Value-Added Tax Fraud within the European Union

Pilot Study

dr. A.A. Aronowitz
mr. D.C.G. Laagland
G. Paulides
mr. drs. J.M. Nelen (project supervisor)
Foreword

This project is jointly funded by the Research and Documentation Centre (WODC) of the Ministry of Justice, the Netherlands and the European Documentation and Research Network on Cross-Border Crime Foundation (EDRN). The researchers wish to thank the EDRN for its financial support of this project.

The following persons also deserve our thanks. They have been instrumental in assisting us to carry out the research in the Netherlands and Belgium: mr. H. de Die (Central Unit, the Netherlands), R. Verbraak (Business Unit, Tax Services, the Netherlands), M. Holsteyn (Central Service for the fight against Organized Economic and Financial Offences, Belgium), drs. R. Tjalkens (EUROPOL), and drs. R. Emmery (Ministry of Justice, the Netherlands). Thanks is also offered to representatives from the Directorates General XIX and XXI who granted interviews, and to other representatives from tax authorities and fiscal agencies who sent copies of the questionnaires outlining their country’s tax collection and control procedures.

Our special heartfelt thanks go to Mr. Rob Faber from the Customs Investigation branch at the FIOD. Mr. Faber’s interest in, and dedication to this project, greatly enhanced the researchers’ understanding of the patterns of value added tax-fraud, its investigation and control in the Netherlands.
# Table of contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Introduction</td>
<td>1</td>
</tr>
<tr>
<td>1.1 The Need for Research on Value-Added Tax Fraud</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Status of the Pilot Study</td>
<td>2</td>
</tr>
<tr>
<td>1.3 Construction of the Report</td>
<td>3</td>
</tr>
<tr>
<td>2 Research Questions and Methods</td>
<td>4</td>
</tr>
<tr>
<td>2.1 The Rationale of Value-Added Tax</td>
<td>4</td>
</tr>
<tr>
<td>2.2 VAT Fraud: Domestic Fraud and E.U. Fraud?</td>
<td>6</td>
</tr>
<tr>
<td>2.3 Defining the Research Terrain</td>
<td>8</td>
</tr>
<tr>
<td>2.4 Research Questions</td>
<td>9</td>
</tr>
<tr>
<td>2.5 Methodology and Research Instruments</td>
<td>9</td>
</tr>
<tr>
<td>3 European Union Regulations</td>
<td>11</td>
</tr>
<tr>
<td>3.1 EU Regulations Prior to 1 January 1993</td>
<td>11</td>
</tr>
<tr>
<td>3.2 EU Regulations Post 1 January 1993</td>
<td>12</td>
</tr>
<tr>
<td>3.3 European Controls and Cooperation: the Communal Fight Against Fraud</td>
<td>14</td>
</tr>
<tr>
<td>3.3.1 Prevention</td>
<td>14</td>
</tr>
<tr>
<td>3.3.2 Enforcement</td>
<td>16</td>
</tr>
<tr>
<td>3.3.3 Cooperation Between Member States</td>
<td>16</td>
</tr>
<tr>
<td>4 The Detection and Settlement of VAT Fraud within the Netherlands</td>
<td>20</td>
</tr>
<tr>
<td>4.1 Detection</td>
<td>20</td>
</tr>
<tr>
<td>4.1.1 Control by the Enterprise Unit</td>
<td>20</td>
</tr>
<tr>
<td>4.1.2 Control of Intra-Community Transactions</td>
<td>22</td>
</tr>
<tr>
<td>4.2 Investigation and Settlement</td>
<td>24</td>
</tr>
<tr>
<td>4.2.1 Investigation of VAT fraud Cases by the Fiscal Intelligence and Investigation Department</td>
<td>24</td>
</tr>
<tr>
<td>4.2.2 The Public Prosecutor and Cases Involving Serious Fraud</td>
<td>25</td>
</tr>
<tr>
<td>5 A Preliminary Look at Cases of Fraud</td>
<td>27</td>
</tr>
<tr>
<td>5.1 Possibilities to Commit Fraud</td>
<td>27</td>
</tr>
<tr>
<td>5.2 Fraud Constructions</td>
<td>28</td>
</tr>
<tr>
<td>5.2.1 Fictitious Intra-Community Supply, Real Goods</td>
<td>29</td>
</tr>
<tr>
<td>5.2.2 Fictitious Intra-Community Supply, Fictitious Goods</td>
<td>32</td>
</tr>
<tr>
<td>5.2.3 Non-Declaration of Intra-Community Acquisitions</td>
<td>33</td>
</tr>
</tbody>
</table>
6 Concluding Remarks

