Possible Solutions for Missing Trader Intra-Community Fraud
Abstract

This study examines the problem of Missing Trader Intra-Community (MTIC) Fraud, the nature and scale of its impact on the EU’s finances, and potential solutions. The solutions that are assessed are: Split Payment Methods, Electronic Clearance Procedure (a digital solution), Real-Time Reporting (and TX++), VAT Coin, and the Definitive VAT system (and proposed amendments). Recommendations are made regarding the most appropriate solution.
This document was requested by the European Parliament's Committee on Budgetary Control.

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## CONTENTS

**LIST OF ABBREVIATIONS**  
6

**LIST OF BOXES**  
7

**LIST OF FIGURES**  
7

**LIST OF TABLES**  
7

1. **INTRODUCTION**  
11

1.1 Resume of Study Objectives  
11

1.1 Methodological Approach  
11

1.2 Final Study  
13

2. **PROBLEM OF MISSING TRADER INTRA COMMUNITY FRAUD**  
14

2.1 Missing Trader Intra-Community Fraud  
14

2.1.1 ‘Disappearance’ of companies  
17

2.1.2 Customs Procedure  
18

2.2 Scale of the MTIC Fraud Problem  
20

2.2.1 Estimates of MTIC fraud  
20

2.2.2 Factors making it difficult to identify MTIC fraud  
22

2.3 Conclusions – Problem of MTIC Fraud  
23

3. **CURRENT MEASURES AND ROLES IN TACKLING MITC FRAUD**  
24

3.1 Current Measures to Tackle MTIC Fraud  
24

3.1.1 Reverse charge principle  
24

3.1.2 VIES and TNA Data tools  
25

3.2 Role of EU in Tackling MTIC Fraud  
28

3.2.1 Key EU entities There are several EU entities involved in the fight against MTIC fraud.  
29

3.2.2 EU networks  
30

3.3 Effectiveness of Cooperation between the Authorities  
31

3.3.1 Cooperation between the EU and national authorities  
32

3.3.2 Cooperation at the Member State level  
33

3.4 Conclusions - Current Measures and Roles  
37

4. **ASSESSMENT OF POSSIBLE MTIC SOLUTIONS**  
38

4.1 Split Payments  
38

4.1.1 SPM Experience in Member States  
39

4.1.4 Conclusions – Split Payment Methods  
43

4.2 Electronic Clearance Procedure  
43
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFCOS</td>
<td>Anti-Fraud Coordination Service</td>
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<td>ANAC</td>
<td>National Anti-Corruption Authority</td>
</tr>
<tr>
<td>ARCHNE</td>
<td>ARACHNE (database of EU-funded projects)</td>
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<td>CAFS</td>
<td>Commission Anti-Fraud Strategy</td>
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<td>CNLF</td>
<td>National Committee against Fraud</td>
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<td>CNRs</td>
<td>Common National Rules</td>
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<tr>
<td>DG BUDG</td>
<td>Directorate-General for Budget</td>
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<tr>
<td>DG TAXUD</td>
<td>Directorate-General for Taxation and Customs Union</td>
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<tr>
<td>ECA</td>
<td>European Court of Auditors</td>
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<td>EC</td>
<td>European Commission</td>
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<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>EPPO</td>
<td>European Public Prosecutor's Office</td>
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<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUROPOL</td>
<td>European Union Agency for Law Enforcement Cooperation</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>ICT</td>
<td>Information and Communications Technology</td>
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<tr>
<td>IGRUE</td>
<td>Inspectorate General for Financial Relations with the European Union</td>
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<td>JAFS</td>
<td>Joint Anti-Fraud Strategy</td>
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<td>JIT</td>
<td>Joint Investigation Team</td>
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<tr>
<td>MEF</td>
<td>Ministry of Economy and Finance</td>
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<td>MTIC</td>
<td>Missing Trader Intra-Community Fraud</td>
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<tr>
<td>NAFS</td>
<td>National Anti-Fraud Strategy</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OLAF</td>
<td>European Commission's Anti-Fraud Office</td>
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<tr>
<td>PIAF-IT</td>
<td>Integrated National Anti-Fraud Platform</td>
</tr>
<tr>
<td>PIF</td>
<td>Protection of the Financial Interests of the Union (Report)</td>
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<tr>
<td>PFIA</td>
<td>Public Financial Inspection Agency</td>
</tr>
<tr>
<td>PPO</td>
<td>Public Prosecutor’s Office for Combatting Economic Crimes and Corruption</td>
</tr>
<tr>
<td>STT</td>
<td>Special Investigation Service</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
</tbody>
</table>
LIST OF BOXES

Box 1.1: Final Report Structure 13
Box 2.1: Example of Portugal’s eFatura tax system 19
Box 2.2: Scale of MTIC Fraud 20
Box 2.3: De-registration of VAT numbers 23
Box 3.1: Central Electronic System of Payment information (CESOP) 27
Box 3.2: Poland STIR data tool (System Teleinformatyczny Izby Rozliczeniowej) 28
Box 3.3: Examples of a National multidisciplinary approach to MTIC fraud 35
Box 3.4: Example of Secrecy Law in Sweden 37
Box 4.1: Italy’s experience with SPM 40
Box 4.2: Mandatory e-invoicing in Real-Time Reporting 46
Box 4.3: Implementation of e-invoice in Italy 48
Box 4.4: Overview – Blockchain 54
Box 4.5: Proofs of Concept agreed by DG TAXUD 55

LIST OF FIGURES

Figure 1: Summary – Research Plan 12
Figure 2.1: Simple MTIC fraud 15
Figure 2.2: Carousel fraud 16
Figure 2.3: VAT Gap as a Percentage of the VAT Total Tax Liability (VTTL) in EU Member States 2019 21
Figure 2.4: Percentage Point Change in VAT Gap, 2019 over 2018 21
Figure 3.1: Number of Carousel Fraud Cases in Belgium 2007-14 and Trend Line 36
Figure 4.1: Example of an SPM 39
Figure 4.2: Examples of Real-Time Invoice Reporting in the EU 47
Figure 4.3: TX++ (Real-Time Reporting and blockchain) 50
Figure 4.4: The transitional system and the definitive VAT system proposal 58
Figure 4.5: Payment flows when the OSS is used under the definitive system 59

LIST OF TABLES

Table 3.1: Summary of responsibilities 31
Table 4.1: Summary – Pros, Cons and Costs of Different MTIC Solutions 65
EXECUTIVE SUMMARY

The study ‘Possible Solutions for Missing Trader Intra-Community Fraud’ was carried out for the European Parliament by the Centre for Strategy & Evaluation Services LLP.

Problem of Missing Trader Intra-Community (MTIC) fraud

MTIC fraud is estimated to result in a loss of at least EUR 60 billion to Member States and the EU’s finances. Estimates of MTIC fraud vary but are almost certainly mostly under-estimates because by its very nature, there is a largely unknown hidden element. MTIC fraud deprives the EU of a significant amount of revenue. The complexity of MTIC schemes means that the perpetrators are usually organised crime groups.

MTIC fraud takes advantage of the design of the transitional Value Added Tax (VAT) system that has been in place in the EU since 1993. This establishes a zero-rate of VAT for cross-border transactions. With this in place, traders purchase goods or services from another Member State with a zero-rate of VAT and then sell the goods or services within their own Member State with VAT applied. The trader then disappears without paying the VAT owed to the tax authorities. Carousel fraud entails the goods or services being eventually sold back into the original Member State where the chain began. Fraud linked to the Customs Procedure 42 is frequently part of MTIC and carousel chains. Procedure 42 is used to allow the circulation of imported goods in Member States without charging VAT, when the goods were exported from another Member State (Article 143./d of Council Directive 2006/112/EC).

Member States face difficulties in being able to detect MTIC fraud with the tools currently available. At present, the reporting, auditing, and analysis of VAT information does not match the speed with which fraudsters can purchase and sell goods or services and move around in the EU’s Internal Market. The ability of the tax authorities to tackle MTIC fraud is also affected by the lack of ready access to tax information held by authorities in different Member States. Moreover, the roles and responsibilities of the EU authorities, the legal basis of bodies involved in investigations (European Anti-Fraud Office (OLAF), the European Public Prosecutor’s Office (EPPO), and the European Union Agency for Law Enforcement Cooperation (Europol)) are limited considering their potential role in tackling MTIC fraud. In particular, EU authorities do not have quick access to national data and information. Similarly, judicial cooperation functions well but there are obstacles to obtaining national tax information and executing European Investigation Orders (EIOs).

At the Member State level, national authorities are often not able to quickly share MTIC-related information and data from the authorities in other Member States, especially when different types of authorities are involved. Furthermore, the activities of different authorities within individual Member States can sometimes occur in ‘silos’ with little cooperation between them. Secrecy laws are sometimes interpreted in an overly strict manner preventing information sharing.

Conclusions and Recommendations

Because there is still no consensus on a reform to the transitional VAT system, Member States have been implementing different types of solutions. Furthermore, even where Member States have implemented the same type of solutions, this has not been done in a harmonised way.

Considering possible solutions to MTIC fraud, Split Payment Methods and VAT Coin would change the way in which VAT is paid and could eliminate MTIC fraud as we know it. Split payments have been tested by some Member States but the high costs of implementation appear to discourage
Member States and businesses from supporting its wider adoption. **VAT Coin** would help address Member States’ lack of trust in each other’s reporting abilities, a constraint on any solution, but this approach has not been tested and similarly faces reluctance and challenges related to the costs of implementation.

**Real-time reporting** and the idea of an **electronic clearing procedure** would provide Member States with information on all transactions in real-time, reducing the time gap between transactions and audits that currently allow traders to ‘disappear’ with VAT owed. Both solutions would involve costs in their implementation, particularly related to the storage of data. The latter has also not been tested. Nevertheless, real-time reporting appears to have the most support from Member States.

The **definitive VAT regime** as well as proposed amendments to it, as with Split Payment and VAT Coin, would eliminate MTIC fraud, at least in its current form, by removing the zero-rate VAT applied to cross-border transactions and establishing a tax at destination principle. This solution would not have the same implementation costs as Split Payment and VAT Coin as infrastructural change (for Member States or business) would not be necessary. Trust between Member States’ reporting and collection ability is a major constraint. In the absence of implementation of the definitive VAT regime, Split Payment Methods alone (though they can be paired with the definitive regime) appear to be potentially the most effective solution to address the problem of MTIC fraud but currently there is reluctance to adopt this solution due to the high costs involved.

**Real-time reporting would seem to be the solution most likely to be transferable across the EU-27 as it has been implemented in several Member States and others are making plans to do so.** The solution would effectively tackle key problems in the fight against MTIC fraud but it might not completely eliminate the problem. Nevertheless, it would be a significant step forward.

In terms of the possible costs and benefits, there is ultimately the possibility of preventing losses to Member States and the EU’s budget of up to EUR 60 billion. There would be varying costs to the EU, Member States and businesses. Some previous research exists on these costs and benefits, but most of this is now quite dated and it is in any case very difficult to quantify the costs of different solutions. We have therefore provided an essentially qualitative assessment.

### Possible Solutions to MTIC Fraud

**Recommendation 1:** Harmonised RTR rules for intra-EU cross-border transactions should be adopted to replace the current VAT Information Exchange System (VIES) recapitulative statements (the latter would then be rescinded).

**Recommendation 2:** The definitive VAT system should be linked to the proposal on the adoption of mandatory RTR rules.

**Recommendation 3:** Consideration should be given to regulating e-invoicing rules as an optional measure for Member States.

**Recommendation 4:** Regulating SPM as an optional measure for Member States should also be considered.

### Existing Measures and Roles

**Recommendation 5:** Steps should be taken to allow the EU authorities to have quicker access to EUROFISC data and to allow for EIOs to be efficiently implemented.

**Recommendation 6:** Council Regulation (EU) 2017/1939 should be amended to allow the EPPO to act in cases that involve fraud related direct income taxes if they also involve VAT fraud.
Recommendation 7: Council Regulation (EU) 2017/1939 should also be amended to allow OLAF to be consulted by the EPPO when MTIC fraud investigations have evolved into a criminal case.

Recommendation 8: National secrecy laws should ideally allow for VAT information to be transmitted to EU authorities involved in MTIC fraud investigations if there is suspicion of criminal activity.

Recommendation 9: Member States’ tax declarations, customs declarations and transportation documents should be more harmonised in terms of information being reported and language / terminology.

Recommendation 10: There should be more ‘diagonal’ communication across Member States between different types of authorities involved in tackling MTIC fraud.

Recommendation 11: Checks should be strengthened on businesses that request large VAT refunds and for businesses seeking to register new VAT numbers.

Recommendation 12: Ideally, Member States should implement or amend domestic legislation to allow them to quickly de-register companies suspected of MTIC fraud.
1. INTRODUCTION

This study was carried out for the European Parliament’s Budgetary Control Committee by the Centre for Strategy & Evaluation Services LLP (CSES).

1.1 Resume of Study Objectives

To summarise, the objectives of this study were to:

- Describe the problem of Missing Trader Intra-Community (MTIC) fraud and carousel fraud, provide details on the current Value Added Tax (VAT) system (i.e. an exempt intra-Community supply in the country of origin and a taxed intra-Community acquisition in the country of destination with VAT remitted by the customer) and the proposals of the definitive VAT system.

- Investigate the different solutions for the fight against MTIC fraud including but not limited to: digital solutions, real-time reporting, blockchain technology, TX++, split payment, definitive VAT system and other possible solutions known to the researchers or academics.

- Present solutions accompanied by a cost-benefit analysis. This analysis should include the benefits and the potential challenges of implementing the solution.

- Identify best practices of the fight against MTIC fraud from the Member States and assess the coordination and cooperation between the Member States.

- Provide an overview of the work that the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), and the European Union Agency for Law Enforcement Cooperation (Europol) are doing in the field of MTIC fraud. This should lead to an overview of the different competences these institutions have in the field of VAT fraud and how they cooperate in detection and prosecution.

The purpose of the study is to contribute to the development of reliable, achievable and detailed solutions for the fight against MTIC fraud.

As the Parliament’s terms of reference explained, MTIC fraud is estimated to result in a loss of at least EUR 60 billion to the EU's own resources. Compared with other types of fraud on the expenditure and revenue sides of the EU’s budget, this is by far the most serious problem. Moreover, estimates of MTIC fraud are almost certainly under estimates because by its very nature, there is a largely unknown hidden element. The complexity of MTIC schemes also means that the perpetrators are usually organised crime groups rather than individuals or legitimate businesses. Overall, it is a very serious problem which deprives the EU of resources that could be used to help tackle the challenges the EU and Member States face. We elaborate on the problem of MTIC fraud in Section 2 of the study.

This study builds on a considerable amount of previous research and a workshop organised by the EP’s Budgetary Control Committee on ‘Missing Trader Fraud - definition, effects, prevention and solutions’ that took place on 26 May 2021.

1.1 Methodological Approach

The contract for this assignment was awarded on 2 December 2021. The research plan proposed in the CSES offer is reproduced below.
Figure 1: Summary – Research Plan

Following a kick-off meeting (Task 1), CSES performed the tasks highlighted in Phase 1 of the research plan, namely the study methodology and research plan (Task 2), which led to the submission of the inception report on 26 January 2022. A first focus group was held just before this, on 25 January 2022. The purpose of this focus group was to validate the preliminary findings on the possible solutions and to discuss the benefits, the challenges involved in potential implementation and other issues. In addition to the EP, the participants included DG TAXUD, EPPO, OLAF and EUROFISC, as well as CSES and our two external experts (a total of just over 20 participants).

The tasks outlined above under Phase 2 of the research plan were then carried out during February and March. These tasks included a total of 37 interviews with the European Commission (OLAF, DG TAXUD), the EPPO, EUROFISC, Eurojust and Europol, and with the national authorities in 12 Member States. The Member States that were selected for the Phase 2 research were agreed with the EP and were: Belgium, Bulgaria, Denmark, Germany, Spain, Hungary, Italy, Netherlands, Poland, Portugal, Romania, and Sweden. An interim report was submitted on 10 February 2022.

In Phase 3, CSES organised a second focus group which in addition to the European Commission and other EU-level bodies also included representatives from a number of Member States, namely Germany, Spain, Italy, Netherlands, Poland, Portugal and Romania. A total of 37 representatives of various organisations involved in combating MTIC fraud accepted the invitation to the second focus group which was used to outline the key study findings, conclusions and recommendations concerning the preferred approach to tackling MTIC fraud.

The research largely focused on exploring the possible solutions highlighted by the EP in the terms of reference, namely: split payments, electronic clearance procedure, real-time reporting, VAT coin and the definitive VAT system. The research has focused on examining each of these solutions, their potential effectiveness in tackling MTIC fraud, their costs and benefits, and other issues.

The study team for this assignment included two external experts: Professor Marie Lamensch from UCLouvain and Vrije Universiteit Brussel, who helped especially to develop Section 4; and Stefano...
Pavesi who works for Ernst Young and who participated in the focus groups and reviewed the study. We would like to thank them for their contributions to the study.

1.2 Final Study
The final study is structured as follows:

### Box 1.1: Final Study Structure

- **Section 2: Problem of Missing Trader Intra-Community Fraud** - examines the problem of Missing Trader Intra-Community Fraud together with estimates of the scale of the problem and considers the factors making it difficult to identify MTIC fraud.

- **Section 3: Current Measures and Roles in Tackling MTIC Fraud** - in this section we first review the current measures being implemented to help tackle MTIC fraud. We then consider the roles of the EU and Member States.

- **Section 4: Assessment of Possible Solutions to MTIC Fraud** - assesses the various solutions that were proposed in the EP’s terms of reference of this study - Split Payment Methods, Electronic Clearance Procedure (a digital solution), Real-Time Reporting (and TX++), VAT Coin, and the Definitive VAT system (and proposed amendments).

- **Section 5: Conclusions and Recommendations** - in this final section of the report we present our overall conclusions and recommendations in relation to the various issues examined in earlier sections – the problem of MTIC fraud, possible solutions to MTIC fraud, and existing measures and roles.
2 PROBLEM OF MISSING TRADER INTRA COMMUNITY FRAUD

This section examines the problem of Missing Trader Intra-Community Fraud and summarises estimates of the scale of the problem and considers the factors making it difficult to identify MTIC fraud.

2.1 Missing Trader Intra-Community Fraud

Missing Trader Intra-Community (MTIC) fraud can be defined as the theft of Value-Added Tax (VAT) through the abuse of VAT rules on cross-border transactions between European Union (EU) Member States by traders that go missing.1

VAT fraud is a serious problem affecting the EU, with MTIC fraud and ‘carousel’ fraud (a type of MTIC fraud) reducing the revenues received by both Member States and the EU itself. In its current form, MTIC fraud takes advantage of the original design of the Internal Market rules governing intra-community trade that were introduced in 1993 in order to suit the requirements of the Single Market (i.e. the abolishment of the internal borders within the EU).

This is a result of the implementation of the Single European Act which removed all checks on goods as well as the payment of VAT when goods crossed physical borders within the Single Market. 2

Previously, citizens had to declare their purchases at the border between Member States and after completing customs declarations, they had to pay the difference in VAT between the country of purchase and the country of destination. Businesses involved in importing and exporting products within the EU were required to present goods at customs checks, where payment of VAT tax on imports was expected and the remission of tax on exportation were verified. 3 The Commission initially proposed that VAT should be paid at the place of origin but the Council, while agreeing to abolish tax frontiers, preferred a transitional option requiring VAT to be paid in the country of destination for goods.4 This system was intended to be replaced by a “definitive” VAT system based on the origin principle by 31 December 1996 but this has not happened. The shortcomings of the current system allow MTIC fraud to take place.

MTIC fraud makes use of the zero-rate of VAT applied to cross-border transactions on the one hand, and the VAT applied on transactions occurring within a Member State, on the other. Thus, if the goods or services involved are sold by Company A across a border to Company B, the latter does not pay VAT to Company A. However, if Company B then sells the good or service again within their own Member State to Company C, Company C has to pay VAT on the good or service. This VAT is therefore sent to Company B. The process is illustrated below.

