



# INTRA-COMMUNITY FRAUD INVESTIGATION

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## CHAPTER 1 – INTRODUCTION

### 1.1. Project description INTRAFRAUD

The project "Strengthening the authorities' capacity of law enforcement to combat intra-Community fraud - INTRAFRAUD", coordinated by the General Inspectorate of the Romanian Police through the Directorate for Investigation of Economic Crime has been funded by the European Commission *Preventing and Combating Crime Programme - ISEC Framework Partners 2012*.

The project was developed in partnership with the law enforcement authorities and prestigious universities in Romania and other countries, members of the European Union: the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Office for Preventing and Combating Money Laundering, the Directorate General for Tax Anti-Fraud, Bucharest University of Economic Studies, Alexandru Ioan Cuza Police Academy, the Criminal Investigations Service of the Administration for Taxes and Customs of the Netherlands (FIOD), the National Administration of Taxes and Customs of Hungary and was supported by Europol.

The project was co-financed in proportion of 89.97% of the COM budget in total value of EUR 134,793.44 euro, the I.G.P.R. contribution being of EUR 15,026.56 (10.03%).

Released on 06.01.2013, the project had as general objective *the development of law enforcement authorities' ability to combat intra-community fraud* and as specific objectives *raising the level of expertise to law enforcement authorities in combating intra-community frauds and the increase of the level of inter-institutional cooperation between law enforcement agencies in Romania and partner countries*.

In the five training sessions held were trained 204 experts in the detection and investigation of intra-community fraud, of which:

- 15 prosecutors;
- 48 anti-fraud inspectors;
- 15 experts from N.O.P.C.M.L. (FIU);

- 4 university professors;
- 102 judicial police officers from the Economic Crime Investigation Police;
- 10 experts from the partners in the Netherlands;
- 10 experts from the partners in Hungary.

Seminars enjoyed the active participation of all trainees, they had a strong interactive character allowing many debates between prosecutors, judicial police officers and anti-fraud inspectors - key actors in the prevention, detection and investigation of intra-community fraud. The form of organization of the seminars was very appreciated, as participants could exchange experiences and opinions between all law enforcement agencies in the field. The seminars enjoyed the presence of partners from the Netherlands and Hungary, this way being able to know the way of organization and action, and the powers of law enforcement agencies in these countries.

This guide is the quintessence of these debates and reflects the expression of crime in intra-community procurements field, the mode of action to prevent and combat this type of fraud, the structure and duties of the competent law enforcement authorities, the judicial practice and also theoretical concepts which are necessary to be known by those called upon to apply the law.

## 1.2. International context

Foreign trade was imposed by the international specialization of national economies, "led by a number of factors, such as the natural physical and geographical conditions, the territorial size and the population of each country, the technical level and the diversification of the productive capacities of each country, the economic traditions, the geographical proximity of the countries and the establishment of dynamic economic complementarity relationships between them, as well as a number of extra-economic factors (colonial domination, relations of production, wars etc.)"(Sută Miron, Sută-Selejan). Deepening the international division of labor has led to an emphasis



of the economic interdependences between countries, helping at the same time to the diversification of the forms of manifestation of international trade. In practice, entities are involved in the international business by import-export operations, commercial transactions accounting for mostly the exclusive form of internationalization, especially for small and medium enterprises. If we look from the perspective of Romania's accession to the European Union we can say that foreign trade transactions were delimited, in terms of customs borders, from January 1, 2007, in intra-community transactions and international transactions. In this context, the manner of conducting those operations is influenced by both financial and economic traits common to both categories of transactions which relate to the economic nature of the business, the diversity and specificity of foreign trade operations, the transport of goods, the complexity and regulation of intra-community and international transactions, as well as peculiarities specific to each category of transaction.

The specificity of intra-community trade is based on its very definition which refers to all commercial exchanges in goods and/or services carried out between entities belonging to the Member States of the European Union. Based on these considerations and given the fact that the concept of intra-Community transactions appeared at the same time with the accession of our country to Community space, it seems that intra-Community specific features are determined by the environment where the entities involved in these transactions operate on EU markets. Looking from this perspective, we can say that the main feature of the intra-Community trade is related to the abolition of customs barriers between Member States, decay that led to the elimination of customs control of the movement of goods within the Community.

Thus, from the commercial relationships between Member States have gone those notions which referred to import and export, being replaced by new terminology such as intra-Community procurement, which substitutes the denomination of import, and intra-Community delivery, which has replaced the notion of export, as constituents of intra-Community trade.

Following the accession to the European Union, Romania became part of the Single Market, and as an effect of the disappearance of customs borders between EU countries there were abolished the customs declarations for intra-Community transactions, statements that were used to achieve intra-

Community trade statistics. But to replace this data source in the European Union was created and developed a statistical system to collect information directly from the companies belonging to the community area and performing trade activities with entities in the Member States of the European Union, a system called "Intrastat" which is based on the regulations that apply in all EU countries. At the same time, although customs barriers were abolished, the control of the movement of goods in the Community area is achieved through the VIES electronic system (VAT International Exchange System), which allows Member States sharing information and multilateral controls in order to prevent tax fraud in VAT field.

As a matter of fact, the compulsoriness of the exchange of information is an essential tool in the fight against infringements of tax law in the context of globalization and the development of multinational companies. According to the Model of the agreement for the exchange of tax information (TIEAS - Tax Information Exchange Agreements) developed by the OECD, the idea of promoting international cooperation in tax matters, tax administrations and the central authorities of the signatory states are obliged and at the same time have the right to exchange financial information in order to determine the value of contributions of residents and to combat tax evasion. Moreover, we have already stated and we shall point out hereinafter that Community law provides for a long time already the introduction in each Member State of two systems of information exchange: VIES - VAT Information Exchange System (validation of the VAT number) and SEED - System for Exchange of Excise Data (information exchange system on excise duty), and systems that Romania has also implemented. VIES provides the exchange of information with Member States of the European Union on value added tax. Hence, it is created an online database to determine Member States contributions to the community budget, which includes all payers of VAT in the Member States. VAT collection is therefore much more transparent because it provides electronic monitoring of receipt thereof. Depending on the amount of VAT in a country it is established that country's contribution to the EU budget. SEED provides the exchange of information on excise duties and creates a consistent database about all authorized warehouse keepers, that is, any economic agent authorized to engage in the production, processing,

storage and shipping of goods. The SEED can track the exact route of excise goods, and also ensures the excise payment in the country that produced the goods, and not that where the goods are exported. It is considered, in this regard, that in a globalized world, where fraudsters and those who defraud take advantage of the different limitations of the tax administrations, efficient cooperation and mutual assistance between tax authorities is crucial to combat tax fraud. Improvement of transparency, based on rapid and simple information exchange mechanisms, is considered crucial.

Romania's accession to the European Union imposed the harmonization of the national legislation with the Community legislation, significant changes occurring, among others, in the field of taxation, with major implications on the intra-Community trade transactions. At first glance, however, new procedures have a positive impact on intra-Community trade because of the simplification of transactions with goods, by eliminating customs formalities and implicitly customs duties and fees paid to customs officials through logistics streamlining, and following the elimination of costs related to cash flow whereas value added tax is not payable to customs. However, there are costs arising from new legislation related to its uniform implementation, mainly costs related to expenses incurred with the change of the accounting and information system, changes necessary in order to complete the declarations required by the new legislative provisions relating to indirect taxes, expenses involved by an exhaustive, fair and accurate record-keeping of all operations performed in carrying out intra-Community trade, but also costs generated by the rapid adoption of new regulations, resulting in increased expenses for accounting and tax services or staff training.

Fraud and tax evasion limits the ability of Member States to collect revenue and to implement the economic policy. According to estimates, tens of billions of euro, often representing unreported and untaxed amounts, are still in offshore jurisdictions, reducing the national tax revenue. The implementation of decisive actions that aim to minimize fraud and tax evasion could generate additional revenue worth billions of euros of public budgets across Europe. Fraud and tax evasion is also a challenge in terms of fairness and equity. Fairness is an essential condition for economic reforms to be socially and politically acceptable. The tax burden should be distributed more

evenly, by ensuring that everyone, whether less qualified workers, multinationals benefiting from the single market or wealthy persons with economies in offshore jurisdictions, contribute to public finances by paying a fair contribution. Fairness and equity also means the creation of better and fairer tax systems.

Combating fraud and tax evasion requires actions at national, EU and global level. The European integration process has led to a more cohesive integration of the economies of all Member States, registering high volumes of cross-border transactions and the reduction of costs and risks related to these transactions. The process has generated huge benefits for European citizens and businesses, but instead has created additional challenges for national tax administrations regarding cooperation and exchange of information. Experience has shown that Member States can meet these challenges effectively only if acting together based on a framework agreed at EU level. Solutions exclusively unilateral will not work. Within a single market, in a globalized economy, inconsistencies and gaps in national laws are too easily exploited by those who seek to circumvent tax obligations payment.

The EU has long had a strong policy on good governance in the tax area. The principles underlying the EU system are transparency, automatic exchange of information and fair tax competition. As noted above, the EU can build on the experience gained over many years through automatic information exchange, which is from the year 2005 the EU standard on savings income.

At the community level, it was developed a comprehensive set of tools to improve the ability of Member States to combat fraud and tax evasion. This set includes EU legislation (on improving transparency, information exchange and administrative cooperation), coordinated actions recommended to Member States (e.g., those aimed at aggressive tax planning and tax havens) and country-specific recommendations on intensifying the fight against tax fraud as part of the European Semester of economic governance. For example, through the Fiscalis 2020 programme, the EU shall also provide financial support for cooperation between national tax authorities.

The EU system is based on the principle of automatic exchange of information. In this regard, the EU is a world leader. Automatic exchange of

information between Member States was designed in 2003 and was implemented in 2005 by the Directive on taxation of savings income. Due to this Directive, Member States exchange information on savings income of non-resident taxpayers, their value amounting to EUR 20 billion. Moreover, the Directive on administrative cooperation, which entered into force in January this year, provides for automatic exchange of information on a wide range of incomes. Recently, the United States also introduced this principle into agreements on tax compliance applicable to foreign accounts (Foreign Account Tax Compliance Act - FATCA). Working together under the system introduced at EU level allows Member States to minimize the additional burden on tax administrations and financial institutions and to ensure a rapid and consistent implementation throughout the EU. The European Commission has also developed electronic formats for information exchange and secured communication channels. Information exchange is only possible with specialized computer support. The Commission has already developed computerized standard formats for automatic information exchange and channels for the exchange of information under the Directive on taxation of savings income. These will be continually updated and expanded to include other types of income, in accordance with the Directive on administrative cooperation. In addition, in early 2014 the European Commission presented a specific action plan setting out key actions meant to help Member States in their fight against fraud and tax evasion in the field of direct and indirect taxation. There have already been taken several important measures, and Member States should make better use of available tools. Presently, it is a priority for Member States to make necessary improvements to their national systems and to use the full European set of tools and implement rightly agreed and coordinated measures.

It is estimated that the European Union must assume a leading role in promoting good tax governance and, in particular, the automatic exchange of information worldwide. In this context, the European Commission is leading international efforts to combat fraud and tax evasion. Relying on EU mechanisms, a strong and coordinated position of the EU in the G8, G20 and the OECD can help to ensure the transformation of automatic exchange of information in the new global standard in the field.

Thus, at EU level it is estimated that:

- U.E. should continue to support developing countries that have committed to observe the principles of good fiscal governance to form sound fiscal administrations, working with them and providing them with technical assistance;
- The EU should coordinate their position within G20 discussions about the erosion of the taxation base and the transfer of profits, in accordance with the instructions provided in the conclusions of the European Council and on the developments in the EU in tackling the problem of tax havens and aggressive tax planning;
- The automatic exchange of information should become the new international standard. The EU should reach an ambitious and coordinated position for the automatic exchange of information to become a worldwide standard in international taxation. In particular, the EU should speak with one voice in the G8, G20 and the OECD, so as to ensure a strong commitment to the development of new international regulations that take into account current mechanisms at EU level to exchange information automatically.

Member States of the Community area agreed that the European Union should take a leading role on the international stage to promote the principles of good governance in tax matters and, in particular, the principle of automatic exchange of information and fair tax competition.

### 1.3. Contributor

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#### 1.3.1. Public Ministry

**Pîrlog Gigel** - prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice - Criminal Investigation and Forensic Section.

He graduated from the Law Faculty of Bucharest, class of 1992, having over 20 years of experience in investigating economic offences, which include those relating to intra-Community fraud.

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### 1.3.2. General Inspectorate of the Romanian Police

**Constantin Preoteasa** – project manager, the chief commissioner of Economic Crime Investigation Department of the General Inspectorate of the Romanian Police, the head of the Crime Investigation to the Regime of Public Funds and Corruption Service.

Graduate of the Faculty of Law of the University of Bucharest, class of 1995 and the post-university studies - Strategic Management of Internal Affairs of the National College of Internal Affairs of the "A.I. Cuza" Police Academy, the postgraduate academic studies, Public Administration and Public Management - National School of Political and Administrative Studies.

Trainer of the Project on combating fraud in public procurement, "An Operational Approach" organized by Freedom House Romania, financed by the European Commission within the period 2012-2015.

He participated in several training courses in Romania and abroad:

- US Department of Justice, Federal Bureau of Investigation - *Public Corruption Training Seminar*;
- UN Anti-Corruption Project in Romania – *The Judiciary, the State Institutions and the Civil Society fighting corruption Seminar*;
- US Department of Justice – *Southern Police Institute, University of Louisville Public Accountability and Police Internal Affairs Seminar*;
- US Department of Treasury – *Federal Law Enforcement Training Center International Banking and Money Laundering Training Program*;
- Organizer of the training course for police officers in Romania, initiated by the USA State Department, the US Embassy, in

collaboration with the University of Louisville, Kentucky (Bucharest, 1996);

- Attendee at the Symposium *Building Institutional Capacity to Fight Corruption in Romania* (Paris, 1999);
- Attendee at the Seminar *Fighting corruption*, organized by TAIEX Office of the European Commission (Brussels, 2002).

**Nicolae Marian Bucur** is head of the investigation of tax evasion and money laundering service within the General Inspectorate of the Romanian Police - Directorate of Economic Crime Investigation with a 15 years experience in investigating crimes of economic-financial nature.

Bachelor of *Legal and Administrative Sciences* - University of Craiova, session 1999 and graduate of post-university specialization courses - *criminal sciences*, and master's degree - *fraud investigations*, organized by the "A.I. Cuza" Police Academy of Bucharest, he attended training courses organized by prestigious institutions (CEPOL, ILEA - FBI and IRS, Comisaria General de Policia Judicial - Madrid, NBR).

He also attended training within the projects: *"Increase of the the investigative capacity of the National Anticorruption Directorate"* by presenting the theme: *"Discovery and probation of the fraudulent mechanisms used in the insurance market and money laundering"*, together with British specialists and experts, and "DEVELOPMENT OF PROFESSIONAL FINANCIAL INVESTIGATORS IN ROMANIA, DEVELOPED BY THE PROSECUTOR'S OFFICE ATTACHED TO THE HIGH COURT OF CASSATION AND JUSTICE AND GERMAN FINANCIAL EXPERTS AND AS SPECIALIST held lectures to trainees in fraud investigation of the Alexandru Ioan Cuza Police Academy - Bucharest.

**Stancu Petruț** is a specialist officer of the Economic Crime Investigation Department of the General Inspectorate of the Romanian Police, with over 17 years experience in investigating crimes of tax evasion, intra-Community offences and money laundering.

A graduate of the A.I. Cuza Police Academy in Bucharest, class of 1998, of postgraduate and master's degree courses, he attended numerous training courses organized by prestigious institutions (EUROPOL, CEPOL, Guardia di Finanza, Guardia Civil).



He is Romania's contact officer at EUROPOL, at the SMOKE Focal Point and for the EMPACT MTIC project.

**Dan Baicu** is a specialist officer of the Economic Crime Investigation Department of the General Inspectorate of the Romanian Police, with over 12 years experience in investigating tax evasion, intra-Community customs fraud and money laundering.

A graduate of the A.I. Cuza Police Academy in Bucharest, class of 2003, of postgraduate and master's degree courses, he attended numerous training courses organized by prestigious institutions (EUROPOL, CEPOL, Universitz of Strasbourg, Guardia di Finanza). He has also been invited as a lecturer at training sessions organized by CEPOL, with presentations that addressed themes such as intra/Community fraud and cigarette smuggling.

He is Romania's contact officer at EUROPOL, at the SMOKE Focal Point and for the EMPACT Excise project.

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### 1.3.3. Directorate General for Tax Fraud

**Lucian Moraru** is head of Tax Investigations Department within the Directorate General for Tax Fraud, graduate from the Bucharest University of Economic Studies (graduation year - 1997), with an experience of over 15 years in tax fraud investigation.

He coordinates external cooperation of the Directorate General for Tax Fraud in preventing and combating VAT fraud, with the quality of the EUROFISC Liaison Official, as he has participated in numerous traineeships and working meetings organized to improve methods and tools for halting such fraud and for the investigation of important cases in this field.

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### 1.3.4. National Office for Preventing and Combating Money Laundering

**Steluța Claudia Oncică:** economic university studies (Bucharest University of Economic Studies - Bachelor's degree in economic sciences, Faculty of Management - graduation date 1998) and legal studies (Bachelor of Law, University of Bucharest - Faculty of Law, graduation date 2007).

Current professional activity: Director of the National Office for Prevention and Control of Money Laundering with a 10 years experience in the Financial Intelligence Unit of Romania, exercising prerogatives in the area of interinstitutional cooperation and international relations. Manager of international programs - SPO (since 2008), Office spokesman (since 2012) and responsible for the implementation of the Anti-corruption National Strategy at FIU Romania level.

Professional experience: over 15 years in central public administration, acting also as a member of the Steering Committee at the National Office for Gaming (April 2013 - present) and 3 years as manager at the level of national and international companies.

Latest specialization: graduate of the "*Financial Crime Investigation Techniques*" (Budapest 2013), the International Police Academy (ILEA) with the support of the US Embassy in Bucharest.

**Ionela Laura Cojocaru-Galer:** economic university studies (Spiru Haret University - Graduate in Economic Sciences, Faculty of Financial and Accounting Management - graduation date 2006).

Current professional activity: Financial Analyst in the National Office for Prevention and Control of Money Laundering - International Relations Service, with experience in the Financial Intelligence Unit of Romania for 16 years, exercising prerogatives in the area of international relations, particularly in the exchange of financial information with other Financial Intelligence Units.

Professional experience: 16 years within the National Office for Prevention and Control of Money, 1 year in a bank, and 1 year in commercial activities.

The latest specialization: use of SIENA system within Europol, a EU financed project - FIU.NET.

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### 1.3.5. Bucharest University of Economic Studies

**Dorel Mihai Paraschiv** is Vice-Rector - International Relations at the University of Economic Studies in Bucharest. He has a rich experience of research in areas such as international economic relations; sustainable development; social responsibility; strategy. He worked in international research teams in Washington, the World Bank, Wirtschafts Universitat Wien, then in national teams in NURC research projects. These experiences are supplemented by a theoretical experience through numerous research grants he benefited from by his Ph.D. thesis and published papers.

**Ioan Popa** is professor at the Bucharest University of Economic Studies, Faculty of International Economic Relations. Graduate of the Faculty of Foreign Trade of the Bucharest University of Economic Studies and the Faculty of Law, University of Bucharest, Professor Ioan Popa is the author of numerous books, studies and articles on international affairs. He was a visiting professor at prestigious universities abroad (Université Paris-Sorbonne, Université de Lille I, France), manager in several national and international research grants.

**Mihaela Gabriela Belu** is Associate Professor at the Department of International Economic Relations, Bucharest University of Economic Studies. She obtained her master's degree in marketing from the UNIVERSITÉ DES SCIENCES ET TECHNOLOGIES - LILLE (FRANCE). Her areas of interest are: International Commercial Negotiation, Techniques of Foreign Trade Operations, International Marketing, International Logistics. Publications (selection): Foreign Trade Operations. Case studies. Applications, ASE Publishing, Bucharest, 2008 (author); Customs System, Economica Publishing, Bucharest, 2003 (coauthor).

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### 1.3.6. "Al. I. Cuza" Police Academy

**Nicolae Ghinea** is Associate Professor - *Fraud Investigation* subject within the Alexandru Ioan Cuza Police Academy - Bucharest. Previous to his academic career, he has worked in the Economic Crime Investigation

Department, with over 12 years of experience in preventing and combating money laundering.

**Nicolae Ghinea- PhD Lecturer**, teaches „Fraud investigation”, leads the university masters course „Fraud investigation management” within the Police Academy, currently the director of Internal Affairs and Strategic Management Department of the National College for Home Affairs of „A.I. Cuza” Police Academy. He carried out other managerial activities working as Vice-Rector of the Police Academy and director of the Center for Human Rights Promotion in the Ministry of Internal Affairs, he took training courses both domestic and abroad, he was a member of the National Council for Attesting Titles, Diplomas and University Certificates in the Ministry of Education and Research. Previous to his academic career, he worked in the Economic Crime Investigation Department, with over 12 years experience in preventing and combating money laundering. He has a vast scientific expertise in investigating economic and financial crime, reflected in the publication as author/co-author of a large number of papers, university courses, publications in specialized magazines and national and international conferences, he conducted several national and international research projects, is a member of the editorial board and editor in chief of the „Public Security Studies” magazine, indexed in several international databases; member of the Scientific Council of the „International Journal of Information Security and Cybercrime” magazine, editor of the „ Crime Investigation Magazine”.

**Petrică-mihail Marcoci - PhD Lecturer** teaching Fraud Investigation, Informative Activity basics, Economic and Financial Crime Investigation, Operational Methods and Techniques, Police Management, Accounting applied in fraud investigation and MAI Information. He graduated in 2015 postdoctoral studies in the field of public order and national security themed „Optimizing interinstitutional management cooperation in order to prevent and combat tax evasion”. He is the president of the Police Academy Ethics Commission, the secretary of MA program „Information Management” and specialized trainer of Ilfov Bar in criminal law and criminal procedure. He is member of the Scientific Council of many specialized scientific journals and author of many specialty papers and articles.

## CHAPTER 2 – BACKGROUND

### 2.1. National legislation

Since intra-Community frauds mainly aim at circumventing the payment of value added tax (VAT) and the use these monies for the own benefit of the people involved in illegal activities, relevant national legislation in this field is that governing the VAT regime in Romania and criminalizing tax evasion and money laundering.

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#### 2.1.1. Romanian Fiscal Code

Romanian Fiscal Code regulates the value added tax regime in Romania, the regime of intra-Community transactions and used goods. Also, the Fiscal Code is supplemented by the relevant provisions of the Fiscal Procedure Code and the Methodological Norms.

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#### 2.1.2. Law 241/2005 on preventing and combating tax evasion

##### ART. 8

(1) It is considered an offence and is punishable by imprisonment from 3 to 10 years and removal of some rights the establishment in bad faith by the taxpayer of fees, taxes or contributions, resulting in obtaining without right sums of money as reimbursement or return from the general consolidated budget or compensation due to the general consolidated budget.

(2) It is considered an offence and is punishable by imprisonment from 5 years to 15 years and removal of rights the collusion in order to commit the act stipulated in para. (1).

(3) The attempt to commit the acts in para. (1) and (2) shall be punished.

## ART. 9

(1) Constitute tax evasion offences and are punishable with imprisonment from 2 to 8 years and removal of rights the following acts committed in order to escape the tax obligations:

- a) veiling of the good or the dutiable or taxable source;
- b) failure, in whole or in part, to record in the accounting or other legal documents, the conducted trade operations or the obtained revenues;
- c) record in the accounting or other legal documents, the expenses that are not based on real transactions or record of their fictitious operations.

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### 2.1.3. Law 656/2002 republished for the prevention and punishment of money laundering

The normative act criminalises money laundering in the three paragraphs of Article 29, any of which may be incident in the cases of investigated intra-Community frauds.

Therefore, it constitutes the offence of money laundering and shall be punished with imprisonment from 3 to 10 years:

- a) exchange or transfer of property, knowing that come from criminal offences, committed for the purpose of concealing or disguising the illicit origin of the property or in order to help the person who committed the offence where goods come from to evade prosecution, trial or penalty;
- b) concealment or disguise of the true nature of the source, location, disposition, movement or ownership of the assets or rights over them, knowing that such property is derived from criminal activity;
- c) acquisition, possession or use of property, knowing that they originate from criminal offences.

.....

(3) If the act was committed by a legal person, in addition to the fine penalty, the court shall apply, as appropriate, one or more of the additional penalties provided for in art. 136 para. (3) let. a) -c) of the Criminal Code.

(4) Knowledge of the origin of the goods or the intended purpose can be deduced/inferred from objective factual circumstances.

(5) The provisions of para. (1) - (4) apply irrespective of whether the offence where the asset comes from was committed in Romania or abroad.

## 2.2. Community legislation

As regards intra-Community frauds, the main normative act of the Community legislation which has direct application in the field is the Directive 2006/112/EC.

The Directive 2006/112/EC of the European Union Council of November 28, 2006 on the common system of value added tax, published in the Official Journal of the European Communities (OJEC) no. L 347 of December 11, 2006, constitutes a republication of the 6th Directive, namely the Directive 77/388/EC of May 17, 1977 on tax on turnover - common system of value added tax: the uniform basis of assessment. By republishing, the articles of the 6th Directive were renumbered.

The provisions of the Directive have been transposed into the national legislation as of January 1, 2008 when came into force the provisions of the Government Emergency Ordinance no. 106/2007 amending the Law no. 571/2003 regarding the Fiscal Code and where the references to the articles of the 6th Directive (77/388/EEC) have been replaced by references to the Directive 112/2006.

## 2.3. Decisions by the Court of Justice of the European Union

ECJ decisions apply immediately throughout the EU, without having to taking them into the national legislation.

As regards intra-Community transactions, they can be grouped into two main categories:

- a) decision by which the right to deduct the VAT can be appealed;
- b) decisions by which the right to VAT exemption for the intra-Community supplies may be challenged, given that both those rights can determine the right for VAT refund.

Among the ECJ decisions by which the right to deduct the VAT can be appealed, we shall address only the decision in the Kittel case (joined cases C-439/04 and C-440/04), which essentially states in paragraph 61 that: "if it is found that, given the objective factors, the delivery of goods is made by a taxable person who knew or should have known that, by his purchase, was participating in a transaction connected with fraudulent evasion of value added tax, the refusal of right to deduction of the taxable purchaser person belongs to the national authorities".

Thus, for this right to be challenged, it has to be proved, on objective grounds, that there was a VAT fraudulent evasion, that the transaction in question relates to that fraud and that the entity in the position of buyer knew or ought to have known that he was participating in this fraud, through that acquisition.

As for the decisions that could support opposing the right of exemption from the payment of VAT corresponding to the intra-Community supplies, it is to be noted the ECJ decision in the Mecsek-Gabon case (C-273/11) which states that "Article 138 para. (1) of the Directive 2006/112/EC of November 28, 2006 on the common system of value added tax, as amended by the Directive 2010/88/EU of December 7, 2010, it must be interpreted as not precluding, in circumstances such as the issue in the main proceedings, the seller should be denied the right to benefit from the exemption from an intra-Community delivery, provided to prove, in the light of objective information, that the latter has not fulfilled their obligations in terms of evidence or they knew or should have known that the transaction which they carried out was part of a fraud committed by the person purchasing the goods and not having taken every reasonable measure in their power to prevent their participation in this fraud.



Thus, for this right to be challenged, it must be proved, on objective grounds, that there was a VAT fraudulent evasion committed by the buyer and the entity in the position of seller failed to take all reasonable measures in their power to prevent their participation in the fraud and that they knew or should have known that they were participating in this fraud through such sale.

A recent decision, given by the ECJ in December 2014 in joined cases C 131/13, 163/13 and C 164/13 C, known as *Italmoda*, clarifies and consolidates interpretations of previous decisions, both in terms of procurement, and supplies:

The Sixth Council Directive 77/388/EEC of May 17, 1977 on the harmonization of the laws of the Member States relating to taxes on turnover - the common system of value added tax: the uniform basis of assessment, as amended by the Directive 95/7/EC of April 10, 1995, must be interpreted as meaning that national authorities and courts are obliged to oppose a taxable person in a intra-Community delivery, a refusal of the right to benefit from value added tax deduction, exemption or refund, even in the absence of provisions in the national law which provide for such a refusal, if proven, given objective information, that the taxable person knew or should have known that the transaction invoked as grounds for that right, was participating in value-added tax fraud committed within a supply chain.

The Sixth Directive 77/388, as amended by the Directive 95/7, must be interpreted as meaning that a taxable person who knew or should have known that the transaction invoked as grounds for the right of value added tax deduction, exemption or refund, was participating in fraud relating to value added tax committed within a supply chain, shall be denied the enjoyment of those rights, despite the fact that fraud has been committed in a Member State other than that where the benefit has been requested and that the taxable person observed in the latter Member State the formal requirements of the national legislation in order to benefit from those rights.

## 2.4. Competent institutions

### 2.4.1. Public Ministry

The role of the Public Ministry and the prosecutors's status is legally settled by the Constitution of Romania, in Articles 131 and 132, which stipulate that:

Art. 131

*(1) Within the judicial activity, the Public Ministry represents the general interests of the society and protects the rule of law and the rights and freedoms of citizens.*

*(2) The Public Ministry exercises its powers through prosecutors attached to courts, under the law.*

*(3) Prosecutor's offices operate attached to courts of law, direct and supervise the criminal investigation activity of the judicial police, under the law.*

Art. 132

*(1) Prosecutors operate according to the principle of legality, impartiality and hierarchical control, under the authority of the Ministry of Justice.*

*(2) The position of public prosecutor is incompatible with any other public or private position, except for academic positions in higher education.*

In accordance with the provisions of article 62 of the Law no. 304/2004<sup>1</sup>, the Public Ministry exercises its powers under the law and is headed by the Prosecutor General attached to the High Court of Cassation and Justice.

The Public Ministry exercises by prosecutors the duties assigned to it by the Article 63 of the Law no. 304/2004, among which we can list:

- conducts the criminal prosecution in the cases and conditions provided by law;

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<sup>1</sup> On judicial organization, as subsequently amended and supplemented

- directs and supervises the criminal investigation activity of the judicial police;
- manages and controls the activity of other organs of criminal investigation;
- notifies the courts for the trial of criminal cases according to the law;
- exercises the civil action in the cases provided by law;
- participates, under the law, in the trial hearings;
- lodges appeals against judgments, as provided by law;
- studies the causes that generate or facilitate delinquency, develops and submits to the Ministry of Justice proposals for eliminating them and for improving legislation in the field.

In accordance with Chapter 2 of the Law no. 304/2004, the Public Ministry is organized as follows:

2.4.1.1. Prosecutor's Office attached to the High Court of Cassation and Justice, which is headed by the Prosecutor General attached to the High Court of Cassation and Justice, assisted by a senior deputy and a deputy.

The powers of the P.H.C.C.J. are settled by the article 63 with reference to article 40 of the Criminal Procedure Code, according to which undertakes the criminal investigation for the offences of high treason, offences committed by senators, deputies and members of Romania in the European Parliament, members of Government, judges of the Constitutional Court, members of the Superior Council of Magistracy, judges of the High Court of Cassation and Justice and prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice.

In case of evidence or suspicions of offences covering intra-Community fraud by any of the nominees, if the law provides otherwise, the powers of prosecution lies to the P.H.C.C.J.

2.4.1.2. The National Anticorruption Directorate, headed by a chief prosecutor and two deputies, is organized as an autonomous structure within the Public Ministry and is coordinated by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

The D.N.A. jurisdiction, as determined by the provisions of the article 13 of the G.E.O. no. 43/2002, refers in particular to offences under the Law no. 78/2000, as subsequently amended and supplemented, committed by people who have certain qualities. The offences covering intra-Community frauds draw the DNA's powers when between them and those provided by the article 13 of the G.E.O. no. 43/2002 there is a connection and their combination is necessary for better administration of justice.

#### 2.4.1.3. D.I.I.C.O.T. (Directorate for Investigating Organized Crime and Terrorism)

The Directorate for Investigating Organized Crime and Terrorism is established as a structure with legal personality, specialized in the fight against organized crime and terrorism, within the Prosecutor's Office attached to the High Court of Cassation and Justice. The Prosecutor General Prosecutor of the High Court of Cassation and Justice leads D.I.I.C.O.T by the agency of the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism.

The powers of this institution are provided by the art. 12 of the Law no. 508/2004 and may be called in the case of:

a) the following criminal offences if their perpetration entered the purpose of an organized crime group for the purposes set out in art. 367 para. (6) of the Criminal Code:

- offences stipulated by the Law no. 241/2005 on preventing and combating tax evasion, as subsequently amended, if in the case, irrespective of the number of concurrent offences, there has been a material damage greater than the equivalent in lei of the amount of EUR 500,000;

- offences stipulated by the Law no. 86/2006 on Romania's Customs Code, as subsequently amended and supplemented.

b) the following criminal offences, whether committed or not in the conditions of an organized crime group laid down by the art. 367 para. (6) of the Criminal Code:

- offence of money laundering stipulated by the Law no. 656/2002, if the money, goods and values that have been the subject of money laundering offences come within the powers of the Directorate for Investigating Organized Crime and Terrorism;
- offences connected, according to the article 43 of the Criminal Procedure Code, with those in powers of the D.I.I.C.O.T.

2.4.1.4. Prosecutor's offices attached to the courts of appeal, have jurisdiction under the art. 38 and art. 39 of the Criminal Procedure Code.

These too can hear the case covering intra-Community frauds if the suspect or the defendant has any of the qualities provided by the art. 38 and art. 39 of the Criminal Procedure Code, specifically lawyer, notary public, judicial executor, financial controllers of the Court of Accounts, external public auditors, etc.

2.4.1.5. Prosecutor's offices attached to the tribunals, have the powers regulated by the art. 36 and art. 37 of the Criminal Procedure Code.

The Offices solve the offence of money laundering and tax evasion stipulated by the art. 9 of the Law no. 241/2005, except those in the competence of other prosecutor's offices.

2.4.1.6. Prosecutor's offices attached to the first instance courts perform or supervise prosecutions for all offences except those in the competence of other prosecutor's offices, according to data previously submitted.

\*\*\*\*\*

According to the art. 288 of the Criminal Procedure Code, the criminal prosecution body is notified by a complaint or denunciation, by the acts concluded by other fact-finding bodies required by law or is notified ex officio.

In the case of intra-Community frauds, intimation is usually carried out by acts concluded the fact-finding bodies provided by law, which include the National Agency for Fiscal Administration, in some cases as a result of notifications ex officio, rarely through a denunciation submitted by natural or legal persons.

Intimations are submitted to the prosecutor's offices or police institutions, with the note that wrong complaint filed at the criminal prosecution body or the court shall be sent administratively to the competent judicial body. After registration, intimations are assigned to the prosecutor in view of criminal prosecution or are sent to the competent criminal investigation body.

