tax evasion, [COM\(2012\) 722](#); together with the recommendations of 6 December 2012 on [aggressive tax planning](#) (2012/772/EU) and [good tax governance with third countries](#).

²⁵ [Platform for tax good governance](#), European Commission web pages.

As highlighted by the European Court of Auditors,²⁶ the tools of administrative cooperation between tax administrations are not being sufficiently exploited. There is a need to move from the existing cooperation models based on Member States exchanging information to new models of sharing and jointly analysing information and acting together. The EU could also provide additional support by rationalising IT instruments and extending EUROFISC to direct taxation.

1.2.2. EU legislative framework

In addition to these non-binding measures, since the 1990s the EU has been developing a binding legal framework first for anti-money laundering and later for tax evasion and tax avoidance.

European Union Anti-Money Laundering (AML) Directives

In 1991, the first AML Directive (Directive 91/308/EEC) embraced the 40 FATF Recommendations, focused on drug-trafficking related money laundering. The directive was first revised in 2001 (second AML Directive, Directive 2001/97/EC) to be extended to all crime types and adding some service-providers obliged to report transactions (obliged entities). In 2005, the third AML Directive (Directive 2005/60/EC) extended the scope of the anti-money-laundering regime, for the first time, to activities associated with terrorist financing.

The current directive is the fourth AML Directive.²⁷ It was published on 20 May 2015 and the Member States were required to implement it by 26 June 2017.²⁸ The fourth AML Directive aligns EU legislation with international standards and the latest FATF recommendations.

The fourth AML Directive defines money laundering as converting or transferring property derived from criminal activity in order to disguise or conceal its origin or to assist someone in committing or evading the consequences of such activity, as well as concealing the nature, location, movement or ownership of such property, or acquiring, possessing or using such property. In each case, knowledge that the property is derived from criminal activity is required, but this may be inferred from objective factual circumstances.²⁹ In addition to the general categories of crime as provided in the list of predicate offences established by FATF and the Warsaw Convention, the list includes cybercrime and crimes where there is legislation at EU level defining the predicate offences, by making a reference to the relevant EU legislative acts.

²⁶ [Special report No 24/2015](#): Tackling intra-Community VAT fraud: More action needed, European Court of Auditors, 3 March 2016.

²⁷ [Directive \(EU\) 2015/849](#) of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012, and repealing Directive 2005/60/EC and Directive 2006/70/EC.

²⁸ Article 76, fourth AML Directive

²⁹ Article 1(2) and (5) of the third AML Directive, and Article 1(3) and (6) of the fourth AML Directive.

The directive also criminalises self-laundering and includes tax offences as a predicate offence to money laundering.³⁰

The other main changes, compared with the third AML Directive, relate to the following:

- Beneficial ownership: all Member States are required to introduce an ultimate beneficial owner register. Entities will be required to maintain accurate and up-to-date information on beneficial ownership. This obligation applies to corporate and other legal entities, but also to trusts. The information on beneficial ownership should be held by each Member State in a central register that should be accessible to banks, law firms and 'any person or organisation that can demonstrate a legitimate interest'.
- Customer due diligence (CDD): simplified due diligence should now be individually assessed, and obliged entities are required to undertake enhanced due diligence when dealing with companies in designated 'high-risk' countries, in order to both manage and mitigate risks.
- Risk-based approach: the directive acknowledges that measures should be adjusted according to the level of risk presented in specific jurisdictions and sectors. It introduces a new requirement for Member States to identify, assess, understand and mitigate the risks they face, and to keep their assessments up to date.
- Politically exposed persons (PEPs): the categories of individual who can be regarded as PEPs has been broadened to include members of the governing bodies of political parties, and directors, deputy directors and members of the board or equivalent function of an international organisation.

As an addition, prompted by the terrorist attacks of late 2015 and the Panama Papers leak, the European Commission decided to review the EU's anti-money laundering framework once more and to propose new amendments that are, at the time of writing, still under negotiation.³¹

EU tax avoidance and tax evasion developing framework

In recent decades, an advanced EU legal framework aimed at tackling tax avoidance and evasion has developed significantly. Whilst Member States have preserved their sovereignty over tax policies, the EU treaties emphasise the need to harmonise some rules

³⁰ Austria, Belgium, Bulgaria, Spain, France, Greece, Luxembourg, the Netherlands, Poland, Portugal and Slovakia underlined this in their contributions.

³¹ Proposal for a directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, [COM\(2016\) 450](#). For an EPRS initial appraisal of the European Commission's impact assessment on these amendments, see C. Collovà, [Prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), DG EPRS, European Parliament, 2016.

²⁰ Directive 2005/60/EC, op.cit.

to guard the single market's integrity. EU intervention in the area of taxation has consequently increased, together with the ambition to complete the single market. Some degree of harmonisation has been put in place with regard to direct taxes, such as corporate tax, so as to remove tax obstacles to trade, double (non-) taxation, and prevent harmful tax competition. Harmonisation has also been set up for indirect taxes (e.g. VAT) to limit single market distortions.

Administrative cooperation and mutual assistance

Administrative cooperation and mutual assistance are necessary because states define their tax jurisdiction in an extraterritorial way (e.g. taxing the worldwide income of residents and the domestic source income of non-residents), whereas their powers to investigate and to recover taxes stop at their borders. To close this gap between extraterritorial jurisdiction and territorial enforcement limits, states need each other in order to achieve correct assessment and full recovery of taxes.

Mutual assistance between the Member States in the field of taxation was established at EU level in the late 1970s. Mutual assistance was possible pursuant to Directive 77/799, which enabled the Member States to exchange information on direct taxation. Directive 79/1070/EEC extended this to VAT. However, because of the need to address new challenges such as increased taxpayer mobility and a growing volume of cross-border transactions, this directive was repealed and replaced by Directive 2011/16 (DAC1).³² This directive defines the necessary procedures for better cooperation between tax administrations. The DAC provides for information to be exchanged in three ways: spontaneously, automatically or on request. It establishes mechanisms for the participation of Member States' authorities in administrative enquiries, and simultaneous controls and mutual notifications of tax decisions. It also provides for the necessary practical tools, such as a secure electronic system for information exchange.

The DAC has so far undergone three main revisions, in 2014, 2015 and 2016:

- The first revision (**DAC2**) amended the DAC as regards mandatory automatic exchange of information in the field of taxation, aligning EU law with the AEOI global standard.³³
- The second revision (**DAC3**) amended the DAC to extend the mandatory automatic exchange of information to rulings and advance-pricing arrangements.³⁴
- The third revision (**DAC4**) amended the DAC by introducing a new article establishing the scope of application and conditions relating to the

³² [Council Directive 2011/16/EU](#) of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

³³ [Council Directive 2014/107/EU](#) of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

³⁴ [Council Directive \(EU\) 2015/2376](#) of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

mandatory automatic exchange of information regarding country-by-country reporting.³⁵

Measures against aggressive tax planning, including anti-abuse provisions

Uncoordinated measures against profit shifting can harm national policies. Indeed, rules in one Member State can undermine the effectiveness of the rules of others. Thus unilateral action by Member States would not tackle the problem of aggressive tax planning adequately, as divergent national approaches to tackling this cross-border problem can create loopholes for aggressive tax planners.

The EU has set up various instruments to address some profit-shifting situations, such as the Parent Subsidiary Directive (PSD) covering payments between subsidiaries and EU parent companies. The PSD was amended in 2015³⁶ to counter abusive practices. The amended directive allows Member States to use unilateral measures against profit-participation loans, and introduced a common minimum anti-abuse rule for situations that fall under the PSD.

The EU also adopted an Anti-Tax Avoidance Directive³⁷ (ATAD), in 2016. Linked to the OECD/G20 base erosion and profit shifting (BEPS) action plan, it targets schemes where corporate taxpayers operating businesses in several countries take advantage of disparities and loopholes to reduce their tax bills. The directive applies to all taxpayers subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country. It lays down anti-tax-avoidance rules in five specific anti-BEPS fields: interest limitation rules, exit taxation rules, general anti-abuse rule, controlled foreign company (CFC) rules and rules on hybrid mismatches. The deadline for implementation is 31 December 2018, with some derogations.

In the context of the corporate tax reform package,³⁸ the European Commission has published a proposal to amend the ATAD in order to extend the rules on hybrid mismatches to those involving non-EU countries. Hybrid mismatches³⁹ are used as aggressive tax planning structures, which in turn trigger policy reactions to neutralise their tax effects. The proposal seeks to neutralise mismatches by obliging Member States to deny the deduction of payments by taxpayers or by requiring taxpayers to include a payment or a profit in their taxable income.

³⁵ [Council Directive 2016/881](#) of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

³⁶ [Council Directive 2015/121](#) of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

³⁷ [Council Directive 2016/1164](#) laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

³⁸ [Corporate tax reform package webpages](#), European Commission.

³⁹ Hybrid mismatch is a situation where a cross-border activity is treated differently for tax purposes by the countries involved, resulting in favourable tax treatment.

In addition, on 25 October 2016, the European Commission decided to re-launch the common corporate tax base project in two steps, with the publication of two new interconnected proposals for directives on a common corporate tax base (CCTB)⁴⁰ and a common consolidated corporate tax base (CCCTB).⁴¹ The purpose of the proposals is to establish common rules for corporate taxes and to provide for the framing of a single set of rules for the determination of the corporate tax base. The proposals are still under discussion in the Council.

A further step in tax transparency would be to broaden it by providing publicly available information relating to tax paid at the place where profits are actually made. To achieve that, the European Commission published a proposal for a directive providing for public country-by-country reporting,⁴² as an amendment to Accounting Directive 2013/34. Public country-by-country reporting (CBCR) is the publication of a defined set of facts and figures by large multi-national enterprises (MNEs), thereby providing the public with a global picture of the taxes MNEs pay on their corporate income. The proposal is still under discussion in the European Parliament and the Council.

A considerable number of EU initiatives have therefore been launched recently, especially since 2012. The legal framework is constantly developing, in order to fill the previously identified gaps. However, these recent changes have not always been timely or fully implemented by the Member States.⁴³

2. Diverging national legal frameworks

All respondents included comprehensive information on the relevant legal definitions for tax evasion and money laundering and sometimes references to the relevant EU legal acts. This information provided the framework for the analysis of Member States' legal architecture and the definition of tax avoidance, tax evasion and money laundering.

2.1. The grey zone of tax avoidance

Since tax avoidance is generally understood to be a lawful act or at least, a grey area, it was expected that only a few submissions mentioning specific legal provisions governing this practice would be received. Only half of the respondents (12 countries) included information on tax avoidance. Some however included references to their legal framework, consisting mainly of general provisions (abuse of rights or general anti-avoidance rules

⁴⁰ Proposal for a Council directive on a Common Corporate Tax Base, [COM\(2016\) 685](#).

⁴¹ Proposal for a Council directive on a Common Consolidated Corporate Tax Base, [COM\(2016\) 683](#).

⁴² Proposal for a directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, [COM\(2016\) 198](#).

⁴³ See B Unger et al., [Project 'ECOLEF' – The economic and legal effectiveness of anti-money laundering and combating terrorist financing policy](#), February 2013, for the implementation of EU laws before 2013, and, A Scherrer, [Fighting tax crimes: Cooperation between Financial Intelligence Units](#), DG EPRS, European Parliament, 2017, p. 12, for recent changes.

(GAARs)) or sometimes specific targeted anti-avoidance rules (TAARs). The tax system of the Netherlands contains both.

