



Guidance report for
practitioners and policy
makers



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List of acronyms/abbreviations

Abbreviation	Explanation
EIO	European Investigation Order
EPPO	European Public Prosecutor’s Office
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FLEAs	Fiscal Law Enforcement Agencies
ICT	Information and Communications Technologies
LEAs	Law Enforcement Agencies
MLA	Mutual Legal Assistance
PP	Public Prosecutor
PPO	Public Prosecutor Office
STRs	Suspicion Transaction Reports
TA	Tax Administration
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

1.1 Background

Effective investigation and prosecution of tax crimes rely on wide and comprehensive exchanges of information between all actors involved. This is true within a country's law enforcement ecosystem. There has to be no leakage or bottleneck in the flow of information from the tax-authorities' first suspicion of a tax offence to the competent LEA, the PPO and finally to the court. Moreover, in view of the increasing transnational nature and reach of tax crimes, the information chain must not stop at the border of a legislation or particular jurisdiction. But what is the extent of information sharing between all relevant actors taking place and how do ICT-enabled tools facilitate exchange of information? In this WP, PROTAX investigated obstacles and best practices in regard to information-sharing in the context of combating tax crimes. We identify and analyse the different obstacles as provided in literature and through interviews and / or data collected in preceding WPs.

This deliverable uses output from WP2 to analyse information sharing frameworks in place to combat tax crimes. Taking into particular consideration the ECOLEF report, analysing information sharing with FIUs,¹ we assume to draw an updated picture of these efforts with a special focus on tax crimes and its particularities.

Businesses regulated in line with FATF standards and the EU's AML regime have a preventative role ('gatekeeping'), as well as a function in detecting and reporting crime to LEAs. In this role, private sector entities – and especially professionals working within them - often claim that they are unable to properly comply with standards given the significant obstacles that prevent enhanced information sharing between the regulated sector (within groups, across groups and sectors) but also with LEAs within the country of residence and across borders. Task 5.2 focussed on factors shaping effectiveness and investigated conditions for effective approaches to information sharing, based on data from WP2 and interviews with stakeholders. Work in tasks 5.2 and 5.1 was conducted cooperatively and key findings from Task 5.2 are presented in section 5 and 6 of this Deliverable, taking a socio-legal perspective on the results of Task 5.1 presented in Section 2 – 4.

1.2 Objectives

Building on existing research and previous WPs, PROTAX will map existing information-sharing mechanisms, obstacles and best practices, contributing to the production of tools in WP7 and recommending measures that can assist LEAs and private sector in their joint efforts. An updated and complete picture of information sharing in the EU will generate additional guidance and recommendations for policy-makers to facilitate information sharing in the

¹ Project 'ECOLEF' The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy, DG Home Affairs - JLS/2009/ISEC/AG/087, February 2013, <
[http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20\(digital%20version\).pdf](http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf) >
(accessed 12.08.2020).

context of cross-border investigations combating serious organised crime. PROTAX will collect recommendations for immediate action to improve information sharing.

1.3 Structure of the report

As this task focuses on the compilation of existing data on information sharing and cooperation, first of all, we give an overview of:

- A) On a national level:
 1. the relevant players involved in fighting tax crimes and their responsibilities
 2. their possibilities to share information
 3. the means of cooperation they can use; and
- B) On an international level:
 1. the (legal) framework of information sharing and cooperation
 2. a compilation of authorities with comparable competences.

Secondly, we identify examples of best practice and analyse fundamental obstacles arising from institutional and / or legal structures. Finally, we conclude with specific recommendations aiming to foster the cooperation between relevant authorities and agencies, including the key private enabling entities and actors.

2. Actors involved in the investigation and prosecution of tax crimes

As we showed in previous work-packages, multiple authorities, departments and agencies are engaged in the process of detection, investigation and prosecution of tax crimes. They have different backgrounds, using their specialised expertise and skills, and contributing to successful investigation and prosecution of tax crimes. Applying the OECD-methodology,² we identified tax authorities, tax investigation units, police (economic crime units), FIUs, specialised independent investigation units, Public Prosecutor’s Offices and Courts to be the main players. The following table gives an overview of these players for each selected country.³

Table 1–Key actors

Country	Tax / Customs	Police / other LEA	FIU – financial regulators	Public Prosecutor
Austria	Tax and customs authorities act in close connection with the fiscal law enforcement authorities (FLEA), who are part of the tax and customs administration.	The police is involved in tax crime cases only if they are in close connection with other crimes or FLEA are not at hand (Art. 196 par. 2 FAO).	Tax Authorities are obliged to report suspicious activities they get knowledge of in the course of fulfilling their duties (Art. 18(1) Financial Markets Anti-Money Laundering Act 2017.	PP directs tax crime investigations if courts are competent for prosecution.

² This typology is based on OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, < <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf> > (accessed 12.08.2020).

³ Though being able to provide valuable information on tax crimes, this table does not contain additional agencies with specific other competences like anticorruption agencies or asset recovery offices.

Country	Tax / Customs	Police / other LEA	FIU – financial regulators	Public Prosecutor
Bulgaria	National Revenue Agency	Investigation of Tax Crime (“Crime against Tax and Social Security System” of the Economic Police Department).	Financial Intelligence Specialised Administrative Directorate (FISAD). Cooperates with the National Revenue Agency, the Customs Agency and the Ministry of Finance. Analyses of STRs. ⁴	PP directs the investigations, taking part at court proceedings
Czech Republic	Has to report suspected tax offences to the PP. Authorised customs authorities are entitled to investigate in VAT-related cases too.	Carries out investigation under the supervision of the PP	FIU shares information with the police and tax authorities ⁵ . FIU has direct access to data of the tax administration	Initiating investigations, supervising police activities, bringing the case before the court or stop investigation
Estonia	The Estonian Tax and Customs Board is in charge of all tax and customs offences. It investigates tax crimes in coordination with the PP. ETCB acts within the same legal framework as the police, but limited with regard to surveillance operations.	Surveillance-operations have to be executed by the police. Investigation of tax crimes closely connected with other crimes.	The FIU is an independent structural unit of the Police and Border Guard Board. It is entitled to report findings to agencies investigating tax crimes and to the customs. Police and PPO have direct access.	The PPO is the competent authority for investigating tax crimes.
Finland ⁶	Tax administration detects and reports suspicious tax crimes to the police. Within the customs administration the Customs Investigation Service (CIS) entitled to conduct pre-trial investigation also regarding to VAT-Fraud	Conducts investigation of tax crimes in cooperation with the PP	Pre-trial investigation of money laundering. Exchange of information with tax-authorities and police is permitted. Direct access is possible with police and PPO	Competent investigation authority.

⁴ Thirion, Elodie and Scherrer (2017), Amandine, *Member States capacity to fight tax crimes* (Ex-post impact assessment, European Parliamentary Research Service. < <https://op.europa.eu/en/publication-detail/-/publication/d2408d30-92ae-11e7-b92d-01aa75ed71a1> > (accessed 12.08.2020).

⁵ See OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, p 244. < <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf> > (accessed 12.08.2020).

⁶ OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, pp 261 ff.

Country	Tax / Customs	Police / other LEA	FIU – financial regulators	Public Prosecutor
France	Tax administration detects and combats tax fraud. It files complaints via DGFIP that have to be approved by the Commission of Fiscal Infringements.	Conducts investigation of tax crimes. Specialised units are in place, partly staffed with officials from the tax authorities (BNRDF and OCLIFF)	Receives STRs, reports to the DGFIP if only tax crimes as predicate offences are underlying. In all other cases it reports to the PP.	Decides to enter in judiciary procedure and directs them.
Germany	Civil penalty body is part of the tax administration and acts with similar powers as the PP. The investigating body conducts investigations		Obligation of Tax administration to report suspicious facts relating to money laundering to the FIU. On the other hand, the FIU has to submit information regarding tax crimes or relevant for tax assessment. ⁷	Gets involved if the civil penalty body transfers a case to him or in serious cases.
Greece	Secretary General for Public Revenue (General Directorate of Tax Administration) initiates independent criminal procedures upon reports derived from tax authorities	Independent Public Revenue Authority and its Service for Investigations and for Safeguarding of Public Revenue, the Financial Police Division of the Hellenic Police Force, and the Authority on the Prevention of Money Laundering and Funding of Terrorism	FIU is an independent agency. Evidence discovered by tax authorities are forwarded to the FIU via the General Directorate of Tax Administration. FIU gives feed-back of the out-coming of their investigation. FIU submits information about possible tax evasion to the tax authorities ⁸	Financial Crime Prosecutor controls investigation. Athens and Thessaloniki: Special Prosecutor of Economic Crime are responsible for the prosecution of serious offences.
Hungary	National Tax and Customs Administration (NTCA) and its Directorate General for Criminal Affairs (DG-CA)	No competence of the Police in tax crimes. Hungarian Prosecution Service	FIU is an independent department of the NTCA. Exchange of information with the NTCA and DG-CA is granted.	PPO directs criminal tax investigation led by the DG-CA
Ireland	The Revenue Commissioners.	An Garda Síochána National Police and Security Service	FIU is based in the Garda National Economic Crime Bureau. It is the central reception point for STRs.	Director of Public Prosecutions (DPP)

⁷ OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, pp 288 ff.

⁸ OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, pp 295 ff.

Country	Tax / Customs	Police / other LEA	FIU – financial regulators	Public Prosecutor
			Revenue Commissioners also receive STRs independently. Communication between Revenue and FIU is permitted. ⁹	
Italy	Agenzia delle Entrate (tax administration)	Guardia di Finanza (combining tax police and judiciary police)	Unità di informazione Finanziaria (UIF) receives and analyses STR's. Findings are forwarded to a specialised unit of the Guardia di Finanza	Public Prosecutor's Office
Malta	Commissioner of Revenue Customs Department	Malta Police	Financial Intelligence Analysis Unit (FIAU), an independent government agency. Handles STRs	Court of Magistrates (Art 52 ITMA)
Poland	Heads of tax and customs authorities, head of the National Tax Administration	Border Guard, Police, Military Police, Internal Security Agency, Central Anti-Corruption Bureau	General Inspector of Financial Information (GIIF) with support of the Department of Financial Information of the Ministry of Finance. Reports suspicious activities linked with tax crimes	Public Prosecutor, District court
Portugal	Tax and customs administration	Criminal Police	Unidade de Informação Financeira (UIF) Independently operating unit of the Criminal Police Gathering, analysing and providing information for investigation of MLTF, organised crime and predicate offences Cooperation with Tax authority for	Public Prosecution Service

⁹ Ibid. pp 322 f.

Country	Tax / Customs	Police / other LEA	FIU – financial regulators	Public Prosecutor
			criminal tax investigation.	
Spain	Tax administration (Agencia Tributaria) Customs Surveillance Service	Guardia Civil (Fiscal Service), National Police Financial Intelligence Squad (BCIF)	Executive Service of the Commission for the Prevention of Money Laundering (SEPBLAC) acts as FIU. Analyses STRs. Cooperates with BCIF. Tax authorities have to report information relevant for money laundering. FIU reports STRs with reference to taxation ¹⁰	Public Prosecutor’s Office Investigation Judges
United Kingdom	Her Majesty’s Revenue and Customs		FIU is established within the NCA. HMRC has a small SAR team embedded in the FIU.	Crown Prosecution Service (E/W) / Crown Office and Procurator Fiscal Service (Scotland) / Prosecution Service Northern Ireland

Moreover, the countries considered in our analysis take different organisational approaches in distributing competences and interaction between national authorities investigating and prosecuting tax offences.

Table 2–Typology of criminal tax investigations

Country	Tax administration	Tax admin. under direction of PPO	Specialised enforcement agency outside TA	Police	Public Prosecutor
Austria	Detection and preliminary investigation of tax crimes. Prosecution of tax crimes if they are not in the competence of the courts.	Tax crimes in the competence of the courts are investigated by the tax administration under direction of the PPO	---	Investigates only in urgent cases if the fiscal law enforcement agencies are not at hand or tax crimes are closely connected with other crimes	Directs all investigation of tax crimes in the competence of the courts.
Bulgaria	Prosecution of administrative offences			Economic Police Department with a specialised Section for	Rules and supervises all investigations (Art. 46 CPC)

¹⁰ Ibid. p. 442 passim.

				Crime against Tax and Social Security System	
Czech Republic	Reporting of suspected tax offences to PP	Authorised Customs Agencies are entitled to investigate offences related to VAT		Investigates tax crimes under supervision of the PP	Directs all investigation of tax crimes
Estonia		ETCB conducts tax-crime investigations in coordination with the PPO		Executing surveillance-tasks. Investigating tax crimes in connected with other crimes	Competent authority for tax-crime investigation, coordinates the investigation of the ETCB
Finland¹¹	Detects and reports suspected tax offences to LEAs Pre-trial investigations in customs cases are conducted by the Customs Investigation Service. This relates also to VAT		Specialised enforcement authorities are competent inter alia for the enforcement of unpaid taxes.	Conducts criminal investigation. International and other serious crimes are investigated by the National Bureau of Investigation (NBI).	Responsible for criminal investigation conducted by the police.
France	Detecting of tax crimes, DGFIP reports complaints to the PP under approval of the Commission of Fiscal Infringements.			Conducts investigation of tax crimes within specialised units BNRDF (judicial police unit composed with officers of the DGFIP) OCLCIFI (specialised unit for investigation of complex tax fraud)	Directs investigation of tax crimes
Germany	Detecting and prosecuting tax crimes. Conducts criminal investigation	If cases are prosecuted by the PP, investigation is conducted by the			Directs prosecution of tax crimes if they are not prosecuted by

¹¹ OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, pp 261 ff.

	partly independently, exercising powers of Police and PP.	Investigating Body, a special unit of the tax authority			the Civil Penalty Body
Greece	Conducts audits and reports to the General Directorate of Tax Administration		The Service for Investigations and for Safeguarding of Public Revenue conducts criminal tax investigations	Financial Police Division conducts criminal tax investigation also.	Financial Crime Prosecutor directs criminal prosecution. More serious tax crimes are prosecuted by the Special Prosecutor of Economic Crime (Athens and Thessaloniki)
Hungary	Tax authorities conduct audits and detect possible tax crimes.	The DG-CA exclusively conducts tax crime investigation under direction of PPO		No competence in tax crimes	Directs investigations of the DG-CA
Ireland	Revenue gets knowledge of possible tax offences. It decides if to hand over to the OPP for prosecution or to apply administrative measures or summary proceedings.			ODCE, a specialised Unit of the An Garda is in charge to investigate tax crimes, handed over to the OPP	OPP decides if to prosecute a reported case. In case of an indictable offence, the OPP carries it through the court proceeding.
Italy	The Agenzia delle Entrate conducts tax-audits and reports possible tax crimes either to the Guardia or the Public Prosecutor.		The Guardia di Finanza conducts tax crime investigation in close cooperation with the PP.		Public Prosecutor directs investigation and files a request to the Judge for trial. Experts from the tax authority can be appointed for consultation.
Malta	Commissioner for Revenue has the power to investigate tax offences under administrative law. He has to authorise		FIAU analyses STRs and forwards its findings to the Malta Police for further investigation.	Malta Police investigates tax crimes.	Court of Magistrates deals with the prosecution of tax crimes.

	criminal prosecution of tax crimes				
Poland	.	Tax authorities conduct preliminary investigations in tax crimes. They also act as Prosecutors according the CCP. In case of tax infringements, a penal order can be issued without court proceedings. If contested, ordinary proceedings are initiated	Military Police, Internal Security Agency, Central Anti-Corruption Bureau act within their specific competences or on specific order of the PP	The police also is entitled to conduct investigation.	The Public Prosecutor supervises the preliminary investigations. Criminal Courts are competent for prosecuting all tax offences. If there is a connection to military persons, Military courts are competent.
Portugal		Tax authorities investigate tax crimes with the power of criminal police under direction of the PPO Investigation shall be completed within 8 months		Can also be assigned by the PPO to investigate tax crimes	PPO directs criminal investigation.
Spain	Detects and investigates tax infringements	Investigates tax crimes as well as money laundering if tax crimes are predicate offences.		Fiscal Service (Guardia Civil) and BCIF are specialised for organised crime and money laundering	PPO directs investigation. The Judge of investigation has to approve the investigation and is also entitled to terminate it.
United Kingdom	HMRC primary competent agency for investigating tax crimes. It is vested with all necessary investigation powers. Findings are handed over to the Public Prosecution Office, if	-	-	-	PPO decides if a criminal tax case has to be brought to prosecution.

satisfied with the facts and evidence				
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2.1 Cases at national level

As PROTAX showed in D3.1,¹² using an adapted OECD modelling,¹³ the competence for conducting investigations in criminal tax matters in all selected countries follows, with some overlapping, one of the four different models, as theorised by scientific studies.

Table 3–Models of Competence

	Description	Applying Countries
Model 1	Tax administration directs and conducts investigations	Germany, Greece, Ireland, United Kingdom
Model 2	Tax administration conducts investigations, directed by prosecutor / examining judge	Austria, Estonia, Germany, Hungary, Poland, Portugal, Spain
Model 3	Specialist tax agency outside tax administration conducts investigations	Greece, Italy
Model 4	Police or public prosecutor conducts investigations	Bulgaria, Finland, France, Greece, Spain

In terms of information-flows one can pose the question about the impact of these four models on the shape of the information chain. As each of the involved authorities depend on information which is either received from other agencies or from their own sources, the organisational setting can seriously impact the effectiveness of the investigation and prosecution of tax crimes. Therefore, PROTAX assumes to deduce a basic typology of information chains out of the competence-models described above. Relying on the findings of ECOLEF’s analysis on FIUs in ‘the context of money laundering and terrorist financing,¹⁴ we have transposed and adopted them to LEAs involved in tax crime investigations as far as possible.

This task faces some crucial limits due to the lack and/or limited amount of statistical information on tax crime prosecutions, as discovered and presented in WP3, D3.1 and WP4, D4.1. Therefore, a comprehensive and valid analysis of the efficiency is not possible to conduct. Instead of this, a formalised structure of information-dependences between the involved authorities can be deduced for each of the four Models, showing advantages and threats in terms of potential information decay and bottlenecks and if there are structural safeguards observable.

In doing so, we start from the tax authorities,¹⁵ who gather first-hand information during their assessment- and audit-proceedings. This information is the most important source for detection of tax offences which has to be communicated to the competent LEA for further

¹² PROTAX, *Report on comparative legal and institutional analysis* – Deliverable 3.1, 2020, p. 125 f.

¹³ OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes* – Third Edition, OECD Publishing, Paris, p. 33.

¹⁴ ECOLEF, *The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy* – Final Report, Utrecht University, 2013, p. 168 f.

¹⁵ In the interest of simplicity, we do not differentiate between tax and customs authorities.

criminal investigation which may add further information deriving from their own databases and sources. These LEAs can be either part of the tax administration or the police or can be independent specialised agencies; the type of agency involved in tax enforcement can also affect the flow of information. A further element to mention is the role that PPO plays. Finally, all the gathered information on a tax crime has to be handed over to the court for trial procedure.

FIUs are, to some extent, integrated in this information chain, as their intelligence is transferred to the tax authorities, the LEAs and the PPOs. Their position within the organisational setting will not be further discussed, as this has been the focus of previous study (e.g. the ECOLEF Project). Other sources of information can be third persons such as whistle-blowers or other informants as demonstrated by PROTAX case studies and other instances of large tax crime cases reported by the media in recent years.

In the following figures, red lines indicate the flow of information, blue lines indicate requests and/or feedback.

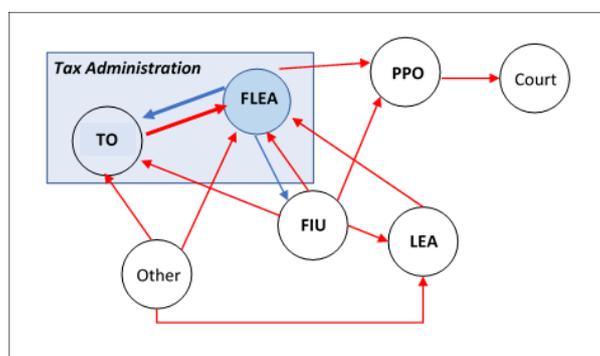
2.1.1 Tax authorities involved in criminal investigations of tax offences

In most of the examined countries, tax authorities are competent for investigating tax offences, even if they come in three major forms. They can be agencies, integrated into the tax administration department, authorised to conduct investigations either independently or under the supervision of the PPO, or they are specialised tax agencies, independent from the tax authorities.