In all cases, criminal cases are being finalized at the level of prosecutor's offices with the following solutions:

- entry of a nolle prosequi of the case, when the prosecutor does not exercise criminal proceedings or, where appropriate, file away the exercised prosecution, whereas there is a case stipulated by the article 16 para. (1) of the Criminal Procedure Code;
- waiver of prosecution when there is no public interest in prosecuting the defendant.
- preparation of the indictment and intimation of the competent court to carry out a forensic investigation.

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#### 2.4.2 General Inspectorate of the Romanian Police

The Economic Crime Investigation Police is the **specialized structure of the Romanian Police** acting through specific means to prevent and combat the economic-financial crimes and other violations of the law affecting the economic climate in Romania and the fundamental rights of citizens.

The main objective of the economic crime investigation structures is **to ensure lawful business climate by combating tax evasion, smuggling, corruption, counterfeiting of goods, offences in public procurement and the protection of the European Union's financial interests.**

The economic crime investigation bodies are **part of the Judicial Police** and have as essential object of activity and identifying individuals who break the law and their investigation by complying with the criminal procedure provisions, in terms of lines of work under their jurisdiction.

The economic crime investigation Police functions at central and territorial level, having the following **organizational structure**:

a) within the *General Inspectorate of the Romanian Police* works the **Directorate for Economic Crime Investigation**, organized into 6 services;

b) within the *Bucharest General Directorate of Police* works the **Economic Crime Investigation Service**, at the level of the Directorate General and **related services** within the districtual police, with double subordination: in terms of management and logistics provision is subordinated to the head of the territorial police, and in terms of skilled work is also subordinated to the specialized directorate of the General Inspectorate of the Romanian Police;

c) within the *county police inspectorates* work **economic crime investigation services**, organized on lines, coordinated by the management of the county police inspectorates. On professional line, these are also subordinated to specialized services within the Directorate for Investigation of Economic Crime, who gives support and guidance by expert policemen in their structure.

The main **lines of work** in the competence of economic crime investigation structures are:

- Tax evasion and intra-Community fraud;
- Money laundering;
- Customs fraud and the regime of excisable products;
- Intellectual property;
- Financial crime;

- Corruption, public administration and public institutions, conflicts of interest;
- Public procurement;
- Labor protection;
- Agriculture, agricultural real estate and food industry;
- Road infrastructure, transport and construction;
- Recyclable materials, environmental protection and forestry.

## **Jurisdiction of the Economic Crime Investigation Police**

### **I. General jurisdiction in criminal matters**

According to the Law no. 218/2002 on the organization and operation of the Romanian Police, the Criminal Procedure Code and the Law no. 364/2004 on the organization and operations of the judicial police, the Economic Crime Investigation Police is a criminal investigation body, part of the Judicial Police which operates under the authority of the prosecutor.

**Structures investigating economic crime have general jurisdiction regarding fact-finding and investigation of economic and financial crimes.**

Thus, according to art. 26 para. 1 of the **Law no. 218/2002**, the Romanian Police has the following main duties:

- *Performs activities of preventing and combating corruption, economic and financial delinquency, cross-border crime, offences in the field of informatics crime and organized crime;*
- *Carries out, according to the jurisdiction, activities for fact-finding criminal acts and conducts investigations about them.*

*According to art. 57 para. 1 of the New Code of Civil Procedure, the criminal investigation bodies of the police are performing judicial prosecution for any offence that is not given, by law, within the jurisdiction of the the special criminal investigation bodies or the prosecutor, and in other cases provided by law.*

*According to art. 2 of the **Law no. 364/2004**, the judicial Police is made up of police officers and agents, specialized in carrying out offences fact-finding, collecting data for stating criminal prosecution and criminal investigation.*



## **II. General jurisdiction in contraventional matters**

**The economic crime investigation bodies have general jurisdiction regarding fact-finding infringements on general rules for trade, sale, movement and transport of food and non-food goods, cigarettes and alcoholic beverages and control of the operation of electronic cash register with fiscal memory.**

By art. 15 para. 3 of the Government Ordinance no. 2/2001 on the judicial regime of contraventions it is established that officers and non-commissioned officers within the Ministry of Administration and Interior found contraventions of: defending public order; circulation on public roads; **general trade rules; sale, movement and transport of food and non-food goods, cigarettes and alcoholic beverages; other fields of activity determined by law or by the Government decision.**

Among the regulatory documents that provide contraventions for which the fact-finding competence belongs to economic crime investigation policemen, we illustrate:

- Law no. 12/1990 on the protection of the population against illicit commercial activities;
- Government Decision no. 247/2001 for the approval of the Regulation on the access, records and protection of tourists in tourism accommodation units;
- Government Emergency Ordinance no. 28/1999 on the obligation of economic agents to use the electronic cash register with fiscal memory;
- Government Emergency Ordinance no. 190/2000 concerning the regime of precious metals, their alloys and precious stones in Romania;
- Law no. 8/1996 on copyright and related rights;
- Government Emergency Ordinance no. 12/2006 to establish measures of market regulation on the channel of cereals and processed cereal products;
- Law no. 171/2010 on the establishment and sanctioning of forestry offences;

- Government Decision no. 996/2008 for the approval of the Regulation on the origin, movement and trading of timber, the regime of timber storage facilities and roundwood processing plants.

### **III. Special jurisdiction conferred by certain regulatory documents:**

#### **Jurisdiction of fact-finding, investigation and preservation of evidence in cases of offences relating to excise goods:**

Thus, according to art. 233 ind. 1 para. 1 of the **Fiscal Procedure Code**, *where data or solid evidence related to preparing or committing offences targeting goods referred to in [art. 135](#) para. (4) of the Law no. 571/2003, as subsequently amended and supplemented, which fall within the scope of excise levy, the criminal prosecution bodies can carry out fact-finding, investigation and evidence preservation activities.*

#### **Jurisdiction of fact-finding tax evasion offences:**

Thus, according to art. 2 let. g, of the **Law no. 241/2005** for preventing and combating tax evasion, competent bodies are the bodies which have duties for financial, tax and customs checkings, according to the law, and criminal investigation bodies of the judicial police.

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#### 2.4.3. Directorate- General for Tax Anti-Fraud

The Directorate- General FOR TAX Anti-FRAUD – DGAF - was established within the National Agency for Fiscal Administration (N.A.F.A.) on June 26, 2013 by the Government Emergency Ordinance no. 74/2013, approved by the Law no. 144/2014.

DGAF's main objective is firmly combating tax evasion and tax and customs fraud. The activity of fraud investigation and destructuring of transactional chains established for damaging the state budget is important both financially and socially, strengthening the confidence in the safety and integrity of the tax system.

DGAF is coordinated by a vice president of N.A.F.A. with the rank of Under-Secretary of State, appointed by decision of the Prime Minister.

Within DGAF operates the Fraud Combat Directorate, and inspectors of this structure are detached in prosecutor's offices and give technical specialist support to prosecutors in investigating economic and financial offences.

DGAF was operationalized in December 2013 after completion of the first phase of recruitment, when 856 tax anti-fraud inspectors were hired, subsequently other employment competitions being organized.

The effective operationalization assumed completion of several important stages, part of the extensive reorganization of the N.A.F.A.: draft and approval of secondary legislation and internal procedures regarding the anti-fraud control activity, completion of the first professional theoretical and practical training, provision of the logistical resources necessary to conduct the activity (headquarters design, connection to computer systems, fleet formation, development of forms, signs and equipment specific to the operative control activity).

Nationwide, DGAF operates through the central structure and the 8 regional structures, namely Bucharest, Suceava, Constanța, Alexandria, Târgu Jiu, Deva, Oradea and Sibiu.

DGAF **organizational structure** on departments, services, offices, departments was approved by the Order of N.A.F.A.'s President no. 1115/2013, later amended by the Order of N.A.F.A.'s President no. 3507/2013, and their specific duties are set by the Rules of organization and operation approved by the Order of N.A.F.A.'s President no. 563/2014.

According to the aforementioned legal regulations, at **central level** operate a total of **9 directorates**, namely:

- a) Fraud Combat Directorate
- b) Directorate for Special Cases Coordination
- c) Directorate for Interinstitutional Cooperation
- d) Intra-Community Operations and VAT Department (with operative control duties)
- e) Directorate for Customs Operations, Import-Export and Excise Goods (with operative control duties)

- f) Directorate for Control of Fiscal Risk Activities and Early Intervention (with operative control duties)
- g) Directorate for Risk Analysis, Selection and Appointment
- h) Directorate for Methodologies, Anti-Fraud Procedures, Synthesis and Reporting
- i) Tax Investigation Directorate.

Depending on their professional experience, anti-fraud inspectors come both from the public sector (structures of the Minister of Public Finance, N.A.F.A. and other institutions) and the private sector. DGAF management is ensured by a general anti-fraud inspector, aided in their activity by deputy general antifraud inspectors, appointed by decision of the Prime Minister. The general anti-fraud inspector and a deputy general inspector are detached prosecutors of the Public Ministry.

According to expert studies on the fiscal gap undertaken at the level of N.A.F.A. and other national and international entities in the field, DGAF attaches great importance to the identification and investigation of tax fraud phenomena with significant negative implications for the general consolidated state budget.

In this respect, the activity carried out by the DGAF focuses on the investigation of transactional chains organized in order to avoid the fulfillment of tax obligations, following which are quantified significant prejudices, also aiming and ensuring their recovery, the identification of the persons involved and the evidences. A significant contribution to achieving this demarche is provided by the nationally coordinated investigation of the special cases and the permanent inter-institutional cooperation with the criminal prosecution bodies.

DGAF and the Prosecutor's Office attached to the High Court of Cassation and Justice cooperate by observing the clearical jurisdictions specific to each of the two structures.

On the other hand, at the level of the DGAF are carried out activities aiming at cooperation with the intelligence structures and the criminal prosecution bodies, by organizing and coordinating some special actions on preventing and combating tax frauds, the establishment and operationalization of mixed operational teams for documentation of the tax fraud and exchange of information in areas of common interest.

The activity carried out by the DGAF also includes monitoring, supervision and control activities, oriented towards areas and economic fields where there is tax evasion, financial indiscipline or poor compliance phenomena. Thus, the aim is the awareness of taxpayers on the presence and vigilance of anti-fraud inspectors on mission in areas with high tax risk and the increase of tax compliance.

With a view to ensuring the unannounced and operational nature of controls for preventing and detecting any acts and deeds in the economic and financial, tax and customs field, there have been set out certain practical conditions of programming and implementation thereof and providing on-line knowledge of all ongoing control actions.

All anti-fraud controls performed by the DGAF are included in a national action plan, drawn up monthly based on the priority objectives of control and the findings of the risk analysis. Investigation of the phenomena of tax fraud is achieved inclusively through the analysis of data and information at which N.A.F.A. has automatic or on-demand access (records of persons, cadastre, vehicle records, criminal records, bank accounts), the capitalization of information obtained by international administrative cooperation, the capitalization of evidence from control actions or those obtained by continuous monitoring of road goods transport.

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#### 2.4.4. National Office for Preventing and Combating Money Laundering

The National Office for Preventing and Combating Money Laundering (The Office/N.O.P.C.M.L.) activates as *financial intelligence unit* within the national system for preventing and combating money laundering and terrorism financing (ML/TF).

According to applicable standards, financial intelligence units are specialized government agencies which act as an interface between the financial and non-financial sector and the law enforcement agencies. They aim to identify suspicious money laundering activities / terrorism financing that needs to be investigated.

## Definition of the Financial Intelligence Unit

**The Financial Intelligence Unit acts as a central agency responsible for receiving and analyzing (a) suspicious transaction reports and (b) other relevant information related to money laundering, predicate offences and terrorism financing, as well as to dissemination of the results of these analyzes.**

**The Financial Intelligence Unit should have the authority to obtain additional information from reporting entities and must have timely access to the financial, administrative and law enforcement information, which is necessary for the proper performance of its duties.**

**\* FATF recommendation no. 29**

The key elements of the regime for the prevention and combat of money laundering and terrorism financing in Romania are included in special legislative provisions, in particular, in the Law no. 656/2002, updated and supplemented by a series of secondary regulatory documents, in the Law no. 535/2004 for the prevention and combat of terrorism, as subsequently amended, as supplemented by the Criminal Code and the Criminal Procedure Code, in sectoral regulations, orders and decisions in the field issued by supervisory authorities.

National Office for Preventing and Combating Money Laundering (the FIU in Romania) is an administrative FIU, established in 1999, at the same time with the Law no. 21/1999. In 2002, the Law no. 21/1999 was repealed and replaced by the Law no. 656/2002 (CML/CTF Law), which extended the mandate of the FIU to include the TF combat and broadened the framework of responsibilities of the FIU outside its core functions.

*The object of activity of the Office is to prevent and combat money laundering and terrorism financing.* The Rules of organization and operation of the Office (the Government Decision no. 1599/2008) sets out in detail the functions and powers of the Office. To achieve its scope of work, the Office has the following duties:

- receives data and information from the reporting entities and prudential supervisory authorities relating to operations and transactions in lei and/or foreign currency;

- analyzes and processes data and information received according to the law to identify the existence of solid evidence of money laundering or terrorism financing;
- requires any public authorities and institutions, as well as any natural and legal persons the data and information which they hold and which are necessary to fulfill their object; this data and information are processed and used in the Office according to the legal provisions concerning the processing of personal data and those relating to classified information;
- collaborates with public authorities and institutions, as well as with natural or legal persons who can provide useful data in order to achieve their object;
- can exchange information, based on reciprocity, with foreign institutions having similar functions and that have the obligation to secrecy, if such communications are made for the purposes of preventing and combating money laundering or terrorism financing;
- issues, under the law, decisions of suspending transactions on which there is a suspicion that would target money laundering and/or terrorism financing;
- notifies the Prosecutor's Office attached to the High Court of Cassation and Justice in cases provided by law;
- immediately notifies the Romanian Intelligence Service on suspicion of terrorism financing operations, whether in the analysis and processing of information are found clues of financing of such acts;
- immediately notifies the competent authority in case of finding solid evidence of committing offences other than those of money laundering or terrorism financing;
- establishes and maintains lists of natural and legal persons suspected of committing terrorism financing, which are sent to the Ministry of Public Finance, according to legal provisions in force;
- is notified ex officio when being brought to knowledge in any way, about a suspicious transaction, under the law;

- develops proposals to the Government and other central public administration bodies for measures to prevent and combat money laundering and terrorism financing, endorses draft regulatory documents related to their field of activity;
- organizes and conducts specialized training of their staff and takes part in special training programs of other institutions;
- determines the form and content of the reports mentioned in art. 5 para. (1), (7) and (8) of the Act, and the work methodology on reporting under art. 5 para. (7) and (8) of the Act;
- develops their own working procedures through specialized departments and draws up the annual activity report;
- drafts, negotiates and concludes conventions, protocols, agreements with institutions in the country that have duties in this area and with similar foreign institutions, under the law; may be a member of specialized international organizations and may participate in their activities.

The **Office's mission** is to protect the integrity, stability and reputation of the financial system and to ensure the security of Romanian citizens by coordinating intelligence component of the national system of prevention and combating money laundering and terrorism financing.

The **Office's vision** is to support the effort of law enforcement authorities, financial and tax control authorities and regulator and supervisory authorities, by creating new information resources meant to prevent and detect all forms of economic and financial delinquency and providing qualitative financial intelligence.

The Office is headed by a President appointed by the Government from among the members of the Board. The FIU President represents The Office in the relation with the Romanian Parliament, the judicial and administrative authorities and with domestic or foreign natural and legal persons, including international organizations and bodies.



The objective of the Law no. 656/2002, republished, as subsequently amended, referred to in art. 1 is *to establish measures to prevent and combat money laundering and measures to prevent and combat terrorism financing.*

From this perspective, the regulatory document establishes three main categories of measures:

- incriminating and sanctioning - the definition of money laundering, with the applicable sanctioning regime
- institutional - operationalization of the N.O.P.C.M.L.
- operational - defining a process flow devoted to preventing and combating money laundering by setting precise tasks/competencies for entities and/or public authorities with responsibilities in the field.

While there is not a distinct concept used by the Law no. 656/2002, republished, with subsequent amendments, **all the operational measures introduced constitute an operational system to prevent and combat money laundering and terrorism financing, with the following components:**

a) **REPORTING Component** – has as purpose to supply the operating system with financial information from the financial and non-financial system:

i. The reporting entities transmit to the N.O.P.C.M.L. **suspicious transaction reports (STRs)** (art. 5(1), 6(1), 6(2) and 6(3) of the Law no. 656/2002), **cash transaction reports (CTRs)** (art. 5(8) of the Law no. 656/2002), **external transfer reports** (art. 5(7) of the Law no. 656/2002).

ii. National Customs Authority - transmits to the N.O.P.C.M.L. information held, under by law, in connection with statements of natural persons relating to cash in foreign currency and/or in national currency, which equals or exceeds the limit set by the (EC) Regulation no. 1889/2005 (art. 5(12) thesis 1 of the Law no. 656/2002), and all information related to suspicions of money laundering or terrorism financing, which are identified in the specific activity (art. 5(12) thesis 2 of the Law no. 656/2002),

iii. Authorities and structures provided for in art. 24 para. 1 letter (a) - (c) of the Law no. 656/2002 send to the N.O.P.C.M.L. information on suspected money laundering, terrorism financing or other violations of the Law no. 656/2002 (art. 24(2) of the Law no. 656/2002).

b) **ANALYSIS Component** – has as purpose filtering information submitted by reporting entities and disseminating relevant information to the PHCCJ, RIS or other competent bodies:

i. N.O.P.C.M.L. performs the analysis of suspicious transactions: (a) upon notification by any of the persons mentioned at art. 10 of the Act, or (b) ex officio, when being brought to knowledge in any way about a suspicious transaction (art. 26(3) of the Law no. 656/2002),

ii. N.O.P.C.M.L. shall analyze and process the information, and when it finds that there are serious evidences of money laundering or terrorism financing, shall notify the PHCCJ and the RIS (art. 8(1) of the Law no. 656/2002),

iii. After receiving the reports on suspicious transactions, if there are found solid evidences of committed offences other than those of money laundering or terrorism financing, the Office shall immediately notify the competent body (art. 8(10) of the Law no. 656/2002).

c) **INVESTIGATION Component** – has as purpose the investigation of relevant cases of money laundering and/or terrorism financing:

i. After receiving the intimation, the prosecutor conducting or supervising the criminal prosecution and the Romanian Intelligence Service may require the Office to file it (art. 8(5) of the Law no. 656/2002)

ii. The Office has an obligation to provide the prosecutor who is conducting or supervising the criminal investigation and the Romanian Intelligence Service, at their request, the data and information they obtained under the law (art. 8(6) of the Law no. 656/2002),

d) **INDICTMENT Component** – has as purpose the inflictment of penalties provided by law in cases of money laundering and/or terrorism financing.

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#### 2.4.5. EUROPOL (European Police Office)

The European Police Office (EUROPOL) is an European Union agency whose duties consist of collating, analyzing the information and disseminating the analytical materials to competent law enforcement agencies of Member States.

Europol facilitates the exchange of information between Member States, while providing their expertise, analytical and operational support. The only condition that is required by the involvement of Europol in the investigative work is that the criminal activity to affect two or more Member States.

Europol is a multidisciplinary law enforcement agency collaborating with both police organizations in Member States and with customs, fiscal, immigration authorities, coastguard etc. Moreover, Europol has concluded operational agreements with 13 organizations and third countries (Australia, Canada, Colombia, EUROJUST, Iceland, INTERPOL, Monaco, Albania, Norway, Switzerland, US agencies - ex Immigration & Customs Enforcement ICE, ATF, DEA, US Postal Service, US Secret Service, Lichtenstein and Serbia) and 20 strategic agreements with Bosnia and Herzegovina, Montenegro, Moldova, Russia, Turkey, Ukraine - Organisations, WCO, UNODC, CEPOL, European Commission, ECB, OLAF, Frontex, the European Centre for Monitoring Drugs and Drug Addiction (EMCDDA), Situation Centre of the European Council (SitCen).

Presently, Europol has two analytical files (AWX), one on combating terrorism and the second on organized crime (AWF SOC), both of which have a specific database. In the context of the second analytical case there are 27 focal points, each specialized in a particular crime area.

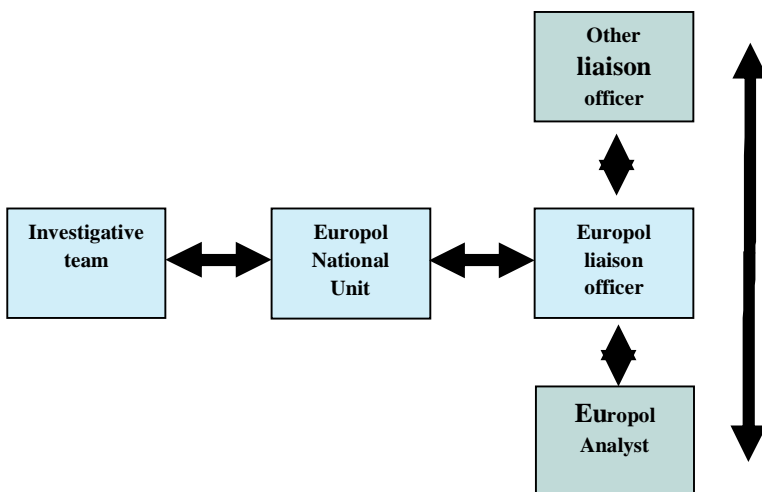
The MITC (Missing Trader Intra-Community) focal point was opened in April 2008 and aims to collect, collate and analyze information received from Member States in order to identify organized crime groups involved in intra-Community fraud and to support ongoing investigations. At this point, the MITC focal point has 23 Member States, namely Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Italy, Ireland,

Latvia, Lithuania, Netherlands, Poland, Portugal Romania, Slovakia, Spain, Sweden and the UK and three associates, Switzerland, Norway and EUROJUST.

The exchange of information with Europol and other Member States is performed using the secure communication channel SIENA (**Secure Information Exchange Network Application**), using one of the H1, H2 or H3 codes.

These codes relate to restrictions that may be imposed in the management of information transmitted to Europol. H1 code is less restrictive and assumes that the information can not be used as evidence in legal proceedings, in this sense a international rogatory commission being necessary. H2 code is restrictive, in that information can not be disseminated without the consent of the provider. H3 code allows the supplier to manage restrictions, using various criteria (eg., only some Member States may have access to information).

In the chart below we can see the flow of information to Europol



Basically, to Europol may be transmitted any relevant materials which can be subject to analysis (minutes of confiscation, operative surveillance reports, forensic reports, minutes of house searches, etc). It is important that the transmitted data contain identifiers of entities to be introduced (name, surname, personal identity number, address, registration number, phone, bank account etc.).

Currently, in the AWF SOC database are stored over 7,500,000 entities that are regularly evaluated (every 3 years) in terms of relevance.

Europol can provide "on site" support by moving the mobile office through which one can access databases and can identify possible links with other entities already implemented. Also, one can clone and analyze mobile phone content (contacts, photos, text messages, dialed, etc.) using the UFED (Universal Forensic Extraction Device) equipment.

The main priorities of the MTIC focal point are:

- Intra-community VAT fraud involving green certificates;
- VAT fraud in energy products and metals;
- Classic Carousel fraud;
- Fraud using the CP 42.00 customs procedure;
- Margin fraud margin in the intra-Community trade with used vehicles
- Offshore financial institutions

## 2.5. INCOTERMS delivery terms

A number of intra-Community frauds may also arise from the use of inappropriate, often through ignorance or bad faith, of INCOTERMS delivery terms. They explain how to make the delivery of goods from seller to buyer and the obligations of contracting parties in this regard.

The **method of delivery** means that delivery can be made on a global basis or in installments. If the seller does not perform its obligations with respect to compliance of the date of delivery and this failure it is to constitute a fundamental breach, the buyer may request either further execution of the contract or terminate the agreement. If the buyer has chosen performance of the contract and does not get this in a reasonable time, he is entitled to declare contract rescission or termination. When late delivery does not constitute a fundamental breach of contract, the seller retains the right to make further delivery, and the buyer that of claiming the seller the execution of the contract.

In the contract, it must be specified the supplier's liability for failure to comply with the delivery terms under the agreement, respectively the penalties payable by the exporter on each day of delay in case of delayed delivery.

### **INCOTERMS Terms**

The delivery terms are regulated under the contract, the rules and commercial practice. Professional associations, chambers of commerce, stock exchanges and other institutions publish collections of good practices with respective interpretations.

The great importance of the terms of delivery in the international agreement, as well as the existence of numerous practices and usances of delivery explain the concerns for encoding of rules in this area, which could serve as a benchmark for the business world.

The International Chamber of Commerce in Paris published a series of rules of international nature concerning the delivery, called INCOTERMS 1996 (*International Commercial Terms*). These rules were revised in 1953, 1967, 1976, 1980, 1990, 2000, last revision was in 2010.

**INCOTERMS** refer to the mutual obligations of the seller and the buyer in an international sales contract by proposing a set of rules for the interpretation of the most commonly used commercial terms in foreign trade.

INCOTERMS rules have effect on all stages and operations involved in transferring goods from supplier to customer, making explicit reference to the following elements:

- a) the seller's obligation to deliver and therefore the buyer's to take over and pay the freight. The seller must deliver the goods according to the agreement in terms of quality, quantity, time of delivery and place of delivery, with the presentation of evidence (documents) related to the delivery, and the buyer is obliged to take over the goods on the established deadline and pay the price of goods according to the agreement;
- b) the bearing of the costs of packaging, incumbent, usually, to the seller, unless the goods are delivered unpacked;
- c) the quantitative and qualitative control - the seller is obliged to perform all operations (and to cover all costs) related to the

control, in order to put the merchandise to the buyer's disposal, according to the contractual terms;

d) the establishment of the place of transition of expenditure, respectively risks from seller to buyer;

e) the obligation on the seller to notify the buyer that the goods have been made available to them (or the carrier) and, if the hiring of means of transport is the responsibility of the buyer, their obligation to notify the seller of the conditions in which goods must be delivered to the appointed carrier;

f) the conclusion of the contract of transport and procurement of the documents related to the delivery;

g) the procurement of other documents relating to the export (import): permit, certificate of origin, consular invoice etc.;

h) the customs duties organization and customs clearance.

INCOTERMS, version 2000, entered into force on January 1, 2000, has a number of advantages for the international trade.

Thus, *firstly*, the thirteen delivery terms (INCOTERMS 2000) give a precise definition of:

- obligations of the seller in connection with the delivery;
- transfer of risks on goods from the seller to the buyer;
- sharing of expenditure between the two sides, during transport of goods;
- documents - or equivalent electronic messages - owed by the seller to the buyer.

*Secondly*, INCOTERMS are optional, the parties having the freedom to use those rules, but not being obliged to do so. However, as soon as an INCOTERMS condition has been inserted in the contract by mutual consent of the parties, compliance with it is mandatory.

Even if they do not have the force of international law, INCOTERMS proved a very useful tool in the practice of foreign trade. In the absence of an express reference to INCOTERMS 2000, the parties may lie in the face of serious difficulties of interpretation of the contract in its execution process.

On the other hand, the parties may make reference to a certain INCOTERMS condition, bringing, however, certain changes. In other words,

admitting variations, INCOTERMS allow some flexibility in the contracting process; in the Publication 560 is discouraged, but firmly, the abuse of variants.

*Thirdly*, INCOTERMS are international; they relate only to international agreements. If in case of internal deliveries there is usually a small number of delivery terms, in international contracts there are 13 different rules, each admitting certain variants.

Furthermore, these European-inspired rules tend more and more to become universal: African and South American countries, the Middle East countries, China etc. practice them routinely, and lately they have penetrated the North American space, dominated before by the RAFTD.

**INCOTERMS 2000**, as otherwise INCOTERMS 1990, are based on the classification of rules into four groups - E, F, C, D - organized by the criterion of growing obligations of the seller.

The rules are set from the one that represents the minimum expenditure that may be incurred by the seller - "ex factory" or Ex Works (EXW) - and ending with the one that states that the seller should bear most of the costs. "customs clearance" or Delivered Duty Paid (DDP) - grouped into four distinct groups:

1. Group "E", according to which seller makes the goods available for the buyer at their premises (EXW);
2. Group "F", according to which the seller must deliver the goods to a carrier appointed by the buyer (FCA, FAS, FOB);
3. Group "C", according to which the seller is required to bear the transport - and under CIF and CIP to also bear the goods insurance - but without assuming the risk of loss or damage to goods and without incurring additional costs due to events occurring after loading and dispatch (CFR, CIF, CPT and CIP);
4. Group "D", according to which the seller must bear all costs and risks relating to transport of goods to the country of destination (DAF, DES, DEQ, DDU and DDP).

Annexes A and B present in detail the most commonly used INCOTERMS terms: FOB and CIF.

In order to understand INCOTERMS, we must consider two issues: the mode of transport and the main transport concept; the difference between "sale at departure" and "sale at arrival".



Main transport is that part of the international transport - sea, air, rail, road - where the goods are moving across a border without transshipment to that border.

"Sale on departure" means that goods are circulating, in the main transport, on the risk and account of the buyer.

"Sale on arrival" means that goods are circulating in the main transport on the risk and account of the seller.

The table below presents the 13 INCOTERMS rules, grouped into the four families and qualified according to the mode of transport and the type of sale.

### INCOTERMS Delivery Terms 2000

Group	Abbreviation	Terms of Delivery	Mode of Transport	SD * SA
E	EXW...	Ex Works ... (Franco fabrică...)	any	SD
F	FCA...	Free Carrier ... (Franco transportator)	any	SD
	FAS...	Free Alongside Ship... (Franco de-a lungul vasului)	exclusively maritime	SD
	FOB...	Free On Board... (Franco la bord...)	exclusively maritime	SD
C	CFR...	Cost and Freight... (Cost și navlu...)	exclusively maritime	SD
	CIF...	Cost , Insurance , Freight (Cost asigurare și navlu)	exclusively maritime	SD
	CPT...	Carriage Paid To... (Transport plătit până la...)	any	SD
	CIP...	Carriage Insurance Paid... (Transport și asigurare plătite până la...)	any e	SD
D	DAF...	Delivered At Frontier... (Livrat la frontieră..)	land	SA
	DES...	Delivered Ex Ship (Livrat pe navă nedescărcată...)	exclusively maritime	SA
	DEQ...	Delivered Ex Quay ... ( Livrat pe chei...)	exclusively maritime	SA
	DDU...	Delivered Duty Unpaid (Livrat destinație nevămuți)	any	SA
	DDP...	Delivered Duty Paid ( Livrat destinație vămuți...)	any	SA

SD: sale on departure ; SA: sale on arrival  
exclusively maritime: maritime and inland waters transport

### **Importance of coded delivery terms**

The coded delivery terms are a particularly useful **guide** for all businesses engaged in international trade transactions. They allow precise definition of the extent of the parties' obligations in relation to one of the essential components of the contract: delivery. By reference to INCOTERMS 2000/2010, partners reduce time and effort required to define and negotiate the delivery terms applicable to that transaction.

As shown in the literature, the judicious use - which requires thorough knowledge - of the coded terms is essential to the material success of foreign trade operations and the trader's security, either exporter or importer.

Lately, there is a tendency to generalize the INCOTERMS, a code of usances that has seen significant improvements in recent years. In a specialist paper published in the US it is recommended even to American companies to proceed to the replacement of the RAFTD with INCOTERMS, to ensure more clearly defining or contractual terms and to better protect their commercial business interests.

The use of INCOTERMS has several advantages for contractual parties.

*Firstly*, INCOTERMS 2000 enables rigorous determination of the seller's responsibilities and respectively the buyer's responsibilities in operations entailed by the delivery: packaging of goods, storage for export, loading in the means of transport (truck, wagon), customs formalities for export, main transport, insurance during the main transport, customs formalities for import, unloading at plant/warehouse of destination.

The table below provides the obligations of the partners related to those operations, obligations translated into costs incurred and reflected in the contract price.

**Table . Obligations of the parties by INCOTERMS groups**

<b>GROUP Obligations</b>	<b>E</b>	<b>F</b>	<b>C</b>	<b>D</b>
PACKING	exporter	exporter	exporter	exporter
Storage	exporter	exporter	exporter	exporter
Loading (at plant/warehouse)	importer	exporter	exporter	exporter
Export customs duty	importer	exporter	exporter	exporter
Main transport	importer	importer	exporter	exporter*
Asiguraré transport principal	undefined [the importer]	undefined [the importer]	For CIF and CIP the exporter	Undefined [the exporter]
Import customs duty	importer	importer	importer	Importer For DDP the exporter
Unloading (plant/warehouse of destination)	importer	importer	importer	importer

\* For DAF, when the frontier is not at destination, the importer

*Secondly*, INCOTERMS 2000 establishes the obligations of the parties regarding procurement of delivery documents: invoice, packing list, export license, certificate of inspection of goods, certificate of origin, consular invoice, document certifying delivery, transport document, insurance policy, and import license.

**Table**

Delivery term	Invoice	Packing list	Export license*	Certificate of inspection*	Certificate of origin*	Consular invoice*	Document certifying delivery	Transport document	Insurance policy	Import license*
<b>XW...</b>	S	(S)	B	B	(B)	(B)	B	(B)	(B)	B
<b>CA...</b>	S	(S)	S	B	(B)	(B)	S	B	(B)	B
<b>AS...</b>	S	(S)	S	B	(B)	(B)	S	B	(B)	B
<b>OB...</b>	S	(S)	S	B	(B)	(B)	S	B	(B)	B
<b>FR...</b>	S	(S)	S	B	(B)	(B)	-	S	(B)	B
<b>IF...</b>	S	(S)	S	B	(B)	(B)	-	S	S	B
<b>PT...</b>	S	(S)	S	B	(B)	(B)	-	S	(B)	B
<b>CIP...</b>	S	(S)	S	B	(B)	(B)	-	S	S	B
<b>AF...</b>	S	(S)	S	B	(B)	(B)	S	S	(S)-(B)	B
<b>ES...</b>	S	(S)	S	B	(B)	(B)	S	S	(S)	B
<b>EQ</b>	S	(S)	S	B	(B)	(B)	S	S	(S)	B
<b>DU...</b>	S	(S)	S	B	(B)	(B)	S	S	(S)	B
<b>DP...</b>	S	(S)	S	B	(S)	(S)	S	S	(S)	S

Legend:

V = documents on the expense of the seller

C= documents on the expense of the buyer

() = it is not stipulated in INCOTERMS on who's expense shall the document be obtained

\* = if appropriate

As shown in the Table, INCOTERMS specify who bears the costs only in the case of the invoice, the export and import license, the certificate of inspection, the transport document. Regarding the insurance policy, the holder of the obligation is indicated only for CFR and CIF.

In all other cases, the parties should specify who bears the costs, usances being in the sense of the solutions presented within brackets.

The established delivery term directly influence the price charged by the exporter.

The option of applying one or other of the conditions of delivery or usances internationally known must consider a number of criteria such as the following: the ratio of the contractual currency and the payment currency of the transport, insurance and other charges related to the delivery; the freight market situation, namely land and air transport tariffs; participation in international agreements on transport, involving preferential tariffs on transportation, usances on the outlet or supply markets.

