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1. Introduction and background to the strategic meeting

The strategic meeting on VAT fraud, organised jointly by Eurojust in co-operation with Europol, took place on 28 March 2011 at Eurojust, in The Hague. The meeting was organised at the conclusion of “The strategic project on the enhancement of exchange of information and mutual legal assistance between judicial authorities of the EU Member States in the area of VAT fraud”. This project was initiated in 2009 by the Eurojust Financial and Economic Crimes College Team.

Under the project, a questionnaire was drafted and sent to the Member States in 2010 to obtain in-depth information on the problems and best practices identified in the investigation and prosecution of cross-border VAT fraud cases. The questions included topics related to the access to and exchange of information between the Member States in VAT fraud cases, the legal obstacles encountered and the current level of expertise and training of the national authorities investigating such complex cases.

The aim of the strategic meeting was to gather practitioners from all the Member States experienced in investigating and prosecuting VAT fraud cases and discuss the results of the project. Eurojust had co-operated closely with Europol in the implementation of the project; the agenda of the meeting had been drafted jointly, based in particular on the key findings resulting from the answers to the questionnaire developed within the framework of the project. The purpose of the seminar was to identify and discuss some of the current legal and practical obstacles to disclosing, investigating and prosecuting VAT fraud, particularly the so-called carousel fraud. At the same time, the tools that Eurojust and Europol have now at their disposal to facilitate and co-ordinate national VAT fraud investigations and prosecutions were presented.

A total of 75 participants attended the strategic meeting, including experts on VAT fraud from the national authorities of the Member States, and representatives from the Council of the European Union, the European Commission, Eurojust and Europol.

2. Opening remarks

Opening remarks were given by Mr Aled Williams, President of Eurojust, and Mr Rob Wainwright, Director of Europol. They highlighted the very large scale of the VAT fraud problem: although difficult to quantify, researches show that the shortfall in VAT revenue, amounting to several billions of euro, is attributable, to a large extent, to VAT fraud. The loss of revenue hits both the Member States and the EU as a whole. The perpetrators are sophisticated criminals who diversify their activities and move from one fiscal jurisdiction to another. The co-operation and co-ordination in the fight against such crimes should be a priority and must involve all national authorities from the Member States with support from Eurojust and Europol.

One of the most alarming aspects of VAT fraud nowadays is the so-called carbon credit trading, when the crime is completely virtual, with no movement of goods, no crossing of borders, nothing physical to check or search. This makes investigations even more challenging. The response at EU level to VAT fraud is too fragmented: there is no integrated policy at EU level between the judicial, law enforcement and administrative authorities, despite the joint efforts of Europol and Eurojust.

The result is that the law enforcement and judicial authorities work independently, and very often not all affected Member States get involved. A common strategy to combat VAT fraud is needed.

3. Session I – Existing problems in the fight against VAT fraud

The objective of session I was to stress the importance of understanding the transitional VAT system in the EU and its vulnerability to fraud across tax jurisdictions. It highlighted the latest amendments at European level to the current VAT system, as well as the Commission's main proposals to combat tax fraud more effectively. It also analysed the practical obstacles encountered in administrative co-operation, the shifts in trends in VAT fraud and the practical problems at judicial level.

The highlights of session I are presented below:

1. The improvements of the instruments to fight VAT fraud as provided for in the recast Council Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax were presented. The newly-created EUROFISC network can provide a swift exchange of targeted information between the Member States. Despite the achievements, much remains to be done, especially since VAT fraud results in part from the weaknesses of the current legal provisions. The Commission has launched a green paper on the future of VAT, seeking views on how to improve the current system, making it simpler, sounder and more efficient. The green paper looks at specific issues, including how the system can be made more fraud-proof. It is expected that this broad-based consultation process would allow the Commission to present the priorities for the future VAT system by the end of 2011.
2. The main problems currently encountered in administrative co-operation in the field of VAT were discussed. They include: the lack of direct communication between anti-fraud offices at national or local level; the poor quality of information exchange; the delays in replies; the lack of a feedback mechanism to address these issues; and language problems. In addition, there are specific problems arising in the context of VAT carousel fraud cases, including: the lack of specialist staff; the co-operation between tax, law enforcement and judicial authorities, which is not always ideal; and no shared responsibility for VAT revenues between the Member States.