The main difference lies in their scope of application: while TAARs are aimed at curbing specific tax avoidance techniques, e.g. abusive transfer pricing or debt financing, GAARs can be applied on a much broader scale, forming a kind of catch-all anti-avoidance tool.

The fundamental role of a GAAR is to draw a statutory line between acceptable tax planning and unacceptable tax avoidance, by providing the tax administration and the courts with a set of parameters to take into account when deciding on the acceptability of a taxpayers' tax reduction behaviour.

Although GAARs vary in form in different Member States, the definitions tend only to be applied only if a taxpayer's arrangement results in a tax benefit (e.g. exclusion of a certain item of income from the tax base) that would not arise but for the arrangement.

Some Member States use the concept of 'abuse of law'. Even though the concept of abuse of law is not specific to taxation, it is applied to taxation issues, for instance in the following countries:

- France: article 64 of the French tax procedures code states that in order to restore its true character, the administration is entitled to reject, as not being acceptable, acts constituting an abuse of rights, either because they are of a fictitious nature or because they seek the benefit of a literal application of texts or decisions against the objectives pursued by their authors, they could not have been inspired by any motive other than that of evading or mitigating the tax burdens that the person concerned, had those acts not been carried out, would normally have borne in view of his actual situation or activities.
- Italy: the chapter on "Discipline of abuse of rights or tax avoidance", provides a definition of the abuse of rights and determines the manner in which the Italian finance administration can counter it.
- Poland: abuse of law in the taxation area is defined as an activity performed mainly for the purpose of obtaining a tax advantage, which in given circumstances is contrary to the purpose and regulation of tax provision, and shall not result in obtaining tax advantage where the process was artificial.

In some other countries, a similar concept has developed under case law. This is the case for example in the Netherlands, where the *Fraus legis* principle (abuse of law principle) was set by the Dutch Supreme Court. It applies when the sole purpose or primary objective of the taxpayer is to realise a significant tax reduction by concluding a transaction (motive requirement) and is not in conformity with the purpose and scope of the relevant legislation (norm requirement).

The Court of Justice of the European Union (CJEU) has also acknowledged that principle, first with the *Halifax* case, regarding indirect taxes.⁴⁴ The decision showed clearly that two elements constituted abusive behaviour. Firstly, the transactions gave rise to a tax advantage contrary to the purpose of pertinent rules of EU law (the 'objective element'). Secondly, the essential aim of the transactions was to obtain a tax advantage (the 'subjective element'). Subsequent case law of the CJEU seems to extend that anti-abuse theory to the Treaty freedoms, in the *Cadbury Schweppes* case.⁴⁵ In both cases, the CJEU rules that nationals of a Member State cannot attempt improperly or fraudulently to take advantage of provisions of EU law (*Halifax* at Nos 68 and 69 and *Cadbury Schweppes* at No 35, each citing a different precedent).

This comparative overview of EU Member States' anti-avoidance legislation confirms the well-established view that the approach to tax avoidance is unique in every country, and reveals that no general European-wide principles may be extracted from the national level. However, with the advent of the OECD BEPS project and the adoption of the ATAD, all EU Member States will be required to adopt GAARs by 1 January 2019.

2.2. Different legal mechanisms for fighting tax evasion

Most respondents provided at least some detail on their tax evasion legislation. Unfortunately, some Member States only referred to their 'umbrella legal acts' and not to specific provisions. This has made the analysis more complicated than initially foreseen.

Nevertheless, Member States' answers show that they have different legal mechanisms for fighting tax evasion (mainly with a mix of administrative and criminal offences and sanctions).

Most definitions include all tax-related evasion provisions. This is for instance the case of Germany, Estonia, Spain, Finland, France, Croatia, Lithuania, Latvia, Netherlands, Poland, Portugal, Slovakia and Slovenia. In other cases, the legal texts feature specific provisions for each kind of tax for example VAT, excise duties, social security taxes, or revenue taxes. The offences can be, in most cases, fraudulent evasion of income tax, fraudulent evasion of VAT, cheating the public revenue, providing false documents or information, and fraudulent evasion of excise duty on imported goods or smuggling goods (e.g. cigarettes or alcohol). These 'enumerative' provisions take the form of clear and precise legal prescriptions.

2.2.1. A mix of administrative and criminal offences

The majority of the tax systems reviewed in the submissions provide for two types of offence, i.e. administrative and criminal, depending on whether the violation is classified under domestic tax law as an administrative offence or, rather, as a criminal offence.

⁴⁴ [C-255/02](#) – *Halifax and Others*, CJEU, 21 February 2006.

⁴⁵ [C-196/04](#) – *Cadbury Schweppes and Cadbury Schweppes Overseas*, CJEU, 12 September 2006.

According to the Member States' answers, most systems allow for both criminal and administrative qualification for tax evasion offences.⁴⁶ This qualification has a great importance in determining the authorities competent for prosecuting the alleged offence and in determining the sanction. This is further examined in parts 2 and 3 of this study.

2.2.2. Differences between the persons who can be sentenced

Two main kinds of perpetrator can be distinguished in the area of tax fraud: natural persons (having their own legal personality) and legal persons (i.e. business entities, non-governmental organisations, etc.).

Although it is given a lot of media coverage, tax fraud committed by legal persons is the most difficult to grasp. It is where the line between avoidance and fraud is the finest, given the various schemes and strategies adopted by business entities. Fraudulent tax avoidance appears easier for firms than for individuals: a firm can set up a branch or an affiliate on any territory, so long as it follows the relevant legal provisions.

Some Member States allow for the prosecution of all kind of legal persons, excluding States and State-owned bodies. This is for example the case in Bulgaria, Croatia, the Republic of Ireland and Portugal. On the contrary, in some Member States, legal persons cannot be prosecuted⁴⁷ or the prosecutions are limited to certain circumstances.⁴⁸ In some other Member States, sanctions on legal persons can be directed at the natural persons in charge. In Cyprus for example, the board of directors or any person responsible for the financial administration of the legal entity can be liable. In the same way, in the Republic of Ireland, officers of the legal entity may also be prosecuted where the offence is shown to have been committed with the officer's consent or connivance or to be attributable to any recklessness of that person.

2.2.3. Tax evasion without intent

In some Member States, negligence is a sufficient subjective element (*mens rea*) to constitute the offence. This is the case for certain types of minor offence in Spain, in Portugal and in Slovenia. In most Member States, on the contrary, direct intent is required.

2.3. The fourth AML Directive

The deadline for transposition of the fourth AML Directive was 26 June 2017. Unfortunately, it is too early for a proper analysis of the transposition of this directive in all the Member States.

⁴⁶ This is the case of Bulgaria, Cyprus, the Czech Republic, France, Italy, Luxembourg, Portugal and the United Kingdom.

⁴⁷ This is the case in Bulgaria for example, where legal persons cannot be criminally prosecuted.

⁴⁸ In Latvia for example.

However, many Member States mentioned in their submissions that they had already implemented some of the main changes introduced by the fourth AML Directive, providing for example for the aspects listed below:

- Inclusion of tax offences as a predicate offence to money laundering.⁴⁹
- **Beneficial ownership:** in Germany, obliged entities are required as part of their customer due diligence to identify where applicable, the beneficial owner of the customer and to take risk-based measures in order to verify his or her identity, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer. The Netherlands underlined that it is, *inter alia*, in the process of setting up a register with information on the beneficial ownership of legal entities.⁵⁰
- **Customer due diligence (CDD):** German banks and their branches and subsidiaries both at home and abroad have been required since 2008 to have in place single group-wide AML policies, including CDD regarding the beneficial owner (section 251 of the German Banking Act, in conjunction with sections 3(1)(3) and 4(5) of the German Money Laundering Act). In Slovenia, the obligation to apply CDD measures in cases of occasional transactions of over €1 000 and in cases of the collection of winnings, the wagering of a stake, or both, within gambling services providers above the threshold of €2 000 was introduced by the new law on the prevention of money laundering and terrorist financing.
- **Risk-based approach:** Croatia implemented a project for a national risk assessment of money laundering and financing of terrorism risks project, in accordance with article 7 of Directive 2015/849 and FATF Recommendation 1, according to which each state is required to identify, assess and understand the risk of money laundering and financing terrorism in that country, and to take appropriate measures to effectively mitigate the risks identified.⁵¹ The results of the national risk assessment indicated that criminal offences relating to tax and customs duties evasion are crimes that represent a high threat of money laundering, because two conditions are met simultaneously: the offences are committed often and lead to significant pecuniary gain. Slovenia underlined that

⁴⁹ Austria, Belgium, Bulgaria, Spain, France, Greece, Luxembourg, the Netherlands, Poland, Portugal, Slovakia underlined this in their contributions.

⁵⁰ It is the intention of the government of the Netherlands to make this a public register, subject to strong privacy safeguards.

⁵¹ The purpose of the national risk assessment is to determine the threats and vulnerabilities of the system of prevention and detection of money laundering and related predicate offenses (including evasion of tax or customs duties as a predicate offense) and the financing of terrorism in order to further strengthen the overall system of prevention of money laundering and terrorist financing in the Republic of Croatia.

its new law on the prevention of money laundering and terrorist financing includes provisions on a risk-based approach. It is worth noting that a project financed by the European Commission developed a methodology which allows the systematic measurement of national anti-money laundering risks.⁵²

- **Politically exposed persons (PEPs):** Latvia adopted a law in 2016 on the prevention of money laundering and terrorism financing, extending the definition of PEPs. The Slovenian law defines PEPs not only as foreign persons entrusted with a prominent public function, but domestic persons as well.

Other Member States, such as Finland,⁵³ and Latvia⁵⁴ mentioned that they are in the process of adopting new legislative provisions to implement the fourth AML Directive.

It is worth noting that, according to Article 65 of the fourth AML Directive, the European Commission will have to draw up a report on the implementation of the directive by 26 June 2019.

In addition, even if all Member States consider money laundering to be a criminal offence, there are still significant differences in the respective definitions of what constitutes money laundering, and on what constitute predicate offences – i.e. the underlying criminal activities that give rise to money-laundering activities.

For example, France underlined that no link is necessary between the predicate offence and the offender, as long as he/she is in possession of the proceeds of the crime. In the same way, in the Netherlands, the mere possession of the proceeds of crime constitute money laundering.

In Sweden, a person can be found guilty of money laundering, even if the predicate offence has not been substantiated. In contrast, Estonia stated that the predicate offence is a necessary element of proof.

Finally, only Germany and the United Kingdom highlighted the fact that they have a system in place for protecting whistle-blowers. The fight against tax avoidance, tax evasion and money laundering is typically an area where, in the course of their work, individuals

⁵² E Savona and M Riccardi, [Assessing the risk of money laundering in Europe](#) – Final report of project IARM, co-funded by the Prevention of and Fight against Crime Programme of the European Union, April 2017.

⁵³ The Finnish government has put forward a proposal to parliament amending the act on detecting and preventing money laundering and terrorist financing. One of the key elements of that proposal is to give new supervisory powers to various authorities operating against money laundering and also to widen the scope of administrative sanctions.

⁵⁴ The justice ministry and the other institutions involved in the enforcement of anti-money laundering provisions are currently working on draft amendments to ensure the more effective prosecution of persons liable for money laundering offences. The objective of the draft amendments is to introduce a lesser subjective mental element for money laundering offences. The draft amendments have been submitted to the parliament for approval.

may come across information that represents a threat or harm to public financial interests. Reporting such behaviour can bring it to the fore and help to prevent harm to the public interest. This was the case for instance in the Luxleaks case. In July 2017 the European Commission will propose EU measures to strengthen EU whistle-blower protection.⁵⁵ The European Parliament also endorses this as a priority and will draft an own initiative report in the course of 2017.⁵⁶

3. Conclusions

A large number of Member States have a functioning legal framework to fight tax avoidance, tax evasion and money laundering, including legal definitions and sanctions.