In a saturated market, where there is a strong competition, the exporter may win a segment of this market, giving the importer certain conditions of favor, in terms of risks and minimum expenses that the latter should bear. In this case, the exporter will deliver the goods under the DEQ or DDP.

There are situations where an exporter who sells a commodity regularly and in large quantities, is in a position that allows them to obtain more favorable terms from transport and insurance companies, compared to a casual importer. Then, the exporter may accept conditions such as CFR, CIF, CPT or CIP.

The exporter can take the risk during transportation, choosing a delivery term to take responsibility to the point of destination of goods (*DAF, DES, DEQ, DDP*) only to the extent that the transport system on this route is well organized, the countries through which it will pass registers a relatively low number of labor disputes in this area, and the danger of congestion in ports or other areas of destination is limited.

If however, the exporter considers that the risks to the importing country risks are great, then they are fully transferred to the importer (FAS, FOB, CFR).

Government authorities can instruct, directly or indirectly, businesses in that country to sell under CIF or CIP or to buy under FOB or FCA terms.

*Thirdly*, although not governing the transfer of ownership, INCOTERMS gives a clear solution of the problem of transfer of risks in international cargo delivery from seller to buyer.

Basically, with two exceptions, time/place of expenditure transfer corresponds with the time/place of risks transfer. The exceptions are the terms CFR and CIF where transfer of expenditure occurs at the destination (as well as other conditions in the "C" group), while the risks are transferred to the port of embarkation, that is at shipment (as in the "F" group).

The fact that INCOTERMS does not concern the transfer of ownership is related to the need to find an operational solution on the rights/obligations related the merchandise in international traffic, given the impossibility, so far, to establish a standard on property transfer. Indeed, on the issue, law systems give different views and different solutions. But the needs of international trade require a single solution, precise, unambiguous and easy to apply on the obligations of the parties relating to the goods.

The correct use of INCOTERMS involves the contractual parties not only to know the content of those terms, but also their insertion into the contract with all necessary stipulations, namely:

- stipulation of the geographical point where the transfer of expenses and risks takes place; therefore, there will be inserted in the contract not FOB, but for example, FOB Constanța;
- indication of responsibilities for handling goods (eg., multimodal transport).

In 2010, the INCOTERMS terms have been updated, 4 INCOTERMS being cleared and another two new INCOTERMS condition: DAT ("Delivered at terminal") replaces DEQ, DAP (Delivered at Place) replaces DAT, DES, DDU (See chart below)

## Incoterms® 2000 vs. 2010



**Exclusively maritime**

**For any mode of transport**

DAT is used in multimodal transport. The seller's obligations are: export customs clearance, payment of transportation costs mainly with unloading at the agreed place. The seller bears the risks during the main transport. On the other hand, the buyer has the duty to import customs clearance and post-shipment.

DAP is used for multimodal transport, the seller has the following obligations: export customs clearance, pays costs with the main transport, and bears all costs. The seller bears the risks during the main transport. The purchaser has the responsibility to: unload goods at the agreed place (unless the parties agree otherwise); import customs clearance and post-shipment.

INCOTERMS must also be properly correlated with other rules or usances which affect the performance of the international sale agreement, such as: regular transport lines conditions (Liner Terms), harbour usances, specific professional rules etc.

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Ioan Popa, Negociere comercială internațională [International Trade Negotiation], Ed Economica, Bucharest, 2006

INCOTERMS 200, Publication 560, International Chamber of Commerce in Paris

\*\*\*, INCOTERMS® 2010, International Chamber of Commerce (ICC)

## Annex

### FOB Clause: Obligations of the Parties INCOTERMS 2000

**FREE ON BOARD (named port of shipment)** - means that the seller fulfills their obligation to deliver when the goods have passed the ship's rail at the port of shipment.

This means that the costs and risks of loss or damage to goods from that time are incurred by the buyer.

The term "FOB" involves the the seller's obligation to customs clearance for export.

This term can only be used for maritime or inland waters transport. When the ship's rail is irrelevant, such as in roll-on / roll-off or container traffic, it is more appropriate to use the FCA term.

#### **The Seller has the obligation**

##### *S1. Delivery of the goods according to the agreement*

To deliver the goods and provide the commercial invoice or electronic message according to the sale agreement and any certificate of conformity required by the agreement.

##### *S2. Licenses, permits and formalities*

To obtain, on their own risk and expense, the export license or any other official authorization and fulfill customs formalities necessary for the export of goods.

##### *S3. Transport agreement and insurance*

- Transport agreement: no obligation
- Insurance agreement: no obligation

##### *S4. Delivery*

To deliver the goods on board of the vessel designated by the buyer, in the agreed port, according to the port usance, on or within the set period.

##### *S5. Transfer of risks*

Subject to the provisions from B5, to bear all risks of loss or damage to the goods, once the goods have passed the ship's rail at the agreed port of loading.



*S6. Distribution of costs*

Subject to C6, to bear all costs related to the goods until the goods have passed the ship's rail at the agreed port of loading.

*S7. Buyer's notification*

To notify the buyer accordingly, that the goods were delivered aboard the vessel.

*S8. Proof of delivery, transport document and equivalent electronic message*

To provide the buyer, at the expense of the seller, the document that usually is proof of delivery of goods in accordance with A4.

If the document mentioned in the preceding paragraph is not the transport document (such as the negotiable bill of lading, the non-negotiable bill of lading, the inland waters transport document or the multimodal transport document).

If the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by equivalent electronic message (EDI).

*S9. Checking, packaging, marking*

To pay expenses related to checking operations (such as checking quality, measuring, weighing, counting) necessary for the goods to be made available for the buyer.

Provided that in such transactions it is not commonly that the goods that are subject to the contract to be unpacked, to provide, at their own expense, the pack required for the transport of goods, to the extent that the conditions related to transport (such as the mode of transport, the destination) were made known to the seller before the conclusion of the sale agreement. The packaging must be marked accordingly.

*S10. Other obligations*

To provide the buyer, upon request, on the buyer's risk and expense, all necessary support for obtaining any documents or equivalent electronic messages (other than those specified in S8) issued or transmitted in the country where the delivery is made and/or in the home country that buyer might need to export and/or import the goods and, if necessary, for the transit of goods through a third country.

To provide the buyer, upon request, all information needed for insurance.

## **The Buyer has the obligation**

### *B1. Payment of the price*

To pay the price as provided in the sale agreement.

### *B2. Licenses, permits and formalities*

To obtain, on their own risk and expense, the import license or any other official authorization and fulfill import customs formalities and, if appropriate, the ones for the transit of goods through a third country.

### *B3. Transport agreement*

To conclude on their expense the contract for the transport of the goods from the agreed port of loading.

### *B4. Take-over of goods*

To take over the goods according to S4.

### *B5. Transfer of risks*

To bear all risks of loss or damage to goods from the moment that the goods passed the ship's rail at the agreed port of loading.

In case the notification referred to at B7 is not carried out, or the vessel designated by him has not presented in time, can not load the cargo or can not finish loading before the deadline, to bear all risks of loss or damage to goods, from the agreed date or the expiry of the period for delivery, provided, however, that the goods have been duly individualized, i.e., that the goods have been set aside or otherwise identified as the goods covered by the contract.

### *B6. Distribution of costs*

To pay all costs relating to the goods from the moment the goods have passed the vessel's rail in the loading aboard.

To pay any additional expenses resulting from the fact that the vessel designated by him did not appear in time, can not load the goods or can not finish loading before the fixed deadline or the buyer has not made the endorsement referred to at B7, provided, however, the goods have not been properly individualized, i.e. set aside or otherwise identified as the goods covered by the contract.

To pay customs duties and other taxes and charges in official and the costs for customs formalities for import and, where applicable, those related to the transit of goods through a third country.

*B7. Seller's notification*

To notify the seller properly on the name of the vessel, the place of loading and the required delivery time.

*B8. Proof of delivery, transport document and equivalent electronic message*

To accept the proof of delivery made pursuant to S8.

*B9. Inspection of goods*

Unless otherwise agreed, to pay costs of prior inspection of goods loading, including inspection ordered by the authorities of the exporting country.

*B10. Other obligations*

To pay all costs and expenses to obtain the documents or electronic messages referred to at S10 and to refund the seller the expenses incurred for providing support as indicated.

**CIF Clause: Obligations of the Parties**

**INCOTERMS 2000**

**COST, INSURANCE AND FREIGHT (named port of destination):** means that the seller has the same obligations as for CFR, but additionally they must perform maritime insurance covering purchaser's risk of loss or damage to goods during transportation. The seller concludes insurance agreements and pays the insurance premium.

The buyer should note that in the case of the CIF term the seller is required to obtain the minimum coverage insurance.

CIF term requires the seller to ensure clearance of goods for export.

This term can only be used for maritime or inland waters transport.

When the ship's rail is irrelevant, such is the case for *roll-on/roll-off* or container traffic, it is more appropriate to use the CIP term.

**The Seller has the obligation**

*S1. Delivery of the goods according to the agreement*

To deliver the goods and provide the commercial invoice or electronic message according to the sale agreement and any certificate of conformity required by the agreement.

*S2. Licenses, permits and formalities*

To obtain, on their own risk and expense, the export license or any other official authorization and fulfill customs formalities necessary for the export of goods.

### *S3. Transport agreement and insurance*

#### a) Transport agreement

To conclude, at their own expense, under the usual conditions, the agreement for the transport of goods at the port of destination, on the usual route, with a maritime ship (or a vessel used in inland waters, where appropriate) of the type used commonly to transport the goods covered by the agreement.

#### b) Insurance agreement

To obtain, on their expense, the insurance of goods as agreed in the contract, so the buyer or any other person having an insurable interest in the goods, be entitled to appeal directly to the insurer; to provide the buyer insurance policy or any other certificate proving the insurance. The insurance shall be concluded by insurance agents or an insurance company with a good reputation and, if otherwise agreed, it must comply with the minimum coverage required by the "Institute Cargo Clauses" (Institute of London Underwriters) or other similar clauses.

The period covered by the insurance should be consistent with the B5 and B4. At the request of the buyer, the seller must provide, on the buyer's expense, the insurance for the risk of war, strikes, riots or civil upheaval, if such insurance can be obtained.

The minimum insurance should cover the price provided in the contract plus ten percent (i.e., 110%) and shall be conducted in the currency of the contract.

### *S4. Delivery*

To deliver the goods on board of the vessel, in the loading port, on or within the set period.

### *S5. Transfer of risks*

Subject to the provisions from B5, to bear all risks of loss or damage to the goods, once the goods have passed the ship's rail at the agreed port of loading.

### *S6. Distribution of costs*

Subject to the provisions from B6, to bear all costs related to goods until the goods have been delivered, as provided in S4, the freight and other costs resulting from B3, including cargo loading on board charges and any unloading expenses that are charged.

*S7. Buyer's notification*

To notify the buyer accordingly, that the goods were delivered aboard the vessel. and communicate any data enabling the buyer to take the necessary steps to typically take over the goods.

*S8. Proof of delivery, transport document and equivalent electronic message*

If not otherwise agreed, to provide the buyer, without delay, at their expense, the usual transport document for the agreed port of destination.

This document (such as the negotiable bill of lading, the non-negotiable bill of lading or the document of transport on inland waters) must specify the goods subject to the agreement, to be dated within the period agreed for loading, to enable the purchaser to request the goods at destination from carrier and, unless otherwise agreed, to sell it in transit by transferring the document to another buyer (negotiable bill of lading) or by notification to the carrier.

If the transport document is issued in several original copies, the complete set of original copies must be presented to the buyer.

If the transport document refers to charter-party, the seller must also provide the copy of this document.

If the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by equivalent electronic message (EDI).

*S9. Checking, packaging, marking*

To pay expenses related to checking operations (such as checking quality, measuring, weighing, counting) necessary for the goods to be made available for the buyer.

Provided that in such transactions it is not commonly that the goods that are subject to the contract to be unpacked, to provide, at their own expense, the pack required for the transport of goods, to the extent that the conditions related to transport (such as the mode of transport, the destination) were made known to the seller before the conclusion of the sale agreement.

The packaging must be marked accordingly.

*S10. Other obligations*

To provide the buyer, upon request, on the buyer's risk and expense, all necessary support for obtaining any documents or equivalent electronic messages (other than those specified in S8) issued or transmitted in the country where the delivery is made and/or in the home country that buyer might need to import the goods and, if necessary, for the transit of goods through a third country.

**The Buyer has the obligation**

*B1. Payment of the price*

To pay the price as provided in the sale agreement.

*B2. Licenses, permits and formalities*

To obtain, on their own risk and expense, the import license or any other official authorization and fulfill import customs formalities and, if appropriate, the ones for the transit of goods through a third country.

*B3. Transport agreement*

No obligation.

*B4. Take-over of goods*

To accept delivery of the goods when it was delivered as specified in S4 and receive the goods from the carrier at the port of destination.

*B5. Transfer of risks*

To bear all risks of loss or damage to goods from the moment that the goods passed the ship's rail at the agreed port of loading.

In case the notification referred to at B7 is not carried out, or the vessel designated by him has not presented in time, can not load the cargo or can not finish loading before the deadline, to bear all risks of loss or damage to goods, from the agreed date or the expiry of the period for delivery, provided, however, that the goods have been duly individualized, i.e., that the goods have been set aside or otherwise identified as the goods covered by the contract.

## 2.6. Fraudster profile

Individuals who have been the subject of investigations regarding fraud in intra-Community trade operations are of different nationalities and come from most social media (business community, central/local administration, civil society etc).

Relevant is that some of them are directly connected or are envoys of persons on decision-making or executive positions in the political and institutional spectrum at central or local level involved in the monitoring of these activities.

Also, it can be noted, due to the past experience, the specialization of firms with foreign capital, most offshore, in using fraudulent schemes for concealment and transfer of profits abroad.

In the common vocabulary of the fraud investigators, fraudster is the term often used to refer both to the individual who commits a delinquency as for the intra-Community regime and the individual who commits a crime, a fraud. But in our approach we shall emphasize the personality traits of the intra-Community offender, who has the ability, when conditions allow, to ignore the legal provisions in force in a given moment.

From a legal perspective, the offender is a person who commits an offence committed with guilt or participates in the offence, either as instigator or as an accomplice.

The intra-Community offender is a species concept of the generic term of offender, the specific difference being made up of the scope of work, namely the intra-Community economic and financial, tax or banking field through which harms the national and European budget. His aim is illegally obtaining considerable sums of money, rerouting the commercial route by interposing some commercial companies of "bottle", "ghost" type and evading the payment of duties on transactions carried out at European level, thereby diminished national and European budget resources.<sup>2</sup>

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<sup>2</sup> Nicolae Ghinea, s.a., *Criminalitatea economico-financiară în Uniunea Europeană [Economic and Financial Crime in the European Union]*, Sitech-Craiova, 2009

The financial offender's criminal conduct requires thorough knowledge of the mechanisms and factors that influence it. The offender as an individual must be known and analyzed in depth, paying particular attention to his psychological structure, endogenous and exogenous factors acting on his behavior.

To the economic and financial world are characteristic both factual modalities and certain types of criminal personalities, with some motivational potential of criminal nature.

The *motivation* of the perpetrators is all mental elements competing for the decision to commit a specific offence, it is composed of structuring all the reasons that led to this choice<sup>3</sup>. The more an offender is motivated in the work he performs, the more chances of success he will have, as he will endeavor all diligence to achieve the result which he pursues. Motivation is not the same for all offenders, it varies according to the time point interests and needs of each individual. However, a common element of all offenders in the sphere of economic and financial crime is given by the result pursued by criminal activity.

Thus, the motivation for this type of offender is characterized mainly by the desire to win, to obtain material benefits as large as possible. In the current social context, enrichment may appear as justified reason: the desire to win is, at least in the market economy system, viewed as sufficient and legitimate justification, being socially acceptable.

Greed and envy are the dominant features of many of the behaviors that manifest in the business space. The motivation to achieve considerable material gain is the most compelling and meets all criminals operating in this environment. Basically this is the defining element in criminal activity and is a particularly important element in the development of this type of delinquency.

V. Ruggiero<sup>4</sup> stated on criminal motivation that only "personal ambition is what impels people to commit crimes. Crime in business is "forbidden fruit" for the instruments of control, but also of self-control of its

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<sup>3</sup> Amza, Tudor, *Tratat de teorie and politică criminologică [Political and Criminological Theory Treaty]*, Luminalex, Bucharest, 2000

<sup>4</sup> Lygia, Negrier-Dormont and collaborators, *Introducere în criminologie aplicată [Introduction to Applied Criminology]*, Universul Juridic, 2004 – p. 304



own individuals belonging by definition to the business system". Causality of fraud is linked predominantly to the author's personality rather than the environment in which it operates and it would increase the crime vulnerability.

According to V. Ruggiero, criminal causation belongs to the motivational sphere determined by the culture level of individuals<sup>5</sup>. Thus, any criminal activity of individuals is an unusual situation, from which emerges their impossibility of having a self-sufficient control. Regarding self-control and the refuse to go to acts, their absence could be explained by a behavior dominated by certain addictions such as: precarious appropriation of the risk, tendency to avoid difficult tasks, reduced tolerance to frustrations, impulsive acts manifested through the pleasures of the moment. All these features are circumscribed to egocentrism as side of the human personality.

Criminals acting within the scope of intra-Community economic and financial criminality know in detail the gaps in the regulatory systems in which they operate and the legal vacuum and the inability of governments to firming the control that should be exercised in this system gives a particular vulnerability to such offences.

*Intellectual preparation* is the school formation that offenders in this category of crime have and that affects qualitatively the crime phenomena in that it provides the knowledge necessary to commit acts of particularly complex modes of operation. The experience of recent years in studying this kind of offences revealed that offenders have more and more knowledge in various fields, from the legislative and to areas that have been recently developed (IT, telecommunications, etc.).

Specific to the financial offender is that he is acting in his field of activity, where he possesses sound knowledge, where he knows the legislation and its imperfections, giving him the opportunity to circumvent laws<sup>6</sup>.

In most cases the offender has higher education and financial leadership positions within an organization (eg.: manager, director, owner,

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<sup>5</sup> Voicu, Costică, Georgeta Ungureanu, Adriana Voicu, *Globalizarea and criminalitatea financiar-bancară [Globalization and Financial and Banking Crime]*, Universul Juridic, Bucharest, 2005 – p. 229

<sup>6</sup> Voicu, Costică, Georgeta Ungureanu, Adriana Voicu, op.cit.

administrator, etc.). His position enables him to put his knowledge into practice, in violation of legal provisions, aiming to obtain illicit profits.

Greed causes the fraudster to develop schemes by which to defalcate considerable sums of money, which he invests further in real estate (eg. housing, land), the acquisition of valuable goods (such as luxury cars) or even in corrupting influence officials or politicians.

The fraudster studies cracks in the system and the unit where he operates, establishes in detail how to act and implement his plan tactful, with calm, consistent, displaying an exceptional tone. The control bodies, especially domestic ones, are concerned to a lesser extent to seek cracks in the system. Thus, in their ignorance inevitably fail or do not dare to check on those who, at least in appearance, are successful in the work they perform. Therefore they do not proceed to a rigorous verification of financial and accounting activities carried out by members of the organization. This feature of managers to trust the people who lead them favors committing crimes.

Another reason for which the control turns out to be, in many cases, ineffective, is that most managers consider that within the organization they lead can not be committed large-scale fraud. Treatment with indifference of signal that anticipate the suspicious behavior of employees and some employees view as too many checks have negative effects on the staff, boosts the offenders' activity, creating favorable circumstances to implement fraud.

Often a manager is forced to postpone from making a firm decision against irregularities discovered simply because their disclosure would affect their own professional situation. In other situations, the manager's ignorance can interfere, outlined by his inability to decipher the mechanisms and procedures used by the fraudster.

According to specialists, financial offender's personality has both a positive side and a negative side<sup>7</sup>.

As of the positive side, it is envisaged that the fraudster is dynamic, consistent, with great physical and mental strength, customary to work overtime, he requires no holidays, without being affected by effort. In the

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<sup>7</sup> Lygia, Negrier-Dormont and collaborators, *Introducere în criminologie aplicată [Introduction to Applied Criminology]*, Universul Juridic, 2004 – p. 203

banking-financial and tax institutions, where there is a permanent relationship with the public, it is noted that the intra-Community offender communicates very easily in interhuman relationships, having always ready solutions and answers that attract customers and impresses peers, accustomed to supporting statements using specialized terms and strictly specialized phrases, of which he is aware that the interlocutors do not fully understand.

As a special category of offenders acting in the economic and financial environment, fraudsters are aware that they operate in an institution (bank, investment fund, public institutions, commercial companies, regional development agencies) managing risk. All operations are marked by a higher or lower dose of risk. Therefore, in most cases they have no remorse or guilt when they lose a transaction. Aware of the risk, the fraudster is manifesting impulsively, does not consult with anyone, deliberately ignoring technical and accounting regulations. This way of working is accepted by superiors who are not bothered by this issues apparently minor.

The negative side of the fraudster's personality is complemented by his arrogance. He is considered the most capable individual in the organization he is acting and has intimate conviction that no one will be able to discover his fraud. The fraudster displays a nonchalant attitude, a stylish outfit, the availability to any issue under discussion, holds and controls every situation. To provide a complete picture of a professional, he knows when and what for to make small concessions, to yield, but only in situations that do not affect his interests.

The intra-Community fraudster has a very good financial situation, comparing permanently with those above him in the organizational hierarchy, but while exhibiting concern not to pinpoint in any positively or negatively way.

Studies in the field showed that greed is not an element to motivate particularly on the intra-Community fraudster in committing illegal actions.

At Yale University in the United States of America there is a department studying psychology of criminals specializing in economic and financial crime. Researchers have developed a pretty interesting concept, which refers to the fact that the offender is not someone with an obvious greed, but the person who is afraid of failures, misses. The classic example given by

researchers is the type of person who is doing really well in financial terms. When the institution where he is operating suffers a financial failure and the individual is affected in terms of remuneration, he attempts to commit fraud at a small scale, hoping not to be discovered. The analyzes carried out show that financial organizations and banks, solely concerned with results, are not willing to consider how they were obtained, excluding any control over the work of employees who developed key business points. To avoid being surprised by delicate situations, managers of the banking-financial institutions are concerned about corruption of financial auditing firms or supervisory and control bodies that verify the legality of their operations and confirm their balance sheets.

The complicity of the management of financial and banking institutions in committing fraud and money laundering transactions is also highlighted by the constant refusal thereof to intervene preventively or to notify the competent bodies of the irregularities found, which is no more than ongoing offences.

Another feature of the personality of the intra-Community offender is represented by his ability to relate and establish connections able of favor, with senior officials and leaders of the administration, police and judiciary bodies. He knows how to take advantage of these relationships and use them when he feels his position or activity threatened.

The many connections that have those dealing with economic and financial crime, make the development of the phenomenon to be a prolific one, because most often relationships of these criminals are in the political sphere where the economic delinquency develops in parallel with political corruption. Therefore detecting and combating infringements is much more difficult than in other areas.

Combining corruption with crime forms a system to facilitate and create opportunities that open the necessary channels to conduct illicit activities and give the dimensions of the facilities of which delinquency is benefiting in carrying out its activities.

The psychological and behavioral profile of type of fraudsters in intra-Community economic and financial outlines a robust personality, whose opulence hide very strong characters. The authors of this type of offences are

those who are at the forefront of public life, who have accumulated considerable wealth and have the ability to influence political power structures. Carefully planned and pursued with patience, their corrupt actions reach the target, which suggests a premeditation of the criminal activity. They speculate with great skill the applications and the pulse of economic, social and political life, building and implementing real strategies meant to increase their wealth and power by resorting to unusual tricks which, relying on flashes of intelligence and law gaps, provide a fertile ground to proceeding to the criminal act.

Unlike other offenders who, after the offence are trying to become invisible, economic and financial criminals appear in public without any remorse. In fact they are appreciated individuals in the society, honorable, and had been remarked by others, they possess knowledge that gives them an acclaimed position and in no way they could be considered criminals by others. In reality they are offenders, like those who would commit crimes against persons or other common law offence.

Often, some of them are temporary staying in Romania, their actual residence being in the opulence islands (Monte Carlo, Paris, London, Rome, etc.) and in the tax havens. They situate themselves, due to their financial potential and penetration power, very fast, in the circle of politicians, economic and financial elites, studying the existing relationships and exploring the inevitable conjunctures.

As noted, the motivation of the financial offender is the desire to get as many material advantages, the goal towards which they go, irrespective of the case they act in, is to earn more money or achieve a higher profit. They are, at least apparently, respectable people with a well-defined social position, possessing specialized studies which allow them to exploit any situation that favors the final aim, even if through the actions they carry out the violate the law. Most times, the illegal behavior of this type of offender is difficult to detect due to their status, but a multitude of socio-mutual indicators on the behavior of the offender can be identified, which would highlight the illegal activities they carry out and that bring them material benefits.

In the intra-Community fraud investigating work, investigators must consider the socio-neutral indicators on the behavior of the financial offender<sup>8</sup>, respectively:

- sudden change in lifestyle, particularly visible through the acquisition of goods and important values, which could not be justified by legally declared income. Such offenders invest illegally obtained monies in houses, cars, clothes, holidays, durables or have outstanding material conditions of their children. These assets could not be obtained only from the ordinary salary, so, often, the differences between the living standards and the means by which they formally gain their existence is an indication that the individual carries out illicit activities.
- the indicator called the "irresponsibility", resulted in voluntary renunciation to legal holidays, the uninterrupted presence at the job for extended periods, unjustified extension of working hours or insistence to participate in activities not normally under his responsibility etc. This type of offender is characterized by a special dynamics and attention, he studies all existing situations, showing interest in everything that happens in his environment.

Criminals acting within the scope of intra-Community economic and financial crime generally display a false image, therefore being relatively hard to find. Because of the power and social status, of which they are aware and taking advantage, they manage to corrupt values considered immune to the power of money. Self-centeredness is considered the crime "country", the driving force to achieve their desires. Money and power are their main motivations, which would determine them to interfere in any activity which would bring a profit.

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<sup>8</sup> Voicu, Costică, Georgeta Ungureanu, Adriana Voicu, *Globalizarea and criminalitatea financiar-bancară [Globalization and Financial and Banking Crime]*, Universul Juridic, Bucharest, 2005 – p. 246

## CHAPTER 3 INTRA-COMMUNITY FRAUD

### 3.1. Methods of fraud

The value added tax is an indirect tax which is for the most part a resource to the budgets of the Member States of the European Union and in a lesser extent a part of the European Union budget, together with customs duties and a share of the gross domestic product. Consequently, collecting this tax by the national law enforcement authorities should be a constant concern of each Member State of the European Union.

The creation of the internal market of the European Union by the abolition of borders of the Member States to facilitate, streamline and development the intra-Community trade and to harmonize national legislations on VAT, excise duties and other indirect taxes, have created the basis of emergence of fraud mechanism for avoiding the payment of the tax value added in the Member State of destination.

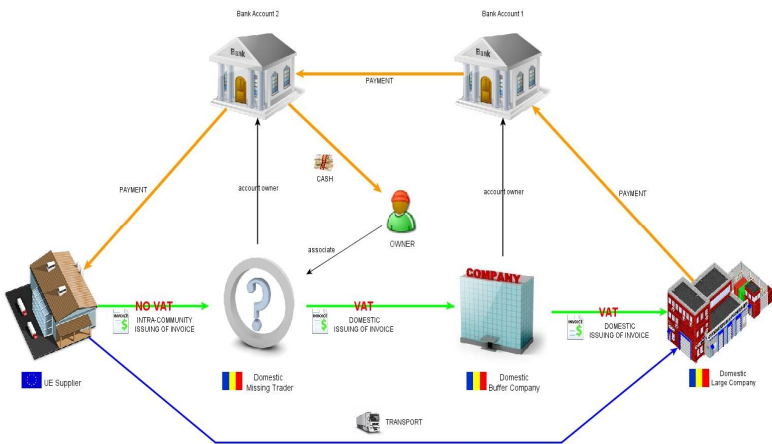
Casistry dealt with by the competent law enforcement bodies in Romania revealed that, although the aim pursued by those involved in intra-Community offences is to achieve a higher profit, depending on the outcome produced, three ways of fraud stand out:

- I. Total circumvention from payment of obligations due to the State general consolidated budget;
- II. Partial circumvention from payment of obligations due to the State general consolidated budget;
- III. Illegal reimbursements from the State general consolidated budget.

## 3.2. Total circumvention from payment of due obligations

### 3.2.1. Typical Intra-Community Fraud (MTIC)

The structure of this crime scheme designed in order to achieve tax fraud aimed at using an economic circuit involving legal persons liable for VAT, who performs different functions:



**Missing Trader**, is a legal person without real economic activity, not benefiting of financial independence in the economic activity circumscribed to the object of activity declared with the Trade Registry Office, its role is solely to make intra-Community procurements and to create a deductible VAT allowing subsequent exercise of the right of deduction.

It is abandoned after a relatively short period of time (20-30 days) to prevent investigation of its activities by law enforcement authorities. Also, the company either did not declare its activity to territorial tax bodies, or declare its activity, submits VAT returns, records tax debits, but does not pay for them.



One of its most important roles is in the financial circuit, as their accounts are used mostly for withdrawing cash illicit profit, masked in the rate of VAT payable to the general consolidated State budget.

**Buffer company**, is the taxable legal person interposed in the crime scheme between the missing trader and the final beneficiary in order to create an apparent state of legality. Its main role is of "honest" supplier of the final beneficiary, who records in accounting procurements on the national territory, bearers of deductible VAT. By analyzing the crime scheme, it appears that the right to deduct VAT practically comes from the missing trader, who collects it but it does not pay it to consolidated general State budget.

In the investigated cases there were situations where organized criminal groups with greater financial possibilities have interposed two or more buffer companies to chase away as much as possible the final beneficiary off the missing trader and implicitly to hold administrative or criminal investigation.

This company does not carry out intra-Community procurements, declares its commercial activity, namely procurements and deliveries on the national territory, its abandon not being necessary. Trade markups are very low, which generates submission of tax declarations listing payable obligations which are nil. Therefore, these companies will be used for a long time, since they are relatively safe from initial investigations of law enforcement bodies that focus on companies that perform intra-Community procurements.

In some cases it was found that after a certain period of time, buffer companies take on the role of corporate "missing trader" for a period of 20-30 days, before being abandoned.

**Final beneficiary** is the taxable legal person who either provides financial resources and controls the other legal persons situated upstream, directly or through intermediaries, concludes a convention with an organized crime group that controls them, which is the beneficiary of the tax advantage created artificially by fraud.

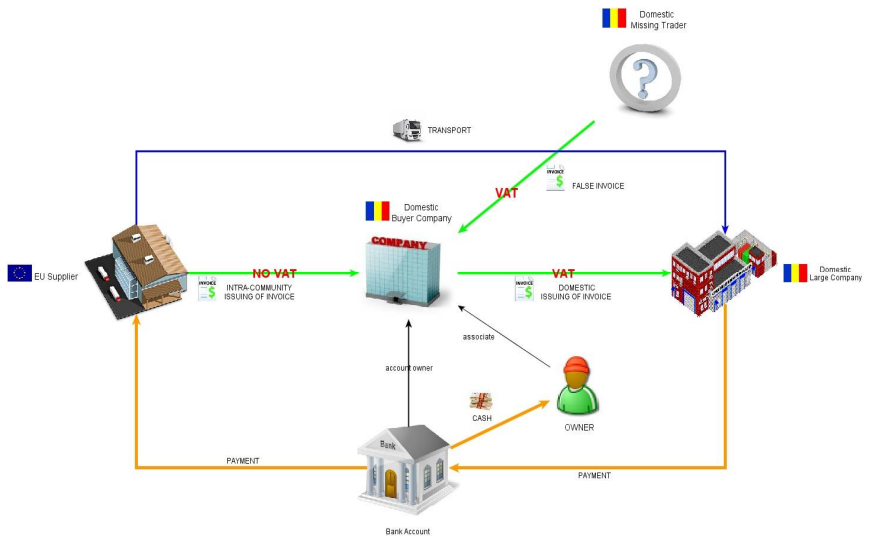
In this type of fraud is often noted that purchased goods may be sold in two ways:

- On the one hand by adding a trading margin, the aim being the creation of a taxable revenue whose value is close to the value of resale by the final beneficiary so as to achieve simultaneously with the VAT deduction a reduction of the taxable income; subsequently, it is found on the flow of payments that the payment of the value of goods was achieved entirely, but at the level of the missing trader a breakdown of payments is carried out. Thus, of the amount of money cashed over the illegal trade chain, intra-Community providers are paid and the difference representing the trading margins and the collected VAT which had to be transferred to the State budget is withdrawn in cash.
- On the other hand, if the aim is exclusively reducing collected VAT by creating an artificial deductible VAT, it should be possible to proceed including to the sale in loss of the missing trader to the buffer company and then to the final beneficiary. Payments corresponding to registered invoices will be in the amount necessary to cover the costs of intra-Community providers and carriers.

What must be retained in the second hypothesis is that the mere selling below cost of the missing trader to the buffer company and then to the final beneficiary is not only an initial objective which may lead to suspicion of VAT fraud, but it is not enough in itself to qualify the whole trade relations as being flawed by tax fraud, in this respect being the Community case law – Decision of the EUCJ in the case C-412/2003, *Scandic Gåsabäck AB*.

Also, given that profit belongs with the nature and not the essence of economic activity of the taxable legal entity, and the nature of sales below the acquisition cost in terms of supplier must be exceptional, it must be demonstrated why the supplier missing traded was determined to sell at a loss. Consequently, to establish the existence of tax fraud, it essential is to determine the subjective position of the taxpayer in pursuing circumvention of tax compliance, respectively, to demonstrate the participation in the fraud of the real beneficiary of the tax advantage obtained fraudulently - the right to deduct VAT.

### 3.2.2 Illegal VAT deduction (cross invoicing)



This crime scheme of intra-Community fraud involves in turn two ways:

- The first way consists in recording in the accounts in previous periods of intra-Community procurements of fictional expenses (advance cargo or service provision) that generate deductible VAT.
- The second way implies registration of fictitious procurements of goods from the national territory, followed by fictitious intra-Community deliveries to a missing trader from another Member State, which also generates VAT to be reimbursed.

Whatever the way, the main actor in this scheme is a taxable person registered in Romania with valid VAT number, which aims to carry out intra-Community procurements of goods without paying VAT to the State consolidated budget.

After the intra-Community procurement, goods are sold to the final beneficiary, the invoice issued being subject to VAT, as there is a national delivery. This VAT, although collected, is not paid to the consolidated general State budget as it is compensated with the value of the deductible VAT previously recorded under fictitious expenses from the missing trader.

The amounts collected as VAT are withdrawn in cash, on various explanations (eg. repayment of loan) and are used to pay for the transport and for the personal benefit of company administrator.

The scheme is also advantageous for the final beneficiary as it does not pay for the transport of goods and records procurement with deductible VAT, which he shall subsequently recover from domestic sales.

