



Dear reader,

I am pleased to present the eleventh issue of Eurojust News and the first issue of 2014. This issue focuses on Missing Trader Intra-Community (MTIC) fraud. MTIC fraud is a growing part of Eurojust's casework, with 60 cases in 2012 and 89 in 2013.

Fraud accounts for substantial losses to the European Union's budget. In his interview with Eurojust News, Algirdas Šemeta, Commissioner for Taxation, Customs, Statistics, Audit and Anti-fraud of DG TAXUD, tells us that the annual losses from cigarette smuggling alone are estimated at more than EUR 10 billion. This figure, however, is less than one-tenth of the total estimated losses to fraud across the European Union.

Although the ability to trade carbon credits has only been in existence for a short time, the market has grown quickly; trading in the European Union's Emission Trading System (EU ETS) is estimated at approximately EUR 90 billion per year. The scope of the market provides opportunities for fraud, and, indeed, fraud in the EU ETS is already the cause of huge revenue losses for the European Union. We have included two interviews on the EU ETS in this newsletter to highlight the fact that fraud in this area exists, that it is a growing problem, and that judicial and law enforcement authorities, including Eurojust, are aware of the problem. We have interviewed Yvon Slingenberg, Head of Unit, EU ETS Implementation, DG CLIMA, and Chris Perryman, Project Manager for Focal Point MTIC, Europol. Mr Perryman estimates that from mid-2007 to the beginning of 2009, national treasuries across the European Union lost approximately EUR 5 billion to this type of fraud. But the risks do not end with fraud; money laundering schemes and cyber attacks are also occurring.

By including EU ETS fraud in this issue, we also hope to draw attention to the broad nature of MTIC fraud and demonstrate that far more is involved than traders avoiding the payment of VAT on cigarettes or fuel, important though these types of fraud may be.

Case examples involving Eurojust are provided to further illustrate several forms of MTIC fraud.

To learn about the problem from the perspective of practitioners and investigators, we have interviewed Janja Bernard Korpar, District Public Prosecutor, Republic of Slovenia, and representatives of the Hungarian National Tax and Customs Administration (NTCA).

If you have any comments concerning this issue of Eurojust News, please contact our Press & PR Service at [info@eurojust.europa.eu](mailto:info@eurojust.europa.eu).

Michèle Coninx, President of Eurojust

## MTIC fraud

### What is MTIC fraud?

**M**TIC fraud has two elements: a missing trader and an intra-community supply, and two types: acquisition and carousel. In the following descriptions, we will use the UK as an example, as the UK is considered to be one of the biggest victims of MTIC fraud within the European Union. The descriptions below are courtesy of the HM Revenue & Customs (HMRC) website:

*"Acquisition fraud is a commodity based fraud in which standard-rated goods or*

*services are purchased zero-rated for VAT purposes from a supplier based in another EU Member State and sold in the UK for domestic consumption. The importer, who is known as the 'acquirer', subsequently fails to account for the VAT due on the standard-rated taxable supply to its UK customer(s).*

*Carousel fraud is a financial fraud that is an abuse of the VAT system resulting in the fraudulent extraction of revenue from the UK Treasury. It may involve any type of standard-rated goods or services. As*

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*with acquisition fraud, goods or services are acquired zero-rated from the EU, with the acquirer then going missing without accounting for the VAT due on the onward supply. However, the goods or services do not become available in the UK for consumption, but are sold through a series of companies in the UK and then exported or dispatched, prompting a repayment from HMRC to the exporter/dispatcher. This process can be repeated over and over again using the same goods or commodities. When this happens it is called 'carousel fraud'.*

Eurojust contributed to a 2011 report, *How does organised crime misuse EU funds?*, published by the Directorate-General for Internal Policies. The report provides the following helpful examples:

*"Missing trader fraud can exist in a very simple form. A fraudster – that can be businesses or individuals – imports goods from a different Member State VAT free and sells the goods in its own country by charging VAT. Then the fraudster disappears and the VAT he received from his customer will not be returned to the Treasury.*

*Carousel fraud is a more complex system, involving multiple businesses and/or taxable individuals. Within this system the goods are sold across businesses in the Member States, before being exported again. The basics of the carousel fraud mechanism work as follows: A business (B) acquires a good (or service) from a supplier (A) located in another Member State VAT free. Then business (B) makes a domestic supply for which he charges VAT to his customer (C). The VAT received from his customer will not be paid to the Treasury and business (B) disappears. As customer (C) is a business itself, it claims the VAT paid to business (B). Subsequently, customer (C) sells the goods back to business (A) without any VAT paid as it concerns an intra-community supply and the fraud pattern resumes".*

In February 2014, the Commission proposed exploratory talks with the goal of entering into negotiations for administrative cooperation agreements with Norway, Russia, Canada, Turkey and

China related to tackling cross-border VAT fraud, bearing in mind the potential risks from globalisation and e-commerce. Granting these third States access to EU databases such as Eurofisc would help with vital information exchange.

## Eurojust and MTIC fraud

Eurojust's operational priorities for 2014-2017, adopted by the College in January 2014, list "drug trafficking, illegal immigration, trafficking in human beings, **fraud, in particular Missing Trader Intra-Community (MTIC) fraud**, corruption, cybercrime (including child sexual abuse images), criminal offences affecting the EU's financial interests (so-called PIF offences) (the 'PIF Directive' is still under discussion in Brussels), organised property crimes committed by Mobile Organised Crime Groups, and terrorism". These priorities reflect the priorities set by the Council against serious and organised crime, including the following language: "To disrupt the capacity of Organised Crime Groups and specialists involved in excise fraud and Missing Trader Intra Community MTIC fraud".

In the report, *How does organised crime misuse EU funds?*, Eurojust wrote of its experience in dealing with cases in which offences affecting the financial interests of the European Union have a transnational dimension, and the investigation involves two or more Member States, one of which has requested the assistance of Eurojust. In cases of fraud or misuse of EU funds investigated only at national level, Eurojust's involvement is not requested, and thus Eurojust's experience is limited.

The JHA Council, in June 2013, included the fight against excise fraud as one of the EU priorities in the fight against serious and organised crime for the EU Policy Cycle 2014-2017.

### *Strategic meeting on cross-border excise fraud*

On 14 and 15 November 2013, under the Lithuanian EU Presidency, Eurojust co-hosted a strategic meeting, entitled *Cross-border excise fraud: emerging threats in the European Union*. This

meeting highlighted the fact that, in most cases, excise fraud and VAT fraud are linked, and constitute some of the EU's biggest annual losses of revenue from unpaid duties. The illicit tobacco trade alone costs the European Union in excess of EUR 10 billion in lost revenue each year. Weaknesses in EU and national control mechanisms, i.e. legislation and customs procedures, are exploited by organised crime groups (OCGs) to commit duty fraud, often combined with smuggling of goods. These findings are echoed in the interview with Janja Bernard Korpar later in this newsletter.

The main findings and conclusions of the strategic meeting were the following:

### Challenges identified

- *Legal and prosecutorial challenges:*

In addition to differences in Member States' tax, customs and asset recovery legislation, different approaches to fraud investigations and differing evidential requirements, the key challenge identified was that excise fraud schemes are complex and continually evolving.

- *Practical challenges:*

Furthermore, weaknesses in control mechanisms make the origin of goods, the identity of the traders behind these schemes and the location of the proceeds difficult to determine.

### Solutions proposed

- Harmonisation of excise tariffs and goods subject to excise, further training for investigatory and judicial authorities, the development of specialised control mechanisms and the improved exchange of information between Member States' authorities were endorsed.

- The best practice identified included use of the judicial support offered by Eurojust, including the exchange of information facilitat-

ed through coordination meetings, joint action days and the establishment of joint investigation teams (JITs), the use of dedicated Focal Points at Europol to collate and analyse intelligence and the assistance from OLAF in setting up Joint Customs Operations.