Each type of agency shows a specific flow of information in that ecosystem.

The following figure shows the information-dependencies in the case of the Tax Authorities investigating independently from the PPO.

Figure 1–Tax administration investigates on its own



Source: PROTAX

Legend

TO: Tax Office; FLEA: Fiscal Law Enforcement Agency; LEA: Police Law Enforcement Agency; FIU: Financial Investigation Unit; PPO:

As a part of the tax administration, the tax law enforcement agency and the tax office have a sound understanding of what their respective needs are in order to fulfil their tasks. On the other hand, they also are aware of what information they can expect from each other. In general, they have access to the same information and/or databases. From a formalised point of view, inside the tax authorities, interaction in a regular and informal way is granted and one can suppose that the information is interpreted with the same professional knowledge and competence.

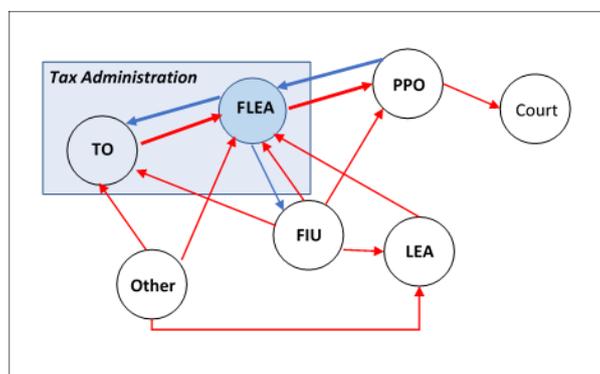
As there is no need to communicate with the PPO in the course of regular investigation, no information decay or misinterpretation can occur at this stage. It is only the final report (which

contains the findings of the investigation and the evidence gathered) that is submitted either directly to the court for trial or to the PPO for filing an indictment. This seems to provide a speedy and effective procedure.

Furthermore, there is a number of critical issues to highlight. Being part of the same administration, with access to the same sources of information, can lead to a bottleneck in the flow of information to the Tax Law Enforcement Agency, as there is no effective filter granted. This risk can be mitigated in providing for sufficient resources to the FLEA and / or having reasonable legal and practice guidelines in place on how to select potential criminal cases for further investigation. Another critical point of this setting can be identified in the missing or late checking of the decisions made by the tax authorities in the course of the investigation. The threat evolving from this point increases with the level of corruption affecting a legislation.

The chart below illustrates the slightly modified flow of information in the case involving the PPO in the investigation of tax crimes.

Figure 2–Tax administration investigates under supervision of the PPO



Source: PROTAX

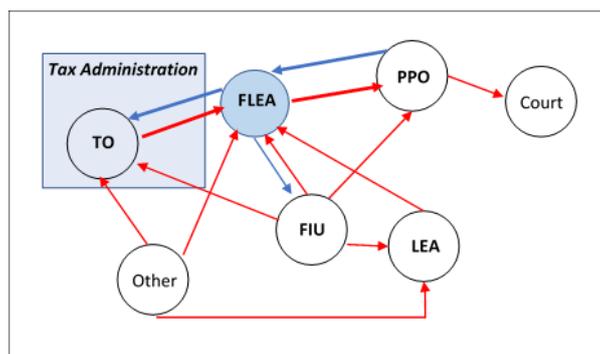
Legend

TO: Tax Office; FLEA: Fiscal Law Enforcement Agency; LEA: Police Law Enforcement Agency; FIU: Financial Investigation Unit; PPO:

With regard to the integration of the law enforcement into the tax administration, the same remarks articulated for the previous setting are also valid. The supervising or directing function of the PPO constitutes an important element and difference. Being able to fulfil this obligation, the PPO depends on the information gathered by the FLEA. So, an additional flow of information between these authorities has to take place. As they are part of different organisations, mutual understanding of the respective needs and expectations can only be built up by continuous feedback and communication. This seems to be systematically granted by the necessary interventions of the PPO. These permanent interactions between the FLEA and the PPO have the potential to slow down the investigation procedure. On the other hand, the intervention of an external authority in an early stage of the investigation makes the setting much less vulnerable to corruption and other malfeasant risks.

The third figure explains the information flow of investigations conducted by a specialised tax agency, being independent from the tax administration.

Figure 3—Independent specialised tax agency investigates



Source: PROTAX

Legend

TO: Tax Office; FLEA: Fiscal Law Enforcement Agency; LEA: Police Law Enforcement Agency; FIU: Financial Investigation Unit; PPO:

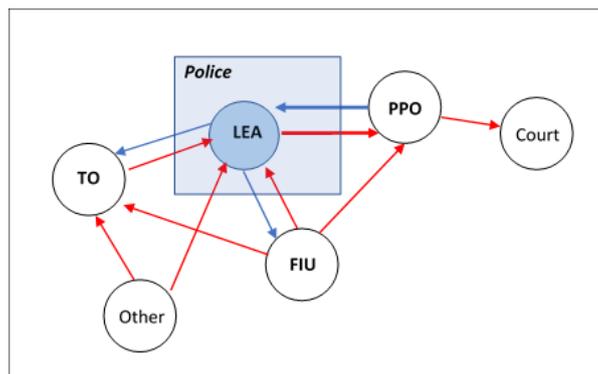
The speciality of this type of information flow and process lays in the independency of the specialised tax law enforcement agency from the tax authority. Being not integrated in the organisation of the tax administration the necessary information-flow has to be granted via specific legal provisions, as it could be the case that the tax authorities have complete discretion as to what information they hand over to the enforcement agency. On the other hand, as the tax law enforcement agencies are specialised in investigating tax crimes, there would be an expectation that they have thorough knowledge of the tax administration, thus they should know what to expect. It is also assumed that these law enforcement agencies have the same access to information as the tax authorities do. On the other hand, as tax authorities are not directly or regularly involved in investigations, they are not that familiar with the particularities of criminal procedures. Therefore, their awareness of what the needs for information of the enforcement agency are, seems not to be granted, potentially leading to the production of useless, incomplete or misleading information. Therefore, an institutionalised feedback and joint training should be in place.

There is no difference to the previous setting as to the interaction with the PPO.

2.1.2 Police is competent for investigating tax offences

The fourth figure illustrates the setting in which the investigation of tax offences is not in the competence of the tax authority at all but has to be conducted by the police.

Figure 4–Police investigates tax crimes



Source: PROTAX

Legend

TO: Tax Office; FLEA: Fiscal Law Enforcement Agency; LEA: Police Law Enforcement Agency; FIU: Financial Investigation Unit; PPO:

Police, as a completely different organisation, depends to a greater extent on input about tax crime suspicions coming from the tax authorities. This can be hampered by a lack of mutual understanding and trust of not homologous institutions. Therefore, a continuous and institutionalised communication with each other is essential as well as a legal framework, regulating this communication and complementary relation. The filter-function of the tax authorities is supposed to be more relevant than in the other settings, aggravated by the circumstance of different sources of information and access to them. Another point to mention is, that police usually is not always familiar with the particularities of taxation, but has plenty of experience with common offences like fraud, misappropriation or organised crime, affecting the understanding of information provided by tax authorities. Therefore, specialised police-units with additional skills in taxation, forensic accounting and economics, built up to investigate tax crimes, could be an advantage.

As police law enforcement agencies act under the supervision of PPOs, the relevant statements to the previous settings apply.

2.1.3 Involvement of FIUs

With regard to tax crimes, FIUs play a big role by providing information/intelligence. Information exchange between different authorities is particularly necessary when tax crimes and general criminal crimes coincide. The flow of information between FIUs and the authorities investigating tax crimes is common to all EU Member States and the UK. In this respect, four models of information exchange between the authorities can be identified according to the OECD,¹⁶ as already shown in D4.1:

1. Direct access to records and databases;
2. Mandatory spontaneous information-sharing or reporting obligations;
3. Spontaneous information; and
4. Information-sharing on demand.

¹⁶ OECD and The World Bank 'Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption' (OECD Publishing, 2018) < <https://www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.pdf> > (accessed 12.08.2020).; OECD 'Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition' (OECD Publishing, 2017) < <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm> > (accessed 12.08.2020).

However, FIUs are organised in different ways across the selected countries, whereby three¹⁷ types of FIUs can be outlined:¹⁸

1. Administrative units embedded in a ministry or supervisory authority;
2. Organised in the environment of Law Enforcement Agencies; and
3. Hybrid organisation with administrative and law enforcement elements.

These forms of organisation have also great impact on the way information-exchange takes place. This has been thoroughly examined in the ECOLEF study,¹⁹ identifying four main typologies of information chains with the FIUs as their centre:

1. FIU is part of the law enforcement (police cluster);
2. FIU is part of the PPO (judicial cluster);
3. FIU transmits information to all LEAs (star typology); and
4. FIU transmits information to the PPO (linear typology).

This study could demonstrate, that the “star typology” performs best especially in an environment with high corruption whereas the “police cluster” is preferable in societies with no corruption but high information decay.²⁰

As to the communication between FIUs on an international level, due to international standards on AML/CFT,²¹ FIUs are obliged to cooperate and share information. The **Egmont Group of Financial Intelligence Units** builds a platform on a global scale for communication between national FIUs. It unifies FIUs worldwide, providing the possibilities for secure exchange of intelligence and sharing of expertise. Its ‘Europe I’ region encompasses all 27 EU-Member States as well as Iceland and Norway. All other European countries including the UK, alongside with its territories Gibraltar, Guernsey, Isle of Man and Jersey are members of the Europe II region.²²

At EU-level, Council Decision 642/2000²³ obliges Member States to ensure that their FIUs cooperate with FIUs of other Member States. To support this communication, the **FIU.Net**, a computer network became operative in 2002 and is part of EUROPOL since 2016, acting as an information hub.²⁴

But the focus of the PROTAX study moves not only from the FIU to the LEA, but has the whole network of authorities involved in tax crime investigations and its effectiveness in view. Nevertheless, the performance of one player can boost or jeopardize the outcome of the entire prosecution process. Therefore, the findings of ECOLEF on the FIUs as part of the information sharing chain fit perfectly into the whole picture of tax crime prosecution, confirming that the ability to communicate with all relevant players is a crucial success-factor.

¹⁷ According to the IMF (Financial Intelligence Units: An Overview, Washington DC, 2004) also a judicial type of FIUs can be stated. This typology of four models is also used in the ECOLEF Study of 2013. As the judicial type is not represented among the examined countries, only three types are mentioned here. See also the reference in the following footnote.

¹⁸ Thirion, Elodie and Scherrer, Amandine, *Member States’ capacity to fight tax crimes, Ex-post impact assessment*, European Parliamentary Research Service, PE 603.257, 2017.

¹⁹ ECOLEF, *The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy – Final Report*, Utrecht University, 2013.

²⁰ Ibid. p. 173.

²¹ FATF (2012-2019), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, No. 36 to 40. < www.fatf-gafi.org/recommendations.html > (accessed 28.7.2020).

²² See: <https://egmontgroup.org/en/membership/list> (accessed 28.7.2020).

²³ Council Decision, 17. 10. 2000, 2000/642/JHA, OJ L 271, p. 4.

²⁴ See: < <https://www.europol.europa.eu/about-europol/financial-intelligence-units-fiu-net> > (accessed 28.7.2020).

On the other hand, this analysis also shows the complexity of structures emerging from different forms of organisation affecting the flow of information exchange. The embedding of FIUs into a national administrative environment builds a different layer of organisation to the agencies competent for investigating and prosecuting of tax crimes, not necessarily following the same structure. This causes an increasing variety of possible communication chains between these two layers.

2.1.4 Interaction with judicial authorities (PPO, judges)

The transmission of information and evidence gathered during the investigation process to the judicial authorities is a critical point in the information chain, and so as the quality and completeness of evidence are essential elements for the outcome of the trial stage.

As shown above, in most of the countries examined, the PPO supervises or directs the investigations conducted by the competent LEAs. In these cases, the investigating LEAs have to produce regular reports to the Public Prosecutor. For example, in Austria the Tax Law Enforcement Agency investigating a tax crime has to report to the Public Prosecutor about their findings at least every three months.²⁵ Moreover, highly sensitive measures like house search or the interception of tele-communication need the approval of a judge, compelling the LEA to interact with judicial authorities. On the other hand, the Public Prosecutors in most countries are conferred the power to order specific investigations to be executed by the Law Enforcement Agencies. All these necessary interactions and feedbacks are to enhance the mutual understanding and trust between agencies and entities involved in tax enforcement, leading to an investigation-file that meets the requirements for a successful prosecution.

2.2 Investigation of different kinds of offences

As statistics – as far as available – show, tax crimes only build a small fraction of the full spectrum of criminal behaviour, but can be closely connected with other offences and organised crime inter alia, money laundering, corruption, infringements of regulations concerning the labour market or fair competition rules. Usually, there are different authorities with the competence to investigate and prosecute such offences, but deal with the same facts more or less. In particular, the models for investigating and prosecuting tax crimes and corruption can be very different, as PROTAX has already demonstrated in its Report on comparative legal and institutional analysis.²⁶ So, there is a further need for interaction and cooperation between different agencies involved.

The following examples indicate how countries deal with such situations, relying on the findings of previous work packages.

2.2.1 Joint investigation teams

Building joint investigation teams (JITs), both, on national and international levels, are a favourable means for efficient investigation of a criminal conduct, constituting offences of different nature, falling in the competence of several authorities or legislations.

For international cooperation, a couple of legal frameworks expressly enable the creation of JITs. Even if some of them have their scope on other crimes, there can also be a close

²⁵ See section 100 of the Austrian PPC.

²⁶ PROTAX, D3.1, Report on comparative legal and institutional analysis, 2020, p. 226 f.

connection with tax crimes. This can be the case with corruption or dealing with narcotics, to give an example. Those multilateral and EU instruments include:

- Article 20 of the Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters;²⁷
- Article 13 of the EU Convention on Mutual Assistance in Criminal Matters 2000;²⁸
- Council Framework Decision on joint investigation teams, 2002/465/JHA;²⁹
- Article 49 of the United Nations Convention against Corruption (2003);³⁰
- Article 19 of the United Nations Convention against Transnational Organized Crime (2000);³¹ and
- Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).³²

Assisted by EUROPOL and Eurojust, many EU countries have reported good experiences and great success stories associated with the use of such teams.³³ Also countries, participating in focus groups, conducted by PROTAX, said focus groups are a success-factor for investigating cross-border tax crimes. For example, Finland applies this means on a regular basis.³⁴

As an example on national basis, in Austria, JITs have been applied to investigate a network of sham companies in the construction industry, employing persons from Eastern Europe without fulfilling the obligation to pay social security contributions and payroll tax as well as infringing regulations on working conditions and minimum wages.³⁵ As several authorities with different competences have been involved, a joint investigation team was built up as a task force with the subsequent success story behind them.

The advantage of this form of cooperation is the gathering and availability of information from all related authorities immediately. On the other hand, this means is only feasible if simultaneous investigations can be conducted.

²⁷ Second Additional Protocol to the Europe Convention on Mutual Assistance in Criminal Matters, Strasbourg 2001, ETS No.182, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008155e> (accessed 26.7.2020).

²⁸ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197/2000, p. 3, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02000A0712\(01\)-20000712](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02000A0712(01)-20000712) (accessed 26.7.2020).

²⁹ Council Framework Decision on joint investigation teams, 2002/465/JHA of 13.6.2002, OJ L 162/2002, p. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0465&from=EN> (accessed 26.7.2020).

³⁰ United Nations Convention Against Corruption, 31.10.2003, Resolution 58/4, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (accessed 26.7.2020).

³¹ United Nations Convention against Transnational Organized Crime, 14.11.2000, Resolution 55/25, < <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> > (accessed 26.7.2020)

³² United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, < [https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The International Drug Control Conventions E.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf) > (accessed 26.7.2020).

³³ EUROPOL, Joint Investigation Teams, < <https://www.europol.europa.eu/activities-services/joint-investigation-teams>; Safe Communities Portugal, Major Cybercrime Ring Dismantled by Joint Investigation Team, <https://www.safecomunitiesportugal.com/cybercrimealerts/europol-major-cybercrime-ring-dismantled-by-joint-investigation-team/> > and RTE, Three arrested over Kevin Lunney attack and abduction released, < <https://www.rte.ie/news/ulster/2020/0306/1120560-kevin-lunney-investigation/> > (accessed 12.08.2020).

³⁴ PROTAX, Approaches to tax crimes in the European Union, WP2 – Focus groups to explore institutional practices in anti-money laundering and tax evasion, D2.3, 2019, p 81.

³⁵ See: APA, 'BMF: Erfolgreicher Schlag gegen internationales Bau-Betrugsnetz', OTS0052 5 CI 0562 NFI0001 WI 27.9.2017, < https://www.ots.at/presseaussendung/OTS_20170927_OTS0052/bmf-erfolgreicher-schlag-gegen-internationales-bau-betrugsnetz > (accessed 26.7.2020).

2.2.2 Secondment of officials

Another applied measure to secure the flow of information between different LEAs in the course of investigations into connected offences is the secondment of skilled officials to other agencies involved. In such a setting specialised expertise and knowledge can be transferred more easily. Through the personal presence of the expert, more information can be shared in verbal exchanges. Issues can be discussed more efficiently and it is easier to ask further questions and make enquiries. This measure is applicable even if simultaneous investigation is not possible. As an example, based on an agreement between the Ministry of Finance and the Ministry of Justice, an expert of the Austrian Tax Administration is seconded to the Public Prosecution Office, dealing with economic crimes (including serious tax crimes) and corruption. This makes investigations more efficient and opens up speedy communication channels between the Tax Law Enforcement Agencies and the PPO.

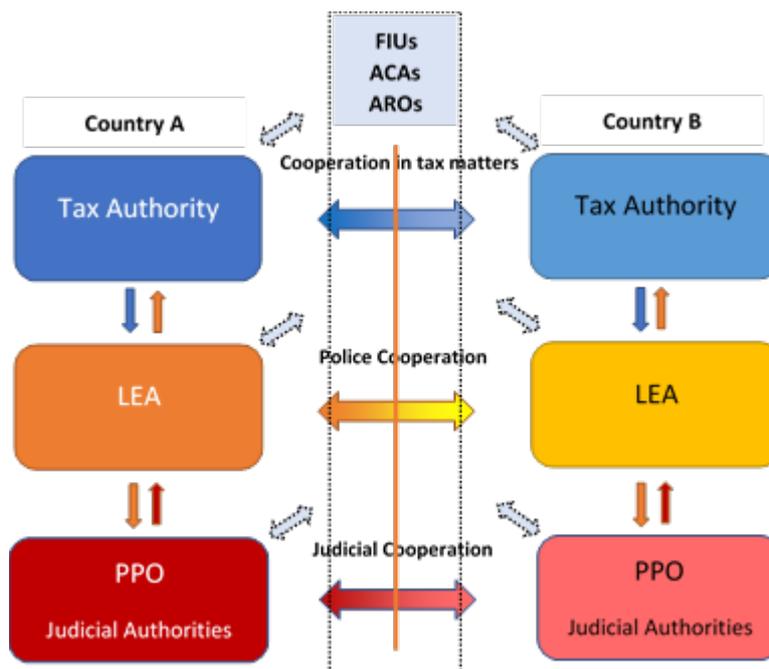
3. Existing legal instruments and frameworks for international cooperation and information sharing

The success of LEAs in the fight against tax-fraud depends on the cooperation and the sharing of all relevant information among them. For efficient and effective proceedings, the smooth interaction and cooperation of all players is crucial. This is true not only for investigating agencies of a country, but also in an international setting. To this end, several conventions on a multilateral basis as well as in the context of the EU have been concluded and the EU acquis also provides for specific instruments.

Investigating tax crime is always strongly interlaced with taxation. Therefore, not only the means for criminal cooperation but also for administrative assistance in tax matters are indispensable for trans-border information-gathering and exchange.