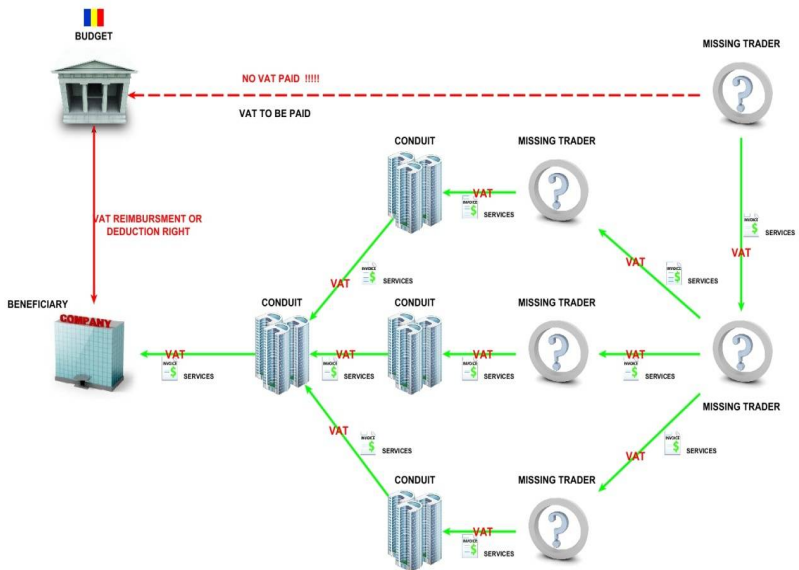
A short calculation made in a criminal case on concrete steel procurements from Bulgaria is as follows:

- Value of a truck = EUR 11,000
- Value of domestic sales = 10,450 + 2,508 VAT = EUR 12,958
- Amount paid to the supplier = EUR 11,000
- Cost of transport = EUR 800
- Personal gain = 1,158 EUR/truck
- Actually gain estimated at a total of 300 trucks =  $1.158 \times 300$   
= 347.400 eur

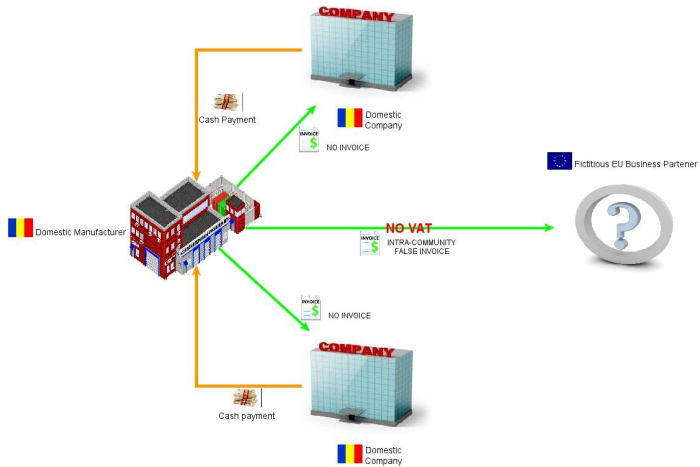
**Damage caused to the State general consolidated budget = EUR 750,000 (VAT)**

In the case of this crime scheme, there may be difficulties in terms of probation of illegal activities (registration of fictitious procurements of services or goods) made by the company that carried out the intra-Community procurements. In practice, there have been times when, between the beneficiary company and missing trader were interposed several pipeline companies, in order to hinder the discovery of fraud.

Such a scheme can be exemplified as follows:



### 3.2.3. Fictitious intra-community deliveries

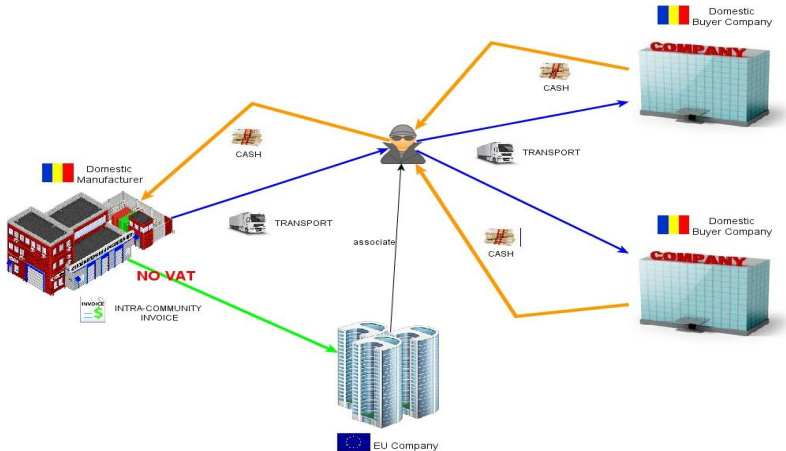


This system presupposes the existence of commodity stocks typically generating deductible VAT as a result of procurements on the domestic market. The scriptic discharge from administration is achieved by recording in the accounts of fictitious intra-Community deliveries, to missing traders from other Member States.

In reality, the goods are sold domestically without issuing tax documents, payment of their value being performed with cash. In practice it was found that missing traders from other Member States were controlled by the same persons who also controlled the company carrying out fictitious intra-Community delivery in Romania.

To consolidate the legal nature of the transactions, they issued orders on behalf of missing traders, confirmed receipt of goods by affixing the stamp against transport documents (CMR) and were making payments via bank transfer. In some cases vehicles were actually going to the State where the missing trader company was registered, keeping supporting documents in this regard (ex. road toll, bridge toll etc.)

### 3.2.4. CASH & CARRY fraud



This crime scheme, common in previous years, involves the purchase of consumer goods from cash and carry stores, on behalf of companies from other Member States, followed by their merchandising over the Romanian territory, without issuing legal documents and without payment of obligations to the consolidated general State budget.

Thus, the people involved set up companies in other Member States or obtained power of attorney from their associates and came to cash and carry stores where they placed orders. The issued invoices did not include VAT as the delivery to be carried out was an intra-Community exempt delivery, with right of deduction.

Payment was performed by cash deposits to automatic cash transaction machines (ATM) directly to the bank account of cash and carry store.

The vehicles belonged to the organizers of the fraud and after loading they were routed to wholesale trade markets where the goods were capitalized "on the black market", their value being received in cash.

After a time, they returned to the cash and carry stores the transport documents (CMR) that had the company stamp affixed against, certifying the receipt of goods in that Member State.

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### 3.2.5. Import operations using the 42.00 customs procedure

The operation of import (40.00 customs procedure) implies the indigenization of goods from outside the EU area through the presentation of the goods to European Union customs points and payment of due obligations (VAT, customs duties, customs fees, etc.).

Customs duties are collected directly to the European Union budget, only a small percentage of which is directed to the Member States to ensure the smooth functioning of customs authorities.

On the other hand, value added tax is collected by the Member State in which the indigenization of goods is carried out, as determined by the national legislation on VAT.

In Romania, customs duties are collected at the customs point before granting the customs clearance. According to customs regulations in force in Romania, customs clearance can not be granted before proof (treasury receipt) evidencing payment of import duties.

In other Member States of the European Union, the value added tax is transferred to the national budget, after the indigenization and trade of goods.

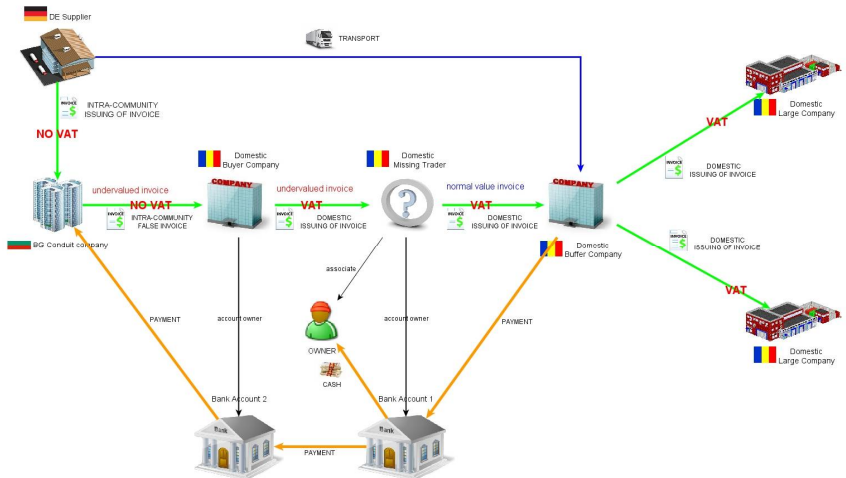
The 42.00 customs procedure involves an import operation through a customs office in an A Member State followed by an intra-Community delivery to another B Member State. Basically, in this case customs duties are collected in the A Member State and the VAT in the B Member State.

The crime scheme using the 42.00 customs procedure consists of the indigenization of goods in the A Member State, the declaration of an intra-Community delivery to the B Member State and their merchandising without legal documents in the A Member State, in the B Member State or in another C Member State (located in most cases on the route between the A Member State and the B Member State).



### 3.3. Partial circumvention from the payment of due obligations

#### 3.3.1 Understated community procurements



This complex crime scheme presupposes the existence of firms controlled by the organizer in at least two Member States, through which the undervaluation of the value of goods is carried out in order to pay the VAT at a lower value than normal.

In the graphic scheme presented, the goods are delivered by a supplier from Germany to a pipeline company in Bulgaria, the transaction is not subject to VAT, as it is an intra-Community delivery. The role of this pipeline company is to re-invoice the goods to an understated value to a company in Romania, also controlled by the organizer.

This company in Romania records the intra-Community procurements in the Bank accounting records, files tax declarations and pays the value of the collected VAT to the general consolidated State budget. The

goods being recorded in the inventory at an undertated value, the next step is to bring them to the real value without paying the related income tax and value added tax.

This is achieved by selling the goods to missing trader in Romania, at a value close to that value of acquisition in Bulgaria. The role of this missing trader is to "lift" the value of goods to the market level by reselling the goods to a buffer company, but without paying the obligations due to the consolidated general State budget.

Finally, the buffer company sells the goods to final beneficiaries, they recording in the book keeping with deductible VAT.

Basically, using this crime scheme, the State budget collects a small portion (20-25%) of the actual VAT.

The advantage of the scheme is that the company carrying out intra-Community procurements in Romania can be used for a longer period, whereas it declares its activity to the territorial tax bodies and pays their due obligations. Also, when making a cross-check in the VIES system it is impossible to find differences between their 390 declaration and those similar of the trading partner in Bulgaria.

Moreover, the missing trader can be used for a longer time, since it is not carrying out intra-Community procurements, thus being free from any risk analysis based, for example, on the TRAFFIC CONTROL application managed by the Ministry of Finance.

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### 3.3.2. Margin fraud

Art. 152 ind. 2 of the Romanian Fiscal Code establishes the special regime of taxation of second hand goods. For such transactions, the VAT rate will apply only to the profit margin, on the invoice being mentioned "included and non-deductible VAT". In order to apply this exemption scheme, the goods must originate either from a final user, non-taxable person (eg. a natural person) or a taxable reseller, who also applies taxation on the profit margin.

In case of procurements from a reseller taxpayer, to be able to apply the special taxation regime, it is necessary that on the purchase tax invoice to be clearly indicated that the supplier applies in turn the taxation on margin in

accordance with the EC provisions 112/2006 on the common system of value added tax.

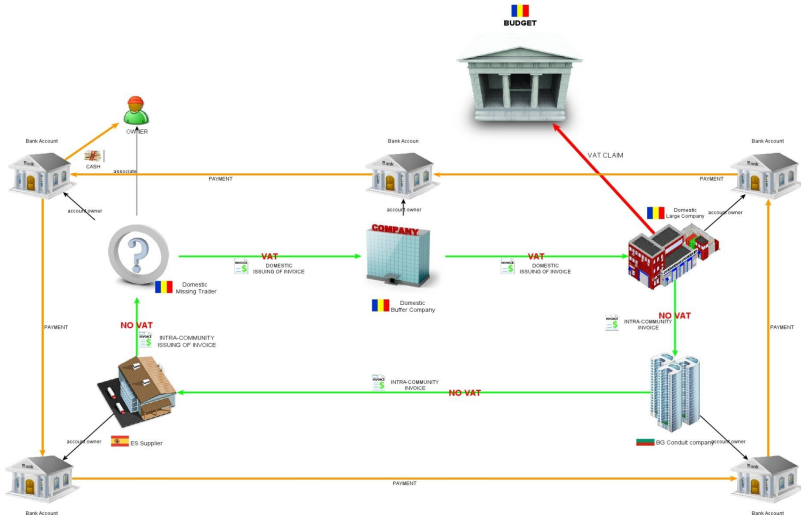
The Margin Fraud was most common in the case of intra-Community procurements of used cars. In accordance with the European legislation and the Romanian Fiscal Code, by used means of transport one can understand a property which has a mileage of more than 6,000 kilometers or was commissioned at least 6 months earlier.

This type of fraud can be either the purchase of used cars which are subject to the normal tax regime, with falsified purchase invoices, meaning that the seller also applies taxation on the margin, or the purchase of new cars for that the normal taxation regime is applied, with falsified purchase invoices, for the purposes of declaring them as second-hand vehicles.

In both cases, the seller from the A Member State declares intra-Community deliveries to the purchaser in B Member State, with the normal taxation regime (exemption with deductibility).

The buyer in the B Member State declares intra-Community procurements of second-hand goods for which the seller in the A Member State applies the margin taxation.

### 3.4. Illegal reimbursements from the State General Consolidated Budget – Carousel Fraud



The Carousel fraud is a crime scheme that aims to obtain illegal VAT refunds by successive invoicing, fictitious, of goods/services between multiple companies from at least two Member States.

In the diagram shown above, the goods are intra-Community delivered from a supplier in Spain to a **missing trader** in Romania, the transaction being exempt from VAT with a right to deduction. Subsequently, they are invoiced by a buffer company (Broker) in Romania, the delivery being charged with the related VAT rate.

The buffer company subsequently sells the goods to a third company, also from Romania, designated as the **broker**. In turn, this company sells goods to a **pipeline company** in another Member State (Bulgaria in the diagram above). The role of this company is to purchase intra-Community goods, excluding VAT, and to re-invoice them to the original supplier. Once closed the circuit, the operations described above are repeated.

The **missing trader** does not pay the collected VAT to the general consolidated State budget and the broker company shall reimburse from the budget the VAT paid by the **buffer company**.

## CHAPTER 4 – ADMINISTRATIVE INVESTIGATION

### 4.1. Detection

Obviously, the first step in the implementation of DGAF specific activities is the **determination of the economic areas and fields** where there is tax evasion and the **detection of the main actors** that determine major prejudices.

The most important role in this stage is held by the Directorate for Risk Analysis, Selection and Programming, the findings of the processes carried out consisting of risk analyzes and assessments of the tax implications arising from the commercial activity of an economic entity or transaction chain.

Risk analyzes are made based on complex profiles, updated periodically, which take into account a variety of economic and financial, commercial, socio-professional indicators, etc., that capture, according to the concrete state of things, manifestations of behaviors and situations that can be considered as suspicious.

At this stage, the information input is most often of huge volume and increased complexity, however, by the specific methods and analytical instruments adopted, there are identified and prioritized, based on objective criteria, those presenting a major tax risk.

Another important source of information that is processed at this stage is the international cooperation of tax authorities in Romania with those in other Member States, carried out under EU law and bilateral agreements.

These tax profiling and evaluation processes ensure a high rate of further confirmation, resulting of the actions of control, and hence a high efficiency of the overall DGAF activity.

## 4.2 Prevention

The function of prevention of tax evasion carried out by the DGAF has a multitude of forms, but from the perspective of this guidebook, only a few of them shall be addressed:

1. Grant/withdrawal of the VAT registration number;
2. Inactivation of commercial companies under the terms of primary and secondary legislation;
3. Establishment of customs and Traffic Control black lists generated by risk profiles.

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### 4.2.1. Grant/withdrawal of the VAT registration number

The vast majority of tax frauds have in common the missing trader, and their great number has affected for many years the State budget and the fair competitive climate in our country.

To limit their existence and influence, there have been adopted legal provisions by which, essentially, it is valued the intention and ability of the submitting company to conduct business in the sphere of VAT. The assessment is performed based on clear and objective criteria, following the well established procedure in which DGAF fulfills a very important role.

This procedure is applied to newly set up companies in order to grant or deny the VAT registration number, but also to companies that own such code, when there are changes of shareholder board or registered office.

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### 4.2.2. Inactivation of commercial companies

In parallel with the duties arising from the previous paragraph, in accordance with art. 78<sup>1</sup> of the Fiscal Procedure Code, the DGAF has jurisdiction in terms of inactivation of companies where finding that they do not work at the declared registered office, according to the procedure established by order of the President of the National Agency for Fiscal Administration.

This duty is very important mainly to limit to a minimum level the operation lifetime and hence the negative impact that a missing traded can have.

There were significant situations when following the control actions carried out by the DGAF and the coordinates measures of prevention and fighting such firms were identified in incipient phase of operation, at first transactions, and on their stocks being arranged precautionary measures. After their inactivation, it was found that people who controlled those companies have relocated to other countries where they have been trading for tens of millions of euros, the potential damage being proportionately.

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#### 4.2.3. Establishment of customs and traffic control black lists

In many situations, the risk analysis generates lists of economic entities whose business is predominantly located in the intra-Community procurements and imports area, which is the starting point of potential fraud, on them being imposed alerts.

In case of identification of such shipments, based on the black lists established for each situation, there are taken the appropriate measures to prevent fraud, for example sealing the transport of goods followed by unsealing at destination, its blocking until clarification of the tax risk situation, or even seizures, where applicable.

### 4.3. Combat

When joint elements of tax fraud are met, or when there are found circumstances of acts punishable by the criminal law, the primary and immediate concern of the DGAF is to identify the goods and assets that can cover (totally or partially) the damage, taking DGAF specific measures related to their blocking, and the investigation of fraud to the level of detail, according to competences.

When there are fact-found circumstances of act sanctioned by the criminal law, they are notified to the criminal prosecution bodies, and where

applicable, operational teams are established and the measures of verification and control are continued, according to the strategy of the case prosecutor.

In the field of international administrative cooperation, the Regulation no. 904/2010 provides as the most complex form of cooperation the development of multilateral controls by several tax administrations in the Member States.

They are proposed by a Member State when holding data on tax fraud with extensions in several Member States and/or affecting their budgets.

The participation of Member States in such control is voluntary, the decision being taken after assessing the actual situation and its fiscal implications.



## CHAPTER 5 – FINANCIAL INVESTIGATION

The Office integrates financial information submitted by reporting entities based on the Law no. 656/2002, with other available data to generate information products with value for the investigative effort of the law enforcement agencies.

The releases of the Office contain specific information designed to identify individuals and businesses, as well as accounts and information on transactions. If the institution finds that there are serious indications of money laundering, it disseminates the information to the Prosecutor's Office attached to the High Court of Cassation and Justice, and if solid evidence of terrorism financing is identified, it shall also disseminate information to the Romanian Intelligence Service.

At the same time, if finding that there are serious reasons to commit offences other than those of money laundering or terrorism financing, the Office notifies the competent body to investigate such crimes.

In order to achieve an effective financial analysis, the National Office is guided by the following principles of governance:

### **Principle of priority of the prevention activity**

As with other systems, the prevention of money laundering and/or terrorism financing is more efficient in cost/benefit ratio than the combat component. The appropriate risk prevention eliminates the unfavorable consequences of their implementation, manifested at social, economic level, etc. In this context, it is important that any information transmitted to the public authorities on the financial operations carried out and showing indications of possible acts of money laundering and/or terrorism financing, to be regarded as a risk not identified at the appropriate time, to which the system has allowed to materialize. The prevention component should aim at identifying the causes that allowed the materialization of that risk.

### **Principle of partnership and collaboration**

The institution is positioned at the intersection of the financial sector regulatory authorities and supervisory authorities, law enforcement authorities and equivalent foreign authorities which is a great opportunity for the

integration/inter-relationship of these different perspectives, to generate a comprehensive overview on the prevention, detect and combat of financial and economic crime in general.

It is important to maximize the cooperation with all authorities with responsibilities in preventing and combating economic and financial crime, in order to allocate resources as effectively as possible at the system level and increase the positive results (convictions).

The National Office for Preventing and Combating Money Laundering is particularly active in trying to improve substantially national cooperation in the CML/CTF field.

### **Principle of effectiveness in combat**

The National Office for Preventing and Combating Money Laundering is a public authority without law enforcement powers. As a financial information unit, the institution should ensure that relevant information in the financial and non-financial field are processed with consideration of the needs of beneficiaries and delivered to them in time for the proper application of the law. In this context, the assessment of the relevance of the institution's activity is related to the rate of confirmation of financial intelligence products disseminated to law enforcement authorities.

The Office has concluded cooperation agreements with law enforcement authorities (and other public authorities), supervisory authorities, intelligence services and professional associations that represent the reporting authorities. These protocols allow:

- development of comparative analyzes between the national regulatory framework on preventing and combating money laundering and terrorism financing and the requirements, regulations and efficiency criteria issued by the international profile fora in this sector (Financial Action Task Force, Council of Europe, UNO, EU, etc)
- coordination of the process of amending/supplementing the law on preventing and combating money laundering and terrorism financing, according to the requirements of the regulatory harmonization with the main national, community and international legislation in the field.

- development of an analysis on the efficiency of the national mechanism for prevention and combat of money laundering and terrorism financing, including the possibility of withholding money laundering as an independent crime and developing and implementing efficiency measures
- identification of existing databases at national level and selection of those that competent institutions and authorities, where appropriate, could use in carrying out their specific activity, and the conclusion of agreements of cooperation for achieving effective access to these databases;
- analysis of the judicial practice of non-indictment by the Public Ministry and the solutions of release from criminal prosecution ordered by the courts in cases concerning the crime of money laundering, to identify possible system malfunctions;
- analysis of the current practice of reporting entities in relation to N.O.P.C.M.L. to identify measures needed to improve the efficiency of reporting, including on the level of electronic transmission of STRs, CTRs and ETRs and the correspondence related thereto;
- establishment of specialized workshops with the participation of representatives of competent institutions and authorities at central and local level, which may propose initiation of operational investigation directions in combating money laundering, evaluation and updating of specific risk indicators and profiles specific and the transfer of best practices;
- provision of enhanced statistics and typologies of money laundering for the reporting entities;
- issue of guidebooks on best practices in combating money laundering and terrorism financing, for law enforcement authorities involved, which include typologies and investigation techniques used in documenting the cases of money laundering and terrorism financing;

- organization of workshops among experts in order to improve the exchange of information;
- organization of thematic workshops of the N.O.P.C.M.L. and/or other prudential supervisory authorities, with designated representatives of the reporting, supervisory and control entities and their professional associations, as appropriate, for enhancing the training on money laundering and terrorism financing;
- update, publication and dissemination of documentation materials / training guidebooks in the field for financial and non-financial reporting entities, to identify suspicious transactions and compliance with the obligations to prevent and combat money laundering and terrorism financing and to promote the concept of approach based on the risk of money laundering relating to the categories of reporting entities.

For the Office to bring added value to the information received and held, it shall carry out the following **types of analysis (financial investigation)**:

- a) **Operational Analysis**: using information available or that can be obtained to identify specific targets of investigation (eg., people, goods, criminal networks and associations), to track specific activities or transactions, and to establish links between these targets and crime products, money laundering, predicate offences and terrorism financing.
- b) **Strategic Analysis**: using information available or that can be obtained, including data which may be provided by other competent authorities to identify typologies and patterns of money laundering and/or terrorism financing. This information is then used by the Office or other public authorities to identify vulnerabilities and threats of money laundering and terrorism financing. Strategic analysis helps to establish policies and objectives of the Office, or more widely, to other entities in the CML / CTF system.

**Operational Analysis:** Law no. 656/2002 provides in article 26 para. 3 that the N.O.P.C.M.L. carries out analysis of suspicious transactions (a) upon notification by any of the persons mentioned in art. 10 and (b) ex officio, when becoming acquainted in any way about a suspicious transaction.

Although the law does not detail the content of the analysis process, art. 8 para. 1 of the Law no. 656/2002 clearly sets out its purpose, namely the identification of solid grounds of money laundering or terrorism financing.

Given that, after analysis, N.O.P.C.M.L. notifies the PHCCJ and/or the RIS in connection with probable cause identified, the analysis focused on the art. 26 of the Act covers part of the operational analysis.

According to international standards applicable in the matter, the essence of the financial analysis is that relevant information on risks / offences of money laundering and terrorism financing available at the financial and non-financial sector, should be disseminated in a timely manner to the Financial Intelligence Unit, and competent law enforcement institutions so that they can rule the necessary preventive or combative measures. The proceeding required by the international standards in this regard is the *intelligence* (analysis of information).

At the level of the N.O.P.C.M.L., the intelligence analysis is performed in cases that present a high risk of ML / TF, due to the process of risk assessment conducted at the institution level.

In this respect, the role of the Office is to transform the collected / accessed information, under the law, in value-added information products relevant to law enforcement authorities.

The analysis of data for operational purposes is the process by which raw data available to the National Office for Preventing and Combating Money Laundering are converted / processed in information products that meet the information needs of beneficiaries and supports its decision-making process.

**INFORMATION + ANALYSIS = INFORMATION PRODUCT**  
**(value-added information)**

In accordance with the Law no. 656/2002 on *preventing and sanctioning money laundering, as well as on measures to prevent and combat terrorism financing*, the National Office for Preventing and Combating Money Laundering receives the following **categories of information**:

- a) Immediately - Information about suspicions of money laundering and/or terrorism financing identified for operations carried out by the customers of the entities referred to in art. 10 of the Law (art. 5 (1), 6 (2) and 6 (3) of the Law no. 656/2002)
- b) Within 10 working days - Information regarding transactions in cash, in lei or foreign currency, whose minimum limit represents the equivalent in RON of EUR 15,000, whether the transaction is carried out by one or more operations that appear to be linked to each other (art. 5 (7) of the Law no. 656/2002),
- c) Within 10 working days - Information on external transfer operations to and from accounts in RON or foreign currency, whose minimum limit represents the equivalent in RON of EUR 15,000, whether the transaction is carried out by one or more operations that appear to be linked to each other (art. 5 (8) of the Law no. 656/2002)
- d) Not later than 24 hours from the time of the transaction - Information about the reason why an operation suspected of money laundering and terrorism financing was not reported in accordance with the art. 6 (1) of the Law,
- e) Monthly Information held, under the law, by the General Customs Directorate in connection with statements individuals on cash in foreign currency and/or in national currency, which equals or exceeds the limit set by the (EC) Regulation no. 1889/2005 (art. 5 (12) thesis 1 of the Law no. 656/2002)
- f) As soon as possible, but no later than 24 hours - All information relating to suspicions of money laundering or terrorism financing, which are identified in the specific activity of the National Customs Authority (art. 5 (12) thesis 2 of the Law no. 656/2002)

g) Within 30 days – data and information required to persons referred to in art. 10 and the relevant institutions, necessary for fulfilling the tasks set by the law (art. 7 (1) of the Law no. 656/2002)

h) Data and information to be exchanged, based on reciprocity, with foreign institutions having similar functions and having the obligation to secrecy, if such communications are made for the purposes of preventing and combating money laundering or terrorism financing (art. 7 (4) of the Law no. 656/2002)

i) Information on the name of person having responsibilities in the enforcement of the Law no. 656/2002, together with the nature and limits of the mentioned responsibilities, transmitted by entities in art. 10 of the law, except those mentioned in art. 10 (k) (art. 20 (1) of the Law no. 656/2002)

j) Information on suspicion of money laundering, terrorism financing or other violations of the Law no. 656/2002, sent by the authorities and structures referred to in art. 24 para. 1 letter (a) - (c) of the law (art. 24 (2) of the Law no. 656/2002).

To achieve an effective financial analysis, the analysis is done by **stages**, that is **planning, collection, evaluation, processing and collecting, analysis, information**.

The financial analysis should answer the following questions:

- **WHO** – who are the entities covered by the initial information?
- **WHAT** – what is the suspicious activity (what is known about these entities (what have they done)?
- **WHERE** – where did the suspicious activity take place?
- **WHEN** – when did the suspicious activity take place?
- **HOW** – which is the mode of operation of entities subject to initial information?
- **WHY** – what is the reason why entities have reacted as they did?

Also, to achieve the financial analysis, the following questions should be answered:

- **What is the purpose of the analysis?**
- **What information is missing?**
- **What are the sources of information available?**
- **Which information sources available contain information which is relevant to the analysis carried out?**

The collection of qualitative information is a key component of the intelligence analysis process.

The quality of information depends on the accuracy, relevance and timeliness thereof.

The financial analysis will take into account:

- Identification of the relationships between the analyzed entities,
- Identification of significant events,
- Identification of information gaps,
- Clarification of the significant of collected data collected.

The analysis is the process of converting information which has been collected, evaluated and collated in information products through integration and interpretation.

**Spontaneous dissemination** – FIU has the ability to disseminate information and results of its analysis to the competent authorities when there are indications of suspicion of money laundering, predicate offences or terrorism financing. Based on analyzes performed by FIU, information dissemination must be selective and allow beneficiaries to focus on cases / relevant information.

**Dissemination upon request** – FIU has the ability to respond to requests for information by competent authorities. Upon receiving a request from a competent authority, a decision to review and / or dissemination of information to the requesting authority belongs to the financial intelligence unit.



Spontaneous dissemination - Art. 8 of the Law no. 656/2002 (r) indicates the following categories of beneficiaries of the analyzes performed at Officie level, namely:

- Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service - the analysis reveals the existence of serious indications of money laundering or terrorism financing,
- Other competent bodies - when identified clues of offences committed, other than those of money laundering or terrorism financing.

Dissemination upon request - Art. 8 of the Law no. 656/2002 (r) governing the law enforcement authorities access to data and financial information held by the National Office for Preventing and Combating Money Laundering under the following conditions:

"... (5) After receiving the notification, the prosecutor conducting or supervising the prosecution and the Romanian Intelligence Service may require to be filed.

**(6) The Office has an obligation to provide or supervise the prosecutor conducting the investigation and the Romanian Intelligence Service, at their request, the data and information obtained according to this law.**

(7) The prosecution bodies shall periodically communicate to the Office the status of solving the submitted notifications and the amount of money in the accounts of natural or legal entities for which blocking was ruled, due to the suspensions effected or the arranged precautionary measures".

However, the process of dissemination upon request is also activated in the cooperation relations with foreign institutions with similar functions, in art. 7 para. (4) of the Law no. 656/2002, republished, is regulated "N.O.P.C.M.L.'s ability to exchange information". The Office may exchange information, based on reciprocity, with foreign institutions having similar functions and have an obligation of secrecy in similar circumstances, if such communications are made for the purposes of preventing and combating money laundering or terrorism financing."

**Strategic analysis: can be simply defined as the process of financial information which includes the results of analyzes of financial data (data on financial circuits, financial transaction, assets circuits, etc.) and other non-financial information accessible obtained by different analytical methods and IT tools to identify trends and patterns of abnormalities or other suspected money laundering or terrorism financing.**

Although the Act contains no express provisions on the N.O.P.C.M.L.'s obligation to conduct a strategic review process in the meaning of the Recommendation 29, according to article 8 (8) the Office has an obligation to provide individuals and entities mentioned in art. 10, and authorities responsible for financial control and prudential supervision, a procedure considered appropriate, general information on suspicious transactions and typologies of money laundering and terrorism financing.

For this purpose, art. 11 (3) let. j of the G.D. no. 1599/2008 provides that the Directorate for Information Analysis and Processing develops on the basis of cases analyzed within the Office, studies on specific typologies of money laundering and / or terrorism financing.

Also, the Office shall carry out analyses and produce strategic information on the risks of money laundering and/or terrorism financing, as well as developments in the two phenomena.

From this perspective, the financial information prepared by the Office, revealed a series of threats and vulnerabilities exploited by those interested in the money laundering/ financing of terrorism, namely:

**Threats:**

- organized groups specializing in money laundering from tax evasion. They use intermediaries to export significant funds out of the financial system, the physical movement of money and making them available to the beneficiary;
- external organized groups who use Romania's financial system for the transit of illicit funds from Western European countries to non-EU jurisdictions. They mainly use bank accounts for the transfer of amounts in Romania, the funds being

withdrawn in cash and stratified by subsequent and successive transfers by fast money transfer systems;

- external organized groups that use Romania's financial system, as the gateway of entry into the EU financial system of some significant funds of unknown origin. Money is transferred to Romania with fictional justifications. Subsequently, there are used internet banking services for outsourcing the amounts to other EU states;
- domestic organized groups engaged in prostitution and human trafficking. They show a predisposition to use money transfer systems to repatriate earnings from trafficked persons in countries of Western Europe;
- unstructured groups of evaders or individual fraudsters involved in undervalued imports of goods from Asian countries. They use intermediaries, possible employees for the transfer of significant sums to individuals and businesses from China especially through the fast money transfer systems.

#### **Weaknesses:**

- Increasing of the complexity of money laundering schemes, using traditional payment methods, alternating with using modern payment methods;
- Frequent use of accounts of legal entities of limited liability company type in money laundering schemes from tax evasion;
- Use in money laundering schemes of banking services that do not require physical presence in the bank branch for operations;
- Presence of frequent cash transactions in money laundering schemes;
- Use of intermediaries to conceal the illicit origin of funds and for concealing the real identity of the beneficiary of the crime products;
- Frequent use of money transfer systems in relation to commercial operations carried out by legal persons;
- Use of external accounts opened at credit institutions located in offshore destinations for placement of illicit funds obtained in Romania.

## CHAPTER 6 – CRIMINAL INVESTIGATION

Criminal investigation is a procedure of secret and/or public nature, performed by competent judicial authorities, in compliance with the procedural guarantees of the rights of the parties and the procedure subjects so as to ascertain the timely and complete facts constituting the offence, no innocent person to be criminalized and any person who committed a crime to be punished according to the law, in a reasonable time.

The general framework in which the criminal investigation is carried out is set by the Criminal Procedure Code, approved by the Law no.135/2010, as subsequently amended and supplemented, and other procedural regulations.

In order to implement the provisions of procedural nature there was issued a "Methodology for investigating tax evasion, tax fraud and customs fraud", concluded in February 2014 between the Prosecutor's Office attached to the High Court of Cassation and Justice, the General Inspectorate of the Romanian Police and the National Agency for Fiscal Administration<sup>9</sup>, and the Order of the General Prosecutor's Office attached to the High Court of Cassation and Justice and the Minister of Interior<sup>10</sup>, approving the Methodological Norms on registration, uniform records, circuit of criminal allegations and administrative coordination of the activities assigned to the police bodies by the prosecutor.

In carrying out criminal prosecution, the prosecutor supervises the activity of criminal investigation bodies so that any offence to be discovered and any person who has committed a crime to be prosecuted.

The criminal investigation is notified by a complaint or denunciation, by the acts signed by other fact-finding bodies required by law or notified ex officio.

In cases concerning economic and financial crimes, which include those relating to intra-Community fraud, after registration of the notice to the prosecutor's office, it is assigned a prosecutor to supervise or carry out prosecutions.