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1 Ashmans Solicitors. (2020). What is MTIC-VAT Fraud?. Online: https://www.ashmanssolicitors.com/articles/what-is-mtic-vat-fraud/
4 Ibid.
Fraud under these circumstances can occur as an entity from one Member State can purchase a good from another Member State with 0% VAT applied and then sell the same good within the importing Member State applying a rate of, for example, 19% VAT on the sale. This 19% VAT applied on the sale of a good is owed to the Member State tax authorities but under MTIC fraud, the entity selling the good disappears, pocketing the VAT owed. The ‘missing trader’ makes a profit by purchasing the good with a 0% VAT rate through a cross-border transaction and then pocketing the 19% VAT after selling the same goods or services within their own country instead of delivering the VAT revenues to the tax authority. This is a simple type of MTIC fraud. Sectors of the EU’s economy that are targeted tend to involve goods that are not difficult or costly to transport across borders (e.g. mobile phones and computer chips). Increasingly, MTIC fraud also includes trade in services (software, licensing etc.).

In the case of ‘Carousel Fraud’, the same goods and services are sold by a group of companies in a circle with the traded commodity returning to the initial entity selling the good. This is illustrated in the figure below.
In this case, Company A in Member State 1 sells a good across a border to Company B in Member State 2. As it is a cross-border trade, 0% VAT rate is applied to the transaction and Company B does not pay VAT to Company A. Company B can then sell this good to Company C in its own country, but since it remains in Member State 2, a VAT rate is applied on the transaction and Company C pays VAT to Company B. As with the first example, this VAT is owed by Company B to the tax authorities but Company B disappears without paying the VAT to the authorities. Company C can then sell the good back to Company A in Member State 1.

In this transaction, since 0% rate of VAT is applied (as it is a cross-border trade) Company C requests the tax authorities to refund the VAT as Company C bought the good from Company B with VAT included in the price at purchase. The tax authorities in this situation lose out twice on VAT revenues, in the first instance because Company B has not paid VAT to the tax authorities and in the second case because Company C has requested a VAT refund for having paid VAT to Company B. **Carousel fraud can involve several buffer companies in between the companies in a transaction, and can involve chains extending across several countries, which makes it even more difficult to detect.** Furthermore, there may be several buffer companies included in a chain that are unaware of the fraudulent scheme.

As noted earlier, it is not only VAT from goods transported across borders that can be defrauded from the state coffers as authorities increasingly also face difficulties with the **trade in intangible goods (qualified as “services” for VAT purposes).** A recent example is the trade of CO2 ETS certificates which were issued and exchanged within the EU following the Kyoto protocol through a special trading system. This type of trading ‘commodity’ was preferred by fraudsters as the certificates were fully digitalised and could thus be traded immediately with no need for merchandise crossing borders. In Germany CO2 emission VAT fraud led to EUR 800 million in losses.

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between 2009-10, and another estimated EUR 7 billion losses in other EU Member States.\(^9\) However, it was possible to identify the fraudsters in the EU through the ETS certificate system as users had to register to be able to trade, which enabled authorities to recognise unusual trading movements such as spikes in registrations to the ETS system, which in turn would help identify the potential fraudsters these new companies were trading with.\(^10\) Indeed, ETS certificate VAT fraud was quickly identified as a motivator for spikes in companies registering to trade on the ETS system: after France obtained permission from the EU to apply a reverse charge mechanism on the final buyers of ETS certificates, several new companies registered to use the ETS trading system in the UK.\(^11\)

### 2.1.1 ‘Disappearance’ of companies

The ability of traders to go missing depends on the regulations that govern setting up, operating and disbanding a company, and how VAT rules work in this regard.

The VAT registration number is the unique number that identifies a taxable person (business) or non-taxable legal entity that is registered for VAT. According to Article 214 of the Directive 2006/112/EC on the European Union’s common system of value added tax (VAT Directive), most businesses, or persons carrying out an economic activity, need a VAT registration number.\(^12\) Companies must be VAT (EU companies) or tax (non-EU companies) registered. They will then be required to complete and submit a local VAT registration form, along with supporting documentation.\(^13\) The application form will often be in the local language. EU Member States have become increasingly reluctant to provide document translations as this can create misunderstandings. Each country will also have other documents specific to their own requirements that should be supplied. Following the submission of the application, it will take 2-8 weeks to receive a VAT number, depending on the country. The tax authorities may well ask further questions, specifically to try to prevent VAT fraud.

More generally, the ease with which companies can be set up varies across EU Member States. In some cases, there are very few checks or requirements. For example, some companies are able to start operations immediately without having shareholders. Furthermore, some Member States only require an address to be registered via national tax portals. Certain jurisdictions allow companies to be registered without having to submit a request in person at the national tax authority. Often the approval of a notary is sufficient but the notaries concerned sometimes do not carry out enough checks on the applicants and, indeed, can even be complicit in the fraud. In theory, according to Directive (EU) 2015/849\(^14\) Member States should be enacting requirements such as proof of activity and imposing requirements on notaries to perform more rigorous checks but the strength with which Member States apply this directive varies. Some Member States’ laws apply secrecy restrictions over the activities of notaries (secrecy laws are discussed further in Section 3.2.2).

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\(^9\) CORRECTIV. (n.d.) Grand Theft Europe. Available at: https://correctiv.org/en/top-stories/2019/05/07/grand-theft-europe/

\(^10\) Ibid.


\(^12\) Directive 2006/112/EC – the European Union’s common system of value added tax. In particular, they are obliged to register VAT numbers in the following cases: when the business carries out the supply of goods or services taxed with VAT; when the business makes an intra-EU acquisition of goods; when it receives services for which it is liable to pay VAT (under Article 196 VAT Directive); when it supplies services for which the customer is liable to pay VAT (under Article 196 VAT Directive).

\(^13\) Typically, a company will be required to provide the following supporting documentation: proof of VAT or tax registration in its country of domiciliation; an original copy of the certificate of incorporation of the company; a copy of the company’s Articles of Association; an extract from the national company registrar as proof of existence; and increasingly, proof of the planned trade (e.g. contracts or invoices). If the company is appointing a local tax agent or Fiscal Representative, then a Letter of Authority or Power of Attorney.

There are multiple ways in which companies set up and ‘disappear’ to commit MTIC fraud. Often, legal entities are established from scratch for the sole purpose of then disappearing, usually after a relatively short period of time. New VAT registration numbers can be requested from the authorities for a company but the people using these registration numbers will later go missing. The dilemma for the authorities is that there is pressure to simplify the regulations on setting up a company to encourage entrepreneurship; however, this can also mean that the rules are relatively easy to manipulate for criminal purposes.

There are Member States such as France that have much more rigorous checks which make the process of establishing a company and registering on the VAT Information Exchange System (VIES) more difficult. Documentation proving activity is required and then verified by national tax authorities. On the other hand, such Member States have been facing court cases against their tax authorities by individuals denied the possibility of setting up a company. Furthermore, risk analysis tools can be implemented to raise red flags of potential fraudulent companies. Authorities in The Netherlands highlighted the situation in which such red flags can include whether a company is located in a building where multiple companies are located (can be a legal co-working space of start-ups or it can be a warehouse with multiple empty offices). They also noted that if the company declares that it will be trading a good that is often in MTIC fraud chains, they also consider this a red flag.

In order to register new entities and later disappear, organised crime groups will frequently hire people in economic difficulty (including homeless people) to act on paper as the CEO or manager for the purpose of registering a VAT number. The people behind the scheme can then disappear leaving the VAT registered company stripped of all assets. In other cases, fraudulent companies will ‘hijack’ an honest business’ VAT number and issue false invoices in its name. Likewise, companies that are on the brink of bankruptcy can be added to the carousel of fraudulent companies. ‘Disappearance’ in this regard, occurs when the tax authorities seek to retrieve VAT from this company but it has already declared itself to be bankrupt.

### 2.1.2 Customs Procedure 42

The research for this study indicates that what is known as ‘Customs Procedure 42’ is often involved in MTIC fraud. Moreover, when a chain extends to third countries, Customs Procedure 42 can further hinder the ability to identify fraud. Under Customs Procedure 42, entities importing a good from outside the EU can request a VAT exemption if the good is destined for a different Member State than where the VAT is collected. Fraud involving the Customs Procedure 42 occurs when the good does not move to the Member State declared as final destination and is instead sold in the Member State.

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15 The VAT Information Exchange System (VIES) is an online platform that enables companies to ensure that the businesses they are trading with are properly VAT registered and therefore have the right to engage in cross-border trade within the EU. In addition, VIES also allows national tax administrations to monitor and control the flow of trade (goods) within the EU. The data generated by VIES can also be used to monitor, prevent and prosecute MTIC fraud cases.

16 Tax Disputes. Missing Trader Fraud (MTIC VAT Evasion). Online: [https://taxdisputes.co.uk/missing-trader-fraud-vat-evasion-solicitors-london/](https://taxdisputes.co.uk/missing-trader-fraud-vat-evasion-solicitors-london/)


18 The procedure 42 is the customs procedure of release for free circulation of imports in an EU Member State without charging the VAT, because the goods are intended for a person in another EU Member State (Article 143/d of Council Directive 2006/112/EC).
where an exemption has been obtained. In such cases, the customs authorities often lose track of the direction of goods, thereby making it difficult to identify the fraud.

It has been stressed that to investigate possible cases of MTIC fraud, investigations need to follow the flow of goods. To help solve the issue concerning the difficulty of tracing goods, authorities consulted have argued that a centralised database at the EU level for e-CMRs (transportation documents) should be established to allow for authorities to identify the destination of goods imported into the single market. Once the supplier records the transport in e-CMR, immediately afterwards, the respective intra-client should receive an electronic message/transport notification that would need to be confirmed by the same client. If not confirmed, this could indicate that the transport and related intra-community trade has not taken place (in which case fraud cannot occur) or is involves an irregularity and/or a case of fraud. When a good has arrived in one Member State from another, both tax authorities can be notified. If a good has not arrived in its destination Member State, tax authorities can be immediately notified that a possible fraud has occurred. Adding such checks at the EU’s external and internal borders would make it more difficult to change the documents of origin and type as well as the declared price of goods.

The ability to cross-check transportation documents by the national revenue agencies and the customs authorities in real time can also improve detection of other irregularities such as the undervaluation of imports. Furthermore, it has been suggested that instead of a new database, the recording of transportation documents can be included in a new real-time reporting system (see section 4) or the current VIES system. It has also been noted that transportation documents are not harmonised and are in different languages which makes it difficult for EU authorities to compare them and make use of them for investigations.

Box 2.1: Example of Portugal’s eFatura tax system

- Launched in 2013, the e-Fatura system in Portugal allows companies to register invoices online with the central tax authority. Citizens are also able to verify that a company has declared all its businesses transactions to the central tax administration. Companies that issue more than 1,000 invoices or manage transactions valued at over EUR 100,000 are required to register on the system. The registration of invoices with the tax authority also allows for quicker detection of fraud.

- The eFatura system is an effective tool in the fight against MTIC fraud because in addition to registering invoices, companies have to upload transportation documents for the goods involved in transactions. It is also seen as effective in incorporating the informal economy in Portugal into the public tax system.

- To incentivise use of the system, there is a lottery prize with VAT numbers on invoices offering greater tax deductions. The system can be accessed via a web browser or a mobile phone app. Each year the system processes 5.2 billion invoices and over 8 million citizens have registered themselves to process their tax affairs online.

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9 The e-CMR or electronic CMR is the digital equivalent of the CMR Transport Document in paper-based format that is used and signed in four copies (sender, consignee, carrier and administration). Its use implies adherence to the CMR Agreement (Contrat de Transport International de Marchandises par Route) that regulates it.

2.2 Scale of the MTIC Fraud Problem

The EU is entitled to 0.30% of VAT revenues from most Member States (a reduced rate of 0.15% was collected from Germany, the Netherlands, and Sweden during the period of 2014-20). VAT therefore represents a significant source of revenue for the EU. For example, VAT-based revenues accounted for 12.2% of the total revenue of the EU (around EUR 17 billion) in 2020.

2.2.1 Estimates of MTIC fraud

As an illegal activity, and therefore largely hidden, it is difficult to estimate the size of VAT lost through MTIC fraud. Moreover, the schemes are usually very complex. There are, however, several estimates available on the scale of MTIC fraud as well as the ‘VAT Gap’ more generally.

**Box 2.2: Scale of MTIC Fraud**

- Estimates from the Commission suggest that the VAT gap amounted to EUR 134 billion in 2019 according to the EU VAT gap report of 2021. A large portion of this gap is likely to be a result of organised crime involvement in MTIC fraud. According to the Commission, the EU VAT gap was EUR 150 billion in 2016, EUR 50 billion of which was defrauded by criminal groups. The charts below provide a breakdown by country.

- As noted in CSES’s previous EP study on the involvement of organised crime in defrauding the EU finances, MTIC fraud has been estimated to cost the EU some EUR 60 billion p.a. in lost revenue. Europol suggests that such fraud is worth between EUR 40 billion to EUR 60 billion p.a. to organised crime groups. Furthermore, Europol indicates that 2% of organised crime groups are involved in 80% of the MTIC fraud. The significant proportion of MTIC fraud being committed by organised crime has been attributed to the complexity of MTIC fraud schemes which would be difficult for individual business owners to commit. Another study suggested that MTIC fraud could be as high as EUR 94 billion (2014).

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22 The ‘VAT Gap’ is the difference between expected revenues in EU Member States and the revenues actually collected. The VAT Gap provides an estimate of the VAT revenue loss due to tax fraud, tax evasion, tax avoidance and optimisation practices, bankruptcies, financial insolvencies, as well as miscalculations and administrative errors. Other circumstances that could have an impact on the size of the VAT Gap include economic developments and the quality of national statistics. See https://ec.europa.eu/taxation_customs/business/vat/vat-gap_en
Figure 2.3: VAT Gap as a Percentage of the VAT Total Tax Liability (VTTL) in EU Member States 2019


Figure 2.4: Percentage Point Change in VAT Gap, 2019 over 2018

There are several factors that the study suggests can affect the scale of MTIC fraud in different Member States. A key factor is the level of VAT rates imposed on goods domestically as fraudsters are keen to target Member States with high VAT rates to extract more profits from their activity. The effectiveness of controls in different Member States is also an important consideration. It has been noted by several experts that fraudsters target the Member States that have weaker systems of control. This weakness can exist for several reasons including the resources and expertise of tax authorities, customs authorities, police and investigative authorities. Fraudsters are quick to adapt and can easily move to other Member States where there are weaker systems and where it is easier to register VAT numbers and/or where it takes longer for government authorities to deregister VAT numbers. Nevertheless, countries with low VAT gaps and low levels of MTIC fraud sometimes face sudden surges in the number of cases as organised crime groups find new ways to avoid detection.

2.2.2 Factors making it difficult to identify MTIC fraud

National authorities face difficulties in being able to detect MTIC fraud. In the Single Market, companies are able to move with relative ease from one Member State to another, obtain different VAT registration numbers, and purchase and sell goods and services in different Member States with little difficulty. The tax authorities on the other hand do not have access to real-time data that matches the speed of these activities, preventing risk analyses that would allow for early detection of fraudulent irregularities and fraudulent traders before they go missing.

Furthermore, administrative procedures mean that intra-community transactions are usually reported around one month after the sale and purchase of the goods or services occurs, preventing early identification of fraudulent irregularities and providing opportunities for traders to disappear without having paid VAT. When it comes to investigating cross-border cases of potential fraud, national tax administrators often need to request such data from other Member States, which can prevent immediate action being taken and allow time for fraudsters to disappear.

There is evidence that some Member States are beginning to introduce appropriate risk analysis methods for MTIC fraud detection and setting up multidisciplinary investigative units to tackle the problem but these initiatives are not harmonised enough to allow for significant positive effects. The efforts also appear to be more consistently applied for national cases of VAT fraud than intra-community manifestations. This was a suggestion made at the European Parliament workshop on MTIC fraud (September 2021). Another factor is the ease with which companies can request VAT reimbursements. In some Member States, there are relatively complicated procedures involved in requesting tax refunds from the national revenue authorities which leads to a higher likelihood of irregularities being detected and audits launched. While it is important to minimise bureaucracy and to ensure that businesses can obtain refunds in a timely manner, it has been argued that controls should be performed with the help of data mining tools when there are red flags concerning the companies requesting refunds. Such red flags can include the fact that a high amount of refund is being requested.

Box 2.3: De-registration of VAT numbers

- The speed with which Member States can de-register companies has been highlighted as a factor in explaining the scale of MTIC fraud in Member States. Quick de-registration allows authorities to quickly react to fraud by suspending a company’s ability to continue trading.

- Another option is to suspend a company from the VIES system which would allow a company to continue trading but would mean they are charged VAT for intra-community transactions (for which they would have to ask for a refund at a later date). This would mean a ‘change’ rather than a cessation of activities which would be quicker to enact.

It has also been suggested that the difference in VAT gaps across Member States (which includes the impact of MTIC fraud but also other issues in in tax collection) can be due to the way in which the impact of MTIC fraud is recorded in national and EU statistics. While a fraud chain may include several conduit companies involved in multiple Member States, the contribution to the VAT gap is only recorded in the Member State in which the trader has gone missing. Furthermore, it has been argued that the organisers of such chains are sometimes based in Member States with low VAT gaps and larger economies as it is easier for their activities to be hidden amongst the large volume of transactions (even if the instance of a trader going missing does not occur in this Member State).

Another factor highlighted by experts consulted for this study which affects the scale of MTIC fraud is the difficulty in making conduit companies liable for fraud. There are ECJ decisions stating that Member States can refuse the right to deduction, the right to refunds and the right to VAT exemption in intra-community supply of goods (even in the case in which fraud has occurred in another Member State) if the taxable person knows or should have known that they were participating in a fraud scheme. Nevertheless, in the case in which fraud has occurred in another Member State (e.g. Member State 2), it is difficult to legally prove an individual’s (e.g. from Member State 1) role in a fraud scheme or their knowledge of participation in one as a conduit company. This is because of the difficulties inherent in the court (in Member State 1) having to require proof from another Member State (e.g. Member State 2) that fraud was committed by the client of the conduit company and subsequently, the need to prove that the conduit company had knowledge of the scheme.\footnote{Examples of illustrative ECJ cases include Staatssecretaris van Financiën v Schoenimport 'Italomoda' (C-131/13, C-163/13, and C-164/13) as well as 'Mecsek-Gabona' C-273/11.}

2.3 Conclusions – Problem of MTIC Fraud

MTIC and carousel fraud is widely considered to be a significant issue affecting the finances of the EU and Member States. The EU VAT gap was estimated to be around EUR 150 billion in 2016 with around EUR 50 billion being defrauded by criminal groups through MTIC fraud. This form of VAT fraud is also increasingly difficult to tackle particularly as services and intangible goods are used to commit this form of fraud. Fraudsters are very adaptable and able to move from one Member State to another where controls are weaker and it is easier in some countries to register new companies and harder to de-register VAT numbers. Fraud in the Customs Procedure 42 is also frequently part of carousel chains.
3 CURRENT MEASURES AND ROLES IN TACKLING MTIC FRAUD

In this section we first review the current measures being implemented to help tackle MTIC fraud. We then consider the roles of the EU and Member States.

3.1 Current Measures to Tackle MTIC Fraud

There are a number of measures being implemented to tackle MTIC fraud – the reverse charge principle, the VAT Information Exchange System (VIES) and Transaction Network Analysis (TNA), and several e-documentation tools.

3.1.1 Reverse charge principle

To limit the extent of MTIC fraud in sectors that are particularly hard hit, the Commission has allowed Member States to apply the reverse charge principle in specific situations.