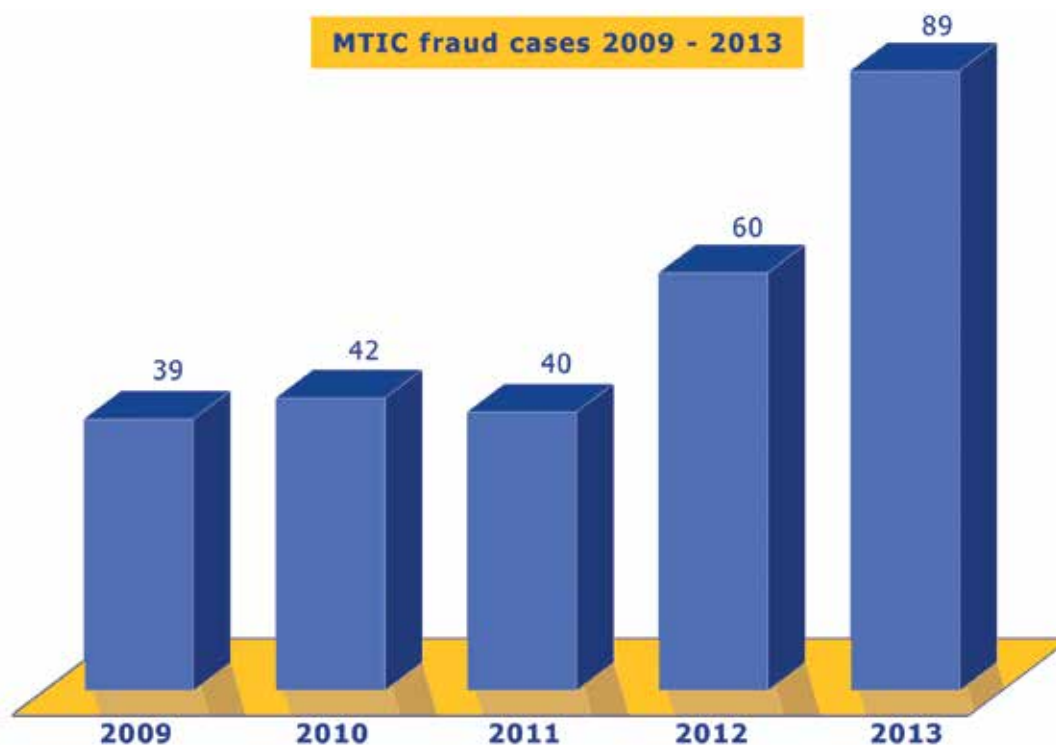
- Harmonisation of Member States' tax and customs policies and the use of the best practice identified were endorsed. A multi-disciplinary approach involving reinforced cooperation among Eurojust, Europol and OLAF as well as among tax, customs, police and judicial authorities on the ground is needed to tackle cross-border excise fraud effectively.
- A report of the strategic meeting will be published as a Council document.



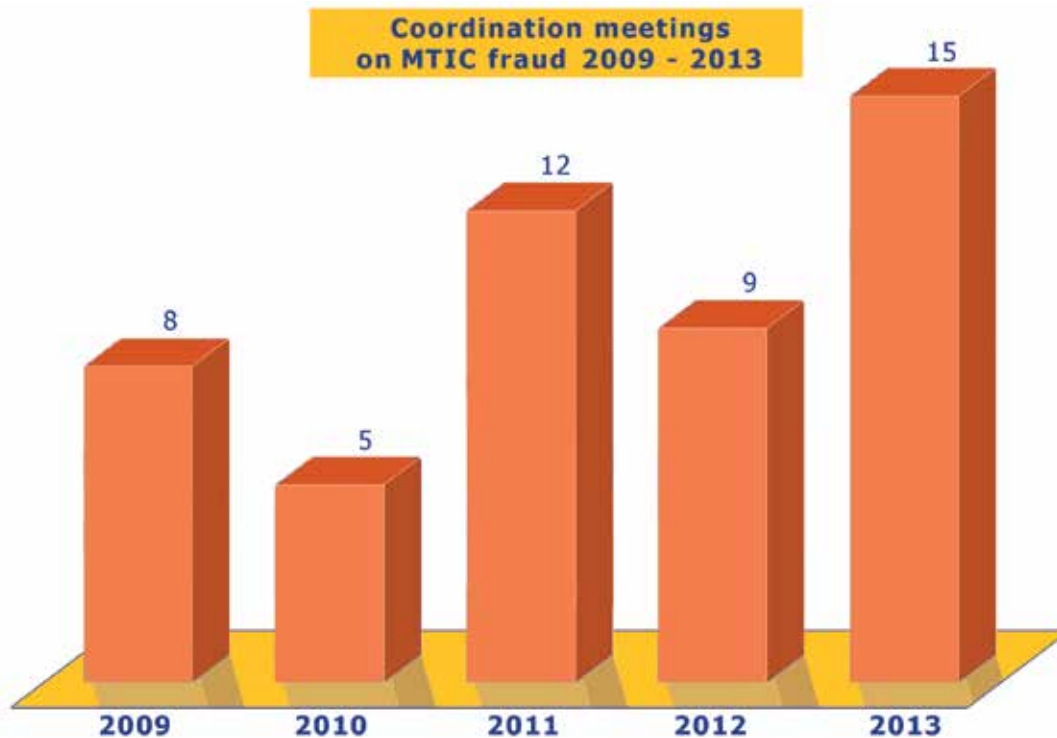
Such meetings clearly demonstrate the subject's increasing importance to the European Union and its agencies. The 2013 meeting followed an earlier

meeting Eurojust co-organised with Europol on VAT fraud in 2011. Please see below for more details.

## Eurojust and MTIC fraud cases



As the above figure illustrates, a total of 270 MTIC fraud cases were registered at Eurojust between 2009 and 2013.



Coordination meetings are among Eurojust's most valuable tools, bringing prosecutors from Member States and third States together around the table, facilitating the effective and early exchange of information and evidence in cross-border cases, and enabling national authorities to initiate and coordinate investigation and prosecution strategies, resolving legal obstacles, identifying possible parallel proceedings, detecting links with other cases, and overcoming language barriers. Coordination meetings also allow for the facilitation and coordination of mutual legal assistance requests.

## Case example: Carbon trading fraud

This case example highlights several legal issues that regularly require resolution in multilateral cases handled by Eurojust. The French National Desk requested the assistance of Eurojust in a case that illustrates the strengths of the coordination meeting as a mechanism to achieve greater international cooperation in judicial matters.

A French subsidiary of an international company registered in the British Virgin Islands and located in Dubai, United Arab Emirates (UAE), participated in the trading of carbon emission rights. This company bought carbon allowances from three French suppliers. With regard to two of the suppliers, the invoices – including VAT – were transferred to accounts in Hong Kong. None of the suppliers informed the French tax authorities of the VAT collected on the resale of those allowances, thereby breaching their legal and fiscal obligations.

The French subsidiary benefited from a tax credit against the amount of VAT to be repaid to the tax authorities – based on questionable invoices – and therefore fraudulently profited from tax deductions to the detriment of the French Treasury. Given the evidence gathered during the investigation of this company and its representatives, the extensive pattern of VAT fraud was most likely established by and for the benefit of the French subsidiary or the international company that represented its interests in France.

The support of Eurojust was requested and a JIT was established between France and the Netherlands in 2011. In October 2013, the case was at a very advanced stage and a coordination meeting was held to agree on how to proceed with prosecutions in both countries. The evidence obtained showed that the main suspects were acting from Dubai, and that the money flow ended in Dubai after being channelled through intermediary accounts in Hong Kong. At the time of the

meeting, almost all of the mutual legal assistance (MLA) requests had been executed in Spain, Germany, Portugal and Hong Kong. The French authorities considered issuing MLA requests towards the UAE to interview suspects and seize assets that were believed to be located there. Both France and the Netherlands had sufficient evidence to prosecute the main suspect.

The issue at stake was whether the main suspect would remain in custody after arrest. In France, a strong possibility existed that he would be released until trial. The Dutch authorities were confident that the amount of evidence collected and the economic damage caused by the crime would convince the French court to keep the suspect in custody, allowing prosecutors in both countries to conduct interviews and continue their proceedings.

The participating authorities discussed whether the legislation of the involved countries would allow the surrender

of the suspect to the other party for interviewing and trial if held in custody until trial. The parties agreed that the national legislation implementing the Framework Decision on the European Arrest Warrant made this possible. The participating authorities also raised the question of whether the French investigating judge could interview the suspect in the event he was held in custody in the Netherlands, and carry out the formal indictment in, that location.

As both countries intended to prosecute the main suspect for a VAT fraud-related offence, the participating authorities discussed whether they would indict him for the same crime, and concluded that two different fraud offences had been committed against two different victims in different jurisdictions (French and Dutch tax administrations); consequently, no risk of double jeopardy was incurred.

The parties considered that France could formally transfer its case to the Netherlands for prosecution. In principle, the Netherlands would not have jurisdiction over the offence in France, as the offence affected a French victim and had been committed by a non-Dutch national. However, the Dutch case may have included prosecution for participation in a criminal organisation. This possibility required further study by both sides and the approval of the French Prosecutor General.

By 2013, the investigation had resulted in the freezing of approximately USD 7 million. Seizure of further assets is anticipated. Both countries agreed that assets eventually confiscated would be shared on a 50/50 basis.

Discussion took place over two issues: (a) whether information provided by a country not participating in the JIT could be legally exchanged as valid evidence, since the exchange took place between JIT members, and (b) the fact that information was only given to one JIT party and not to all JIT members. The JIT participants agreed that the receiving party should request permission from the

provider to formally share information with the other party to the JIT.