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<sup>9</sup> Registered under no.2144/10.02.2014, no.8372/18.02.2014, respectively no.800215/10.02.2014

<sup>10</sup> Registered under no.12/C/2014, respectively no.56/10.04.2014

Within 10 days of the file assignment, the prosecutor rules, under the law, relating to:

- a) procedural acts that will be carried out by the criminal investigation authorities;
- b) activities to be carried out by anti-fraud inspectors;
- c) where necessary, the deadline to comply with the provisions of let. a) and b).

By the entry into force of G.E.O. no. 74/2013<sup>11</sup>, within the central structure of N.A.F.A. - Directorate-General for Tax Anti-Fraud runs the Fraud Combat Directorate, providing specialized technical support to prosecutors in investigating economic and financial offences. To this end, anti-fraud inspectors from the Fraud Combat Directorate are assigned to the prosecutor's offices, under the law, on specialists positions.

In accordance with article 3, paragraph 4 of the G.E.O. no. 74/2003, fraud inspectors carry out, from the prosecutor's order:

- a) technical-scientific fact-findings, which constitute evidence under the law;
- b) financial investigations in order of blocking the assets;
- c) any checks on tax matters ordered by the prosecutor.

Appointment of the anti-fraud inspector is made according to objective criteria established in this regard by the head of the prosecutor's office and involves the establishment of a grounded ordinance ordering on the name of the specialist assigned, the activities to be performs, the filed documents which are available, the term for settlement and other matters of concern to the cause.

In the 10 days of the date of registration of the case to the prosecutor's office, the anti-fraud inspector may be appointed to carry out checks on tax matters referred to article 3, paragraph 4, letter c) of the G.E.O. no. 74/2003, among which:

- identification of accounting documents and legal documents defined by article 2, letter c) of the Law no. 241/2005<sup>12</sup>, concludend and useful to the case;

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<sup>11</sup>on measures to improve and reorganize activity of the National Agency for Fiscal Administration and for amending and supplementing certain regulatory documents

<sup>12</sup>documents provided by the Tax Code, the Fiscal Procedure Code, Customs Code, the Accounting Law no. 82/1991, republished, and the regulations developed for their implementation

- accessing databases, which are available according to their duties and making of copies of all relevant documents submitted by taxpayers relevant in the case or those prepared by state institutions in relation to the work performed by them;
- examination of the documents in the file on bank accounts held by the persons indicated in the complaint, to determine whether it is appropriate the application of art. 153 of the Criminal Procedure Code, governing the provision of data on the financial situation of individuals;
- accessing [www.onrc.ro](http://www.onrc.ro) and making copies on commercial entities investigated or those involved in the case.

The activities carried out by the anti-fraud inspector, under article 3, paragraph 4 let. b) and c) of the G.E.O. no. 74/2003 materializes through the keeping of minutes.

Except in cases where he carries out his own criminal prosecution, the prosecutor submits the file to the competent criminal investigation body for criminal prosecution.

The activity of prosecution involves strict compliance with procedural rules generally applicable regardless of the nature of the investigated crime.

Among the activities that need to be made for proving offences covering intra-Community fraud, we illustrate:

## 6.1. Procurement of initial data and information

- The National Administration for Fiscal Administration, to determine: whether the facts investigated were subject to controls at this institution, bank units that have accounts with companies and individuals that are of interest in the case, other data in the taxpayer's fiscal file;
- The National Trade Registry Office, on the legal file of companies involved in the case;
- The Labour Inspectorate in relation to labor relations;

- The National Office for Preventing and Combating Money Laundering, which can provide objective information of a confidential nature, provided that its application in criminal proceedings require evidence adduced such as getting data on the financial situation, or the international rogatory commission;
- Commercial companies specialized in the special regime prints, to identify series and ranges of invoice numbers, receipts and other deeds with special regime bought by the companies involved in the case.

**6.2. Ruling of specific operative surveillance activities** (surveillance, investigations) carried out by specialized state institutions;

**6.3. Seizure of objects and deeds**, provided by art. 169 of the Criminal Procedure Code<sup>13</sup>, which can be achieved either by voluntary surrender, either by forced seizure, the latter under the conditions laid down in article 171 of the Criminal Procedure Code<sup>14</sup>. Handing over objects, documents or computer data, as regulated by art. 170 of the Criminal Procedure Code<sup>15</sup>, involves the issuance of an ordinance by which a criminal prosecution body rules the natural or legal person in who's possession or detention are, to present and hand them over, upon evidence. Any person who, being warned of the consequences of inaction, is refusing to provide the criminal investigative body, in whole or in part, data, information, documents or property, which had been requested explicitly in the law, is subject to the offence of obstructing justice<sup>16</sup>.

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<sup>13</sup>according to which the criminal prosecution body or the court of law is obliged to confiscate the objects and documents that may serve as evidence in the criminal proceedings

<sup>14</sup>The text provides that if the object or document requested is not handed over voluntarily, the criminal prosecution body, by decree, or the court of law, by cfinal hearing report, rules the forced seizure

<sup>15</sup>Regulation - If there is reasonable suspicion about the planning or commission of an offence and are grounds for believing that an object or a document may serve as evidence in the case, the criminal investigative body or the court may order the natural or legal person in who's possession these are to submit them and to handthem over, upon evidence

<sup>16</sup>Art.271 of the Criminal Code

#### 6.4. Home and computerized searches.

This activity may be imposed by the need to identify:

- supporting documents, accounting documents and other legal documents, fictitious or unrecorded, double accounting records, articles of incorporation or documents modifying the statute of the companies, transport documents, customs documents, contracts, stamps, etc .;
- deposits or other locations where stolen goods are hidden from tax obligations;
- monies exempted from tax obligations as well as those resulting from illicit activity carried out by the taxpayer or other person on his behalf;
- goods and products made in violation of the law, installations, machines and equipment for this purpose;
- information systems and data storage media;
- documents or other material evidence of criminal activity carried out by individuals under investigation.

**6.5. Identification of goods** held by the suspect, defendant, or other persons (if extended confiscation) and the seizure or insurance garnishment, for which purpose the prosecutor can arrange for financial investigation by the anti-fraud inspector, as stipulated by the article 3, paragraph 4, letter b as of the G.E.O. no. 73/2013<sup>17</sup>.

**6.6. Technical surveillance** is carried out under a warrant issued by a judge of rights and freedoms or the authorization of a prosecutor within 48 hours, the latter being subject to confirmation under the law.

Technical Surveillance can be achieved by:

- interception of communications or of any type of distance communication, which consists of the interception, access,

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<sup>17</sup> on measures to improve and reorganize the National Agency for Fiscal Administration, as well as for amending and supplementing certain regulatory documents



monitoring, collection and recording of communications by telephone, computer system or any other means of communication<sup>18</sup>;

- access to a computer system involves intrusion into a computer system or data storage means either directly or remotely, through specialized programs or via a network in order to identify evidence<sup>19</sup>;

- video, audio or shooting surveillance, which consists of taking pictures of people who are of interest in the cause, observing or recording conversations, movements or their other activities<sup>20</sup>;

- locating or tracking by technical means, involves the use of devices that determine the location of a person or object that they are attached to<sup>21</sup>;

- procurance of data on financial transactions of a person, which provide knowledge of the content of financial transactions and other transactions made or to be made through a credit institution or other financial entity, and the obtention from a credit institution or other financial entity of the documents or information in its possession concerning a person's transactions or operations<sup>22</sup>.

#### 6.7. Surveillance measures and special investigation methods, achieved by:

- retaining, hand over and searches of postal items, which require verification by physical or technical means, of letters, or other postal items sent by any other means<sup>23</sup>;

- use of undercover investigators and collaborators involves the use of a person under another identity than the actual identity to

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<sup>18</sup>Art. 138 para. 1 let. a) and para. 2 of the Criminal Procedure Code.

<sup>19</sup>Art. 138 para. 1 let. b) and para. 3 of the Criminal Procedure Code

<sup>20</sup>Art. 138 para. 1 let. c) and para. 6 of the Criminal Procedure Code

<sup>21</sup>Art. 138 para. 1 let. d) and para. 7 of the Criminal Procedure Code

<sup>22</sup>Art. 138 para. 1 let. e) and para. 9 of the Criminal Procedure Code

<sup>23</sup>Art. 138 para. 1 let. f) and para. 8 of the Criminal Procedure Code

obtain data and information on offences that are subject to the case<sup>24</sup>;

- controlled delivery, which allows entry, transit and exit from the Romanian territory of goods in respect of which there is a suspicion of the unlawful possession or procurement, under the supervision or with the authorization of the competent authorities to investigate the crime or to identify the persons involved in committing it<sup>25</sup>;

- procurement of data generated or processed by providers of electronic communications networks or providers of publicly available electronic communications other than the communications content, and retained by them<sup>26</sup>.

## 6.8. Procurement of data on the financial situation

It involves drawing up a grounded ordinance given by the prosecutor, by which is ruled the communication of data relating to the existence and content of the accounts and financial statements of other natural or legal persons who are of interest in the cause. The claim must be subject to prior agreement of the competent judge for rights and freedoms.

**6.9. Hearing of suspects and defendants**, with strict compliance with their procedural rights and rules of forensic tactics specific to each case.

As to intra-Community frauds, hearing of suspects and defendants should sight:

- identification of entities in intra-Community space who had trade relations having criminal connotations with operators in Romania;
- goods and products subject to evasion, means of transport, their route and destination;

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<sup>24</sup>Art. 138 para. 1 let. g) and para. 10 of the Criminal Procedure Code

<sup>25</sup>Art. 138 para. 1 let. i) and para. 12 of the Criminal Procedure Code

<sup>26</sup>Art. 152 of the Criminal Procedure Code

- determination of the period of time when the criminal activity took place;
- if in the offences others participated as co-authors, instigator or accomplice;
- identification of the mode of operation that led to the taxpayer's circumvention from the payment of taxes and fees due to the state budget;
- revenue obtained by suspects and defendants or others in the evasion activity and how they were used;
- other aspects conclusive and useful for the case.

#### 6.10. Ruling and carrying out technical-scientific fact-findings and expert opinions

- **technical-scientific and graphical/graphoscopic expertise** that can aim: to identify the author of writing and/or underwriting of documentary evidence, documents and books, to identify the person who wrote the double bookkeeping or the one who recorded expenses not grounded on actual transactions, etc.
- **technical-scientific fact/finding carried out by the anti-fraud inspector**, can aim the following issues: the legality of the supporting and accounting documents, other documents required by law, the reality of expenditure recorded, and achieved and reported revenues, amount of taxes and contributions due and those actually paid, amount and method of compounding the damage due to the state budget, etc.;
- **tax and accounting forensic expertise**, it is ruled if the conclusions of the fact/finding report elaborated by the anti-fraud inspector are challenged<sup>27</sup>, and where the criminal prosecution body considers that are necessary the findings of an expert for the establishment, clarification or assessment of facts or circumstances that are of significance to ascertain the truth into the case.

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<sup>27</sup>Art. 172 para. 12 of the Criminal Procedure Code

## 6.11. Identification and hearing of witnesses

Witnesses may be identified from among:

- persons (carriers, commissioners, delegates etc.) who know about suppliers, the circumstances of movement of goods in the intra-Community space and their beneficiaries;
- those who performed services on behalf of investigated persons (accountants, referrers, shopkeeper, etc.) since they have not participated in the commission of the acts attributed to them;
- persons who are knowledgeable about the forgery and/or incomplete or inadequate preparation of primary accounting documents and bookkeeping;
- those who know about storage locations and how the goods subject to the escapist process were capitalized;
- persons who can provide information about the destruction or alteration of bookkeeping, other documents, memoirs of delectronic cash registers, marking devices or data storage devices;
- other persons who know facts useful and conclusive to the case.

Hearing of the witness primarily aims at determining the essential aspects of the case, such as:

- circumstances which enabled him to ascertain investigated facts ;
- the mode of operation that led to the taxpayer's circumvention from the payment of obligations due to the state budget;
- the author and the actions or inactions he committed;
- how and who exactly transported goods in the intra-Community space or within the country;
- the places of storage and the mode of capitalization of goods subject to evasion;
- the income from criminal activity and the beneficiaries;
- if other persons participated in committing the offence, if yes, which was their contribution;
- other specific aspects of the case.

6.12. International rogatory commission, is that form of legal assistance consisting in the empowering a judicial authority of a State attaches to an authority of another State, mandated to meet, at a given place and on its behalf, certain judicial activities regarding a certain criminal trial<sup>28</sup>.

It is ordered by the prosecutor and may concern<sup>29</sup> the following aspects:

- locating and identifying persons and objects; hearing the suspect, defendant, injured party, civil party, civilly responsible party, witnesses and experts, and their confrontation; searches, seizure of property and documents, sequestration and special or extended confiscation; site investigation and reconstitution; expertise; transmission of information required in a particular trial, interception, examination of archive documents and files and other such specialized proceedings;
- transmission of articles of evidence;
- communication of documents or files.

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<sup>28</sup> Art.173 of the Law no.302/2004 on international judicial cooperation in criminal matters

<sup>29</sup> Art.174 of the Law no.302/2004

## CHAPTER 7 – JUDICIAL PRACTICE

### 7.1. Criminal case no. 115D/P/2014 - D.I.I.C.O.T. - Oradea Territorial Service

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#### 7.1.1. Mode of notification:

N.A.F.A. – Directorate-General for Tax Anti-Fraud notification, no.1233919 of 16.07.2014.

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#### 7.1.2. Issue in fact set in the case

In the period 2011-2014, the defendant D.M., by continuing an organized criminal group, which was joined by the defendants N.S., as the representative of S.C. T.D. SRL, V.C.Ş., ss the representative of S.C. S.P. SRL, I.I., as the representative of S.C. V.D. SRL, D.L.A. and K.Z., as representatives of S.C. TLV 2008 S.R.L, initiated and coordinated an escapist circuit which aimed to circumvent the indicted company B.I. SRL from tax obligations.

B.I. SRL, company specialized in the trade of fruit and vegetables, made direct procurements of from intra-Community partners (particularly in Italy), transactions that are declared in supporting documents. The goods thus acquired were sold wholesale through the working locations (warehouses) Oradea and Satu Mare, to domestic partners (especially the supermarket chains Carrefour, Cora and Metro). The commercial activity of SC B.I. SRL was controlled by the defendant D.M., who also held the position of administrator.

In order to avoid the payment of tax obligations, it was created a commercial tax evasion circuit involving the company T.D. SRL, a "buffer company" controlled by the defendant D.M. through the defendant N.S., manager of S.C. T.D. SRL and employed in the B.I. SRL at the working location in Satu Mare.

Thus, between 2012-2013, B.I. SRL recorded fictitious purchases from T.D. SRL totaling RON 32,198,554.75, which was determined not

reflecting the actual operations because they did not have a correspondent in the real business of delivering / purchasing to follow the documentary circuit. In turn T.D. SRL has made purchases from companies with missing trader behavior: S.C. S.P. SRL, S.C. V.D. SRL, and S.C. TLV 2008 SRL.

B.I. SRL registered direct purchases worth RON 4,812,937 from S.C. S.P. SRL in 2011 and worth RON 8,099,516 from S.C. V.D. SRL in 2014.

The role of buffer company, company in very close dependence of the beneficiary company, was to provide a semblance of legality of commercial transactions recorded by the beneficiary by declaring full commercial operations of purchase and delivery, but by practicing a significant trade mark-up of around 0.57%, so tax debts accumulated by this company to be very low.

Basically, the T.D. SRL was controlled by the company BI SRL, which was the sole beneficiary of the so-called deliveries by T.D. SRL. It has been found that T.D. SRL have not declared the working locations, has no staff, has no fixed assets and hasn't conducted activities at the declared registered office.

Tax declarations of T.D. SRL were submitted by the person who provided submission of tax declarations for B.I. SRL as well, respectively the witness G.M., who has been contacted to provide services for T.D. SRL by the defendant D.M. The witness says that the monies were remitted for payment in cash at the headquarters of B.I. SRL by employees of that company, and accounting documents of T.D. SRL were made available to her at the headquarters of B.I. SRL or were brought to her by representatives of this company.

At his approach by the tax authorities, the defendant N.S. could not provide information on the company's premises, to the senior accounting and persons in charge of submitting accounting declarations, suppliers and customers of T.D. SRL.

To ensure the appearance of reality of the deliveries to B.I. SRL, in the bookkeeping of T.D. SRL were recorded fictitious purchases from companies with missing traders behaviour: S.C. S.P. SRL, represented by the defendant V.C.Ş., S.C. V.D. SRL represented by the defendant I.I. and S.C. TLV 2008 SRL, represented by defendants D.L.A. and K.Z., these three

companies are, as noted, the only suppliers of SC T.D. SRL. Part of shipments of these companies were supported by procurement operations of other companies having missing traders behaviour (S.C. F.M. SRL and S.C. K.C.SRL), except that the difference has no counterpart in procurement operations.

Missing traders circumvent the tax checks, are not working at the declared registered office, are represented by insolvent persons, hard to locate, declaring themselves out of the commercial activity of the company, citing the fact that they have executed orders of some identifiable or unidentifiable persons. They are designed to accumulate tax burdens relating to fictitious operations, obligations that would practically return to the beneficiary, and by their behavior they ensure circumvention from the payment of these charges. Through missing traders was possible the achievement of monies resulting from tax evasion activity (either by subtracting cash from company accounts or by transferring these amounts in the accounts of other companies with missing trader behavior).

S.C. S. P. SRL administered by the defendant V.C.Ş., Performed no business effectively. In the period February 2012 - April 2012, on behalf of that company they were issued a total of 77 delivery invoices (vegetables and fruits) to S.C. T.D. SRL, totaling RON 4,687,193, VAT included. In the first half of 2011 S.C. B.I. SRL has made purchases from S.C. S. P. SRL worth RON 4,812,937, VAT included, then opting for the interposition of a buffer company (S.C. T.D. SRL) to not arouse suspicion about the reality of purchases.

The defendant V.C.Ş. recognized the fictional nature of trade relations with S.C. T.D. SRL and S.C. B.I. SRL.

S.C. V.D. SRL was administered by the defendant I.I.. During the period April 2013 - October 2013 in the accounts of S.C. T.D. SRL Oradea were registered 112 invoices for the supply of goods (vegetables and fruits) worth RON 9,727,373, VAT included. In the period January-April 2014 S.C. B.I. SRL declared direct purchases from S.C. V.D. SRL worth RON 8,099,516, VAT included.

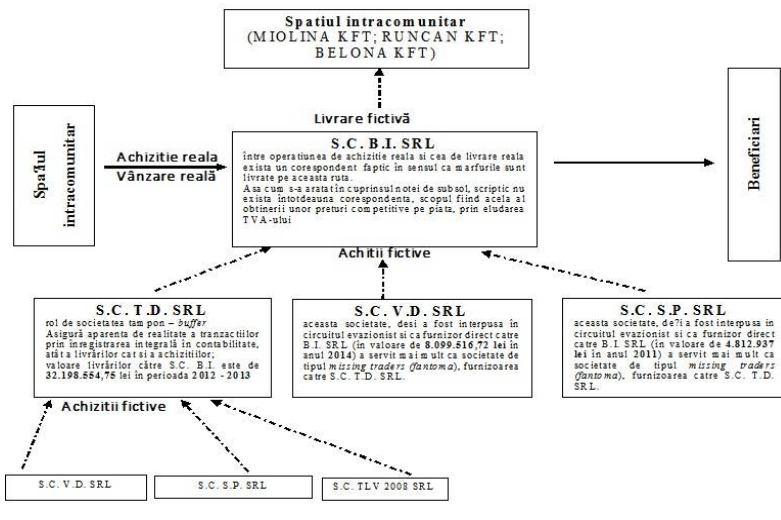
S.C. TLV 2008 SRL was administered by the defendants K.Z. and D.L.A. (now deceased). During May-July 2012, respectively January- March



2013 in the accounting of SC T.D. SRL were registered 150 purchase invoices (fruit and vegetables) from S.C. TLV 2008 SRL, totaling RON 13,811,188, VAT included. As of 16.01.2012, the defendant D.L.A. was appointed as manager of another company, a missing trader, S.C. F. M. SRL, which although did not have direct relationships with S.C. B.I. SRL, assured supplies semblance of reality to that company by providing acquisition transactions in the accounts of missing trader companies that have registered direct relations with the beneficiary or with the buffer company. The role of these missing trader companies positioned on the "upstream" tax evasion relations, was also to enable cash flows through the accounts, monies that are subtracted in cash (at the counter or ATM).

By recording actual purchases (intra-Community space) and fictitious purchases (at national level), the scriptic stock of S.C. B.I. SRL was artificially inflated. During a check, the tax authorities have found a double value of the stock of merchandise according to the accounts, compared to the value in the scriptic records. To discharge to stock of goods accumulated artificially, SC B.I. SRL simulates intra-Community deliveries of goods to companies in the intra-Community space, particularly in Hungary. The fictional nature of the intra-Community deliveries results from the interplay of: investigations of the tax bodies within N.A.F.A. - Directorate General for Tax Anti-Fraud, completed by the notification no.1233919 of 16.07.2014 registered at DIICOT under no.115 D/P/2014; the Fact-finding Report no. 9 of December 19, 2014 prepared by anti-fraud inspectors assigned to the DIICOT - Oradea Territorial Service; the information type SCAC 2005 and the statements of the witnesses R.I.V. (commercial manager of the company RUNCAN KFT missing trader located in Hungary) and K.A. (administrator of MIOLINA KFT company located in Hungary).

## Diagram of the criminal activity



### 7.1.3. Legal classification

In the charge of the defendants were hold the following offences:

- setting up an organized crime group, provided for by the art. 367, paragraph 1, 2 of the Criminal Code 2., in the charge of the defendants D.M.; S.C. B.I. SRL; N.S. ; S.C. T.D. SRL; V.C.Ș. ; S.C. S. P. SRL; I.I. ; S.C. V.D. SRL; K.Z. and S.C. TVL 2008 SRL;
- tax evasion, provided for by article 9, paragraph 1, letter c reporting to paragraph 3 of the Law no. 241 of 2005, with the enforcement of article 35 paragraph 1 of the Criminal Code., in the charge of the defendant D.M., with a prejudice of RON 14,551,937;
- complicity in tax evasion, provided for by article 48 of the Criminal Code, reporting to article 9, paragraph 1, letter c,

reporting to paragraph 3 of the Law no. 241 of 2005, with the enforcement of article 35 paragraph 1 of the Criminal Code, in charge of the defendants N.S. and K.Z. (prejudice worth RON 10,386,631), V.C.Ş. (prejudice worth RON 1,552,560 + RON 10,386,631) and I.I., in his case the prejudice worthing RON 10,386,631 + RON 2,612,746,

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#### 7.1.4. Civil side of the cause

The overall prejudice was calculated as rising to the amount of RON 14,551,937. Thus, from the relationship between S.C. T.D. SRL - S.C. B.I. SRL resulted a prejudice of RON 10,386,631 (RON 6,231,979 as VAT and RON 4,154,652 as income tax); from the relation S.C. V.D. SRL - SC B.I. SRL resulted a prejudice of RON 2,612,746 (RON 1,567,648 as VAT and 1,045,099 lei as income tax); from the relation S.P. SRL - S.C. B.I. SRL resulted a prejudice of RON 1,552,560 (RON 931,536 as VAT and RON 621,024 as income tax).

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#### 7.1.5. Preventive measures

The following preventive measures were held in the case:

- Detention for a period of 24 hours, against defendants I.I., D.M., N.S. and V.C.Ş.;
- Detention, for a period of 30 days, ordered by the final hearing report no. 63/DL/2014 dated 18.06.2014 of Bihor Court against defendants D.M. and N.S.;
- Judicial control, against defendants I.I. and V.C.Ş.;

By the final hearing report no. 75/DL/ 2014 dated 08.07.2014 the Tribunal of Bihor County granted the applications of defendants D.M. and N.S. for the replacement of the preventive arrest measure with the measure of judicial control on bail.

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#### 7.1.6. Precautionary measures:

By the judgment date June 17, 2014 was ruled the precautionary measure of seizure of movable and immovable property of the defendants S.C. B.I. SRL and D.M. implemented by the minutes dated 17.06.2014, valued at RON 5,565,807.

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#### 7.1.7. Solutions:

**By the indictment no. 115D/P/2014 of 01.04.2015 was ruled:  
Institution of proceedings against the defendants:**

D.M. and S.C.U.B.I. SRL, for offences of tax evasion, deed procided by article 9 paragraph 1 letter c of the Law no. 241/2005, based on article 9, paragraph 3 of the Law no. 241/2005, article 35, paragraph 1, with the application of the Criminal Code and the establishment of a organized criminal group - stipulated by art. 367 paragraph 1, 2 of the Criminal Code., both with the application of article 38 of the Criminal Code. and article 5 of the Criminal Code.

N.S., S.C. T.D. SRL, V.C.Ş., S.C. S.P. SRL, I.I., S.C. V.D. SRL, K.Z., S.C. TLV 2008 SRL, for offences of complicity in tax evasion offence, as stipulated by article 48 of the Criminal Code, reporting to article 9 paragraph 1 letter c of the Law no. 241/2005, based on article 9, paragraph 3 of the Law no. 241/2005, article 35, paragraph 1 of the application of the Criminal Code and the establishment of an organized crime group - provided for in art. 367 paragraph 1, 2 of the Criminal Code, both with the application of the article 38 of the Criminal Code, and article 5 of the Criminal Code.

**Entry of a nolle prosequi of the** case against the defendant D.L.A., investigated for offences of complicity in tax evasion, offence stipulated by article 48 of the Criminal Code, reported in the article 9 paragraph 1 letter c of the Law no. 241/2005, based on the article 9, paragraph 3 of the Law no. 241/2005, article 35, paragraph 1, the application of the Criminal Code and the establishment of an organized crime group - stipulated in art. 367 paragraph 1, 2 of the Criminal Code, both with the application of the article 38 of the Criminal Code, and article 5 of the Criminal Code, because occurrence of his death.

**Notification of Bihor Tribunal,** court before which the case is currently pending.

## 7.2. Criminal case NO.1030/P/2014 – Prosecutor’s office attached to the Bucharest Tribunal

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### 7.2.1. Mode of notification:

On 12.03.2014 N.A.F.A. – Directorate-General for Tax Anti-Fraud notified the Prosecutor’s Office attached to the Bucharest Tribunal on the offence of tax evasion by SC S.F.B.SRL, SC A.B.E.SRL and SC N.T.SRL

The checks carried out by representatives of the Directorate General for Tax Anti-Fraud revealed that, during 2013, SC S.F.B. SRL, SC A.B.E. SRL and N.T. SRL conducted intra-Community procurements of goods in the amount of RON 10,488,621, RON 8,634,624, respectively RON 1,697,243 that have not been declared to tax authorities. The above three companies controlled by P.M.R. through intermediaries, have not declared deliveries of goods during 2013 by SC S.F.B. SRL, a company managed by P.M.R. and his mother, N.E., worth RON 7,281,935, RON 7,701,395, respectively RON 1,946,032.

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### 7.2.2. Issue in fact set in the case

During 31.12.2012-13.09.2013 the defendant PMR, as manager of SC A.B.E. SRL actually carried out intra-Community purchases of electronic goods they resold on the domestic market through two websites. Operations generated revenues and collected VAT in the amount of RON 675,980.64, which R.M.P. failed to record in the bookkeeping or other documents in order to avoid payment of tax obligations. In committing these acts the defendant P.M.R. was helped by the defendants N.E., I.V., I.G., P.N.L. and M.L.C.

During 01.01.2013-30.04.2014 the defendant R.M.P. helped by the defendants N.E., I.V., I.G., P.N.L and M.L.C, as manager of SC S.F.B. SRL, recorded false transactions of goods and services from companies with missing trader behavior, controlled in this way: from SC V.C.I. SRL has made purchases of goods and services amounting to RON 5,040,408.23 with Deducted VAT in the amount of RON 1,209,697.98, from SC A.B.E. SRL

recorded purchases of goods and services amounting to RON 7,311,193.18 lei with Deducted VAT in the amount of RON 1,754,686.36 and from SC N.T. SRL recorded purchases of goods and services amounting to RON 8,118,060.09 with Deducted VAT in the amount of RON 1,948,334.42 lei. Operations were created artificially to deduct VAT amounting to RON 4,912,718.76, collected by SC S.F.B SRL as a result of domestic resale of electronic goods through websites.

During 2013-2014, the defendant P.M.R, helped by the defendants N.E., I.V., I.G., P.N.L and M.L.C, as manager of SC E.S.I SRL, recorded false transactions of goods and services from companies with missing trader behavior, controlled by him in this way: from SC V.C.I. SRL has made purchases of goods and services amounting to RON 5,137,329. with Deducted VAT in the amount of RON 1,276,194.69 and from SC N.T. SRL recorded purchases of goods and services amounting to RON 180,148.04 with Deducted VAT in the amount of RON 43,235.53, transactions being artificially created to deduct VAT in the amount of RON 1,276,194.69, collected by SC ESISRL due to resale of electronic goods on the domestic market.

The defendant SFB SRL was used during 01.01.2013-30.04.2014, in the carousel tax fraud, in that recorded unreal procurement operations goods and services from companies with missing trader behavior - SC VCI SRL, SC NT SRL and SC ABE SRL, operations being artificially created to deduct VAT in the amount of RON 4,912,718.76i, collected as a result of domestic resale of electronic goods through the website.

The defendant SC E.S.I. SRL was used in a carousel tax fraud in the period 2013-2014 in order to supply the online stores [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) where mobile phones were sold coming from the illicit activity of SFB SRL and SC A.B.E.SRL, and during 01.01.2014-30.04.2014, it was used in the commission of carousel fraud and recorded false procurement operations of goods and services from companies with missing trader behavior - SC V.C.I SRL and SC N.T.SRL, operations being artificially created to deduct VAT in the amount of RON 1,276,194.69i, collected by SC E.S.I. SRL due to resale of electronic goods on the domestic market.

The defendant SC T.G.T. SRL was used during the 2013-2014 in the tax carousel fraud through its creation with the sole purpose of acquiring

internet domains that hosted the online stores [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) that were selling mobile phones from the illegal activity of SC S.F.B.SRL, SC A.B.E.SRL și SC E.S.I.SRL..

The defendant SC A.B.E.SRL was used to make intra-Community procurements of small electronics. During 31.12.2012-13.09.2013 it conducted delivery operations in the amount of RON 2,816,586 that generated income and VAT collected in the amount of RON 675,980.64, operations that were not highlighted in the accounting or other documents in order to avoid payment of tax obligations, with the consequence of a prejudice in the amount of RON 675,980.64 accounting for VAT. During 01.01.2013-30.04.2014, it was used for the sole purpose to serve as a missing trader that collects VAT domestically from SC S.F.B., the missing trader failing to report transactions and unpaying collected VAT.

The defendant SC N.T.SRL was used between 2013 and April 2014 to make intra-Community acquisitions of small electronics and later in the period 01.01.2013-30.04.2014, was used for the sole purpose to serve as a missing trader that collects VAT domestically from S.C. S.F.B. SRL and S.C. E.S.I. SRL.

The defendant SC V.C.I. SRL was used during 2013-2014 for conducting electronic Community acquisitions of commercial operations and thereafter, during 01.01.2013-30.04.2014, was used for the sole purpose to serve as a phantom company that collects VAT on domestically SC SFBSRL and SC ESISRL.

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### 7.2.3. Legal classification

In light of evidence administered in the case were retained:

**The defendant P.M.R.,**

Offences of: tax evasion offence stipulated and punished by article 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; tax evasion, offence stipulated and punished by article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, and tax evasion, offence stipulated and punished by

article 9 para. (1) let b) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, each with the enforcement of the provisions of article 77 para. (1) let a), and all with the application of the provisions of art. 38 of the Criminal Code, consisting in that:

- during 31.12.2012-13.09.2013 in achieving same criminal liability against the same passive subject (state budget), as manager of SC A.B.E. SRL carried out intra-Community purchases of electronic goods that he resold on the domestic market through the websites [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) (owned by SC E.S.I.SRL and hosted on internet domains owned by SC T.G.T.SRL), transactions amounting to RON 2,816,586 RON that generated income and VAT collected in the amount of RON 675,980.64 and that he failed to declare in the records or other documents thereby avoiding the payment of the amount of RON 675,980.64

- during 01.01.2013-30.04.2014, in carrying out the same criminal liability against the same passive subject (state budget), as manager of SC S.F.B.SRL, he recorded false transactions of goods and services from companies with missing trader behavior, controlled by him, respectively from SC VCI SRL has made purchases of goods and services amounting to RON 5,040,408.23, of which RON 1,209,697.98 as Deducted VAT, from SC N.T.SRL recorded purchases of goods and services amounting to RON 8,118,060.09 with RON 1,948,334.42 as Deducted VAT, from SC A.B.E.SRL recorded purchases of goods and services amounting to RON 7,311,193.18, with Deducted VAT in the amount of RON 1,754,686, transactions being created artificially for to deduct VAT in the amount of RON 4,912,718.76, collected by SC S.F.B.SRL as a result of reselling electronic goods on the domestic market, the final beneficiaries through the sites [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) (owned by SC E.S.I.SRL and hosted on the Internet domains owned by SC T.G.T.SRL) thereby



circumventing the total amount of RON 4,912,718.76 as deducted VAT and

- during 01.01.2014-30.04.2014 in achieving the same criminal liability against the same passive subject (state budget), as manager of SC E.S.I.SRL, registered unreal procurement operations for goods and services supplied from missing traders, controlled by him, respectively from SC VCI SRL has made purchases of goods and services amounting to RON 5,137,329.84 of which deducted VAT worth RON 1,232,959.16, and from SC N.T.SRL recorded purchases of goods and services amounting to RON 180,148.04, of which deducted VAT worth RON 43235.53, operations being artificially created to deduct VAT in the amount of RON 1,276,194.69 collected by SC E.S.I.SRL as a result of reselling electronic goods on the domestic market, to the final beneficiaries through the websites [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) (owned by SC E.S.I.SRL and hosted on Internet domains owned by SC T.G.T.SRL) with the purpose to circumvent the payment of tax obligations, purpose which was achieved by circumventing the total amount of RON 2,126,991.15, made of deducted VAT amounting RON 1,276,194.69 and income tax worth RON 850,796.46 and established SC E.S.I.SRI and used it to buy the websites [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) to offer for sale the goods coming from the fraud committed by SC S.F.B.SRL and S.C. A.B.E.SRL.