As prescribed in the previous section, several authorities within a legal regime may be involved in criminal tax investigations including the tax authorities, the LEAs (part of the tax administration or of the police) and the judicial authorities (the PPOs at the first instance) whereby each of them use their relevant channels of communication.

Figure 5–International Communication



Source: PROTAX

Moreover, other authorities and agencies can occasionally interact with LEAs engaged in investigating tax offences, each embedded in their own organisational ecosystem, like FIUs, Anti-corruption agencies (ACAs) or asset recovery offices (AROs). They build additional layers in the picture of communications.

The most important instruments used by the LEAs in the fight against tax crime are portrayed in the following section.

3.1 Non-EU multilateral instruments

The importance of international cooperation and information exchange in criminal tax matters has been recognised since decades. Therefore, efforts have been made on European and international levels to create standardised mechanisms for international interaction. This interaction comprises means of cooperation like interrogation of witnesses or prosecuted persons, delivery of documents or conducting joint investigations as well as the sharing of relevant information. Both forms of interaction are usually addressed in relevant legal instruments and therefore not separately discussed.

As tax crimes are intrinsically tied to tax law, also international cooperation between tax authorities comes into play.

The following portray the most important multilateral instruments in praxis.

3.1.1 European Convention on Mutual Assistance in Criminal Matters 1959³⁶

This convention deals with the international cooperation in criminal matters between judicial authorities and under the Second Additional Protocol 2001 also between LEAs.

It is the preferable legal basis for countries not applying the European Investigation Order (e.g. Ireland and Denmark) as well as for those Member States which do not apply the Convention

³⁶ Council of Europe, Treaty Office, ETS No 030, < <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/030> > and < <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/rms/09000016800656ce> > (accessed 12.08.2020).

on Mutual Assistance in Criminal Matters between the Member States of the European Union (e.g. Estonia, Greece and Italy) and for third countries applying this convention.

It is worth noting that the **Additional Protocol 1978**³⁷ has expanded the application of this Convention on fiscal offences. Furthermore, the **Second Additional Protocol 2001**³⁸ has expanded the provisions of the Convention on “administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters” (Art1(3)) which covers also legal persons (Art1(4)).

Measures provided for in this convention are:

- Procuring evidence, records or documents (Art. 3)
- Presence of officials of the requesting Party (Art. 4)
- Service of documents (Art. 7)
- Interrogation of witnesses, experts and prosecuted persons (Art. 8 ff)
- Temporary transfer of detained persons (Art 11)
- Transmission of information in connection with proceedings and of judicial records (Art. 21f)
- Presence of officials of the requesting Party (Art. 2, 2nd Additional Protocol)
- Spontaneous information (Art. 11, 2nd Additional Protocol)
- Cross-border observations (Art. 17, 2nd Additional Protocol)
- Covert investigations (Art. 19, 2nd Additional Protocol)
- Joint investigation teams (Art. 20. 2nd Additional Protocol)

3.1.2 OECD Convention on Mutual Administrative Assistance in Tax Matters:³⁹

The OECD Convention provides avenues for mutual **administrative assistance** between **tax authorities** in tax proceedings, even if there are pending criminal investigations. It covers tax-periods starting from 1 January 2015 and in case of suspicion of tax evasion, it applies to periods starting from 1 January 2011.

The provisions of the OECD Convention can be used in criminal proceedings, save there have been no coercive measures applied.

The measures available therein are:

- Exchange of information regarding Personal Income Tax and Corporate Tax (VAT only if there is no reservation made);
- Spontaneous information if there is suspicion on tax evasion;
- Notification assistance (safe reservation has been made);
- Direct notification via post service; and
- Participation at tax audits executed by the requested country.

For the EU Member States, the Council Directive 2011/16/EU prevails if applicable.⁴⁰

³⁷ Council of Europe, Treaty Office, ETS No 099, < <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680077975> > (accessed 12.08.2020).

³⁸ Council of Europe, Treaty Office, ETS No 182, < <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008155e> > (accessed 12.08.2020).

³⁹ OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters of 1988 as amended by Protocol of 2010, < https://www.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en > (accessed 02.07.2020).

⁴⁰ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, < <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32011L0016>.

3.1.3 OECD Model Tax Convention

The OECD Model Tax Convention on Income and on Capital⁴¹ is not a binding convention as such, but aims to provide a tool for a uniform handling of double taxation (or double non-taxation) problems arising from the imposition of similar taxes in two jurisdictions on the same taxpayer for the same taxable circumstance. These problems are solved by means of a network of bilateral double taxation treaties, usually following the OECD Model Tax Convention, whose latest update is from 2017.

Art. 26 of this Model Convention provides for a broad exchange of information between the tax authorities of the contracting states. Information sharing based on Art. 26 of the Model Convention is not restricted to the purposes of execution of the treaty, but comprises all information “foreseeably relevant” for the administration of all taxes imposed on behalf of the contracting state or its subdivision. The exchange of information under this instrument between tax authorities is even permitted if criminal proceedings are pending.⁴²

3.2 European Union Legal Instruments

The specific situation of a single market and open borders, facilitating not only economic activities but also criminal conducts and cheating taxation, induced the development of European Union instruments on information sharing and cooperation between the Member States authorities as well as in tax matters as in criminal matters. Those instruments have particular practical importance for the interaction of the Member States in the fight against tax crime, as they go partly far beyond the possibilities, which the non-EU-instruments provide. So, an automatic information exchange in particular sensitive fields of taxation has been introduced or the possibility not only to request, but to order specific investigations in another Member State has been introduced, to give some examples.

With respect to the **United Kingdom**, who already has left the European Union on 31 January 2020, the legal instruments under EU-Legislation stay in force until the end of the transition period on 31 December 2020.⁴³ As intensive negotiations on the future relationship between the UK and the EU are ongoing, the legal situation after the end of the year 2020 is not predictable at the time of drafting this report. In the worst case of an “Hard Brexit” all EU instruments would not be applicable any more in the relation with the UK, causing palpable restrictions of information sharing and other forms of cooperation in the fields of taxation and fighting tax crimes. Also, the participants of the UK focus group, conducted by PROTAX⁴⁴, expressed their concerns, that “Brexit” can cause a reluctance to cooperate and a decrease of the quality of cooperation. They even fear a downgrading of the fight against tax crimes in the list of priorities.

The following portray the EU legal instruments on cross-border information sharing, relevant for the investigation and prosecution of tax crimes, starting with the cooperation of tax authorities and continuing with police and judicial cooperation.

⁴¹ OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en > (accessed 4.8.2020).

⁴² OECD (2006), Manual on the Implementation of Exchange of Information Provisions for Tax Purposes, p. 6, < <https://www.oecd.org/ctp/exchange-of-tax-information/36647823.pdf> > (accessed 26.7.2020).

⁴³ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 2020/29-7, especially Art. 62 ff, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12020W/TXT&qid=1596707377523&from=EN> (accessed 26.7.2020).

⁴⁴ PROTAX, Approaches to tax crimes in the European Union, WP2 – Focus groups to explore institutional practices in anti-money laundering and tax evasion, D2.3, 2019, p. 80.

3.2.1 Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax⁴⁵

This regulation builds the primary legal basis in the field of cooperation between tax authorities of the MS in the field of **VAT**. Corresponding to the particular importance of VAT as a harmonised indirect tax,⁴⁶ the rules for international cooperation⁴⁷ had been enacted using the legal form of a regulation.⁴⁷ It aims to enhance administrative cooperation and to combat VAT-fraud. To that end, it provides for the following measures:

- Exchange of all necessary information regarding VAT;
- Including information on bank accounts (Art. 54(1)5);
- Information received by tax authorities before initiating criminal proceedings may be used within those criminal proceedings;
- In case of parallel criminal proceedings, the defender's rights have to be respected. The requested country has to be notified accordingly (Art. 55(1));
- Spontaneous or automatic information if there is suspicion on tax evasion (Art. 13(1)); and
- Joint administrative enquiries (Art. 28) and simultaneous controls (Art. 29).

Moreover, Regulation 904/2010 establishes with **EUROFISC** a network between Member States "to promote and facilitate multilateral cooperation in the fight against VAT fraud" (Art 33 ff). Within EUROFISC, the Member States:

- Establish a multilateral early warning mechanism;
- Exchange, process and analyse targeted information on cross-border fraud;
- Act on warnings and information received; and
- Coordinate administrative enquiries of fraud identified by EUROFISC liaison officers.

Despite the far-reaching possibilities for sharing information it remains to state, that this Regulation addresses only tax administrations and only information in relation to VAT. So, judicial agencies and LEAs cannot use it as basis for criminal investigations independently from tax proceedings. This is also reflected in Art. 1(3), stipulating that "the application in the Member States of the rules on mutual assistance in criminal matters" shall not be affected by this Regulation.

3.2.2 Directive 2011/16/EU on administrative cooperation in the field of taxation⁴⁸

This directive provides the primary legal basis of information exchange in the field of **direct taxes** between tax authorities of Member States and builds the second backbone of administrative cooperation in tax matters. Known under the label "DAC" there has been a permanent evolution and expansion of this directive with up to now five amendments as shown in the following table:

⁴⁵ Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax of 7.10.2010, OJ L 268/2010, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0904&qid=1596707094510&from=EN> (accessed 26.7.2020).

⁴⁶ Council Directive 2006/112/EC on the common system of value added tax of 28 November 2006, OJ L 2006/347, < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596717683435&uri=CELEX:32006L0112> > (accessed 12.08.2020).

⁴⁷ Based on Art. 113 TFEU.

⁴⁸ Council Directive 2011/16/EU on administrative cooperation in the field of taxation of 15.2.2011, OJ L 64/2011, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0016&qid=1596707926695&from=EN> > (accessed 26.7.2020).

Table 4–Development of Directive 2011/16/EU

Directive	Basic content
DAC 1	Directive 2011/16/EU on administrative cooperation in the field of taxation of 15.2.2011
	<ul style="list-style-type: none"> • Exchange of information on request regarding taxes of any kind (with the exception of VAT, customs duties, excise duties and compulsory social contributions) including necessary inquiries. • Information held by banks or financial institutes. • Spontaneous exchange of information in case of suspicion on tax evasion. • Automatic exchange of information about income from employment, pensions, director’s fees, life insurances and immovable property about residents of another MS. • Participation in administrative enquiries. • Simultaneous controls. • Information received by tax authorities before initiating criminal proceedings may be used within those criminal proceedings. • In case of parallel criminal proceedings, the defender’s rights have to be respected and the requested country has to be notified accordingly.
DAC 2	Directive 2014/107/EU of 9.12.2014 ⁴⁹
	<ul style="list-style-type: none"> • Automatic exchange on financial account information about residents of another MS.
DAC 3	Directive 2015/2376/EU of 8.12.2015 ⁵⁰
	<ul style="list-style-type: none"> • Automatic exchange of information about cross-border tax rulings and advance pricing agreements concerning businesses of any form of organisation, but not natural persons.
DAC 4	Directive 2016/881/EU of 25.5.2016 ⁵¹
	<ul style="list-style-type: none"> • Automatic exchange of country-by-country reports from Multinational Groups located in the EU.

⁴⁹ Council Directive 2014/107/EU of 9.12.2014, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 2014/359, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0107&from=EN> > (accessed 26.7.2020).

⁵⁰ Council Directive 2015/2376/EU of 8.12.2015, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 2015/332, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0332&qid=1596707926695&from=EN> > (accessed 26.7.2020).

⁵¹ Council Directive 2016/881/EU of 25.5.2016, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 2016/146 p. 8, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0881&from=EN> > (accessed 26.7.2020).

	Directive	Basic content
DAC 5	Directive 216/2258/EU of 6.12.2016 ⁵²	<ul style="list-style-type: none"> • Access of tax authorities to beneficial ownership information collected on the basis of anti-money-laundering legislation.
DAC 6	Directive 2018/882/EU of 25.5.2018 ⁵³	<ul style="list-style-type: none"> • Automatic exchange of information about tax-planning cross border arrangements reported by obliged intermediaries.

The development is towards the extension of mandatory automatic information exchange on areas identified as particularly harmful to the assessment of the appropriate tax base. The Commission has already published an evaluation on this Directive⁵⁴ considering the amendments up to DAC 5 as far as possible. This evaluation, suffering from limited data, nevertheless deems the Directive to be relevant especially in terms of tackling substantial problems in fighting tax evasion. It was also effective in contributing to an improved ability to fight tax crimes. On the other hand, despite lack of data, problems addressed with DAC 3 and DAC 4 seem very huge. The evaluation also shows, that MS do not make use of the tools provided in the same extent, giving reason to improve information.

The development of the DAC is not completed. Recently, the Commission has launched two proposals. The first of 12 February 2020,⁵⁵ focuses on a new codification of the Directive, due to the frequent amendments during the past few years, making it difficult for practitioners to orientate. This codification intends no further amendments.

The objection of the proposal of 15 July 2020 for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation⁵⁶ is the enhancement of existing provisions and the extension of the scope of automatic exchange of information. Upon the proposed changes the most important seem to be:

- Introducing and defining the standard of “foreseeable relevance” in case of a request for information.
- Introducing the possibility of group requests.
- Including royalties into the categories of income subject to mandatory automatic exchange of information.

⁵² Council Directive 216/2258/EU of 6.12.2016, amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities, OJ L 2016/342 p 1, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2258&from=EN> > (accessed 26.7.2020).

⁵³ Council Directive 2018/882/EU of 25.5.2018, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L 2018/139 p. 1, < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0822&from=EN> > (accessed 26.7.2020).

⁵⁴ Commission Staff Working Document of 12.9.2019, Evaluation of the Council Directive 2011/16/EU, SWD(2019) 327 final, < https://ec.europa.eu/taxation_customs/sites/taxation/files/2019_staff_working_document_evaluation_on_dac_summary_en.pdf > (accessed 26.7.2020).

⁵⁵ European Commission, Proposal for a Council Directive on administrative cooperation in the field of taxation (codification), COM(2020) 49 final, < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0049> > (accessed 26.7.2020).

⁵⁶ European Commission, Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, COM(2020) 314 final, < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596746287562&uri=CELEX:52020PC0314> > (accessed 26.7.2020).

- Stipulating reporting rules for operators of digital platforms providing persons to sell goods, provide services or invest and lend in the context of crowdfunding.
- Mandatory automatic exchange of reported information of platform provider.
- Improvement related to the presence of officials during an enquiry in another MS and simultaneous controls.
- Clear legal framework on joint audits.
- Information exchanged can be used also with respect to VAT or other indirect taxes.

This possibly upcoming “DAC 7” seems to meet demands for improvement in the area of e-commerce, expressed also in the PROTAX focus groups.⁵⁷

It is to state a clear tendency towards automatic exchange of information wherever useful to provide the MS with available data in the covered areas on a regular basis.

3.2.3 FICALIS 2020

“To improve the operation of the taxation systems in the internal market and support cooperation in relation thereto”, the EU established **FISCALIS** programmes, covering VAT and direct taxes. The current programme is based on the FISCALIS 2020 Regulation.⁵⁸ Fighting tax fraud, tax evasion and aggressive tax planning is one of the main objectives of this programme. To achieve its goals, information sharing tools⁵⁹ have been developed and implemented to enable a secured communication between the tax authorities of the MS. It also supports administrative cooperation activities like joint audits (JA) and multilateral controls (MLC) or organises seminars and trainings to discuss challenges of the day by day work and improve the application of EU-legislation on taxation.⁶⁰

3.2.4 “Swedish Initiative”⁶¹

The Council Framework Decision 2006/960/JHA (also known as the Swedish Initiative) aims to enhance international cooperation between LEAs.

It contains limitations related to tax offences:

Existing information or intelligence on request in the context of intentional tax offences (excluding misdemeanours).

It applies in the following circumstances and if certain conditions are met:

- Only in case of reciprocity and proportionality;
- Only existing information (no investigation);

⁵⁷ PROTAX, Approaches to tax crimes in the European Union, WP2 – Focus groups to explore institutional practices in anti-money laundering and tax evasion, D2.3, 2019, p. 74.

⁵⁸ Regulation (EU) 1286/2013 of 11.12.2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (FISCALIS 2020) and repealing Decision No 1482/2007/EC, OJ L 347/2013 p. 25, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2013:347:TOC> (accessed 3.8.2020).

⁵⁹ Secure Common Communication Network/Common Systems Interface (CCN/CSI)

⁶⁰ For more information on the impact and activities under the Fiscalis 2020 programme see: Fiscalis 2020 Programme – Progress Report 2018, Commission staff working document of 3.12.2019, SWD(2019) 429 final, https://ec.europa.eu/taxation_customs/sites/taxation/files/fiscalis_2020_programme_progress_report_2018.pdf (accessed 26.7.2020) and the annual working programme, Annex to the Commission implementing decision on the financing of the FISCALIS 2020 programme and the adoption of the work programme for 2020, and authorising the use of unit costs under this programme, C(2020) 482 final, https://ec.europa.eu/taxation_customs/sites/taxation/files/1_awp_2019_f_en.pdf (Accessed 26.7.2020).

⁶¹ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386/2006.

- Spontaneous information only in relation to criminal offences according to Art. 2(2) EAW⁶² (EU-Arrest-Warrant), comprising fraud affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;⁶³
- Communication of data still reported to the PPO need its approval;
- Data or intelligence may be used for investigation. If they shall be used as evidence in court proceedings, the consent of the providing MS has to be obtained, where necessary through the use of instruments of judicial cooperation; and
- Received information may be used solely for the purposes for which it has been supplied. The use for other purposes needs prior authorisation from the communicating MS.

3.2.5 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁶⁴

This convention supplements and extends the application of the European Convention on Mutual Assistance in Criminal Matters and its Protocol of 17 March 1978 in relation to Member States. It has been derogated as far as the European Investigation Order is applicable. The measures available in relation to EU MS include:

- Notification;
- Exchange of information without request;
- Restitution of objects to their legal owner;
- Joint investigation-teams; and
- Transfer of criminal prosecution.

3.2.6 Directive 2014/41/EU Regarding the European Investigation Order in Criminal Matters⁶⁵

This is arguably the most relevant instrument for transnational criminal investigations within the EU.

The measures available under this Directive include:

- All measures applicable under domestic law except those mentioned below; and
- The use of the prescribed form is mandatory.

The following measures are not covered by the Directive:

- Notification;
- Exchange of information without request;
- Restitution of objects to their legal owner;
- Joint investigation-teams; and
- Transfer of criminal prosecution.

It seems reasonable not to include the abovementioned measures into the EIA-Instrument, as they do not match with the scope of an "Investigation Order".

⁶² Framework Decision 584/2002 of 13.6.2002, OJ L 190/2002 p. 1.

⁶³ It is questionable if the scope of this provision has been affected by the PIF Directive.

⁶⁴ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197/2000.

⁶⁵ Directive 2014/41/EU of 3. 4. 2014 regarding the European Investigation Order in criminal matters, OJ L 130/2014.

3.2.7 Convention implementing the Schengen Agreement⁶⁶

The Legal Basis is provided by the Convention of 14 June 1986.⁶⁷

The scope of this legal instrument encompasses:

1. Police cooperation (Art. 39 passim):
 - Assisting each other in preventing and detection of criminal offences;
 - Requests for assistance have to be exchanged between central bodies, in urgent cases also direct;
 - Surveillance not applicable in tax crime investigation (Art, 40(7));
 - Hot pursuit if extraditable tax offences are related (Art 41);
 - Exchange of information; and
 - Secondment of liaison officers.
2. Mutual Assistance in criminal matters (Art. 48 ff):
 - Supplements the European Convention on Mutual Assistance in Criminal Matters 1959 and facilitates its implementation;
 - Applicable also by administrative authorities in respect of acts punishable as infringements and the decision may be brought before a court having jurisdiction in criminal matters (Art. 49);
 - Tax offences related to excise duties, value added tax and customs duties are covered (evasion has to exceed 25 000 ECU);
 - Direct delivery of procedural documents by post (Art. 52); and
 - Request for assistance may be made directly between judicial authorities (Art. 53).

As a secured channel for the exchange of information under this Conventions, the Schengen Information System (SIS) is maintained.