Subject to consultation with the national authorities, the parties agreed that France would proceed with arresting the main suspect, as he visited the country regularly. Bail was set very high. Subsequently, the Netherlands planned to issue a European Arrest Warrant, take the suspect to the Netherlands, and request that he remain in custody. Both countries were to run simultaneous prosecutions.

The French authorities were to obtain authorisation to interview the suspect in the Netherlands, with the transfer of proceedings to the Netherlands to be considered only at a later stage. The parties also agreed on the exchange of case files and evidence based on the JIT agreement.

As a result of the cooperation in this case, three suspects were arrested in France. The MLA requests that were issued to Hong Kong, Switzerland, the UK, Germany, Denmark, Spain and the USA were executed. Eight persons were questioned in France and the Netherlands, a European Arrest Warrant was issued against a principal suspect whose location was unknown and a coordination meeting was planned to follow up on the investigation.

## Eurojust strategic project and strategic meeting on VAT fraud

*Eurojust's strategic project on the enhancement of exchange of information and mutual legal assistance between judicial authorities of the EU Member States in the area of VAT fraud* was initiated in 2009 by the Eurojust Financial and Economic Crime (FEC) Team.

### Strategic project

In 2010, the FEC Team sent a questionnaire to representatives in the Member States, seeking detailed information on legal obstacles and best practice in disclosing, investigating and prosecuting cross-border VAT fraud cases, particularly carousel fraud. Information from Member States on access to and

exchange of information between the Member States and potential training needs for national authorities handling these complex cases was also requested.

### Strategic meeting on VAT fraud

On 28 March 2011, Eurojust hosted a strategic meeting on VAT fraud, co-organised with Europol, to discuss the results of the strategic project and work on a common strategy. A total of 75 participants, including practitioners experienced in prosecuting VAT fraud cases in the Member States, as well as representatives from the Council, the Commission, Eurojust and Europol, attended.

The following needs were identified during the strategic meeting: a common strategy to combat cross-border VAT fraud; implementation of relevant EU and international legal instruments, especially those related to tracing, freezing, confiscating and sharing of proceeds of VAT fraud; approximation of definitions, sanctions and statutes of limitation in the Member States; a common interpretation of *ne bis in idem* and rules for exclusive jurisdiction to avoid conflicts of jurisdiction in VAT fraud cases; early and more efficient cooperation with the support of Eurojust and Europol; the more frequent use of JITs in VAT fraud cases; the use of Europol as an early warning system for investigators and prosecutors (using, e.g., Focal Point MTIC); cooperation with third States; a more uniform approach; an enhancement of the role of Eurojust in facilitating the issuance and execution of mutual legal requests; and regular meetings in the future.

A full report of the strategic meeting was published as a Council document, 11570/11, on 17 June 2011.

In May 2010, under the Spanish EU Presidency, Eurojust co-hosted a seminar on money laundering of the proceeds of crime, tracing and disposal of illegal assets in Granada, Spain. Money laundering, as Mr Lo Voi makes clear in his interview below, is very often linked to other types of crime, such as MTIC fraud.

# Interview with Algirdas Šemeta

*EU Commissioner for Taxation, Customs, Anti-Fraud and Audit*

**A**lgirdas Šemeta is the EU Commissioner for Taxation, Customs, Anti-Fraud and Audit. Mr Šemeta began his career in 1985 as an economist at the Lithuanian Economy Institute. Beginning in 1990, he held various jobs in the Lithuanian government, including Head of the Subdivision of the Economy Development Strategy Division; Adviser, Deputy Chief of the Privatisation Unit; Chairman of the Securities Commission (1992-1997); Director General of the Department of Statistics (2001-2008); and Minister of Finance of the Republic of Lithuania (1997-1999 and 2008-2009). In 2009, he became Member of the European Commission responsible for Financial Programming and Budget. He was selected for his current role as Member of the European Commission responsible for Taxation, Customs, Statistics, Anti-Fraud and Audit in 2010. He works closely with DG Taxation and Customs Union, DG Budget, the Internal Audit Service and OLAF, the EU's anti-fraud office.

*Eurojust News: How important is cross-border cooperation in the judicial sphere to the fight against excise fraud?*

**Commissioner Šemeta:** “Cross-border fraud requires cross-border solutions, which is why we put such emphasis on a Europe-wide coordinated response. Excise fraud is particularly pernicious, as it is a high-yield, low-risk crime, which nevertheless tends to feed into more sinister organised crime. Cigarette smuggling is a particularly wide-scale and damaging activity for the European Union. Financial losses are huge in this area. The cost of cigarette smuggling in terms of unpaid excise duties, VAT and custom duties is estimated at more than EUR 10 billion a year, and studies suggest that one-tenth of all cigarettes consumed in the European Union are counterfeit or contraband. These estimates do not take into account other indirect costs triggered by such products, such as health risks and the damage to honest businesses.

Cross-border cooperation in criminal investigations involving excise fraud is, thus, of great importance. All Member States and EU bodies need to work together to tackle such crimes. OLAF plays an important role in battling cigarette smuggling, which in turn helps reduce the amount of excise duty lost to this type of criminal activity. OLAF has also recently taken steps to strengthen its cooperation with Eurojust and Europol in this respect.”

*Can you describe a success story since you took over your role?*

“As Commissioner for both anti-fraud and customs, tackling the illicit trade in



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cigarettes is a top priority for me. This is an area where even small successes can reap huge results. A lot of work has already been done at EU level, particularly by OLAF, to tackle counterfeiting and smuggling, but there is always more to be done. I am working with Member States, industry and our trading partners to ensure that every tool at our disposal is used to tackle this serious problem.

In June 2013, the Commission presented a new strategy to combat cigarette smuggling, focusing on four key areas: decreasing incentives for smugglers; improving supply chain security; better enforcement by all responsible authorities, including tax and customs; and heavier sanctions to deter smuggling. This strategy was accompanied by a thorough action plan, so that all actors know the measures they need to take to follow up.

In terms of very practical ‘success stories’, there have been many. For example, coordinated raids in Poland and Germany led to the arrest of 26 members of an international criminal gang that had smuggled millions of cigarettes into the European Union from former Soviet republics and China. These raids followed months of cooperation between OLAF, the Polish Central Investigation Bureau of the National Police, the German Customs Investigation Office and the Belgian Federal Police. In addition to the arrests, the authorities seized some seven million cigarettes, a truck that was being loaded with contraband cigarettes, approximately EUR 3 million in cash and nine kg of gold. The authorities froze more than 40 bank accounts belonging to key suspects and seized personal property, including cars and houses. In total, 60 people were arrested, including the leaders of the criminal organisation.”

“Cross-border fraud requires cross-border solutions, which is why we put such emphasis on a Europe-wide coordinated response.”

According to DG TAXUD's website, "[T]he amounts of tax recovered cross border on the basis of EU law were multiplied by 11 between 2003 and 2011": what simple steps can be taken to increase the collection of excise taxes and what obstacles stand in the way of possible measures?

"Increasing the collection of excise taxes is primarily down to Member States – they must take the necessary measures to reduce tax evasion, abuse and fraud. At EU level, we have the Excise Movement and Control System (EMCS), a computerised system for monitoring the movement of excise goods. It entered fully into force in 2012 and provides real-time monitoring of goods moved under suspension of excise duty. The vast majority (estimated at approximately 95%) of legitimate goods subject to excise duty are monitored by the EMCS as they move cross-border. In addition to the use of the EMCS, Member States should encourage increased cooperation and exchange of information with their colleagues from customs, VAT and direct tax services as well as other agencies, such as the police and public prosecution services, and with their counterparts in other Member States. To this end, more use should be made of the possibilities provided by European legislation on excise cooperation, particularly the functions allocated to the Central Excise Liaison Offices and to designated officials."

#### *What are the estimated losses to the European Union from excise fraud?*

"It is almost impossible to put a figure on revenues lost to fraud – the very nature of fraud makes it hard to quantify. However, we do have some indications for tobacco, which we estimate at EUR 10 billion. It is more difficult to pinpoint a figure for alcohol and energy fraud than it is for Member States themselves to calculate estimates if they can, and there is no obligation to report these to the Commission. However, as one indication, a single Member State estimated losses of up to 8 per cent of total diesel tax revenues from one particular type of energy fraud."



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#### *Which aspect of excise fraud presents the greatest threat to the revenues of the European Union?*

"Cigarette smuggling and the illicit tobacco trade are undoubtedly huge threats to the EU and Member States' budgets. This type of activity comes in many forms: cigarettes declared as exported but which remain in the European Union; cigarettes declared to be destined for another Member State (known as 'intra-community movements') but that 'disappear' on the way; and of course, smuggling across borders from third countries.