Offences of: complicity to tax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to art. 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; complicity to tax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, and complicity to tax evasion, offence stipulated and punished by article 48 of the Criminal

Code reporting to article 9 para. (1) let b) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, each with the enforcement of the provisions of article 77 para. (1) let a), and all with the application of the provisions of art. 38 of the Criminal Code, in the charge of:

- the defendant **N.E.**, consisting in that in the period 2012-2014, knowing the illegal nature of criminal acts, by creating, alongside the defendant P.M.R., SC S.F.B.SRL, a company used in the criminal activity, by setting up SC T.G.T.SRL, company founded only for purchasing Internet domains used for the online stores where there were traded the goods subject to tax fraud, by mentioning her telephone number as the contact number for the company SC A.B.E.SRL, a missing trader, by conducting banking transactions from the account of SC S.F.B.SRL and by contacting the persons in charge of accounting and officials in the NTRO and by solving problems related to accounting statements and dissolution of SC S.F.B.SRL, the defendant gave material support to the defendant POPESCU RĂZVAN MIHAI in committing offence through S.C. A.B.E.SRL, SC S.F.B.Expertise SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC V.C.I. SRL and SC N.T.SRL

- the defendant **P.N.L.**, consisting in that in the period 2012-2014, knowing the illegal nature of the criminal acts, by taking orders by phone or online from the websites [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) and by keeping track with courier companies to receive parcels from intra-Community suppliers of SC AA.B.E.SRL, SC N.T.SRL and SC V.C.I. SRL and by delivering orders to customers of SC S.F.B.SRL and SC E.S.I.SRL, by keeping daily record of the phones inventory, by receiving monies from the defendants M.L.C. and I.V. for surrendering them to the defendant P.M.R. and by carrying out online payments to mobile phone providers, at the defendant P.M.R.'s indication, he gave material support to the defendant **P.M.R.** in committing offence through S.C. A.B.E.SRL, SC

S.F.B.Expertise SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC V.C.I.SRL and SC N.T.SRL.

- the defendant **M.L.C.**, consisting in that in the period 2012-2014, knowing the illegal nature of the criminal acts, by taking orders by phone or online from the websites www.gsmtell-online.ro and www.online-tel.ro and by receiving parcels from intra-Community suppliers of SC A.A.B.E.SRL, SC N.T.SRL and SC V.C.I. SRL and by delivering orders to customers of SC S.F.B.SRL and SC E.S.I.SRL on the territory of Bucharest, by cashing money from customers on the territory of Bucharest and by surrendering these amounts to the defendant P.N., he gave material support to the defendant **P.M.R.** in committing offences through SC A.B.E.SRL, SC S.F.B.Expertise SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC V.C.I. SRL and SC N.T.SRL.

- the defendant **I.V.**, consisting in that in the period 2012-2014, knowing the illegal nature of the criminal acts, by taking orders by phone or online from the websites www.gsmtell-online.ro and www.online-tel.ro and by accepting the formal quality of associate of SC E.S.I.SRL although knowing that of this company shall be in charge the defendant **P.M.R.**, consisting in that in the period 2012-2014, knowing the illegal nature of the criminal acts, by taking orders by phone or online from the websites www.gsmtell-online.ro and www.online-tel.ro and by P.N.L. and by carrying out banking transactions and other operations on the circuit of product, the the indications of the defendant **P.M.R.** he gave material support to the defendant **P.M.R.** in committing offences through SC A.B.E.SRL, SC S.F.B.Expertise SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC V.C.I.SRL and SC N.T.SRL.

- the defendant **I.G.**, consisting in that in the period 2012-2014, knowing the illegal nature of the criminal acts, by accepting the formal quality of associate of SC E.S.I.SRL although knowing that of this company shall be in charge the defendant **P.M.R.**, by preparing the parcels with mobile phones for delivery to

customers and by handing over documents and monies to the defendant **P.M.R.** or N.E., she gave material support to the defendant **P.M.R.** in committing offence through SC A.B.E.SRL, SC S.F.B.Expertise SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC V.C.I. SRL and SC N.T.SRL.

The tax evasion offence, offence stipulated and punished by article 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; and with the enforcement of the provisions of article 77 para. (1) let a) of the Criminal Code, in charge of the defendant **SC S.F.B.SRL**, consisting in that in the period 01.01.2013-30.04.2014, it was used in a carousel tax fraud and registered false procurements of goods and services from companies with missing trader behavior, namely from S.C. V.C.I. SRL has made purchases of goods and services amounting to RON 5,040,408.23, of which deducted VAT worth RON 1,209,697.98, from S.C. N.T.SRL recorded purchases of goods and services amounting to RON 8,118,060.09 of which deducted VAT worth RON 1,948,334.42, from S.C. A.B.E.SRL recorded purchases of goods and services amounting to RON 7,311,193.18, with deductible VAT RON 1,754,686, transactions being created artificially to deduct VAT in the amount of RON 4,912,718.76 collected by SC S.F.B.SRL as a result to the resales of electronic goods on the domestic market.

The offences of tax evasion, offence stipulated and punished by article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, offence stipulated and punished by article 48 of the Criminal Code reporting to art. 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; complicity to tax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, each with the enforcement of the provisions of article 77 para. (1) let a), and all with the application of the provisions of art. 38 of the Criminal Code, in the charge of the defendant **SC E.S.I.SRL**, consisting in

that in the period 2013-2014, by its establishment in order to supply the online stores [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) by means of which were sold mobile phones coming from the illegal activity of SC S.F.B.SRL and SC A.B.E.SRL, and in the period 01.01.2014-30.04.2014 it was used in the commission of a carousel fraud and recorded false procurements of goods and services from companies with missing trader behavior, namely S.C. V.C.I. SRL and SC N.T.SRL, operations being artificially created to deduct VAT in the amount of RON 1,276,194.69 collected by SC E.S.I.SRL as a result of resales of electronic goods on the domestic market.

The offences of tax evasion, offence stipulated and punished by article 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; complicity tot ax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to art. 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code; complicity to tax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, each with the enforcement of the provisions of article 77 para. (1) let a), and all with the application of the provisions of art. 38 of the Criminal Code, in the charge of the defendant **SC T.G.T.SRL**, consisting in that in the period 2013-2014 it was used by the defendant Popescu Răzvan Mihai in the commission of a carousel fraud, by its establishment with the sole purpose of purchasing internet domains that hosted the online stores [www.gsmtell-online.ro](http://www.gsmtell-online.ro) and [www.online-tel.ro](http://www.online-tel.ro) where mobile phones coming from the illegal activity of SC S.F.B.SRL, SC A.B.E. SRL, SC E.S.I.SRL were sold.

The offences of complicity tot ax evasion, offence stipulated and punished by article 48 of the Criminal Code reporting to art. 9 para. (1) let c) and para. (3) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, and tax evasion, offence stipulated and punished by article 9 para. (1) let c) and para. (2) of the Law no. 241/2005 with the enforcement of the provisions of article 35 para. (1) of the Criminal Code, each with the enforcement of the provisions of article 77 para. (1) let a),

and both with the application of the provisions of art. 38 of the Criminal Code, in the charge of:

- the defendant **SC A.B.E.SRL**, consisting in that in the period 2012-2014 it was used to carry out intra-Community procurements of small electronic devices and thereafter these commercial operations, in the period 31.12.2012-13.09.2013 carried out transactions in the amount of RON 2,816,586 that generated income and collected VAT in the amount of RON 675,980.64 and that it failed to disclose in the bookkeeping records or other documents in order to avoid the payment of tax obligations, thereby circumventing the payment of the amount of RON 675,980.64 representing the collected VAT and in the period 01.01.2013-30.04.2014 it was used for the sole purpose to serve as a missing trader company that collects VAT domestically from SC S.F.B. SRL, the missing trader company failing to report operations and failing to pay the collected VAT

- the defendant **SC N.T.SRL**, consisting in that in the period 2013-April 2014 it was used to carry out intra-Community procurements of small electronic devices and thereafter, in the period 01.01.2013-30.04.2014, it was used for the sole purpose to serve as a missing trader company that collects VAT domestically from SC S.F.B.SRL and SC E.S.I.SRL, the missing trader company failing to report operations and failing to pay the collected VAT;

- the defendant **SC V.C.I. SRL**, consisting in that in the period 2013-2014 it was used to carry out intra-Community procurements of small electronic devices and thereafter these commercial operations, in the period 01.01.2013-30.04.2014, it was used for the sole purpose to serve as a missing trader company that collects VAT domestically from SC S.F.B.SRL and SC E.S.I.SRL, the missing trader company failing to report operations and failing to pay the collected VAT.

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#### 7.2.4. Civil side

By the committed offences, a total prejudice amounting to RON 6,864,894.09 representing the VAT circumvented from payment through SC A.B.E.SRI, SC E.S.I.SRL and SC S.F.B.SRL.

By the official note no. 2936640 dated 28.11.2014, N.A.F.A. - Legal Affairs Directorate was established as civil party in the case, with the amount of RON 6,914,512

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#### 7.2.5. Preventive measures

The following preventive measures were hold in the case:

- Detention for a period of 24 hours, against defendants **P.M.R., N.E., I.V., I.G., P.N.L. and M.L.C.**;
- Preventive detention, for a period of 30 days, ordered by the final hearing report dated 19.06.2014 issued by the Bucharest Tribunal against defendants **P.M.R., N.E., I.V., I.G., P.N.L. and M.L.C.**

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#### 7.2.6. Precautionary measures:

By the Ordinance of the Prosecutor's Office attached to the Bucharest Tribunal no. 1030/P/2014 dated 16.06.2014, it was ruled the enforcement of the measure of precautionary seizure:

- on all movable and immovable property (buildings, land, vehicles, money in bank accounts, etc.) belonging to the defendants **P.M.R., N.E., P.N.L., M.L.C., I.V. and I.G.** and garnishment of money owed under any title by third parties to them, up to the amount of RON 6,204,356.22;
- on all movable and immovable property (buildings, land, vehicles, money in bank accounts, etc.) belonging to the defendant SC S.F.B.SRL and garnishment of money owed under any title by third parties to them, up to the amount of RON 4,646.581 lei;

- on all movable and immovable property (buildings, land, vehicles, money in bank accounts, etc.) belonging to the defendants SC E.S.I.SRL, SC T.G.T.SRL and garnishment of money owed under any title by third parties to them, up to the amount of RON 6,204,356.22 lei;
  - on all movable and immovable property (buildings, land, vehicles, money in bank accounts, etc.) belonging to the defendants SC A.B.E.SRL, SC V.C.I. SRL and SC N.T.SRL and garnishment of money owed under any title by third parties to them, up to the amount of RON 5,512,630.22 lei;
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#### 7.2.7. Solutions:

By the indictment no. 1030/P/2014 of 11.06.2015 was ruled:

- **Institution of proceedings against the** defendants: P.M.R., P.N.L., N.E., M.L.C., I.G., I.V. , SC S.F.B.SRL, SC E.S.I.SRL, SC T.G.T.SRL, SC ADVANCED BUSINESS EXPERTISE SRL, SC N.T.SRL and SC V.C.I. SRL, for committing the offences presented in the "Legal Classification" section;
- **Notification of Bucharest Tribunal**, court before which the case is currently pending ready for judgment.



## CHAPTER 8 - COMMUNITY FRAUD IN HUNGARY

### 8.1. The history of investigation against tax crimes in Hungary

The investigative competence for tax crimes several times was transferred between Hungarian law enforcement authorities as follow:

- 31st Jan 1999 until this date investigation of tax fraud fell into the competence of the Hungarian Customs and Finance Guard (HC&FG)
- 31st Jan 1999 until this date bodies of the Police dedicated for the protection of the economy led the procedures in fraud investigations if committed on taxes (only the serious offences were dealt by the county-seat offices, minor offences were investigated by town-seat offices or in Budapest by the districts)
- 1st Feb 1999 Criminal Directorate of the Tax and Financial Control Administration was established together with regional and local bodies (*one investigation office was responsible for Budapest and Pest County*) – tax fraud regarding import VAT was investigated by the HC&FG further on
- 1st Jan 2003 the competence for tax and financial investigation migrated again to the Police (*Directorate for Financial Investigations of the Criminal Directorate of the National Police and its regional bodies, as regards Pest County and Budapest one investigation office was competent*) – the investigation of tax fraud regarding import VAT remained at the HC&FG
- 1st July 2004 National Investigation Office (NIO) was established within the National Police, financial affairs were investigated by the Department for Financial Investigations and its regional bodies (*the investigation of tax fraud regarding import VAT remained at the HC&FG*)

- 1st July 2005 NIO is reorganized as independent service, financial investigations were performed at regional levels. (*the investigation of tax fraud regarding import VAT remained at the HC&FG*)
- 15th Sep 2006 changes in the scope of competence: exclusive investigative competence was granted for the HC&FG
- 1st Jan 2011 changes in the scope of competence: Tax and Financial Control Administration and the Hungarian Customs and Finance Guard merged as National Tax and Customs Administration (NTCA) having exclusive competence in different financial acts of crime such as: **Fraud Relating to Social Security, Social and Other Welfare Benefits; Budget Fraud** (tax evasion, tax fraud, smuggling, excise fraud); **Omission of Oversight or Supervisory Responsibilities in Connection with Budget Fraud; Conspiracy to Commit Excise Violation; Breach of Accounting Regulations; Fraudulent Bankruptcy.**

## 8.2. Hungarian legislation

Act C of 2012 on the Criminal Code

Budget Fraud

*Section 396*

- (1) Any person who:
- a) Induces a person to hold or continue to hold a false belief, or suppresses known facts in connection with any budget payment obligation or with any funds paid or payable from the budget, or makes a false statement to this extent;
  - b) Unlawfully claims any advantage made available in connection with budget payment obligations; or
  - c) Uses funds paid or payable from the budget for purposes other than those authorized;

- d) and thereby causes financial loss to one or more budgets, is guilty of misdemeanor punishable by imprisonment not exceeding two years.
- (2) The penalty shall be imprisonment not exceeding three years for a felony if:
- a) The budget fraud results in considerable financial loss;
  - or
  - b) The budget fraud defined in Subsection (1) is committed in criminal association with accomplices or on a commercial scale.
- (3) The penalty shall be imprisonment between one to five years if:
- a) The budget fraud results in substantial financial loss;
  - or
  - b) The budget fraud results in considerable financial loss and is committed in criminal association with accomplices or on a commercial scale.
- (4) The penalty shall be imprisonment between two to eight years if:
- a) The budget fraud results in particularly considerable financial loss;
  - or
  - b) The budget fraud results in substantial financial loss and is committed in criminal association with accomplices or on a commercial scale.
- (5) The penalty shall be imprisonment between five to ten years if:
- a) The budget fraud results in particularly substantial financial loss;
  - or
  - b) The budget fraud results in particularly considerable financial loss and is committed in criminal association with accomplices or on a commercial scale.
- (6) Any person who manufactures, obtains, stores, sells or trades any excise goods in the absence of the criteria specified in the Act on Excise Taxes and Special Regulations on the Marketing

of Excise Goods or in other legislation enacted by authorization of this Act, or without an official permit, and thereby causes financial loss to the central budget, shall be punishable in accordance with Subsections (1)-(5).

(7) Any person who either does not comply or inadequately complies with the settlement, accounting or notification obligations relating to funds paid or payable from the budget, or makes a false statement to this extent, or uses a false, counterfeit or forged document or instrument, is guilty of a felony punishable by imprisonment not exceeding three years.

(8) The penalty may be reduced without limitation if the perpetrator provides compensation for the financial loss caused by the budget fraud referred to in Subsections (1)-(6) before the indictment is filed. This provision shall not apply if the criminal offense is committed in criminal association with accomplices or on a commercial scale.

(9) For the purposes of this Section:

a) 'Budget' shall mean the sub-systems of the central budget - including the budgets of social security funds and extra-budgetary funds -, budgets and/or funds managed by or on behalf of international organizations and budgets and/or funds managed by or on behalf of the European Union. In respect of crimes committed in connection with funds paid or payable from a budget, 'budget' shall also mean - in addition to the above - budgets and/or funds managed by or on behalf of a foreign State;

b) 'financial loss' shall mean any loss of revenue stemming from non-compliance with any budget payment obligation, as well as the claiming of funds from a budget unlawfully or the use of funds paid or payable from a budget for purposes other than those authorized.

This legislation merged tax evasion, tax fraud, smuggling and excise fraud under a new name as budget fraud.

### 8.3. The types of the hungarian vat fraud trends and modus operandies

Perpetrators of financial and economic crimes move on a large scale, on the one hand breach of law for small value offences, sometimes for personal subsistence, on the other hand organized, international perpetration for billions of worth. Significant crimes committed correlate to economy are one and all committed in an organized way.

One of the basic crimes within financial and economic crimes is tax or tax related crimes. Our investigative service experienced several perpetration behaviors during the past years in relation to the above mentioned form of crimes. The most typical of the perpetrations is, when the perpetrator declares false data in the tax declaration form and with this reducing the tax income of the state. The fake declaration can be realized 2 ways. One is when despite their economic activities they declare nothing or in their declaration they indicate fake data. We often meet with both perpetration manners. The second way is when they declare real data, but the invoices proving the economic activities are fake, meaning no actual activity happened. Fake invoicing is very frequent in connection with tax frauds.

➤ **invoice factories:**

Some domestic companies in order to minimize their tax paying obligations include fictitious invoices in their bookkeeping. Perpetrators specialized on this use fake companies (companies without any actual economic activity). Managers of these companies are usually non reachable by the authorities (homeless people, citizens of other countries), or if they are reachable than they possess no assets for recovery. The essence of the phenomenon is that the perpetrators issue fictitious invoices for a certain percentage of the value of the invoice in the name of companies founded under the name of people in need, homeless people or foreign citizens. This way the companies paying for this and accepting these invoices can recall VAT and corporate tax in an unlawful way. The fictitious activity is usually land work, education, counseling, cleaning, advertisement etc. activities that are hardly controllable by the authorities.

➤ **Intra Community VAT frauds:**

- *VAT frauds in connection with export activities*

One of the main problems with intra community sales is not the unpaid VAT but the unlawful VAT refund applications. The exporting company – after crossing the border - can apply for a VAT refund after materials used in the product, services paid previously.

The most often used technique is when the exported materials never actually leave the country but are sold inland without invoicing at the same time applying for VAT refund referring to the export activity. The perpetrators in this case take advantage of the provision according to which the VAT of the exported goods that were purchased inland falls under a 0% tax rate, this way the VAT is 100 % claimable.

Before Hungary joined the EU in case of an export activity goods were only allowed to leave the territory of Hungary by a customs authority controlled way. After joining the EU goods are leaving the territory of Hungary without any control, tax payers are bound to prove the fact of the export activity afterwards with documents, methods chose by them.

The most common criminal conducts:

- The exporting company does not possess any goods, proves its purchases, sales with fake documents, the customs documents are also fake. They submit their tax declarations using these fake data and apply for a VAT refund after their fictitious purchases;
- Solely on paper the exporting company - according to the amount of the purchased goods - transports a significantly bigger amount of goods. For the difference they make fake documents;
- In this case the exporting company possesses no goods either. The customs clearance happens with the bribe of the customs officer and with fictitious invoices, after exiting, since the vehicle of transport claims for an entry empty there is no need to pay any customs of tax duties either.

*- VAT frauds in connection with intra community purchases*

In certain cases the company does not admit the goods imported from an other member state, but resells it to its business partner with VAT. The state's loss is in one hand the not paid VAT on the other hand the lawfully claimed VAT return.

If the company carries on other activities as well and the claim only appears as an item reducing the payment duties it is possible that the tax fraud will not be revealed at all considering that the tax authority usually checks the companies that are applying for a refund.

*- Carousel or organized VAT fraud*

The above mentioned 2 technique's combination is the carousel fraud or in other words organized VAT fraud which appeared in the Benelux States at the end of the 70's beginning of 80's. An important element is that the company, founded for the above mentioned reasons buys easily transportable but high value goods from an other member state. The vendor makes a tax free intra community transportation and the buyer should be declaring the VAT after the purchased goods. This is of course not done, but the goods are sold again this time within the country charging VAT in the invoice. The buyer – who might be a company with actual economic activity- claims for a refund and the fraud thanks to the real economic activity will not come to light straightway. By the time the crime comes to light the company, who sold the goods unlawfully disappears.

*- VAT free import of goods (tax fraud committed with 42.00 customs procedure)*

Thanks to it's geographical location Hungary is the main target of criminal groups exploiting possibilities from provisions of import of goods. The so called import VAT fraud's principle is that the goods declared in Hungarian customs offices are transported – only on paper – to an other member state, therefore when declaring the goods the import VAT is not to be

paid. The consignment however – after releasing for free circulation – never leave the territory of Hungary, they are placed into circulation domestically without the VAT paid.

Particularly popular goods in connection with this type of fraud are goods coming from the Far East (footwear, textile products) or rather white sugar.

The terms of using the 42.00 customs procedure is to transport the imported goods to an other member state after customs procedure. Accordingly the import is tax free when the goods are transported from inland to an other member state and it can be proved.

Taking into account that the European Union is also a customs union, therefore custom clearance for the goods imported into the territory of the Community can be done at any member state. However it must be secured that independently from the place of the customs clearance the VAT revenue after the import should go to the budget of the member state where the import's real destination is. The regulation makes it possible in the following ways: in the member state where customs clearance is done the import is tax free, tax has to be paid at the member state, where the good's real destination is.

Tax fraud in connection with clothing products is usually done by companies with a Chinese involvement of course with the necessary professional support (lawyers, bookkeepers, tax advisers, customs officials). These clothing products imported from the Far East arrive to west-European harbors in containers. The goods are usually transported to Slovakia, where customs clearance is done with 42.00 customs procedure after which the containers are transported to Budapest or with fake papers to south- or west European countries. The perpetrators use Hungarian strawman companies for putting the goods into free circulation, with these companies they cover their import from the Far East. Including the "ghost" companies into the invoicing chain the perpetrators do not fulfill their tax paying and tax declaration obligations.

Considering that the strawman company does not issue any invoice towards the perpetrators it is hard to measure the amount of goods actually sold in Hungary.



Characteristics of the above mentioned conducts:

- offence is connected to an import from a 3<sup>rd</sup> country, mostly Chinese textile products and footwear
- the member state where the goods will be put into free circulation differs from the member state where customs clearance of the goods were done
- strawman companies are used as 1<sup>st</sup> intra community users of the goods (they make no tax declaration, they are unreachable at their registered office, they have no employees, there is no movement on the company's bank account)
- VAT that should be paid for importing goods is not paid at the member state which was marked as the place of destination of the goods

#### **Examples on VAT fraud:**

- *Criminal conducts in connection with agricultural products (grain, meat, sugar, oil)*

Mostly Slovakian, Romanian economic companies with Hungarian management, buying grain from Hungarian vendors in order to transport it to an other EU member state.

These transports never actually happen, grain is sold inland. The perpetrators verify the exit of goods with fictitious consignment notes.

The way of conducting the above mentioned activity gets more and more sophisticated taking into consideration that proving that the grain did not leave the territory of Hungary was not too difficult with examining the consignment notes supported by the statements of the transporters. For the evasion of the authorities most of the time they even exit the goods. Conducts characterizing the cereals sector also appeared in connection with other products as well. Their common features are that they are easily transportable in big amounts. These goods are: oil, sugar and meat. When proving the above

mentioned criminal offences the transporters statements play a particular role since that can prove weather the goods left the territory of Hungary or not.

*- Criminal conducts in connection with guarding-protection (the so called manpower leasing)*

In order to avoid their tax and contribution payment obligation some guarding-protection companies – according to investigation’s experience – indicate their employees as if they are employed at an other company. The strawman companies include the contribution payment after their employees in their declaration and the VAT content of the invoice towards the general contractor, however the actual payment never happens. This way the general contractor who actually employs the employees does not need to pay tax after them, moreover the company’s tax is also reduced thanks to the received invoices. The perpetrators don’t only use subcontractors but they contact manpower-leasing companies as well. These companies are also strawman companies with no actual registered office, they make no tax declaration and after a short period of time they finish their activity, change their seat and the management. Detection of strawman companies at the bottom of the invoicing chain happens almost every time, but the proving that the aim of the invoicing chain is to release the general contractor from tax paying obligations is not possible without operational activities.

*- Conducts harming the budget in connection with the building and construction industry*

The construction industry is also infected with companies that reduce the amount of tax they should be paying with fictitious invoices granting – with this - unfair competition advantage for themselves. The company is making the construction works with their declared or undeclared workers, but in their bookkeeping they create the impression that the work was done by subcontractors in order to decrease their tax payment. The strawman subcontractor does not fulfill the tax declaration and tax payment obligation and this way the VAT is not paid. It is making the proving harder that

although the economic activity on the invoice did happen but not the way it was indicated. The perpetrators often try to prove the role of the subcontractors with contracts, bank transfers etc.

- *Conducts in connection with the selling of intra community purchased used cars*

In these cases the used car tradesman – with the help of his connections - orders the car for his customer from an intra community tradesman. For the import they establish a strawman company which purchases the car in the member state and the used car tradesman sells the car on assignment, on paper of course. The income and the VAT payment obligation appears at the strawman company but the network is run by the car selling tradesman.

- *„Company cemeteries”*

In the past few years the investigation service of the National Tax and Customs Administration met several times with companies aggregated significant debts in which companies the representation is done by a person well known by NTCA. The common feature in these companies is that their seat is registered at the same place, that works as a “company cemetery”. The method is so popular, that NTCA has several investigations where there are hundreds of companies registered at the same place. Having more companies is of course not against the law, but someone who is fictitiously utilizing companies in order to exempt its former owners from tax paying and other obligations has to face legal consequences.

The essence of the phenomenon is that the owners of the companies engross a significant debit and they sell their business share to individuals – typically for consideration – who has no intention to keep the company alive. Currently besides the individuals a company which can not be found at its registered office is also appears as buyer. The former owners usually do not hand over the company’s bookkeeping, the possible assets of the company flows to an unknown place. The former owner in most of the times establishes

a new company (with similar or with the same scope of activities, seat, ownership, employees, instruments) proving that they had no intention to stop their activity, they only sold the other company in order to get rid of their debt.

#### 8.4. What are the most popular goods in hungarian mtic cases

On 1 January 2012 the VAT rate was increased from 25 % up to 27% in the country. Hungary has the 3rd highest rate of VAT in the world after Saint Lucie and Djibouti. The criminals don't make a difference between the goods. They use all goods to conduct VAT fraud like cars, tinned food, nappy, wood wares. The most popular commercial goods are: sugar, milk, vegetable oil, frozen meat, egg, chocolate, energydrink, coffee, cement, iron, aluminium (industrial basic material), plasticgranulate, packagenylon, soya, electrical goods, mobile phones and tablets, used cars, petfood, rape-oil.

The goods shouldn't possess distinguishing marks (like computer hardwares, IT parts) and haven't got special legal regulations (like excisable goods). Preferably the goods are small sized with high value and their weight is low as this makes the transport easier. The more the amount and total value of the goods are, the more profit could be achieved. Actually loose cargo can be a good choice (cereals like grain, corn; honey, sugar etc.)The high demand for certain goods can be attractive for criminals, like consumer's goods.

#### 8.5. Risk analysis and risk management, or: what support can be offered by advanced risk management systems and solutions?

Use of the Panorama network analysis tool for the review of risky invoicing chains identified on the basis of VIES data<sup>30</sup> and itemized domestic VAT data<sup>31</sup>

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<sup>30</sup> VAT (Value Added Tax) Information Exchange System: a system to record key identification data of taxpayers having a community VAT registration number, including the

Hungary is typically a target country in the region. A target country does not necessarily mean a place of consumption, however, it may be assumed that some of the Hungarian missing traders not declaring intra-community purchases are only virtual consignees of the deliveries. As a matter of fact, in several cases, companies established by Czech, Polish or Slovak private individuals admitted to have re-sold the goods to customers in the same member-states. Irrational transport routes, as well as the lack of business sites and other conditions necessary for conducting business operation allow us to conclude that some consignments have never even been to Hungary, their only role has been to conceal the actual origin of goods, thus impeding the work of the member-states' authorities.

The Panorama network analysis solution package provides an efficient support to the staff of the Hungarian NTCA in revealing the above risky transport procedures and, more exactly, the officially declared invoicing processes. The system, which is based directly on data stored in data warehouses, provides an excellent synthesis of the advanced risk management solutions: it displays the hierarchy of relationships of the taxpayers, the risk indicators relating to the most important tax types, based on modelling rules of data mining, and – based on VIES data, as well as itemized domestic VAT data –, the system helps explore the direct and indirect environment, and business relationships of risky taxpayers, providing an efficient support for detecting suspicious commercial chains operating in order to evade taxes.

Central selection lists, as well as detections of certain risky cases often include taxpayers, who are connected to each other, have common representatives, owners or business partners, or are registered at the same business seat. The Information Database of Risky Relations (abbreviated as KoKaIn in Hungarian) is permanently updated with the data of tax fraudsters already known or caught. The database typically registers taxpayers involving

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validity of such VAT numbers, and the intra-community trade turnover figures of such taxpayers declared in their summary declarations.

<sup>31</sup> A data supply form to be filed since 01.01.2013 as an annex to the VAT Return, which contains the key data of each individual invoice including a VAT amount of HUF 2 million or more either to be paid or to be deducted, as well as the total amount of VAT relating to partners, whose invoices include a consolidated VAT amount reaching HUF 2 million or more for the particular return period, although not by invoices, but by business partners.

the risk of control, of termination under suspicious circumstances, of phantomization, as well as the representatives and owners behind such taxpayers. At the same time, the KOKAIN-indicators are shown at the other existing and new relationships of these taxpayers as well, thus forecasting the risks of tax fraud or collapse of the companies concerned. (In the network display area of the Panorama tool, relationships of intricate hierarchies become transparent, and suspicious relations become easy to recognise and identify.)

(The map of relations of business operators dealing in base oils generated with the help of the Panorama system is included in Annex 3.)

The central selection list called 'RIASZT', which was started in 2008, is basically made of VAT Return figures and their chronological indicators, as well as their comparison with current account figures, based on indicators defined in relation to three typically risky roles characterized by a sudden rise in trade turnover, involved in the fraud chain model (i.e. beneficial brokers, tax minimizing buffers and missing traders). The resulting lists of the central selection for the three different roles mentioned above are sent to the control units of the regions on a monthly or quarterly basis, depending on the risk indicators. From the very beginning, taxpayers included in the lists have been characterized by the establishment of outstanding absolute and average tax difference, as well as by a high level of failure of control, which are indicators that continuously and appropriately represent the level of risk related to the selected taxpayers.

Since 2011, a grouping of taxpayers not declaring their intra-community purchases has been introduced, based on partner-level VIES data systematically loaded in the RADAR data warehouse, and further, since 2012, taxpayers declaring intra-community sales to the same risky intra-community partners have also been included in the groups, as well as in the RIASZT-list. (Several of those have been listed, anyway, because of their parameters being typical for 'traditional' brokers.) Already then, several community taxpayers appeared in the list that were identified as partners forming part of the groups. It was typical for such partners that in certain periods, sales of Hungarian taxpayers to them, as well as their undeclared purchases were almost identical, thus allowing already at that time for the RIASZT-procedure to identify

hundreds of semi-carousel-type chains automatically. With the help of this grouping method, we managed to link missing traders and brokers having been selected separately before in an automatic manner, via community partners.

Following from the above, several of the Hungarian companies involved in base oil transactions were also included in the RIASZT-list, since they showed significant VIES-differences, they normally did not file their tax returns, or when they did, their relevant intra-community purchases were not declared properly. Most of the companies phantomized when controls were started, while the next companies in the row continued the purchases from the same source. Before 2013, we could not obtain information on the re-selling transactions of such buyers, or even on the existence of the purchased goods by using tax control tools.

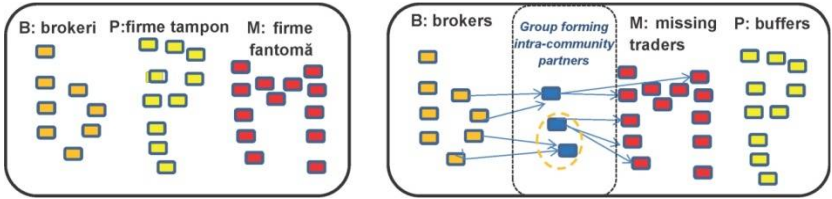
However, the use of itemized VAT data of the domestic summary report including each invoice separately introduced in January 2013 was actually a milestone in identifying risky routes and networks, since the processed data provided a basis for the development of an automated system for the identification of invoicing chains or fragments of chains having suspicious gaps, as well as complete carousel invoicing chains. The system also shows re-sale transactions of taxpayers not declaring their purchases and of non-filers of VAT returns and itemized data supply if the next link in the invoicing chain is compliant and declares its purchases.

It is expected that by revealing the complete chains, with the help of coordinated controls, the efficiency of the tax and customs areas shall further increase, and by having regular information on the most risky networks we manage to call the attention to the current economic and tax risks, and in certain cases support may be provided for the detection of organized criminal networks established for 'professional' tax evasion.

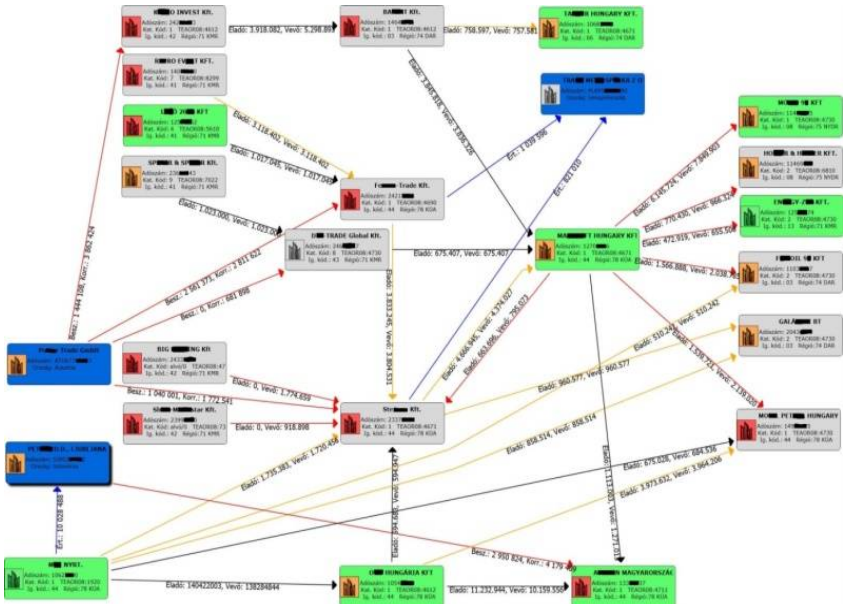
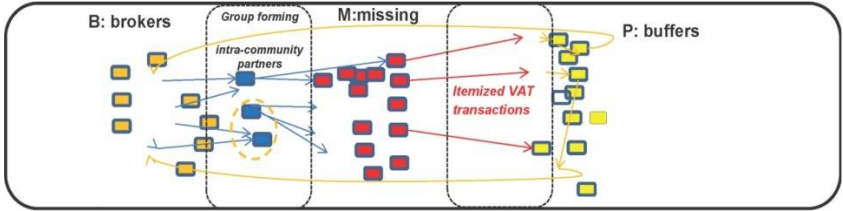
Table 7: Generation of risky taxpayers and groups in the RIASZT-list

1.)2008-2011 : Markings of carousel fraud roles

2.)From 2011 : Group formation based on VIES data (KAKUK)



3.) 2013: Adding itemized domestic VAT figures (TAVA) to group formation, and chain formation





## 8.6. Recommendations – cooperation between Law Enforcement Agencies and Tax Authority

- Soonest possible evasion of the disadvantages caused by parallel tax administrative and operative procedures
- Tax administrative data could be utilized as a new input to the criminal procedure – on an annual basis nearly 1600 ongoing investigations are led due to suspected tax fraud
- Immediate growth-of-property verifications (living standard is not coherent with the declared incomes)
- Advantages of synchronized criminal and tax administrative procedures (e.g. avoiding document delivery problems in tax administrative cases run parallel to criminal procedures; bookkeeping data seized in a criminal procedure can lead to tax administrative cases)
- Findings of the tax administrative procedures – official forensic report
- Direct access to classified tax and customs information in open criminal procedure – ”direct terminal access”

## 8.7 MTIC phenomenon - asset searching - asset recovery

In the fight against MTIC frauds (in case of budget fraud, fraudulent Bankruptcy, money laundering as well) during the investigation is obligatory to create financial profile to help the asset searching and asset recovery. For that reason it was created a financial profile fact sheet see under below:

# Financial profile Fact sheet

## I. Perpetrator's financial profile:

Case Nr.:

Underlying criminal offense:

Value of commission:

Time of commission (statute of limitation):

### • Asset tracing results

Perpetrator, name:

Permanent Residence:

Temporary residence:

### • Investigation Database: antecedent search:

- Perpetrator involved in other crim. procedures:  
yes - no

- Relevant information on assets:  
yes - no

# Financial Profile Fact Sheet

- If yes, detailed predescription:

.....  
.....  
.....