In some cases, the legislation is still evolving. These recent changes in Member States' legislation may have been induced by the evolution in EU and international standards, in combination with recent scandals (Luxleaks, Panama Papers leak, etc.).

However, many Member States still encourage tax competition among themselves, leading to divergent legal frameworks, legal definitions and sanctions. This was acknowledged by the President of the European Commission in a hearing in front of the PANA Committee of the European Parliament on 30 May 2017.⁵⁷ In addition, referring to its very competitive tax policy, the Dutch finance minister, Jeroen Dijsselbloem stated that the Netherlands for too long had been 'part of the problem', but that in recent years steps had been taken and the Netherlands now wanted to be 'part of the solution'.⁵⁸ He also said that the OECD/BEPS measures had been implemented in record time, and that the same was true of the ATAD, transparency standards and the DAC.

More significantly, at operational level, the differences in the definitions, scope and sanctions of money laundering offences affect cross-border police and judicial cooperation between national authorities and the exchange of information. For instance, differences in the scope of predicate offences make it difficult for financial intelligence units (FIUs) and law enforcement authorities in one Member State to coordinate with other EU jurisdictions to tackle cross-border money laundering (e.g. as regards money laundering related to tax crimes), as explained in Part 2.

These variations between Member States, and these legal differences can be exploited by fraudsters and criminals, who can choose to carry out their financial transactions where they perceive anti-money laundering legislation to be weakest.

⁵⁵ The [public consultation](#) took place in May 2017.

⁵⁶ Own-initiative report on [Legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies](#).

⁵⁷ European Parliament Committee of Inquiry on Money Laundering, Tax avoidance and Tax Evasion, [recording of the meeting of 30 May 2017](#).

⁵⁸ European Parliament Committee of Inquiry on Money Laundering, Tax avoidance and Tax Evasion, [recording of the meeting on 11 July 2017](#).

As the EU framework is still evolving, many legal provisions are not yet in place in the Member States' legal systems. The smooth and rapid implementation of EU legislation, such as the inclusion of tax crimes as predicate offences under the fourth AML Directive, should help to tackle some of the loopholes identified. Member States must ensure full and effective implementation and application of these instruments, in particular by stepping up the exchange of information.

Part II: Member States' administrative capabilities in the area of tax crime

Key findings

(1) The institutional set-up to deal with tax crimes is similar across the EU Member States: tax/customs administrations, police and prosecuting authorities, FIUs and financial regulators are the key players in this field. However, the ways in which each of these players work in practice and cooperate with one another at domestic level vary greatly.

(2) The role and powers of tax administrations vary across Member States. In the majority of Member States, the central prosecution authority is responsible for criminal investigations relating to tax crimes. Tax administrations usually have some form of investigative powers, but under the direction of the public prosecutor.

(3) As regards police authorities, a number of Member States mention specialised investigative units for combatting tax crimes that have access to numerous databases. Some of these units are granted special investigative powers.

(4) Information provided on EU FIUs show that Member States apply various organisational models for their respective FIUs. Despite these variations, all the contributions confirmed the special role of FIUs in the fight against money laundering: FIUs are the entities responsible for handling suspicious transaction reports (STRs). Most of the contributions mention the role of national supervisory authorities responsible for the supervision of financial/banking institutions in their AML activities, which includes the submission of STRs.

(5) At the level of cooperation, the majority of the contributions mention some kind of inter-institutional information and operational exchanges. This includes joint investigation teams, cooperation protocols across various administrations, and secondments of personnel. These various models are not necessarily exclusive from one another, and some Member States combine these strategies, thus maximising efforts in tax compliance.

The questionnaire sent to the Member States asked for details on the work of the authorities responsible for the fight against tax crime and on how the relevant competent Member State authorities coordinate their work. The aim was to gather comparable data to enable an assessment of Member States' administrative capabilities in this area.

In their submissions, all Member States explained their national tax collection set-ups and approaches towards fraud. Despite similar key institutional actors involved in this process,

significant differences exist in the way they operate and how they share information and cooperate with one another.

In addition to the analysis of the Member States' contributions, a report produced by the OECD in 2013,⁵⁹ which provided an in-depth comparative analysis of inter-agency cooperation in fighting tax crimes and other financial crimes in 32 countries,⁶⁰ including 18 EU Member States, was taken into account.

⁵⁹ [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes](#), Second edition, OECD, 2013.

⁶⁰ Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, India, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

1. Key institutional actors

One common denominator found in the submissions is the key institutional actors involved in the fight against tax crimes:

- Tax administrations are at the forefront of tackling abuse and fraud. In some Member States, tax and customs are dealt within the same administrative structure, whereas in others customs-related crimes (notably VAT and excise duty abuses) are tackled separately. Some of those administrations are empowered to conduct direct investigations.
- Law enforcement (police and prosecuting authorities): in some Member States, the police or public prosecutor has responsibility for conducting investigations. Some contributions mention specialised police units that deal specifically with financial crimes.
- FIUs can play an important role in the detection of fraud. The cooperation between FIUs and tax administrations on the one hand, and with the prosecuting authorities on the other hand, is key to ensure tax compliance.

The financial regulators also play an important role in national mechanisms against tax crime.

1.1. Tax administration and customs

All the submissions mention the important role of their tax administrations in the fight against tax fraud. Customs administrations are, in the majority of Member States, a separate agency. Joint tax and customs administrations are found in at least the following Member States: Austria, Estonia, Ireland, Netherlands, Poland, Portugal, Slovakia, Spain and the United Kingdom⁶¹. In the contributions, the information provided on the role of customs administrations is generally far less detailed than on the role played by tax administrations, and often not mentioned at all. However, VAT fraud is explicitly pointed out as a significant challenge in some Member States, as described below.

The role and powers of tax administrations vary across Member States. Looking at ways countries have allocated responsibilities for countering tax crime, the above-mentioned OECD report identified the following four models: ⁶²

⁶¹ On the basis of the contributions by the Member States, it has not been possible to determine whether customs were a separate entity or a joint entity with tax authorities for the following Member States: Belgium, Bulgaria, Czech Republic, Lithuania, Latvia, Poland, Croatia, Romania and Germany.

⁶² [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes](#), 2013, OECD, pp. 20-22.

- **Model 1:** the tax administration has responsibility for directing and conducting investigations. For the EU Member States considered in the report, this model is applied in Ireland and the United Kingdom.
- **Model 2:** the tax administration has responsibility for conducting investigations, under the direction of the public prosecutor. This model is applied in Austria, Germany,⁶³ the Netherlands, Portugal, Sweden and Spain. In Spain, investigations are directed by an examining judge.
- **Model 3:** a specialist tax agency outside the tax administration has responsibility for conducting investigations. This model is applied in Greece.
- **Model 4:** the police or public prosecutor has responsibility for conducting investigations. This model is applied in Belgium, the Czech Republic, Finland, France, Luxembourg, Slovakia and Slovenia.

The submissions of the Member States confirm the existence of these organisational models,⁶⁴ and some of them provide interesting explanations and illustrative examples.

Member States in which the tax administration has responsibility for directing and conducting investigations (Model 1)

Ireland mentions the role of the Revenue Commissioners (the tax and customs administrations), supported by a national risk evaluation, analysis and profiling system (REAP). Investigations with a view to prosecution (for the most serious cases) are carried out by the Investigations and Prosecutions Division of the Revenue Commissioners, and files are referred to the Office of the Director of Public Prosecutions.

In the United Kingdom, Her Majesty's Revenue & Customs (HMRC) has a dedicated Fraud Investigation Service (FIS) that deals with tax crime bringing together HMRC's civil and criminal investigation expertise. HMRC is not a prosecuting authority, but works with independent prosecutors.

Member States in which the tax administration has responsibility for conducting investigations, under the direction of the public prosecutor (Model 2)

The Netherlands provided a good deal of detail on how the system works in practice. In the Netherlands, the Tax and Customs Administration (NTCA) is responsible for tackling

⁶³ In the OECD report, Germany is placed under Model 1 – but in practice, the public prosecutor is involved at an early stage in the investigations for the most serious offences. See the report p.28. Moreover, in Germany, tackling tax crimes is the responsibility of the *Landers*, which have dedicated tax investigation units.

⁶⁴ For those Member States not linked with any of the four categories and that were not part of the OECD comparative assessment, the contributions received have not provided enough information to determine in which organisation models they belong to.

tax avoidance within the scope of tax legislation. A regulation on notification and settlement of fiscal offences and offences relating to customs and allowances (the AAFD protocol) entered into force with effect from 1 July 2015. The protocol (enshrined in procedural law) describes how the Tax and Customs Administration selects the notifications of possible offences that are eligible for criminal processing in the jurisdictions of taxes, allowances and customs. The selected notifications are presented in a coordination meeting of the Tax and Customs Administration, the Fiscal Information and Investigation Service (FIOD) and the Public Prosecution Service. The eventual choice of settlement by a criminal court is made in a coordination meeting between the Tax and Customs Administration and the Public Prosecution Service. A coordination meeting, for that matter, can also take place on an administrative level. The protocol primarily provides for coordination between the Tax and Customs Administration and the Public Prosecution Service to prevent administrative settlement and settlement by a criminal law court from going ahead concurrently.

In Sweden, the Swedish Tax Agency (*Skatteverket*, SKV) is obliged to report all suspected tax offences to the Swedish Economic Crime Authority (*Ekobrottsmyndigheten*, EBM), which is the prosecution authority that processes all financial crimes.

In Portugal, the Tax Inspectorate's Fraud Investigation Services and Special Activities Directorate (DSIFAE) has delegated powers to investigate, without prejudice to having the case taken over at any time by the Public Prosecutor's Office, which it must notify immediately of the initiation of an inquiry.

Member States in which a specialist tax agency outside the tax administration has responsibility for conducting investigations (Model 3)

The unique example of Greece is worth mentioning here. In Greece, the Financial Police Division (FPD) is an independent office, attached to the Hellenic Police, under the control of the deputy minister of justice, which cooperates with many other authorities, including the tax administration. The division has special investigation methods, including undercover investigation, lifting of confidentiality, and access to databases.

Member States in which the police or public prosecutor has responsibility for conducting investigations (Model 4)

In France the detection of fraud is the responsibility of the *Direction nationale d'enquêtes fiscales* (DNEF), located within the economy and finance ministry. Within this administration, a special unit is responsible for conducting investigations (the *Brigade nationale de répression de la délinquance fiscale*) under the authority of the judiciary police. It is worth mentioning that in France, for tax frauds that are not covered by criminal law, a special commission (the *Commission des infractions fiscales* – CIF) filters the cases they receive and decides if they are to be transmitted to the judicial authorities for further proceedings or if a settlement is to be sought (see part 3, section 2 for further analysis). For cases covered by criminal law, the prosecutor conducts investigations and prosecutions directly.

In Belgium, normal tax audits are performed by a subdivision of the finance ministry. Tax fraud audits are performed by the Special Tax Inspectorate, also within the finance ministry. Some special tax inspectors are granted the status of 'Officer of the Judicial Police' and are delegated to the public prosecution service or the federal police.

The OECD report notes the particularity of Italy, which does not fit into any of the four models set out above. In Italy, responsibility for carrying out investigations into financial crimes, including tax crimes, sits with the *Guardia di Finanza*, which can conduct such investigations both independently and under the direction of the public prosecutor. The *Guardia di Finanza* is also able to carry out civil tax investigations and audits in accordance with its own administrative powers. In its submission, Italy underlines the special role of the *Nucleo Speciale di Polizia Valutaria della Guardia di Finanza*, which conducts pre-investigation analysis and works in coordination with the Inland Revenue Agency. If links with organised criminal groups are unveiled, investigations are conducted by the *Direzione Investigativa Antimafia*.