More specifically, Article 199a of Directive 2006/112/EC on the European Union’s common system of value added tax (‘VAT Directive’) offers an option to apply the reverse charge mechanism on a temporary basis in specific sectors, namely: mobile phones, integrated circuit devices, supplies of gas and electricity, telecoms services, game consoles, tablets, PCs and laptops, cereals and industrial crops, and raw and semi-finished metals. These have been identified as sectors particularly vulnerable to MTIC fraud. The use of reverse charging prevents MTIC fraud since the supplier no longer collects VAT on the domestic supply side. If a Member State wants to apply the reverse charge mechanism to other supplies than those listed in Article 199a of the VAT Directive, a derogation can be granted according to Article 395 of the VAT Directive. Article 199b of the VAT Directive offers a faster procedure for the introduction of the reverse charge mechanism known as the Quick Reaction Mechanism (‘QRM’) in order to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses. Furthermore, Articles 199a and 199b of the VAT Directive may be relied on until 30 June 2022 (the initial deadline of December 2018 was prolonged on 25 May 2018). The reason is that the ‘definitive system’ was expected to enter into application in 2022 and was meant to solve the risk of carousel fraud (see below).

Council Directive 2018/2057/EU of 20 December 2018 also offers the opportunity for EU Member States that deal with a high level of VAT fraud to implement a general reverse charge mechanism (i.e. apply the reverse charge rule on all local supplies in that EU Member State that exceed a threshold of EUR 17,500 per transaction) under strict conditions and with the approval of the Council. So far, no Member State has requested the application of the general reverse charge rule, not even Czechia.
which supported the adoption of this Directive (and it is not expected that one of the EU Member States will request for it). The general reverse charge mechanism can be applied until 30 June 2022 only.

According to the authorities consulted in this study, the mechanism has been successful in reducing the amount of MTIC fraud occurring in the specific sectors that are highly vulnerable to this activity, most notably the sale and purchase of mobile phones. Nevertheless, as noted by the ECA’s 2015 report, the tool has to be applied consistently across the EU-27 as fraudsters will move from one Member State in which it is established to another where it is not in place. Overall, the application of reverse charge is not harmonised. Thus, as of 2020, only some Member States apply the reverse charge procedure when the supplier is a non-resident of the Member State.37

While it has been noted that the reverse charge could be effective alongside a centralised data system for validation, and because it would mean supervising a smaller group of traders, i.e. just the retailers at the end of the chain, there is currently little support for applying generalised reverse charge for all goods traded. One reason for this is because VAT fraud in many cases would shift to occurring at the retail phase and domestic transactions. Furthermore, the complexity of the mechanism (particularly if applied to all goods) has raised concerns about the compliance costs for business.38 Tax officials interviewed for this study noted that in the case of the ETS/carbon credits fraud mentioned above, France and the Netherlands (and the UK) were relatively quick to apply reverse charge while other Member States did so after a delay of a few years.

### 3.1.2 VIES and TNA Data tools

As noted earlier, the VAT Information Exchange System (VIES) is an online platform that enables companies to ensure that the businesses they are trading with are properly VAT registered and therefore have the right to engage in cross-border trade within the EU.

One application of the VIES data is in the Transaction Network Analysis (TNA). TNA is an online tool designed to gather and compare VAT transactional data with a view to helping the early identification of VAT fraud. This tool was first piloted in 2014 by Belgium, alongside other Benelux countries, and was subsequently expanded to 10 Member States in 2016. Since May 2019, it is being used on a voluntary basis by most Member States as part of the activities of EUROFISC. TNA works by applying automated data mining of data provided by companies in their VAT returns. Using machine learning and big data, this tool can analyse transactional networks (using social network analysis) and detect fraudulent transactions as they emerge. The European Commission contributed to the development of TNA by conducting pilots, market scanning and by holding working groups to identify best practice for the implementation of the most suited methodology for the tool.

In addition, beyond the transnational network analysis, TNA also provides a platform for the Member States’ tax administrations to collaborate and to share best practices. TNA also complements national

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37 On all goods: Belgium, Croatia, Czech Republic, Estonia, Finland, France, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, and Sweden; on selected goods: Austria, Bulgaria, Cyprus, Denmark, Germany, Greece, Hungary, Ireland, Latvia, and Slovenia; and does not apply reverse charge: Luxembourg. TMFgroup. (2020). A quick guide to reverse charges across Europe. Online: https://www.tmf-group.com/en-news-insights/publications/2020/reverse-charges-across-europe/

risk analysis systems. With the use of these tools EUROFISC is able to cross-check information against criminal records and databases held by Europol and OLAF. 39 40 41

While VIES has been noted as being a useful tool, some authorities nonetheless argue that improvements are needed to ensure greater reliability and effectiveness in tackling MTIC fraud. Firstly, there are issues concerning the speed with which information can be accessed by the European Commission and national authorities. According to some of the authorities interviewed, tax administrators are not able to check intra-community supplies that are moving from their Member State to another without submitting a request to the other Member State. Furthermore, such requests can sometimes take a few months before a response is forthcoming. Another issue is the timeliness with which information is uploaded.

Currently VIES is updated with information on intra-community supply and acquisition by Member States following a standardised template but solely on a monthly basis which authorities consider is not quick enough to tackle fraud and to prevent traders from going missing. Some experts have argued that this procedure needs to be replaced with a system that allows for real-time reporting of intra-community acquisition and intra-community supply. This would allow for early detection of irregularities when cross-checking intra-community acquisition and intra-community supply. Another issue raised is the fact that information submitted by Member States is in different languages and the information that is inputted is not harmonised. It is argued that this makes it difficult to use the information for investigations into possible cases of fraud.

Several tax administrators interviewed for this study highlighted the TNA as an effective tool to combat MTIC fraud, especially now that it has been made available to all Member States and can assess data from across the EU. As a data mining tool, it allows the authorities to reduce the time between a possible fraudulent transaction, the detection of an irregularity and the launch of an investigation. On the other hand, the TNA has only been available to the EU-27 Member States for around three years and it has been argued that it needs more data from Member States. Furthermore, the TNA relies on national tax administrators to input data into the system as it does not have automatic access to the national data systems. Similarly, the system is not integrated with other EU level data tools such as those managed by OLAF and Europol. It has also been argued that relying on the tool will not eliminate the problem of MTIC fraud and that national level investigations are still required to confirm whether irregularities are fraudulent.

A new tool, the Central Electronic System of Payment information (CESOP) is planned that should help reduce the time gap between when intra-community trades occur and when irregularities are detected. CESOP is due to become operational on 1 January 2024. Box 3.1 explains how the system will work.

Box 3.1: Central Electronic System of Payment information (CESOP)

- The Central Electronic System of Payment information (CESOP) is being launched in 2024 as part of a set of legislative measures aiming to make payment service providers transmit information to a central EU database on cross-border payments originating from Member States as well as on the beneficiary (“the payee”) of these cross-border payments, which was agreed upon by the Council (Directive 2020/8442, Regulation 2020/283). It will be managed by EUROFISC. Payment service providers will have to monitor and provide information on cross-border payments occurring in Member States and information on the beneficiary of these transactions. Information will have to be provided for payees receiving more than 25 payments for cross-border transactions in a quarter to Member State tax authorities.

- Information collected by payment service providers will be inputted by them into the CESOP where it will be possible for it to be analysed and compared with other EU data tools such as the VIES system. Authorities consulted noted that the tool when launched has the potential to be effective as it will allow tax administrations to match intra-community trades with payments that are actually made. This has the potential to raise red flags of possible fraud associated with patterns of payment. Red flags include traders selling consistently at a loss (which remains profitable if they are pocketing VAT owed to the tax authorities), payments made in advance of trade, and trading by so-called ‘shelf companies’ i.e. companies with no activity that abruptly begin trading high volumes of goods.

- The CESOP will also help in reducing the time gap between when intra-community trades occur and when tax authorities detect irregularities as data is inputted on a weekly basis (near-real time). While highlighted as potentially effective, individuals consulted have argued that other EU institutions should be given access to CESOP as it would help in EU administrative, law enforcement, and prosecution investigations.

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Box 3.2: Poland STIR data tool (System Teleinformatyczny Izby Rozliczeniowej)

- Poland has been successful in implementing novel solutions to mitigate the prevalence of Carousel and other forms of VAT fraud. In particular, the fight against VAT fraud has been facilitated through the introduction in 2017 of the STIR tool (System Teleinformatyczny Izby Rozliczeniowej) by the National Clearing House (KIR), which equipped national authorities with the ability to identify and target suspicious transactions. The Polish KIR is run as a company, it is public-private partnership between the country’s main banks and national bank.

- STIR engages in the collection and maintenance of potentially fraudulent transactions’ data, for further analysis – and is used mainly by the Polish National Revenue Administration (KAS). STIR uses algorithmic functions to collect information from all business bank accounts operating in Poland (approximately 4 million entities), including from all daily transactions – identifying information from both the sender and receiver, such as the IP address through which they log into their banking account. These features make it easier for STIR to pinpoint which actors might be engaging in fraud, and where they are located. The STIR algorithm selects suspicious transactions, based on whether an entity made unusual, sudden movements on its bank account and whether it transferred money to “countries where there is a high risk of fraud”.

- Analysts from KAS regularly receive reports from STIR of financial transactions that appear dubious and identifying high-risk entities. KAS analysts can make recommendations on which bank accounts should be frozen based on STIR information. So far, STIR has been an effective tool in countering VAT fraud in Poland, freezing 537 accounts from 113 entities and holding over 15 million euros in assets – and saving the Polish state 133 million EUR. STIR is believed to be a contributing factor to the decline of the VAT gap in Poland from 14% of expected VAT returns to 10% in 2019, below the EU average of 11%.  

- More widely, Poland can be considered a model in reducing VAT fraud, having seen the VAT gap reduce from highs of 29% in 2016. The planned Central Electronic System of Payment information (CESOP), would operate on a similar basis to STIR throughout the EU.

3.2 Role of EU in Tackling MTIC Fraud

Ensuring the EU’s finances are not subject to fraud is a shared competence between the EU and Member States. The EU has competence over the Customs Union as a whole, but national authorities are responsible for fraud prevention and collecting taxes.

Article 325 of the Treaty on the Functioning of the European Union (TFEU) stipulates that Member States must counter fraud and any other illegal activities affecting the financial interests of the Union and Directive 2017/1371 obliges Member States to prosecute and effectively sanction VAT fraud involving a total damage of at least EUR 10 million. Furthermore, the Court of Justice in several opinions has declared that the prevention of tax evasion, tax avoidance and abuse is an objective recognised and encouraged by the VAT Directive. Additionally, Article 273 of the VAT Directive provides that

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45 Algorithm Watch (n.d.) Pre-crime at the tax office: How Poland automated the fight against VAT fraud. Available at: https://algorithmwatch.org/en/poland-stir-vat-fraud/
46 Idem.
Member States may impose other (i.e. not foreseen by the Directive) obligations which they deem necessary to ensure the correct collection of VAT and to prevent fraud. Detecting and prosecuting such fraud was the sole competence of Member States until the creation of the European Public Prosecutor’s Office (EPPO). 48

3.2.1 Key EU entities: There are several EU entities involved in the fight against MTIC fraud.

The European Anti-Fraud Office (OLAF) is in charge of investigating fraud against the EU budget and develops policy to combat fraud for the Commission. When it comes to VAT fraud, it conducts administrative investigations on potential fraud cases at the EU level and then notifies the Member States affected. It cannot perform law enforcement investigations, prosecute cases itself or enact sanctions.

The EPPO’s responsibility is to investigate and prosecute crimes against the EU’s financial interests including VAT fraud if the damages are above EUR 10 million and at least two Member States are involved. The EPPO does not, however, have competency over direct income tax issues. Furthermore, Council Regulation (EU) 2017/1939 does not explain whether the EPPO would be allowed to prosecute and investigate a case if it involves both VAT fraud and fraud involving direct income taxes. 49 As a consequence, if a case of VAT fraud has a link to an issue involving direct income tax the EPPO may not have competency over the case. The authorities consulted for this study argued that the Regulation should be modified to allow the EPPO to investigate such cases, particularly as the institution may have already begun investigating the case involved when evidence only pointed towards VAT fraud being committed. They argue that EPPO’s effectiveness is, however, ultimately dependent on the universal and harmonised transposition of laws covering VAT fraud. Furthermore, Denmark, Hungary, Ireland, Poland, and Sweden have chosen to not participate in the EPPO.

Two EU agencies are involved in facilitating cooperation between Member States. Europol (European Union Agency for Law Enforcement and Cooperation) has the responsibility for combating VAT fraud by supporting Member States’ law enforcement investigations and intelligence operations and by providing analytical support and coordination for effective cross-border cooperation to help dismantle and identify EU VAT fraud networks. It facilitates cooperation and supports the 27 EU Member States in law enforcement operations in their fight against serious and organized forms of crimes such as terrorism, cybercrime or organized fraud. It serves as a hub for information on criminal activities and a center for law enforcement expertise. The agency includes a European Serious Organized Crime Centre (ESOCC) delivering operational support for the fight against organized crime and the European Financial and Economic Crime Center (EFEC) which deals with fraud including tax fraud schemes. 50

Similarly, Eurojust (European Union Agency for Criminal Justice Cooperation) facilitates judicial cooperation, coordinating cross-border crime investigations in Europe and with third countries. Each participating Member State seconds a National Member to Eurojust, facilitating an international

49  Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (the EPPO).
50  The EFEC, founded in June 2020, is Europol’s answer to the growing threats to the economy and integrity of the EU’s financial systems. These threats include money laundering, corruption, widespread counterfeiting, fraud and tax fraud schemes that target individuals, countries and companies. The Centre will enhance the operational support provided to the EU Member States and EU bodies in the fields of financial and economic crime and promote the systematic use of financial investigations. See: https://www.europol.europa.eu/about-europol
network. In practice, if authorities in one Member State need to obtain evidence, support the freezing of assets, or issue an EAW (European Arrest Warrant) from another Member State, they can transmit this request via their National Member to the National Member from the other country concerned. The National Member from this country can then obtain the information from (or submit the request to) the appropriate authority to then later transmit the information back to the requesting country. Eurojust provides a physical venue for coordination meetings where prosecutors and investigators can meet and develop closer links. Such cooperation also prevents prosecutions from overlapping. The closest cooperation occurs in what are called joint investigative teams (JIT). JITs are established with agreements between Member States and can allow for cooperation and access to data without needing to submit requests for information.

3.2.2 EU networks

In addition to the EU agencies, several EU-supported networks have been established to help tackle the problem of MTIC fraud.

A particularly important network is EUROFISC. Set up in 2010, it brings together anti-fraud experts and tax officials to exchange information on VAT fraud. It allows the exchange of early warnings on businesses suspected of carousel fraud. While the EU provides funds for the network and plays a supporting role, the network’s activities are driven by Member States. As noted earlier, the network houses the VIES data system and the Transactions Network Analysis (TNA) tool. Nonetheless, the ECA has suggested that the data exchanged is not always well targeted, not all Member States participate in EUROFISC working areas, and data exchanges can be slow.

Another relevant network is the Customs Eastern and South-Eastern Land Border Expert Team (CELBET). The network started in 2016 and involves 11 EU Member States (Finland, Estonia, Latvia, Lithuania, Poland, Hungary, Slovakia, Croatia, Romania, Bulgaria and Greece) that contribute to sharing of information and collaboration to implement common customs legislation and policy. The network receives EU funding via the European Commission’s DG TAXUD. The CELBET network is organized in teams which includes a Management and Evaluation team which has the objective to establish an evaluation approach based on key performance, the Risk Management team which seeks to improve the effectiveness and efficiency in selection of customs controls while facilitating legitimate trade, and the Operation Controls team which exploits the data collected and improves customs controls. Exchanges of staff, technical feasibility studies are recognized as extremely useful for customs administrations in their work to fight EU fraud.

EU Member States also cooperate in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) policy cycle. EMPACT promotes multidisciplinary and multiagency operational cooperation to fight organized crime at EU level. One of the priorities of EMPACT is economic and financial crimes, including MTIC fraud. In this area it seeks to disrupt criminal networks and individual criminal actors. EMPACT brings together EU authorities (such as DG TAXUD, Europol, Frontex, Eurojust, CEPOL, OLAF, EU-LISA, and EFCA), national authorities from the EU 27 (such as from law enforcement, customs, tax administration, judiciary, FIUs as well as experts and NGO representatives) to jointly set,
implement and evaluate priorities during a four-year cycle. Its priorities are derived from the SOCTA report produced by Europol. EMPACT activities also bring in agencies such as Europol as well as non-EU partners such as Norway and Association of Issuing Bodies or Western Balkan Partners to cooperate in the fight against organized crime. The activities seek to create and harmonize legislation on the basis of discussions held at EMPACT as well as foster and direct cooperation according to the priorities set.

The ECA’s 2015 special report on VAT fraud, raised concerns about overlapping competencies and lack of efficient cooperation and exchange of information between EU authorities such as Europol, Eurojust, and OLAF. Nevertheless, in our consultations, the authorities indicated that this did not appear to still be the case as their roles and responsibilities have been clearly delineated in cooperation agreements. With the establishment of EPPO for example, working arrangements have been established with OLAF, Eurojust and Europol to ensure no overlaps in their roles arise.

### Table 3.1: Summary of responsibilities

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<tr>
<th>Institution</th>
<th>Main role in tackling MTIC fraud</th>
</tr>
</thead>
<tbody>
<tr>
<td>OLAF</td>
<td>Administrative investigations at the EU level</td>
</tr>
<tr>
<td>EPPO</td>
<td>Criminal investigations and prosecution of cases at the EU level</td>
</tr>
<tr>
<td>Europol</td>
<td>Law enforcement investigations at EU level and facilitating law enforcement cooperation</td>
</tr>
<tr>
<td>Eurojust</td>
<td>Facilitate judicial cooperation between Member States</td>
</tr>
<tr>
<td>EUROFISC</td>
<td>Tax administrative cooperation against fraud</td>
</tr>
<tr>
<td>CELBET</td>
<td>Network for customs information exchange</td>
</tr>
<tr>
<td>EMPACT</td>
<td>Policy cooperation</td>
</tr>
</tbody>
</table>

### 3.3 Effectiveness of Cooperation between the Authorities

Following the EU 2016 Action Plan on VAT (See Section 3.1), in 2018 finance ministers agreed to the formal adoption of new rules to exchange more information and boost cooperation on criminal VAT fraud between national tax authorities and law enforcement authorities.

The new rules are set out in Regulation (EU) 2018/1541, which is designed as a measure to combat cross-border VAT fraud more effectively and in a more timely manner. It improves and simplifies administrative cooperation instruments, in particular EUROFISC. The main objectives are: simplified procedures for administrative enquiries when the taxable person is not established in the Member State where the tax is due. Enquiries are conducted in the Member State of establishment under close cooperation with the country where the tax is due; access for customs authorities to the registry of VAT

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56 EMPACT stands for the European Multidisciplinary Platform Against Criminal Threats. It introduces an integrated approach to EU internal security, involving measures that range from external border controls, police, customs and judicial cooperation to information management, innovation, training, prevention and the external dimension of internal security, as well as public-private partnerships where appropriate. See [https://www.europol.europa.eu/crime-areas-and-statistics/empact](https://www.europol.europa.eu/crime-areas-and-statistics/empact)

57 European Court of Auditors, (2015), ‘Tackling intra-Community VAT fraud: more action needed’

58 The EU Action Plan on VAT was launched in 2016 and consists of a number of initiatives to promote the concept of a single EU VAT area including simplification of the VAT compliance costs for SMEs, new measures to combat fraud using payment data and a proposal on the period of application of the optional reverse charge mechanism and the Quick Reaction Mechanism against VAT fraud.
identification numbers and the recapitulative statements; joint administrative enquiries; clarification and strengthening of the governance, tasks and functioning of EUROFISC (officials will be able to access, exchange, process and analyse all necessary information swiftly and to coordinate any follow-up actions); exchange of information between EUROFISC, Europol and OLAF; and the possibility for Member States to communicate relevant information to OLAF to enable it to fulfil its mandate to carry out administrative investigations into fraud, corruption and other illegal activities affecting the financial interests of the EU.

The Regulation entered into force in 2018, with most of the provisions being applicable as of January 2020. Nevertheless, our research has found that there remain some gaps and obstacles preventing timely and effective cooperation which are detailed in the following sub-sections.

3.3.1 Cooperation between the EU and national authorities

EU authorities involved in investigating and prosecuting fraud need quick, if not immediate access to data. This is particularly important because the time gap between when a case of fraud occurs, when it is detected and investigated, and when it is prosecuted, is currently significant and allows fraudsters to disappear.