Though the focus of this instrument lies not on tax crimes, it can be the basis of operation in connected cases and explicitly when VAT, excise duties or customs duties are at play.

3.2.8 Directive 2019/1153 on rules facilitating the use of financial and other information⁶⁸

This recent Directive, to be transposed into national law until 1. August 2021, targets the information sharing between FIUs and other authorities, competent “for the prevention, detection, investigation or prosecution of serious criminal offences” as well as on national as on international level. It aims to facilitate the access and the use of financial information and bank account information by competent authorities and the access to law enforcement information by FIUs. To this end, inter alia, the following measures have to be introduced:

- Designating of “competent authorities” by each MS (whereas the Asset Recovery Offices have to be among them) having direct access to banking account registers.
- Designating of competent authorities, entitled to request and to receive financial information or financial analyses from FIUs.
- Notification of designated authorities to the Commission.
- Laying down the conditions for access to information and requests.
- Designated authorities are competent to reply on requests of FIUs for law enforcement information.

⁶⁶ Convention implementing the Schengen agreement of 14. June 1986, OJ L 239/2000 p 19.

⁶⁷ OJ L 239/2000, p 19.

⁶⁸ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, OJ L 2019/186 p. 122, < <https://eur-lex.europa.eu/eli/dir/2019/1153/oj> > (accessed 26.7.2020).

- Enabling the exchange of information between competent authorities of different MS via dedicated secure electronic communication.
- Exchange of financial and banking information with EUROPOL via SIENA or FIU.net.
- Introducing a monitoring system.

Once transposed accordingly, this Directive can help to solve some shortcomings in the exchange of information between FIUs and LEAs and between FIUs of different countries, which was also communicated by participants on the focus groups, conducted by PROTAX under WP 2.

3.3 Multilateral Frameworks supporting international cooperation

INTERPOL (International Criminal Police Organization) is the most important multinational framework supporting international cooperation of LEAs across the world. Its aim is to enable police forces around the world to work together in the prevention of and the fight against international crime. To this end, it offers infrastructure of technical and operational support, provides relevant data and secure communications channels. Thus, INTERPOL is the most important channel for the exchange of information between LEAs in tax crime investigations, independent of the underlying legal instrument.

INTERPOL's areas of activity include for example criminal intelligence analysis, fugitive investigative support and capacity building. With the data provided by the member states, Interpol can conduct effective and timely intelligence analysis and the results help to “deal more effectively with uncertainty in the policing environment, prepare for new security challenges, and establish investigative and programmatic priorities”⁶⁹. With its Command and Coordination Centre INTERPOL provides a “first point of contact for any country requiring urgent assistance from the General Secretariat or from another country”⁷⁰. By providing investigative support, deliver training, bring experts together and encourage sharing of best practice, INTERPOL also provides support with fugitive investigations.

The backbone of its legal framework is the “Constitution of the ICPO-INTERPOL”, adopted by the General Assembly Vienna 1956 which has been amended 2017.⁷¹

3.4 European Frameworks supporting international cooperation

On European level, one can state a continuous development of frameworks aiming to assist and strengthen the communication and cooperation between MS in fighting serious crime, covering crime against the financial interest of the Union. This development got a strong boost since the Lisbon Treaty 2007, mounting in the establishment of the European Public Prosecutor’s Office.

Despite the importance of the EU agencies and offices dealing with the fight on cross border, severe and organised crime, one shortfall is the fight against tax crimes. Their scope is limited to tax offences affecting the financial interests of the EU. Therefore, their competence covers VAT related offences only as explained in detail in D3.1.

Below section identifies the most prominent European institutions addressing tax crimes

⁶⁹ See: < <https://www.interpol.int/How-we-work/Criminal-intelligence-analysis> > (accessed: 6.8.2020).

⁷⁰ See: < <https://www.interpol.int/How-we-work/Command-and-Coordination-Centre> > (accessed: 6.8.2020).

⁷¹ See: < <https://www.interpol.int/en/Who-we-are/Legal-framework/Legal-documents> > (accessed: 2.7.2020)

3.4.1 EUROPOL (European Union Agency for Law Enforcement Cooperation)⁷²

The Legal basis for EUROPOL is underpinned by Art. 87 TFEU (police cooperation) and Art. 88 TFEU (EUROPOL). Furthermore, Regulation (EU) 2016/794 of 11. 5. 2016, OJ L 135/2016 S 53 [EUROPOL Regulation] provides detailed objectives for this LEA (Art. 3 EUROPOL Regulation):

- To support and strengthen action by the competent **police authorities** and **other law enforcement services** of the MS and their mutual cooperation in preventing and combating **serious crime** affecting **two or more MS**, terrorism and forms of crime which affect a common interest covered by a Union policy, as listed in Annex I.

In addition, other related criminal offences which are covered include *inter alia* those:

- Committed in order to procure the means of perpetrating acts;
- Committed in order to facilitate or perpetrate acts; and
- Committed in order to ensure the impunity of those committing acts.

All acts in respect of which EUROPOL is competent also include (as per Annex I) *inter alia*:

- Money-laundering activities;
- Swindling and fraud; and
- Crime against the financial interests of the Union.

Organisation:

Each MS shall designate a national unit, functioning as liaison body with EUROPOL and the competent authorities of the MS. FIUs shall be allowed to cooperate with EUROPOL (Art 7(2) EUROPOL Regulation).

EUROPOL acts with liaison officers, designated by the MS (Art. 8 EUROPOL Regulation).

Based on Art. 4, para 1, sub-para I of EUROPOL Regulation, on the 5th of June 2020 EUROPOL has launched a new **European Financial and Economic Crime Centre (EFECC)**. This centre of specialised expertise aims to enhance the operational support of the MS in the fields of financial and economic crime and to promote the systematic use of financial investigations. This is seen in the context of organised crime, relying on money laundering and criminal finances in order to make use of the illicit profit. Therefore, the EFECC shall support the MS to cut off the flow of these illicit profits and to enforce the possibilities of their confiscation.

As the competence of EUROPOL in criminal tax matters is limited to those affecting the financial interests of the EU as defined within the PIF-Directive, this channel of information exchange is only used in VAT related matters. However, it should provide the starting point for developing the area of cooperation in other forms of tax crimes.

There are numerous examples of successful cooperation within Europol. In 2018, the Spanish Guardia Civil collaborated with the Spanish Tax Agency and with support by Europol, was able to dismantle a Chinese criminal organisation that imported goods into the EU from China. The joint action succeeded in seizing EUR 8 million in cash from these fraudsters.⁷³ In 2019,⁷⁴ the Hungarian National Tax and Customs Administration was able to seize almost €2.3 million after unravelling a sophisticated VAT fraud scheme involving fake invoicing. EUROPOL experts equipped with mobile offices and Universal Forensic Extraction Devices (UFED) to facilitate the smooth exchange of information supported the investigations on the spot. This allowed carrying out European Investigation Orders simultaneously in Poland, Slovakia and the United

⁷² See: < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596963347916&uri=CELEX:32016R0794> > (accessed 26.7.2020).

⁷³ See: < <https://www.europol.europa.eu/newsroom/news/big-hit-against-tax-evading-chinese-criminal-group-operating-in-spain> > (accessed: 6.8.2020).

⁷⁴ See: < <https://www.europol.europa.eu/newsroom/news/carousel-of-vat-abuse-dozens-arrested-in-connection-multi-million-tax-evasion-schemes> > (accessed: 6.8.2020).

Kingdom. This year⁷⁵ Europol supported the Czech National Organised Crime Agency in a Joint Investigation Team with the Slovak National Criminal Agency in close cooperation with the Czech Financial Intelligence Unit and the Czech Financial Administration to arrest 23 people suspected of tax evasion through employment agencies.

3.4.2 EUROJUST (European Union Agency for Criminal Justice Cooperation)

The legal basis is provided by Art 85 TFEU (EUROJUST), and Regulation (EU) 2018/1727 of 14.11.2018, OJ L 295/2018 [EUROJUST Regulation].⁷⁶

The objectives are articulated by Art. 85 TFEU and Art. 2 EUROJUST Regulation which include:

- Supporting and strengthening the coordination and cooperation between national **investigating and prosecuting authorities** in relation to **serious crime** affecting two or more MS, or requires prosecution on common basis.

Serious crime, falling in the competence of EUROJUST, is defined by Art. 3 EUROJUST Regulation and its Annex I. This corresponds to those for which EUROPOL has the competence to deal with and covers as well money-laundering activities, swindling and fraud and crime against the financial interest of the Union.

Organisation:

EUROJUST consist of one national member, delegated by each MS, who is assisted by a deputy and Assistants (Art. 7 EUROJUST Regulation). It acts through one or more of the national members concerned (Art. 5).

3.4.3 EJM (European Judicial Network)

Legal basis:

Council Decision 2008/976/JHA 16.12.2008 (OJ L 348/2008 S 130) on the European Judicial Network (EJM).⁷⁷

The EJM operates in three ways (Art. 3 EJM Decision) in order to achieve the following objectives:

- Facilitating the establishment of appropriate contacts between the contact points of the MS;
- Organising periodic meetings of the representatives of the MS; and
- Constantly providing a certain amount of up to date information (by means of a telecommunications network).

EJM is made up of the MS's central authorities responsible for international judicial cooperation and other competent authorities in this field (Art. 2(1) EJM Decision). These contact points shall be active intermediaries, facilitating judicial cooperation between MS to combat serious crimes (Art. 4(1)). EJM maintains privileged relation with EUROJUST (Art. 10).

3.4.4 EPPO (European Public Prosecutor's Office)

The legal basis for the EPPO is provided by Art. 86 TFEU and the Council Regulation (EU) 2017/1939 of 12 October 2017, OJ L 283/2017 S 1 [EPPO Regulation].⁷⁸

⁷⁵ See: < <https://www.europol.europa.eu/newsroom/news/scammers-arrested-after-evading-%E2%82%AC72-million-in-tax> > (accessed: 6.8.2020).

⁷⁶ See: < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596963823888&uri=CELEX:32018R1727> > (accessed 26.7.2020).

⁷⁷ < <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2008:348:FULL&from=IT> > (accessed 26.7.2020).

⁷⁸ < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596964006406&uri=CELEX:32017R1939> > (accessed 26.7.2020).

The EPPO is responsible for investigating, prosecuting and bringing to judgment criminal offences affecting the financial interests of the Union as provided for in the PIF-Directive and determined by Art. 22 of the EPPO-Regulation. Within its competence, the EPPO undertakes investigations and acts as prosecutor in the competent courts of the MS (Art. 4).

The structure of the EPPO is organised as follows:

The EPPO is an indivisible Union body operating as a single Office with a decentralised structure. Its central level consists of a Central Office consisting, *inter alia*, of the College, the Permanent Chambers, the European Chief Prosecutor and its Deputies and the European Prosecutors. On its decentralised level the EPPO consists of European Delegated Prosecutors, located in the MS (Art. 8).

To be able to exercise its competence, according to Art 24, the authorities of the MS and the EU are obliged to report any criminal conduct to the EPPO, possibly falling in its competence. On the other hand, the EPPO may request relevant information available in the institutions of the EU and the authorities of the MS (Art. 24(9)). On verification of these reports and information gathered by the EPPO, he may decide to exercise his right of evocation according to Art. 27. The EPPO has to consult the competent authority of the MS if he wants to refrain from exercising his competence in a specific case (Art. 25).

If the EPPO gets knowledge from investigations of a criminal conduct, possibly falling into its competence from other sources, it has to inform the competent authority of the MS (Art. 27(3)).

Nevertheless, the EPPO may only exercise its competence in cases causing less than 10 000 EUR damage to the Union, if there are specific repercussions at Union level or EU-officials are involved (Art. 25 (2)). Furthermore, the EPPO shall refrain from exercising its competence if the damage on revenues other than VAT caused to the Union's financial interest does not exceed the damage caused, or likely caused to another victim (Art. 25 (3) b).

Having in mind, that according to Art. 22(4) the EPPO shall not be competent in any case related to direct taxes including offences inextricably linked thereto in combination with the case, the EPPO has to refrain from exercising its competence, its practical relevance for the prosecution of tax crimes will be limited to serious cross-border VAT fraud according to Art. 3(2)d of the PIF-Directive.

3.4.5 OLAF (European Anti-fraud Office – Office pour la Lutte Anti-Fraude)

The legal basis for OLAF includes Regulation (EU, EURATOM) 2013/883, OJ L 2013/248, amended by Regulation (EU, Euratom) 2016/2030, OJ L 2016/317 [OLAF Regulation]⁷⁹ and Commission Decision 1999/352/EC, OJ L 136/1999 p 20, amended by Commission Decision 2013/478/EU; Commission Decision 2105/512; Commission Decision 2015/2418 [OLAF Decision].⁸⁰

The objective and tasks of OLAF are set out as follows (Art. 2 OLAF Decision):

OLAF shall exercise the Commission's powers to carry out **external administrative investigations** (Art. 3 OLAF Regulation) to strengthen the fight against fraud, corruption and any other **illegal activity affecting the Union's financial interests** as well as any other act or activity by operators in breach of Union provisions.

OLAF is responsible for carrying out **internal administrative investigations** (Art. 4 OLAF Regulation) to combat illegal activity **affecting the Union's financial interests** and to

⁷⁹ Consolidated version: < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596964422135&uri=CELEX:02013R0883-20170101> > (accessed 26.7.2020).

⁸⁰ Consolidated version: < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596965232856&uri=CELEX:01999D0352-20160101> > (accessed 26.7.2020).

investigate **serious facts** linked to the **performance of professional activities** which may constitute a **breach of obligations**.

OLAF is also responsible for the development of a concept for the fight against fraud affecting the Union's financial interests, the preparation of legislative and regulatory initiatives of the Commission in this field and for other operational activities (e.g. giving technical support in training other institutions and national authorities).

Track record, expertise and experience of OLAF in fraud investigation and information sharing can be utilised by EU Member States when they are dealing with cross border tax fraud and crimes.

3.4.6 Inter-Agency communication

All the above portrayed agencies have to exchange information and to cooperate according to specific legal provisions showing the following picture:

EUROPOL and Eurojust are mutually granted indirect access on hit/no hit basis to information of Eurojust as far as there are working agreements concluded.⁸¹ In the same way OLAF has access to information of Europol⁸²

Beside the cooperation with Europol, **EUROJUST** maintains a privileged relationship with the **EJN**, having access to centralised information made available by EJN and has for his disposal the EJN secured communication channel. In addition, EJN contact points shall inform their own national member of Eurojust on a case-by-case basis.⁸³ Eurojust also maintains a close relationship based on mutual cooperation to the EPPO. It has indirect access to information of the EPPO's case-management system on hit/no hit basis.⁸⁴

The **EPPO** can establish and maintain cooperative relations with Union institutions and conclude working arrangements, permitting direct exchange of relevant information.⁸⁵ It can associate Eurojust with cross border cases by – inter alia – sharing information including personal data.⁸⁶ EPPO is granted indirect access to information of Eurojust's and OLAF's case information system on hit/no hit basis, where hits shall be communicated.⁸⁷ With OLAF, EPPO shall maintain close mutual cooperation, whereas OLAF shall not open parallel investigations into the same facts. EPPO is also entitled to request from OLAF support by providing inter alia information, expertise and analyses. On the other hand, EPPO can provide relevant information to OLAF in cases it decided not to prosecute.⁸⁸ Information held by Europol, is available to the EPPO on request.⁸⁹

Prior to the opening of an investigation, **OLAF** has the right of access to any relevant information in any database held by one of the agencies.⁹⁰ Where appropriate, OLAF shall cooperate with Eurojust and Europol.⁹¹

⁸¹ Art. 21 Europol Regulation, Art. 49 Eurojust Regulation.

⁸² Art. 21 Europol Regulation.

⁸³ Art. 10 Council Decision 2008/976.

⁸⁴ Art. 50 Eurojust, Art. 100 EPPO Regulation.

⁸⁵ Art.99 EPPO Regulation.

⁸⁶ Art. 100 EPPO Regulation.

⁸⁷ Art. 100 f. EPPO Regulation.

⁸⁸ Art. 101 EPPO Regulation.

⁸⁹ Art. 102 EPPO Regulation.

⁹⁰ Art. 6 OLAF Regulation.

⁹¹ Art. 8 OLAF Regulation.

Those sketched forms of information sharing and cooperation have their limits in the respective competences of the involved agencies. Breaking them down to tax crimes, information sharing with the EPPO will be limited to serious VAT-fraud in practice. Also, OLAF is focusing on PIF-relevant facts, so cases referring to the evasion of direct taxes are unlikely to be of great importance. On the other hand, the competences of Europol and Eurojust have a broader spectrum in relation to tax crimes. Therefore, their cooperation with other agencies is open also for tax crimes other than relating to VAT.

4. Factors shaping cross-border information-sharing

Increasing international economic interaction, especially within the common market of the European Union, also implicates increasing criminality with international dimension, requiring adequate response. To this end, effective and smooth cross-border communication and cooperation between the LEAs of the MS is crucial.

As from the Focus Groups, conducted under WP2, PROTAX⁹² has assessed the factors having impact on the international cooperation between LEAs and judicial agencies. Most of the participating countries utilise international networks and information channels like Interpol, Europol, Eurojust or FIU-platforms, where liaison officers seem to play a critical role. They also make use of JITs or the means of the EIO. Beside these more formal aspects, informal channels of collaboration have also been reported to be of importance as a means of fast obtaining information, especially in neighbouring countries like the Scandinavians. Differences in the legal framework, different terminology and definitions of tax offences as well as language barriers have been said to be great challenges for international cooperation, as misinterpretations affect the kind of information provided. On the other hand, mutual trust and personal contacts have been identified to be success factors with positive effect on the quality of evidence. Though sometimes causing problems, JITs also have been applied with great success, whereas the EIO, despite broadly used, has been criticised to cause a lot of administrative burdens in some countries.

Given the legal and structural situation of tackling tax crimes as stated by the findings of PROTAX, a number of typical constellations, shaping cross-border interaction can be considered:

- Different definitions and thresholds for tax crimes;
- different competences and responsibilities across the LEA communities; and
- many, partly overlapping, partly competing legal regulations.

Following typical cases shall exemplify obstacles caused by these constellations. The model cases, introduced below have been reconstructed from empirical evidence shared by stakeholders in focus groups conducted in WP2. They represent so-called ideal types, applying a well-established methodology, introduced by social theorist Max Weber.⁹³ Ideal types capture important aspects of an object or phenomenon from empirical data to demonstrate and exemplify general principles or hypotheses. The case constellations below cover a broad spectrum of situations reported by participants of focus groups, highlighting what is typical and relevant for the purpose of our analysis.

⁹² PROTAX, Approaches to tax crimes in the European Union, WP2 – Focus groups to explore institutional practices in anti-money laundering and tax evasion, D2.3, 2019.

⁹³ Hekman, S. J. (1983). Weber's ideal type: a contemporary re-assessment. *Polity*, 16(1), 119-137.

4.1 Different thresholds

Model case.

Tax offence based on € 80 000 of evaded taxes by undeclared sales to customers with residence in a neighbouring country which involved Austria and Hungary.

Analysis

Austria:

The related tax offence according to the Austrian law is “tax evasion” as defined in Art. 33 Fiscal Offence Act (“Finanzstrafgesetz”, hereinafter: FOA). As the evaded amount does not exceed the threshold of € 100 000 (Art. 53(1) FOA) for criminalisation of the offence, it would not be the courts, but the Fiscal Law Enforcement Authority, part of the tax administration, is the competent authority for prosecution.

Hungary:

In Hungary, the prescribed deed/offence would constitute the offence of “Budget Fraud” according to Section 396 of the Criminal Code 2012 (hereinafter: CC). As the evaded tax surpasses the threshold defined in Section 462(1)a CC of 100 000 HUF (about €300), prosecution falls in the competence of the criminal courts. The competent authority for investigating budget fraud is the Directorate General for Criminal Affairs (DC-CA) under the direction of the Public Prosecutor. The DC-CA is part of the National Tax and Customs Administration but applies Criminal Procedure Law.

a) The offence has been committed in Austria, involving Hungary as the neighbouring country. As in Austria administrative ‘criminal’ proceedings apply, direct communication between the competent tax authorities is not possible. Therefore, the competent Austrian tax authority acting as Tax Law Enforcement Agency, has to address judicial authorities to get access to relevant information.

b) The offence has been committed in Hungary, involving Austria as the neighbouring country. In Hungary judicial criminal proceedings apply. Communication has to be maintained via judicial authorities. Hungary also has to indicate the suspected amount of evaded taxes to enable the Austrian authorities to identify their authorities to deal with the request.