Worth mentioning also is the fact that in Romania and the United Kingdom at least, separate units are dedicated to dealing with the tax compliance of people in high income brackets.

1.2. Law enforcement authorities

A number of Member States mention specialised investigative units for combatting tax crimes:

- In Sweden, the Economic Crime Authority (EBM) is a centralised entity that investigates accounting offences, tax crimes and money laundering. The EBM employs 560 staff, and criminal investigations are conducted by police officers, along with a special tax fraud investigation unit of the tax agency (*Skatteverket*, SKV).
- In France, the role of the *Brigade nationale de répression de la délinquance fiscale* under the authority of the judiciary police has been mentioned.
- In Italy, the *Guardia di Finanza* acts as fiscal police.
- In the Netherlands, a dedicated structural fund of €20 million has been set up by the Ministry of Security and Justice for the Fiscal Intelligence and Investigation Service (FIOD) and the Public Prosecution Service (OM) to address money laundering and corruption.
- In Slovakia, the Slovak national crime agency (NAKA) was reorganised in February 2017 and one of its units is dedicated exclusively to financial crime. This unit now includes a division specialised in the investigation of assets.

- In Greece, the financial police division (see above) has special investigative powers, including undercover investigation, lifting of confidentiality, and access to multiple databases.

As regards prosecuting authorities, as outlined above in section 1.1., they are involved at different levels of the fight against tax crimes across the Member States and to varying degrees: in some Member States, prosecuting authorities are involved during the investigation phase and the prosecution phase, in others only at the prosecution phase. In the majority of Member States, the central prosecution authority is responsible for criminal investigations. Central prosecution authorities with no responsibility for criminal investigations are found in only two Member States: Ireland and the United Kingdom. This distinction is also related to the criminal system under which Member States operate, namely under common law or civil law traditions.⁶⁵

1.3. Financial Intelligence Units (FIUs)

The information on their respective FIUs given by the Member States are consistent with the findings of the EPRS study on FIUs published in March 2017.⁶⁶

As regard the structure of FIUs, the following key information can be outlined:

- 11 EU FIUs have indicated that they are of an administrative nature (located for instance into the ministries of finance, justice or the interior, or embedded into the central banks or supervisory authorities): Belgium, Bulgaria, Croatia, the Czech Republic, France, Italy, Latvia, Poland, Romania, Slovenia and Spain;
- 11 EU FIUs have indicated that they are organised under a law enforcement (police and/or justice) model: Austria, Estonia, Finland, Germany, Ireland, Lithuania, Portugal, Slovakia, Sweden, Luxembourg and the UK;
- 3 EU FIUs have described themselves as being of a 'hybrid' nature, owing to the combined presence of administrative and police elements: Cyprus, Greece, and the Netherlands.⁶⁷

The submissions confirm the specific nature of FIUs' role in the fight against money laundering: FIUs serve as national centres for receiving, analysing and disseminating suspicious transaction reports (STRs). In all the submissions, FIUs are recognised as the entity responsible for handling STRs.

⁶⁵ [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes](#), OECD, 2013, p.28.

⁶⁶ A Scherrer, [Fighting tax crimes: Cooperation between Financial Intelligence Units](#), DG EPRS, European Parliament, 2017.

⁶⁷ For the Netherlands, the contribution indicates that the FIU is placed under the police authority but as an independent entity.

However, whereas the most common model is that of FIUs acting as filters for STRs that are then transmitted to the competent authorities (tax administrations or law enforcement authorities) where relevant, some Member States underline forms of multiple reporting: this confirms the findings of the EPRS study on FIUs, that underlined that in some Member States the entities concerned transmit their report simultaneously to both the FIU and the relevant authorities. These include the fiscal authorities, which can then tackle the cases where suspicious transactions exist. Therefore, in relation to tax offences, analysis of STRs can be carried out by several bodies. The following Member States make explicit reference to multiple reporting: Ireland, Portugal and the United Kingdom.

Several Member States provide information on the staffing of their respective FIUs, which varies from 16 (Estonia) to 300 (Germany). However, as noted in the EPRS study on FIUs, the percentage of FIU staff dedicated to the core functions of FIUs also varies greatly. Staffing figures should not lead to over-simplification, as the adequacy of human resources available should be assessed against the FIU's respective workload.

As regard tax crimes, the issue of information exchange and inter-institutional cooperation is key and is developed below in section 2.

1.4. Financial regulators

Most of the submissions mention national supervisory authorities, responsible for the supervision of financial/banking institutions in their AML activities. This supervision is either part of the activities of the Member States' central banks (the Netherlands, Ireland) or is carried out by independent entities (Finland, France, Luxembourg, Germany, Latvia and the United Kingdom). Most of them seem to have redress schemes for non-compliant firms and powers of sanctions (including fines). In Germany, the federal supervisory authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* - BaFin) in charge of the proper implementation of EU legal requirements as regards the successive AML directives is reviewed annually by external auditors.

Of course, how information is shared among these players is key to understanding how the prevention, detection and prosecution of tax crimes work in practice, but also to identify some of the challenges encountered: the various inter-institutional cooperation models are described below.

2. Inter-institutional cooperation models

When it comes to information exchange between the above-described institutional key players, the submissions provide interesting information that displays various models of cooperation and inter-institutional agreements. Following the classification of the OECD report, almost all submissions mention some kind of enhanced cooperation comprising joint investigation teams, cooperation protocols, inter-agency centres of intelligence or secondments of personnel. These various models are not necessarily exclusive from one another, and some Member States combine these strategies.

Joint investigation teams

Based on the information provided in the submissions, joint investigation teams (usually tax administrations' investigators and law enforcement officers) are found in Austria, Finland, Luxembourg, the Netherlands, Portugal, Slovenia, Slovakia and the Czech Republic.

- In Slovakia, an action plan for combating tax fraud and strengthening cooperation between administrations was adopted in 2012. In particular, a joint platform of specialists from the Financial Directorate, the Financial Administration Criminal Office, the National Criminal Agency and the public prosecutor was set up and named Tax Cobra. Its task is the detection, in particular, of VAT-related carousel fraud. Since its creation, Tax Cobra has opened 1897 tax audits, checked 741 companies and initiated 78 investigations.
- The Czech Republic also mentions a similar set-up named Project Kobra, whose main purpose is to deepen the cooperation between the police, the financial administration and the customs administration.
- In Austria, a special commission, referred to as SOKO Offshore has been established by the Ministry of Finance Anti-Fraud Division, and consists of IT experts, tax investigators and offshore experts of the Audit Unit for Large Traders. The commission has been working on offshore leaks since 2013.

Cooperation agreements

Cooperation agreements between the key players (in particular in between FIUs, the tax administration and the law enforcement authorities) are found in Belgium, Spain, France, Finland, Croatia Italy, the Netherlands and Sweden:

- In Belgium, the Anti-Fraud Coordination Service (AFCOS) within the tax administration has a protocol with the FIU, the public prosecution service and the customs and excise administration. AFCOS serves as a single point of contact between these key players.
- In Spain, a cooperation agreement for the exchange of information between AEAT (the official tax administration authority) and the national FIU (Sepblac) was signed on 5 July 2006. Within the framework of this agreement, the AEAT's financial and tax inspection department and its customs and excise duties department receive financial intelligence reports. Within the framework of the same agreement, Sepblac can also request tax information from the AEAT.
- In the Netherlands, special funds were used to set up several new partnerships. For example, the FIU-Netherlands is a partner in the Criminal and Unaccountable Assets Infobox (iCOV), which was set up in 2013, and cooperates closely with the Fiscal Information and Investigation Service's (FIOD) Anti Money Laundering Centre.

Liaison officers

Liaison officers, in particular tax administration staff located within the FIU, are found in Sweden, Finland, Spain, Belgium, Greece, the UK and Portugal.

Centralised authorities

In some Member States, centralised authorities ensure proper coordination and cooperation between entities:

- In Finland, the Grey Economy Information Unit is a body that ensures proper information dissemination across the key institutional players. The obligation compliance reports prepared by the unit provide the authorities with information about the operations of organisations and the activities of the people connected with them, finances and connections of organisations and the way in which organisations manage their obligations concerning taxes and other fees under public law.
- In Spain, the Commission for the Prevention of Money Laundering and Monetary Offences is an interdepartmental body represented by a number of key players in the fight against money laundering and the financing of terrorism, such as the official tax administration authority (AEAT), the judiciary, the prosecutor's office, prudential supervisors and law enforcement bodies. The Spanish FIU (Sepblac) is placed under the authority of this commission.

Intelligence centre

Also worth mentioning is the setting-up of an inter-agency centre of intelligence in the Netherlands, the Financial Expertise Centre (FEC). The joint objective of the FEC partners is to promote the integrity of the financial sector through mutual cooperation and exchange of information. FIU-the Netherlands holds a seat on the FEC Council, and take part in contact consultations and the information platform. It also participates in a number of FEC (sub) working groups. Similarly, in April 2017 the Slovak government adopted an action plan to combat tax fraud (2017-2018), which contains 21 new measures aimed at combating tax fraud. The establishment of a single analytical centre is one of the new measures.

In addition, Latvia mentions in its contribution numerous inter-institutional meetings that are organised to tackle tax evasion, involving the Financial and Capital Market Commission / FIU / State Revenue Service / Ministry of Finance. Furthermore, many training exchanges between the FIU and the Finance Police Department and supervisory institutions are organised.

3. Challenges mentioned in the submissions

Overall, the submissions give useful explanations of how tax crimes are being tackled, demonstrating that specific measures are undertaken at national level. In terms of

performance, significant variations from one Member State to the next can be identified in the reported number of cases handled, the value of taxable revenues identified, the number of cases brought to trial, the type of penalty or sentence handed down, and the overall value of funds or assets recovered. This aspect is developed below in part 3.

In addition, several specific challenges were mentioned explicitly:

- At least one submission (Croatia) mentions the difficulty of sharing information on tax crimes between FIUs and national authorities, but also between FIUs at EU level. This was indeed a key finding of the EPRS study on FIUs.⁶⁸
- Furthermore, the cross-border dimension of tax avoidance, tax evasion, and money laundering is experienced by public authorities and practitioners in their day-to-day work: FIUs for instance collaborate on a regular basis in order to fulfil their mission. The proportion of suspicious transaction reports (STRs) involving other EU Member States varies greatly depending on the Member State. As part of the consultation process in the context of the European Commission's proposal for a directive on countering money laundering by criminal law,⁶⁹ a large number of Member States estimated the number of STRs with a cross-border dimension to be between 30 % and 50 % of the STRs disseminated to competent authorities.⁷⁰ The number of requests for information and cooperation transmitted through the FIU.Net online network also increases significantly each year: in 2014 there were 12 076 information exchanges, a number that increased to 17 149 in 2015.⁷¹
- A number of the Member States' submissions made reference to their limited ability to deal with offshore tax crimes, owing to limits to their jurisdiction. They also pointed to difficulties dealing with possible tax crimes perpetrated by cross-border entities established internationally.
- A number of submissions also reported difficulties in dealing with organised criminals perpetrating serious fraud. VAT carousel fraud in particular is often recognised as problematic in this regard. Here, the current debate on the establishment of a European public prosecutor's office (EPPO) is particularly relevant. On the 8 June 2017, 20 Member States reached a political agreement on the establishment of the new European public prosecutor's office under enhanced cooperation. The European public prosecutor will be able to investigate crimes against the EU budget and VAT fraud, such as fraud involving EU funds over €10 000 and cross-border VAT fraud worth over €10 million. It will be able to act quickly across borders without the need for lengthy judicial cooperation

⁶⁸ A Scherrer, [Fighting tax crimes: Cooperation between Financial Intelligence Units](#), DG EPRS, 2017.