3. The shifts in trends in VAT fraudulent activities and issues regarding intelligence gathering were presented by Europol. The amendments to their national VAT legislations introduced by some Member States have not solved the problems, but only moved the fraud to other sectors or Member States. There is a need to share experiences and to gather and analyse the intelligence. This would allow a broader integrated approach in the fight against VAT fraud.
4. Many difficulties have been encountered in the investigation and prosecution of cross-border VAT fraud cases, as presented by Eurojust. The most common problem relates to delays in the execution of mutual legal assistance requests, mainly due to: lack of resources; the involvement of some Member States' central authorities in dealing with the requests; lack of ratification and/or implementation by all Member States of the judicial co-operation instruments; different procedures in the Member States regarding the collection of information from Financial Investigation Units and tax authorities during judicial investigations; lack of precision and poor translation of the requests; difficulties in identifying the competent authorities in other Member States; lack of nexus between the alleged criminal conduct and the evidence sought; and difficulties in tracing the illegal assets for an efficient recovery of the proceeds from crime. In addition, difficulties in setting up Joint Investigation Teams (JITs) in VAT fraud cases, in the admissibility of evidence and in cross-border co-operation can adversely affect pre-trial arrangements.

4. **Session II – Case studies**

Session II focused on cross-border VAT fraud case examples and its purpose was to learn how to overcome obstacles at intelligence gathering level and in the field of mutual legal assistance. Such obstacles arise sometimes from a lack of awareness in many Member States about new VAT fraud mechanisms applied by fraudsters. Difficulties in international co-operation are encountered particularly due to the complexity of letters rogatory in VAT fraud cases and the differences between confiscation and asset recovery regimes in the various Member States.

Two VAT fraud case studies related to CO₂ emission allowance trading were presented by the national authorities in charge of these cases. An illustration of the practical and legal problems encountered and the solutions found was provided. The following main conclusions could be drawn:

1. There is a need to exchange information between the Member States on the shifts in trends in VAT fraud to allow all EU countries to be aware of any mutations and to act accordingly and timely to reduce fraud.
2. The Analysis Work File (AWF) MTIC at Europol could play the role of an alert system for the Member States, allowing a quick response in combating VAT fraud and helping to prevent it.
3. Eurojust could play an important role in facilitating the issuing and the execution of mutual legal requests, as cross-border VAT fraud cases are usually associated with complex investigations that require a lot of evidence from other EU Member States.
4. There is a lack of motivation for executing letters rogatory, which are usually very complex and require many resources for their execution.
5. Requests for bank account information are handled with big delays and the information received only includes bank statements and not swift codes (which are needed in order to trace further the money).
6. The co-operation in the fight against VAT fraud should include third States.

5. **Session III - Towards an overall picture of the criminal phenomena and a close co-operation between the authorities involved**

Session III discussed the existing pool of EU legal instruments on judicial co-operation in criminal matters applicable to VAT fraud and the problems resulted from the interpretation of the *ne bis in idem* principle in the context of tax increase. The different approaches that the Members States have taken to confiscate the proceeds of cross-border VAT fraud were presented, and the necessity of a common European confiscation regime was discussed.

The roles of Eurojust and Europol in co-ordinating the actions of law enforcement and judicial authorities in VAT fraud cases were stressed. Finally, session III stimulated a reflection on how far the Member States should go in creating a common European approach to investigating and prosecuting VAT carousel fraud.