As this example can demonstrate, different thresholds for criminalisation has impact not only on the possibility of direct communication between Law Enforcement Agencies, but also LEAs involved in these countries to pay particular attention to communicate the suspected amount of evaded taxes. This can be a challenging task especially in cases with uncertain tax volume, different currencies, causing additional obstacles, surpassing the threshold during ongoing investigation.

4.2 Different competent authorities

Model case:

Tax offence causing € 200 000 of evaded taxes by undeclared sales to customers with residence in a neighbouring country. Involved countries: Austria and Czech Republic.

Analysis

Austria:

The related tax offence according to the Austrian law is “tax evasion” as defined in Art. 33 FAO. As the evaded amount exceeds the threshold of € 100 000 (Art. 53(1) FOA), a criminal

court is competent for prosecution. The Fiscal Law Enforcement Authority, part of the tax administration, is competent for investigation under the supervision of the Public Prosecutor.

Czech Republic:

The prescribed deed would constitute the criminal offence of “Tax evasion” (Section 240 Penal Code (hereinafter: PC) or “Failure to notify in tax proceedings” (Section 243 PC). As the evaded tax surpasses the threshold as defined in Section 138 PC of 50 000 CZK (about € 1,956), prosecution falls in the competence of the criminal courts. The competent authority for investigating budget fraud is the Police under the direction of the Public Prosecutor.

Communication:

In both countries, criminal court procedures apply, so there are instruments dealing with mutual assistance in criminal matters between judicial authorities in place. However, there are LEAs of different organisational backgrounds competent for investigation (tax authorities vs. police). This makes it more challenging to communicate directly on LEA-level than with homologous authorities due to information channels, better mutual understanding of their professional environment and available legal instruments.

4.3 Overlapping legal regulations

As already sketched in Section 3 above, many different multilateral legal instruments for international cooperation on the level of tax authorities, LEAs and judicial authorities are in place, each of them containing specific provisions in terms of authorities addressed, measures applicable and procedures covered. This elaborative picture gets even more complicated taking into consideration bilateral treaties on mutual assistance and cooperation.⁹⁴

Confronted with such a plethora of conventions, treaties, regulations and directives, both the assistance / information requesting and the requested country rely on the correct indication of the underlying legal instrument/s and provisions therein. Without this information the applying legal procedure and the competent authority for executing the request cannot be determined.

However, coping with this requirement cannot be taken for granted. Between 2019 and 2020, in Austria 22% of all incoming request for mutual assistance in tax crime investigations had to be refused, whereof 84% on the ground of missing or incorrect legal basis.⁹⁵ This gives a good example of the fact that even professionals (presumably with the right competences and experience) can have difficulties to apply the correct legal basis for international cooperation in criminal investigations appropriately.

⁹⁴ The following ought to be mentioned in particular:

- Double Taxation Treaties following the OECD Model Tax Convention on Income and Capital (https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page1, accessed 11.07.2020), whose Art. 26 deals with the exchange of information.
- Bilateral treaties facilitating the application of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

⁹⁵ Austrian Tax Fraud Investigation Unit, Department for International Cooperation in Fiscal Investigation. Data refer to the years 2019 and 2020 (until June 2020).

4.4 Conclusion

Having portrayed the legal and organisational environment of information sharing and cooperation between authorities engaged in the fight against tax crimes and discussing identified factors with impact on the interaction, the following conclusions can be drawn:

- The organisational structure of LEAs competent for investigating and prosecuting tax crimes can be very different in the examined countries with different intensity and efficiency of communication.⁹⁶ The same differences can be stated on the organisation of FIUs⁹⁷ as well as of other offices and authorities, contributing to this fight. Those different structures build multiple layers of communication networks, making it nearly impossible to trace all possible variants of interaction flows on even at the national level. Different competences for investigation and prosecution of tax crimes are some of the identified challenging factors for sharing information.
- On EU-level, there have been many instruments implemented aiming to facilitate the cooperation and information sharing between the administrative, law enforcement and judicial authorities of the MS and to support the fight against tax evasion and tax avoidance. These instruments cover all stages from detection to investigation and prosecution of tax crimes, as they address tax authorities, LEAs and judicial authorities. The development of these instruments is an ongoing process. At present it seems to have a particular momentum in the field of administrative cooperation in tax matters, expanding automatic exchange of information, fostering the abilities of tax authorities to detect possible tax offences. On the other hand, those instruments are increasingly overlapping, making it difficult to choose the appropriate one and hampering cross-border communication, caused by diverging interpretations of applicability.⁹⁸
- EU-agencies, supporting the cooperation of LEAs and judicial authorities tend to play an increasing role for the interoperation related to tax crimes. Nevertheless, there is a tendency of PIF-offences to narrow competences of these authorities in tax matters.
- Findings from the PROTAX focus groups on relevant factors for the improvement of inter-agency communication have been put into the context of legal and organisational structures. According to this study, we can state that different legal frameworks and definitions of tax offences and their criminalisation are one of the most important impediments for mutual assistance and the exchange of information between jurisdictions.

On the other hand, JITs as a reported success-factor for mutual cooperation also find their boost in multilateral and EU-instruments. Most recent proposals for amendments of EU legislation⁹⁹ meet urgent demands also expressed in the focus groups for improving the application of JITs and for information gathering in the field of e-commerce. Yet, further steps have to be made as to the second point to put this effort on a global level.

- The way ahead should lead to intensify mutual trust and understanding of involved players by encouraging personal cross-border contacts. Also, the implementation of single point of contacts or CLOs for mutual assistance – regardless of the instrument

⁹⁶ See chapter 2.1.

⁹⁷ Examined in detail by ECOLEF, *The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy* – Final Report, Utrecht University, 2013.

⁹⁸ This is of particular importance when it comes to an overlapping of administrative and criminal instruments.

⁹⁹ European Commission, Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, COM(2020) 314 final, < <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596746287562&uri=CELEX:52020PC0314> > (accessed 26.7.2020).

underpinned could have the potential to smooth cooperation. In this hindsight, a reference can also be made to the proposal from the COFFERS-Project to establish tax intelligence centres in the MS and the EU-Commission.¹⁰⁰

¹⁰⁰ COFFERS Policy recommendations, < <http://coffers.eu/wp-content/uploads/2020/03/2020-03-31-COFFERS-Policy-Recommendations.pdf> > (accessed 12.8.2020).

5. Information sharing as organisational problem and human factors to be considered when designing solutions

As we have shown in the previous sections of this Deliverable, information sharing between actors involved in combatting tax crime is governed by a dense regulatory web of national and European legal provisions, bilateral, European and international cooperation agreements. We could also identify some of the major obstacles, hindering the flow and exchange of data and information – within and across national jurisdictions. Even within the narrow field of tax crimes there are still a significant number of problems that need to be addressed by national and European policy initiatives. These include different thresholds for prosecution, incompatible distribution of competences in different jurisdictions and differences in the legal definitions of tax offences need to be further harmonised within the EU to facilitate cooperation within the complex ecosystem of actors involved in combatting these crimes.

In this section we will shift the focus and take a closer look at evidence and experience collected from stakeholders and how they assess the effectiveness of information-sharing mechanisms in practice. We will use concepts from organisational analysis to identify factors for successful information sharing and good practice applicable within the ecosystem made up of the different actors fighting tax crimes and linked by existing legal frameworks.

In a simplified and schematic model version of this ecosystem, the involved actors, such as FIU, financial authorities, customs, LEA, public prosecutors, tax consultants and businesses in the financial services sector are operating within their own (organisational, national) regulatory contexts and can be seen as isolated silos or “informational hubs”. As such they are allowed, enabled, obliged but sometimes also prohibited to share information with others, guided by the legal frameworks reviewed in the previous sections of this Deliverable. These frameworks are designed to provide favourable conditions for information sharing within the ecosystem to better detect, investigate and prosecute tax crimes. However, facilitating the sharing of information as such will not lead to envisaged effects. Data and information need to be processed and turned into actionable intelligence for prosecution to deliver court-proof forensic evidence that can lead to a conviction. The simplified model takes this transformation from raw data to evidence in court for granted and furthermore assumes without further consideration a competent (financial) authority in a Member State, actively pursuing a lead as given, as a kind of prime mover *asking* for information from others, thereby ignoring the reciprocal nature of *sharing* and also the problem of *detection*, i.e. the organisational practices that help to discover early warning signs in the data collected, shared and processed.

Policy makers are inclined to use such simplified models and tend to overlook contextual factors that can be crucial for success of regulatory initiatives intended to increase effectiveness of information exchange and cooperation. Expanding the simplified model to add ethnographic evidence to doctrinal and policy analysis reveals a wealth of important factors that escape legal regulation but should nonetheless be considered, such as e.g. motivation of staff, trust, language, culture, technology, shared understanding, communication, knowledge, information management, divergent interests and objectives of

organisations, human and material resources to invest in innovative activities. These factors can determine success of policies and effectiveness of practices.

5.1 Tax crimes in context

As we have already shown in the PROTAX project, the term “tax crime” lacks a clear, coherent and uniform legal definition and similar offences may be treated and prosecuted differently in European countries. This heterogeneity also affects sharing and exchange of information across jurisdictions with different (and sometimes conflicting) institutional competences and legal definitions.

Apart from these differences that can complicate cooperation, tax crimes in almost all instances are linked to other illegal activities and can be put in the wider context of financial crime where many predicate offences for tax crimes are committed.

Financial crime is not a legal term but an umbrella concept, covering different types of offences, many of which may be linked to tax offences. Several authors have suggested heuristic typologies to capture the varieties of financial crimes and how they relate to different criminal offences.¹⁰¹

Tax crimes, in the narrow sense, often surface towards the end of a chain of other illegal activities; they rarely are self-contained but rather form the tip of a larger criminal iceberg. Broadening the scope and looking at the wider realm of financial crimes, reveals the complexity and also the challenges of inter-agency information sharing and cooperation across institutional silos, national borders and the public and private sectors. Taking this broader view, there is also a lesson to be learned for policy makers, who may gain some insights into the complexity of the field to be targeted by regulatory initiatives. Sharing information about tax crimes almost always involves cooperation and information sharing about other criminal activities. However, as long as mutual cooperation and exchange of information is strictly limited to tax crimes, it can be difficult to get access to such “contextual” forensic information.

Fraud, theft, manipulation and corruption in different varieties are producing financial gains through illegal activities. At some point, these gains will be used for legitimate activities. Once criminal proceeds enter into the legitimate economic or financial sphere they need to be declared as taxable wealth or income while at the same time their origin needs to be concealed.

Crossing the border between the realms of legal and illegal financial spheres by either turning criminal proceeds into legitimate wealth and income (money laundering) or concealing legitimate income from taxation (tax fraud) constitutes an illegal act. A drug dealer setting up a proforma business may submit a tax declaration declaring the profits from his drug deals as legitimate income from this proforma business for which he is paying taxes. This is a standard textbook case for money laundering.¹⁰² On the other hand, a business operating in the legal sector of the economy may file a tax declaration that conceals some of its taxable profits, e.g.

¹⁰¹ See e.g. Gottschalk, P. (2016). *Investigation and prevention of financial crime: Knowledge management, intelligence strategy and executive leadership*. CRC Press. Gottschalk, P. (2016). *Investigation and prevention of financial crime: Knowledge management, intelligence strategy and executive leadership*. CRC Press.

¹⁰² See e.g. Sullivan, K. (2015). *Anti-money laundering in a nutshell: Awareness and compliance for financial personnel and business managers*. Apress.

through manipulating the corporate balance sheet to increase losses – a textbook scenario for tax crimes.

In a technical sense, these are two different types of tax-related crimes: in the first case of the drug dealer, taxes are paid on income from illegal activity to create legal wealth. In the second case of corporate tax evasion, taxable income is concealed by dishonesty and fraud, turning profits from legal business activities into illegal wealth of the business owner who then may also engage in money laundering e.g. by setting up a shell company in an offshore financial centre where s/he can transfer the illegally acquired wealth to be used or reintegrated into the legal business sphere later.

Starting from these scenarios, the role of information sharing driving the process of transforming data into evidence can be nicely demonstrated remaining within the realm of simplified textbook scenarios of case-based investigations. A tax inspector from a national tax authority conducting a routine audit of a local company may find hints that fit for both of these types of tax-related crimes. Based on his professional experience he may come across suspicious financial transactions or an atypical cash flow in the company's books, pointing either to tax evasion or to money laundering - declaring criminal proceeds as taxable income from legal business activities. After explanations presented by the owner or the company's CFO fail to convince the tax inspector, he could file a report, turning his observation and suspicion sustained by professional experience and gut feeling into a formal written statement to be processed within the hierarchy of the tax authority. Information from other branches of the public administration may be needed to verify the claims brought forward by the suspects. Turning the data into intelligence can reveal new aspects of the case suggesting cross-national inquiries to substantiate the suspicion. Assuming that these requests are covered by the existing regulatory framework and inter-agency agreements for information sharing, the investigation may e.g. lead to a search warrant to confiscate relevant documents from the company. It is assumed that the competent prosecuting authority has sufficient capacities to evaluate the collected evidence, bringing the case to court and at the end the result of the process is a conviction. *Initiated* by suspicion of a *motivated* tax auditor taken up by a *supportive management*, *information from others* was provided, *intelligence* was turned into *court-proof evidence* leading to a court case and the offender is convicted.

This course of events represents typical steps along a pathway as defined and foreseen in the relevant legal provisions. Information based on data collected at ground level by field operatives flows bottom-up, arrives at the right place where it is processed properly and in a timely manner becomes intelligence triggering substantial investigation and prosecution activities, to produce court-proof evidence. Information from other jurisdictions may be needed for more complex cases investigated cooperatively by experts from different departments.

However, in the majority of cases reported by practitioners, such smooth and efficient processing seems to be the exception to the rule of burdensome incremental collaborative work of prosecuting tax crimes. While legal provisions may be in place, interagency cooperation and information sharing has to deal with a variety of factors and obstacles shaping organisational performance on ground level. This points to the important difference between the implementation of a regulatory framework and the impact on institutional practices.

5.2 Implementation and Impact

When looking at reports of international organisations about cooperation in tax-related investigations, or fight against organised crime, money laundering and terrorism, their focus is on the implementation of recommendations, guidelines, treaties and legal provisions. As pointed out in the previous sections of this Deliverable, regulatory frameworks have been implemented in a large number of jurisdictions; national authorities and the designated players in the private sectors have largely adopted the required measures on paper and, to some extent, in practice.

Despite some gaps and unresolved issues, recurrently acknowledged in these reports, the fight against financial crimes appears to be a success story at the level of implementation. Implementation, however, is different from impact and outcome in practice. Implementing a regulation by signing a mutual agreement, adapting national legal regulations or establishing a new department in an organisation of the public or private sector will not automatically create a sustainable impact or bring about the desired results and effects. Mundane factors such as organisational inertia, entrenched traditions, lack of skills, coordination and motivation can be important obstacles, when moving from implementation to impact.¹⁰³

Unfortunately, there are no reliable data to assess the impact and practical effects of black letter law regulations in the ecosystem of actors and institutions endowed with the governance of the financial sector and the identification and prosecution of financial and tax crimes. Implementing regulations that require e.g. a tighter regime of control of clients and transactions in the financial sector or establish new reporting obligations for the private sector is a first step, but whether these regulations produce any measurable impact is largely unknown. Since most national tax authorities do not use any systematic assessment and evaluation, based on measurable quantitative indicators for strategic objectives the impact of implemented regulations cannot be assessed reliably.

As the comprehensive ECOLEF study on Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing policy¹⁰⁴ has shown, there are significant differences between Member States, and data collected at national level are not compatible and fit for a comparative analysis. Several platforms and channels for cross-country cooperation and information exchange between national institutions have been established, such as e.g. FIU.net. However, as the ECOLEF study report (2013:16) states, cooperation is still a problem:

The most common hindrances to international cooperation appear to be language barriers, time delays, generic information, differences in data protection standards, non-efficient national cooperation, and the lack of a legal basis in all EU Member States' legislation that would allow FIUs to block or freeze suspicious transactions on their own motion.

Several initiatives to address these problems have been launched, such as e.g. the European Financial and Economic Crime Centre.¹⁰⁵ This new centre should improve cooperation and

¹⁰³ Such factors become visible, when approaching legal practice from an observational ethnographic perspective. The seminal contemporary study here is Latour, B. (2002). *La fabrique du droit: une ethnographie du Conseil d'État*. La découverte.

¹⁰⁴ Universiteit Utrecht (2013). Project 'ECOLEF'. The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy.

¹⁰⁵ See Europol (2020). Enterprising criminals. Europe's fight against the global networks of financial and economic crime.

bridge the gap between implementation and impact, as stated in a report from EUROPOL's Financial Intelligence Group:¹⁰⁶

*The structure of Financial Intelligence Units (FIUs), their activities, working practices, and methods of recording and analysing information vary considerably across the EU. There is limited harmonisation among EU Member States (MS) beyond the obligation to establish an FIU. **This makes any comparison of the implementation and effectiveness of the EU anti- money laundering directives and the effectiveness of suspicious transaction reporting difficult, if not impossible.** Just 10% of suspicious transaction reports (STRs) are further investigated after collection, a figure that is unchanged since 2006. Over 65% of reports are received by just two Member States - the UK and the Netherlands. The overall number of reports sent by the regulated sector continues to increase. In 2014, the EU FIUs received almost 1 million reports. Volumes are likely only to increase, in particular as virtual currency providers come into regulatory scope and services using distributed ledger technology (DLT) enter the mainstream.*

This assessment pinpoints important key problems: While FIUs have been established in all European countries, demonstrating successful implementation, the impact at ground level is hard to determine due to national variations in the mode of operation. Also, increased information does not lead to better intelligence unless it is processed and turned into actionable intelligence. Information processing capacity should be considered at the level of the overall ecosystem. Last but not least, performance is unevenly distributed among national settings.

Despite an increasing number of regulatory and policy initiatives to prevent, detect, investigate and prosecute financial crimes through better sharing of information a number of experimental studies have demonstrated¹⁰⁷ that it is still possible in many countries to set up shell companies proposing obviously suspicious financial transactions, presenting incomplete information to the involved financial institutions. Despite the formal and complete implementation of comprehensive legal requirements to conduct thorough background checks on clients and report any suspicious activities to the relevant authorities the impact on ground level seems to be not very high which is evidenced by the huge tax gap in the EU and across its Member States.

There are several factors that might explain the gap between the comprehensive implementation of a regulatory framework and the lack of any substantial impact it creates. Implementation is often easy to enforce. Within the European Union, national parliaments and governments are bound by existing treaties to implement the Directives enacted by European Parliament and/or adapt their national legal regulations accordingly. At the international level, the relevant initiatives of international organisations such as the Financial Action Task Force (FATF), issuing recommendations and guidelines against money laundering and tax crimes are adopted by national governments without any binding legal obligation. Sharman (2011) has investigated the global spread of AML/TF policies that are now

¹⁰⁶ EUROPOL Financial Intelligence Unit (2017). From Suspicion to Action. Converting financial intelligence into greater operational impact. Luxembourg Publication Office of the European Union, p.5 (emphasis added).

¹⁰⁷ Baradaran, S., Findley, M., Nielson, D., & Sahrman, J. (2013). Funding terror. *U. Pa. L. Rev.*, 162, 477.

Sharman, J. C. (2011). *The money laundry: Regulating criminal finance in the global economy*. Cornell University Press.

implemented across the world, even in countries that have no financial sector. As Sharman points out, refusing to adopt the AML/TF guidelines entails the risk of being blacklisted as a tax haven, global financial players may refuse to engage with a country refusing to implement the 40+9 AML/TF recommendations issued by FATF, and for poorer countries, access to developmental aid may depend on playing by the rules of the FATF and other global bodies.