7 Plan for the future
7.1 Theoretical Underpinnings
7.1.1 Organized Crime vs. Corporate Crime
7.1.2 The Fraudsters and their Organizations
7.2 Future Activities

References

Appendix A: file analysis
Appendix B: questionnaire for experts
Appendix C: abbreviations
1 Introduction

During the last decade organized crime has attracted increased attention from governments, law enforcement agencies and social scientists all over the world. The focus of interest is the worldwide drug trafficking of international crime organizations like the Mafia, the Chinese Triads, the Colombian cocaine cartels and the huge profits these organizations allegedly launder and reinvest in legitimate industry. The strong emphasis on drug trafficking neglects the finding that organized business crime may be at least as lucrative and (from the point of view of the crime-entrepreneur) much safer (van Duyne, et al. 1990). There is also ample evidence that the distinction between crime entrepreneurs and so-called white collar criminals is fallacious. Indeed, many symbiotic relationships have been established between representatives of organized and corporate crime.

This research project, to a certain degree, aims at filling the knowledge gap concerning organized business crime by highlighting one specific phenomenon, that of cross-border VAT fraud within the European Union. Insight is to be provided into

(a) the effectiveness of the present VAT control system
(b) the vulnerability of legitimate trade to criminal inroads
(c) the development of organized crime in this area.

1.1 The need for research on value added tax fraud

Value-added tax (VAT)\(^1\) is a cost price increasing tax: it creates a 'wedge' between the price of the real production process and the final market price. As exportation is free of VAT (the so-called 'zero tariff') and differences in VAT rates occur between the member states of the European Union (E.U.), this economic regulation has been abused by a number of organized criminals as well as criminal organizations in various countries. On 1 January 1993 a new regulation concerning VAT went into effect in the member states of the E.U.. Because import and export documents are no longer required, and because customs controls at the internal borders have been abandoned, criminal opportunities are likely to increase. Research on organized VAT fraud has been carried out in the Netherlands and Belgium on the basis of investigations of several large fraud schemes by customs officials and the police in the Benelux (van Duyne, et. al, 1990). The research has shown that the Benelux treaty provided ample opportunity for VAT fraud. The extensive organized crime VAT patterns which have been observed in the Benelux during the last 10 years may well spread to the whole E.U.

\(^1\) Value added tax will be abbreviated throughout this report as VAT. For a list of further abbreviations, see Appendix C.
The cases identified by van Duyne are only a small part of the whole range of VAT fraud within the E.U. Therefore, the question to what extent the legitimate industry is affected by such crime entrepreneurs, cannot be answered. As no quantitative research data are available, statements about the impact of VAT fraud on the legitimate trade are merely speculative. Nevertheless, the damage to the member states and to society is thought to be great and such practices have a serious negative impact on the competitive relations in industry. Tax fraud's corrupting influence creates a real danger that legitimate businesses cannot compete any more with criminal enterprises that sell their goods at a (fraudulently) reduced price. As a result of this unfair competition legitimate businesses may be forced into bankruptcy or induced to join the criminal VAT trade themselves. VAT fraud's further negative impact can be seen in the form of frustration from the standpoint of commercial policy or objectives and last, but not least important, in the form of direct financial disadvantage to the E.U. and its individual member states. In essence, then, VAT-fraud claims numerous victims. It affects the communal budget of the E.U. as well as the tax base of the country in which the fraud is being committed. It destabilizes legitimate businesses (possibly causing some to go bankrupt and others to join in the illegal operation to avoid tremendous losses). Members of society are the final 'victims'. Their trust in commerce and industry may be shattered as a result of fraudulent business practices.