The highlights of session III are presented below:

1. Improved measures at EU level to facilitate judicial co-operation in the fight against VAT fraud are already in place; unfortunately, they are not always transposed into national laws in all Member States. Still, practitioners have a wide range of instruments at their disposal, but the issue at stake is their practical implementation, which is often hampered by the lack of financial resources.
2. An obstacle encountered recently by some Member States in the prosecution of VAT fraud cases is related to the infringement of the *ne bis in idem* principle. Following the interpretation given in 2009 by the European Court of Human Rights in the *Case of Sergey Zolotukhin vs. Russia* and in 2010 by the Court of Justice of the EU in case *C-261/09 Mantello*, it is not possible to apply both penal and administrative sanctions to the same individual for the same facts. For example, an increase in taxation applied as an administrative sanction cannot be followed by a criminal sanction for the same facts, which in this case makes it impossible to prosecute VAT fraud criminals. While in some Member States there are safeguards in place that ensure the *ne bis in idem* principle is adhered to in relation to tax increase and criminal sanctions, this is not yet the case in a number of EU countries. A European interpretation and awareness of the *ne bis in idem* principle in VAT fraud cases is therefore needed.
3. The existing problems in the fight against VAT fraud and possible European solutions were discussed. These include the need for: an early disclosure of VAT fraud; an efficient use of the EU judicial co-operation instruments; and the resolution of existing negative conflicts of jurisdiction in VAT fraud cases with a possible reflection towards a European jurisdiction in this area.

4. Substantial profits result from VAT fraud and often they are also laundered; therefore their confiscation is an effective deterrent. There are four EU framework decisions in place whose purpose is to ensure a common approach to confiscation. Still, not all Member States have adopted measures to allow a more widespread confiscation of proceeds from crime. The advantages of the system of confiscation without a criminal conviction (civil confiscation) and of the system of extended confiscation powers were presented. Unfortunately, such systems have been introduced only in very few Member States, which determines relevant issues with the mutual recognition of confiscation orders based on civil confiscation procedures or on the extended confiscation powers. A common approach to confiscation is needed.
5. The role of Eurojust in co-ordinating investigations in VAT fraud cases was emphasized. The operational effectiveness of Eurojust has been enhanced with new powers conferred to both the College and the National Members. A particular reference was made to the co-ordination meetings organised by Eurojust as well as the support and involvement of Eurojust in JITs. At the same time, the session introduced the recent idea of using Eurojust as a “co-ordination centre”, ensuring that agreements made at co-ordination meetings are the subject of timely execution by all parties. Such a centre is installed at Eurojust’s premises on a specific agreed “action day” (when, for example, simultaneous arrests, house searches, vehicle searches, seizures etc. could take place under Eurojust’s co-ordination). All these tools could provide a real added value for the investigation and prosecution of complex VAT fraud cases, since they facilitate the exchange of information on linked investigations and the co-ordination of operational actions. Co-operation with third States is also of crucial importance in VAT fraud cases, as more and more often crime assets are concealed or converted outside the EU. Eurojust can provide active support, by concluding co-operation agreements with third States, establishing contact points in third States, and co-ordinating the execution of requests for judicial co-operation issued by third States or requesting execution in third States.

6. The work of the AWF MTIC at Europol was introduced. This is a unique European tool to pool on a European level intelligence information related to VAT fraudsters, and the financial movement of their criminal proceeds. The Member States were invited to support the MTIC file and transmit to Europol all the information they might have on VAT fraud cases. 18 EU Member States together with Eurojust and three third States are involved in this project. Still, it is not possible to obtain a complete picture of this crime phenomenon because various Member States, although massively affected by VAT fraud, have not joined yet. Europol's main role is to gather information and intelligence from law enforcement authorities, analyse such information identifying links between facts, persons and data, and finally provide Member States with an intelligence picture that can help them identify criminal organisations, and trace and recover proceeds of crime.