There are certain issues that the research for this study has highlighted with regard to cooperation between EU and Member State authorities and the latter’s cooperation networks. In particular, while EUROFISC is frequently highlighted as a useful network in tackling MTIC fraud across Member States, databases run by it (VIES and results from TNA applied on VIES) are not accessible to the EPPO, Europol, and OLAF. Council Regulation (EU) No 904/2010 indicates that EUROFISC can have access to databases and information held by Europol and OLAF but the Regulation does not stipulate that the latter two can have access to the former’s databases.

In the current situation, EU authorities face delays of around a month to obtain information via requests to tax authorities for investigations. This situation arises not due to the lack of a legal basis but because of a lack of clarity in the legislation which Member States then cite as a reason to not provide information. This has been highlighted in the research for this study as an obstacle preventing EU bodies from obtaining data and information, including from VIES which could help in investigations of fraud. Nevertheless, it should be noted that some Member States have expressed reservations about the involvement of OLAF in VAT investigations as only 0.30% of VAT revenues are contributed to the EU budget for the 2021-2027 period. However, access to data and information for EU authorities is important as this type of fraud is by its nature a cross-border phenomenon and because expertise and knowledge can be derived from an overview across Member States and used in investigations of MTIC fraud cases. There is therefore a case for Council Regulation (EU) 904/2010 to be amended (for example Article 36 (3)) in a way that clearly stipulates that EU authorities should have access to Member States’ VAT information and data.

Furthermore, it is argued that different EU authorities (e.g. OLAF) should be able to continue their involvement in VAT fraud investigations when the cases have moved on to a different type of proceeding (e.g. from an administrative to a criminal investigation). An issue can arise when a criminal investigation is launched following information gathered by OLAF in its administrative investigations. In such a situation, because OLAF is not a law enforcement or prosecution body, OLAF cannot be...
involved in the respective criminal investigations of the case (EPPO cannot delegate judicial investigations to them). This can be an issue hampering effectiveness as OLAF in this situation can have more information and full knowledge of the case than the competent authority identified to coordinate law enforcements at EU level, in this case Europol.

The research suggests that cooperation between Member States and with EU authorities at the judicial level functions well but difficulties can arise when obtaining national tax information and executing European Investigation Orders (EIOs). Several authorities noted that some Member States do not respond to requests for information from EPPO in a timely manner. The situation is similar with requests for information from Member States’ tax authorities submitted by other Member States’ judicial authorities cooperating via Eurojust. When it comes to communication with non-participating Member States, communication most often occurs through EIOs but this can be more cumbersome when compared to direct communication with participating Member States.

Furthermore, some Member States not participating in EPPO do not recognise EIOs preventing quick cooperation with the institution. Some of these non-participating Member States are enacting domestic legislative change to recognise EIOs, but while such a change has not been implemented, cooperation faces significant obstacles. The situation is worse when considering collaboration with third countries. With third countries, particularly states recognised as tax havens, information is difficult to get concerning ownership, shareholders and bank account details. It has been suggested that to help solve the issues found in cooperation with third countries, bilateral agreements between third countries and the EU need to be established to allow for quick responses to requests for information.

There are also legal obstacles which prevent authorities from being able to receive information from different authorities in other Member States. In some cases, a law enforcement agency in one Member State may request information from the tax administration in another Member State in an investigation, but the authorities at times reject the request arguing they are only able to communicate tax information via EUROFISC with other tax authorities (i.e. not with law enforcement agencies in other Member States). It has therefore been suggested that the legal framework governing communication between different authorities involved in tackling VAT fraud should allow for more ‘diagonal’ communication between different types of authorities (e.g. law enforcement, tax administrations, customs etc.) across Member States and with EU authorities. Such diagonal communication occurs already between Europol and Member States’ Financial Intelligence Units for requests for financial information as permitted by the Directive (EU) 2019/115361.

There are also issues relating to cooperation with OLAF. For example, in some Member States, declarations for imports are the responsibility of customs authority but VAT issues are the responsibility of the treasury. This can be an issue as sometimes these two authorities do not communicate on a systematic basis which creates difficulties for OLAF when requesting information for investigations. In France and Italy the customs authorities nonetheless can make enquiries into VAT issues, for instance connected to the abuse of CP42 rule. The effectiveness of cooperation at the Member State level is further explored below.

3.3.2 Cooperation at the Member State level

The national authorities involved in the fight against MTIC fraud can include tax administrations, customs authorities, financial intelligence units (FIUs), law enforcement authorities, prosecutors’
offices, and financial regulators. There are differences in the way national authorities and their responsibilities are organised when it comes to investigating cases of fraud.

In some Member States, the tax administrations are responsible for administrative investigations but cannot be involved in criminal investigations into MTIC fraud which is the responsibility of law enforcement agencies. In other Member States, some authorities have the authority to conduct both administrative and criminal investigations (e.g. the Guardia di Finanza in Italy). A report by Europol identified three types of configurations for criminal investigations:

- The tax administration is responsible for conducting the criminal investigations. In some cases, this is under the direction of the public prosecutor but not in all Member States;
- A law enforcement agency is responsible for conducting the criminal investigations. In some cases, this is also under the direction of the public prosecutor but not in all Member States;
- A special tax agency falling under the Ministry of Finance is responsible for conducting the criminal investigations.

The Europol report indicated that cooperation between different authorities - for example, tax administrators on the one hand, and law enforcement agencies on the other - does not occur effectively as authorities often work in “silos” and do not prioritise cooperation, assistance and data exchange with other authorities. In the cases where the tax administrations are conducting criminal investigations, there is the benefit of the tax authority being able to bring in tax expertise to investigations but they may lack law enforcement expertise required to tackle the organised crime groups involved in MTIC fraud. In other Member States, tax administrators can begin investigations into fraud but then they later do not have the authority to launch criminal investigations.

Cooperation with prosecutors and law enforcement is often not efficient as it occurs on an ad hoc basis. This is further complicated by the fact that in some Member States, there are different prosecutors in different regions that do not always coordinate their activities. As the Europol report indicates, the law enforcement agency may also lack expertise in tax issues and may face a lack of access to tax data of tax administrators. In the third case there is potential for overlap with the work of law enforcement agencies which creates inefficiencies. The overlapping of competencies and lack of efficient cooperation between tax officials, judicial authorities and law enforcement was an issue raised also by the ECA in 2015.

In response to these concerns, some of the authorities consulted for this study highlighted the need for a centralised and multidisciplinary taskforce which can act as a coordinator of activities at the national level. Such a taskforce can connect tax officials and law enforcement for criminal investigations. The complexity of the MTIC fraud chains mean investigations need to go beyond having individual tax authorities and prosecutors auditing and investigating single companies. Establishing a strong link between these elements allows investigations and prosecution to focus on disrupting organisers of the chain of missing traders rather than attempting to locate individual missing traders. This conjoined approach was also stressed because the involvement of organised crime groups mean expertise in other aspects of criminal activity is needed beyond just tax issues. Such an approach also allows for data inaccessible by some authorities to be shared (e.g. data only accessible by tax authorities can be accessed by law enforcement in a joint up approach).

Such a task force would also allow for coordination with prosecutors who may be present in different

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64 European Court of Auditors. (2015), ‘Tackling intra-Community VAT fraud: more action needed’
regions. Having such centralised coordination would also help in simplifying the coordination that has to occur with other Member States to tackle MTIC fraud cases as it provides a single point of communication. As communication with EPPO often only can occur via national public prosecutors (i.e. EPPO cannot speak with tax administrators), a coordinated approach would also allow EPPO a contact point that has close cooperation with tax administrators. This would allow for the EPPO to have quick access to information that tax authorities have exclusive access to.

Below we provide examples from Belgium and Ireland of multidisciplinary approaches to tackling MTIC fraud.

### Box 3.3: Examples of a National multidisciplinary approach to MTIC fraud

- In Belgium, a multilateral task force has been established to tackle MTIC fraud which includes liaison officers to enhance cooperation and communication between tax administrators and law enforcement bodies.
- The Belgian authorities attempted to solve issues in the cooperation between national authorities in charge of tackling MTIC fraud by establishing a multilateral task force in 2000 to tackle the issue more effectively. The multidisciplinary approach includes liaison officers between tax administrators and law enforcement bodies with a view to enhancing cooperation and communication between them. This multilateral taskforce is comprised of individuals working for the Ministries of Justice, Finance and Home Affairs. It allows for an earlier detection of MTIC fraud by pooling resources and information. Post-prevention, the taskforce also makes it possible to prosecute cases more effectively, which provides additional deterrence to fraudsters.
- In operational terms, once suspicious cases have been identified, the judicial coordinator of the taskforce communicates the information to the head of the VAT department of the federal law enforcement body. The information is then reviewed in light of other data available to the police forces. An initial report is then drawn up and sent to the prosecutor, which then takes swift action against cases where irregularities are believed to be fraudulent. This multidisciplinary approach has several benefits: early and accurate identification; the ability to distinguish between fraudulent and non-fraudulent VAT irregularities; recovery of VAT obligations; increased deterrence.
- While this example does not completely eliminate the phenomenon of MTIC fraud, in the Belgian context, it is believed to have significantly contributed to its curtailment. Indeed, a parliamentary report noted that, according to the Financial Intelligence Processing Unit, the number of carousel fraud cases detected per year had, overall, gone down and stakeholders attributed this decrease to the launch of the multilateral taskforce.
- Another example of good practice in this regard highlighted by interviewees is the Criminal Assets Bureau in Ireland. This body, established in 1996, brings together members of the national police service, tax and customs authorities from the Office of the Revenue Commissioners, officials from the Department of Social Protection, and authorities from the Department of Justice. Staff from the latter office include a Bureau Legal Officer (BLO), forensic accountants, IT experts and financial crime experts.

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66 Known as the "Economic and Financial Department of the Federal Judicial Police"; OCDEFO.

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Figure 3.1: Number of Carousel Fraud Cases in Belgium 2007-14 and Trend Line

Source: Chambre Des Représentants De Belgique – Parliamentary Report

Another obstacle within Member States to the effective combatting of MTIC fraud highlighted in a 2018 Europol report and the research for this study are secrecy laws. Such laws protect individuals’ information as it pertains to income, financial circumstances, and some aspects determining the assessment of their taxes.

Such secrecy laws can be interpreted by Member State authorities in a strict manner, preventing intelligence gathering across Member States. In certain Member States, access to banking information for revenue, operational and investigative authorities requires approval from a court. It has been argued that the legal basis of EU institutions should be clarified also to prevent secrecy laws from creating obstacles to obtaining VAT information in criminal cases (in response to perceived Member State reluctance, EU authorities have stressed that they require VAT information and not individuals’ income, property or tax declarations).

It should be noted that some Member State authorities consulted for this study have argued that EPPO and OLAF should not be the institutions responsible for declaring whether a case has moved into criminal proceedings (which would allow data to be collected by EPPO and OLAF). As in previous areas, this is because only 0.30% of VAT revenues goes to the EU authorities and because involvement of EU authorities is seen as having the potential to disrupt initial investigations. We nonetheless argue that EU authorities should be able to make such a declaration as it facilitates their own investigations which contain expertise and knowledge of cases occurring throughout the EU for what is a cross-border phenomenon.


Box 3.4: Example of Secrecy Law in Sweden

- The Swedish Secrecy act protects an individual’s personal or financial situation from inspection by public services unless there is a suspicion of criminal activity which allows the information to be reported to a public prosecutor, law enforcement agencies involved in preliminary investigation, or any other government agency involved in tackling crime.

- The data inter alia covers the information which determines the amount of taxes owed and pension entitlement income. To be included in this exception, the crime must entail possible imprisonment if found guilty (the punishment applicable must be more severe than a fine). Furthermore, there are provisions which allow this information to be transferred to another agency not listed above if there is “obvious interest in disclosure” which would override the principle of privacy.

- The Swedish law also indicates that the purpose of detecting and preventing organised crime can also be used as a principle which would allow authorities to overcome the restrictions based on confidentiality. The law also provides regulations and guidance for the exchange of such confidential information between authorities specifically to detect and prevent organised criminal activity.

There is also a need to harmonise tax collection information at the national level. Similar to the situation for OLAF when handling national data, some national authorities indicated that in certain cases their tax officials have not been able to use tax information provided by other Member States for their own administration of intra-community transactions.

3.4 Conclusions - Current Measures and Roles

The roles and responsibilities of EU agencies do not appear to overlap but the legal basis of OLAF, EPPO and Europol to engage in fraud investigations is limited. EU authorities do not have quick access to national data and information and there are obstacles when it comes to national level execution of EIOs.

Furthermore, there is limited scope and flexibility in EU level investigations as OLAF in particular cannot be involved beyond administrative investigations. At the Member State level, there are obstacles to fast ‘diagonal’ communication, i.e. between a law enforcement agency in one Member State and a tax administration in another. Furthermore, within a particular Member State, investigations can face obstacles as authorities tend to work in silos which limits cooperation although this can be overcome with the establishment of multi-disciplinary task forces. Secrecy laws can also present a barrier to investigations, particularly as these prevent access of EU authorities to national level information on criminal cases.
4 ASSESSMENT OF POSSIBLE MTIC SOLUTIONS

In this section, we assess various solutions to MTIC fraud - Split Payment Methods, Electronic Clearance Procedure (a digital solution), Real-Time Reporting (and TX++), VAT Coin, and the Definitive VAT system (and proposed amendments).

It has been highlighted by authorities consulted for this study that as the EU has not been able to achieve a consensus amongst Member States on a reform to the transitional VAT system, Member States have been implementing different types of solutions including those listed below. Furthermore, in the cases in which Member States have implemented the same type of solution, this has not been done in a harmonised way. While attempts to limit MTIC fraud are welcomed and can have a positive effect in terms of reducing the scale of MTIC fraud, the different requirements on businesses across Member States lead to trade barriers and costs on such firms.

4.1 Split Payments

Split Payment Methods (SPM) are a VAT collection method which has been proposed as an effective tool in the fight against MTIC fraud. Essentially, in contrast to vendor-based collection systems, SPM allows for VAT to be paid upfront when transactions are made, by design preventing fraudsters from committing MTIC fraud. To achieve this, SPM rely on a system of invoices paid to the supplier’s account, which are traditionally divided into two parts - the net sale amount is credited to the supplier’s basic settlement account and, secondly, the VAT amount is paid to a dedicated VAT account that is automatically created by the bank as an additional account to every business/trading settlement account.

It is worth noting that there are several possible models for SPM. The first model is used by some EU Member States (e.g. Poland) which have implemented this VAT collection method. However, there are other models, including one where VAT is paid directly by the payers to the tax authority when transactions are made (e.g., Italy), which constitutes a payer-based system. Under an intermediary-based SPM systems, such as the one in Poland, the money accumulated in VAT accounts can only be used to pay VAT for goods or services and to pay tax liabilities to tax authorities. The intermediary-based SPM system requires the intervention of an intermediary such as a bank, which takes a single payment from payers and subsequently splits the VAT amounts from the rest of the payment and pays both amounts into different bank accounts that belongs to the supplier (VAT account and main account). The figure below (Figure 4.1) provides a diagrammatic representation of an intermediary-based SPM scheme.

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4.1.1 SPM Experience in Member States

Three Member States have so far implemented split payment systems. Member States need to request authorisation from the European Commission when looking to implement SPM.\(^{74}\) For example, the Commission approved the extension of Italy’s split payment system until 2023.\(^{75}\) Likewise, Poland’s request to establish a SPM for certain types of transactions was approved, such as B2B transactions for selected groups of goods and services where the invoice exceeds the gross amount of PLN 15 000.\(^{76}\) However, Romania was unsuccessful in its request for its own SPM as its proposal was deemed to be at odds with the principle of proportionality and raised more general concerns regarding the proposed SPM’s compatibility with EU law.\(^{77}\) Below we provide an overview of the experiences of the three Member States that have so far implemented SPM schemes.

**Italy** was the first Member State to implement a SPM scheme. The SPM was introduced in January 2015 for payments to public authorities (B2G\(^{78}\)) under the ‘Stability Law’ (Law 23/12/2014, no. 190). The

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\(^{74}\) In accordance with Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter ‘the VAT Directive’), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

\(^{75}\) The European Commission can oppose the implementation of SPM schemes if their provisions infringe the VAT Directive (Council Directive 2006/112/EC) and the freedom to provide services under Article 56 of the TFEU.


\(^{78}\) Business to Government.
scheme has since then been expanded several times, most recently in 2018. This is an example of a ‘payer-based’ SPM scheme, where VAT amounts are quoted in vendors’ invoices but are paid directly by payers to the tax authorities.

Box 4.1: Italy’s experience with SPM

- At present, the Italian SPM system only applies to goods and services provided to several types of public bodies (e.g. public economic entities, special companies, foundations and their subsidiaries, as well as to companies listed on the FTSE MIB index).  

- Where the SPM applies, the suppliers quote VAT on their invoices, but they do not collect the related amount from their customers, as these latter are required to pay such VAT directly to the Tax Authorities. The SPM as a prevention to frauds is in addition to other measures introduced in Italy (e.g. domestic reverse-charge in critical sectors, mandatory e-invoicing).

- As per the design of the system, suppliers charge Italian VAT on goods and services provided to the entities (B2G, B2B and B2C). Payers then ‘split’ the payment of the invoice by paying the taxable amount to the suppliers and at the same time pay VAT to an allocated VAT bank account of the Italian treasury.

Benefits

- As said the SPM was introduced together with other measures aimed to prevent fraud and the Italian VAT GAP decreased by more than EUR 10 billion from 2015 to 2019. It is not possible to confirm if and how much said reduction can be attributed to the SPM.

- Moreover, before the introduction of the mechanism the suppliers of public authorities were requested to anticipate the payment of VAT to the tax authorities, while awaiting to be paid from their customers (in particular public authorities have long terms of payment); the implementation of the SPM eliminated such negative effect, as VAT shall no longer be paid by the suppliers.

- The collateral effect for suppliers, to accrue VAT credits was resolved by allowing the VAT taxable subject to access a specific accelerated VAT refund procedure. There were only minor IT costs to implement new tax code and no costs for the Government except to update the list of those liable to SPM.

Problems

- Despite a lack of information on the costs of implementation, the introduction of the SPM caused some procedural burden to the involved parties. In particular, the list of purchasers subject to the SPM is published by the Authorities each year and the suppliers are requested to check it before issuing invoices.

- From a supplier’s perspective SPM implementation required minor Enterprise Resource Planning (ERP) amendments (new tax codes), as with the reverse charge. The circumstance that the suppliers applying the SPM do not register output VAT to be offset with input VAT caused an increase of cases of receivable VAT credits to be claimed. The purchasers, instead, had to implement more significant changes to their ERP, also considering that purchases have to generate payable VAT. Moreover, they are also responsible in case of infringements relating to the payment obligation.

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79 This is an Index of the Italian stock exchange. The Index consists of the 40 most liquid and capitalised stocks listed on the Borsa Italiana.

Poland was the second Member State to implement a SPM scheme in 2018. In contrast to the Italian system, Poland’s scheme does not require customers to make two separate payments. Instead, the Polish tax authority only requires a single payment be made to the bank involved in the transaction, which will then split the payment into two separate bank accounts: one account for the amount net of VAT to be paid to the supplier’s business bank account, and the other account for the VAT amount to be paid directly to a dedicated VAT bank account of the supplier. The scheme in Poland is a good example of an ‘intermediary-based SPM’. It is important to note that the scope of Poland’s SPM scheme is much broader than Italy’s as it applies to all VAT registered businesses (albeit for transactions above a certain threshold). Since 1 November 2019, the SPM is mandatory only for transactions above PLN 15 000 (approximately EUR 3 260) involving sensitive goods and services (as defined in Annex 15 to the VAT Act).\(^81\) In other cases, the application of the SPM is voluntary for the taxable entity (either the buyer or paying entity). The use of SPM also protects the buyer from a number of possible negative consequences if it is found that he has engaged in fraudulent VAT transactions.\(^82\)

Romania also implemented a SPM scheme, although this experience was short-lived - the scheme was launched in January 2018 before being rescinded in February 2020. This decision was made following a formal notice sent by the Commission to the Romanian authorities in November 2018 requesting the scheme be terminated due to inconsistencies with the EU’s VAT Directive and the freedom to provide services as set out in the TFEU. In addition, there are also provisions in Czech law where a SPM can be used in certain cases where there is a strong suspicion that VAT will not be collected. While this is not a fully-fledged and operational SPM scheme, this is nevertheless a good example of the interest in SPM as a potential solution to MTIC fraud.