⁶⁹ Proposal for a directive on countering money laundering by criminal law, [COM\(2016\) 826](#).

⁷⁰ COM(2016) 826, p.8.

⁷¹ COM(2016) 826, p.8.

proceedings. It will bring actions against criminals directly before national courts.⁷²

4. Conclusions

In order to maximise tax compliance, cooperation among the key institutional actors involved in the fight against tax crimes is critical. As indicated by the OECD report, there is a particular need for a thorough review of national models for sharing information among different agencies.⁷³ This includes:

- the ability of the tax administration to share information with agencies such as the police and the FIU;
- the possibility of introducing an obligation for the tax administration to report to the relevant law enforcement agency or the FIU evidence of any serious offence, suspected money laundering or terrorist financing activities, and to share information relevant to investigations into these offences or activities;
- the ability of any agency holding information relevant to the administration and assessment of taxes to make this information available to the tax administration.

The EU legal framework gives the Member States a wide margin of discretion regarding how FIUs should operate and how Member States organise their national institutional set-up as regards tax crimes. However, further harmonisation of practices across the Member States could be sought within the European Commission's Expert Group on Money Laundering and Terrorist Financing (EGMLT) and the EU FIU platform.⁷⁴ As developed in this chapter, some Member States have adopted combined strategies to tackle tax crimes (via the use of joint investigation teams, cooperation agreements, the posting of liaison officers across agencies). Such combined strategies tend to improve information exchange and enhance governments' capabilities in dealing with tax evasion and frauds. Such good practices could be shared and discussed at EU level.

⁷² European Commission, [Press release](#): Commission welcomes decision of 20 Member States to establish the European Public Prosecutor's Office, Brussels, 8 June 2017.

⁷³ [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes](#), OECD, 2013, p.18.

⁷⁴ The FIUs Platform is an informal expert group established by the Commission in 2006. The EU FIUs Platform is composed of representatives from Member States' FIUs. The meetings of the Platform facilitate the cooperation among FIUs by creating a forum for them to exchange views and where advice is provided on implementation issues relevant for FIUs and reporting entities.

Furthermore, as a result of the mapping exercise⁷⁵ conducted by the EU FIU platform in 2016 and as indicated by the European Commission, the challenges faced by FIUs could be addressed through various means:⁷⁶

- through guidance and enhanced cooperation at the operational level. Some issues could be addressed through 'good practices' that can be shared through guidelines at EU level, to be developed within the EU FIU platform;
- through the transposition of the fourth AML Directive and the amending proposal;
- through regulation.

For the latter, the European Commission indicates that some of the obstacles to cooperation seem to be the result of a diverse legal framework in Member States, which itself is the result of a minimum level of harmonisation at EU level. Possible rules at EU level that provide for better sharing of information and improved cooperation of FIUs with law enforcement and judicial authorities could be considered.

⁷⁵ The mapping exercise was carried out by a dedicated EU FIU platform team led by the Italian FIU (Unità di Informazione Finanziaria per l'Italia – UIF). The findings of this exercise are presented in the EPRS study on FIUs: A Scherrer, [Fighting tax crimes: Cooperation between Financial Intelligence Units](#), DG EPRS, European Parliament, 2017.

⁷⁶ See European Commission staff working document on improving cooperation between EU Financial Intelligence units, [SWD\(2017\) 275](#) and the European Commission [Press release](#): Strengthened EU rules to tackle money laundering, tax avoidance and terrorism financing enter into force, Brussels, 26 June 2017.

Part III: Enforcement of rules

Key findings

- (1) Compliance mechanisms vary greatly across the EU Member States, who have adopted different strategies ranging from deterrence-based enforcement strategies with high penalty regimes, to persuasive and cooperative models.
- (2) The dual system of administrative and criminal sanctions is challenging in many countries, especially as regard the *ne bis in idem* principle, according to which no legal action can be instituted twice for the same cause of action.
- (3) Prosecution systems do not always allow for timely and efficient enforcement of penalties. It is underlined that the effectiveness of criminal sanctioning of AML cases is relatively low, as criminal courts do not effectively use all possibilities provided by criminal legislation.
- (4) Regarding the enforcement of sanctions, the lack of data did not allow for a fully-fledged comparison. While Belgium, France, Romania and Spain provided no data at all, other Member States gave information that is not comparable, either in the way it is formulated (aggregated data, yearly data, etc.) or in its scope (including custom fraud, money laundering or tax evasion).

An effective fight against tax avoidance, tax evasion, and money laundering should comprise a wide range of regulatory provisions that include preventive measures, sanctions and investigative and prosecuting instruments.

The literature often relates notions of legal effectiveness and sanction. The theory acknowledging that people choose whether or not to commit a crime by weighing the potential benefits of getting away with it against the potential consequences of getting caught is still debated among academics.⁷⁷ A long standing debate exists between those who believe deterrence-based enforcement strategies work for gaining compliance from offenders⁷⁸ and those who believe persuasion and cooperation is more effective.⁷⁹

⁷⁷ G Becker, 'Crime and punishment: an economic approach', *Journal of Political Economy*, Vol. 76, 1968, pp. 169-217; or Rauhut and Juncker, 2009, Harbaugh et al., 2011.

⁷⁸ B Unger, J Ferwerda, M Van Den Broek and I Deleanu, *The economic and legal effectiveness of the European Union's anti money laundering policy*, Edward Elgar Publishing Limited, 2014.

⁷⁹ Including I Ayres and J Braithwaite, *Responsive regulation – Transcending the deregulation debate*, Oxford Socio-Legal Studies, 1992.

This debate is somehow reflected in the Member States' compliance models developed to maximise the effectiveness of their tax avoidance, tax evasion and money laundering policies, with either non-repressive or repressive compliance models.

In order to compare data in the most acceptable way, country files were compiled,⁸⁰ gathering statistics in order to enable a comparative assessment and to identify common trends:

- Administrative level:
 - Number of reports disclosed that could be suspected of illegality
 - Monitoring of suspicious activities, such as audits/visits, etc.
 - If applicable, the sanctions/fines/penalties applied
- Judiciary level:
 - Proceedings started following these audits/visits, etc.
 - Convictions by the court, including number of sentences
 - Focus on the amounts recovered by the court.

⁸⁰ See Annex 2.

1. Non repressive compliance models

To enhance the persuasive effect of their legislation, some Member States favour cooperation with the offender and forms of 'soft' settlement.

In their submissions, some Member States' state that the authorities responsible make considerable efforts to give offenders a chance to correct behaviour before imposing a sanction, through voluntary disclosure programmes or settlement procedures.

1.1. Voluntary disclosure programmes

Enhancing voluntary compliance is also a way for Member States to safeguard tax revenues. Some Member States provide taxpayers who have not complied with their tax obligations with incentives to come forward.⁸¹ These programmes generally offer incentives, such as reduced penalties and interest charges, together with some form of protection from prosecution.

In their answers, some Member States highlight features in their general law or administrative practice to encourage voluntary disclosure. This is the case of Ireland, the Netherlands and the United Kingdom:

- Ireland supports and facilitates voluntary compliance. Irish Revenue undertakes targeted and risk focused interventions that deliver a proportionate and effective response to non-compliance and secure voluntary compliance for the future. Irish tax legislation provides for a 'qualifying disclosure' (Section. 1077E Taxes Consolidation Act 1997), which can come under the category of either a 'prompted qualifying disclosure'⁸² or an 'unprompted qualifying disclosure'.⁸³ A 'qualifying disclosure' is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that give rise to a penalty. The liability due must be paid (i.e. tax and interest). Unfortunately, Irish Revenue do not provide statistics related to qualifying disclosures.
- In the United Kingdom, HMRC has an escalating range of intervention available to tackle tax evasion and non-compliance. This includes offering taxpayers the opportunity to come forward voluntarily.⁸⁴

⁸¹ For a more detailed analysis, see the OECD report: [Update on voluntary disclosure programmes – A pathway to tax compliance](#), 2015.

⁸² A 'prompted qualifying disclosure' is a qualifying disclosure that has been made in the period between the date on which the person is notified of an audit and the date the audit starts.

⁸³ An 'unprompted qualifying disclosure' is a qualifying disclosure that has been voluntarily made a) before any audit or investigation has been started, or b) where the taxpayer is notified by Irish Revenue of the date on which an audit or investigation, before that notification (i.e. before the letter notifying the taxpayer of an audit is issued or before the commencement of an investigation).

⁸⁴ Guidance can be found on the [HMRC website](#).

- In the Netherlands, until now, taxpayers who fill out an incomplete or incorrect tax return have been able to supplement or correct their tax returns within a period of two years without being fined. This approach was taken to encourage taxpayers to rectify past wrongs without having to fear immediate adverse consequences. The Dutch State Secretary for Finance announced on 17 January 2016 that this policy will change and that persons supplementing or correcting their tax returns at a later moment will be fined in future.

In addition, several countries mentioned a temporary voluntary disclosure programme, in order to take advantage of the momentum. Generally, temporary programmes run for a short defined period, with a deadline for disclosure being set at the outset and incentives, superior to those offered under existing general provisions, only being available during that period. Spain, for example, mentions its 2012 temporary voluntary disclosure programme, put in place for several months before the introduction of a new anti-fraud law that would include the obligation to declare assets and entitlements abroad.

1.2. Settlement procedures

- In Spain, when during the assessment procedure a general offence against the tax authorities is detected, a settlement proposal related to the offence is presented. The settlement includes the facts and points of law on which it is based. The liable taxpayer is notified of the proposal at a hearing to argue their case. At the end of the period laid down for the audience (15 calendar days from the day after the notification is given) and once the allegations presented in the case have been assessed, the competent body communicates an administrative settlement. The tax administration then approaches the competent jurisdiction or sends the file to the public prosecutor. The sanctioning process is generally separate from the tax settlement. In Spain, for the year 2015, for 29 275 taxpayers were inspected and €7 129 million settled.
- In Belgium, it is possible for a taxpayer to enter into a court settlement, under certain conditions, which allows the matter to be settled by paying a sum of money.
- In the United Kingdom, HMRC seeks to resolve tax disputes through agreements with the customer. HMRC seeks to secure the best practicable return for the exchequer. In general, HMRC will not take up a tax dispute unless the overall revenue flows potentially involved justify doing so. HMRC underlines that minimising the scope for disputes and seeking non-confrontational solutions help to reduce the costs to HMRC of resolving disputes, and are likely to reduce customer costs, as well as improving the customer's experience.

2. Repressive compliance schemes

All Member States apply deterrence-based enforcement regimes (i.e., criminal sanctions in the form of high fines and possible imprisonment), whether alone or together with non-repressive compliance schemes.

As regards the punitive measures implemented, different kinds of penalty are usually employed. The most common instrument is constituted by cash penalties, essentially consisting of a request from the tax authority to the taxpayer to pay an additional sum of money proportional to the unpaid tax or, alternatively, a flat cash penalty, i.e. regardless how much the government's loss due to the taxpayer's non-compliance is. These measures are additional costs borne by the taxpayer because he/she failed to comply with specific tax duties, though not involving behaviour considered to be 'criminal' by domestic laws.