### • Real estates:

- (TAKARNET) Real estates, financial rights attached to real estates:

1.....  
2.....  
3.....  
4.....

## Financial Profile Fact Sheet

-With regard to the real estates owned linked with the perpetrator

TAKARNET Fact sheet attached:

yes - no

contract of purchase attached:

igen - nem

• Bank account details

- Bank accounts linked with the perpetrator:

- The perpetrator has .... Bank accounts rendelkezik, detailed bank account informations concerning ...time intervals:

yes - no

## Financial Profile Fact Sheet

• Vehicles

- The perpetrator does not own any vehicle:

- The perpetrator owns...vehicles, Fact sheets/ vehicles attached:

yes - no

• Business shares

- negative:

- The perpetrator owns shares in...companies, incorporation documents/contracts attached

yes - no

• Other relevant assets:

- 1.....
- 2.....
- 3.....

# Financial Profile Fact Sheet

## II. Legal entity

Name of the Legal entity:

Place of Operation:

Tax number:

• Forfeiture or criminal investigative measures against legal entities is applicable :

• **yes - no**

... Same content

Other relevant assets could be: pieces, works, antiques, pieces, works, antiques, intellectual property rights, horses, jewellery, precious stones, insurance policies, old-timer, art treasures, government securities, stocks, investments (gold, silver)

If the damage more than 30.000 Euro it is compulsory to send a request to the national FIU.

If the damage more than 16.000 Euro it is compulsory to send a request to the national tax authority to find out all of bank accounts related of the relevant companies and legal persons.

On the basis of information that relevant assets belongs to the suspect or the real usufructuary to be located in other EU member states to send a request to the national Asset Recovery Office is obligatory as well.

Before the first interrogation of suspect should have to create the financial profile of the suspect, and relevant persons (family members, friends, business partners, etc. of the suspect) who touched or wrapped the black asset as a result of the crime very likely.

## 8.8. Case study

### **Statement of facts:**

*A.Z is a resident in Debrecen who established a network of companies with almost 60 companies, with using these companies he purchased different metal-working materials, brought machinery and working gear to Hungary and placed them into circulation without paying VAT.*

### **The criminal organization used the following methods:**

1. Goods coming from the Community's territory contrary to the delivery route are coming through an invoice network of 8, the aim is to make the goods look like inland goods and the right to claim for VAT refunds at the end user.
2. Goods from the Community's territory come into circulation inland and with this they create the possibility of multiple VAT refund claims

### **The loss caused with this unlawful activity is: 3.031.000.000 HUF**

**The result of the operation is: assets in an amount of nearly 3 billion HUF seized , 5 pax held in custody**

### **The invoice network:**

**„Missing trader”**: *fake Romanian id cards, driving license and Hungarian tax cards were created for the members of the criminal organization. For these company accounts internet access and banking cards were given. The banking cards were kept in a separate office which also belonged to the organization. On the cards the name of the company and pin codes were indicated. The members of the criminal organization withdraw cash from ATM machines than handed it back to the “sender” company’s representative. These companies are not reachable by the tax authority. The only conclusion the tax authority could make was that the documentation is incomplete.*

*Missing trader companies were changed often within a short period of time.*

**Broker 1:** *Economic companies with an existing bookkeeping. Purchased only from missing trader companies. Their managers acknowledged the economic activities as real ones. Their statements were affected by the leaders of the criminal group. In each case they handed over the responses and the managers were ordered to learn them and tell them to the tax authorities.*

*In case the managers said something wrong it was revised in writing, statements were blue-penciled subsequently. After years of investigation on this level the tax authority could make a conclusion. However by the time a tax supervision started the company disappeared.*

**Broker 2:** *Economic companies with an existing bookkeeping. They purchased from different Broker 1 level companies. On this level the company had its own bookkeeper, who represented them in front of the tax authority. The tax authority could not yet make a conclusion on this level.*

**Wholesalers:** *they are on the top of the invoice network, these are economic companies with a great background. Their illegal activity was established on their real activities.*

*The acquired stock was moved several times on paper which made the selling of the goods on a lower price for bigger construction works. Their aim was to lower their VAT paying obligations after their legal activities, but occasionally they tried to claim unlawfully for VAT refunds.*

*In such cases they put a new, “clean” economic company on the top of the invoicing network and the transport of goods were done by external carriers.*

**Contacts:**

*Each company used a gmail.hu type e-mail address and all documents in connection with keeping contact with the others were saved as draft. Than the others who of course knew the password checked the draft and on the basis of that they could continue communicating.*

*Each member of the organization had a separate mobile phone. The phone and the SIM card were changed in every one and a half month. The phones were registered under homeless people’s names, they had nearly 3000 subscriptions. These phones were usually switched off after 4PM. Personal meeting between the main organizers only happened – because of the distance - when they handed cash over to each other. We can also say that personal*

meetings happened rarely because the perpetrators have earned a well based self-confidence during the years and they lived a very comfy and lazy life.

**Office:**

For the smooth accounting, invoicing activity the criminal organization needed an office which they rented for half a year than they moved to the next one. They paid special attention to the office. Only 4 people had admittance to the office. Every time the first one who arrived turned the mobile phones in the office on. The address of the office was kept in secret even in front of their families.

**Registers:**

In the organization's office they had a very precise registration for each economic company. Main registers:

- invoicing network: where each company is buying from and selling to;
- email password: Gmail email addresses with the passwords;
- declaration deadlines: when it has to be done and if it did actually happen or not;
- tax administration statements: what kind of statements the managers are allowed to make;
- expenses: how much they spent on each company, how much money each member received, which of their expenses were financed.

**Submission of declarations:**

According to the available information the fictitious declarations submitted done electronically by an accountant from Debrecen.

For the submission of the declarations a Bulgarian mobile internet stick was used. On the accountant's laptop several material of different economic companies were found.





## CHAPTER 9- COMMUNITY FRAUD IN NETHERLANDS

### 9.1. FIOD

FIOD, the Criminal Investigation Service of the Ministry of Finance of the Netherlands is embedded in the Tax and Customs Administration of the Netherlands. The FIOD combats fiscal, financial-economic and commodity fraud, safeguards the integrity of the financial system and combats organised crime, especially its financial component.

The Dutch Tax and Customs Administration (staff: approx. 28,000) has three primary processes, namely taxes, customs and allowances. The FIOD is responsible for criminal law enforcement regarding fraud in these processes.

The FIOD can be called in if someone evades taxes or commits fraud in another way. The more than 1.300 FIOD staff focus on the criminal investigation of:

- fiscal fraud (including VAT/carousel fraud, excise duty fraud or undisclosed foreign assets);
- financial-economic fraud (insider trading, bankruptcy fraud, property fraud, money laundering, health care sector, fraud with public money, etc.);
- commodity fraud (strategic goods and sanctions, raw materials for drugs, intellectual property, etc.).

FIOD is a centralised service with approximately 30 operational teams throughout the country in 15 offices. In total there are about 1.000 criminal investigators of which 75% have a higher professional or university education followed by an in-house training on financial criminal investigation, relevant articles of the criminal codes applicable (general and specific codes) and the relevant sections of the code on criminal procedures.

All criminal investigators have full police powers and are supported by other FIOD-teams in the area of forensic IT, arrests, surveillance, bugging, strategic intelligence, international co-operation and covert operations.

In the Netherlands all criminal investigations are carried out on the authority of a public prosecutor. In almost all criminal investigations by FIOD these public prosecutors belong to one specialised National Public Prosecutors Office, the Functioneel Parket.

## 9.2. Central VAT Anti Fraud Unit (dutch approach against MTIC fraud)

On national level as well as in an international framework the fight against intracommunity VAT-fraud is one of the main focal points of FIOD. With FIOD being part of the Tax and Customs Administration we aim at an integrated approach of law enforcement to tackle VAT-fraud. That means that we act with a combination of prevention, education, communication, supervision and criminal investigation to combat this type of fraud. With a balanced mix of these instruments we try to achieve the maximum effect of enforcement. That means a very close co-operation with tax administrations, in first instance of course with the Tax & Customs Administration of the Netherlands, but also with foreign tax administrations and law enforcement agencies who deal with intracommunity VAT fraud.

FIOD plays an important role in this process as it has a Central Vat Anti Fraud Unit (CPB).

In this unit 15 staff members work on different tasks.

1. analysis of information from national as well as EU databases to detect as early as possible intracommunity VAT fraud, modern tools like Analytics are used for this
2. exchange of information with other EU member states
3. coordination of tax audits
4. education of tax auditors, criminal investigators, public prosecutors, judges, etc
5. support of criminal investigations
6. international co-operation on operational, tactical and strategic level (Eurofisc, EMPACT, Joint investigation teams, working groups of the EC)

7. communication strategies, focussed on entrepreneurs, banks, notaries, tax advisors, freight forwarders, etc
8. suggestions for change of legislation to the Ministry of finance and/or the European Commission

Information from criminal investigations, (crime areas, modus operandi, involved suspects) is shared with the Tax Administration so that it can better determine risk area's to target its limited supervision capacity as efficient as possible to achieve effect of their activities.

An important activity of the unit is to coordinate tax audits. Upon a signal of the CPB the tax administration is obliged to start a tax audit within 3 days and has to report results back to the unit. With all these activities we have a more or less complete overview of the field and are better equipped to make the necessary choices where to focus on.

### 9.3. Tripartite consultations

The FIOD receives fraud reportings every day, from the Tax and Customs

Administration, Customs, companies, individuals, trade associations, police, Financial Intelligence Unit (FIU), banks, etc. To investigate all these signals requires an enormous capacity of criminal investigators and public prosecutors.

In the Netherlands not every criminal offence on fiscal fraud needs to be followed by a criminal investigation. In our civil code the principle of opportunity is included.

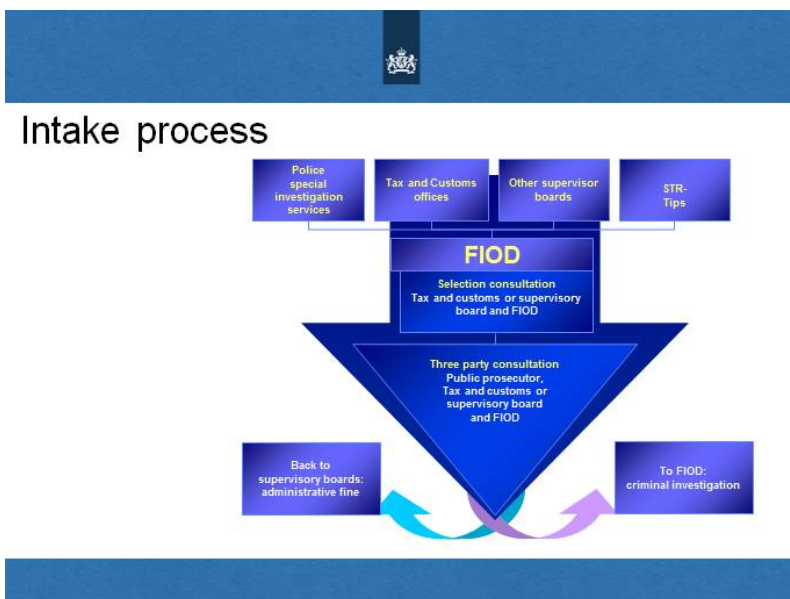
Tax Administration, the FIOD and the Public Prosecutors Office decide together in tripartite consultation whether a supposed crime should be investigated and consequently be prosecuted or should be dealt with on another way (e.g. an administrative fine). In this way the limited criminal investigation capacity is used as efficient and effective as possible.

Criteria for the choices to be made are laid down in law, the AAFD guidelines (attachment xx). The preliminary evaluation documents are subsequently weighed on the basis of different criteria during the so-

called Tripartite Consultations; consultations between three parties: the FIOD, the Public Prosecution Service and a representative of the Tax Administration. When determining whether to prosecute, we consider also the financial and social consequences of this prosecution.

Other cases are dealt with administratively by the Tax Administration by means of an assessment, a fine or another measure to make the effects of the fight against fraud as large as possible.

The FIOD always cooperates closely with the public prosecutor during the criminal investigation. In the end, the prosecutor determines which cases will be brought before the criminal court.



#### 9.4. Criminal offences and maximum punishment

In the Netherlands there is the General Penal Code and the General Tax Act. In both Codes criminal offences for this type of fraud are defined.

<b>Code</b>	<b>Description</b>	<b>Imprisonment</b>	<b>Levy</b>
General Tax Act (art. 69 lid 1)	<b>Tax fraud (intentionally not returning tax return)</b>	4 years	4 <sup>th</sup> category (max. €20.250) plus taking away assets
General Tax Act (art. 69, lid 2)	<b>Tax fraud (intentionally false/incorrect returning tax return)</b>	6 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets
General Tax Act (art. 69a, lid 1)	<b>Tax fraud (intentionally don't pay the VAT mentioned on the tax return)</b>	6 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets
Penal Code (art. 140, lid 1)	<b>Being part of a Criminal organisation.</b>	6 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets
Penal Code (art. 225, lid 1)	<b>Forgery</b>	6 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets
Penal Code (art. 420bis, lid 1)	<b>Money laundering</b>	4 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets
Penal Code (art. 420ter, lid 1)	<b>Money laundering as a habit</b>	8 years	5 <sup>th</sup> category (max. €1.000) plus taking away assets

In case the offence is committed by a company the next category can be levied. In most of the cases the 6<sup>th</sup> category will be the case. The maximum amount of the 6<sup>th</sup> category is €10.000,--

## 9.5. Specific measures which can be taken in the Netherlands

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### 9.5.1 Warning letters

Since January 2011 the Netherlands Tax Administration sends out warning letters in specific cases.

Especially when there is reasonable doubt that a company is involved in a carousel network, in which at least one company doesn't fulfil his VAT obligations and there is a tax loss in The Netherlands, the tax administration can send out a warning letter (see attachment 2). The

In this letter the entrepreneur is warned that the goods that were received from supplier X are most likely part of a carouselchain.

In relation to Kittel and Italmoda, European jurisprudence, a company who knows or should have known that he is involved in a carouselchain can be refused deduction of the VAT that has been invoiced to the company. With this letter we warn the company that this could be the case.

An added advantage is that when this company is involved in a investigation (administrative or criminal) at a later stage, it can't be denied that the responsible persons were not aware of the offence.

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### 9.5.2 Taking away the assets earned with committing the offence

Since a couple of years it is common practice in all criminal investigations of the FIOD to take away the assets of the suspects. A specific project had been started on that. Specialists at all our offices are available to assist the criminal investigators (who all had a training on taking away the assets). We don't only take away assets by confiscation or seizure but also by all other means, for example an additional assessment by the Tax Administration or enable the liquidator in an insolvency case to seize the goods.

This relates not only to money but also to everything that includes a value, seizing bitcoins, debit cards, expense cars, art, real estate, etc.

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### 9.5.3 Cooperation with Financial Intelligence Unit (FIU)

To the Financial Intelligence Unit in the Netherlands criminal investigators of FIOD are seconded. Their work is to detect Suspicious Transaction Reports (STR's) that relate to MTIC Fraud and transfer them to the FIOD / CPB for criminal investigations purposes.

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### 9.5.4 Administrative fine by the tax administration

When a MTIC fraud case is detected it is reported to the FIOD (as explained in 9.4). The Tripartite Consultation (FIOD, public prosecutor and Tax Administration together) decides whether a case will be investigated by the FIOD (and consequently prosecuted by the public prosecutor) or that the Tax Administration will act. The Tax Administration has the power, according to the General Tax Act, to raise an assessment including an administrative fine. This fine can be a percentage of the additional tax assessment. It depends on the degree of involvement in the fraud case, namely guilt, gross negligence, intent or fraud. Depending on the situation the fine is 25%, 50% or 100%. Within the Tax Administration special officers are appointed to deal with these matters.

## 9.6. Cases

In this Chapter two Dutch criminal investigations in relation to intracommunity fraud are presented.

### **Case 1**

This case concerns an intracommunity VAT fraud with expensive second hand cars. These cars were bought in Germany by an organized crime group (OCG), using a Dutch missing trader, and transferred to the Netherlands. In the Netherlands these cars were sold to renowned car companies.

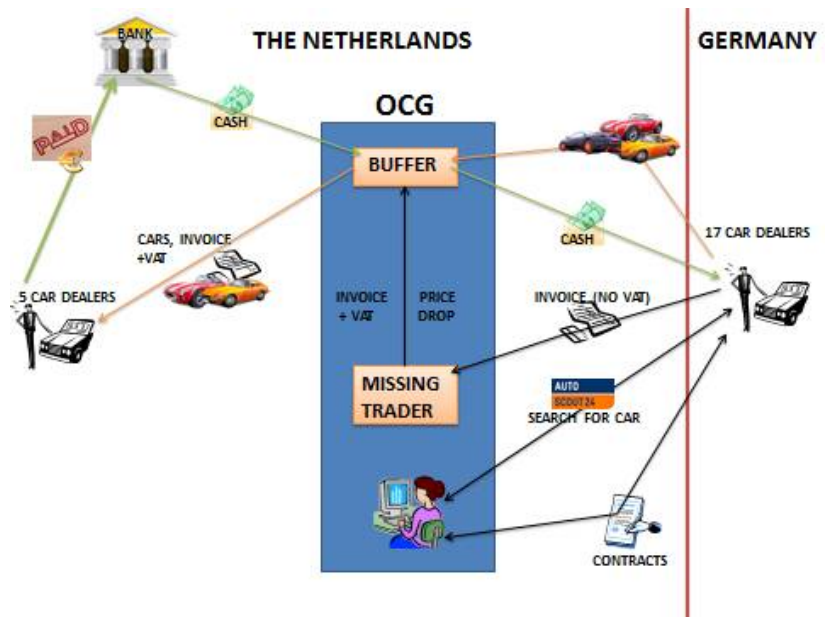
The first diagram shows the fraud before it was detected by the Dutch Central Vat Fraud Unit (CPB).

The second diagram shows the fraud discovered by the FIOD.

## First scheme

The first scheme shows that the OCG maintained digital contact with German car companies. In doing so, she presented itself as the Dutch missing trader. After a digital purchase was made, the German invoices, free of VAT, were digital sent to the missing trader, read OCG. After that the cars were picked up in Germany with false documents in the name of the Dutch missing trader and paid in cash. The cars were directly transferred to the Dutch buffer in the Netherlands and sold with invoices in the name of the buffer, including VAT, to car companies in the Netherlands. To hide this fraud the OCG made false purchase invoices in the name of the missing trader, including VAT and price drop, and processed these false purchase invoices in the administration of the buffer. The Dutch missing trader did not fulfil its VAT liability.

After the tax administration started to ask questions to the missing trader and buffer about the trade in cars the OCG quickly got rid of the missing trader and buffer.

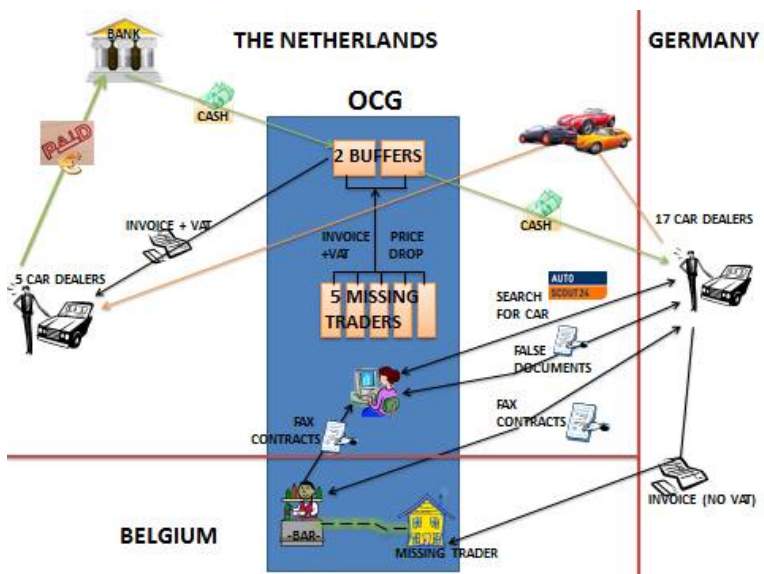




## Second scheme

After a month the fraud was activated again. The second diagram shows that the OCG has set up a more complex and more difficult to detect fraud. Once again the OCG maintains digital contact with the German car companies but now she presents herself as a Belgian missing trader.

After a digital purchase was made by the OCG the German car companies faxed the German invoices, free of VAT, to the Belgian missing trader who faxed these documents to the OCG in the Netherlands. The cars were picked up in Germany with false documents in the name of the Belgian missing trader and paid in cash. The cars were directly transferred to one of the 2 Dutch buffers and sold with invoices in the name of one of these buffers, including VAT, to car companies in the Netherlands. To hide this fraud the OCG made false purchase invoices in the name of one of 5 missing traders, including VAT and price drop, and processed these false purchase invoices in the administration of the buffer. The 5 Dutch missing traders did not fulfil their VAT liability.



## Case 2

This case is about MTIC-fraud with mobile phones.

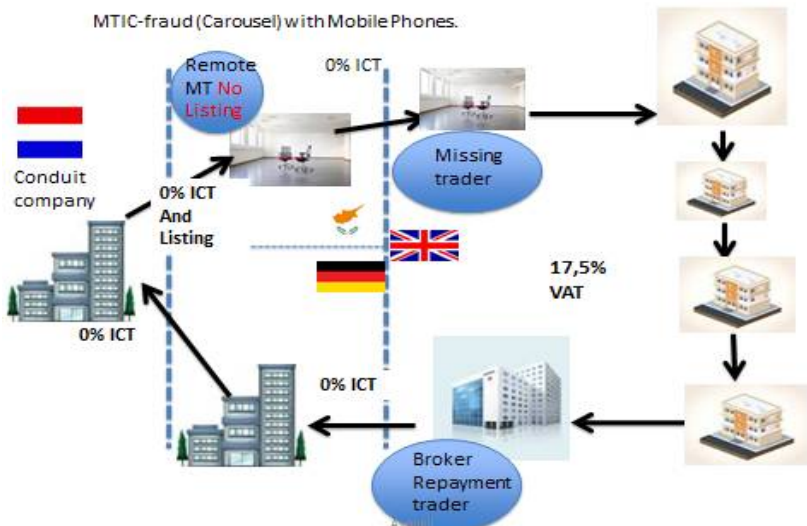
In this case the Dutch prosecutor's office has prosecuted a Dutch company who was involved in an international VAT-carousel fraud, although there was no tax-loss in The Netherlands but mainly in the UK.

The Dutch conduit company sold mobile phone to the remote missing trader (also called a blocking company. The remote missing trader doesn't fulfil its VAT obligation, no vat-return and no recapitulative statement so the paper trail in the dealchain stops here) at Cyprus. The remote missing trader sold the mobile phones to a British missing trader, who sold the phone to a buffer. The phones are sold via several buffercompanies to a Brokercompany.

A broker company is purchasing the goods on the local market with VAT and sells the good to another EU-memberstate, zero rated for the VAT (an intra-community delivery). Because this company purchased the goods with VAT and sold the goods without VAT its VAT-return will show a repayment paid by the HRMC (The British tax-authorities).

The UK missing trader didn't send in its vat-return and did not pay the vat to the HRMC. The remote missing trader didn't send in the VAT-return and recapitulative statement and blocks the exchange of information.

Fraud scheme MTIC Fraud with Mobile phones

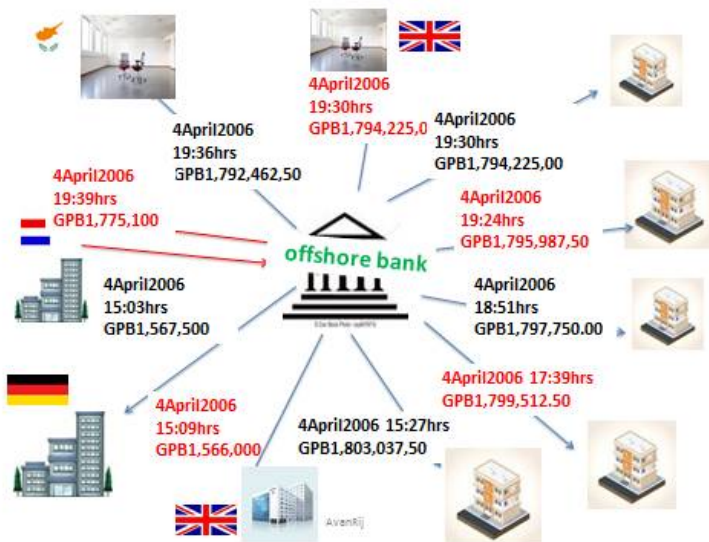


### Bank-accounts

All involved companies had a bank account at the same offshore bank. This bank made it possible to make international payments within a couple of minutes, in the case that both parties had a bank account at this offshore bank.

Investigation of the bank-accounts of all involved companies showed that all payments between the involved companies were made in a very short span.

The scheme below shows the payments regarding a deal at 4 April 2009:



The first payment, GBP 1.567.500, was made by the Dutch company to the company in Germany at 4 April 2006 at 15.03 hrs. The German company paid GBP1.566,000 to the UK Broker at 15.09 hrs. And so on.

The last payment, GBP 1.775.100, was made by the Cypriot company the same day at 19.39 hrs. The Dutch company earned in a timeframe of 4,5 hours GBP 207.600. In this deal the stolen VAT is GBP 267.225 (Tax loss in the UK).

### Profit in the dealchain

In relation to the before shown dealchain concerning the deal at 4 April 2009 the profits of the involved companies are mentioned in the following table.

Name	Buying price Ex VAT	VAT 17,5%	Selling price EX VAT	Profit/ Lose In GBP
NL1	1.567.500	n/a	1.775.100	207.600
DE1	1.566.000	n/a	1.567.500	1.500
UK6	1.534.500	n/a	1.566.000	31.500
UK5	1.531.500	268.537,50	1.534.500	3.000
UK4	1.530.000	268.012,50	1.531.500	1.500
UK3	1.528.500	267.750,00	1.530.000	1.500
UK2	1.527.000	267.487,50	1.528.500	1.500
UK1	1.792.462,	<b>267.225</b>	1.527.000	<b>265.462,5</b>
CY1	1.775.100	n/a	1.792.462,5	17.362,50

The above table shows that:

- the stolen VAT is GBP 267.225;
- the company UK 1 (the missing trader) lost GBP 265.462,50 with this deal. In VAT-carousel fraud this is known as the **price drop**. The missing trader sells the goods for a lower price than its purchase price. The profit is the stolen VAT;
- the buffercompanies (UK2, UK3,UK4 and UK5) earned (= profit) GBP 1.500 and GBP 3.000;
- the Dutch conduit (NL1) earned GBP 207.600;
- the Cypric remote (CY1) missing trader earned 17.362,50;
- the German conduit earned GBP 1.500.

Some details:

- The Dutch conduit operated for 15 months with a turnover of more than GBP 1,5 BILLION. This is also a characteristic of MTIC fraud. (The involved missing trader has a very big turnover in a short period)
- The total Tax loss in the UK was approximately 250 million GBP.
- The Dutch conduit made more than 1.000 selling invoices, more than 600 of these invoices were addressed to the same Cypriote remote missing trader.

## ATTACHMENT 1

Guidelines for reporting and settlement of fiscal offences, customs offences and benefits offences (AAFD Guidelines)

*Richtlijnen aanmelding en afhandeling fiscale delicten, douane-en toeslagendelicten (Richtlijnen AAFD)*

*This amendment comes into effect on 1 July 2011.*

*Due to the introduction of the punishment order as from 1 July 2011 the Reporting, Settlement and Prosecution Guidelines regarding fiscal offences and offences in the field of Customs and benefits have been amended. The amendment only relates to the consequences of the introduction of the fiscal punishment order: a punishment order issued by the Administration of State Taxes (fiscal offences) on the basis of Section 76, par. 1 of the General Tax Act or by the inspector of Customs (customs offences) on the basis of Section 10:15 of the General Customs Act. Among other things, the name of these guidelines was changed into 'Guidelines for the reporting and settlement of fiscal offences, customs offences and benefits offences'.*

*For the sake of convenience the amended text of the guidelines is reproduced below.*

## **1. Introduction**

### *1.1. Context and principles*

The Guidelines for reporting and settlement of fiscal offences, customs offences and supplementary benefits offences (AAFD Guidelines) describe how the tax department selects the reports of possible offences that are eligible for a criminal investigation for the legal areas: taxes, benefits and Customs, and how these reports are subsequently settled in consultation with the public prosecution service with a view to settlement by a criminal court.

#### *Use of criminal law*

All the enforcement efforts are aimed at compliance with legislation and regulations and the encouragement of compliant behaviour. For this purpose several enforcement tools are available, including criminal law. The use of administrative law or criminal law is determined based on the question which tool is the most efficient and effective.

For instance, criminal law will be used to take corrective action in cases involving flagrant breaches of legal order, as a result of which the interests of citizens and the state can be seriously damaged. Criminal law is a part of the entire enforcement chain. However, criminal law serves a broader purpose. The added value of criminal law is also its standard-setting and standard-confirming effect and the preventive effect it wields. By using criminal law as an integral part of law enforcement, it can be used to act proactively as entire chain and to produce large social effects.

In line with this trend criminal law will be used more and more to support and interact with the regulatory bodies in order to promote law enforcement and encourage compliance.

The AAFD Guidelines were written to concentrate the use of criminal law on cases that have a social effect (for instance cases in which the legal order has been seriously breached). Therefore, these guidelines mean that fiscal, customs and/or benefits fraud cases with less or without any social effect will be settled administratively more often in the future. Based on the volume of the fiscal loss, these guidelines indicate whether -in principle- an administrative settlement or a settlement by a criminal court will be chosen.

Depending on the aspects described in chapter 5 the tripartite meeting (TPO) decides which settlement is the most appropriate for a specific case.

Exceptions to these guidelines can be made if criminal law is applied to support administrative authorities. For instance, special actions by the tax department, aimed at specific groups of taxpayers and specific actions in relation to certain offences, for instance the offences of omission. For these kinds of actions the tax department makes agreements with the public prosecution service beforehand in order to coordinate the enforcement efforts.

### *1.2. The tax department*

The tax department is charged with the enforcement of fiscal, benefits and customs legislation. The tax department carries out these statutory duties as effectively and efficiently as possible. Through its actions it seeks to maintain legal certainty and equality before the law. It operates from a compliance point of view: the tax department is aimed at having the parties concerned (taxpayers, parties entitled to benefits, withholding agents and persons required to keep records) comply with their statutory obligations voluntarily. If it emerges that parties concerned do not comply with their obligations the tax department encourages compliance by means of corrective actions and, if appropriate, by means of criminally enforced compliance.

#### *Tax department/Customs*

In the case of customs offences the possibility to impose administrative fines is usually lacking.

As a result, for customs offences there often is only a choice between a punishment order and bringing the case before the criminal court. For these customs offences there are specific guidelines in relation to the punishment order. They can be found in the *Handboek Douane* of the Ministry of Finance.

The AAFD Guidelines describe which fiscal customs offences are eligible for criminal prosecution. The handling of non-customs offences, the so-called VGEM offences (offences in the field of safety, health, economy and the environment), is regulated in the *Handboek VGEM*.

### *1.3. The procedure from reporting to prosecution*

The AAFD procedure consists of three stages. These stages are:

Stage		Discussed in these guidelines in
1	reporting	chapter 2
2	selection meeting	chapter 3
3	tripartite meeting	chapter 4

The reporting guidelines (chapter 2) were laid down by the director-general of the tax department of the Ministry of Finance in consultation with the Board of Procurators General of the Public Prosecution Service. The guidelines for issuing a punishment order (chapter 4.2) came about in joint consultations of the Board and said director-general.

The prosecution guidelines (chapter 4.3) were laid down by the Board of Procurators General in consultation with said director-general.

## **2. Reporting (stage 1)**

The reporting guidelines indicate in which cases tax officers must report suspicions of a criminal offence to the tax penalty/fraud coordinator (/liaison officer).

### **Reporting criteria**

Reporting takes place if a threshold amount is exceeded. For taxes or benefits this is the amount that -as a result of the offences committed in or during the investigated period that served to cause this - was or would have been levied short, or was or would have been awarded too much if the tax return or the application from the party concerned had been followed (hereinafter: 'financial loss'). The financial loss must amount to at least €10,000 for private taxpayers or persons entitled to supplementary benefits, or €15,000 for enterprises. This minimum financial loss is the threshold amount. The threshold amount must be exceeded per legal area (taxes, benefits and Customs).

The tax penalty/fraud coordinator judges whether intent is present for at least the threshold amount. The tax penalty/fraud



coordinator submits these reported cases to the selection meeting and indicates which aspects (see chapter 5) are important.

In the case of Customs, a punishment order with a maximum of 100% of the tax levied short is offered if the threshold amount is exceeded as a result of intent.

If no intent is present, or if the financial loss due to intent remains below the threshold amount, the case is returned to the organisational unit in question, in order to be settled administratively.

### **Offences of omission**

Offences of omission are also reported on the basis of the above-mentioned criteria (the financial loss due to intent amounts to at least €10,000 for private individuals and at least €15,000 for enterprises).

In practice, however, it may occur that the financial loss caused by an offence of omission cannot or cannot adequately be quantified or determined and, therefore, cannot be tested against the threshold amount.

Offences of omission can be distinguished into two categories: offences for which an administrative fine can be imposed and offences of omission for which no administrative fine can be imposed.

An offence of omission is reported for criminal prosecution if in the preceding period (benefits: the preceding year), for the same tax or benefit, it also involved a violation of the same statutory provision, and if this violation was punished with a fine for an offence.