In France, after considering SPM as a potential solution for MTIC fraud, the authorities decided against its implementation. Indeed, the French tax authority (Inspection Générale des Finances) ruled out the introduction of an ‘intermediary based’ SPM scheme as a way to limit e-commerce related VAT fraud.\(^83\)The French audit authority’s rationale for its position on SPM was threefold.\(^84\) First, experiences from other countries (e.g. Poland but also third counties like Argentina) was not seen as proving that SPM is an effective solution to reduce the VAT gap.\(^85\) More specifically, it was argued that SPM has not demonstrated adequate levels of effectiveness against all types of VAT fraud. Linked to this, as the effectiveness of SPM against all VAT fraud is not clear, the French audit authority concluded that implementation costs would be disproportionately high as there would have to be a considerable reconfiguration of transaction systems which would have resulted in significant additional costs along the transaction chain, including for customers. Lastly, as arrangements are being made to introduce VAT e-invoicing, which will apply to all French companies by 2025 (see Section 3.3), the relevance and potential added-value of SPM is seen as doubtful. The arguments put forward by the French tax authority illustrate the more general benefits and drawbacks of SPM.

4.1.2 Costs and benefits of SPM

The main benefit of SPM lies in their potential to stop MTIC fraud and carousel fraud. Rather than having suppliers charge VAT to customers and disappear before remitting VAT to the tax authorities, SPM schemes would require buyers to settle VAT obligations, thereby (i) impeding fraudsters from

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81 Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax
85 It is difficult to accurately determine the proportion of the VAT gap attributable to MTIC fraud. However, a Commission impact assessment estimates that it ranges between 12% and 38% across all MS.
being able to pocket the VAT and go missing and (ii) preventing refund requests in relation to VAT that has not been paid to the Treasury.

The second benefit of SPM is seen as being in the likely positive effect on the cash flow of the public budget of Member States. This is due to the fact that under SPM systems, VAT on purchases would be transferred in real time or at shorter intervals than under traditional VAT collection systems, which usually require quarterly reporting. Last but not least, a potential benefit that could arise from the implementation of SPM stems from the financial data that would be generated as a result. This would in turn help national authorities acquire a more accurate and broader picture of the VAT gap but also of other types of fraud. The previous 2017 study by Deloitte that was cited earlier noted that the implementation of Split Payments\textsuperscript{86} could lead to a reduction in the VAT gap of around 27-42\% meaning a reduction of EUR 40.7 to 63.2 billion. This was based on the VAT GAP of 2014 of EUR 159.5 billion. Furthermore, around 50-70\% of this VAT GAP reduction would be due to a reduction in MTIC fraud. This would mean around EUR 17.5-28.9 billion reduction in MTIC fraud.\textsuperscript{87}

4.1.3 Costs and drawbacks

While there are a number of benefits that could potentially be brought about by SPM, there are also significant drawbacks. Indeed, as noted above, the potential drawbacks led France to rule out its use but also informed the European Commission’s decision not to accept the Romanian SPM model.

The first and arguably the most significant drawback lies in high administrative costs. More specifically, high implementation costs are quite significant as structural changes have to be made along the transaction chain to allow for a seamless splitting of payments. As was pointed by the French tax authorities, the cost-benefit assessment commissioned by the Commission (and undertaken by Deloitte\textsuperscript{88}) also identified this issue as a significant hurdle.

The Deloitte study calculated the costs to business across the EU as amounting to an estimated total of EUR 98.4 billion.\textsuperscript{89} A consultation on SPM carried out by the UK Government supported this view. In practice, most of the costs would be borne by the payments industry (e.g. banks) and by businesses. However, some experts who took part in the first focus group for this study and who are familiar with the Italian case pointed out that the costs incurred by businesses have not been as significant as initially anticipated.

Furthermore, one of the conclusions of the study undertaken by Deloitte was that the overall implementation cost could be reduced with the use of appropriate technology (this study dates back from 2017 and the technology has further evolved since then). From a design perspective, however, and in order to protect the EU’s Single Market, only direct payments to the tax administration (or to a special account of the customer) in cross-border transactions should be considered. As a matter of fact, if the payment must be made to a specific account of the supplier, either that specific account will be located in another Member State (but in this case it seems difficult to dedicate it to VAT payments of one specific Member State) or a specific account has to be opened in the country of the customer, which would create significant obstacles to trade in the Single Market.

The second main disadvantage of SPM is the negative impact on the cash flow of VAT payers who need to pay VAT immediately upon purchase before getting reimbursed instead of deducting it from the input VAT collected during the same tax period, only remitting the difference to the tax authorities.

\textsuperscript{86} Current VAT regime with split payment applying to electronic fund transfers (EFT) between taxable persons (B2B)


This disadvantage is shown in the Italian case as there are significant delays in processing VAT refund claims on the part of the tax authority. Delays in obtaining refunds is, however, a well-known problem that is not specifically linked to SPM but is made more visible when SPM is being used.

In Poland, there is no established system for SPM for cash payments. The question then arises of whether the taxpayers purchasing sensitive SPM-covered goods have been deprived of this payment option. The Ministry of Finance has stated traders will have to pay via bank transfer instead, but depriving entrepreneurs/businesses of the option to pay with cash and making them switch to bank transfer payments will negatively affect the financial liquidity of business trading in sensitive goods.90

In terms of implementation, in Poland, statutory sanctions – particularly those relating to income, have the potential to produce less than positive externalities. For example, these sanctions may impact businesses or traders, but they also negatively impact honest taxpayers, and in cases when a transaction has been properly settled and a supplier owes VAT.91

4.1.4 Conclusions – Split Payment Methods

SPM is a radical solution to deal with MTIC fraud since taxable entities can no longer disappear with the fraudulently obtained VAT and cannot make fraudulent VAT reimbursement claims.

However, the main drawback, is that, on balance, it seems to be a costly policy option, albeit to a varying extent depending on the parameters used for its implementation, i.e. payers paying VAT or a third party such as banks required to do so when processing transactions. The Commission considered SPM as part of its proposals for the ‘Definitive VAT System’ but faced strong opposition from the business and financial sector in view of the compliance costs which persuaded the Commission to not pursue the solution any further.

Politically, therefore, the solution also seems more difficult than other potential solutions. In our consultations, SPM seemed to be considered potentially the most effective solution but also potentially one of the most costly for business and the banking sector to implement. On the other hand, some experts in our first focus group concluded that SPM could be made more financially attractive if, for example, new technologies were used to facilitate automation thus reducing the costs. As the Deloitte cost-benefit analysis notes, the potentially high administrative costs to the tax authorities and businesses could be mitigated in the medium to longer-term by increasing automation of split payment transactions, introducing e-invoicing and adopting pre-filled VAT returns. Also, the costs for businesses are highly dependent on the number of transactions conducted by the individual business.

To conclude, SPM constitutes an effective solution to the issue of MTIC fraud, although several implementation issues need to be resolved to make it worthwhile and to secure the buy-in of important stakeholders, including the Member States.

4.2 Electronic Clearance Procedure

In the European Parliament’s terms of reference, digital solutions were highlighted as being another solution that should be investigated. The Electronic Clearance Procedure is a digital solution identified in our desk research.92 In our first focus group, it was noted that the Commission was exploring the idea of having an electronic clearing procedure as part of a new system of transaction-based reporting.
Clearing houses are used for processing international transactions, for example involving derivatives and other financial instruments. The purpose of a clearing house is to act as an intermediary between a buyer and a seller of a financial instrument, and to be a neutral party for settling trading accounts, clearing daily trades and ensuring delivery transaction amounts, while also recording and reporting trading data. Clearing houses are currently used to improve the efficiency and transparency of financial markets to add stability to the financial system, and to ensure trust in the system. The use of clearing houses is associated with the future market in which members of an exchange are required to use such systems for their daily trades by depositing a sum of money covering the debit.93

A similar clearing mechanism could be envisaged for cross-border transactions of any type within the EU-27, and such a solution has been proposed to combat VAT fraud. As with the more traditional clearing house model, the electronic clearing procedure for intra-community transactions could act as an EU intermediary and its aim would be to resolve issues related to both inaccurate reporting of VAT between intra-EU transactions and deliberately fraudulent misreporting. Such a mechanism could take the form of an EU-level, centralized electronic ‘clearing house’ documenting intra-EU transactions for goods and services.

In such a mechanism, to make the clearing process secure, the clearing procedure could require a two-factor authentication process: first, the exporter would declare the value of its exports and the counterparty to the system, and second, the importer would confirm the transaction’s details.94 This would apply the reverse charge mechanism, which would mean that the importer becomes responsible for declaring and paying VAT amounts. Following confirmation from the importer, the clearing procedure would then record the transaction details, including VAT amounts applied, and transmit this information to the tax authorities of the importer’s and exporter’s countries. In the absence of a confirmation of a transaction’s details by the importer, the VAT liability would remain with the exporter and thus ensure that VAT is still collected by one of the Member States. This system would create incentives for exporters to make sure that the importer confirms transaction’s details.

4.2.1 Costs and benefits of Electronic Clearance Procedure

If applied to all intra-community transactions, the electronic clearing procedure could greatly diminish the possibility for VAT fraud, ensuring that VAT is collected in most if not every case. Such a mechanism could leverage new technologies to facilitate the authentication of transactions, including the introduction of VAT IDs and a VAT app. In effect, a centralised EU electronic clearing procedure would ensure that for each cross-border transaction there would always be a counterparty paying a VAT tax liability, making VAT fraud more difficult to carry-out through intra-community transactions as well as easier to investigate.

The creation of an electronic clearing procedure would also create a large database with VAT information that could be used by the tax authorities in the EU27 Member States. Indeed, recording intra-community transactions electronically would allow for the creation of a record of the VAT amounts paid for every intra-community transaction and identify wider cross-border transaction trends (e.g. products, transaction amounts, payment systems). Moreover, it would allow Member States to see which transactions’ details were not confirmed by importers. As with real-time reporting, these

electronic records would provide a **solution to the lack of immediate data available** to analyse to catch fraudsters and allow prosecution authorities to investigate cases.

The authorities consulted for this study argued that an e-clearing mechanism could be beneficial in tackling fraud involving Customs Procedure 42 (as noted earlier, this is often involved in a chain of MTIC fraud). Such a system would allow the customs authorities in the Member State in which the good arrives and the tax authorities where the good is destined for to clear the movement of goods and prevent fraud. The tax authorities could verify whether the good has moved to the Member State officially declared as the destination or has been traded within the Member State where the good entered the Single Market with a zero-rate of tax applied as part of the Customs Procedure 42.

### 4.2.2 Costs and drawbacks

Introducing this mechanism on an EU-27 scale would entail significant challenges, mainly because no such electronic clearing procedure has been introduced on such a large scale for international transactions. Moreover, introducing a clearing mechanism to cover all intra-EU transactions would require significant EU Member State coordination as well as infrastructure and adaptation costs, including the creation of interoperable EU tax IDs.

Experts in our first focus group highlighted the fact that Member States are reluctant to implement such a solution due to the **costs and complexity** involved in establishing such a comprehensive database of invoices. Moreover, all businesses with varying degrees of internal sophistication (as well as individuals if applied to a B2C context) would have to adapt to utilising **new technological processes** to ensure that they are not burdened by unnecessary VAT when selling abroad. It is not clear to what extent Member States might wish to introduce such a mechanism to control VAT fraud, nor whether the costs of VAT fraud levels would justify the establishment of such a system. It has also been noted that with this solution, tax authorities could gather information at the intra-community level but the extent to which MTIC fraud would be eliminated is not clear and **fraud involving missing traders could still occur at a different level**, for example within domestic transactions.

Last but not least, this solution whereby the supplier remains liable for the VAT in case the customer does not reverse charge it is likely to create significant obstacles to trade in the EU’s Single Market as the risk of being burdened with irrecoverable VAT arises in cross-border transactions. In practice it is likely that businesses would only agree to trade with well-known operators who are likely to be compliant. This could disadvantage many smaller or new operators.

The research has not come across any quantitative estimates for the potential costs involved in implementation of this solution.

### 4.2.3 Conclusions - Electronic Clearance Procedure

The potential upside of an electronic clearance procedure would be significant as it would be a concrete move towards establishing a pan-European payment system and payment infrastructure for intra-EU transactions. Moreover, such a system could be monitored easily and would be secure, contributing to the EU’s overall financial stability. However, while it would reduce the incidence of VAT tax avoidance, this solution would be complex to establish, especially as there are no existing models or templates that could be followed. It would also require the development of significant digital infrastructure and adaptation costs that Member States might not find it easy to justify to consumers and businesses (e.g. such as EU VAT numbers, EU tax eIDs). Finally, it could create obstacles to trade in the Single Market.
4.3 Real-Time Reporting

Real-time reporting is a form of transaction-based reporting whereby both the supplier and the buyer or only the buyer must report transaction details to the tax authority at the same time the invoice is issued (or within a very short time frame, e.g. four working days). The reporting most often involves sending an electronic invoice (computer readable data format, for example an XML file) to the tax authorities although in other models, the tax authorities can receive a fingerprint of this invoice or a digital invoice (e.g. scanned PDF file). The invoice is then sent to the buyer (by the tax authority or the supplier depending on the model of real-time reporting) implemented in the Member State.

Box 4.2: Mandatory e-invoicing in Real-Time Reporting

- Real-time reporting may be coupled with mandatory e-invoicing. This form of invoicing would allow tax authorities to receive information on transactions in formats (e.g. XML files) that would allow for immediate analysis with data mining tools. This is less so the case with digital invoices which can involve tax authorities receiving invoices as PDF or word documents which can be read and interpreted by tax officials but cannot be as easily analysed by data mining tools. The requirement for companies to send e-invoices would help Member States tackle MTIC fraud as it would allow them to use data tools to analyse the information received and quickly flag irregularities.

- Nevertheless, certain constraints have prevented countries from adopting mandatory e-invoicing. Requiring companies to report all their invoices as well as change the format in which they do so could impose costs on business that they are reluctant to take on board. Furthermore, in the EU, Member States can only implement mandatory B2B e-invoicing if they obtain the authorisation to derogate from Articles 218 and 232 of the EU VAT Directive, which respectively provide that both electronic and paper-based invoices should be accepted and that the use of an electronic invoice is subject to acceptance by the recipient of the invoice. This has been highlighted as a constraint making some Member States hesitant to adopt mandatory B2B e-invoicing. Some Member States have nonetheless done so to implement such regimes as a way of tackling MTIC fraud. Italy requested the Commission on 27 September 2017 permission to derogate Articles 218 and 232 which would allow them to introduce mandatory electronic invoicing for all taxable persons in Italy and to have these invoices submitted via their real-time reporting system, ‘Sistema di Interscambio’.

- Furthermore, e-invoicing for B2B transactions (including intra-community) has been highlighted as having a high degree of transferability as some Member States have already applied this requirement to some types of B2B transactions. Furthermore, most EU Member States as well as the UK and Norway, require B2G transactions to be reported with e-invoices. Some countries such as Italy have gone further, mandating e-invoicing for all B2B transactions over a certain monetary threshold.

95 Summitto (2021) The relationship between real-time reporting and e-invoicing. Available at: https://blog.summitto.com/posts/the_relationship_between_real_time_reporting_and_e_invoicing/

On the other hand, there are some disadvantages. Implementation of the mandatory e-invoicing can disrupt the invoicing trail as the invoice is no longer sent by the supplier to the client but by the administration. Furthermore, the collection of e-invoices means that a significant amount of data will have to be stored in a central database. This brings with it the risk of confidentiality breach and cyberattacks. The large amount of data that would have to be processed would also place significant burden on tax administrations and can greatly increase costs for Member States. Amongst other issues, this could mean other tasks such as the sending of invoices in a timely manner may be affected.

Nevertheless, it has been argued that the imposition of e-invoicing on businesses would be costly and that real-time reporting without e-invoicing would be more cost effective. This is because businesses would not have to process both the invoice of the supply and the invoice upon receipt, and government administrations would not have to process either.

4.3.1 Real time reporting experience in Member states

There are several examples of real-time reporting that have been implemented in Member States. In Hungary, a Real-Time Invoice Reporting (RTIR) system was launched in July 2018. Under this system, companies were required to submit invoice data in real-time to tax authorities via an online invoicing portal ‘KOBAK’ for domestic transactions involving VAT amounts of at least HUF 100 000. After July 2020, the real-time reporting requirement was applied for all invoices (regardless of VAT amount) for domestic B2B transactions, and in 2021 the obligation was extended to domestic B2C transactions and B2B intra-community transactions.

As indicated in the chart below Hungary’s RTIR requires suppliers to send invoices to the Hungarian tax authorities in real-time, i.e. at the time they are issued. In line with the mandatory e-invoicing requirement, suppliers send an invoice in an XML format. The supplier also sends the invoice to the buyer in any format.

Figure 4.2: Examples of Real-Time Invoice Reporting in the EU

(a) Real-Time Reporting in Hungary
(b) Real-Time Reporting in Italy

Another example is the centralised clearance system in Italy. This system in Italy entails real-time reporting with mandatory B2B e-invoicing in which businesses send standardised e-invoices via the ‘Sistema di Interscambio (Sdl)’ to the tax authorities which then clear the invoice before it is sent to the buyer. The buyer of the goods or services then sends a confirmation to the central tax authority that it has received the invoice.  

**Box 4.3: implementation of e-invoice in Italy**

- Starting from 1 January 2019, Italy introduced a mandatory e-invoicing system between business to business (B2B) and business to consumer (B2C). Invoices for the sale of goods or supply of services between VAT taxpayer which are both residents or established in Italy must be issued in an XML format. This XML must be sent to the Interchange System of the Italian tax authorities (SdI), which is the collector and delivery means of all Italian e-invoices.

- Although the cross-border transactions are outside the scope of e-invoicing, communication in XML format to the SDI of invoices is required by the law, until June 2022. Starting from July 2022 such cross-border transactions will be included in the mandatory e-invoicing as well. In particular, intra-community invoices will be processed through the SDI.

- It is worth saying that the Italian way of working of the e-invoicing, through the SDI also implements a real-time reporting system. Indeed, any information relating to e-invoices are made in real time available to both parties of the supplies and to the Italian tax authorities. Moreover, it is a very strong instrument in order to fight the MTIC fraud since VAT deduction is allowed only in case the invoices are correctly processed through the SDI, registered in due time and declared in the relevant VAT return.

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97 Summitto (2020) Real-time reporting models compared. Available at: https://blog.summitto.com/posts/real-time_reporting_models_compared/
Benefits

- Costs related to the IT investment is partially mitigated by the savings obtained from the invoice dematerialization.

- This system allows the Government to have the full control of the transactions flow; moreover, this instrument allows to perform e-audit applying analytics software. VAT fulfilments could be reduced introducing the pre-filled VAT returns. In particular the Italian Tax Authorities will provide to taxpayers pre-filled in VAT returns requesting to the taxpayers just to check and signed for approval. This process will be implemented gradually, starting from small taxpayers.

- The application of e-invoice together with the split payment and the reverse charge mechanism allows to obtain results in terms of preventing MTIC frauds because they are complementary instruments, and they can work together.

Problems

- When implementing the e-invoicing the Italian State had to invest in technology in order to setup and manage the SDI and as well has to invest in software which are able to manage big data and analytics.

- Taxpayers were requested to implement adequate IT systems linked to their existing ERP. This has an impact in terms of direct and indirect costs.