Criminal penalties, on the other hand, commonly involve either imprisonment (up to 14 years for money laundering, in Cyprus) or high fines (up to €1 250 000 in Luxembourg).

National legislation may also impose other ancillary penalties. This is the case for temporary interdictions, i.e. a ban on taking up public office, a prohibition on entering into contracts with the public administration, suspension from certain professions (e.g. company director, auditor or notary), prohibition on participating in public auctions, and suspension of licences, permits or other administrative authorisations.⁸⁵

2.1. Tax evasion: a dual system of penalties

The majority of the tax systems, as described by the Member States in their answers, provide for two types of penalty: administrative and criminal, depending on whether the violation is classified under domestic tax law, respectively, as an administrative offence, or rather as a criminal offence.

Administrative penalties generally have a preventive purpose to ensure tax compliance in order to assure a truly lawful and equal tax assessment, i.e. they do not tend to have a fundamentally repressive nature. National legislation also contains criminal penalties of a repressive nature.

Among the Member States who provided information in this regard (16), the majority (9)⁸⁶ mentioned having a dual system. What determines what deserves an administrative sanction or to be passed onto judicial authorities for further criminal proceedings is not always clear from the contributions.

⁸⁵ This is the case in Bulgaria, Spain and Portugal.

⁸⁶ A dual system is found in Bulgaria, Cyprus, the Czech Republic, France, Italy, Luxembourg, Portugal, Slovenia and the United Kingdom, and also Estonia to a certain extent.

- In few Member States, e.g. Bulgaria, a threshold (above approximately €1 500) for the sums of money involved determines whether the offence (and thus the sanction) is administrative or criminal.
- In other cases, the legislation makes provisions to determine that only one of the proceedings shall apply (*una-via-principle* or *speciality principle*).⁸⁷
- A further way to avoid double sanctions is to provide for consideration of administrative fines if they are applied cumulatively. This is the case in France, where the constitutional court decided in two decisions of 24 June 2016 that the addition of administrative and criminal sanctions in the field of tax evasion complied with the constitution notably if the cumulative amount of administrative and criminal penalties imposed did not exceed the heaviest of the penalties incurred.
- It is sometimes unclear whether such double types of sanction are complementary or conflicting. The distinction between administrative tax offences and criminal tax offences is sometimes hazy. In several tax systems, administrative tax penalties do share the same fundamental purposes of criminal penalties, affliction and re-education, rather than the civil law principle of compensation. The literature underlines that the *ne bis in idem*⁸⁸ principle with respect to the co-application of the tax code and the criminal code could be breached if the state imposes both the tax penalty and criminal penalty on the offender.⁸⁹ The *ne bis in idem* principle is embodied both in international⁹⁰ and EU law,⁹¹ and applies not only to crimes, but also to wrongdoing of an administrative nature. The CJEU also reviewed this issue of co-application of an administrative penalty and a criminal penalty. In the *Åkerberg Fransson* case,⁹² the CJEU ruled that 'the *ne bis in idem* principle laid down in Article 50 of the Charter does not preclude a Member State from imposing

⁸⁷ This is mentioned in the Belgian, Dutch, Finnish, Italian and Spanish contributions.

⁸⁸ *Non bis in idem* translates literally from Latin as 'not twice in the same [thing]'. It is a legal doctrine, used mainly in Roman civil law, to the effect that no legal action can be instituted twice for the same cause of action.

⁸⁹ M Radvan and J Schweigl, '[Penalties in Tax Law in Light of the Principle Ne Bis in Idem](#)', in L Etel and M Poplawski, *Tax Codes Concepts in the Countries of Central and Eastern Europe*, Bialystok: Temida, 2016, pp. 399-410.

⁹⁰ Article 14 (7) of the International Covenant on Civil and Political Rights: 'No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country'. Article 4 or Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms: 'No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State'.

⁹¹ Article 50 of the Charter of Fundamental Rights of the EU: 'No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'.

⁹² [C-617/10](#) – *Åkerberg Fransson*, CJEU, 26 February 2013.

successively, for the same acts of non-compliance with declaration obligations in the field of VAT, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine'.⁹³ According to the CJEU, the main element to be taken into account to respect the *ne bis in idem* principle, is the fact that the administrative sanction should not be of a criminal nature, i.e. the administrative sanction should be only of a compensatory nature, and not a punitive one.

2.2. Money laundering is always criminalised

All Member States criminalise money laundering. In most Member States, failure to comply with AML legislation can have serious consequences such as punitive fines (up to €1 250 000 in Luxembourg) or prison sentences (up to 14 years, in Cyprus).

There are significant differences between Member States in the sanctions to be applied to money launderers. Such a diverse approach could influence tax offenders that are forum shopping (looking for the least punitive regime in the EU). Indeed, in Finland, the maximum sanction incurred is two years of imprisonment whereas in Italy the minimum is two years.

Many Member States have a system of aggravating circumstances, such as: when committed by a criminal organised group, when committed repeatedly, or on a large-scale basis.

2.2.1. Enforcement of sanctions

Comparing the fines or sanctions effectively applied by the Member States in cases of tax avoidance, tax evasion or money laundering is a difficult task. The data collected from the Member States are not consistent enough. While some Member States provide no data at all (Belgium, France, Romania and Spain), others offer information that is not comparable, i.e. some data relates to the number of cases, other to the number of persons and not covering the same scope (e.g. some aggregated data include custom fraud, other includes only money laundering or tax evasion).

The collection of information did not therefore allow for a fully-fledged comparison. The lack of such data is not a new issue, as the study on the economic and legal effectiveness of the European Union's anti-money laundering policy encountered similar difficulties.⁹⁴

However, the submissions received show that there are still some weaknesses in the AML compliance systems for professionals subject to customer diligence obligations, confirming the findings of the EPRS study on FIUs.⁹⁵

⁹³ [C-617/10](#) – Åkerberg Fransson, CJEU, 26 February 2013.

⁹⁴ B Unger, J Ferwerda, M Van Den Broek, I Deleanu, *The economic and legal effectiveness of the European Union's anti money laundering policy*, 2014, p.142.

⁹⁵ A Scherrer, [Fighting tax crimes: Cooperation between financial intelligence units](#), DG EPRS,

Slovakia underlines in its answer that the effectiveness of criminal sanctioning of AML cases is relatively low. Criminal courts do not use all the possibilities provided by criminal legislation in respect of the imposition of criminal sanctions related to seizure and confiscation of the proceeds of crimes.

2.2.2. Prosecution regimes

The literature⁹⁶ recognises that there is 'selective tolerance' of the judicial system towards white-collar crimes i.e. the criminal courts do not necessarily use all the possibilities available in legislation. However, the situation seems to be changing slowly. The list of predicate offences to money laundering has been extended, to include tax crimes. This will bring the proceeds of tax crimes within the scope and powers of authorities used to investigate money laundering. The inclusion in the AML arsenal at the international and EU level could mark the end of a form of tolerance vis à vis tax avoidance and tax evasion.

In addition, the procedures in place for pursuing offenders vary greatly from one Member State to the next.

- In France, a prior complaint by the administration with the assent of the tax commission is necessary to initiate criminal proceedings for tax evasion. Before the complaint is lodged, the budget minister must consult an independent administrative authority, the commission for tax offences, which is composed of members of the highest administrative or judicial administrative bodies: the *Conseil d'État*, the *Cour des comptes*, the *Cour de cassation* and qualified individuals appointed by the president of the *Assemblée nationale* and by the president of the Senate. The commission takes the view that, in view of the gravity of the tax evasion and the contamination of the case, it is necessary to seek the implementation of criminal penalties in addition to the tax penalties applied. This commission does not constitute a court but an administrative authority. The minister is bound by the opinion of the commission; he or she must file a complaint in the event of a favourable opinion and refrain from doing so if the commission gives a negative opinion.⁹⁷ Once the complaint has been lodged, only the public prosecutor's office can start the prosecution and initiate an investigation. It is only in the most serious cases that a complaint for fraud is proposed by the administration.

European Parliament, 2017.

⁹⁶ P Healy and G Serafeim, [Who Pays for White-Collar Crime?](#), Harvard Business School, June 2016; A Amicelle, ['Deux attitudes face au monde : La criminologie à l'épreuve des illégalismes financiers'](#), *Cultures & Conflits*, No 94-95-96, 2014, pp. 65-98.

⁹⁷ The finance minister may also lodge a complaint if there are well-founded presumptions of a tax offence for which there is a risk of loss of evidence. He or she must also obtain the opinion of the commission for tax offences.

- In Germany, the 'legality principle'⁹⁸ makes the prosecution of tax crimes mandatory. This principle of compulsory prosecution requires police and prosecutors to pursue the case when there is sufficient evidence to support a conviction. As a general principle, all crimes, including business or corporate crime, are investigated and prosecuted by the public prosecutor's office and the competent police forces of the respective federal states.
- In Italy, the fiscal police (GDF) doesn't need any previous authorisation in order to undertake an investigation involving the banking and financial sectors, following a suspicious signal.

2.2.3. Efficiency of asset recovery

Asset recovery is a key issue in the fight against organised crime and corruption, in order to deprive criminals from their illicit profits and ensure that crime does not pay. Previous studies have underlined that there is a virtuous circle in the freezing and confiscating criminal assets: it is deemed efficient against criminals, who are deprived of their financial means and thus cannot reinvest in criminal activity. Additionally, recovered assets provide a new source of income for the state. In some Member States, it also opens up financial possibilities for victim compensation.⁹⁹

However, legal systems related to asset recovery vary a lot from one Member State to the other. This creates challenges, specifically when recovery of assets takes place across various jurisdictions. According to an EPRS report¹⁰⁰, the Directive 2014/42/EU on the freezing and confiscation of the instrumentalities and proceeds of crime has not succeeded in harmonising national systems at a high level and has left EU Member States considerable room for discretion. The main difficulties in implementing the directive relate to domestic measures regarding third party confiscation, different national versions of non-conviction confiscation, and the management of frozen and confiscated property. In addition, in 2007 the EU adopted Council Decision 2007/845/JHA (referred to as the Asset Recovery Offices (ARO) Decision), which obliged Member States to set up or designate national AROs as central contact points that facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. These EU AROs exchange best practices within the EU's informal ARO platform hosted by Europol. Further coordination could be promoted at this level.

The EU should encourage improvement of the enforcement of legal rules, particularly through improved public statistics on enforcement measures. Most countries do not regularly publish a comprehensive set of statistics on enforcement. This significantly hinders competent authorities' capacity to monitor and assess the effectiveness of the

⁹⁸ In German *Legalitätsprinzip*.

⁹⁹ W van Ballegoij and T Zandstra, [The cost of non-Europe in the area of organised crime and corruption](#), DG EPRS, European Parliament, 2016, p. 43.

¹⁰⁰ [The cost of non-Europe in the area of organised crime and corruption](#), DG EPRS, European Parliament, 2016, p. 42 and following.

system in place. Moreover, these data, if collected, are defined and captured differently across Member States, which makes international comparisons challenging.

3. Conclusions

Non-repressive compliance regimes are an option used in some Member States. However, it seems that some Member States are toughening their non-repressive compliance regimes. In order to establish if this type of regime is cost-effective (as it saves on procedural costs for tax administrations and courts), further research would be needed to assess the extent to which these settlements result in loss of legitimate earnings of the State. It has to be stressed that the persistent lack of data does not allow for a proper cost benefit analysis. Providing the best possible data on the settlement procedures and/or the sanctions applied is vital to the cost effective success of any tax policy, as it allows Member States to know what the benefits and the deficiencies are in their implementation of tax policies. A better effectiveness analysis of Member States' tax legislation could help to draw guidelines and share best practice.