In the other cases in which there is an offence of omission with a financial loss that cannot or cannot adequately be quantified or determined, criminal prosecution is also the point of departure, if it is clear that the tax department has undertaken sufficient actions to incite the party concerned to comply with the statutory provisions, and that this action by the tax department has not led to compliance. The tax department must have given the party concerned the opportunity -in writing- to comply with the violated provision within a certain period of time. If the party concerned does not fully comply with the provision within the fixed period it is possible –if the use of criminal law is appropriate in view of the aspects mentioned in chapter 5– to opt for criminal prosecution.

### **3. The selection meeting (stage 2)**

The selection meeting (attended by the FIOD, the liaison officer for procedural law, the tax penalty/fraud coordinator/customs liaison officer and the tax penalty/fraud coordinators belonging to one region) tests whether a case has been correctly reported on the basis of the reporting guideline (chapter 2) (hereinafter: 'case worthy of reporting').

For cases worthy of reporting the selection meeting advises whether a case is eligible for investigation, based on the provability of the case (these are the cases potentially worthy of prosecution). The selection meeting also assesses which aspects (chapter 5) apply.

The selection meeting qualifies cases potentially worthy of prosecution as category I or II.

#### *Category I*

In these cases the financial loss due to intent amounts to at least the threshold amount and is less than €25,000.

#### *Category II*

In these cases the financial loss due to intent amounts to €25,000 or more.

Category I cases are referred back to the tax department for administrative settlement if none of the other aspects (chapter 5) is involved. If a category I case involves at least one of these aspects, the selection meeting can submit the case to the tripartite meeting. The selection meeting informs the tripartite meeting about the category I cases that the selection meeting has referred back to the tax department. Because the selection meeting reports these cases for information purposes, these cases remain visible to the tripartite meeting and, if necessary, (for new, comparable cases) make adjustments.

Category II cases pass through to the tripartite meeting and are eligible -in principle- for prosecution.

If the selection meeting judges that there is no case (potentially) worthy of reporting, the case is referred back to the tax department where it is then settled administratively.

## **4. The tripartite meeting (stage 3)**

### *4.1. Process and organisation*

The tripartite meeting (consisting of a public prosecutor, the liaison officer for procedural law, the tax penalty/fraud coordinator/customs liaison officer and the FIOD) tests whether a case satisfies the guidelines for settlement by a criminal court (punishment order or criminal prosecution). If it emerges that the case does not satisfy these guidelines, the case is referred back to the tax department for administrative settlement. If the case does satisfy the guidelines, a criminal investigation is started.

When making this decision the aspects mentioned in chapter 5 play a role, in addition to the capacity aspect.

In the case of caught-in-the-act situations that meet the criteria of these guidelines, the tax penalty/fraud coordinator/liaison officer immediately contacts the FIOD and the Public Prosecution Service in order to discuss the case as soon as possible.

### *4.2. Guidelines for issuing a punishment order*

The Administration of State Taxes or the inspector for General Customs Act offences can issue a punishment order based on the results of the criminal investigation, if a punishment order is the desired (criminal) settlement method.

Intentionally not filing returns for assessment taxes (offence of omission), of which the fiscal loss cannot be calculated (entirely), in principle qualifies for a punishment order if in the preceding tax period, returns were not filed intentionally as well, and if this was punished with a fine for an offence.

Other cases involving offences of omission of which the fiscal loss cannot be calculated (entirely), in principle qualify for a punishment order if the cases involve one or more of the aspects described in chapter 5.

For Customs there are specific guidelines for issuing a punishment order (see chapter 1.2).

### *4.3. Prosecution guidelines*

As far as the General Tax Act, the General Income-Dependent Schemes Act and the Collection of State Taxes Act 1990 are concerned, the prosecution guidelines only relate to intentionally committed offences.

The following criteria regarding fiscal, benefit and customs offences apply:

*Category I*

In these cases the financial loss due to intent amounts to at least the threshold amount and is less than €125,000. At least one of the other aspects (chapter 5) is at issue.

*Category II*

In these cases the financial loss due to intent amounts to €125,000 or more.

The tripartite meeting can decide to refer category I cases that the selection meeting transferred to the tripartite meeting (see chapter 3) back to the tax department for administrative settlement. For instance if the tripartite meeting is of the opinion that within the scope of a balanced administration of justice it is better to settle the case administratively. In principle, category II cases are brought before the court. In exceptional cases the principle can be deviated from.

## **5. The financial loss and the other aspects**

*The financial loss and other aspects*

This list includes the extent of the financial loss and other aspects on the basis of which it is assessed whether it is appropriate to prosecute a case. It is not possible to make general remarks about the mutual weight that should be attributed to the different aspects. In addition, there may be mutual differences in the attribution of a certain aspect to a case. There is a difference between the 'exemplary role' of for instance a minister and a civil servant. 'Concurrence' with a fraud of €100,000 must be weighed and judged differently from 'concurrence' in connection with the presence of one false invoice in the business records.

*Financial loss*

Cases can be reported to the tripartite meeting if the financial loss is at least €10,000 (private individuals) or €15,000 (entrepreneurs).

Financial loss is understood to mean the amount that -as a result of the offences committed in or during the investigated period that served to cause this - probably was or would have been levied short, if the tax inspector would have followed the tax return of the party concerned, or the amount of

benefits that was or would have been awarded too much if Belastingdienst/Toeslagen would have followed the application of the party concerned.

The concept of financial loss is in keeping with – and has the same substance as – the ‘purpose requirement’ in Section 69 of the General Tax Act. For instance: if too high a refund is granted on the basis of incorrect information (in the tax return), this high refund is taken into consideration when determining the financial loss.

The threshold amount must be exceeded for each legal area. If for instance the financial loss amounts to €6,000 for taxes and €5,000 for benefits, a case involving a private individual will not be reported. If too high a refund is granted on the basis of incorrect information (in the tax return), this high refund is taken into consideration when determining the (fiscal) loss. For the sake of completeness it should be noted that for the determination of the extent of the fiscal loss, the (over)stated loss that was allegedly suffered in the (financial) year in question, is also taken into account. Also included is the amount of tax that was wrongfully granted or granted at too high an amount on the basis of a reduction, exemption, refund or tax credit provided for in the law. This is also understood to include the amount of tax that probably would have been levied short from third parties as a result of the fiscal, customs or benefit offence.

### *Other aspects*

#### *1. Status of the suspect/exemplary role*

This refers to situations in which the suspect is a regionally or nationally well-known person (of social standing), a person holding a public office (mayor, alderman or political representative), or a person with a professional influence on the conduct of third parties or on the financial integrity of flows of money (judge, lawyer, consultant, notary, banker, stockbroker). There must be a relationship between the status and the committed criminal offence. Furthermore, it must concern the current status at the time of the decision in the tripartite meeting. If there is concurrence between the aspects ‘status of suspect’ as consultant and ‘cooperation by consultant’, only one aspect can be taken into consideration.

## *2. Recidivism*

Recidivism is held to mean that the suspect was already sentenced for a fiscal, benefit of customs offence, or a financial (not tax department related) offence, that a punishment order was imposed on him in relation to such an offence that was actually implemented, or that he was given a fine for an offence within the previous five years. This means the period between the penalty becoming irrevocable and the presumed date on which the new criminal offence was committed.

## *3. Recourse impossible*

Imposing an administrative fine is not an adequate alternative for criminal law if this fine cannot be recovered, other than by limitation. Therefore, this aspect must be taken into consideration when deciding if a case should be prosecuted. Criminal prosecution will be especially indicated in case a suspect has tried to make recourse impossible.

## *4. Combination of a fiscal offence and one or more non-fiscal offences*

Departing from the idea that the legal order will be breached more if - in addition to fiscal fraud or benefit fraud- other offences were committed as well, the combination of fiscal or benefit fraud, economic and civil offences is taken into consideration when deciding if a case should be prosecuted. This involves a wide range of economic and civil offences the legislator made punishable in order to protect other legal interests. Examples are the offences relating to bribes, corruption, bankruptcy fraud, embezzlement, withdrawal from seizure, threats against persons/civil servants, drug trafficking, damage to the environment, non-compliance with the obligation to carry ID papers (working with illegal aliens), exploitation and the so-called VGEM offences in the legal area of Customs. This includes participation in a criminal organisation.

There is no combination of Section 69 of the General Tax Act and Section 225 of the Penal Code if false invoices are submitted on behalf of a tax return. This combination does exist, however, if false invoices are discovered in the business records during a tax audit.

#### *5. Cooperation of consultant, third-party expert or customs forwarding agent*

This aspect is very important, because it involves a situation in which the trust of the authorities is abused. The fact that the tax department offers facilities to consultants and customs forwarding agents is all the more reason why this abuse should be tackled. To prevent jumping to the rash conclusion that this aspect is involved, the tax department must substantiate on the basis of which indications it is of the opinion that the consultant, third-party expert or customs forwarding agent was aware of the fraud *and* rendered his cooperation. If there is concurrence between the aspects 'status of the suspect' as consultant and 'cooperation by consultant', only one aspect can be taken into consideration.

#### *6. Balanced law enforcement*

Taking criminal action can be advisable to maintain the set norm or to confirm a norm. Balanced law enforcement is understood to mean law enforcement within the scope of maintaining or conforming norms in view of larger, underlying legal interests that are to be protected. For instance in the event that fiscal, benefit or customs fraud has social consequences, such as a danger to public health or safety or an attack on the integrity of financial transactions. Another thought is the extent to which innocent or naïve citizens are harmed (pyramid schemes or exploitation of workers). This aspect is also involved if the fraud means that the suspect gains a competitive advantage over fiscally honourable persons, or if the fraud has a domino effect within the business sector. Also taken into account is the importance of openness. In some cases, committed criminal offences must be accounted for in public.

The 'balanced law enforcement' aspect can also play a role in situations in which 'normal' prosecution is considered too heavy and the punishment order issued by the Administration of State Taxes is too mild. In such cases one could consider to have the punishment order issued by the public prosecution service. After all, in the future it will be possible to attach a community order as penalty to such a punishment order. This is not possible if the punishment order is issued by the Administration of State Taxes, as is usually the case.

### *7. No administrative fine possible, other than by limitation*

In most cases, fiscal fraud and benefit fraud can be punished by means of an administrative fine. However, this does not apply to the majority of the customs cases. In these cases, the decision to prosecute will have to be made at an earlier stage. This is also the case if a (co-)perpetrator cannot be punished by means of an administrative fine, although it is desirable to impose a penalty on this perpetrator.

### *8. Establishing the truth*

It may occur that the facts and circumstances established during the audit, that in themselves furnish a reasonable suspicion of guilt of a criminal offence, still do not provide sufficient grounds for administrative settlement. In that case, a further criminal investigation can be conducted into these facts and circumstances with application of investigative powers, with a view to a desired criminal process of establishing the truth.

### *9. Decisiveness*

In some Category II cases it is anticipated that a criminal investigation will take such a long time, that -within the scope of a balanced administration of justice- it is better to impose an administrative fine. Furthermore, enforcement by means of an administrative fine will be an adequate way of sanctioning if the suspect is a legal entity that has sufficient means to pay such a penalty. Considering the importance of openness of a criminal prosecution as well as the equality before the law, such a decision will always be well-founded.

## **6. Entry into force and transitional provision**

For cases reported to the selection meeting prior to 1 January 2010, as referred to in chapter 2, the guidelines, as determined on 12 December 2005, no. DGB 2005/6956, published in the *Staatscourant* 2005, no. 247, remain valid.

This regulation will be published in the *Staatscourant*.

The Hague, 24 June 2011

The Board of Procurators General

M.C.W.M. van Nimwegen

The Director General of the Tax department of the Ministry of Finance

P.W.A. Veld



## ATTACHMENT 2

### Format of warning letters

Dear Sir or Madam,

I herewith inform you that our investigation has shown that you have purchased goods from (name supplier). Considering the circumstances, there is a strong suspicion that these goods are traded within a chain in which at least one party does not fulfil its VAT obligations and in which intra-Community VAT (carousel) fraud is committed.

I would ask you to provide an overview of all the suppliers and buyers you have traded with during the last 6 months. For the future, I also would ask you to report all the new suppliers and buyers prior to the first transaction to: (name of tax auditor).

By virtue of sections 47 and 53 of the General Tax Act (hereinafter: AWR) you are obliged to provide the tax inspector with data and information in relation to third parties (at his request). The way in which this is effected can be determined by the tax inspector (Section 49 AWR).

Perhaps unnecessarily I inform you that non-compliance with these obligations is punishable under sections 68 and 69 AWR.

You can check with the tax department whether the company you wish to trade with is registered as an entrepreneur. If it is a foreign company you can consult the EU site<sup>32</sup> whether the company in question has a valid VAT identification number. You can also consult the tax department regarding the precautionary measures to be taken when choosing your trading partners.

As an entrepreneur you must be careful when choosing your suppliers and customers in order to prevent becoming involved in e.g. VAT fraud. The Court of Justice in Luxembourg and other judicial authorities have determined several times that traders are expected to do everything that can reasonably be expected from them to prevent becoming part of a chain in which VAT fraud is committed. If you are not careful enough, you run the risk that your right to deduct input tax is revoked.

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<sup>32</sup> [ec.europa.eu/taxation\\_customs/vies/](http://ec.europa.eu/taxation_customs/vies/)

The fact that you exercised due care may appear from (among other things) the following:

- the way in which you got into contact with your suppliers and buyers;
- you have established that your contact persons are authorised to represent the companies;
- you can get into contact with these companies and their contact persons through the usual channels, such as a visit to the business address, a telephone number (landline) or a (recognisable) e-mail address;
- you know where the goods are at the moment of supply and you have the opportunity to have actual (physical) disposal of these goods;
- you check the goods yourself, or have a third party check the shipments;
- the goods are insured during transport;
- if the goods show defects, you can put in a complaint with the supplier.

The above enumeration is not exhaustive, you can demonstrate your due care in other ways as well.

If you suspect that you have become involved in an (intra-Community) VAT fraud against your will, you can report this to the *meldpunt carousel fraude*, as mentioned on the website of the tax department<sup>33</sup>. You may also contact the officer mentioned below in this letter.

Of certain goods it has been established that they are often traded in chains in which VAT (Carousel) fraud is committed. Investigations by the Dutch tax administration have shown that flowers are also regularly used to commit cross-border VAT fraud.

Entrepreneurs who trade in high-risk goods must be **extra** alert to intra-Community VAT fraud.

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<sup>33</sup> [www.belastingdienst.nl](http://www.belastingdienst.nl)

A commercial chain involving intra-Community VAT fraud often has one or more of the following characteristic features:

- it concerns trade in risky goods;
- cross-border trade takes place within the chain;
- a lot of companies are active within the chain;
- goods are traded in large transaction volumes, represent a high value and are sometimes offered below the common market price; this is often called parallel trade;
- suppliers and buyers within the chain change frequently, often involving new companies or restarted companies or companies with new managers/shareholders;
- others determine who you can/should purchase the goods from or supply the goods to. These 'others' can be your supplier or buyer, or an intermediary.

Yours sincerely

Belastingdienst/.....

## ATTACHMENT 3

### **Relevant criminal offences in relation to MTIC Fraud**

#### **Section 69 General Tax Act**

1. Anyone who intentionally does not file a tax return, provided for in the fiscal law, or does not file this tax return within the set deadline, or commits one of the acts described in Section 68, first paragraph, parts a, b, d, e, f or g, if this serves to cause that too little tax is levied, will be punished either with a detention of not more than four years or a money fine of the fourth category or, if this is more, not more than once the amount of the tax levied short.

2. Anyone who intentionally files an incorrect or incomplete tax return, provided for in the fiscal law, or commits the act described in Section 68, first paragraph, part c, if this serves to cause that too little tax is levied, will be punished either with a

detention of not more than six years or a money fine of the fifth category or, if this is more, not more than once the amount of the tax levied short, provided that as far as the incorrectness or incompleteness of the tax return relates to taxable income as referred to in Section 5.1 of the Income Tax Act 2001, the money fine is not more than three times the amount of the tax levied short.

3. The right to institute criminal proceedings on the basis of this Section ceases, if the offender yet files a correct and complete tax return or provides correct and complete information, facts or indications, before he knows or may reasonably suspect that one or more officials referred to in Section 80, first paragraph, is or are aware or get(s) acquainted with the incorrectness or incompleteness.

4. If the act, for which the suspect can be prosecuted, is included in one of the provisions of the first or the second paragraph, as well as the provisions of Section 225, second paragraph of the Penal Code, prosecution on the basis of said Section 225, second paragraph, is ruled out.

5. Section 68, third paragraph, is applicable *mutatis mutandis*.

6. If the guilty person commits one of the offences, described in the first and second paragraph, in the course of his profession, he may be disqualified from the practice of this profession.

### **Section 69a General Tax Act**

1. Anyone who intentionally does not, partially does not, or does not within the deadline set in the tax act, pay the tax that must be paid on the basis of self-assessment, will be punished either with a detention of not more than six years or a money fine of the fifth category, or a money fine not exceeding the amount of tax paid short, whichever amount is higher.

2. Section 69, paragraph six, is applicable *mutatis mutandis*.

3. Anyone who applied to the tax collector for postponement of payment in time, or who immediately after it became apparent that the body is not able to pay, informed the tax collector in writing, is not punishable.

### **Section 140 Penal Code**

1. Participation in an organisation whose purpose is to commit criminal offences is punishable by a prison sentence not exceeding six years, or a fine of the fifth category.
2. Participation in the continuation of the activities of an organisation which was banned by an irrevocable judicial decision, or which was banned by operation of law, or with regard to which an irrevocable statement as referred to in Section 122, first paragraph, of Book 10 of the Civil Code was issued, is punishable by a prison sentence not exceeding one year or a fine of the third category.
3. The prison sentences of the founders, leaders or managers of such an organisation can be increased by one third.
4. Participation, as referred to in the first paragraph, is also understood to mean lending monetary or other material assistance to – and raising funds or recruiting persons on behalf of – the organisation specified there.

### **Section 140a Penal Code**

1. Participation in an organisation whose purpose is to commit terrorist offences is punishable by a prison sentence not exceeding fifteen years, or a fine of the fifth category.
2. Founders, leaders and managers are liable to life imprisonment or a fixed term prison sentence not exceeding thirty years, or a fine of the fifth category.
3. Section 140, paragraph 4 applies *mutatis mutandis*.

### **Section 225 Penal Code**

1. Any person who counterfeits or falsifies a document which is to be used as evidence of any fact, such with the aim of using it or enabling others to use it as if it were genuine and non-forged, shall be guilty of forgery and liable to a term of imprisonment not exceeding six years or a fifth category fine.

2. The same sentence will be imposed on any person who deliberately uses the false or forged document as if it were genuine and non-forged, or who deliberately provides or keeps such a document in his possession, whilst he knows or should reasonably suspect that this document is intended to be used as such.

3. If an offence, as specified in the first or second paragraph, is committed with the intention of preparing or facilitating a terrorist crime, the prison sentence imposed on the offence will be increased by one third.

### **Section 420bis Penal Code**

1. Anyone who:

a) hides or conceals the true nature, the origin, the place where it was found, the disposal or the relocation of an object, or hides or conceals who the person holding title to the object is or who has it in his possession, whereas he knows that the object originates -directly or indirectly- from a criminal offence;

b) acquires, possesses, passes on or sells an object, or makes use of an object, whereas he knows that the object originates -directly or indirectly- from a criminal offence;

shall be guilty of money laundering and liable to a term of imprisonment not exceeding six years or a money fine of the fifth category.

2. Objects include any items of property and any property rights.

### **Section 420ter Penal Code**

1. Anyone who makes a habit of committing money laundering is liable to a term of imprisonment not exceeding eight years or a money fine of the fifth category.

2. The same punishment applies to anyone who commits money laundering in the pursuance of his profession or the operation of his business.

### 10.1. Public Ministry – Joint Investigation Team (JIT)

On 29 May 2000, the Council of Ministers of the EU adopted the Convention on mutual assistance in criminal matters (MLA 2000 Convention). The aim of this convention is to encourage and upgrade the cooperation between the judicial and law-enforcement authorities of the EU, as well as of Norway and Iceland, by completing the provisions of the existing legal instruments and by facilitating their enforcement.

Considering the slow progress recorded as regard to the ratification of the MLA 2000 Convention, the Council adopted on 13 June 2002 the Framework Decision regarding the joint investigation team.

JIT concept emerged from the conviction that existing methods of international cooperation in police and judicial fields were not sufficient in order to deal with serious cases of cross-border organized crimes. It was considered that a team formed of investigators and judicial authorities coming from two or more states, acting together and on the basis of a legal authority and of a clear legal security as regard to the rights, duties and obligations of participants, would improve the fight against organized crime.

The legal framework for establishing JIT is provided for by article 13 of the MLA Convention 2000, as well as by the framework decision. Actually, the framework decision copies almost *ad litteram* articles 13, 15 and 16 of the MLA Convention. The framework decision was enforced by Member States in different ways. While certain countries adopted special laws regarding JIT or introduced provisions concerning JIT in their procedure codes, other states only mentioned the direct enforcement of the MLA Convention in their domestic law.

What does JIT mean?

JIT is an investigation team established on the basis of an agreement between two or more Member States and/or other parties, with a precise objective and for a limited period of time.

The general advantages of a JIT in comparison to the traditional forms of international law enforcement and judicial cooperation, as „mirror” or „parallel” investigations and rogatory commissions, are briefly presented in a JIT in relation to the characteristics of each case.

The advantages to rely on a JIT are:

The ability to share information directly between the members of JIT without the need of official requests.

The ability to request research measures directly between the members, without the need of rogatory commissions. This applies also to the requests of corecion measures.

The possibility for the members to be present during home searches, questioning etc. in all covered jurisdictions, helping to cross linguistic barriers during questioning etc.

The ability to spontaneously coordinate the efforts and to have informal exchanges of specialised knowledge.

The ability to establish and promote the mutual trust between the specialists coming from different jurisdictions and working environments.

A JIT provides the best platform in oder to establish the best investigation and prosecution strategies.

Europol and Eurojust capacity to get involved by providing direct support and assistance.

The capacity to request available financing from the EU, Eurojust or Europol.

The participation in a JIT increases the degree of management information and improves **the performance of international investigations.**

### **Requirements for JIT**

Article 13 par. (1) of the MLA Convention 2000 and article 1 of the Framework decision of 13 June 2002 on joint investigation teams deal with the JIT concept not only from the perspective of the gravity of the crime but rather from the perspective of the international and cross-border dimension of the crime.



Article 13 par. (1) of the MLA3 Convention provides that JIT may in particular be set up where:

- a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved

Generally, JITs are taken into consideration when investigating serious forms of crimes. However, whenever a JIT is being taken into consideration, there should be a review of the national legislation and operational orientation in order to determine if the setting up of a JIT complies with a threshold of gravity of the crime or other criteria which must be fulfilled.

JIT can also prove themselves to be useful in investigating cross-border cases of a less important dimension. This is due to the fact that JIT can facilitate the cooperation in a specific case and can, in the same time, prepare the field for future JIT by strengthening mutual trust and gathering experience in cross-border cooperation.

The requests for setting up a JIT can often come from another Member State, but they could be often formulated also by Europol and Eurojust. In some Member States, this initial request has to be under a rogatory commission form.

It is recommended that investigators, prosecutors, magistrates and/or judges coming from the Member States which intend to set up a JIT, together with delegations from Eurojust and Europol, should meet in order to discuss the issue *as soon as possible* before making the official proposition and signing the agreement. Taking into consideration that some countries introduce domestic enforcement rules providing, for example, the notification of competent ministries in the following stage, the early involvement of all competent persons is fundamental in order not to endanger or to delay the whole process.

## 10.2. General Inspectorate of the Romanian Police - CCPI

### International Police Cooperation Center (CCPI)

Being organized as a directorate under the subordination of the General Inspectorate of the Romanian Police, the International Police Cooperation Center (CCPI) represents the central national authority in the field of international police cooperation, being specialized in operative information exchange in the field of combatting crime at international level, and according to the law, it ensures the operative information exchange in the field of combatting cross-border crime, as well as the management of information flow of operative interest related to the international cooperation carried out by the specialized structures of the Ministry of the Interior.

CCPI brings together the following international police cooperation channels: INTERPOL, EUROPOL, Schengen/SIRENE Information System, operational connection with the SELEC Center as well as with interior attaches and liaison officers, both Romanians accredited abroad and foreigners accredited in Romania.

### **Tasks**

- a) receiving and sending assistance requests concerning:
  - the organisation and the performance of the operative data and information exchange carried out between the Romanian competent authorities and similar structures from abroad, as well as with international bodies and institutions;
  - the cooperation at operational level in the police field concerning the data and information exchange, by respecting the personal data confidentiality and protection requirements as well as the applicable legislation;
  - informing the Romanian and foreign competent authorities concerning the terrorist offences and their related offences, drug trafficking, currency counterfeiting and other Romanian or foreign bonds, art and cars thefts,

the criminal activity of foreign or Romanian offenders internationally prosecuted, the content of certain foreign ID documents in order to unlawfully entry/exit a country, as well as any other criminal offences in order to take the necessary operative measures for the prevention and fight against cross-border crime;

- other forms of cooperation and police and judicial assistance deriving from treaties signed by Romania or from other community legal instruments or according to domestic law;

b) other forms of cooperation and police and judicial assistance stemming from the treaties signed by Romania or from other community legal instruments or according to domestic law

c) the development of international cooperation in combatting crime and the coordination of the activity of Romanian interior attaches and liaison officers accredited abroad regarding the operative data and information exchange;

d) the coordination of data and information exchange between the Romanian and foreign competent authorities in order to carry out joint action requiring operations on the territory of several states;

e) the support of the Romanian liaison officers activity at the SELEC Center;

f) ensuring the experience exchange with similar foreign structures.

### 10.3. Tax Antifraud Directorate General

The EU Council Regulation no. 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax provides very important instruments for combatting this kind of fraud.

Thus, it provides the functioning of VIES (the VAT information exchange) through which it ensures the automatic information exchange

concerning intra-community shipping, economic entities' names which carry them out, the activity object and data regarding their VAT code validity.

Also, this regulation also provides other very important cooperation instruments used for obtaining necessary information, among which:

a) request for information; on request of a requesting authority, the requested authority reports any information that would help to correctly determine VAT, to control VAT correct application, especially in case of intracommunity transactions and to combat VAT fraud;

b) the information exchange without prior request (spontaneous exchange). The competent authority of each Member State forwards to the competent authority of any other relevant Member State, without prior request, the requested information, in the following cases:

- when taxation takes place in the target Member State, and the information provided by the Member State of origin are necessary to ensure efficiency of the control system of the target Member state;
- when a Member State has reasons to believe that breach of VAT legislation in the other Member State has been committed or it is likely to have been committed.
- When there is a risk of tax loss in the other Member State.

c) Simultaneous controls; Member States can agree to conduct simultaneous controls each time they consider that this type of controls are more efficient than the controls conducted by one Member State;

d) EUROFISC; for the purpose of promoting and facilitating the multilateral cooperation in combatting VAT fraud, this chapter establishes a network (decentralised and without legal personality) of swift exchanges of specific information between Member States, in which:

- It establishes a multilateral mechanism of early warning for combatting VAT fraud;

- It coordinates the swift and multilateral exchange of targeted information in working fields of Eurofisc;
- It coordinates the liaison officers' activity of Eurofisc in participating Member States in order to take action when receiving warnings.

Besides national and European legislation governing this field, a special importance is attributed to the European Court of Justice's decisions, through which new interpretations of European tax provisions are ensured. This importance resides in the fact that it is thus ensured the updating of tax legislation interpretation and its congruence with the most recent cases and situations met in practice, unlike the legislation upgrading process which can be much more difficult to achieve.

#### 10.4. National Office for Prevention and Control of Money Laundering

The expansion of the underground economy, whose only purpose is to maximise incomes which avoid state controls, no matter what means or methods are used for this purpose, determined the analysis of this phenomenon on an international scale, the countries all around the world working to develop a unitary provisions systems for prevention the use of financial systems to launder money.

One of the most efficient methods of capturing offenders is to monitor the funds obtained by means of illegal ways. For this reason, as well as for eliminating financing sources of criminal and terrorist organisations, Romania developed a legislation aiming at combatting money laundering.

The most efficient solution for money laundering issue on an international scale is mainly the international cooperation and the establishment of control systems and unitary regulations in each country.

In this sense, it is of utmost importance the participation of the National Office for prevention and control of money laundering, as a Financial Intelligence Unity, into specific activities organised in order to ensure international cooperation, aiming at preventing and combatting money laundering and terrorism financing.

### **International perspective principle**

The National Office for Prevention and Control of Money Laundering occupies a favourable position in order to maintain an international perspective in relation to the phenomenon of prevention and control of money laundering and terrorism financing. The globalisation phenomenon exists not only in the visible economy, but also in a more alert rhythm, in relation to the criminal know-how. Keeping an international perspective on the economic-financial crime phenomenon in general and money laundering and terrorism financing in particular, constitutes a mandatory condition for the identification and adequately approaching the risks this kind of phenomenon generate endangering national security and the integrity, the stability and the reputation of Romanian financial system.

**International cooperation – the financial information exchange in the field of prevention and control of money laundering and terrorism financing.**

At an international level, **Romania is appreciated for signing and ratifying conventions applicable in this field as well as for the extended framework of cooperation and mutual legal assistance granting.**

**THE OFFICE has functional mechanisms for ensuring information exchange with Financial Intelligence Units of abroad, the information being provided in a swift, constructive and efficient manner,** fact which is confirmed by other partner FIUs.

In accordance with the provisions of article 7 par. 4 of the Law no. 656/2002 republished with subsequent modifications, and for operatively performing financial analyses carried out in the Office and for obtaining information in real time, the institution acts on international level too, as a Financial Intelligence Unit, conducting the information exchange through the global secure network of Egmont Group and the European network FIU.NET.

The international principles underlying the information exchange between the financial information Units can be summarised as follows:

- FIUs has to exchange information with other FIUs, irrespective of their status, if they are administrative, law enforcement, judicial or of another kind;

- FIUs has to have adequate legal provisions in order to ensure cooperation on money laundering, related offences and terrorism financing;
- FIUs has to conduct the information exchange freely, spontaneously and on request, based on mutuality. FIUs has to ensure that they can ensure in a swift, constructive and effective manner the international cooperation for combatting money laundering spontaneously and on request and has to have the legal framework in order to ensure this type of cooperation;
- In addition of the information that entities report to FIU (by virtue of the receiving function), FIU has to be capable to obtain and use additional information from the reporting entities necessary for fulfilling the analysis function adequately;
- In order to fulfill the analysis function, FIU has to have access as much as possible to the information of financial, administrative and law enforcement kind. These have to include information coming from open or public sources, as well as relevant information collected or possessed by or on behalf of other authorities and when it is the case, trade information;
- FIU has to be able to disseminate on request or spontaneously information and results of analyses to relevant competent authorities;
- FIUs have to use the most efficient methods of cooperation. If it is necessary to conclude bilateral or multilateral agreements, such as agreement Memorandum, these have to be timely signed and negotiated with as many foreign FIUs as possible in the context of international cooperation for control of money laundering, related offences and terrorism financing;
- FIUs has to be able to carry out searches on behalf of other FIUs and to conduct information exchange with them in relation to all information the could obtain as a result of national searches.

## **Financial information exchange – main form of international cooperation**

Considering that international cooperation efficiency between Financial Intelligence Units has to rely on a mutual trust foundation, the Office carries out the information exchange with its foreign partners all around the world, mainly with FIUs of the EU Member States, **using both communication channel of Egmont Group and the platform made available by the European Union and the FIU.NET Project.**

The information requests sent by the Office to other FIUs aimed at obtaining additional information which help to settle financial analyses and to complete the financial circuit of funds making the object of money laundering process, in order to increase the quality of information sent by the Office to PICCJ, under the form of notifications and answers to the competent public prosecutor's office's request.

The requests are sent based on the existence of suspicions regarding the actions carried out by natural and legal persons and where it is indicated the origin of funds entered into or exited from our country's territory which could come from criminal offences.

Also, receiving the information request from other financial intelligence units reflects the necessity of international cooperation between FIUs, in general, and in particular, the usefulness of information provided by the Romanian FIU in using the information in the analyses of other institutions with attributions similar to the ones of the Office.

### **Financial information exchange through the FIU.NET network**

The FIU.NET digital network was **created with the support of the European Commission for the purpose of secure information exchange between FIUs of the Member State of the European Union**, having as main objectives the fight against the organised crime and the blocking of financial system usage for money laundering and terrorism financing. FIU.NET represents a secure communication channel used for the information exchange between the FIUs in the EU.



This network was established on the basis of the Subsidy Agreement financed in 2003 by the European Commission and granted by the Ministry of Justice of the Netherlands, in the Regional PHARE Project 2003-2205.

**The Financial Intelligence Unity from Romania – the National Office for Prevention and Control of Money Laundering became a member of the FIU.NET network in 2004**, as a result of the implementation of the Regional PHARE Project 2003-2005, carried out by the FIU.NET Office of the Ministry of Justice in the Netherlands.

FIU.NET is an important instrument in the international cooperation allowing the performance of the information exchange in the EU, irrespective of the FIUs type – police, administrative, judicial, hybride.

FIU.NET allows FIUs to jointly analyse the information and to set up cases at the EU level in real time, whereas the data remain in the EU Member States.

The FIU.NET network makes available **the Ma3tch application** which is dedicated to the Autonomous Anonymous Analysis. Ma3tch represents an advanced IT technology allowing connected FIUs to match their data with the other FIUs, in an anonymous manner.

With the Ma3tch application in progress, FIU can detect subjects in which they are interested, in other countries, even if they do not have any information concerning the fact that the subject tried to hide its incomes obtained from crimes in those countries, wanting that all FIUs of the EU can work as one FIU, and the FIU.NET network to function as a virtual entity in order to detect hidden information. Thus, as offenders are moving across the EU by virtue of the free movement right, FIUs of the EU can detect their financial community activities.

*The financial information exchange through the Secure Egmont Network – at global level*

The Egmont Group, the international organisation of the Financial Intelligence Units, created in 1995, ensures the efficiency framework of the cooperation in information, training, experience and know-how exchange in the field of the prevention and control of money laundering and terrorism financing.

The National Office for Prevention and Control of Money Laundering is a member of the Egmont Group since May 2000. The permanent involvement of the Office in the Egmont Group's activities has been and remains one of the main objective at international level.

The Secure Egmont Network allows its members to communicate, through a secure email, to request and to receive information as well as to post and access information concerning typologies, analytical instruments and technological evolutions in the field.

Also, the Office participates in a series of initiatives and projects in the field carried out at European level, in the Committee of Experts on the Evaluation on Anti-Money Laundering Measures – MONEYVAL, the Council of Europe or at the level of the EU Financial Intelligence Units Platform, aiming at the strengthening of the European cooperation in the field of combatting money laundering and the financing of terrorism, these activities providing available information, information exchange modalities, used communication channels, as well as the best practices in the field.

At international level, the Office concluded *55 information exchange agreements with similar units* in order to allow the financial intelligence exchange in the field of combatting money laundering and the financing of terrorism.