Other examples include the ‘near’ real-time reporting system in Spain where the ‘Sistema de información Inmediata’ (SII) requires companies to provide invoices within four days of the transaction. In this and other cases real-time reporting exclusively or mostly concerns domestic transactions and is therefore not primarily focused on MTIC or carousel fraud. Real-time reporting can, however, also be used in cross-border transactions. In this case harmonised rules are needed to avoid an excessively high compliance burden for the taxable persons or entities. It has also been argued that the system could be applied to only sales and not to purchases (i.e. only reporting by the buyer and not the customer) to avoid duplication of information and reduce reporting burden on businesses. In the case of Portugal, the authorities indicated that the costs of implementation would not be excessive as the e-invoicing system (sales-based transaction-based reporting) already provides a large portion of the infrastructure required.

4.3.2 ‘TX++ model and blockchain

In reading this sub-section, reference should be made to Section 4.4 on VAT Coin which includes an explanation of blockchain. A form of real-time reporting that protects businesses’ data and does not require Member States to store and protect massive quantity of transaction details is ‘TX++’, a model designed by the tax solutions SME, Summitto. Under this system, the supplier uploads their invoice to a digital platform and instead of sending an invoice to the national tax authorities, the platform uses blockchain technology to create an encrypted fingerprint of the invoice called a ‘hash’ which is sent to the central tax authority. The hash sent to the tax authorities allows the company to demonstrate how much VAT has been paid. When the invoice is sent to the buyer, it includes a reference indicating the hash that has been registered with the central tax authority. This proves that the transaction was reported and registers the encrypted invoice with both the buyer and seller. With the hash being sent to the tax authorities, and registered with both the buyer and seller, the tax authorities can identify mismatches in the chain of hashes that would indicate VAT has not been paid to the tax authorities.
TX++ therefore removes the need for centralised clearance by the tax authorities which also means that the tax authorities do not have to store all transaction data. Furthermore, the registration of hashes on the blockchain creates a registry of invoices which tax authorities can verify to ensure VAT has been paid when the goods or services have been sold. The validation of information through the chain of hashes also allows for audits to be automated, thereby reducing costs to companies. It has been noted that because such a system would entail a large amount of invoices to handle, which could burden resource stretched tax authorities, governments could rely on third parties to assist with administration of documents.

The TX++ solution can be implemented for domestic and cross-border transactions. Harmonisation is nevertheless required to avoid an unbearable compliance burden for the taxable persons. The TX++ solution can be used in combination with e-invoicing or alone.

4.3.3 Costs and benefits of Real-Time Reporting

In most Member States, cross-border transactions are reported to the authorities around a month after the transaction has occurred through the domestic tax return and eventually through the recapitulative statements (the information is then made available in the VIES). This large time gap...
provides opportunities for fraudsters to disappear without having paid VAT to tax authorities. Real-time reporting can allow for the **time gap in reporting transactions to be reduced**, increasing the likelihood of spotting irregularities early before traders have gone missing.

A further benefit of this solution is that it could create a **registry of all digital invoices which can be used to verify whether taxes have been paid**. The first focus group noted that real-time reporting is ideally coupled with e-invoicing and/or data mining tools. Real-time reporting alone does not eliminate fraud but including these elements alongside this system of reporting can allow authorities to interpret the data received in real time. The **data mining tools** can detect chains of fraud, raise red flags and allow tax authorities to react faster to irregularities and quickly identify companies to be audited. Some experts consulted in our focus group have argued that since real-time reporting grants tax authorities a significant amount of control over VAT payments the solution can significantly reduce MTIC fraud if the data can be monitored also in real-time (for example with the TX++ solution).

Another benefit of this solution is that it has been **tested in several Member States**, thereby demonstrating the potential for it to be scaled up across the EU-27. In addition to Spain, Hungary and Italy, this model is being planned in France and Poland. France is planning to extend the requirement on B2G e-invoicing to B2B transactions by 2024 (this is a model where it would be possible to have both RTR and e-invoicing. Mandatory e-invoicing is not needed, it is only a possibility). The system will entail real-time reporting to tax authorities which will then clear the invoice and send it to the customer. The implementation will be staggered, with the mandate applying first to large enterprises from 1 January 2025, medium-sized enterprises from 1 July 2025, and SMEs from 1 January 2026.

In Poland, the upgrade from monthly digital invoicing to real-time reporting e-invoicing (XML files) was introduced voluntarily by the end of 2021 and will be made mandatory by 2023. Similar to the Italian Sdl, the model will involve centralised clearance by the tax authority. In view of these developments it can be concluded that there is great appetite on the side of the Member States for real-time reporting solutions (combined or not with e-invoicing). However, harmonisation is necessary to address more specifically MTIC and carousel fraud and to preserve the Internal Market.

Furthermore, it has been argued that with this solution, companies would also benefit from **reduced bureaucracy and administrative burdens and costs** in reporting as a result of standardised e-invoicing system. As part of this system, businesses can automate their business processes. Furthermore, this system would allow for less burdensome checks and audits by the authorities as well as easier and more timely communication with authorities/counterparts. In response to the

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103 This would be the case when there is mandatory e-invoicing. Pure RTR systems only allow to store “transaction data” or in the case of TX++: “encrypted invoice data”.

104 Way2Vat (2019). 5 Ways that Countries are Clamping Down on VAT Fraud. Available at: https://way2vat.com/5-ways-that-countries-are-clamping-down-on-vat-fraud/


109 RTR could also enable the automatisation (prepopulated tax returns) and would simplify compliance as illustrated by the Spanish example.

110 Summitto (2021) The relationship between real-time reporting and e-invoicing. Available at: https://blog.summitto.com/posts/the_relationship_between_real_time_reporting_and_e_invoicing/
consultations for this study, the national fraud investigation office of the Spanish tax agency noted that their form of near-real-time reporting entails a cost reduction to their activities of around EUR 250 000 by eliminating three types of tax declarations (Presentación de comunicación electrónico modelos No. 390, 340 and 347). This resulted in savings of EUR 2 for each of the around 126 316 declarations the agency had to process each year. Furthermore, there was a total cost reduction of some EUR 9.5 million as a result of digitalising VAT record book-keeping, arising from a cost reduction of EUR 150 for each of the around 63,000 files and declarations. Combining these, the tax administration calculated a cost reduction of some EUR 9.7 million.111

In the case of TX++, and in contrast to other models (including e-invoicing), this solution would mean national authorities would not have to store sensitive invoice data of all the companies performing B2B intra-community transactions (such as pricing information and VAT amounts) nor to share full transaction details with other Member States but only encrypted fingerprints of the invoices. This minimizes the costs of a data breach and tax authorities would nonetheless still be able to apply data mining tools to analyse the encrypted data.112 Furthermore, several experts have suggested that while there may be initial costs of implementation, costs associated with data storage would be reduced as there would be no need to store (and secure) invoices.

4.3.4 Costs and drawbacks

As noted above, there are certain costs that businesses and tax authorities would have to face to implement this solution (this is the case of course for any solution). In our first focus group, it was argued that SMEs in particular could face high costs as a result of having to adapt their systems to report transaction data/invoices in real time and in the appropriate format. In the case of mandatory e-invoicing, national authorities would, also face the costs of having to establish the data storage infrastructure required to processes invoices received for all the intra-community B2B transactions that occur.

Further costs are foreseen if the solution is implemented alongside e-invoicing requirements and data mining tools (as recommended by the experts consulted for this study). Nevertheless, concerns about the costs of real-time reporting do not appear to be as significant as those for SPM or VAT Coin.

As explained below, if TX++ is chosen as the model of real-time reporting that is implemented, there are additional costs associated with the use of blockchain technology. In addition to adapting digital infrastructure to this technology, there are some environmental concerns as blockchain usage involves large amounts of energy consumption. Nevertheless, most energy usage from the use of blockchain derives from cryptocurrency mining which is not envisaged for this VAT blockchain solution. Indeed, under a RTR system using TX++ ‘miners’ would not be needed to validate every transaction as is the case for fully decentralised transactions in exchange of crypto coins. This is because validation would not be extended to the public but restricted crypto-currencies like Bitcoin, where anyone can become a miner and use excessive energy validating to EU tax authorities, therefore eliminating the competition between miners and the excessive computer power currently leading to high energy use for other forms of crypto-currencies and distributed ledger technologies. A commercial provider offering blockchain technology solutions for VAT reporting estimates that their

111 It should be noted that the tax authorities did not consider the costs of adaptation to new software of data infrastructure or the costs to business. They noted that they do not have any further impact assessment or viability studies.

system consumes only 1 800 kWh compared to Bitcoin which uses 47.67 TWh per year (or 25 million times greater).**113** Furthermore, the benefits of automation highlighted above could be hampered by the complexity of cross-border EU VAT rules.

However, it was noted in our first focus group that in Italy, business representatives initially expressed unfavourable views about the implementation of real-time reporting (with e-invoicing in this case). This was largely due to the costs they would have to face to adapt their systems. Nonetheless, this solution has been successful in reducing MTIC fraud and the costs have not ultimately been unsurmountable for either businesses or Member State authorities. Because of reluctance from some Member States to accept the potential high costs of implementation, it has been suggested that national authorities could be required to only apply this solution to intra-community B2B transactions and not all domestic transactions.

4.3.5 Conclusions – Real-Time Reporting

Real-time reporting makes it possible for the tax authorities to close the time gap between when transactions occur and when invoices are issued which allows entities to disappear without having paid VAT to the national authorities. This solution seems particularly attractive for Member States in view of the practical experience gained through initiatives undertaken in the past years.

Real-time reporting increases the chances that tax authorities can identify fraudsters before it is too late. While not eliminating the problem, real-time reporting could be beneficial for the fight against VAT fraud if coupled with e-invoicing requirements and/or data mining tools that can process and analyze the large amount of data that would be made at the disposal of tax authorities. The solution comes with costs of implementation associated with adapting companies’ and national tax infrastructure to the requirements of the system. Nonetheless, real-time reporting has been tested in several Member States. Member States that have implemented this system have been able to improve their ability to tackle MTIC fraud which highlights the potential effectiveness of this solution if applied across the EU.

4.4 VAT Coin

One of the proposed Blockchain-based solutions to MTIC fraud is the use of VAT Coin, a cryptocurrency that would be used instead of fiat currency exclusively for the payment of VAT obligations.**114** The currency would only be able to be converted from cryptocurrency to fiat currency by national governments. Without an intermediary, such as a bank or other third party, VAT Coin transactions take place directly between users and are recorded in a blockchain. Users would receive information of the transaction, and if all parties validated it, the transaction would then be added to their copy, and broadcast to other users within the network to achieve consensus that the transaction was indeed valid.**115**

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**114** Fiat currency, in a broad sense, is all kinds of money that is made legal tender by a government decree or fiat. The term is, however, usually reserved for legal-tender paper money or coins that have face values far exceeding their commodity values and are not redeemable in gold or silver.

Box 4.4: Overview – Blockchain

- Blockchain is a method of distributing data, in which each “block” contains key data and a unique string of letters and numbers called a “hash”. In addition to this information, the block also contains the “hash” of the previous block in the chain.

- If any of the blocks in the chain are tampered with, the hash is altered, thereby invalidating the entire chain as each block contains the hash of the previous block. Each user who has access to the chain is part of a peer-to-peer network, meaning there is no third-party intermediary, and all users have a direct say in verifying the validity of each block, and the data they contain. It is for this reason that blockchain applications are considered more trustworthy in transactions and data sharing than more traditional methods.

- To tackle MTIC fraud, the European Commission has considered different ways to apply blockchain technology to create an obstacle to potential fraudsters in cross-border trade. Previously, the Commission has proposed two models in particular: a ‘clearing house’ in which VAT collected on cross-border transactions would be re-allocated to the relevant Member States based on trade statistics, and later a ‘one-stop-shop’ which relies on direct tracing of VAT paid by the buyer to the seller, through to the relevant tax administrations.

- The main issue with these solutions was, first, that any Member States involved had to trust that the allocation was correct, and later that MTIC fraud was not prevented even with a more auditable trail.

The Commission’s long-term goal is to use European Blockchain Services Infrastructure as a platform for a new era of decentralised, trans-European systems, of which VAT and trade are a key component. With the unique “hash”, each VAT Coin has a recorded history and can be located at any time. Meanwhile, its immaterial form means if VAT Coin is stolen, the thief would not receive currency, and all members of the network would be able to see a stolen coin. The inability to use this form of currency would thus reduce the incentives of fraudsters to engage in VAT fraud.

It is argued that there are no VAT Coins that are not associated with an immediate transaction and that applying this blockchain solution (with the use of VAT Coins instead of fiat currency for cross-border VAT payments) based on the Commission’s current proposal for a reformed VAT system would remove the problem of the lack of trust between Member States. This is because all information concerning transactions for cross-border VAT payments would be automatically registered on this blockchain without the need to rely on Member States’ reporting abilities.

4.4.1 Possible VAT Coin model

One proposed system of VAT Coin would entail the European Central Bank issuing a VAT Coin like cryptocurrency. However, having a central bank act as an intermediary could contradict the aims of

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decentralisation inherent to blockchain solutions. The Commission is considering other blockchain based solutions to place data from VAT transactions on a blockchain.

**Box 4.5: Proofs of Concept agreed by DG TAXUD**

- Two successful proofs of concept were agreed by DG TAXUD. The first, launched by the Commission in 2019 as a pilot in eight Member States, is called the **‘System for Exchange of Excise Data’ (SEED)**. The SEED is a register of all traders involved in the movement of excisable products which aims to synchronise data automatically over a Blockchain, ensuring transparency. Traders are registered on SEED and issued with a SEED number. Excise numbers can be verified on the Europa web portal.

- Another tool is the **‘Import One Stop Shop Data Registry’ (IOSS-DR)**, located on the European Blockchain Services Infrastructure. The IOSS in general is a central portal for businesses to comply with VAT e-commerce obligations on the sale of imported goods, and to simplify the process of declaration, collection and payment of VAT. Member States will have the option to synchronise the IOSS-DR data over a traditional database connection, or via the automatic blockchain mechanism.

- There are other ideas in development, such as a **Notification System** relying on Blockchain technology. Economic operators could directly contribute to a centralised system that could track goods and services, collect all data on cross-border transactions, and notify all involved traders and users of attempts to tamper with the system or falsify data. However, this and other proposed ideas based on blockchain have to consider some ethical and structural challenges (detailed below) that can arise in adopting solutions underpinned by this technology.

Using blockchain-based applications, **all transactions would have a unique ID, and therefore completely traceable to the goods and services involved**. As a blockchain is, in effect, a large database of transactions that is publicly viewable and auditable, any suspicious transactions could be reviewed in real time and at any point after the actual transaction date, and any user could raise an issue concerning mismatches. The traders involved in the network would be required to validate the transactions before the Member States are allocated their VAT revenues. This would impede a trader from stealing VAT in the process.

**4.4.2 Benefits and costs of VAT Coin**

It is possible that such a system could facilitate greater trust between Member States in the collection and redistribution of VAT, evading trust issues that prevent the implementation of other proposed solutions. Moreover, cloud-based solutions for each EU Member State would enable Member States to access and view the transactions recorded in the ledger of other Member States to identify investigate transactions on a as needed basis. Finally, using blockchain-based registers could also increase trust between distributors and buyers across the EU, enabling new business partnerships and streamlining the flow of goods.

The potential benefits would not be limited to only cross-border transactions but could apply to all domestic purchases. Indeed, new technologies can facilitate the adoption of a crypto-currency-based VAT-coin solutions across Member States’ VAT ecosystem as government provided apps could be used by business and consumers to validate the details of every transaction through an active QR code. This

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119 Ainsworth, R. et al. (2016) VATCoin: Can a Crypto Tax Currency Prevent VAT Fraud?
would close the presence of possible loopholes and promote VAT compliance through the issue of fiscalised digital invoices. This has been tested in geographies such as Fiji, where all VAT for domestic transactions is collected and paid via a type of VAT coin.\textsuperscript{120} In Fiji, the application of a VAT coin crypto currency contributed to not only increasing VAT compliance, but together with a reduction in actual VAT rates, it is credited for having increased the VAT base and revenues in the country.

4.4.3 Costs and drawbacks

Elements of blockchain technology present important challenges. First, for databases and registries based on the blockchain, while the personal data they contain are unique and purportedly secure, there is still a risk to data confidentiality and compliance with the General Data Protection Regulation (GDPR) and other legislation such as the upcoming AI Regulation.\textsuperscript{121} Persons trading goods will need to express consent for their data to be collected and stored, including that of any transactions they make. This could be an issue which would make Member States reluctant to introduce such a solution. It has been noted that a system in which tax data would be widely accessible could go against the data protection rules of some Member States. Germany for example has already demonstrated limited participation in tax information sharing networks available at the EU level such as in EUROFISC.\textsuperscript{122}

Challenges involved with adapting to reporting and payment systems which use blockchain may be difficult particularly for SMEs and may also be difficult for some national tax authorities, as workshop attendees discussed. This is primarily due to smaller enterprises and Member State administration lacking the capacity (both among staff and technical budget) to transition to this technology. In addition, even a well-staffed business or tax authority will need to invest time and resources to educate them on the fundamentals of blockchain and how a VAT Coin would work.

A further challenge identified is the considerable amount of energy and additional infrastructure required to facilitate blockchain solutions. The EU as a whole, as well as Member States, would need to consider whether there is the computing capacity to implement VAT Coins in the millions of cross-border goods transactions that take place daily. It has been suggested that each Member State would have to secure a robust artificial intelligence (AI) engine to risk-analyse the data streams, both within their own tax authority and within the [European] Community blockchains.\textsuperscript{123} This is one of several necessary investments that would need to take place to ensure transactions can be processed. Furthermore, the environmental impact of mining any sort of cryptocurrency is significant. According to the Cambridge Bitcoin Electricity Consumption Index, mining bitcoin requires 137.78 TWh of electricity per year—6.78 TWh greater than that required for mining gold. Mining bitcoin also is greater than the estimated energy usage of smaller nations such as Norway.\textsuperscript{124} While it is not quite as environmentally costly as the global electricity usage of data centres, iron & steel, copper, or other major industries, it is still a significant undertaking. Implementing a network of mining centres across

\begin{itemize}
\item \textsuperscript{122} https://news.bloomberghtax.com/daily-tax-report-international/eu-inches-toward-blockchain-in-fight-against-vat-fraud-1
\item \textsuperscript{123} Ainsworth, R. T. et al. (2017). A VATCoin Solution to MTIC Fraud: Past Efforts, Present Technology and the EU’s 2017 Proposal. Boston University School of Law. Available at: https://ccaf.io/cbeci/index/comparisons
\item \textsuperscript{124} Cambridge Centre for Alternative Finance. (2022). Cambridge Bitcoin Electricity Consumption Index. University of Cambridge. Available at: https://ccaf.io/cbeci/index/comparisons
\end{itemize}
the EU may pose a challenge to meeting emission reduction pledges made at COP26 in 2021.

As experts pointed out in the first focus group, blockchain poses some uncertainties in terms of **how much time it would take to review transactions**, achieve consensus from the network on each transaction, and more broadly the overall cost of implementation. Any lag in auditing and reviewing transactions could delay payment to users, which could have a significant impact on businesses’ profitability from cross-border trade. Finally, to be effective in targeting all VAT fraud, a VAT coin solution would have to be applied to all transactions (B2G, B2B and B2C) and apply at all transactions levels without applicable thresholds. In its absence, the prospect for VAT fraud would still exist if VAT coin is not used through the entire VAT eco-system.

No quantitative costs studies have been found for this solution though because of its similarity to SPM, some stakeholders have noted that there are likely to be similar costs to businesses in terms of adaptation and cash flow.

4.4.4 Conclusions – VAT Coin

Despite the challenges, there are a number of VAT Coin ideas either at the development or pilot stages that could prevent MTIC fraud.

As noted earlier, using blockchain-based applications, all transactions would have a unique ID, be completely traceable to the goods and services involved, and the traders involved in the network would be required to validate the transactions before the Member States are allocated their VAT revenues. This would prevent a trader from stealing VAT in the process. Such direct, closed systems could facilitate greater trust between Member States in cross-border transactions and the collection and redistribution of VAT, as well as between distributors and buyers across the EU. Nevertheless, there is some reluctance to implement this particular solution. It has been noted that VAT Coin, in terms of the effect and functionality of the system, is very similar to Split Payment Methods but costlier (in terms of infrastructure, environment and time) to implement.