As regards energy products, the Commission is aware of a number of different types of fraud schemes, such as misuse of tax-free fuels or oils taxed at a lower excise duty rate than motor fuel. However, we do not have data to assess the threat to Member State revenues.

Concerning alcohol products, large-scale fraud and smuggling of denatured alcohol represents an increasing threat to the legal alcohol market in the European Union."

#### *Given that the European Union is just one of many actors, do you think it can really do anything substantive?*

"I absolutely believe that the European Union can have a strong impact on fighting fraud and smuggling. In this globalised economy, in which goods move across borders at an ever-increasing pace and quantity, an isolationist policy is never going to work. That is why we invest a lot in working with our international partners on such issues. The

international nature of these problems demands an international response.

A recent landmark development has been the international agreement on the World Health Organization Protocol on the Elimination of the Illicit Trade in Tobacco Products. This document contains provisions that will be applied globally to control the supply of tobacco products and reduce the opportunities for them to fall into the black market. It requires all those engaged in the tobacco supply chain to ensure that sales to their customers reflect legitimate demand, and the Protocol will establish a global tracking and tracing system.

At EU level, we are working to reinforce this global approach through new measures in the Tobacco Products Directive (2001/37/EC), which governs the manufacture, presentation and sale of tobacco products. An EU-wide tracking and tracing system with security features (e.g. holograms) to combat illicit trade in tobacco products will be put in place. Cigarettes and roll-your-own tobacco products will be the first to be phased in to this system, with other tobacco products following."

#### *Could you describe the experience you have had in working with Eurojust?*

"As Commissioner responsible for anti-fraud, I am aware of the good partnership between Eurojust and OLAF in the fight against fraud and other illegal activities affecting the Union's financial interests. OLAF contributes to Eurojust's work of coordinating investigations and prosecutions by, for example, contributing its expertise in this specific area of crime.

Eurojust helps OLAF to process its investigations more quickly and successfully when coordination and cooperation with national judicial authorities is needed. For example, in 2012, OLAF attended five coordination meetings organised by Eurojust in the context of OLAF investigations.

Cooperation between Eurojust and OLAF is further strengthened by the new OLAF Regulation, which entered into force on 1 October 2013. It puts a clear emphasis on cooperation with Eurojust and provides a specific reference to the transmission of relevant information to Eurojust.”

#### *Practical Agreement on Arrangements of Cooperation between Eurojust and OLAF*

The Practical Agreement was signed on 24 September 2008 to enhance the fight against fraud, corruption or any other criminal offence or illegal activity affecting the European Union’s financial interests, to define the methods of close cooperation between both parties and to avoid duplication of efforts.

Eurojust had cooperated with OLAF for many years on complex and sensitive cases combating organised crime and involving a large number of Member States prior to signing the Practical Agreement. Following the entry into force of the Practical Agreement, the exchange of case-related information between Eurojust and OLAF increased: in 2013, four cases were jointly worked on by Eurojust and OLAF, compared with a total of five cases in the period 2004-2009.

#### *Related Commission links*

[MEMO/14/90](#)

Action plan to fight against tax fraud and evasion:

[http://ec.europa.eu/taxation\\_customs/taxation/tax\\_fraud\\_evasion/missing-part\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/missing-part_en.htm)

Homepage of Commissioner Algirdas Šemeta, EU Taxation and Customs Union, Audit and Anti-fraud Commissioner:

[http://ec.europa.eu/commission/2010-2014/semeta/index\\_en.htm](http://ec.europa.eu/commission/2010-2014/semeta/index_en.htm)



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## Interview with Chris Perryman

*Project Manager and senior specialist, Focal Point MTIC, Europol*

**C**hris Perryman joined Her Majesty’s Customs and Excise (now HM Revenue and Customs) in Essex, UK, in 1978. He then worked as a Value Added Tax (VAT) officer in Essex, and then a Local VAT Office Inquiry Team leader, eventually joining Custom House in London as a Senior Investigation Officer, concentrating exclusively on serious criminal VAT investigations. Mr Perryman joined Europol in 2006 as a Seconded National Expert, at the beginning of the Analysis Work File on MTIC fraud (now Focal Point (FP) MTIC). He became Project Manager and senior specialist for FP MTIC in 2012.

*Eurojust News: In December 2009, Europol issued a press release stating that: “The EU Emission Trading System (ETS) has been the victim of fraudulent traders in the past 18 months. This resulted in losses of approximately EUR 5 billion for several national tax revenues. It is estimated that in some countries, up to 90% of the whole market volume was caused by fraudulent activities”. Can you tell us where the EU ETS stands today in terms of losses and the possible reason?*

**Chris Perryman:** “The trading structure of the EU ETS mechanism has changed since the devastation caused by MTIC fraud during the period 2009 to 2010. Commencing 1 January 2013, one central Union Registry, under the control of the Commission, holds the accounts of all emissions trading participants and records transactions between them, with the objective of

detering fraud, money laundering, terrorist financing or other serious fraud.”

*Have the measures taken by various governments succeeded in cutting ETS fraud, or is more coordinated, sustained action required?*

“VAT fraud within this market has now largely been eliminated following the introduction of VAT ‘reverse charge’ legislation rather than the standard rate of VAT, sometimes without the prior consent of the Commission. In some Member States, the lack of coordinated legislative change had allowed fraudsters to switch their activities to jurisdictions where the standard rate of VAT remained, all the time increasing the level and amount of losses to the Member State concerned. Europol’s understanding is that the smaller or remaining markets where the standard rate of VAT upon such transactions prevails will



not sustain any concerted criminal VAT attack. However, FP MTIC continues to support the Member States in their investigations, including those that are approaching the pre-trial stage.”

#### *What presents the greatest threat to the success of the EU ETS today?*

“Although VAT fraud has been minimised on the EU ETS, the system may be attractive to money laundering schemes and the possibility of cyberattacks upon the trading accounts of participants.

Apart from the excessive amount of organised criminal VAT fraud, further damage to the reputation of the market occurred in early 2011 when seemingly coordinated cyberattacks led to the theft of over 3.3 million European Units of Account (EUAs), also known as ‘carbon credits’, valued at more than EUR 50 million, from National Registries in Austria, the Czech Republic, Greece, Italy, Germany and Romania. These attacks led to the closure of all spot trade dealing throughout the 30 EU ETS registries of the European Economic Area for a two-week period in January 2011, pending the implementation of security measures by operators to the satisfaction of the Commission.

However, only five of the National Registries had provided sufficient security guarantees to reopen for spot trade business by early February 2011, with only 15 satisfying the Commission’s security requirements by mid-March 2011. While the new structures should have included the painful lessons of the past, vigilance is most definitely still required.”

#### *What are you doing to address this threat?*

“The ease with which fraudsters could register to trade in the carbon credit field – on some registries they only needed to supply name, address, telephone number and e-mail contact details, without any formal check of trading bona fides – was a determining factor in their penetration of the markets. FP MTIC now works regularly with representative bodies from the private sector to stop the migration of the fraud into other sectors.



Although dealing takes place on local exchanges, transaction data – such as buyer, seller, value and number of EUAs traded – is recorded within National Registries, originally linked centrally to the Community Independent Transaction Log (CITL), which was maintained by DG CLIMA in Brussels. Access to the CITL for FP MTIC was agreed with the Commission. In this way, Europol speedily advised members of full transaction chains as they spread across Europe, whereas the investigators of Member States themselves would have had to approach the Commission or local exchanges on an individual basis, costing them valuable time and therefore increasing their losses.

Operationally, FP MTIC has supported several action days in these investigations in the UK, Spain and France. In another case, Europol entered into a formalised JIT – still ongoing – with France, the Netherlands and Eurojust, targeting the individuals behind a specific company linked to several fraud chains across the European Union.”

#### *Which of the European trading platforms and other market platforms experience the most fraud?*

“As the opportunity to commit VAT fraud via the EU ETS diminished, organised criminals looked for other commodities to exploit, initially attempting to infiltrate the wholesale gas and electricity markets, as well as other energy and

environmentally related sectors. Fraud continues to occur in markets as diverse as foodstuffs, electronic goods, metals and oil products. Financial services or institutions outside Europe are often, in reality, alternative banking platforms created by specialist facilitators specifically for the purpose of circumventing anti-money laundering reporting legislation and law enforcement attention. They operate in tax havens including Panama, the Caribbean, the Far East, the Gulf region and New Zealand. Experience with these groups has provided FP MTIC with an insight into both the distribution of proceeds from fraud as well as the initial sources of funding and investment. Europol passes on such information, where permitted, to other members of the Focal Point.”