As little scientific knowledge is available on VAT-fraud, it is highly relevant to gain more insight into the nature of this type of organized business crime and its perpetrators. This information may also be used in the process of developing a uniform VAT system within the E.U.

1.2 Status of the pilot study

Originally three phases were distinguished for the research project on VAT fraud. Phase one encompasses the orientation with the topic and collection of relevant material to include regulations, literature, identifying and establishing contact with key figures and public bodies concerned with the VAT system and its abuse. Six months were scheduled for completion of this phase. Six months are allotted for phase two in which a description of the control system will be provided. Phase three will entail empirical research on the manifestation of VAT fraud. During this phase the data will be analyzed and a final report will be produced.

In practice, the three phases have been merged into two phases. In addition to an inventory of the literature in phase one, a description of the control system in the Netherlands was initiated. Preliminary contact with control agencies in other countries was also established in phase one. Phase two will continue when the remaining countries selected for study are identified and more about their control systems is learned.

The orientation phase became a pilot study to determine the feasibility of gaining access to files and the willingness of control and enforcement officials to share information with us. Preliminary research was conducted within the Netherlands, with initial contact being established in Belgium. This pilot study presents material gleaned during the first six months of research and is a report on phase one.
Chapter 2 of this report is designed to introduce the reader to the concept, history and purpose of VAT, as well as the concept of VAT fraud. Here we will provide a formulation of the problem. Further issues addressed in Chapter 2 define the research terrain, and pose questions which the research project aims to answer. The methodology and research instruments (both research instruments are included in the Appendix) will be discussed at greater length.

Chapter 3 addresses in greater detail the E.U. regulations prior to and after 1 January 1993. The reader will also become familiar with controls at the European level and intra-Community cooperation in the fight against fraud.

In Chapter 4 the research examines the practices in the Netherlands. Audit aspects carried out by the tax administration, in particular the Enterprise Units and the Central Unit in Deventer, and the investigation aspects carried out by the Fiscal Intelligence and Investigation Department (Fiscale Inlichtingen- en Opsporingsdienst or FIOD) will be discussed in greater detail. The FIOD’s activities are limited and focus upon the most serious VAT violations. The majority of offenses are dealt with administratively through the Enterprise Unit (Ondernemingseenheid) of the Tax Administration. The information is rounded out with a preliminary examination of patterns of fraud in Chapter 5. The reader is provided with a description and diagrams of fraud patterns. This information will provide the reader with a general understanding of the ways in which VAT fraud is being committed. The final report will elaborate on the general principles established in Chapter 5.

Some summary and concluding remarks will be presented to the reader in Chapter 6.

Chapter 7 examines the phenomenon of business crime and its relationship to organized crime, or rather the question of criminal entrepreneurs versus enterprising criminals. The degree of organization of VAT fraud operations will be examined in the final report in reference to the theoretical underpinnings presented in this chapter. The report closes with a description of the research plan for the coming year.
2 Research questions and methods

2.1 The rationale of value-added tax

In this section we will examine the rationale of value-added tax based upon the situation in the Netherlands. VAT laws applicable to intra-Community trade are the same within E.U. member states.

The history of VAT in the Netherlands dates back to 1569 (Schoenmaker, 1990) when it was first introduced by the Duke of Alva. This tax originated in Spain when, in 1342, dwindling state financial resources led to the introduction of this tax. Some years after its introduction in the Netherlands the tax was repealed. It was not until 1934 that the tax was reintroduced in the Netherlands. In that year a bill for a so-called luxury tax was introduced. It took eight years before the needs of the treasury resulted in the levying of a sales tax. In 1940 the system of levying a one-time tax was substituted by the cumulative cascade system. This resulted in a tax being levied on the supply of all goods and services at each step along the way. In other words, every time an item was sold, and the price increased between each new supplier and purchaser, a new tax was levied on the sale. Since 1968 the system of cumulative cascade has been replaced by the system of value-added tax. The entrepreneur, who must pay tax, is able, at a later point in time, to reclaim the prepaid tax on every supply or service purchased. This system results in the entrepreneur paying tax only on the value which he or she added to the item. The consumer, as the last one in the chain, pays the final tax and is not entitled to a refund. In essence then, it is the consumer who pays the tax on the value of the goods.