In order to maximise tax compliance, and to prevent offenders from taking advantage of loopholes in the Member States enforcement and sanctioning systems, the EU and the Member States could encourage the development of minimal sanctions. In any case, the policy response should be appropriate, proportionate to the objective and not too burdensome for legitimate EU citizens and businesses.

The fourth AML Directive included some provisions in its Article 59 on minimum penalties. Implementation and enforcement of its provisions will be crucial for the fight against money laundering in the EU. Similar provisions could be adopted in the area of tax avoidance and tax evasion.

Part IV: Measures taken by EU Member States in response to the publication of the Panama Papers

Key findings

- (1) The Member States faced difficulties in analysing Panama Papers data, including the fact that the database was very large to navigate, information was in some cases out of date or incomplete, and the source files from the leaks were never published.
- (2) However, Member States identified more than 3 000 EU-based taxpayers and companies linked to the Panama Papers.
- (3) At least 1 300 inquiries, audits or investigations into Panama Papers revelations have been carried out or are still ongoing.
- (4) Unfortunately, in most countries it is too early to report on the fines and convictions relating to the Panama Papers data. Only Sweden makes explicit mention of fines issued to Swedish banks Nordea and Handelsbanken for not following the money laundering legislation properly.

This part considers the measures taken by Member States in the follow up to the Panama Papers leak, as described in their submissions. It considers the steps taken by national government institutions and agencies. In 22 out of the 25 submissions, this information was included explicitly in a designated section.

The information can be separated into two categories. The first includes broader legislative and institutional reforms that are not exclusively reactions to the Panama Papers, the second are clear and explicit consequences to the leak.

The first category includes reforms that have taken place in the context of the political momentum to address tax evasion and money laundering, which was further legitimised by the Panama Papers leak, but which dates further back to the Offshore Leaks in April 2013, the Luxleaks in November 2014, and the Swiss Leaks (also known as HSBC Leaks) in February 2015.

In this context, the Member States have since 2013 focussed their attention increasingly on putting measures in place to counter money laundering and tax evasion. Some of these new measures were already in place at the time of the Panama Papers leak. In other cases the decision to act had been taken but not yet implemented. In other cases still, a decision had been taken but implementation had been put on hold, and action was only unlocked by the new political impetus given by the Panama Papers leak.

Examples of these longer running developments mentioned in the submissions, came in different forms and shapes. They included, amongst others, ad hoc approaches such as collaboration between investigative departments of different agencies and exchanges of information, as well as more structural changes such as institutional or legislative reform, and increased budget allocations. An overview of inter-agency collaboration is given in part 2 of this study. Budgets for investigative purposes were increased in the Netherlands and the United Kingdom. Finally, legal structures and their recent reforms are discussed in part 1.

The second category of actions described in the Member States' submissions are strictly reactionary to the Panama Papers. These include, for example, the United Kingdom Government's Panama Papers taskforce, or what has been undertaken in the field of monitoring supervisory authorities and prosecutions. The remainder of this chapter looks at these activities.

Finally, worth mentioning is the fact that only the Dutch submission explicitly indicated the activity of a parliament inquiry committee into the Panama Papers leak.¹⁰¹ The inquiry committee requested information on the activities of the national supervisory authorities and investigations that have been started or planned further to the Panama Papers and Bahamas leak, as well as information on supervisory activities in relation to tax-related cases.

¹⁰¹ Such a Committee also exists in Belgium. Details of a meeting between members of the PANA Committee and members of the Belgian Panama Papers Special Committee held on 26 April 2017 can be found in Issue No 6 of the [PANA Newsletter](#), of April/May 2017.

1. Nature of the information contained in the Panama Papers

The submissions made note of the difficulty encountered in processing, analysing and acting on the information revealed in the Panama Papers leak. These difficulties can pose barriers to prosecuting the persons (both legal and natural) who allegedly committed illegal acts as revealed in the leaks.

1.1. Processing the Panama Papers data

Among these difficulties, Slovakia mentioned a high error rate in the classification by entities (state, town and the like) found in the Panama Papers content. The submissions of Germany and the Netherlands noted that ICIJ data were not complete, and source files were lacking.

Moreover, the information published relates only to the first beneficiaries level. In cases where these are shell companies or nominees, the information does not necessarily provide a link to national tax numbers or allow identification of the true beneficial owner (Germany, Croatia, the Netherlands, Latvia). Latvia mentioned that this was due to the lack of identification data, such as date of birth, spelling differences in different languages, or simply out-of-date information. A similar point was made in the Spanish contribution, which stated that the information obtained through the leaks was related to prescribed tax periods, or dissolved or liquidated legal persons. Spain also added that some persons mentioned in the Panama Papers leak had already clarified their tax situation.

As a result of these issues with the Panama Papers information, the leads to identify offences of tax evasion and money laundering from the Panama Papers leak may not have been as straightforward or helpful as one might have expected.

1.2. Analysing the Panama Papers data

In some specific cases, banks of other EU Member States were not permitted to produce or submit client and bank employee information and documentation, such as bank accounts holders and transactions numbers, to foreign FIUs because of national criminal or data protection law provisions (mentioned by both Germany and Croatia). Croatia made several more observations about the constraints of international cooperation and exchange of information: the FIUs in some Member States seem to have inadequate powers when cross-border information or collaboration is requested. Moreover, in some cases it was not possible to request blocking of suspicious transactions pursuant to the provisions of the Warsaw Convention or Directive (EU) 2015/849. In those instances the relevant data can be collected only through cooperation of judicial bodies through the provision of mutual legal assistance which is time-consuming and uncertain.

Legal limitations to the sharing of information about national investigations and proceedings concerning money laundering and tax evasion seem to hinder efforts to tackle it. For example, Estonia reported that its tax authorities and officials are required to

maintain the confidentiality of information concerning 'taxable persons, information concerning the existence of media, business secrets and information subject to banking secrecy, which is obtained by the authorities, officials or other staff in the course of verifying the correctness of taxes paid, making an assessment of taxes, collecting tax arrears, conducting proceedings concerning violations of tax law or performing of other official or employment duties.'

The case of Germany serves well to demonstrate arduous regulatory processes and constraints encountered throughout them. The German contribution states:

'Supervisory action by the Federal Financial Supervisory Authority (BaFin) following the Panama Papers allegations consisted of off-site reviews in the form of letters to 14 banks which were mentioned by name in newspaper articles written by the ICIJ journalists in April 2016. Eleven of these banks could not exclude the possibility that they or institutions belonging to their group had contacts to the law firm Mossack Fonseca or referred customers to the law firm Mossack Fonseca.

These eleven banks were requested in May 2016 to provide all documents relating to contacts or business relationships entertained by them or institutions belonging to their group of institutions with the law firm Mossack Fonseca, with companies and foundations incorporated in Panama or in other countries with the involvement of the law firm Mossack Fonseca, or with companies or foundations incorporated or domiciled in Panama where these business relationship existed between 1 January 2010 and 31 March 2016. Furthermore, these banks were asked to compare the names of their customers with the database published by the ICIJ on the Internet and to submit any relevant documentation in case of a hit. The requested documentation has been delivered by the banks with a high data volume (around 600 gigabytes).

In some cases, banks were not permitted to produce or submit client and bank employee information and documentation because of national criminal or data protection law provisions. For this reason, BaFin sent cooperation requests to ten supervisory authorities of EU Member States in order to obtain information about several foreign subsidiaries and branches of German banks. The authorities were requested to forward a letter to several branches and subsidiaries of German banks and to pass the answers and documents received on to BaFin. Six supervisory authorities have not yet provided any information. Additionally, the supervisory authority of a third country was contacted as well. In this country, an on-site visit with access to a limited number of a random sample of documents has been granted by the authority. BaFin is in the process of preparing this on-site visit.

In light of the high data volume submitted by the banks, BaFin needs support to scrutinise the documentation. To this end, it published a public, European-wide tender online in December 2016. The focus of the scrutiny will be on compliance with national AML rules, especially group-wide compliance with due diligence standards, the 'know your customer' (KYC) process, and beneficial ownership. BaFin will not have any results or a report available prior to spring 2017'.

Besides issues with the slow processes of exchanging information, the submission also illustrates that analysis of the large volume of information leaked by the Panama Papers required external support.

Finally, the aim of these efforts to identify and prosecute individuals and entities indicated in the Panama Papers, would be to deliver convictions. In this respect a limitation was mentioned by Latvia, which indicated that it could not submit content of the Panama Papers information as evidence in legal proceedings, because it had not been obtained lawfully.

2. Supervisory activity and investigations initiated

2.1. Letters sent to financial institutions – auditing process

The supervisory authorities in the Member States conducted a variety of audits following the Panama Papers leak, ranging from requests for information, to off-site and on-site tax inspections. By far the most common supervisory activity targeted banking institutions, as well as credit institutions and insurance bodies. Information was requested on links with Panamanian law firms, or on customers named in the Panama Papers, as well as customers registered in the Panama Republic and other offshore jurisdictions.

Moreover, several countries indicated that they had assessed the risk management capacities of their supervised entities, related to their mitigation of ML/TF (Netherlands, Lithuania and Cyprus). Three submissions indicated they had conducted on-site supervisions following the Panama Papers leak (Germany, Slovakia and Cyprus).

Table 1 – Supervisory activity

Member States*	Supervisory activity	Number of possible customers identified
Croatia	The tax authority works with the national bank to create a monitoring plan for 2017 to target Croatians named in the ICIJ database.	
Cyprus	Information requests to regulated entities; to describe risk management procedures On-site inspections	
Finland	Full audits, desk audits and third party audits	
France	100 letters, to all banking institutions and insurance bodies potentially affected by their activity	

Germany	Letters to 14 banks On-site inspection	
Greece	All credit institutions	Limited number
Latvia	24 information requests to banks and branches	3022 current and former
Lithuania	Information requests to banks on clients Requests to describe relevant risk management procedures	74 legal and 2 natural persons registered in the Panama Republic 1258 in other offshore jurisdictions
Luxembourg	Letters to banks	
The Netherlands	The authority is starting a project conducting thematic research into risk management.	
Slovakia	On-site inspection	
Sweden	Investigations	

**Member States not included in this table did not specify supervisory activity following the Panama Papers leak.*

2.2. Investigations initiated

Nearly all submissions noted – in more or less detail – that some form of investigation had been initiated following the Panama Papers leak. These investigations vary in scope and size. However, none of the Member States submitted detailed accounts of investigative efforts. Some touched upon it briefly (Slovakia, the United Kingdom and the Netherlands), some simply provided the number of investigations (Belgium, Portugal, Germany and Sweden), and Poland stated that some of its citizens are currently under investigation. In the case of Italy, it is not clear whether investigations have begun, or if action is limited to intelligence gathering.

Several Member States have sent a letter to relevant individuals and companies mentioned in the Panama Papers, informing them that the competent State authorities were aware of disclosure of their identity in the Panama Papers. These letters requested voluntary explanations from persons (legal or natural) named in the Panama Papers (France, Slovakia, the United Kingdom, Luxembourg and the Netherlands), expecting that these individuals and companies would provide a voluntary explanation in order to prevent their criminalisation in connection with transfers of funds from or to foreign countries or damage to their reputation. Other submissions provided the following insights:

- Belgium mentioned that 15 out of an initial 189 files under investigation had been completed. It was not mentioned in the submission how many of these completed investigations resulted in (pre-)trial proceedings.