#### *Why is that particular market so attractive to fraudsters?*

“Fraudsters have sought out environmental markets due to the intangible nature of trading in the rights associated with these markets. In the early days of carousel fraud, commodities of choice – high-value, low-volume goods such as computer chips or mobile telephones – had to be physically shipped cross-border to receive official physical documentation to prove their entry into a transaction chain and hence commence the abuse of the EU VAT system. Alternatively, falsification of commercial and official documents also occurred.

With intangibles, bought and sold over the Internet, the risk of detection or intervention, before the transaction chain is complete, is greatly reduced.”

*What are the biggest challenges facing you? Are these challenges persistent or constantly changing?*

“To me, a major stumbling block in the successful fight against VAT fraud at the highest levels of organised criminality concerns the difficulties in cooperation between tax administrations and law enforcement agencies in the European Union. The routine exchange of intelligence does not happen in many Member States, be it for reasons of ‘taxpayer’ secrecy or other considerations designed to maintain the separation between tax collectors and criminal investigators. This separation results in the consequent frustrating inability of criminal investigators to utilise or enhance their intelligence to the full, to track the current activities of the major OCGs, and to assist in the prevention of further crimes.”

*What are you doing to address these challenges?*

“The European Multidisciplinary Platform Against Criminal Threats (EM-PACT) is the framework for the implementation of joint actions to address EU priorities in combating serious international and organised crime. One of the priorities of the EU Policy Cycle 2014-2017 is ‘to disrupt the capacity of OCGs and specialists involved in excise fraud and ... MTIC fraud.’”

*Can you describe a success story since you took over your role?*

“FP MTIC, since its beginnings in 2008, has become the principal EU support centre for law enforcement operations. Europol is the only law enforcement agency at European level able to store all criminal information related to MTIC fraud. The information-gathering capability

and repository of FP MTIC provide a solid picture of EU MTIC crimes and the most prominent criminal targets.

FP MTIC has also become a centre of excellence in fighting cross-border MTIC fraud and related offences. The FP MTIC team has operational experience and knowledge and is willing to share its expertise with all VAT fraud investigators. I am extremely proud and privileged to have played a small part in that achievement.”

*MTIC fraud was identified in Europol’s Serious Organised Crime Threat Assessment (SOCTA) 2013 report as a key priority area. Why is it ranked alongside trafficking in human beings and the manufacturing of synthetic drugs?*

“Cross-border (intra-community)/transnational VAT fraud affects not only the financial interests of the Member States and the European Community at large but also has an impact on honest businesses that find themselves unable to compete in those sectors that are affected by a significant amount of VAT fraud. The scale of revenue losses attributable to MTIC fraud since the EU borders were opened to free trade in 1992 may never be precisely quantified. According to different sources, the level of harm caused by MTIC fraud varies. For example, on 19 September 2013, the Commission issued a press release on a study into the EU tax gap, based on 2011 VAT receipts of 26 Member States (figures excluded Cyprus). While this VAT gap covered all losses, including those not attributable to MTIC fraud, the loss amounted to EUR 193 billion in 2011 alone.

Similarly, a 2009 study by the Courts of Auditors of the Netherlands, Germany and Belgium estimated losses to be in the region of EUR 100 billion. As a comparison to understand these

astonishing figures, the EU budget for 2014 is EUR 135.5 billion.

Moreover, the profits from VAT fraud certainly finance other types of fraud, for example cigarette smuggling and drug trafficking, and links have also been made to terrorist activities.”

*Is there light at the end of the tunnel?*

“Establishing an up-to-date and relevant intelligence flow from the Member States and ensuring that this flow is continually maintained can be challenging tasks. We need to persevere and not be pessimistic. We are getting there, and Europol certainly is now instrumental in the fight against serious organised MTIC fraud. So light is certainly to be seen at the end of the tunnel, but I’m keeping my fingers crossed that its source is not an approaching train!”

#### *Cooperation Agreement between Eurojust and Europol*

A new Cooperation Agreement was signed on 1 October 2009 to improve coordination by increasing information exchange and improving strategic and operational cooperation.

Europol regularly attends Eurojust’s coordination meetings (2013: 75 meetings; 2012: 85 meetings), including meetings related to VAT fraud, and attended four of the seven coordination centres\* held in 2013. Eurojust’s involvement in Focal Point MTIC and the association of Eurojust with it illustrate solid cooperation between the two organisations through the exchange of expertise and close coordination to ensure complementarity when supporting national authorities in specific cases. At the same time, Eurojust provides extensive and detailed contributions based on its casework to the SOCTA. Eurojust co-hosted an important strategic meeting with Europol in March 2011 on VAT fraud.

\* Coordination centres, introduced at Eurojust in 2011, provide real-time operational support from the Eurojust premises during action days in the Member States. They facilitate on-the-spot decision-making and analysis of data, and result in the receipt of immediate responses by national authorities. Seven coordination centres were held in 2013, and Europol attended four of them.

“Upper-echelon MTIC fraudsters ARE NOT white collar, loophole-exploiting opportunists. They are serious and major criminals who stop at nothing - including murder - to achieve their criminal ends.”

# Interview with Janja Bernard Korpar

*Local state prosecutor, the Specialized State Prosecution Office, Republic of Slovenia*

**J**anja Bernard Korpar has worked as a prosecutor at the Specialized State Prosecution Office of the Republic of Slovenia for two years, where she specialises in economic crime and corruption. Prior to this position, she worked for five years at the District Prosecutor's Office in Ptuj, prosecuting mainly tax fraud and other economic crimes.

*Eurojust News: How important is cross-border cooperation in the judicial sphere to the fight against excise fraud?*

**Prosecutor Korpar:** "Through experience, we have established a regular practice of consultation with our Eurojust National Desk, which obtains information from other Eurojust National Desks regarding the necessary formation and content of requests. In so doing, we obtain all of the information or evidence needed for each specific case upon our first request. Eurojust provides efficient and effective assistance to prosecutors in coordination and considerable time savings in obtaining the requested information and evidence.

Our experience in cooperation with other national authorities is also very positive. Most of the information and evidence is provided through MLA requests or directly from other national authorities. International cooperation between customs and tax authorities and international organisations such as Eurojust and OLAF is also vital in excise fraud cases because of the frequent cross-border activity of perpetrators or organised crime groups and the necessity to uncover the entire criminal offence and achieve a successful criminal procedure."

*What obstacles do you typically encounter in cooperation with the authorities of other countries, both within and outside the European Union?*

"Most issues arise from different national legislation, different terms and conditions



for obtaining evidence or executing special investigative measures, different definitions of jurisdiction and different definitions of explicit criminal acts (tax fraud or tax evasion, money laundering), etc. Occasionally, we encounter a lack of response or an incomplete response from requested authorities."

*According to DG TAXUD, "[T]he amounts of tax recovered cross border on the basis of EU law were multiplied by 11 between 2003 and 2011". What simple steps can be taken to increase the collection of excise taxes?*

"A simple step would be to implement stricter and more regular controls of companies and their directors dealing with goods both subject and not subject to excise duties. In addition, granting

licences and controlling the transportation of goods using an electronic or automatic control system (e.g. an international database) could help prevent excise fraud. Harmonising legislation and exchanging information on assets and the business of companies involved in criminal acts could also increase the collection of excise taxes. However, the most important aspect is the awareness of citizens and excise taxpayers in the European Union that crime does not pay and that excise duties present a benefit for all EU citizens."

*Are you able to estimate the annual financial losses to Slovenia from excise fraud?*

"According to the annual report of the Customs Administration of the Republic

"The most important aspect is the awareness of citizens and excise taxpayers in the European Union that crime does not pay and that excise duties present a benefit for all EU citizens."

of Slovenia for 2012, decisions were issued for the subsequent payment of more than EUR 6 million in excise duties resulting from inspections and follow-up controls. In my opinion, the annual losses are at least two or three times higher than this figure.”

*Which aspect of excise fraud presents the greatest threat to Slovenia today?*

“Due to its location between northern and southern Europe and the heavy volume of international transport through Slovenia, effective and efficient control

over excise goods is almost impossible without daily international cooperation and a constant exchange of information among the various authorities. The analysis of information obtained by national and foreign authorities is necessary to determine risk indicators.”

## Case example: Cross-border excise fraud

The Slovenian Customs Administration began a joint investigation with the Tax Administration and the police against several Slovenian petroleum companies because of increased sulphur content discovered in samples of euro diesel (D2) fuel at their petrol stations. During the investigation, the investigators discovered that these Slovenian petroleum companies, operating in conjunction with Slovenian suppliers, committed tax and excise fraud by selling modified “base oil” as D2.

The investigation uncovered that the suppliers had not been registered for the sale of energy products, had no excise licenses, were not the recipients of energy products from other Member States, and had not disclosed purchases on the domestic market, but all of them had purchased goods categorised as base oil.