The principles of VAT are quite simple. Whenever Company B purchases goods, VAT is charged by Company A who supplies the goods (in the Netherlands VAT amounts to 17.5% over the value of the item). Company A pays this tax to the tax authorities and Company B may request a refund of the VAT paid to Company A from the tax authorities. This scenario is repeated if Company B sells the goods to Company C; (B charges C VAT and pays this to the tax authorities; C may request his taxes back).

Diagram I outlines the flow of goods and taxes between enterprises and the tax administration. For the sake of simplicity, this example uses a 20% VAT-rate.

---

2 In the Netherlands the 17.5% rate is the standard rate. Reduced VAT rates exist for certain goods (water, books, pharmaceutical products) and exemptions exist for certain services (telephone and international transportation). These standard and reduced rates, and exemptions differ from one country to the next.
Diagram 1: DOMESTIC VAT PROFILE

<table>
<thead>
<tr>
<th>COMPANY A</th>
<th>COMPANY B</th>
<th>COMPANY C</th>
<th>CONSUMER Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>A sells</td>
<td>B sells</td>
<td>C sells</td>
<td>PAYS 20</td>
</tr>
<tr>
<td>goods</td>
<td>the same</td>
<td>the same</td>
<td>TO THE TAX</td>
</tr>
<tr>
<td>to B</td>
<td></td>
<td></td>
<td>ADMINISTRATION</td>
</tr>
<tr>
<td>at 100</td>
<td></td>
<td></td>
<td>FROM 20</td>
</tr>
<tr>
<td>(excl. VAT)</td>
<td></td>
<td></td>
<td>TO 110</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FROM 100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>+ 20 (20% VAT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>= 120</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FROM B</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>+ 20 (20% VAT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>= 122</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FROM C</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>+ 22 (20% VAT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>= 150</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FROM Y</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>+ 30 (20% VAT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>= 180</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FROM Y</td>
</tr>
</tbody>
</table>

The imposition of VAT, as it applies to corporate bodies or businesses, occurs in the country where the taxable item is ultimately used by the consumer. The following example illustrates this principle: a company in the Netherlands which sells and delivers a product to a company in Germany is not required to pay VAT to the Dutch government on the product. Intra-community supply is subject to a ‘zero-rating’. The German company, on the other hand, is required to pay VAT to the German tax authorities on the intra-community acquisition of its goods. The principle of paying VAT in the country of destination is called the "country of destination principle". Similar VAT laws are applicable in all E.U. countries.

---

3 The terms Intra-Community Supply (ICS) and Intra-Community Acquisition (ICA) will be used to describe transactions (Intra-Community Transactions or ICT’s) which occur between E.U. member states. The terms import and export are generally reserved for trade between E.U. member states and third or non-E.U. countries.
2.2 VAT-fraud: domestic fraud and E.U. fraud?

The literature on E.U. fraud as well as that on VAT-fraud is extensive and often times confusing. A clear definition of the phenomenon was necessary to sharpen the focus of the research. This section will define VAT fraud, outline the broader concept of E.U. fraud and attempt to answer the question of whether or not VAT fraud is solely a domestic phenomenon or whether it is also an E.U. offence. Despite the fact that experts disagree as to whether VAT fraud is E.U. fraud, there is no doubt that VAT has a tremendous impact upon the E.U. VAT is the largest and most important source of income for the E.U. coffers. Member states pay 1.4% of their taxable basis (this amounts to approximately 10% of their own VAT taxes) to the E.U. which amounts to approximately 65% of the Union's budget.