- In Germany and Austria, the cases worthy of investigation have been distributed to the competent authorities at regional level (*Länder*) and limited information was also provided.
- Latvia mentioned it had archived case material following the leaks. It made no mention of its investigative efforts beyond the transfer of around a hundred information reports following the leaks.
- Luxembourg stated that its tax authority is currently analysing the voluntary contributions, but it is unclear whether it is taking investigative action beyond that.
- The Netherlands has forwarded the files of 237 taxpayers to different teams consisting of specialised tax inspectors that may request further information.
- In Slovakia, the police force is investigating the individuals mentioned in the Panama Papers while also having requested voluntary contributions.
- Sweden estimated that the penalties payable were €18 million (SEK 173 million)
- The United Kingdom reported that the leaks have led to the identification of nine potential professional enablers of economic crime, and 43 high risk – high net worth individuals. This has led to the identification of a number of leads relevant to a major insider-trading operation, as well as the identification of 26 offshore companies that own United Kingdom property and are involved in suspicious activity. Worth mentioning is the fact the United Kingdom government set up a Panama Papers taskforce on 10 April 2016, jointly led by the national tax agency (HMRC) and the National Crime Agency (NCA). Additionally, the United Kingdom launched the taskforce's Joint Financial Analysis Centre (JFAC) at the end of July 2016.

The following table summarises the key metrics offered by some of the Member States in their submissions:

Table 2 – Number of links identified in the leaks and the resulting number of files under investigation

Member States	Links in leaks			Files under investigation
	Total	Including natural persons	Including legal persons	
Austria	124			Yes
Belgium	116		116	174
Croatia				Yes
Cyprus	A certain number			700

Finland				Dozens
France				Yes
Germany	380			780
Ireland				Yes
Italy	1 200			
Latvia	86	77	9	
Luxembourg				
Netherlands	683	103	308	Yes
Portugal	223	196	27	
Romania	60	60		5
Slovakia				Yes
Spain	209		209	Yes
Sweden				A few hundred
United Kingdom				22
TOTAL	3 081	737	368	593

2.3. (Pre-) trial proceedings initiated

Five countries indicated specifically that (pre)trial proceedings had been initiated following the leaks. In the United Kingdom two arrests had been made, in Estonia proceedings had started in one case, and in the Czech Republic several tax proceedings are in process, as well as one criminal case. In Latvia 20 criminal proceedings were launched in the course of 2016, and several more cases are under consideration. In Spain a number of proceedings have been opened, revealing that some of the individuals linked to Spain in the Panama Papers or Bahamas Leaks had previously regularised their tax situation by presenting declarations in ordinary or extraordinary regularisation proceedings.

Six more Member States (Bulgaria, the United Kingdom, Cyprus, Czech Republic, Romania and Sweden) indicated that information from the Panama Papers were consistent with findings from previous or current investigations or trial proceedings into money laundering and tax evasion. The UK's Revenue and Customs agency was already present in Panama with a taskforce, investigating over 700 leads. Sweden indicated that the leak had greatly expanded its ability to find and investigate data.

2.4. Formal measures: fines and sentences

In most countries it is likely to be too early to report on the fines and convictions relating to the Panama Papers data. Several Member States reported they anticipated fines and convictions following ongoing investigations. Only Sweden made explicit mention of fines issued to Swedish banks Nordea and Handelsbanken for not following money laundering legislation properly.

3. Conclusions

All the Member States seem to have taken the Panama Papers leak seriously, and have been proactive in identifying whether their citizens and domestic companies were implicated. Some Member States found no further action was needed. In some Member States the information confirmed or fed into previous or ongoing investigations. In others, the information could be used to proceed with new avenues for investigation and prosecution.

In analysing the leaked information, the Member States encountered a range of difficulties. Notably, the database was too large to navigate, information was in some cases out of date or incomplete, and the source files from the leaks were never published.

Subsequently, after Member States initiated serious steps towards investigations and (pre)trial proceedings, they were sometimes hindered by laws relating to confidentiality and secrecy, as well as slow procedures for the international exchange of information.

These issues in their own way have had a negative influence on the effectiveness and efficiency of the Member State responses. Nevertheless, investigations relating to individuals and entities indicated in the leaks are ongoing in several Member States, and additional convictions are still expected. Rulings have already been delivered in two cases only. More detail and an exhaustive comparative overview of the input and outcomes of the 28 Member States' efforts to prosecute indictees could prove valuable in designing institutional and legislative structures dealing with tax evasion and AML/CTF.

Besides efforts aimed at bringing tax offenders implicated in the Panama Papers leak to justice, the leaks have also consolidated a change of attitude towards tax crimes, which has translated into legislative and structural reforms. The Panama Papers have reinforced a shift from a form of tolerance against tax crimes to a more comprehensive legal and institutional response aimed at tackling the issue better and, ultimately, recovering losses in national budgets.

Moreover, Member States have identified the potential for significant retrieval of assets (the Swedish contribution for instance mentions €18 million in payable penalties), which might explain the increase in budgets for investigative services at the start of campaigns to reclaim these damages for state revenues.

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Annex I



Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion
The Chair

IPOL-A-PANA D (2016) 50821

D 320298 23.11.2016

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Subject: Request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.

Dear Minister,

I am writing to you in my capacity as Chairman of the European Parliament Committee of inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion. This Committee is also known as the 'Panama papers inquiry Committee,' or by its acronym: "PANA."

As you may be aware, the European Parliament's PANA Committee was established on 8 June 2016, with a one year mandate to investigate, in particular, the alleged failure of the Commission to enforce, and of Member States to implement and to enforce, various relevant EU Directives. For reference, I have attached a copy of our detailed mandate.

The main output of my Committee's work will be a Report, based on which the European Parliament will adopt a Resolution sending a clear political signal to the European Commission and to the Council.

In the context of my Committee's work, the Coordinators have requested, by way of background briefing material for our Members, the production of a number of studies, which are also to be made publicly available. One of these is a *retrospective overview of the systems implemented by the Member States, and an ex-post evaluation of the performance of the competent administrative and judicial authorities to date, as regards investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.*

For this, I have been asked to request information at the highest political level of responsibility in EU Member States, about the relevant national legal definition(s) of tax-related crimes, about the organisation of tasks between national administrations and the

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judiciary, and about staff resources and working methods, as well as about the results achieved to date.

All Member State contributions will then be made available to the Members of the PANA Committee, as they were submitted, in January 2017. Following this, an in-house summary analysis, produced by the Ex-Post Impact Assessment Unit of our Directorate General for Parliamentary Research Services, would then be worked up and published in March 2017. Accordingly, in detail, I would be grateful for your responsible authorities' coordinated input in relation to:

- The legal definitions of administrative and criminal tax-related offences in your Member State covering, as appropriate, avoidance, evasion, fraud and money laundering at both the individual and corporate levels, as well as the references to the national laws underpinning these definitions, as appropriate.
- The names, mission statements and powers of the entities in your Member State, which are responsible for the handling of Suspicious Transaction Reports (STRs), and, as appropriate, the name(s) of the Financial Intelligence Unit(s) (FIUs) required under European Union Law, including details on structures, staff resources, working practices and activities in tackling tax-related crimes. Furthermore, a paragraph explaining how the relevant national entities interact or an organogram would be especially helpful.
- Information on the national prosecution and penalties regime applicable and applied in your Member State in relation to tax-related offences, supported by an explanation on the state of play in relation to the number of cases (progress and outcomes, as appropriate), and a statement covering achievements and problems encountered to date. In particular, up-to-date information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities would be welcome, including statistics on the number of cases related to the offences covered in the first bullet point e.g. the types of companies involved, the types of offences sanctioned and the value of the penalties/fines issued. Furthermore, it would also be helpful to submit information on the number of ongoing and planned investigations pursuant to the Panama Papers and Bahamas leaks. If specific case-information may not be shared for legal reasons, the submission of consolidated anonymised data or analysis would nevertheless be helpful.

I would be grateful if you could also ensure that your Member State's consolidated reply follows the above structure and that the core contents does not exceed 5000 words (approximately 5 pages), excluding any Annexes, where the above mentioned details, for example on relevant cases, could be included. This is to better ensure that the key information provided by each EU Member State can be more easily compared, and especially to avoid the lack of transparency created by overwhelming submissions, for example comprising hundreds of pages of case law.

For follow up, the Head of Secretariat of the PANA Committee is Mrs. Anje Bultena Tel. +32-(0)2-28.42532, email: anje.bultena@ep.europa.eu and the responsible administrator is Mr. Ron Korver, Tel. +32-(0)2-28.44659, email: ronnie.korver@ep.europa.eu.

The policy analyst in the European Parliamentary Research Service coordinating the examination of Member State submissions is Mr. Stephane Reynolds, +32-(0)2-28-42753, email: stephane.reynolds@ep.europa.eu.

I sincerely hope that you will be able to respond positively to this request, and to take the lead in coordinating this submission for Austria, and I look forward to discussing this matter with you if you require.

Finally, I fully appreciate that asking your authorities to respect a tight deadline of mid-January 2017 for submitting your Member State's contribution is demanding, but I am unfortunately also bound by the limited timespan of my Committee's mandate. With this in mind, in our preliminary research, we took note of the 2013 'ECOLEF' (Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy) study carried out for the European Commission.¹ As a suggestion, perhaps this study may constitute a helpful source for compiling the information which we are interested in. Your authorities may consider it most practical to extract, summarise, update and adjust the relevant content to focus on tax-related crimes in order to work up your submission to my Committee.

Yours sincerely,



Dr. Werner Langen

C.c. HE Mr. Walter GRAHAMMER, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Austria (COREPER II).
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Annex: detailed mandate

¹ [http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20\(digital%20version\).pdf](http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf)

Annex II

Country files are available on the [PANA Committee website](http://www.europarl.europa.eu/committees/en/pana/publications.html?tab=Official%20letters), under 'Official letters', 'Request for Member State contributions': <http://www.europarl.europa.eu/committees/en/pana/publications.html?tab=Official%20letters>.

The screenshot displays the European Parliament's PANA Committee website. The header includes the European Parliament logo and the text 'European Parliament Committees'. Below this, a navigation bar lists various topics: News, MEPs, About Parliament, Plenary, Committees, Delegations, At your service, EPTV, and More. A search bar is located on the right. The main content area is titled 'Publications' and features a table with columns for Coordinators, Official letters, Presentations / Speeches, Other documents, and Verbatim / Press releases. The table lists several documents related to the request for Member State contributions, including letters to the Ministry of Finance and replies from various Member States (Austria, Belgium, Bulgaria). A sidebar on the right contains social media links for Facebook and Twitter, and a section for Committee activities.

Coordinators	Official letters	Presentations / Speeches	Other documents	Verbatim / Press releases
Letters related to request of documents 26-07-2017				
Request for Member State contributions 18-07-2017				
Request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.				
Austria	Letter to Ministry of Finance			
	Reply from Permanent Representation of Austria			
	Member States capabilities in fighting tax crimes - Austria			
Belgium	Letter to Ministry of Finance			
	Letter to Ministry of Justice			
	Reply from Ministry of Finance of the Kingdom of Belgium			
	Member States capabilities in fighting tax crimes - Belgium			
Bulgaria	Letter to Ministry of Finance			
	Reply from Ministry of Finance of the Republic of Bulgaria			

National provisions against tax avoidance and tax evasion, and money laundering laws and their enforcement vary widely from one Member State to the next. This study examines the administrative capabilities of EU Member States when it comes to tackling these challenges and reviews the specific measures they have taken in response to the publication of the Panama Papers. The main objectives are to evaluate whether the legal framework and the institutional configurations in place are adequate, to pinpoint the deficiencies and to suggest ways in which they could be addressed.

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