4.5 Definitive VAT System

In October 2017 the European Commission published a series of proposals on the adoption of a ‘definitive’ system for B2B intra-EU trade based on the destination principle (hereafter: ‘the definitive system proposal’). The main change was the replacement of the two taxable events that occur under the current system (i.e. an exempt intra-Community supply in the Member State of origin and a taxed intra-Community acquisition in the Member State of destination with VAT remitted by the customer making the acquisition) by a single taxable event, i.e. an intra-Union supply of goods taxable at destination (at the VAT rate of the Member State of destination).

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Figure 4.4: The transitional system and the definitive VAT system proposal

The current transitional system (since 1993)

Definitive VAT regime – destination based

Taxation of intraEU supplies in the same way as domestic operations


Under the definitive system, the liability to assess, collect and pay the VAT would in principle lie with the supplier who would be able to remit the VAT due via a dedicated ‘one-stop-shop’ (‘OSS’) platform similar to the one used for e-commerce transactions (see Section 4.4.1). Under the OSS scheme, the collected VAT (in the Member State of origin) would then be transferred to the Member State of consumption.


127 It is interesting to note that Professor Vanistendael proposed in 1995 a system in which all cross-border transactions will be taxed at the rate of the country of destination, with a system of foreign tax offices based in origin countries with the objective to accept tax payments, issue refunds and handle all foreign VAT matters. See R. T. AINSWORTH, ‘Tackling VAT Fraud: Thirteen ways forward’, Boston University School of Law, Working Paper No 13-36, 13 August 2013, p. 2.
Possible Solutions for Missing Trader Intra-Community Fraud

Figure 4.5: Payment flows when the OSS is used under the definitive system

![Diagram showing payment flows under the OSS system.]

**Place of taxation:** Member State of arrival of the goods = MS2

**Person liable for the payment of VAT:** Supplier via OSS. The VAT due (+ 2 000 €) is paid to Treasury of MS1 and Treasury of MS1 remits the VAT due (+ 2 000 €) to Treasury of MS2. Customer deducts in MS2 (-2 000 €) using traditional VAT return


Under the current system, no distinction is made between ‘reliable’ and ‘less reliable’ taxable persons as regards the VAT rules to be applied. The definitive system proposal introduces the concept of ‘certified taxable person’ (‘CTP’). When the customer qualifies as a CTP, the supply will still be taxable at destination and there will be one taxable event. However, it is the customer who will be liable to collect the VAT on a reverse charge basis (in this case the supply will be zero-rated by the supplier, as under the current system).

The concept of CTP is therefore a crucial element of the definitive system proposal. Access to the CTP status would be based on harmonised criteria including (a) the absence of any serious infringement or repeated infringements of taxation rules and customs legislation, as well as of any record of serious criminal offences relating to the economic activity of the applicant; (b) the demonstration by the applicant of a high level of control of his operations and of the flow of goods, either by means of a system managing commercial and, where appropriate, transport records, which allows appropriate tax controls, or by means of a reliable or certified internal audit trail; (c) evidence of financial solvency of the applicant, which shall be deemed to be proven either where the applicant has good financial standing, which enables him to fulfil his commitments, with due regard to the characteristics of the type of business activity concerned, or through the production of guarantees.

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provided by insurance or other financial institutions or by other economically reliable third parties.\textsuperscript{130} Certification provided by one Member State should be valid in the whole Union.\textsuperscript{131}

### 4.5.1 Benefits and costs of the definitive VAT system

There are two main advantages of the definitive system proposal: first, although the suppliers will be liable to collect the VAT on their intra-EU supplies, the \textit{suppliers will only have to register in their home country in order to declare and pay the VAT};\textsuperscript{132} and second, this new design should prevent carousel types of fraud as we know it, because \textit{the customer will not be able to go missing without remitting the VAT on the onward domestic sale}. Some national authorities in favour of the definitive VAT system indicated that the one-stop shop and the simplification of invoicing rules were factors that would make for a more fraud-proof system.

When it comes to implementation and scalability, Member States have already deployed two OSS infrastructures for the implementation of the e-commerce package (i.e. the "OSS" for intra-EU trade and the I-OSS” for imports of goods below EUR 150). Most Member States were ready by 1 July 2021. However, some national administrations encountered technical issues. Once all the issues have been settled it may be assumed that \textit{deploying an OSS infrastructure for intra-EU B2B trade will be relatively straightforward}, although the volume of transactions and the number of taxable persons to register will be much higher.

A 2015 study by Ernst Young found that the implementation of the Definitive VAT system would reduce the VAT gap from an estimated EUR 150.2 billion in 2015 to EUR 118.6 billion. Furthermore, the reduction in MTIC fraud was expected to decrease by 83\% to a total of around EUR 3.4 to 8.6 billion, or 2.8\% to 8.1\% of the total VAT Gap in 2015.\textsuperscript{133 134}

### 4.5.2 Drawbacks and costs

Four years after its submission, the proposal still has not been adopted. It is unclear whether the European Commission will withdraw it or if an amended version could eventually be approved.

One of the obstacles for the adoption of the definitive system proposal is that the \textit{Member States are largely opposed to the CTP concept}.\textsuperscript{135} This concept could be dropped in a revised version of the proposal. The question is then whether an OSS infrastructure could handle declarations and payments in relation to all B2B intra-EU trade (the adoption of the CTP concept was partly motivated by the concern of limiting the number of declarations to be made via the OSS).

\textsuperscript{130} Note that the CTP status cannot be granted to taxable person subject to the flat rate scheme for farmers, to the SME exemption nor to exempt or occasional taxable persons.

\textsuperscript{131} See Proposal COM (2017)567 for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person. Any taxable person established in the EU may in principle apply for CTP status (even if some of these criteria may be difficult if not impossible to comply with in the case of an SME), except some taxable persons such as those subject to the common flat-rate scheme for farmers, taxable persons covered by the exemption for small enterprises and taxable persons carrying out exempt supplies.


\textsuperscript{134} The study did not estimate or assume costs to government or business administration.

\textsuperscript{135} The majority of the Member States oppose the idea of introducing a concept of a certified taxable person and to apply different rules dependent on whether the customer is a CTP or not. Many Member States expressed concerns about the possible complexity and its negative effects on businesses and tax authorities, as well as potential neutrality issues. ECOFIN Report to the European Council on tax issues, 5 June 2020, p. 15. For an assessment of the use of the CTP concept under this proposal, see: John Gruson, Bart van der Doef, Naomie Verbaan, ‘Definitive VAT Regime: Stairway to Heaven or Highway to Hell?’, (2018), 27, EC Tax Review, Issue 2, pp. 74-82, https://kluwerlawonline.com/JournalArticle/EC+Tax+Review/27.2/ECTA2018009.
A second obstacle for the adoption of the definitive system proposal is that while carousel fraud – as we know it – would indeed be curbed, the new system, again based on the OSS, will inevitably create opportunities for a new type of fraud in which the supplier becomes the missing trader (i.e. collects VAT but does not remit it to the State of taxation, while the customer is able to obtain a refund of the VAT paid). The European Commission acknowledges that this may occur. In the case of suspicion of fraud, the Member State of consumption will have to rely on mutual assistance instruments to require the Member State of identification to investigate and recover the unpaid revenue from the supplier established in its territory. The OSS system thus implies a very high level of trust between the Member States. The Member State of consumption will have to trust that the Member State of identification will take all necessary measures to ensure the correct payment of VAT, which may include assistance for auditing the taxable persons. This is an inherent weakness of the OSS system that also occurs in the sector of e-commerce, but in the case of B2B intra-EU trade the revenue at stake is much higher.

From a business perspective, charging VAT in accordance with the rules that apply in the Member State of destination will also constitute a non-negligible burden. Although the OSS is a single point of registration, applying the rules (rates, exemptions) of the Member State of consumption might in the end make it more burdensome for them to trade within the EU than to export.

The traditional way to address the new type of ‘missing trader’ fraud that is likely to arise under the definitive system proposal would be to improve administrative cooperation, including measures strengthening Member States’ capacity to conduct joint risk analysis within the framework with EUROFISC, and facilitating the sharing of VAT intelligence with law enforcement bodies at EU level, such as Europol, OLAF, and the new European Public Prosecutor Office (EPPO). However, administrative cooperation has its limits. Numerous reports from the ECA show that although the current regulatory framework is robust and consistent, implementation and pro-active participation by all Member States is not happening.


137 Quoting the European Commission: ‘New types of frauds could also take place once the definitive VAT regime is implemented. For instance, fraudsters could exploit differences in VAT rates between Member States to create new forms of missing trader frauds’. Commission staff working document impact assessment, Amended proposal for a Council Regulation, Amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax, SWD (2017) 428 final, 30 November 2017, p. 36.

138 This includes verification of the correct application of rates (which would be an unbearable burden should the Commission proposal in the sense of VAT rate liberalisation be adopted).

139 In practice, the Member State of consumption will periodically receive bulk payments with summary details regarding the taxable persons from the Member State of identification. Accordingly, it will take time before it realises that insufficient amounts of VAT (might) have been declared. A request for assistance should then be sent to the Member State of identification, which might take some additional time – sufficient time for the non-compliant supplier to go missing without remitting the VAT due. The immediate loss for the Member State of consumption is unavoidable because the customer was able to immediately claim the deduction/refund of the VAT paid to the non-compliant supplier. In this respect, it should here be clarified that linking the right to deduct to the payment of the VAT by the supplier to avoid this situation would be a disproportionate measure that would jeopardise the neutrality of the VAT system.

140 Another risk for taxable persons under the definitive regime is the issue of bad debt. In a destination based system, where the supplier is liable to pay the VAT within a specific timescale, it is not uncommon for them to have to pre-finance the VAT. If the customer subsequently fails to pay the VAT, the supplier might be able – or not – to recover the prefinanced VAT (conditions differ between the Member States, in particular with respect to the ‘irrecoverability’ of the debt).
4.5.3 Possible adaptions - Using technology to limit the risks: real-time reporting and mandatory e-invoicing

Currently available technologies would allow taxable persons to report relevant VAT information on a real-time basis, which means that tax authorities could have access to transaction based on data in real-time. As noted earlier, real-time reporting is already being tested in some Member States (notably in Spain and Hungary, with different specifics). In order to address cross-border VAT fraud, a harmonized approach would however be preferable, notably in order to prevent fragmentation and a related additional compliance burden for business.

Under the current (transitional) system, if suppliers are required to report their (domestic) sales in real time, this would already increase compliance. In addition, customers could be required to verify that the transaction was reported before paying the VAT to their supplier (this check should be made automatically and integrated into payment systems). If the customer pays the VAT whereas the transaction was not reported, its right to deduct should be denied (this sanction/consequence should be added in the legislation). Under the definitive system, the same rules could apply in cross-border situations. A revised definitive system proposal could therefore be linked to the introduction of harmonized real-time reporting rules for cross-border transactions that would be accessible for all Member States, and which would replace the recapitulative statements.

Any real-time reporting procedure should be as friendly as possible for businesses. This includes practical considerations related to compliance, but also the protection of transaction data, which is not an unfeasible endeavor. For example, as noted earlier, the TX++ solution makes it possible to only store fully encrypted “fingerprints” of the data, and not the actual sensitive invoice information. The technology enables the tax administrations to make automatic calculations on this encrypted data and to identify mismatches (using blockchain technology). This means that the administrations do not have to see or store valuable corporate (e.g. pricing information) and tax (VAT amounts) information, while at the same time fraud can be detected.

Immediate access to transaction data may also be achieved through the implementation of e-invoicing (in this case full data is made available in plain text, in contrast with RTR where only selected transaction data are being communicated). Pursuant to the adoption of Council Directive 2014/55/EU, e-invoicing has largely become mandatory for public procurement contracts and a European standard on electronic invoicing has been developed to ensure the operability across the EU. Standardized e-invoicing could therefore also be considered for B2B transactions. Mandatory e-invoicing as currently being tested in Italy (and which inspired Poland and France) includes a clearing

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142 In Spain taxable persons must report invoice data within four calendar days from the issuance date or posting date (both suppliers and customers must report invoice data). In Hungary taxable persons must report their sales invoice data immediately once the invoice is issued.


144 S. JAFARI, Combining Modern Technology and Real-Time Invoice Reporting to Combat VAT Fraud: No Revolution, but a Technological Evolution, 31 Intl. VAT Monitor 3 (2020), Journal Articles & Opinion Pieces IBFD.


147 European standard for e-invoicing (EN16931)
procedure (i.e. the invoice must be cleared by the tax administration before it can be sent to the customer). 148

E-invoicing can also be made mandatory without a clearing feature. Once e-invoices are being issued in a standard format in all the Member States, each Member State could decide which anti-fraud measures would be the most appropriate (e.g. systematic control of each e-invoice, random control of e-invoices, use of risk-assessment processes to optimize controls on e-invoices). From a business perspective, once the taxable person has issued the e-invoice in the EU format, there would be no other compliance requirement. The full disclosure of transaction information however raises confidentiality concerns. Not only businesses but also Member States might be reluctant to share full transaction information concerning their businesses. For this reason, RRT using the TX++ solution (see above) looks like a better option. 149

As noted in Section 3.1., under a **split-payment system** the payment made by the customer is “split” and the VAT component is being paid, either directly to the Treasury or to a supplier’s dedicated VAT account. 150 As noted earlier, a 2017 study carried out for the European Commission (2017) 151 has concluded that: “The main identified effects were that a wider scope of split payment would potentially provide a larger decrease of the VAT gap and hence have a positive impact on the Member States’ budgets, but would also significantly increase the related administrative costs for businesses, especially when applied on broad scale”. In other words, split payment would be effective in curbing fraud but would result in burdensome (and costly) compliance obligations for businesses.

However, the authors of the study acknowledged that: “a different design of the mechanism for split payment (e.g. different scope or technological choices) may come to considerably different results”. 152 Recent technological developments would reduce greatly the compliance costs (for example by using blockchain technology and smart contracts). The great advantage of split-payment in cross-border situations is that the VAT does not leave the taxing State (whereas under the definitive system proposal, the VAT first leaves the taxing State before being declared and paid back via the Union One-Stop Shop (OSS)). 153 This option would therefore deserve further consideration, albeit it seems to be politically difficult to convince the Member States to go in that direction in a harmonised fashion. In terms of design, direct payment to the tax administration would probably be the most secured solution for Member States and, with the support of adequate technology, could be implemented with limited

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153 Another way to avoid ‘passing on’ VAT to someone in another Member State than the Member State of consumption was proposed by Prof. R. Ainsworth. With others he proposed to replace VAT payment by payments in “VATCoin”, i.e. a single purpose digital currency. Using a single purpose digital currency (i.e. a currency that can only be redeemed by a Member State) would prevent VAT “thefts” since there would be nothing to steal that could be of any value for fraudsters (who would not be able to redeem the VATCoin and turn it into ‘real money’). For more information regarding the VAT coin proposal, see: R. AINSWORTH, M. ALWHOHABI, M. CHEETHAM and C. TIRAND, ‘A VATCoin Solution to MTIC Fraud: Past Efforts, Present Technology, and the EU’s 2017 Proposal’, Boston University School of Law, Law and Economics Series Paper, No 18-08, 26 March 2018; R. AINSWORTH, M. ALWHOHABI, M. CHEETHAM, ‘VATCoin: Can a Crypto Tax Currency Prevent VAT Fraud?’, *Tax Notes International*, Vol 84, 14 November 2016.
costs for the businesses. Split payment for cross-border transactions could also be combined with real-time reporting.

The 2015 EY study estimated that the implementation of the Definitive VAT Regime alongside Split Payments would reduce the VAT gap by a further 13-32% or EUR 15.3 – 38.2 billion in addition to the reduction already calculated for the implementation of the Definitive VAT regime (noted above: from EUR 150.2 billion in 2015 to EUR 118.6 billion in VAT GAP).

4.5.4 Conclusions – Definitive VAT system

There are major obstacles to the adoption of the definitive system proposal. At this stage, it seems that the only way to convince the Member States is to increase trust and to limit risks of non-payment.

If the European Commission still intends to convince the Member States to adopt the definitive system proposal it seems necessary to back it up with other measures such as the adoption of harmonised real-time reporting requirements or mandatory e-invoicing (with or without clearing). The most flexible option (and the most business friendly one) seems to be the implementation of harmonised RTR rules for intra-EU transactions. In order to maximise the impact on MTIC-carousel fraud, the right to deduct the VAT paid by a customer should be denied when the transaction has not been reported by the supplier.

The adoption of harmonised RTR rules for intra-EU supplies would still permit the Member State to maintain or adopt other measures (such as mandatory e-invoicing for domestic transactions), which also takes into consideration the current reality as several Member States have adopted various provisions for domestic transactions that they are not likely to accept removing in the short term. It also recognises the fact that all Member States do not have similar VAT gaps and that systematic control measures might be appropriate in some Member States but not in others.

4.6 Summary – Possible Solutions to MTIC Fraud

The study’s overall conclusions on the most appropriate solution to MTIC fraud are presented in the final section and to avoid duplication are not therefore summarised here. Instead, the table below provides a summary of the pros, cons and costs of the different solutions examined in this section. All figures shown in the table are applicable to EU-27.

In terms of the possible benefits of the different solutions, there is ultimately the possibility of preventing losses to EU Member States and the EU budget of up to EUR 60bn and reducing organised crime activity. Against this, there would be varying costs associated with the different solutions to the EU, Member States and businesses. There is some previous research on these costs and benefits, but

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156 Definitive VAT regime with split payment applying to EFT between taxable persons (B2B)

most of this research is now quite dated and it is in any case very difficult to quantify. We have therefore provided an essentially qualitative assessment.

