

HEARING

“VAT FRAUD”

QUESTIONS

Presentation by the Member of the European Court of auditors, Mr Neven Mates

‘Size of the VAT (carousel) fraud and how to best tackle it’

1. Could you summarise the main conclusions of the 2015 Special report and indicate how far they have been implemented?

The main conclusions are summarised in paragraph IV of the Special Report (SR):

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

- (a) there are no effective cross-checks between customs and tax data in most of the Member States visited;
- (b) the administrative cooperation framework allows sharing of VAT information between Member States’ tax authorities but there are problems with the accuracy, completeness and timeliness of data; and
- (c) there is a lack of cooperation and overlapping competences of administrative, judicial and law enforcement authorities.

Concerning (a), the Court recommended Member States’ customs authorities to send data on imports under customs procedure 42 to tax authorities¹, and the Commission to propose legislative amendments enabling effective cross-checks between customs and tax data². The Commission originally rejected Recommendation 3, but eventually included corresponding measures in its latest proposal on administrative cooperation³. Just a few days ago they have been accepted by the Council and will enter into force on 1st January 2020.

Concerning (b), the Court recommended⁴ that the Commission should carry out monitoring visits to Member States selected on a risk basis. The monitoring visits should focus on improving the timeliness of Member States’ replies to information requests, the reliability of VIES and the speed of multilateral controls. According to the Commission⁵, in 2017 monitoring visits in 10 Member States were performed in the context of preparing the Eighth Report under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures⁶. In its report the Commission recommended Member States to “*check the validity of the VAT and VIES registration data in a more systematic way*” (recommendation 6) and that “*Member States which conduct only preliminary checks before registration, should implement post-registration controls to ensure the reliability of VIES data*” (recommendation 7). Concerning CP 42, the Commission recommends “*Member States should still ensure that the Customs authorities check the VIES number and exchange the information with*

¹ See recommendation No 2 of ECA Special Report No 24/2015.

² See recommendation No 3 of ECA Special Report No 24/2015 and recommendation 8 of Special Report No 13/2011.

³ COM(2017) 706 final. ‘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’.

⁴ See recommendation No 8 of ECA Special Report No 24/2015.

⁵ Source: RAD database.

⁶ COM(2017) 780 final. ‘Report from the Commission to the Council and the European Parliament Eighth report under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures’.

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the tax authorities” (recommendation 11). These recommendations to Member States are in line with our 24/2015 special report.

Concerning c), the Court considers that the different authorities involved in the fight against VAT fraud should cooperate not only with their counterparts in other Member States but also among them within the Member States concerned and with the competent EU bodies. In this sense, the new proposal on administrative cooperation, echoing recommendation 12 of the Court’s Special Report⁷ No 24/2015, provides for Eurofisc officials to share information with Europol and OLAF, *“in particular by enabling Eurofisc liaison officials to receive targeted information from Europol and the European Anti-Fraud Office. Therefore, in order to receive relevant information in return held by Europol and the European Anti-Fraud Office, Eurofisc liaison officials should be able to forward to Europol and the European Anti-Fraud Office, as much information as necessary”*⁸.

The Court recommended in its Special Report No 24/2015 (recommendation No 14 (a)) to *“include VAT within the scope of the proposed directive on the fight against fraud to the Union’s financial interests by means of criminal law (PIF directive) and the regulation on the establishment of the European Public Prosecutor’s Office”*⁹. This recommendation 14 has been finally met by the European Parliament and by the Council. According to the PIF Directive, *“offences against the common VAT system should be considered to be serious where they are connected with the territory of two or more Member States, result from a fraudulent scheme whereby those offences are committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000”*¹⁰. Furthermore, according to Article 15 (1) of the PIF Directive, the Member States, Eurojust, the European Public Prosecutor's Office and OLAF shall, within their respective competences, cooperate with each other in the fight against the criminal offences, including the referred serious VAT offences.

2. Can you indicate which recommendations remain to be implemented?

To our knowledge, there is still no common system of estimating the size of MTIC fraud, as the Court recommended in its recommendation No 1. In the introduction of the action plan and also in its follow-up communication, echoing a study of Ernst & Young¹¹, the Commission states that cross-border fraud alone accounts for **50 billion euro** of revenue loss each year. This estimate is based on Member States’ replies to a survey question. The survey question asked Member States tax authorities’ representatives to quantify the percentage of the VAT gap that is related to MTIC fraud. This question was only replied by nine Member States. On average, these Member States consider that 20% of the overall VAT gap was due to MTIC fraud, while the estimated weighted average (based on overall VAT gap proportion) was 24%. This percentage has been extrapolated to all 28 Member States (see pages 113 and 118 of the Study). The extrapolated results do not accord with the (substantially lower) estimates published by Member States such as Belgium (1 billion EUR, according to Ernst & Young, but only 28 million euro, according to the Belgian Court of Auditors¹²) and the United Kingdom, which calls

⁷ Special report no 24/2015, *‘Tackling intra-Community VAT fraud: More action needed’*, http://www.eca.europa.eu/Lists/ECADocuments/SR15_24/SR_VAT_FRAUD_EN.pdf.