6. **Conclusions and recommendations of the strategic meeting**

The **main conclusions** reached at the strategic meeting are the following:

1. VAT fraud is a serious crime whose profits are huge: therefore Member States should give priority to finding the best way to combat it and share responsibilities for the protection of all Member States revenues.
2. VAT fraud causes a substantial loss of revenue for both Member States and the EU as a whole; also, it is very often connected to money laundering, forgery and may have links with terrorist financing.
3. VAT fraud affects markets and the competition between businesses, therefore there is a risk that legitimate companies would no longer be able to compete in a market environment where criminal organisations operate.
4. VAT fraud is increasingly likely to have a cross-border dimension, being organised in particular through so-called carousel schemes; such schemes are usually carried out in the EU by the same fraudsters using the same modus operandi.

5. Initially, carousel fraud only involved intra-community supplies of goods. Recently, several Member States have been confronted with carousel fraud related to greenhouse gas emission allowances, when the crime is completely virtual and very difficult to investigate.
6. There are certain weaknesses within the current EU VAT system that make it vulnerable to fraud.
7. In their efforts to tackle VAT fraud in the sectors most affected by it, some Member States have taken temporary measures which derogate from the VAT general rules. Unfortunately, such solutions only moved the fraud to other sectors or to other Member States.
8. There is no integrated policy or strategy at EU level for investigating and prosecuting VAT fraud; many times the law enforcement and judicial authorities work independently and very often they do not involve all other affected Member States.

The following **recommendations** have resulted from the strategic meeting:

1. A common strategy to combat cross-border VAT fraud is needed so that Member States will no longer tackle serious VAT fraud in isolation.
2. The relevant EU and international legal instruments need to be implemented in practice in all the Member States and applied efficiently, in particular the instruments required for the tracing, freezing, confiscation and sharing of proceeds from VAT fraud.
3. Solutions at European level must be identified in order to:
 - Ensure that all Member States have in place a legal framework allowing for the investigation and prosecution of cross-border VAT fraud, irrespective of the Member State(s) where the crime happened and the loss occurred;
 - Approximate the definitions, levels of sanctions and statute of limitations in the Member States regarding VAT fraud;

- Ensure that all Member States are fully aware of the interpretation of the *ne bis in idem* principle, in the sense that a final decision taken in any EU country in administrative or criminal procedures cannot be followed by a criminal sanction for the same facts, when qualified as VAT fraud; and
 - In the future, avoid that VAT fraud goes unpunished due to negative conflicts of jurisdiction and consider drawing up rules of exclusive jurisdiction within the Union or entrusting the investigation and prosecution of such offences to the envisaged European Public Prosecutor's Office.
4. More efficient co-operation between the administrative, judicial and law enforcement authorities at the national and international level is needed to ensure a swift exchange of information, joint actions, and a common decision on where is best to investigate and prosecute the VAT fraud.
 5. International police and judicial co-operation should be initiated at the earliest stage possible with support from Eurojust and Europol.
 6. Co-operation and co-ordination should be the overriding issues in VAT fraud cases. Eurojust could assist the Member States to ensure from an early stage the co-ordination of actions, their follow-up through a co-ordination centre, a timely execution of requests for mutual legal assistance and the co-operation with third States.
 7. The Member States should consider using more often the effective JITs tool in VAT fraud cases, with support from Eurojust and Europol.
 8. Awareness of new VAT fraud mechanisms applied by fraudsters and of best practices in combating VAT fraud is often lacking in many Member States. There is a need for training sessions and topical meetings to address these issues.
 9. A timely and properly informed Europol could act as an alert system for the investigators and prosecutors in all Member States. The creation of a permanent monitoring platform based on information and intelligence gathered by Europol would be desirable for a constant monitoring of the VAT fraud phenomenon and a better assessment of available intelligence.

10. The co-operation in the fight against VAT fraud should include third States, and should take a more uniform approach, as more and more often crime assets are concealed or converted outside the EU.
 11. It would be very useful to continue the discussions in a follow-up meeting, in the nearest possible future, with the involvement of EU institutions.
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