According to Mennens (1994; 97) VAT fraud occurs thousands of times a day in Belgium and other E.U. member states. Tax inconsistencies or fraud can take on different forms. Below are some examples of fraudulent tax practices. The way in which these practices are carried out may be determined by the E.U. legislation in force at the particular time. Chapter 3 of this report will address the specific changes in European law concerning intra-Community transactions and customs control as well as the various types of fraudulent practices which developed as a result of the introduction of the 6th Revised E.U. directive which entered into effect on 1 January 1993.

Practices which deprive the tax authorities of their proper revenue range from non-intentional inconsistencies such as forgetting to submit a tax return or submitting one past the deadline, to filing a (non-intentional) incorrect tax return. Other practices involve criminal intent and are somewhat more sophisticated. Individuals may file false returns (failing to report and pay taxes on goods which were acquired as the result of an ICA and then later sold on the 'black' market) or may fail to deliver goods which were declared delivered - as a result of an ICS - and for which taxes were then reclaimed from the authorities. Even more sophisticated fraudulent practices involve the custom of smuggling goods from third (non-E.U.) countries into the country (to avoid paying customs and VAT taxes), the use of false VAT identification numbers or the abuse of using a company's VAT identification number without the knowledge or permission of the owner, the exchange of goods (taxes are paid on lower quality equipment or goods and more expensive goods are sold without taxes), and the use of fraud-carousels. These fraudulent schemes are described and diagrammed in Chapter 5, sections 5.2 through 5.2.3.

VAT fraud can be committed at various levels. The level of VAT fraud will most likely determine the scheme used to commit the offence. VAT fraud can be committed within the borders of one country. This type of fraud is characterized by a failure to report certain turnover (false declarations, such as failing to declare a domestic supply or

---

4 Carousel-fraud is a fraud scheme in which fictitious invoices and falsified documents are used to create the illusion of the intra-Community transaction of goods. Typical of this type of fraud is its repetitive nature (the goods go 'round' and 'round' between countries as if on a carousel) whereby the (real or fictitious) goods are purchased and sold numerous times between countries. VAT refunds are frequently requested on the same goods.

5 For more on VAT fraud practices also see Emmery, 1992-1993, Faber, 1993; and FIOD, no publication date).
acquisition on the regular tax return). A second level of fraud, cross-border fraud between E.U. member states, involves more than one country or the use of E.U. regulations to create the illusion of transacting an ICS against the 'zero-tariff'. Fraud-carousels are characteristic of this type of fraud. A third level involves fraudulent practices between E.U. member states and a third (non-E.U.) country.

While member states are required to turn over information to the E.U. concerning cases of fraud occurring within their countries, any statistics involving cases of fraud must be viewed with scepticism. There is a large 'dark number' of unidentified or unreported cases involving fraud. To further complicate this picture, a number of other factors are at work which obscure the true picture of fraud within the E.U.. According to Mennens, (de Smet, 1994; 301) the number of registered fraud cases reported to the European Union is relatively small; countries are either uncovering an insufficient number of fraud cases, or their reports to the E.U. concerning the known cases do not accurately reflect the actual practices within their country (ie. they simply are not reporting all of the cases uncovered). Even where cases of fraud are discovered, member states' reporting is inaccurate which leads to a distorted picture of the true extent of crime in the E.U.

The definition of 'European Union fraud' has undergone a number of changes. In 1987, the European Commission, in describing E.U. fraud, provided the following definition (Wyngaert, 1994; 34): "any violation, whether or not intentional, of a judicial rule, whether by persons or private institutions, which has detrimental financial impact upon the communal budget". According to this definition then, any irregularities which negatively impact upon the national VAT income, also effect the European treasury; thus, even national VAT fraud is, in a sense, European Union VAT fraud. This broad definition would even recognize as E.U. fraud, those cases of VAT fraud which might be only domestic, but which ultimately deprive the communal budget. Perhaps a more complete definition can be found in that which was provided by the 1990 Belgian-Netherlands symposium dedicated to the light against fraud: "Every intentional and planned act by persons or (a corporate body) - whether or not in organized liaison - whose intention it is to evade the regulations of the European Community for the purpose of making an illegal profit for oneself or others" (FIOD, no publication date; 5). This definition expands upon the previous one by emphasizing an intentional circumvention of E.U. regulations for the purpose of making a profit. It was a combination of these two definitions which were selected to set the parameters for our study of VAT fraud. Based upon these two definitions, VAT fraud could be viewed as E.U. fraud.