Business documents, acquired with the assistance of Eurojust, demonstrated that the purchase chain involved companies from four different Member States and a missing trader company; the inspectors were unable to find any business documents of this company and the company was sold after a few months. Since base oil is not classified as an excise good and the listed companies were not excise taxpayers, the obligation to pay VAT was delayed or transferred to the fictive last customer in the chain.

With the sale of modified base oil, the criminal organisation received money for the difference in the price between base oil and D2 by charging the end customer excise duty, VAT and environmental tax, all of which were collected by these companies but not remitted to Slovenia. The Slovenian petroleum companies avoided payment of over EUR 800 000 in VAT, excise duty and environmental tax.

## Interview with representatives of the Hungarian National Tax and Customs Administration (NTCA)

The National Tax and Customs Administration (NTCA) of Hungary was formed in 2011. Established from the predecessor organisations of the Hungarian Tax and Financial Control Administration and the Customs and Finance Guard, the NTCA is a new, independent and integrated governmental body that manages revenues in excess of EUR 100 million daily.

*Eurojust News: How would you describe cooperation with other national authorities?*

**NTCA:** “Cooperation is generally good. The investigating department of the NTCA uses the tool of international cooperation as much as possible, both bilaterally and multilaterally. With coordination meetings organised with the support of international organisations such as Eurojust and forms of cooperation including MLA, the exchange of information between the investigating authorities of the Member States can be carried out more efficiently.”

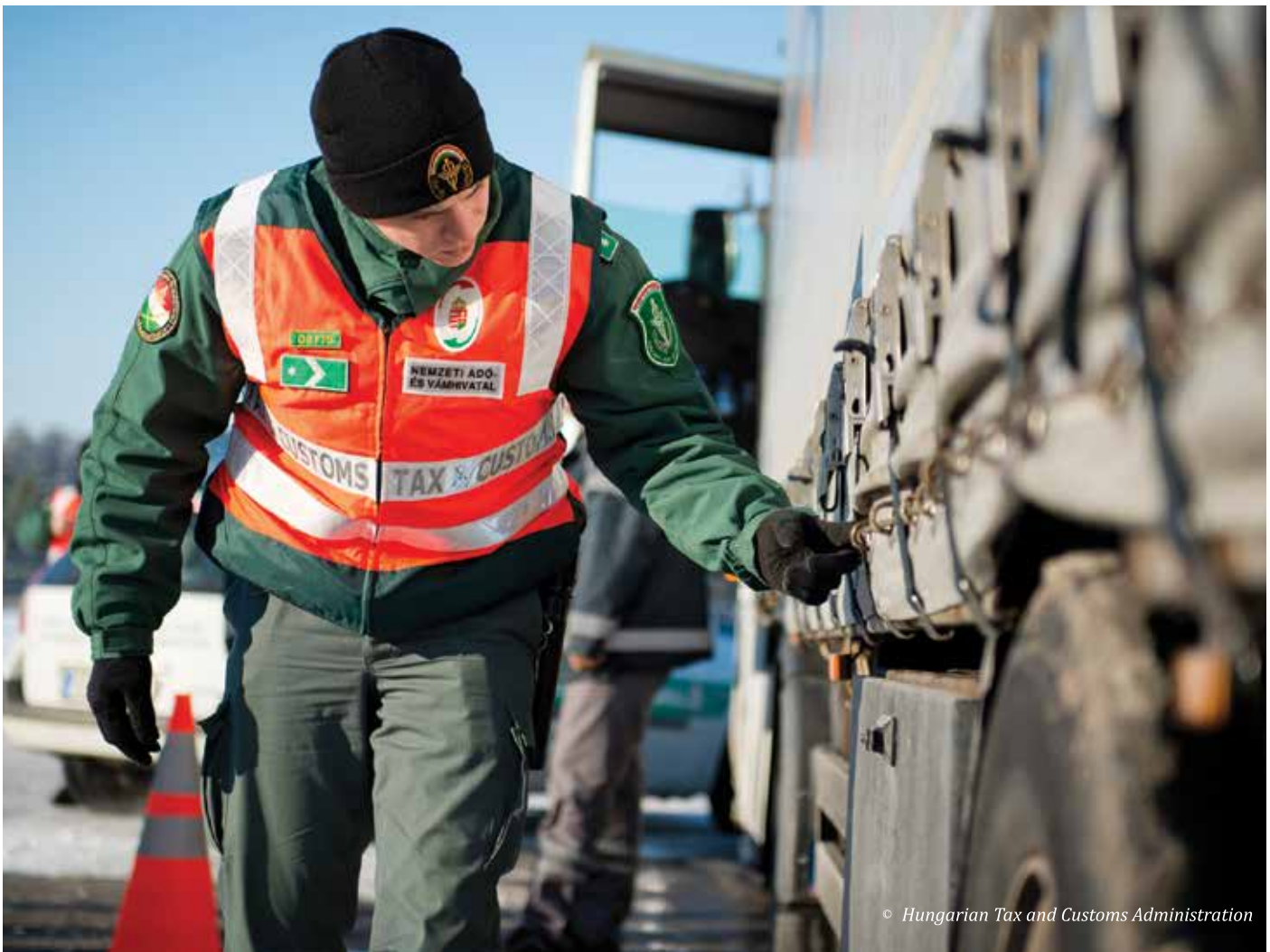
*What obstacles do you typically encounter in cooperation with the authorities of other countries, both within and outside the European Union?*

“Cooperation works both within and outside the European Union; however, in every working relationship, small difficulties may occur that are usually handled by the financial

investigators of the NTCA. For example, in an exchange of information, some questions arise that could be attributed to the different legal backgrounds of the authorities of the Member States.”



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#### *What could be done to improve cooperation in cross-border excise fraud cases?*

“We have found that the real-time exchange of information is absolutely necessary in cross-border cases. Moreover, the special cooperation forms of the Convention implementing the Schengen Agreement of 14 June 1985 and the (Naples II) Convention on mutual assistance and cooperation between customs administrations should be more widely applied.”

#### *What are the annual financial losses to Hungary from excise fraud?*

“In 2012, the total financial damage caused by budgetary fraud detected by the financial investigators of the NTCA was approximately EUR 333 million; in 2013, this figure was approximately EUR 360 million. The detected losses caused by excise fraud resulting from stolen goods alone were approximately EUR 6.6 million in 2012, and approximately EUR 8.3 million in 2013.”

#### *What aspect of excise fraud presents the greatest threat to Hungary today?*

“Typically, VAT fraudsters and cigarette smugglers are the greatest threats, but the smuggling of base oils is also worth

noting. Use of these goods without taxation is an excise crime, so their illegal trade creates large losses. The damage caused by VAT fraud through fictitious trade transactions is enormous and generates approximately EUR 220 million in annual losses to the Hungarian budget.”

#### *What measures would you like to see that would bring a reduction in excise fraud?*

“The question cannot be approached only from a criminal perspective. Both administrative and criminal measures

“Coordination meetings provide a remarkable opportunity to support investigations and are the ideal way to cooperate internationally. Eurojust’s assistance in financing JITs is also very welcome.”

must be managed together to ensure that more is done in the prevention phase to stop fraud against the budget and excise fraud. Among the available criminal measures, the exchanging of information at international level is of particular importance, as are the related risk analysis and the application of legal instruments. In the interest of reversing VAT fraud, obviously the best thing to do would be to reform the system in a manner that presents the fewest opportunities for illegal activity. For example, an Internet database that provides precise information on the procedures available to an investigator and the assistance available when another Member State's help is required would be beneficial."

### *Could you describe the experience you have of working with Eurojust?*

"Our experience in coordination and assistance work with Eurojust has been positive. Coordination meetings are a remarkable opportunity to support investigations and provide the ideal way to cooperate internationally. Eurojust's assistance in financing JITs is also very welcome. With the participation of the National Members, the professional backing and speed of legal assistance contribute to the success of our investigations. Eurojust is a good and trusted source of the latest information, best practice and experience. Our colleagues regularly take part in training sessions where representatives of Eurojust provide lectures and courses to deepen their knowledge."

## Case example: Cross-border excise fraud

**H**ungarian, Czech and Slovak criminal experts joined together in a JIT to halt VAT fraud within the framework of an operation organised by the West-Transdanubian Regional Criminal Affairs Directorate of the Hungarian National Tax and Customs Administration (NTCA) and the Attorney General's Office of Győr-Moson-Sopron County.

In 2011, a JIT dismantled an OCG dealing in metal waste that caused significant losses to the tax authorities of Hungary, the Slovak Republic

and the Czech Republic. This JIT was the first international investigation team in the history of the NTCA, and only the second international inves-

tigation team to which Hungary has been a party. JIT Copper was coordinated and aided by Eurojust and operated under the supervision of the



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prosecution services of these three Member States.