While much of the policy literature points to global adoption of AML/TF, advertising it as a success story and supporting an approach that asks for more of the same, there is general agreement in the academic literature on the ineffectiveness of these activities against money laundering, financial crimes in general and tax crimes in particular.¹⁰⁸ One of the main points raised by the critics is the lack of any empirical evidence and reliable data on the impact and effectiveness of the implemented measures. This reveals a certain irony, since one of the main strategic objectives guiding the policy approach taken in the fight against financial crime is to follow the money, increase transparency, collect data and share information among the involved parties about financial flows and the actors related to them. A further look beneath the surface would reveal just why there is this irony.

The scope or extent of and how the specific parameters are deployed for discharging each of the elements of the policy approach will account for the apparent mismatch between implementation and impact. Something really should be wrong with the implementation even if this is facilitated by the mundane factors mentioned above – they should be observed as part of factors to consider in the full implementation of a programme. Therefore, the evident success stories should give a clue as to what works, at least. Strengthening the pillars of the success stories while identifying the challenges and addressing them head-on would provide a minimum basis to create a better picture in the information exchange architecture for countering tax crimes in the EU.

As mentioned above, the implementation of policy measures that allow for a better exchange of information and collection of data in tax-related cases can have a positive impact on the work of tax authorities and prosecutors, facilitating cooperation between institutional silos, across sectors and national borders in ongoing investigations. However, going beyond this case-based perspective and looking at the overall ecosystem as it emerges in the fight against financial and tax crimes, there are a number of detrimental side-effects that should be considered. Due to the lack of coherent data and systematic studies evaluating the impact of the measures and legal frameworks implemented, empirical evidence for detrimental side effects (and good practices!) is limited, based on anecdotal evidence from focus group discussions and exemplary interviews with stakeholders. The problems and solutions for information sharing, presented in stakeholders' narratives can be seen as exemplary cases of inter-organisational cooperation and coordination. Looking at information sharing in the field of tax crime investigation and prosecution from this broader perspective can produce new insights, ideas and suggestions for improvement.

5.3 Information exchange in the organisational ecosystem

¹⁰⁸Truman, E. M., & Reuter, P. (2004). *Chasing Dirty Money: The Fight Against Anti-Money Laundering*. Peterson Institute Press: All Books. van Duyne, P. C. (2009). Serving the integrity of the Mammon and the compulsive excessive regulatory disorder. *Crime, Law and Social Change*, 52(1), 1-8.

We use the term ecosystem to capture the connections between a wide variety of institutions and actors involved in different roles in the fight against and prosecution of tax crimes such as tax authorities, customs, financial regulators, law enforcement agencies, Financial Intelligence Units, public prosecutors, judges and an increasingly growing number of players from the private sector, such as accountants and tax consultants, banks and the so-called DNFBPS, (i.e. designated non-financial businesses and professions). This category covers a wide variety of actors from casinos, real estate agents, to dealers in precious metals, notaries, lawyers and other professions providing services that involve taxable transactions or could be used for money laundering.¹⁰⁹

All of these actors, institutions and players are governed by specific professional codes of conduct, national, international and European legal instruments and develop local interpretations of widely accepted global standards. All collect some sort of data as part of their routine activities within their own organisational contexts. The legal framework targeting financial crimes requires (or allows, enables) that some of these data are shared within the ecosystem while others may be kept within professional or institutional silos. To improve cooperation and increase transparency of financial flows new reporting duties have been implemented. This has significantly increased the quantity of data circulating within the ecosystem.

From a *case-based perspective* information sharing typically refers to active targeted requests for specific information. A tax authority in country A, working on a particular case, forwards a request for information about a person, company or transaction to the relevant organisation/authority in country B. As long as such case-related requests produce the envisaged results and the required information is timely delivered cooperation and information sharing can be considered as successful.

The overall policy objective, driving initiatives in the fight against financial and tax crimes is to increase and improve information about financial transactions and the involved (corporate or individual) entities and to make this information accessible to investigators and prosecutors. The practical use value of information sharing for case-based investigations depends on data quality and processing capacity. The Austrian Court of Audit reviewed the practice of international information exchange between tax authorities and listed the problems this review revealed. Some of these problems refer to the specific situation in Austria (such as e.g. a lack of staff in the different branches of the Austrian tax authority). Other challenges and obstacles are of a more general nature such as the delay in response to targeted requests caused by differences in national practices of processing a request from a foreign tax authority. Also, the standardised (electronic) templates to be used for filing requests appear to be not very user-friendly making requests very time consuming. These factors that lead to significant delays in the processing are counter-productive for an effective investigation and prosecution of tax crimes within the European Union. An even greater obstacle for effective information exchange is the lack of a common Tax Identification Number (TIN) – not only

¹⁰⁹ Looking at the realm of business and finance from a systemic perspective helps to better understand dynamic developments and reconstruct irritations. Institutions engaged in fight against tax crime can be considered as a “subsystem” here. Viegas, E., Takayasu, M., Miura, W., Tamura, K., Ohnishi, T., Takayasu, H., & Jensen, H. J. (2013). Ecosystems perspective on financial networks: diagnostic tools. *Complexity*, 19(1), 22-36.

within Europe, but also within countries like e.g. Austria. Without such a common TIN information exchange for the investigation and prosecution of tax crimes is difficult.¹¹⁰

The key point from a *systemic perspective*, however, is that for the overall ecosystem to meet its objective (fight against and prosecution of tax crimes) the exchange of information among its members must create some added value, help detect and prevent illegal activities and facilitate prosecution and further (legal) action. Moving from shared data to information and from information to intelligence and court proof evidence in a collaborative inter-agency effort is a complex and complicated process, and the more so, when the investigated events stretch across national borders, as is often the case with major (high value) tax crimes and some of the most important offences, such as VAT-fraud, involve a cross-national cooperation due to the underlying modus operandi. Successful information sharing at system level should help to link isolated dots, discover connections, similarities, suspicious transactions to alert authorities, initiate and guide investigation and prosecution of tax crimes. This is a more challenging task than bilaterally exchanging information related to a specific case from one silo to another.

The difference between case-based and system-level information sharing can be demonstrated when looking at major financial crimes or cases of tax fraud, widely scandalised and covered by media. Such crimes, creating substantial damage and loss of revenue often grow over time and remain undetected by law enforcement, tax and financial supervisory authorities. When looking at the events in hindsight there often were early warning signs, red flags scattered across the overall ecosystem pointing to coordinated illegal activities. However, none of these red flags seemed to be big enough to trigger further investigative action and the locally involved actors had no reason or incentive to share information with others within the ecosystem and collaboratively piece the puzzle together. The pieces (=information) were on the table, but not used and processed to discover the overall picture. One of the most recent fraud scandals involving *Wirecard*, a highly praised provider of electronic payment services from Germany, nicely demonstrates an interesting and typical mechanism, sustaining systemic blindness. Many actors who had business relations with the company as well as authorities supervising the financial markets turned a blind eye on initial rumours about malpractice. Trust on the expertise and judgement of others (last not least on Ernst & Young, the corporate tax consultants) prevailed within the ecosystem and for a very long time prevented a closer scrutiny of the company's business practices.¹¹¹ Such chains of trust (A trusting B and C trusting B, etc.) are important to manage the overload of shared information circulating within the ecosystem, but they may be exploited to conceal fraudulent business practices. Such practical cases can show the impact of (detrimental and success) factors shaping inter-organisational coordination. Taking these (human, social, organisational) factors into account can help to identify typical and interrelated problems and to determine constitutive elements for effective practices of information sharing within the ecosystem. The goal of this analysis is to develop evidence-based recommendations for policy initiatives and add a fresh perspective on information sharing for stakeholders.

¹¹⁰ Rechnungshof Österreich (2019). Internationaler Informationsaustausch in Steuerangelegenheiten. (Report to Austrian Parliament).

¹¹¹ See, The Wallstreet Journal from July 16, 2020: How Germany's SEC Dismissed a Decade of Warnings About Wirecard.

Firstly, there is the problem of *information overload* or information pollution.¹¹² This may appear counter-intuitive, since investigation and prosecution of tax crimes (or for that matter any crime) depends on good information about illegal activities and the individuals or corporations involved in such practices. Exchange of data and information within the legal framework should improve and facilitate investigation and prosecution. The increase of information, however, can be counter-productive when there is a limited information processing capacity at the receiving end. Information overflow can create a situation, described in the well-known scenario of the needle hidden in the hay stack. A good example is the automatic information exchange (AIE) about taxable income of individuals. Financial institutions (like banks, insurance companies) have to report – and do so in more or less detailed form – information about their non-resident clients to the local/national tax authorities who then forward this information to the tax authorities in the country where this person is registered and where s/he declares any taxable income. This information can then help to identify any non-declared income (interests, dividends, royalties, pensions, etc.) from other countries.¹¹³ A study by Tax Justice Network found an average match ratio of 70-75%, i.e. identification of tax payers was successful in three quarters of the reported cases where information was provided from other countries.¹¹⁴ Tax authorities can cross-check this information with declared income of a person and if any inconsistencies are discovered they will approach this person. This can add to the workload of national tax authorities. Information overload can bind scarce resources and this can have another detrimental side effect by shifting the balance between the efforts required for internal processing of incoming data and the time and resources left for feedback and exchange with the provider or data source about any conclusions, and findings resulting from the processing of these data.¹¹⁵ Information overload can emerge as an unintended side-effect of legal instruments enacted to improve the exchange of data. Policy initiatives to improve information sharing should take such problems of information overload at system level into account.

Secondly, and related to information overload emerging within the ecosystem is the problem of *incompatibilities of rationalities, tasks and motivations*, shaping the work of organisations, tied into the overall ecosystem of information exchange. A frequently mentioned standard version of this problem is the exchange of data between financial institutions from the private sector and public sector institutions such as FIUs, public prosecutors or law enforcement agencies. Financial service providers such as banks are legally required to routinely conduct due diligence and so-called KYC checks, before engaging with a new client. In addition, they must identify suspicious transactions, based on a set of pre-defined criteria and send STR (suspicious transaction reports) to the FIU, often producing information overload, since STRs are routinely submitted by banks in large numbers to minimise the risk of being held accountable for engaging in financial crime. Performing a comprehensive check on customers

¹¹² For an overview see Edmunds, A., & Morris, A. (2000). The problem of information overload in business organisations: a review of the literature. *International journal of information management*, 20(1), 17-28. In the ecosystem of tax crime investigation automatic reporting requirements, e.g. of cross-border commercial transactions involving reimbursement of national VAT have been mentioned as a typical cause for information overload.

¹¹³ For the current state and the envisaged development of this exchange see: Proposal for a COUNCIL DIRECTIVE on administrative cooperation in the field of taxation (codification) COM/2020/49 final.

¹¹⁴ Meinzer, M., & Network, T. J. (2013). Towards multilateral automatic information exchange. *Current practice of AIE in selected countries (Tax Justice Network 2012)*.

¹¹⁵ Ibid, p. 22

or filing STR is not part of a bank's business model, but an externally imposed duty, that not only can produce considerable costs but also can interfere with internally held beliefs and strategies on how to do business. The same applies to any requests from the public sector, asking for specific information about clients. Similar constellations of incompatible professional orientations can be found also within the public sector and very often they emerge when actors from different national jurisdictions (which typically involves different languages and cultural orientations) have to cooperate and exchange information.¹¹⁶ Such incompatibilities can be reduced, when all involved parties learn about the needs and tasks of others, but regular exchange seems to be the exception rather than the rule, and deserves to be listed as a separate problem.

Thirdly, while all members of the ecosystem acknowledge the value of exchanging information and sharing data, the regulatory framework governing this exchange entails no provisions with regard to integrating operational needs. As long as the *members of the ecosystem do not know the needs of others*, exchange within the ecosystem may produce a significant amount of noise (i.e. information that is irrelevant for members' practical needs). Better understanding what is relevant for a cooperating party also can help to better organise internal strategies of data processing, i.e. by documenting seemingly irrelevant information that is important for tasks to be performed by others within the ecosystem.¹¹⁷

Fourthly, the channels, *formats and media for storing, exchanging and distributing information and data within the ecosystem* affect the overall performance of the system. There are different constellations to be considered.¹¹⁸ A promising *albeit* highly challenging format are databases accessible by selected groups of members within the ecosystem who can search for specific financial and tax-related data and information of individuals. However, apart from using the database for targeted search, the community of users continuously have to add new information based on shared understanding on which data collected as part of their professional operations deserve sharing. Input to these databases can come from a variety of sources.¹¹⁹ The information presented needs to be regularly updated by adding new input but also by checking the validity of historical data. With regard to data and information for investigation and prosecution of tax crimes the practical use value depends on geographical coverage (a database including e.g. information about non-European jurisdictions can be useful for investigation of cases involving off-shore tax havens), the quality and coherence of data (requiring implementation of common standards and formats used by all actors when adding content to the database). Thresholds for accessibility to such platforms facilitating information sharing across jurisdictions should be low, tools and functionalities for data retrieval should be user friendly and include options for crosscutting searches of multiple

¹¹⁶ See e.g. the case study by Peters, M., Vanderhallen, M., & Nelen, H. (2016). Cross-border criminal investigation in the Meuse-Rhine Euroregion: International policing and the theory of (inter-) organisational conflict. *European Journal on Criminal Policy and Research*, 22(1), 41-60.

¹¹⁷ This kind of problem has been addressed in organization theory under headings like business intelligence. See Olszak, C. M. (2016). Toward better understanding and use of Business Intelligence in organizations. *Information Systems Management*, 33(2), 105-123. Tax crime information ecosystems could be viewed from this perspective. See the report from Transparency International (2019). Under The Shell. Ending Money Laundering in Europe.

¹¹⁸ For an overview see Fiore, S. M., Elias, J., Salas, E., Warner, N. W., & Letsky, M. P. (2018). From data, to information, to knowledge: Measuring knowledge building in the context of collaborative cognition. In *Macro-cognition metrics and scenarios* (pp. 179-200). CRC Press.

¹¹⁹ See e.g. Gal, G., & Eni, L. C. (2016). Considerations regarding the design of an online collaborative audit system. *Managerial Auditing Journal*.

data sources (assuming compatible technical standards). Standardisation has been achieved for other formats of information exchange implementing standard templates for interagency cooperation within and across national jurisdictions. Such targeted requests for information on a one-to-one basis are important for investigation and prosecution of individual cases at national level. While stakeholders who routinely use this template format for information sharing still encounter problems when requesting information as e.g. some jurisdictions process requests for information only reluctantly, the positive impact of regulatory frameworks to facilitate information flows and cross-border cooperation is acknowledged by all stakeholders.

Putting the mechanisms and instruments for information sharing to a critical test, reflected in the narratives of stakeholders, adds a new perspective to the comprehensive discussion from a legal perspective in the first part of this Deliverable and points to factors that are crucial for successful information exchange in any techno-social system briefly discussed in the next sections.

5.3.1 The bottleneck of human information processing capacity

The introduction of digital automated data-processing and artificial intelligence technology has led to significant changes in the way organisations work. Innovative solutions, applying algorithms on huge data sets to identify patterns, cases and events, deserving in-depth investigation are about to change the role, tasks and needed skills of human actors in organisations. While this disruptive process is widely acknowledged, it is still an open and contested question whether the so-called digital revolution has produced an improvement and led to more efficiency of organisational performance. Many routine tasks, related to information processing have been taken over by highly efficient machines, but at the same time, more information, data and meta-data are produced by organisations, creating a demand for more and more complex data management and information processing.

Human reasoning and decision making will not be replaced by machine intelligence in the near future and an important factor to be considered when trying to understand and improve information exchange within an organisation or in ecosystems of cooperating organisations is the limited human information processing capacity. When seen from the logic of a simple memorising task, human short-term memory on average is limited to seven distinct chunks of information, as experiments in psychology have repeatedly demonstrated.¹²⁰ On the other hand, approaching human capacity to process information from a more cultural perspective reveals a different picture. Humans can use acquired knowledge and experience to process and assess complex information, stored in their environment in the split of a second. Furthermore, human memory has a much higher capacity for storage and retrieval when exposed to culturally coded information, that is perceived as meaningful.¹²¹

Considering these different approaches to human capacities, a closer look at the kind of information that is shared within the ecosystem and how this information is coded and

¹²⁰ Miller, G. A. (1956). The magical number seven, plus or minus two: Some limits on our capacity for processing information. *Psychological review*, 63(2), 81.

¹²¹ Rumelhart, D. E. (1975). Notes on a schema for stories. In *Representation and understanding* (pp. 211-236). Morgan Kaufmann.

presented can help to develop ideas for improving information exchange, in terms of quantity of processing capacity as well as in terms of quality of the processing results.

Digitalisation has produced a certain standardised format of information to be shared in organisations. Using quantifiable and uniform categories, this format creates isolated, de-contextualised chunks. As long as humans are involved, the above-mentioned bottleneck of seven elements quickly leads to a deterioration of human performance when exposed to information that lacks any cultural meaning.

The often-ignored hybrid techno-social character of organisations sets limits to purely technology-driven strategies. Transforming all information into a machine-readable format is considered as the magic bullet to increase the quantity of information that can be handled within the organisations and to reduce the time needed for processing. However, such systems, implemented e.g. in trading stocks, leaving collection, exchange and processing of information to machines, taking decisions without human intervention are highly vulnerable to disturbance and lack resilience.¹²² With regard to their performance there seems to be no significant improvement when compared to techno-social modes of operation. The problem of the human bottleneck might be overcome, when *information exchange involves not only de-contextualised chunks but also more complex, meaningful information*. Adding context to de-contextualised information – e.g. providing a narrative interpretation of a case under investigation – can help to better understand and assess the transmitted information with regard to a specific case under investigation.

5.3.2 The effects of division of cognitive labour

Organisations are successful forms of addressing complex problems in a coordinated and accountable way, applying the principle of division of labour, where each staff member or department is assigned a specific task, contributing to the work of others, in a predefined way. The idea of coordinated cooperation of specialists can also be applied to the problem of information exchange, looking at processes that have been termed division of cognitive labour.¹²³ Understanding the division of cognitive (informational) labour within an organisation or a larger ecosystem can help to improve the overall performance. Mapping the distribution of knowledge and information across different members forming the nodes of the ecosystem as informational network and reconstructing the tasks of each node and the links between them allows to identify the impact of different forms of division of labour. As research and experiments in cognitive anthropology have shown, distributed systems with a more egalitarian structure perform better than hierarchical forms, considering correctness and fit of outcome.¹²⁴ Like in the popular scenario of the five blind men describing an elephant, limited information supports partial interpretations at different nodes. The challenge is to integrate them, so the “system” moves towards the shared interpretation that it is dealing with an elephant. Only if the five men take up the information received from others and are willing to integrate them into their own cognitive model they will end up with the correct

¹²² For a critical view on such fully automated systems see MacKenzie, D. (2017). A material political economy: Automated trading desk and price prediction in high-frequency trading. *Social Studies of Science*, 47(2), 172-194.

¹²³ See Hutchins, E. (2006). The distributed cognition perspective on human interaction. *Roots of human sociality: Culture, cognition and interaction*, 1, 375.

¹²⁴ Hutchins, E. (1991). *The social organization of distributed cognition*. In L. B. Resnick, J. M. Levine, & S. D. Teasley (Eds.), *Perspectives on socially shared cognition* (p. 283–307). American Psychological Association.

interpretation. From a perspective of division of cognitive labour an egalitarian structure (treating information from others as equally relevant) raises the probability to come up with the correct solution of this cognitive puzzle. In a hierarchical structure new information would be discarded by the most powerful actor who then will produce a biased interpretation that can be imposed as the final solution of the problem on others.

Conducting criminal investigations in the domain of financial and tax crimes is a good case to study this division of cognitive labour. All members of the ecosystem can be seen as interconnected nodes of an information processing network and depending on the strength of the links, the information they share with others can have more or less impact on the final interpretation adopted by a public prosecutor or an investigating team. The strength of the links not only reflects hierarchies and power relations between different nodes, they are also shaped by the level of mutual trust and assumptions about competence or reliability. This points to a third factor shaping information processing in organisations. Practitioners often describe the detrimental impact of this sharing of cognitive labour with regard to different legal regimes: a public prosecutor and a tax auditor will both “see” a different picture of a case when looking at forensic evidence against the background of criminal or administrative law. What would be needed is a better training of staff, making practitioners competent to evaluate a case and take investigative steps weighing or integrating perspectives from regulatory frames.