⁸ See recital 8 of COM(2017) 706 final. *‘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’*.

⁹ See recommendation 14 of Special report no 24/2015.

¹⁰ See Recital (4) of the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law (OJ L 198 of 28.7.2017, p.29).

¹¹ Ernst & Young, *Implementing the ‘destination principle’ to intra-EU B2B supplies of goods – Feasibility and economic evaluation study*, 2015.

¹² *‘Fraude intracommunautaire à la TVA. Audit de suivi réalisé en collaboration avec les cours des comptes des Pays-Bas et d’Allemagne. Rapport de la Cour des comptes transmis à la Chambre des représentants Bruxelles, septembre 2012’*.

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into question the accuracy of the replies to the survey. In addition, the UK was one of the survey respondents but the estimates of MTIC fraud published by HMRC¹³ (0.5 to 1 billion GBP in 2011) are substantially lower than those shown in the Ernst & Young study (5.4 billion EUR in 2011).

Other recommendations listed in the above reply to question 1 depend on the entry into force of the amended Regulation on administrative cooperation on 1 January 2020 and its effective implementation, and on the EPPO's entering into force and beginning its operations.

ECA's recommendation concerning the need to harmonised Member States' VAT reporting requirements and to coordinate their policies on reverse charges have not been accepted by the Commission because the Commission did not want to commit itself before the adoption of the VAT action plan.

3. Can you specify which are the biggest loopholes not yet addressed in the fight against VAT fraud (if any)?

Until the amended regulation on administrative cooperation is fully implemented (which is expected only on 1 January 2020), the weakest chain in the link will remain procedures linked to the customs procedure 42. Paragraphs 93 to 104 of the Court Special Report No 19/2017 on import procedures¹⁴, continues to report weaknesses on this procedure and so does OLAF's Annual report 2016¹⁵.

Moreover, according to the Special Report No 19/2017, there are strong indications that trade flows are affected by weaknesses in the accurate assessment of import values. The Report also pointed out the conflicting incentive structure of the current arrangement to share custom revenue, with 20% remaining to Member States at the port of importation. Under such arrangement, there is no correspondence between the actual costs of collection and the retained custom revenue. This on one hand creates additional incentives for attracting imports, while on the other reduces incentives for engaging in expensive valuation checking procedures. This issue remains to be addressed.

4. Do you see specific ways to improve the use of the exchange of information database (VIES)?

In order to improve the operation of Eurofisc, the Commission, with the new proposal on administrative cooperation in the field of VAT¹⁶, amending Articles 33 to 36 of Regulation (EU) No 904/2010 and Regulation (EU) 2017/2454, intends to extend the Social Transaction Network Analysis (TNA) used by the Benelux countries to other Member States and has developed a TNA software for voluntary use by Member State from 2018. TNA performs an automated selection of information already available in the VIES system according to risk indicators. The system would allow an automated, faster and more precise detection of fraudulent chains. It would also allow identifying chains of transactions and companies that may be involved in frauds. This is in line with recommendation 4 of Special Report No 24/2015. In addition, the proposal provides for a role of Eurofisc experts in the coordination of any subsequent audits and cross-border investigations and for a legal basis for joint audits and for the exchange of car registration data between Eurofisc officials.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364009/4382_Measuring_Tax_Gaps_2014_IW_v4B_accessible_20141014.pdf

¹⁴ Special Report No 19/2017, "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interest of the EU".

¹⁵ https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report_en

¹⁶ COM(2017) 706 final. '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'.

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5. Taking the different national VAT systems and enforcement rules in place, do you see that there is a risk of cross-border shopping and arbitrage by criminals?

Indeed, this has been depicted as “import point shopping” in paragraphs 98 and following of Special Report No 19/2017. See above reply to question 3.

This cross-border shopping can be used in respect of Member States provisions regarding reverse charges and this is why we recommended, in recommendation 7 of SR No 24/2015, that the *“Commission should encourage Member States to better coordinate their policies on reverse charges, as already done, for example, in the emissions trading scheme”*. This recommendation has not been accepted by the Commission.