On the other hand, however, Community fraud, per se, is not a specific criminal offense. European Union fraud is not legally defined as a separate offense by most member states (Passas, 1993). While E.U. fraud clearly encompasses acts which violate European laws involving customs, agriculture (and its subsidies) and structural funds, there is no consensus upon whether in fact VAT fraud is indeed E.U. fraud. No Europe-wide laws exist prohibiting the practice of fraud. The fact that no community-

---

6 Italy's legislature, in 1986, passed a special law making the defrauding of the European Union a new criminal offense.
wide definition of E.U. fraud exists, and that each member state must define the prohibited act within the boundaries of its own legal system, is an argument in favour of viewing VAT fraud solely as a domestic issue. It is not our intention to take a stand on the issue, but rather to present the reader with the complexity of the phenomenon due to a myriad of definitions and conflicting expert opinions. The standpoint that one takes on the issue, as well as the definition selected, will determine which types of cases will be suitable and selected for research.

2.3 Defining the research terrain

The focus of this research is upon cross-border value-added tax fraud within the E.U. This narrows the field of VAT fraud research to frauds extending across borders (as opposed to solely domestic VAT fraud) and at least in the initial phase of the research, to those committed between E.U. member states (thus excluding frauds perpetrated by individuals or companies in non-E.U. countries). There are a number of reasons for narrowing the focus of the research to only those types of cases selected for this project.

In the first place, the project was funded in part by the European Documentation and Research Network on Cross-Border Crime. Additionally, it was our intention to examine cases of fraud which were committed by manipulating the present transitional regime governing trade within the E.U. Because of differences in controlling the transactions between E.U. member states and those between E.U. member states and third countries, it was decided, at least for the pilot study, to limit the study to inner-E.U. VAT frauds. The possibility exists that fraud involving non-E.U. countries may be addressed in the final report.

This report identifies only those control and investigative instances in the Netherlands. While preliminary contact was established, and research conducted in Belgium, a number of other agencies in Belgium must be contacted before we can report on the practices there. This information will be provided in the final report.
2.4 Research questions

Although limited information is available concerning the control systems in member states (Questionnaire concerning VAT Collection and Control Procedures applied in Member States), one of the aims of this project was to talk with experts in order to establish a better understanding of how the system works in practice: the authority, working patterns, and limitations of control and investigating agencies involved in the identification and fight against VAT fraud. To fully comprehend the nature of the problem it was necessary to examine control systems on both a national and a supranational level. Questions addressed in this project include:

I. * What are the existing control mechanisms and how do they operate?
   * What public bodies are responsible for the fight against VAT fraud and what are their competencies?
   * What are the possibilities to exchange information between member states on VAT irregularities and how are these put into action?

Beyond a purely juridical approach to studying VAT fraud, this project emphasizes a sociological or criminological approach by addressing the subject of the actual operation of fraudulent entrepreneurs. This is the focus of the forthcoming research. This objective we hope to accomplish through empirical research into the structure and modus operandi of crime-enterprises involved in (organized) VAT fraud. The following questions will be addressed:

II. * What techniques of VAT fraud are being used?
   * Which legitimate branches of industry are being affected by this fraud in the sense of (a) damage inflicted and (b) complicity of the ‘legitimate’ entrepreneurs?
   * What are the structures of the organizations or networks and what are the profiles of the crime-entrepreneurs involved?