5.3.3 Trust as human factor shaping information exchange in organisations

Organisations are often reluctant to share information and data they hold with others. Even within an organisation, different departments or staff members may be inclined to treat information as a kind of property and keep it to themselves. Organisations define and regulate the exchange and documentation of information in specific formats to keep their internal operational procedures going. But this internal system of governing information flow only captures part of the knowledge that builds up over time, e.g. in the course of a criminal investigation. While legal frameworks such as the GDPR set limits regarding the use and sharing of information defined as confidential or private by law, organisations operating within these legally defined limits are reluctant to share what they know with others who might profit from it. Since information can be an important source of power and sharing it with others can reduce this power, barriers develop, leading to disconnected informational silos. Such barriers are deeply entrenched in the organisational culture, they are hard to overcome and create negative effects on the overall performance, wasting resources, when information stored in one silo could be shared but instead is collected again by other departments or organisations.

These detrimental effects can be reduced in organisations that have developed a culture of mutual trust.¹²⁵ Trust entails a two-sided relation, either between two individuals (groups) or between an individual and an organisation (institution). A relation of trust between two parties A and B is based on A’s belief that B will not act against A’s interests in a given situation. This belief is sustained by an assumed reciprocity, i.e. B also believes that A will act

¹²⁵ Nyhan, R. C. (2000). Changing the paradigm: Trust and its role in public sector organizations. *The American Review of Public Administration*, 30(1), 87-109. Tyler, T. R. (1996). *Trust in organizations: Frontiers of theory and research*. Sage.

cooperatively and not against B's interest. Trust is a soft factor and trust levels cannot be changed by order of the management.

As research on the organisational culture of law enforcement agencies has shown these organisations tend to develop a culture of secrecy, they are very closed, shutting themselves off from their environment.¹²⁶ This can make information exchange within the overall ecosystem rather difficult. Information remains within silos where trust and cooperation prevail among staff members, who share a view of the outside world as a hostile environment. In their view, keeping information exchange with others to the legally required minimum reduces the risk of wider circulation. Forensic information that ends up in the wrong hands can be misused, a suspect who learns about an ongoing undercover investigation may use this information to his own advantage.

When seen from a trust perspective information exchange requires a delicate balance of conflicting needs and attitudes of the involved organisations. There may be legitimate concerns limiting information exchange. But for the overall system to succeed trust-based links among its members, cooperating and sharing information have to be established and maintained.

Typical problems of information exchange within and between organisations described in the previous pages are not in the focus of legal discourse and analysis. A legal framework for inter-agency and cross-border information exchange to facilitate the prosecution of tax crimes cannot address problems like information overload, insufficient motivation or lack of mutual understanding and trust at the level of staff working under this legal framework. These key factors limiting the flow of information and communication are not at the disposal of lawmakers and cannot be changed by fiat. However, these problems and factors determine the success and impact of legal regulations.

In the PROTAX project we identified a number of good practices that provide for efficient and successful exchange of information within the ecosystem of involved actors. Against the background of the problems discussed in this section these practices can be understood as solutions, that address these more general problems. In the next section we will describe some of the most relevant best practices we discovered in PROTAX. They are validated by stakeholders in our focus groups (WP2) and can serve as guidance for reform and improvement.

6. Good practices, based on examples from PROTAX focus groups

Although the problems identified and the solutions discussed and suggested in the PROTAX focus groups are quite similar for all countries, they also reflect the variety of legal and organisational approaches to tax crimes across Europe. A comprehensive and detailed description of these national systems is provided in the Annex of this Deliverable.

Beyond differences in legal definitions and institutional design, there are other factors that can make a difference. Small island countries like Malta may have less problems to exchange

¹²⁶ Langbein, L., & Jorstad, C. (2004). Productivity in the workplace: Cops, culture, communication, cooperation, and collusion. *Political Research Quarterly*, 57(1), 65-79.

information compared to bigger European countries. Countries with a federal political and administrative structure like Germany with 16 independent regional tax authorities face problems, mostly irrelevant in countries like Austria or Portugal having centralised capacities of investigation and prosecution. Innovative solutions may be implemented more easily in countries like Estonia where a recent system change has erased many pre-existing structures than in countries with long-standing traditions like the United Kingdom.

6.1 Combining criminal and administrative law investigations

Tax crimes are prosecuted under different legal regulations involving administrative and criminal law. In all countries, stakeholders were confronted with this duality one way or the other. Cross-border cooperation may be difficult, when a case falls in the realm of administrative law in one country and is considered as a criminal offence in another jurisdiction. Investigating and prosecuting tax crimes as criminal and administrative offences in parallel or consecutively within one country can produce legal uncertainties and lead to conflicts of competences among the involved actors.¹²⁷ While a sustainable solution of this problem requires legal reforms and major policy initiatives at national and European level, it has to be addressed by stakeholders on ground level investigating tax crimes within the existing limits of national laws. This was done more or less successfully in different jurisdictions but as long as the involved organisations share a common understanding of foreseeable conflicts that could jeopardise parallel ongoing (competing) investigations, the problem of competing civil and criminal law investigations could be managed more or less productively within the national ecosystems. Such a common understanding will emerge when a good, trust-based inter-agency cooperation exists, when relevant information is shared with others and the timing of planned activities can be coordinated. Also, as mentioned above, when staff members, investigating tax crimes are familiar with procedures and legal requirements in both areas, fewer problems of coordination emerge.

The need for improved mutual understanding for sharing information in a timely manner to align and coordinate investigative activities was acknowledged in all countries. Overcoming departmental secrecy was considered a necessary *albeit* difficult step and regularly engaging with staff members from other organisations in personal communication seems to be a promising strategy to build trust and share information. Within the ecosystem such regular interagency meetings offer a platform for informal exchange and feedback across institutional boundaries and can have a positive effect on information exchange and can help to manage coordination problems that can emerge in the investigation of cases.

There is no single best practice model or policy for this kind of trust-based semi-formal interagency communication and any one-size-fits-all solution would have to ignore important differences between individual countries. There are, however, some overarching strategies to provide conducive context conditions within an organisation to facilitate and foster trust-based interagency exchange and improve mutual understanding. Good practices to build trust and enhance mutual understanding should focus on the development of human resources. Offering joint training events that bring together staff members from different institutions in

¹²⁷ See Winter, L. B. (2017). Cross-border investigation of tax offences in the EU: scope of application and grounds for refusal of the European Investigation Order. *EuCLR European Criminal Law Review*, 7(1), 46-66.

a cooperative learning environment can fill individual gaps in knowledge, creating a level playing field sustained by mutual trust.

Problems of information sharing, cooperation and coordination often ignored in daily routine operations may surface in regular moderated inter-organisational (or inter-departmental) work-meetings explicitly declared as platform for free exchange at eye-level involving all hierarchical levels to find feasible solutions that may be pilot-tested. This can drive a horizontal process of organisational development and may positively affect organisational culture, values and motivation of staff.

6.2 Joint investigation teams

While building trust and improving mutual understanding across the overall ecosystem involves long-term shifts of organisational culture, other initiatives are more targeted and can be analysed in more detail. Setting up so-called joint investigation teams (JIT) was recurrently highlighted as best practice solution to overcome obstacles hindering investigation and prosecution of tax crimes. Stakeholders contributed several cases from their own field where a JIT helped to improve and speed up investigations in cross-border cases.

Based on the Convention on Mutual Assistance in Criminal Matters from 2000 and regulated at European level by Framework Decision 2002/465 JITs address several of the problems of organisational information sharing discussed above. Bringing together staff members from different organisations (and different countries) with the official mandate to work together on a specific case removes organisational barriers of information sharing. The regular and continuous personal contact over a longer period of time within the JIT creates a timely and dense flow of information between members from different organisations. Understanding informational needs also helps to prevent information overload. And last but not least, information exchanged among the members of the JIT is not restricted to de-contextualised informational chunks but is provided as meaningful contextualised interpretation in personal communication.

From the perspective of an ecosystem of information exchange JITs can avoid the detrimental effects of secrecy, lack of trust and remove organisational barriers, they also can improve the quality of information shared and manage the quantity of information to be processed.

JITs are used as an instrument to collect court-proof forensic evidence for a clearly defined case that may lead to court cases in several Member States. Including representatives from Eurojust or EUROPOL gives JITs access to not only information but also to resources.¹²⁸ While JITs are case-based initiatives running for a limited period of time, they nonetheless can trigger systemic effects. Participants in a JIT often develop good personal relations with partners from other organisations and countries. These contacts may be useful after the end of cooperation under JIT to exchange information on a personal and informal basis or get access to relevant experts in other organisations. Over time, JITs can nurture a growing network of personal contacts, putting faces to organisations and establishing links, facilitating interagency information exchange. Furthermore, as the majority of JITs are considered as success stories,

¹²⁸ For an overview, see the Evaluation reports of JITs Network published by the Council of Europe, <[http://www.eurojust.europa.eu/doclibrary/JITs/JITsevaluation/Second%20JIT%20Evaluation%20Report%20\(February%202018\)/2018-02_2nd-Report-JIT-Evaluation_EN.pdf](http://www.eurojust.europa.eu/doclibrary/JITs/JITsevaluation/Second%20JIT%20Evaluation%20Report%20(February%202018)/2018-02_2nd-Report-JIT-Evaluation_EN.pdf)> (accessed 13.8.2020).

leading to court cases and convictions in the area of serious crimes, they can help to raise awareness for the need to reform and improve the current practices of cooperation and interagency information exchange along the lines of the approach taken in JITs.

6.3 Public-private partnerships (PPP)

Another example for good practice of information exchange within the interagency ecosystem addresses the cooperation between organisations of the private sector, mainly from the financial industry and law enforcement agencies, tax authorities and FIUs. Over the last few years the private sector has been endowed with a number of reporting task in the field of tax crime. Under the ever-expanding AML/TF regime initiated by the FATF, private sector institutions became more and more involved in the fight against financial crime. As discussed above, cooperation and exchange of information between private businesses from the financial sector and public authorities investigating and prosecuting tax crimes can be considered as a textbook example for incompatible rationalities, hindering mutually productive cooperation. Despite these systemic obstacles both sides can gain from such a cooperation. The British Joint Money Laundering Intelligence Taskforce (JMLIT) set up in 2015 seems to be an established model and solution that stakeholders considered as good practice.¹²⁹ How such a more formalised form of cooperation and exchange of information may look like strongly depends on the national legal frameworks, determining which kind of information and data can be shared with others. Simply sitting around a table and exchange ideas about procedures or typologies applied in each organisation can be a first step leading to a more in-depth exchange of relevant forensic data at a later stage. Often the launch of such activities hinges upon the initiative and motivation of a few individuals who take a first step of bringing the relevant parties around a table in an informal context. Establishing such partnerships can help to better manage the flow of information created through legally defined reporting duties. In national ecosystem of information exchange reporting duties, primarily from banks to public authorities can create a situation of information overload when this exchange happens in an uncoordinated way. Financial institutions may turn in a high volume of suspicious transaction reports to meet their legally required reporting obligations. Public authorities then have to handle this flow of information and determine by themselves which of the reported incidents or transactions require more in-depth investigation. Public private partnerships can help to improve this situation. A better mutual understanding of the needs and operational procedures at both ends can help to reduce informational noise and to increase forensic use value by reducing the volume of irrelevant information that flows within the national ecosystems.¹³⁰

¹²⁹ Maxwell, N.J.; Artingstall D. (2017) *The role of financial information-sharing partnerships in the disruption of crime*. Occasional Paper, Centre for Financial Crime and Security Studies. See also the commentary by Tom Keatinge from Dec. 2017: *Public-Private Partnerships and Financial Crime: advancing an inclusive model* < <https://rusi.org/commentary/public-private-partnerships-and-financial-crime-advancing-inclusive-model> > (accessed 12.08.2020).

¹³⁰ While working on PROTAX we had the opportunity to observe and participate in initial meetings organised by the Austrian FIU bringing together a wide variety of stakeholders from public and private sectors. In these meetings the FIU introduced the idea of a PPP as a collaborative approach promising a win-win solution in the fight against financial crime. The majority of participants was reluctant to get engaged and everybody had one

The situation here is similar to the approaches taken to handle the dual-track problem. Due to significant differences and thresholds for information exchange within national jurisdiction, no single organisational model for public-private partnerships can be developed. Successful solutions have been implemented in the UK and the Netherlands, where the FIU plays a central role as information hub bringing together information from public and private sectors and exchanging ideas between the different groups.

6.4 Single points of contact

As recurrently pointed out in this Deliverable, information exchange is a challenge when it reaches across borders and involves judicial and juridical systems with different organisations and traditions. Legal definitions, institutional competences, thresholds for prosecution of relevant criminal offences are often incompatible, hindering a smooth cooperation between investigators and prosecutors in different countries. What adds to this are problems of communication. When the involved individuals engage in personal interaction and neither side speaks the language of the other, cooperation becomes even more difficult. European agencies like Eurojust or EUROPOL offer support for cross-national cooperation in legal and criminal affairs. However, as we learned in our discussions with practitioners, when it comes to exchange of information across linguistic borders while cooperating in a specific case, personal communication may be required to address complex legal issues. Such complexities are hard to express with 2000-word standard vocabulary of *Europeanese*, the pidgin of simplified English frequently used in cross-border conversation.

Sometimes, based on evidence from prior cooperation and justified with anecdotal narratives, we could identify in our focus group discussions a tendency to use national stereotypes. Labelling other national administrative cultures in very general and not always positive terms is a popular strategy to account for failed cooperation across borders. As research on prejudice and stereotypes has over and over demonstrated, generalised attitudes and views about a certain group disappear with increased personal contacts and interaction. Members of the stereotyped group are no longer framed in a generalised way but perceived as individuals once they are encountered in face-to-face situations.¹³¹ A similar mechanism might be at work in cross-national cooperation and information exchange in the prosecution of tax crimes and with more opportunities for personal contacts this may change. As the example of Joint Investigation Teams clearly demonstrated, personal cooperation over a longer period of time helps to establish trust and mutual understanding across juridical systems, organisations and cultures.

What emerged as a solution to facilitate cooperation in routine cases and standard constellations of information exchange was the establishment of so-called single points of contact in a country. Any request for information can be addressed to them without having to

or more problems that from the perspective of his or her organisation had to be addressed before any operational ideas for a workable solution for a PPP could be put on the table. As of now, no substantial progress has been made in this process, last not least because the manager of the FIU, who had taken the first initiative moved to a different department and without continuous input and engagement of highly motivated activists investing their time, productive irritation of the ecosystem disappears bringing back the *status quo ante*.

¹³¹ Case, K. A. (2007). Raising white privilege awareness and reducing racial prejudice: Assessing diversity course effectiveness. *Teaching of Psychology*, 34(4), 231-235.

search and identify the relevant person, department or office that is responsible for a specific request and could provide the requested information. The main task of such single points of contact consists in matching information request from outside with the relevant experts within the national ecosystem. This may entail informal interaction with the requesting party to better understand their specific needs. Having access to such a one-stop-shop solution on both sides can reduce delays and avoid frustration in the investigation and prosecution of tax crimes. To create added value requires a minimum of two countries, organising their cooperation and information exchange in this way. Not all Member States have established such single points of contact, since there is no legal obligation for it. However, in those countries that took the initiative to set them up as a means to improve cross-border information exchange, the results seem to be very positive.

6.5 Improving infrastructures, allocating resources and expanding training

Beyond examples of good practices for cooperation and exchange of information as they surfaced in the PROTAX focus groups, stakeholders repeatedly referred to a number of structural limits encountered in their daily cooperation when working as investigators and prosecutors or being involved in the fight against tax crimes in other roles (such as e.g. tax consultants or lawyers).

An interesting observation could be made with regard to the use and role of technology or the effects of supporting technological infrastructures. Despite some substantial technological innovations improving the flow and exchange of data (e.g. between financial authorities and law enforcement) there still remain islands of very traditional processing of forensic intelligence within the overall ecosystem. Technology can help to get access to data and collect relevant information for a given case during the early stages of tax-related criminal investigations. However, processing this information at the level of the prosecutor to extract court proof evidence from the information collected during the investigation turns out to be a time-consuming task. Practitioners from financial investigation units, collecting evidence at the front-end see the slow processing of their input by public prosecutors as a problem. Suspects could exploit such delays to their advantage whereas a swift legal response would be more effective. When putting the focus on efficiency of law enforcement such observations can support short-sighted ideas. Reducing procedural thresholds and lowering standards of due process could improve performance and output of criminal prosecution. However, this would be at the cost of eroding important standards of rule of law and fundamental rights. When seen from the perspective of the overall ecosystem, the complaints about the mills of justice, grinding not at desired speed point to an imbalance of resources available and invested for collecting and processing information. The capabilities and human resources needed to move in due time from evidence collected in early stages of an investigation to a prosecutor's justified decision to present a case in criminal court are perceived as insufficient in all countries covered in our focus groups. Public prosecutors or investigating judges have high caseloads and difficulties to productively and in a timely manner process the huge quantity of data from the early stages of criminal investigations.

These difficulties have quantitative, structural and qualitative dimensions. In simple and quantitative terms, more staff is needed for the public prosecutor's office or other departments involved in prosecuting tax crimes in the national judicial systems.

The division of tasks and the consecutive steps to be followed as defined in administrative regulations and relevant procedural legislation can lead to long and complex pathways. The files of a case often take a long bureaucratic journey, wandering from desk to desk and an emerging criminal charge has to be considered and evaluated by different departments. This could be called the legal structural aspect of the problem.

Last not least, since the prosecution of tax crimes not only requires a good understanding of criminal law, but also a sound knowledge of regulations in financial, business and tax law, judges and prosecutors working in this domain need a very specific combination of skills and competences. Law schools rarely provide this kind of hybrid professional education and no opportunities for in-house training to broaden the skills of legal practitioners are foreseen in human resources development plans for judges and prosecutors. At a more practical level, prosecutors and judges complain about brain drain. Private law firms or financial consultancies offer more attractive remunerations for young high-performers who start their careers in the office of the public prosecutor. After being headhunted they may meet their former colleagues as lawyers defending powerful and wealthy clients in court.

6.6 Concluding remarks

Taking a bird's eye perspective on the wide array of highly diverse factors shaping the exchange of information and practices of cooperation in the investigation and prosecution of financial and tax crimes, our investigation yields some critical insights. Relevant policies governing cooperation and information exchange do not (yet) add up to a common European framework or follow an overall strategic plan despite a continuously high output of new regulations with detailed provisions. Introduced to improve coherence and curb idiosyncratic national solutions, European initiatives and regulations have shown only limited success since motivation to cooperate and share information is unevenly spread across Member States and/or hindered by legal, economic, linguistic, technological limitations or cultural prejudices. At times, national policies also sacrifice strict law enforcement and prosecution of tax offences to offer favourable conditions so as to attract international companies and financial investments fuelling the infamous race to the bottom in tax levels and enforcement of regulations.

Such national policies create a prisoner dilemma between individual states and are not conducive to effective cooperation and for the alignment of tax enforcement priorities. They significantly reduce the impact of any regulation that requires cooperation as default attitude to achieve the desired effect. Instead of joining forces against tax crimes and cooperate under a common European regulatory regime of investigation and prosecution, uncooperative players are inclined to strategically turn a blind eye to probably illegal or unethical business practices at best, hoping for a better return for themselves and a loss for their competitors. Competing with other states to create favourable conditions for legal business activities also creates favourable conditions for all kinds of cross-border financial crime and tax evasion which in turn also impedes healthy competition in intra-community (EU) trade. Detecting, investigating and prosecuting high profile tax evasion and tax fraud require good cross-border coordination, sharing of information and intelligence to identify networks, practices or schemes reaching beyond national jurisdictions. The financial assets that could be recovered

through such a coordinated prosecution of tax evasion would constitute a substantial positive return for all players, however only under conditions of comprehensive cooperation.