Family-owned companies transported metal waste from Hungary to end customers in the Slovak Republic and the Czech Republic. Because the system of reverse taxation in Hungary had already been established for the distribution of metal waste, the OCG looked for another Member State in which to carry out its criminal activities. The metal waste was transported to countries where general EU rules were in force, so that the sale could produce gross income. On paper, the customers paid front men, but of course these front men did

not declare or pay VAT in the Slovak Republic or the Czech Republic; the entire proceeds went to the OCG.

More than 200 experts in the three countries participated in this international operation, including attorneys, police and financial investigators, and a special team from the NTCA. The work was also supported by Europol. Data obtained from the investigation showed that the Slovak budget suffered approximately EUR 16.6 million in damages, while the Czech budget lost approximately EUR 3.2 million.

The participation of Eurojust proved very advantageous. Firstly, it brought

together the concerned investigating departments of the Member States, which provided an opportunity to directly share the available information and arrange the required steps. Secondly, Eurojust assisted in the establishment of the JIT in an effective manner, and financed the travel, accommodation and translation expenses incurred during the investigation. Moreover, Eurojust provided a location for the coordination meeting that was held during the investigation.

The financial investigators arrested 14 suspects and seized luxury cars, real estate and cash totalling approximately EUR 4.7 million.

## Interview with Yvon Slingenberg

### *Head of Unit, EU ETS Implementation at DG CLIMA*

**Yvon Slingenberg** is Head of Unit “Implementation of the EU ETS” in DG CLIMA. As a specialist in environmental law, Ms Slingenberg worked at DG Environment from 1998 to 2002 in the Climate Change Policy Unit, where she was responsible for international climate negotiations. She also worked for the European Commission’s Task Force for the World Summit on Sustainable Development in 2002 and in the Cabinet of Commissioner Wallström from 2002 to 2003. From 2003 to 2007, Ms Slingenberg was in charge of the chemicals policy unit and negotiated the new chemicals legislation (REACH). From April 2007, prior to the creation of DG CLIMA, Ms Slingenberg headed the unit in charge of all EU ETS issues.

#### *Eurojust News: Could you explain the EU ETS?*

**Yvon Slingenberg:** “The EU Emissions Trading System (EU ETS) is a cap and trade system – it caps total emissions from aviation and the 11 000 power and industrial plants across the European Union and European Economic Area that produce the most emissions, guaranteeing emissions reductions. The system allows trading that ensures targets are reached in the most cost-effective manner. The EU ETS has allowed the development of a carbon market, which puts a price on carbon, allowing the cost of pollution to be taken into account in operating and investment decisions and sends a signal to the economy, promoting decarbonisation.

Every year, each operator must return one emissions allowance to the regulator for each tonne of greenhouse gas emitted. Allowances, which are auctioned or given to operators at no cost, can be traded, allowing companies tremendous



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flexibility in how they comply with the legislation. They can either reduce emissions or buy extra allowances from others to cover their emissions. The total amount of emissions allowances issued decreases annually. Market activity has increased steadily, with all transactions totalling approximately EUR 148 billion in 2011.

As the EU ETS covers almost 50% of the EU's greenhouse gas emissions, it is a central pillar of the EU's approach to reducing its climate change impact. It allows some use of international credits, can be linked to similar cap and trade systems and so is a driving force for an international carbon market and carbon prices that promote clean investment and emissions reductions in developed and emerging economies across the world. The EU's experience is allowing other large economies, such as China, South Korea and California, to move ahead faster and with more certainty with their own emissions trading systems."

*Have you encountered difficulty in convincing the public that you can trade something that cannot be seen?*

"Of course, we cannot see CO<sub>2</sub> emissions, but people are increasingly aware of the climate impact that results from the build-up of man-made CO<sub>2</sub> in the atmosphere and convinced of the need to act to reduce emissions. While trading under the EU ETS is open to all who meet the minimum security criteria to open an account, the EU ETS generally involves large emitters and those active in financial markets. With a solid accounting infrastructure, it provides market participants with the confidence that each allowance does indeed correspond to one tonne of CO<sub>2</sub> emissions.

The public needs to know that the EU ETS is successful in cutting emissions. The emissions of each operator, verified by a third-party auditor, are visible to all via the registry system". See <http://ec.europa.eu/environment/ets/account.do?languageCode=en>.

*In December 2009, Europol issued a press release stating that the EU ETS had been the victim of VAT fraud, resulting in losses of approximately EUR 5 billion over an 18-month period. Can you tell us where the EU ETS stands today in terms of VAT fraud?*

"Like many other markets, the carbon market has been a victim of VAT fraud, and as in any other market, fraud is detrimental to the market's legitimate functioning. The VAT fraud that was reported in 2009 caused great concern and led us to take action at policy level, which is the European Commission's role. However, it is investigating bodies that play the key role in tackling fraud cases and are perhaps better placed than the European Commission to assess the scope of fraud both in the past and today."

*Have the measures taken by various governments succeeded in cutting ETS fraud, or is more coordinated, sustained action required?*

"To address VAT fraud on EU ETS allowances, Member States now have the possibility to apply a reverse charge mechanism, whereby VAT is owed by the recipient of the allowances and not by the seller. The European Commission is encouraging all Member States to adopt this mechanism to ensure consistent measures across the European Union. According to the latest information we have received, 18 Member States currently apply this mechanism. VAT fraud occurs in many sectors. As far as the carbon market is concerned, our impression is that the implementation of the reverse charge mechanism has been successful in fighting VAT fraud, but the risk still exists because this mechanism has not been implemented by all Member States."

*What presents the greatest threat to the success of the EU ETS today?*

"Reputation is important, especially for a relatively young, policy-based market like the EU ETS, where steps to strengthen the system are still being taken. Any bad news story can be over-amplified and used to undermine the public credibility of ETS as a policy. The EU ETS is an active market with substantial financial flows and so will attract potential fraudsters. It has faced some fraud and other teething problems, which we have worked swiftly with decision-makers to rectify. Stories that make mountains out of molehills only distract the debate from the policy decisions that need to be made to allow the European Union and others to get on a cost-effective path to decarbonising their economies over the coming decades."

*What are you doing to address this threat?*

"Looking to the future, we will keep working to strengthen and improve the EU ETS and minimise the risk of fraud. For example, sustained and coordinated action is essential to prevent and fight fraud, not only tax fraud, but also other risks that the EU ETS faces. Member States have faced cyberattacks in the past, using phishing or more elaborate hacking. We have worked and continue working hard to ensure that measures are in place to minimise the risk of such incidents reoccurring."

*What has been the effect of the major revision that strengthened the system in 2009?*

"The revision of EU ETS legislation that was agreed in 2009 led to the expansion of the system to some new gases and sectors in 2013, but, more importantly, to a fully

**"The EU ETS is a huge success story."**



harmonised system with an EU-wide cap, allocation rules and infrastructure, particularly for the registry that tracks the ownership of allowances held in electronic accounts, transfers of allowances, verified emissions data and compliance status for companies covered. Since 2012, a single Union registry, operated by the European Commission, covering all 31 countries participating in the EU ETS, has replaced a network of national registries, and state of the art security measures have been implemented.”

#### *Are further major revisions planned?*

“Further revisions are part of the process of development of climate policy to meet our long-term climate targets. The climate and energy package adopted in 2009 – that includes the revision of the EU ETS – sets the framework until 2020. The framework must now be set to include a possible revision of the rules under the EU ETS for the period 2020 to 2030; in January, the European Commission issued a package of proposals for the EU’s Climate and Energy framework to 2030.

The unexpected depth and duration of the financial and debt crisis in Europe has led to a significant drop in demand and a larger than expected surplus of emissions allowances, depressing the carbon price. This development has led to calls for new structural measures; in January, the Commission proposed a Market Stability Reserve to make the EU ETS more resilient to such unexpected external shocks.”

#### *Can you describe a success story since you took over your role?*

“The EU ETS is a huge success story. Starting from scratch in 2005, the European Union has created an entirely new market. In 2011, transactions totalled EUR 148 billion and emissions decreased by more than 10% below the 2008 level. In addition, the price of CO<sub>2</sub> is now part of EU companies’ business and investment decisions. The EU ETS helps to ensure that the European Union cuts its greenhouse gas emissions and invests in the low carbon economy of the future.”

#### *Have you been able to apply the experience you gained in this case to other cases or do you find that each case is different?*

“The European Commission has been working with China, Australia, Korea, Switzerland, states in the USA, and provinces in Canada, among others, to support the development of successful and compatible cap and trade systems. Our experience gives others confidence that an emissions

trading system can be established and more certainty on how best to go about it.”