**Table 4.1: Summary – Pros, Cons and Costs of Different MTIC Solutions**

<table>
<thead>
<tr>
<th>Solution</th>
<th>Pros</th>
<th>Cons and costs</th>
</tr>
</thead>
</table>
| Split Payment Methods           | • Can eliminate MTIC fraud through immediate payment of VAT to bank or tax authority  
                                 | • Existing experience with SPM (Hungary, Italy, Poland)                  | • Relatively high compliance and cash flow costs to business and banks (to adjust their systems to enable payments under the split payment mechanism and costs of opening VAT accounts for each taxable person). These costs have been estimated as EUR 100bn for business\(^{158}\)  
                                 | • Positive effects on MS budgets as VAT payments are faster           | • Negative impact on the cash flow of VAT payers who would need to pay VAT immediately upon purchase before getting reimbursed  
                                 | • Improve investigation of fraud by increasing the amount of data available to authorities | • These and other costs have been estimated to amount to around EUR 100bn (2017) which could make SPM politically difficult to adopt  
                                 | • A reduction for the EU of up to EUR 29bn in the VAT gap linked to MTIC fraud has been estimated\(^{158}\) |                                                                                   |
| Electronic Clearing Procedure   | • Partial prevention of MTIC fraud and data misreporting             | • No clearing model exists on a similar scale for international transactions  
                                 | • Could help in preventing fraud of the Customs Procedure 42           | • Would require significant EU Member State coordination as well as infrastructure and adaptation costs, including the creation of interoperable EU tax IDs.  
                                 | • Improved investigation of fraud through creation of database of VAT information across the EU and immediate data of transactions | • Potentially high data storage costs for national authorities, and administrative burdens linked to clearing mechanism  
                                 | • There are no quantified estimates of the benefits (or costs)        | • Concerns about placing liability on exporter in the possible case of fraud and effects on trade  
| Real-Time Reporting (with mandatory e-invoicing) | • Prevention of MTIC fraud through reduced time gap between transaction and audit | • SMEs could face high costs from having to adapt systems to report invoices in real time and in the appropriate format  
                                 | • Improve investigation of fraud with access to real time data and use of data mining tools | • Data storage infrastructure for tax authorities and costs of implementing data mining tools for tax authorities  
                                 | • Reduced cost of adaptation as B2G infrastructure already exists.    | • Confidentiality of business data  
                                 | • Has been tested in several MSs.                                   | • Administrative burden of clearing for banks (in some models)  
                                 |                                                                    | • Real-time reporting alone cannot prevent MTIC fraud  
                                 |                                                                    | • Very little information on costs (or benefits) although some estimates available, |
| Real-Time Reporting (with TX++)  | • Prevention of MTIC fraud through reduced time gap between transaction and audit | • Adaptation costs for business and tax authorities  
                                 | • Improve investigation of fraud with access to real time data         | • Additional environmental and other costs associated with the use of blockchain technology.  
                                 | • Minimised risk of central data breach                             |                                                                                   |
                                 | • Protect sensitive invoice data                                    |                                                                                   |
                                 | • No central clearing necessary                                     |                                                                                   |

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<table>
<thead>
<tr>
<th>Solution</th>
<th>Pros</th>
<th>Cons and costs</th>
</tr>
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| VAT Coin                     | • Similar in effect to the Polish model of SPM but use of cryptocurrency for VAT payment.  
|                              | • Improve investigation of fraud through immediate detection of irregularity  
|                              | • Creation of decentralised database of information                    | • Effective but costly for business and administration to adapt to it and raises issues with cash flow to business  
|                              |                                                                      | • Risk to data confidentiality and compliance with GDPR  
|                              |                                                                      | • Environmental costs of blockchain  
|                              |                                                                      | • Challenges involved with adapting to reporting and payment systems        |
| Definitive VAT Regime (with amendments) | • Attractive solution as it would reduce if not eliminate the incentive for MTIC fraud by removing the VAT exemption for cross border transactions  
|                              | • Suppliers only have to register in their home country to declare and pay VAT  
|                              | • This solution would not have the same implementation costs as Split Payment and VAT Coin as infrastructural change would not be necessary.  
|                              | • One estimate suggests a reduction from EUR 150.2 billion in 2015 to EUR 118.6 billion in VAT GAP (MTIC fraud is expected to decrease by 83%, to EUR 3.4 to 8.6 billion, or 2.8% to 8.1% of the total VAT Gap)  
|                              | • Limited adaptation costs for business                                | • Member State opposition to Certified Taxable Persons requirement  
|                              |                                                                      | • Concerns about other Member States’ collection ability  
|                              |                                                                      | • Opportunities for a new type of fraud in which the supplier becomes the missing trader  
|                              |                                                                      | • Charging VAT in accordance with the rules that apply in the Member State of destination will also constitute a non-negligible burden  
|                              |                                                                      | • Issues if companies in other Member States go bankrupt  
| Definitive VAT Regime (with amendments) | • Can eliminate MTIC fraud altogether                                | • Costs of adaptation to business and bank intermediaries  
|                              |                                                                      | • Negative impact on cash flow of VAT payers (payment before reimbursement)  
|                              |                                                                      | • Administrative burden of clearing (in some models)  

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5 CONCLUSIONS & RECOMMENDATIONS

In this final section we present our overall conclusions and recommendations in relation to the various issues examined in earlier sections – the problem of MTIC fraud, possible solutions to MTIC fraud, and existing measures and roles.

5.1 Problem of MTIC fraud

As Section 2 highlights, **MTIC fraud is a serious problem** as VAT is an important source of EU ‘own resources’ revenue accounting for 12.2% of the total revenue of the EU (around EUR 17 billion) in 2020, the latest year for which publicly available data is available.\(^{161}\) MTIC fraud is estimated to cost the EU Member States and EU finances of around EUR 60 billion p.a. with around 80% being committed by organised crime groups. The involvement of organised crime means that there are wider negative effects because MTIC fraud generates funds for other criminal activities.\(^{162\ 163}\)

**MTIC fraud takes advantage of the design of the transitional VAT system that has been in place in the EU since 1993.** This establishes a zero-rate of VAT for cross-border transactions. With this in place, traders purchase goods or services from another Member State with a zero-rate of VAT and then sell the goods or services within their own Member State with VAT applied. The trader then disappears without paying the VAT owed to the tax authorities. Carousel fraud entails the goods or services being eventually sold back into the original Member State where the chain began. Fraud linked to the Customs Procedure 42 is also frequently part of MTIC and carousel chains.

5.2 Possible Solutions to MTIC Fraud

The study examined a number of possible different solutions to MTIC fraud - Split Payment Methods, Electronic Clearance Procedure (a digital solution), Real-Time Reporting (and TX++), VAT Coin, and the Definitive VAT system (and proposed amendments).

5.2.1 Conclusions – Possible solutions to MTIC fraud

It has been highlighted by authorities consulted for this study that because there is still no consensus among EU Member States on a reform to the transitional VAT system, Member States have been implementing different types of solutions. Furthermore, even where Member States have implemented the same type of solutions, this has not been done in a harmonised way. While attempts to limit MTIC fraud are welcomed and can have a positive effect in terms of reducing the scale of MTIC fraud, the differing rules and requirements for businesses across Member States leads to trade barriers and additional costs to business.

Considering possible solutions to MTIC fraud, Split Payment Methods and VAT Coin would change the way in which VAT is paid and could eliminate MTIC fraud as we know it. **Split payments** have been tested by some Member States but the high costs of implementation (notwithstanding new technologies which could reduce the costs) appear to discourage Member States and businesses from supporting its wider adoption. **VAT Coin** would help address Member States’ lack of trust in each

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\(^{162}\) European Court of Auditors, ‘E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved’, (2019), P. 5.

other’s reporting abilities, a constraint on any solution, but this approach has not been tested and similarly faces reluctance and challenges related to the costs of implementation.

**Real-time reporting** and the idea of an **electronic clearing procedure** would provide Member States with information on all transactions in real-time, reducing the time gap between transactions and audits that currently allow traders to ‘disappear’ with VAT owed. Both solutions could involve costs in their implementation, particularly related to the storage of data. The latter has also not been tested. Nevertheless, real-time reporting appears to have the most support from Member States as it would reduce the time gap between when fraud occurs and when it is detected. The former also has variations which could allow for some cost savings.

**The definitive VAT regime** as well as proposed amendments to it, as with Split Payment and VAT Coin, would eliminate MTIC fraud, at least in its current form, by removing the zero-rate VAT applied to cross-border transactions and establishing a tax at destination principle. This solution would not have the same implementation costs as Split Payment and VAT Coin as infrastructural change (for Member States or business) would not be necessary. Trust between Member States’ reporting and collection ability is a major constraint, but amendments proposed present opportunities to remove such issues and further increase effectiveness.

In the absence of implementation of the definitive VAT regime, Split Payment Methods alone (though they can be paired with the definitive regime) appear to be potentially the most effective solution to address the problem of MTIC fraud but currently there is reluctance to adopt this solution due to the high costs involved. Real-time reporting would seem to be the solution most likely to be transferable across the EU-27 as it has been implemented in several Member States and others are making plans to do so. The solution would effectively tackle key problems in the fight against MTIC fraud but it might not completely eliminate the problem. Nevertheless, it would be a significant step forward.

As noted in Section 4, in terms of the possible **costs and benefits of the different solutions**, there is ultimately the possibility of preventing losses to EU MS budget of up to EUR 60bn and reducing organised crime activity. Against this, there would be varying costs associated with the different solutions to the EU, Member States and businesses. There is some previous research on these costs and benefits, but most of this research is now quite dated and it is in any case very difficult to quantify the costs of different solutions and the more detailed research across all the EU Member States that would be needed is beyond the scope of this study. We have therefore provided an essentially qualitative assessment (also an important element in cost-benefit analyses).

### 5.2.2 Recommendations – Possible solutions to MTIC fraud

Below we present our recommendations in relation to the potential solutions.

**Recommendation 1:** Harmonised RTR rules for intra-EU cross-border transactions should be adopted to replace the current VIES recapitulative statements (the latter would then be rescinded). All Member States seem to agree that the obligation to fill monthly recapitulative statements is a main weakness for the detection of MTIC/carousel fraud. Several Member States have implemented mandatory e-invoicing and RTR rules in recent years to increase the speed of fraud detection. The lack of harmonisation leads to a fragmentation of the rules which potentially results in obstacles to trade in the Internal Market. Mandatory e-invoicing and RTR may co-exist or be imposed in isolation. However, reaching an agreement on harmonisation on both sets of measures seems politically very difficult. In view of the complexity of standardising e-invoicing (see previous failure with
standard VAT declaration form), reaching an agreement on a harmonised e-invoicing framework alone also seems politically difficult.

Among the various RTR models we found that the TX++ solution is a solution that protects both the interests of businesses (because of the confidentiality offered) and the Member States (because of the confidentiality, but also because it removes the need to store and protect a large volume of transaction data, which would come at an extra cost – also environmentally – and might engage the liability of Member States in case of leakage). The adoption of harmonised RTR rules would not prevent the Member States from maintaining their current e-invoicing and other measures regarding domestic transactions (see however below Recommendations 3 and 4). It would furthermore be useful for real-time reporting to also include e-CMRs (transportation documents) to allow authorities to track the flow of goods and tackle fraud of the Customs Procedure 42.

**Recommendation 2: The definitive VAT system should be linked to the proposal on the adoption of mandatory RTR rules.** Member States’ doubts about the definitive system proposal is mostly due to the fact that the Member States of taxation have to trust that the Member State of identification of the supplier will take all necessary measures to ensure the correct payment of VAT, without having themselves direct access to information concerning the transactions. Linking the definitive system proposal to the adoption of mandatory RTR rules is likely to accommodate the legitimate concerns of the Member States and facilitate its adoption. This is particularly the case if Member States would be allowed to adopt additional harmonised measures (see below).

**Recommendation 3: Consideration should be given to regulating e-invoicing rules as an optional measure for Member States.** In recent years several Member States have obtained authorisation to adopt e-invoicing rules. The lack of harmonisation results in a significant compliance burden for businesses and an obstacle to trade in the Internal Market. Therefore, we recommend the adoption of harmonised optional e-invoicing provisions in the VAT Directive. With these rules the Member State would have the possibility to adopt e-invoicing rules without specific authorisation but following a harmonised pattern. Further analysis is needed to determine the model of e-invoicing that would be the most suitable, taking into account the interest of both the Member States and businesses. Transitional measures should be foreseen for those Member States who have already adopted e-invoicing measures. If full harmonisation is not an option, at least a number of criteria should be identified.

**Recommendation 4: Regulating SPM as an optional measure for Member States should also be considered.** In recent years several Member States have obtained authorisation to adopt SPM measures. Split payment by design prevents the revenue leak and based on our research it has proved to be effective in reducing the VAT gap in Member States that have adopted it. Depending on the way SPM is implemented, however, the compliance burden for businesses may be significant. Therefore, we would recommend the adoption of optional SPM rules in the VAT Directive that also preserve taxable persons’ interest. With these rules the Member State would have the possibility to adopt SPM rules but following a harmonised pattern, which would also prevent fragmentation of the legislations. Further analysis is needed to determine which model would be the most suitable pattern. However, based on our research it seems that VAT payment on dedicated VAT account of the customer or directly to the Treasury are the least burdensome.
5.3 Existing Measures and Roles

In this section we summarise the study’s conclusion and recommendations on existing measures and roles, i.e. the last two of the study’s five objectives (as defined in Section 1). Overall, the concludes that the roles and responsibilities of EU authorities are complementary but the legal basis for OLAF, EPPO and Europol to engage in MTIC fraud investigations limits their scope to intervene. EU authorities do not have quick access to national data and information and there are obstacles when it comes to national level execution of EIOs.

5.3.1 Conclusions – existing measures and roles

As section 3 indicates, there are a number of effective tools currently available to help combat MTIC fraud such as the Reverse Charge Principle as well as the VIES data set and TNA tool applied on it available via EUROFISC. In this section, we have highlighted examples of best practice from a number of different Member States. However, on their own such tools can help reduce MTIC fraud but they are not able to prevent it.

More generally, it is clear from the research that Member States face difficulties in being able to detect MTIC fraud with the tools currently available. At present, the reporting, auditing, and analysis of VAT information does not match the speed with which fraudsters can purchase and sell goods or services and move around in the EU’s Internal Market. The ability of the tax authorities to tackle MTIC fraud is also affected by the lack of ready access to tax information held by authorities in different Member States. Across Member States it is relatively easy to set up new VAT numbers and the ability of Member States to quickly de-register companies suspected of fraud varies. Differences in the effectiveness of anti-fraud systems across Member States affect the scale of MTIC fraud in different Member States.

When it comes to the roles and responsibilities of the EU authorities, the legal basis of bodies involved in investigations (OLAF, EPPO, and Europol) appear to be limited considering their potential role in tackling MTIC fraud. In particular, EU authorities do not have quick access to national data and information, notably from Member States’ tax authorities. Similarly, judicial cooperation functions well but there are obstacles to obtaining national tax information and executing EIOs at the national level. The various EU authorities are also strictly limited in their remits. For example, OLAF is involved in administrative investigations but cannot make its expertise available if the case becomes a criminal matter.

At the Member State level, national authorities are often not able to quickly share MTIC-related information and data from the authorities in other Member States, especially when different types of authorities are involved (e.g. law enforcement agencies often cannot obtain information from the tax administrations in another Member State). Furthermore, the activities of different authorities within individual Member States can sometimes occur in ‘silos’ with little cooperation between them. Multi-disciplinary task forces in which officials (tax officials, judicial authorities, law enforcement agencies, etc) cooperate closely and in a clearly delineated way can help avoid fragmentation and obstacles preventing access to different information sources and expertise. Additionally, secrecy laws of Member States are sometimes interpreted in an overly strict manner preventing intelligence gathering within and/or across Member States and the sharing of information with EU officials. While protecting confidentiality is obviously important, national laws should allow for VAT information to be accessible in the cases of suspected criminality.
5.3.2 Recommendations – Existing Measures and Roles

**Recommendation 5:** Steps should be taken to allow the EU authorities to have quicker access to EUROFISC data and to allow for EIOs to be efficiently implemented. EU authorities, in particular OLAF, EPPO, and Europol need to have a strengthened legal basis to effectively undertake investigations in relation to MTIC fraud and to assist Member States with their own investigations. A major constraint on their ability to do so is the lack of direct access to Member States’ tax information and data. This is notably the case with EUROFISC data on VIES. Moreover, investigations need to be speeded up to keep up with potential missing traders, and this requires quicker access to national data and information. Regulation 904/2010 is clear on the ability of EUROFISC to ask EU authorities for data but not clear on whether OLAF, EPPO and Europol can have access to EUROFISC. Furthermore, while there is good cooperation between judicial authorities, this is less so in relation to the tax authorities.

**Recommendation 6:** Council Regulation (EU) 2017/1939 should be amended to allow the EPPO to have competence in cases that involve fraud related direct income taxes if they also involve VAT fraud. At present, the EPPO does not have competence over direct income tax issues. At the same time, Council Regulation (EU) 2017/1939 is currently not clear on whether the EPPO should be allowed to prosecute and investigate a case that involves both VAT fraud as well as fraud involving direct income taxes. As a consequence, Member States can reject a request to provide information to the EPPO. The EPPO can therefore be in a position where it may have already begun investigating a case when evidence only pointed towards VAT fraud being committed but then have to drop the case when it becomes clear that direct taxes are involved.

**Recommendation 7:** Furthermore, Council Regulation (EU) 2017/1939 should also be amended to allow for OLAF to be consulted by the EPPO when MTIC fraud investigations have evolved into a criminal case. An issue can arise when a criminal investigation is launched following information gathered by OLAF through its administrative investigations. In such a situation, because OLAF is not a law enforcement or prosecution body, it cannot be involved in the criminal investigations of the case (EPPO cannot delegate judicial investigations to OLAF). This can be an issue hampering effectiveness as OLAF in this situation can have more information and full knowledge of the case than the competent authority identified to coordinate law enforcements at EU level, in this case Europol.

Turning to the role of Member States in combating MTIC fraud:

**Recommendation 8:** National secrecy laws should ideally allow for VAT information to be transmitted to EU authorities involved in MTIC fraud investigations if there is suspicion of criminal activity. A further constraint on effectively investigating MTIC fraud cases are Member States’ secrecy laws. Secrecy laws can lead national authorities to withhold information that is needed by EU authorities to pursue criminal investigations. Some Member State authorities consulted for this study have, however, argued that the EPPO and OLAF should not have the power to decide whether a case should be treated as justifying criminal proceedings. This issue needs to be resolved and ideally Council Regulation (EU) 2017/1939 as well as national laws should be amended and clarified to allow for the EPPO to decide whether a MTIC fraud case at the EU level has become a criminal matter and should therefore not face barriers to obtaining information from national secrecy laws.

**Recommendation 9:** Member States’ tax declarations, customs declarations and transportation documents should be more harmonised in terms of information being reported and language / terminology to ensure they can be used by other Member States as well as the EU authorities for
investigations. At present, EU and national authorities face difficulties in using and interpreting each other’s tax declarations, customs declarations and transportation documents for investigations and tax administration activities. The differences relate not only to the templates for reporting but also to the definitions and the ways expressions are used. A degree of harmonisation would help ensure authorities can use more easily the information collected and speed up investigations.

**Recommendation 10:** There should be more ‘diagonal’ communication across Member States between different types of authorities involved in tackling MTIC fraud. At present, there are legal obstacles which prevent the authorities (e.g. law enforcement agencies) from being able to obtain information from different types of authorities (e.g. tax authorities) in other Member States. This creates obstacles and slows down investigations in MTIC fraud cases. The legal framework governing communication between different types of authorities involved in tackling VAT fraud should therefore allow for more ‘diagonal’ communication between different types of authorities (e.g. law enforcement, tax administrations, customs etc.) across Member States and with EU authorities. Such diagonal communication occurs already between Europol and Member States’ Financial Intelligence Units for requests for financial information as permitted by the Directive (EU) 2019/1153.165

**Recommendation 11:** Checks should be strengthened on businesses that request large VAT refunds and for businesses seeking to register new VAT numbers. At the national level there need to be more checks on the ability of businesses to obtain refunds and to register new VAT numbers. While it is important to ensure the possibility that businesses can obtain refunds in a timely manner, there is a case for enhanced controls (e.g. using data mining tools) when there are red flags concerning companies requesting refunds. Such red flags can include the fact that a large refund is being requested.

**Recommendation 12:** Ideally, Member States should implement or amend domestic legislation to allow them to quickly de-register companies suspected of MTIC fraud including conduit companies. Similarly, more rigorous checks and requirements for the establishment, transfer and sell of a company need to be implemented in Member States to create obstacles for fraudsters to engage in MTIC fraud. While this would not eliminate fraud, as inter alia, fraudsters can make use of existing companies to commit fraud, such measures would help reduce such activity. Similarly, the ability to more quickly de-register or suspend the VAT numbers of suspected fraudsters would allow the authorities to prevent them from continuing their activities and limit the impact on the VAT gap. In some Member States, legislation does not allow authorities to de-register suspected conduit companies.

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APPENDIX A: LIST OF SECONDARY SOURCES

European Commission


Reports


• Price Water House Coopers (2010). Study on the feasibility of alternative methods for improving and simplifying the collection of VAT through the means of modern technologies and/or financial intermediaries. Available at: https://op.europa.eu/en/publication-detail/-/publication/e0d6a4f7-9ada-11e6-868c-01aa75ed71a1


• Summitto (2021) The relationship between real-time reporting and e-invoicing. Available at: https://blog.summitto.com/posts/the_relationship_between_real_time_reporting_and_e_invoicing/

• Summitto (2021) Introduction to invoice hashing: securing VAT reporting with cryptography. Available at: https://blog.summitto.com/posts/invoice_fingerprints/

• Summitto (2020) Real-time reporting models compared. Available at: https://blog.summitto.com/posts/real-time_reporting_models_compared/

• Way2Vat (2019). 5 Ways that Countries are Clamping Down on VAT Fraud. Available at: https://way2vat.com/5-ways-that-countries-are-clamping-down-on-vat-fraud/

Abstract

This study examines the problem of Missing Trader Intra-Community (MTIC) Fraud, the nature and scale of its impact on the EU's finances, and possible solutions. The possible solutions that are assessed are: Split Payment Methods, Electronic Clearance Procedure (a digital solution), Real-Time Reporting (and TX++), VAT Coin, and the Definitive VAT system (and proposed amendments). Recommendations are made in the report regarding the most appropriate solution.