While numerous legal reform initiatives addressing information exchange and cooperation across sectors and national jurisdictions have been implemented, to achieve sustainable effects they have to be underpinned by organisational adaptations (building trust, provide training and human resources) and political initiatives towards a common European understanding of tax crimes as a threat that needs a coordinated, joint response and equal engagement from all European countries.



Annex: Mapping information Exchange overview

Glossary

PIT	Personal Income Tax
CT	Corporate Tax
VAT	Value added Tax

Taxation

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
Austria	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Tax Fraud Investigation Unit Central Liaison Office Brehmstraße 14 1110 VIENNA AUSTRIA
Bulgaria	PIT, CT, VAT Direct notification	Applicable	Applicable	National Revenue Agency Central Liaison Office 52 Dondukov Blvd. 1000 SOFIA BULGARIA

¹³² OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters of 1988 as amended by Protocol of 2010, https://www.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en (accessed 02.07.2020)

¹³³ Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268 of 12. 10. 2010.

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
Czech Republic	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Finanční správa České Republiky Generální finanční ředitelství Lazarská 7 117 22 PRAHA CZECH REPUBLIC
Estonia	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Maksu- ja Tolliamet Narva mnt 9j 15176 TALLINN ESTONIA
Finland	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Verohallinto Haapaniemenkatu 4 A PL 325 Helsinki 00052 VERO FINNLAND
France	Includes all European and oversea-Departments PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Direction Générale des Finances Publiques 139, rue de Bercy 75572 PARIS CEDEX 12 FRANCE
Germany	PIT, CT, VAT Direct notification	Applicable	Applicable	Bundeszentralamt für Steuern

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				53221 BONN GERMANY
Greece	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Hellenic Republic Ministry of Finance Karageorgi Servias 10 10184 ATHENS GREECE
Hungary	For taxation only, but Information can be used in criminal procedures too. PIT, CT, VAT Direct notification	Applicable For taxation only, but Information can be used in criminal procedures too.	Applicable For taxation only, but Information can be used in criminal procedures too.	Via CLO
Ireland	PIT, CT, VAT Direct notification Participation in tax-audits No assistance in service of documents	Applicable	Applicable	Irish Tax and Customs VIMA Intrastat and Mutual Assistance Government Offices Millennium Centre DUNDALK IRELAND
Italy	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Ministero dell'Economia e delle Finanze Direzione relazioni internazionali

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				Ufficio Centrale di Collegamento Via dei Normanni, 5 0184 ROMA ITALIA
Malta	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	CLO Director General, Legal and International International Tax Unit MFSA Notabile Road ATTARD BKR 3000 MALTA
Poland	PIT, CT, VAT Direct notification Polish citizens will be notified prior to a submission of information	Applicable	Applicable	Ministerstwo Finansów Departament Administracji Podatkowej ul. Świętokrzyska 12 00-916 WARSZAWA POLAND
Portugal	PIT, CT, VAT Direct notification	Applicable	Applicable	DSIFAE - Direção de Serviços de Investigação da Fraude e de Ações Especiais Avª Duque d' Ávila, nº 71

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				1000-139 LISBOA PORTUGAL
Spain	PIT, CT, VAT Direct notification Participation in tax-audits	Applicable	Applicable	Agencia Estatal de Administración Tributaria Dirección General Calle Infanta Mercedes, 37 28020 MADRID SPAIN
United Kingdom	PIT, CT, VAT Direct notification with the exception of Gibraltar, Isle of Man, Guernsey and Jersey. For these territories also, assistance for delivery of documents is excluded.	Applicable until the end of the transition period	Applicable until the end of the transition period	HM Revenue & Customs Mutual Legal Assistance Room 2/74 100 Parliament Street LONDON SW1A 2BQ UNITED KINGDOM ANGUILLA: Ministry of Finance, Economic Development, Investment, Commerce & Tourism

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				<p>Permanent Secretary for Finance P.O. Box 60 Secretariat Second Floor West THE VALLEY ANGUILLA</p> <p>BERMUDA: Ministry of Finance 30 Parliament Street HAMILTON HM 12 BERMUDA</p> <p>BRITISH VIRGIN ISLANDS: Ministry of Finance International Tax Authority 33 Admin Drive Road Town, TORTOLA BRITISH VIRGIN ISLANDS VG1110</p> <p>CAYMAN ISLANDS:</p>

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				<p>Department for International Tax Cooperation Government Administration Building Box 135 133 Elgin Avenue GRAND CAYMAN KY1-9000 CAYMAN ISLANDS</p> <p>GIBRALTAR: Commissioner of Income Tax 331 Main Street GIBRALTAR GX11 1AA</p> <p>GUERNSEY: Director of Income Tax Tax Office PO Box 37 2 Cornet Street ST. PETER PORT GY1 3AZ GUERNSEY</p>

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				<p>JERSEY: Treasury and Resources - Taxes Office Deputy Comptroller of Taxes (International) PO Box 56 Cyril Le Marquand House ST. HELIER JERSEY JE4 8PF</p> <p>ISLE OF MAN: Assessor of Income Tax Government Offices Bucks Road DOUGLAS ISLE OF MAN IM1 3TX</p> <p>MONTserrat: Comptroller of Inland Revenue Competent Authority Tax Information Exchange</p>

Legislation	OECD Convention on Mutual Administrative Assistance in Tax Matters ¹³²	Directive 2011/16/EU on administrative cooperation in the field of taxation	Regulation on administrative cooperation in the field of value added tax. ¹³³	Contact Points
				<p>P O Box 99 BRADES MONTSERRAT</p> <p>TURKS AND CAICOS ISLANDS: Ministry of Finance, Trade and Investment Permanent Secretary for the Ministry of Finance N.J.S. Francis Building Pond Street GRAND TURK TURKS AND CAICOS ISLANDS</p>

Criminal investigation

Legislation	Swedish Initiative¹³⁴ Competent authority	European Investigation Order¹³⁵ Competent authority	Convention on Mutual Assistance in Criminal Matters 2000¹³⁶	Convention on Mutual Assistance in Criminal Matters 2000¹³⁷ Competent authority	European Convention on Mutual Assistance 1959¹³⁸
Austria (Schengen)	TAX and CUSTOMS: Tax Fraud Investigation Unit International Cooperation in Fiscal Investigation Brehmstraße 14 1110 VIENNA AUSTRIA post.sf-rechtshilfe@bmf.gv.at	Competent Public Prosecutor's Office	Applies	Competent Public Prosecutor's Office	Applies insofar as there are no other instruments applicable
Bulgaria	Ministry of the Interior National Police Service 29, Shesti Septemvri Str. 1000 SOFIA BULGARIA	Pre-trial proceeding: competent Public Prosecutor's Office trial proceeding: competent district court or military court	Applies	a) preliminary investigation: PPO of the court of cassation b) Competent regional or district court	Applies insofar as there are no other instruments applicable

¹³⁴ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29. 12. 2006.

¹³⁵ Directive 2014/41/EU regarding the European Investigation Order in criminal matters.

¹³⁶ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197 of 12. 7. 2000

¹³⁷ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197 of 12. 7. 2000

¹³⁸ European Convention on Mutual Assistance in Criminal Matters, Council of Europe, Treaty Office on <https://www.coe.int/en/web/conventions/full-list/conventions/rms/09000016800656ce>; and its additional protocols: Additional Protocol 1978, <https://www.coe.int/en/web/conventions/full-list/conventions/rms/>

<p>Czech Republic (Schengen)</p>	<p>CUSTOMS: Generální ředitelství cel Odbor Pátrání Národní koordinační jednotka Budějovická 7 140 96 PRAHA CZECH REPUBLIC E-Mail: operacni@cs.mfcr.cz</p> <p>CZECH POLICE-PRESIDIUM: Policejní prezidium České republiky Strojnická 27 170 89 PRAHA 7 CZECH REPUBLIC E-Mail: epodatelna.policie@pcr.cz</p> <p>CRIMINAL POLICE: Kriminalistický ústav Praha Policie České republiky Bartolomějská 12 110 00 PRAHA 1 CZECH REPUBLIC E-Mail: ku@pcr.cz</p>	<p>pre-trial proceeding: competent Public Prosecutor's Office trial proceeding: competent regional court</p>	<p>Applies</p>	<p>Competent regional PPO</p>	<p>Applies insofar as there are no other instruments applicable</p>
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<p>Estonia (Schengen)</p>	<p><u>Tax Authority:</u> Maksu- ja Tolliamet Uurimisosakond Lõõtsa 8a 15176 TALLINN ESTONIA E-Mail: ncp@emta.ee <u>Police:</u> Politsei- ja Piirivalveamet Pärnu mnt 139 15060 TALLINN ESTONIA E-Mail: ppa@politsei.ee</p>	<p>Office of the Prosecutor General Address: Wismari 7, Tallinn, 15188 Phone: (372) 6 139 448 Fax: (372) 6 139 402 E-mail: info@prokuratuur.ee</p>	<p>NOT applicable</p>	<p>NOT applicable (Competent PPO's and courts)</p>	<p>House search and confiscation only in accordance with the law of the requested state</p>
<p>Finland (Schengen)</p>	<p>Customs/Enforcement Department International and Legal Affairs Unit P.O. Box 512 00101 HELSINKI FINLAND</p>	<p><u>Central Authority:</u> Ministry of Justice <u>Competent authorities:</u> Police, Border- and Customs authorities, Helsinki district court, PPO, local courts.</p>	<p>Applies House search and confiscation only in case of double criminalisation and in accordance with the law of the requested state</p>	<p>PPO's, Courts of 1st Instance; Courts of Appeal, Supreme Court.</p>	<p>Applies insofar as there are no other instruments applicable</p>
<p>France (Schengen)</p>	<p><u>Tax Authority:</u> Direction Générale des Douanes et Droits Indirects Direction Nationale du Renseignement et des Enquêtes douanières 2, mail Monique-Maunoury TSA 90313</p>	<p><u>Central Authority:</u> Ministry of Justice <u>Competent authorities:</u> Competent PPO</p>	<p>Applies Direct communication between judicial and administrative authorities excluded. Requests have to be exchanged via judicial authorities only, save</p>	<p>Judicial authorities only</p>	<p>Applies insofar as there are no other instruments applicable</p>

	<p>94853 IVRY-SUR-SEINE CEDEX FRANCE E-Mail: bcre-dnred@douane.finances.gouv.fr</p> <p><u>POLICE:</u> 1.) Direction Générale de la Police Nationale: –Offices of the Direction Centrale de la Police Judiciaire – offices of the Direction Centrale de la Sécurité Publique – Offices of the Direction Centrale de la Police Aux Frontières</p> <p>Direction Centrale de la Police Judiciaire Place Beauvau 75800 PARIS CEDEX 08 FRANCE</p> <p>Direction Centrale de la Sécurité Publique Place Beauvau 75800 PARIS CEDEX 08</p>		<p>there are contrary bilateral agreements in place.</p>		
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	<p>FRANCE</p> <p>Direction Centrale de la Police aux Frontières Place Beauvau 75800 PARIS CEDEX 08 FRANCE</p> <p>2.) at the Direction Générale de la Gendarmerie Nationale : – all offices of this authority</p> <p>Direction Générale de la Gendarmerie Nationale 4, rue Claude-Bernard CS 60003 92136 ISSY-LES-MOULINEAUX CEDEX FRANCE</p>				
Germany (Schengen)	Competent authorities:	Competent judicial authority	Applies	Competent PPO, In case of minor offences: Tax office Koblenz Department of fines and offences Ferdinand-Sauerbruch-Straße 19 56073 KOBLENZ GERMANY	Applies insofar as there are no other instruments applicable

				E-Mail: Poststelle@fako.fin-rlp.de	
Greece (Schengen)	<p>Tax authority: Hellenic Republic Ministry of Finance Division of Customs Controls Strategy & Offences 10 Karagiorgi Servias 101 84 ATHENS GREECE</p> <p>E-Mail: Rilod33b@otenet.gr, d33-a@otenet.gr</p> <p>POLICE: Hellenic Police Headquarters 4 P. Kanellopoulou St. 101 77 ATHENS GREECE</p>	"Public Prosecutor at the Court of Appeal"	NOT applicable	NOT applicable	2 nd Additional Protocol not yet ratified.
Hungary (Schengen)	<p>Tax Administrastion: NAV Bűnügyi Főigazgatósága Bűnügyi Koordinációs Főosztály Pf.: 52 1525 BUDAPEST</p>	<p>General Procurator: Legfőbb Ügyészség Markó utca 16 1055 BUDAPEST HUNGARY</p>	Applies	<p>General Procurator: Legfőbb Ügyészség Markó utca 16 1055 BUDAPEST HUNGARY</p>	Applies insofar as there are no other instruments applicable

	<p>HUNGARY E-Mail: bfoig.bkf@nav.gov.hu POLICE: Országos Rendőr- főkapitányság Nemzetközi Bűnügyi Együttműködési Központ (NEBEK) Pf.: 314/22 1903 BUDAPEST HUNGARY E-Mail: intercom@nebek.police.hu</p>	<p>Submission via Eurojust possible</p>			
Ireland	<p><u>Tax and Customs authorities:</u> Office of the Revenue Commissioners Central Investigations Branch 3rd floor, Block D, Ashtown gate DUBLIN 15 IRELAND E-Mail: mutualassistance@revenue .ie POLICE</p>	<p>NOT applicable</p>	<p>Entry into force at 23.8.2020</p>	<p>Will be entry into force at 23.8.2020 Central Authority for Mutual Assistance Department of Justice and Equality 51 St Stephen's Green DUBLIN 2 IRELAND Fax +353 1 408 6117</p>	<p>1st and 2nd Protocol applicable House-search and confiscation only related to criminal offences criminalised in both countries and in accordance with domestic law. Delivery of documents only via Central Authority Principle of speciality</p>

	<p>An Garda Síochána Garda Communications Centre Harcourt Square DUBLIN 2 IRELAND E-Mail: communications@garda.ie</p>				
Italy (Schengen)	<p>Ministeri dell'Interno Dipartimento della Pubblica Sicurezza Direzione Centrale della polizia criminale Servizio per la Cooperazione Internazionale di Polizia Piazza del Viminale n. 1 00184 ROMA ITALIA</p>	<p>Central Authority: Ministry of Justice Directorate General for Criminal Justice Ufficio II - International Cooperation PPO of the capital of the competent region</p>	NOT applicable	NOT applicable	2 nd Additional Protocol since 1.12.2019
Malta (Schengen)	<p>Sirene Office Malta Police Force General Headquarters Fioriana VALLETTA VLT 2000 MALTA E-Mail: sirene.police@gov.mt</p>	<p>"The Attorney General" Refer to EJM-Atlas</p>	<p>Applies No direct contact between administrative and judicial authorities House-search and confiscation only related to criminal offences and in</p>	<p>Office of the Attorney General The Palace Triq ir-Repubblika VALETTA VLT 2000 MALTA No direct contact between administrative and judicial authorities</p>	Applies insofar there are no other instruments applicable

			accordance with domestic law.	House-search and confiscation only related to criminal offences and in accordance with domestic law.	
Poland (Schengen)	<p>POLISH POLICE HEADQUARTERS: Komenda Główna Policji Criminal Investigation Bureau Puławska 148/150 53-333 WROCŁAW POLAND E-Mail: impw@wro.mofnet.gov.pl</p> <p>BORDER GUARD: Headquarters of Border Guard International Cooperation Bureau al. Niepodległości 100 02-514 WARSZAWA POLAND E-Mail: wweu.bwm@strazgraniczna.pl</p>	Applies (Polish, in urgent cases English) pre-trial and trial proceedings: National Prosecutor's Office - Bureau of Intern. Coop. (Central)	Applies	Competent PPO Direct communication between judicial and administrative authorities permitted	Applies insofar there are no other instruments applicable

<p>Portugal (Schengen)</p>	<p>CUSTOMS: Ministra de Estado e das Finanças Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo Rua da Alfândega n.º 5 1149-006 LISBOA PORTUGAL</p> <p>CRIMINAL POLICE: Polícia Judiciária Direcção Nacional Novo edifício-sede da Polícia Judiciária Rua Gomes Freire 1169-007 LISBOA PORTUGAL</p> <p>Regional Directorates: North: Polícia Judiciária Directoria do Norte Rua Assis Vaz, 113 4200-096 PORTO PORTUGAL E-Mail: directoria.porto@pj.pt</p>	<p>Competent PPO or Investigation Judge Central Authority: Prosecutor's General Office</p>	<p>Applies House-search and confiscation only related to criminal offences and in accordance with domestic law.</p>	<p>Procuradoria-Geral da República Rua da Escola Politécnica 140 1269-269 LISBOA PORTUGAL</p> <p>House-search and confiscation only related to criminal offences and in accordance with domestic law.</p>	<p>Applies insofar there are no other instruments applicable</p>
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	<p>South: Polícia Judiciária Diretoria do Sul Rua do Município, 15 8004-003 FARO PORTUGAL E-Mail: directoria.faro@pj.pt</p> <p>Center: Polícia Judiciária Directoria do Centro Rua Venâncio Rodrigues, 16/18 3000-409 COIMBRA PORTUGAL E-Mail: direccao.coimbra@pj.pt</p> <p>Lisbon/Vale de Tejo: Polícia Judiciária Diretoria de Lisboa e Vale do Tejo Rua Gomes Freire, 174 1169-007 LISBOA PORTUGAL E-Mail: directoria.lisboa@pj.pt</p>				
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	<p>Further investigation departements (Departamento de Investigação Criminal) in: Aveiro, Braga, Funchal, Guarda, Leiria, Ponta Delgada, Portimão und Setubál sowie lokale Ermittlungseinheiten in Vila Real und Évora.</p> <p>NATIONAL GUARD: Guarda Nacional Republicana Comando Geral Largo do Carmo 1200-092 LISBOA PORTUGAL</p> <p>SECURITY POLICE (in cities) Polícia de Segurança Pública</p> <p>District headquaters (Comando Distrial) in: Aveiro, Beja, Braga, Bragança, Castelo Branco, Coibmra, Évora, Faro, Guarda, Ilha da Graciosa, Ilha da Madeira, Ilha das Flores, Ilha de Porto Santo,</p>				
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	Ilha de Santa Maria, Ilha de São Jorge, Ilha do São Miguel, Ilha do Faial, Ilha do Pico, Ilha Terceira, Leiria, Lisboa, Portalegre, Porto, Santarém, Setúbal, Viando Castelo, Vila Real and Visem.				
Spain (Schengen)	Competent Police Headquarters	International Cooperation Unit of the General Prosecutor's Office	Applies	PPO, Judges and courts, Secretarios Judiciales	Applies insofar there are no other instruments applicable
United Kingdom ¹³⁹	ENGLAND, WALES: HM Revenue and Customs Criminal Law and Information Law Advisory Team Solicitor's Office Room 2/74 100 Parliament Street LONDON SW1A 2BQ UNITED KINGDOM E-Mail: mla@hmrc.gsi.gov.uk SCOTLAND:	NOT applicable	Applies	HOME OFFICE: Home Office, UK Central Authority Judicial Co-operation Unit 2 Marsham Street Home Office, 5th Floor Fry Building London SW1P 4DF UNITED KINGDOM CROWN OFFICE: Crown Office, Scotland International Co-operation Unit 25 Chambers Street	Applies insofar there are no other instruments applicable

¹³⁹ See: Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 2020/29-7, especially Art. 62 ff. So, the legal instruments under EU-Legislation stay in force until the end of the transition period (31.12.2020 – Art.126)

	<p>International Co-operation Unit Crown Office 25 Chambers Street EDINBURGH EH1 1LA UNITED KINGDOM</p> <p>POLICE: 1.) All Police Services 2.) Border Force 3.) Scottish Crime and Drug Enforcement Agency</p> <p>UK Border Force Lunar House 11th floor Long Corridor 40 Wellesley Road CROYDON CR9 2BY UNITED KINGDOM</p> <p>3.) Police Scotland.</p>			<p>Edinburgh EH1 1LA UNITED KINGDOM</p> <p>REVENUES and CUSTOMS: HM Revenue and Customs Solicitor's Office Room 2/74 100 Parliament Street LONDON SW1A 2BQ UNITED KINGDOM</p>	
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