#### *Protecting the environment is one of the most important tasks facing the European Union, but it is just one of many actors. Do you think the European Union can achieve anything substantive?*

“The European Union emits approximately 11% of global greenhouse gas emissions. Our share of emissions is falling, in part because we are successful in cutting our emissions. Emerging economies, by contrast, have growing levels of emissions. The EU ETS shows that agreement across 31 countries to cap emissions and create a common carbon price is possible; EU emission standards for cars have been copied by many countries around the world, including China. The European Union is also a source of inspiration and technology in terms of investing in a green economy; it is a leader in terms of renewable energy and other low carbon technologies and practices.”

#### *Can you explain what you are doing to protect the environment, and how you can enforce the application of EU environmental rules by Member States?*

“The EU ETS protects the environment by reducing greenhouse gas emissions. It uses a market-based approach to provide longer-term incentives to move to low-carbon technologies. Since the start of the EU ETS in 2005, a growing harmonisation of the rules governing the system has produced a more consistent approach across all Member States.

Close cooperation between the European Commission and Member States in the development and application of the rules is a key factor in their successful implementation. Ultimately, the European Commission can open infringement proceedings against Member States in its role as guardian of the Treaties.”

#### *Could you describe the role of Eurojust regarding ETS fraud?*

“Eurojust and other coordination bodies have crucial roles in investigations and prosecutions of VAT fraud regarding carbon allowances. Efficient coordination is essential because different rules apply in different countries, allowing criminals to more easily target cross-border markets. Unfortunately, we know that the carbon market could be targeted by other fraud attempts. But at least we know that we can benefit from Eurojust’s efforts in the areas of tax fraud, cybercrime and money laundering should these materialise.”

## Interview with Francesco Lo Voi

*Chair of Eurojust Financial and Economic Crime Team and National Member for Italy*

**F**rancesco Lo Voi has been National Member for Italy since December 2009. After working as a magistrate since 1981, he was appointed to the Prosecutor's Office in Palermo, where he was also a member of the Anti-mafia Unit (*Direzione Distrettuale Antimafia*) until 1997. Subsequently, he became Deputy Prosecutor General at the General Prosecutor's Office in Palermo. From 2002 to 2006, Mr Lo Voi was a member of the Italian High Council for the Judiciary. Mr Lo Voi's international experience as a prosecutor was enhanced by his service as a prosecutor, his subsequent appointment as contact point of the European Judicial Network, and the activities he carried out by appointment of the European Commission, Council of Europe, FATF-GAFI and the UN. The position he last held before being appointed to Eurojust was Deputy General Prosecutor before the Italian Supreme Court (*Corte di Cassazione*).

**Eurojust News:** *Can you tell us something about the work of the Financial and Economic Crime (FEC) Team in combating MTIC fraud?*

**Francesco Lo Voi:** "The mandate of the FEC Team is to give advice to the College of Eurojust on fraud-related matters. The FEC Team has a very wide competence, ranging from 'simple' financial cases, such as money laundering and corruption, to more complicated types of crime, e.g. environmental crime.

The FEC Team receives information from relevant organisations, including

updates on criminal trends and new instruments at EU level, and closely follows crime trends. MTIC fraud is very often linked to other types of crime, such as money laundering.

Large strategic seminars, such as the one held on 27 and 28 November 2013 on environmental crime, help to gather knowledge and share it with the people dealing with these issues on a daily basis. The Project Team on Environmental Crime, part of the FEC Team, co-organised the strategic meeting with the European Network of Prosecutors

for the Environment (ENPE), following up on the Eurojust strategic project on environmental crime. Although such meetings are important, receiving information on casework from the Eurojust National Desks and other involved organisations is equally important. The meeting on environmental crime was followed by *Eurojust News*, issue #10 on the same subject.

FEC Team members sometimes address or give presentations to external delegations or speak at external seminars about the work of the team. Team members



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also serve as contact points in networks involved in fighting MTIC fraud. Mr Hamran, Vice-President of Eurojust and National Member for the Slovak Republic, is also Eurojust contact point for the Camden Assets Recovery Interagency Network (CARIN), and Mr Arvidsson, Assistant to the Swedish Desk, is Eurojust contact point for the National Asset Recovery Office platform.”

*The number of cases of MTIC fraud has increased. What are the reasons for this disturbing trend?*

“Unfortunately, the number of MTIC fraud cases, which can be attributed to a multitude of factors, has dramatically increased, and must be tackled with a coordinated approach. Differences in legislation, investigation and penalties in the Member States are major obstacles. The category of ‘tax crime’ is not always considered with the same level of attention as other crimes. With the use of the Internet, you can

immediately transfer millions of euros electronically, but a country that requires bank account data from another country will need to submit a rogatory letter. While the rogatory letter is being transmitted and processed, money can be transferred many more times, making detection of the money trail more difficult.

The worldwide financial crisis has allowed OCGs to take advantage of legal loopholes such as bankruptcy proceedings. MTIC fraud is committed by professional criminals and is often linked with carousel fraud, which requires very sophisticated organisation, and excise fraud, which is often part of a wider system of illicit activities.”

*Can you point to any progress made by the FEC Team and by Eurojust in the fight against MTIC fraud?*

“The FEC Team provided input to Eurojust’s contribution to the first EU

Anti-Corruption Report in February 2013. The FEC Team also drafted a reply to the questionnaire of the European Commission on mutual recognition and confiscation in March. On the basis of a questionnaire disseminated by Eurojust, Mr Hamran prepared a *Report on non-conviction-based confiscation*, also provided to the European Commission.

Another area in which the FEC Team can give added value is by providing opinions. Last year, the European Parliament requested an opinion on Eurojust on a new proposal about freezing and confiscation of assets. Eurojust submitted an opinion and presented it to the European Parliament. The work was carried out rapidly and was greatly appreciated. The FEC Team will of course continue to follow the issue and provide assistance to the National Desks and the College of Eurojust.”

“The category of ‘tax crime’ is not always considered with the same level of attention as other crimes.”

## Case example: Carousel fraud

**F**rench authorities investigated a case of carousel fraud involving the trading of precious metals such as platinum and nickel. The case involved different companies located in Belgium, Spain, the UK and France. The OCG, composed of three previously identified suspects, bought precious metals, via a Belgian company, from a Belgian and a UK company. They subsequently resold the same goods to companies located in Spain, France and Cyprus and other companies located within the European Union, thus avoiding the payment of VAT to the French Ministry of Finance.

France faced delays in the transmission of information collected in the requested jurisdictions to the requesting

authorities. The support of Eurojust was requested to facilitate judicial coordination, the exchange of information, and the setting up of a JIT. Support was also needed regarding the possibility of extraditing one of the suspects. With several companies involved, coordination was needed to avoid potential *ne bis in idem* situations. Two coordination meetings were held. A JIT agreement was signed between France and Belgium in November 2011, and as a result of the second coordination meeting, the duration of the JIT was extended. In addition to Eurojust’s support in judicial matters, Europol provided analytical support during the investigation phase. As a result of the investigations, a massive amount of case-related information was seized in France.

## Introducing Vice-President Ladislav Hamran

**M**r Ladislav Hamran, National Member for the Slovak Republic, joined Eurojust in September 2007 and was elected Vice-President in December 2013. His appointment completes the Presidency Team, composed of Michèle Coninx, President, and Francisco Jiménez-Villarejo, Vice-President.

Mr Hamran is a career prosecutor and an expert in asset recovery and confiscation. He began his career first as a trainee at the Regional Prosecutor's Office in Nitra in 1997, then as Prosecutor at the District Prosecutor's Office in 2000, Prosecutor at the Special Prosecutor's Office of the General Prosecutor in 2003, and Prosecutor in the Economic Crime Section of the Penal Department of the General Prosecutor's Office in 2004, prior to his appointment to Eurojust.

Mr Hamran is also a member of the United Nations group of experts involved in a comparative study on fraud. He was contact point for CARIN for the Slovak Republic from 2005 to 2007, and has been the contact point for Eurojust since 2008.

The President of Eurojust, Ms Michèle Coninx, commented: *"I am very pleased to welcome Mr Hamran as the newest member of the Presidency Team at this pivotal moment in our institutional development. The need for a well-rounded team is especially important to help us carry out our tasks to the fullest extent possible. I am confident that his commitment to the role of Vice-President will contribute to promoting the work of Eurojust and its further development."*

*For related information, please see Eurojust News, issue #4 on Fraud and Eurojust News, issue #8 on the European Public Prosecutor's Office. Both are available on the Eurojust website.*



*Presidency Team: Francisco Jiménez-Villarejo, Michèle Coninx, Ladislav Hamran*

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## Colophon

*Eurojust News* is produced by Eurojust's Press & PR Service.

Copywriter: Barry Irvine

Editor: Jacalyn Birk

Layout: *euroscript*

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Catalogue no: QP-AB-14-001-EN-C

ISSN: 1831-5623