2.5 Methodology and research instruments

The initial stage of the project involved an in-depth literature review of the phenomenon of fraud to include the practice of fraud with VAT, as well as the broader concept of E.U. fraud. To complement the literature, a number of interviews were arranged with representatives from several institutions within the Netherlands and Belgium (ie. the Fiscal Intelligence and Investigation Department - FIOD, EUROPOL, the Central Unit - (Centrale Eenheid), Enterprise Unit (Ondernemingseenheid). More information concerning the functioning of the various agencies can be found in Chapter 4.8 These interviews facilitated a better understanding of the nature of the problem, and the difficulty involved in the investigation of tax fraud. Access was granted to review files

7 This questionnaire is sent by the Directorate-General (DG) XIX to VAT or fiscal offices in member states every three years to obtain information on VAT collection and control procedures. The DG then summarizes the results of this questionnaire and sends the report back to the member states.
8 For information regarding future contacts see Chapter 7.
of VAT fraud cases on file at the Fiscal Intelligence and Investigation Department. To date, seven cases have been examined.

In addition to the aforementioned meetings, contact was established with representatives from the Directorates General XIX and XXI at the European Commission in Brussels. From the DG XIX the names and addresses of the individuals at the respective Ministries of Finance or VAT offices responsible for filling out the Questionnaire concerning VAT Collection and Control Procedures applied in Member States was obtained. A letter was sent to those responsible in each member state asking their cooperation in gaining access to the data contained in this questionnaire. More than half of the countries responded with a copy of the questionnaire and by offering their assistance in the project, to include points of contact and a liaison officer.

In addition to the previously mentioned agencies involved in the evaluation, inspection and investigation of VAT fraud in the Netherlands, contact was also established with tax advisors. Further contact with experts in the area of VAT was established at conferences in the Netherlands and Germany.

As this is an exploratory study to identify patterns of VAT fraud and the degree of organization, the nature of the data collected in this research project is qualitative. The research instruments described in section 2.4.1 are designed for the purpose of collecting this type of data. The open-ended questions and interviews, as well as variables identified in the file analysis will be evaluated with the assistance of KWALITAN, a computer program which aids in the analysis of qualitative data.

The research instruments

Two research instruments were developed to glean information from specialists in the field as well as to extract information from files at various enforcement agencies. The first research instrument, developed for use with file analysis, was designed as an outline identifying key variables. The variables describe, in detail, the methods and organization of the offense, characteristics of the offenders, the organization of the criminal enterprise and the environmental variables, the financial overview of the operation as well as the investigation.

The second research instrument, a questionnaire for experts, contains 39 open-ended items. It is divided into three major sections containing general questions, those which can be posed to anyone being interviewed. The second section of the questionnaire contains questions directed specifically at personnel working at the Central Units. A third section contains questions written specifically for individuals involved in the investigation and or prosecution of offenders. This questionnaire is subject to modification depending upon circumstances during interviews. See Appendix B for the questionnaire.

9 Those cases reviewed in the Netherlands were both completed and on-going. Completed cases provide information on the administrative or penal handling of the offense; information contained in on-going cases is more limited and in at least one case the entire fraudulent operation has not been completely exposed.

10 See Appendix A.

11 See Appendix B.

12 This section of the questionnaire was adapted in part from a questionnaire submitted by Prof. Dr. Gerhard Dannecker from the University of Bayreuth, Germany. For more information concerning a cooperative research agenda with Professor Dannecker refer to chapter 7.
3 European Union regulations

European Union regulations governing cooperation at various levels between member states is extensive, complex and confusing. It is, however, necessary to be familiar with the laws governing intra-Community trade, enforcement and cooperation, in order to understand how fraud may be perpetrated, why it is difficult to investigate, and what is being done from a domestic as well as an intra-Community standpoint. It is not the authors' intention to provide the reader with an extensive background in E.U. law and regulations. Thus, the information provided in this chapter is not complete. The reader is encouraged to refer to the literature listed in the reference section or in the footnotes for more detail.

3.1 E.U. regulations prior to 1 January 1993

Prior to 1993 VAT had to be paid on the import of goods entering a country (whether from an E.U. or from a non-E.U. country). At the border crossings customs documents had to be presented and stamped, and at any time customs officers had the authority to check transport vehicles to verify whether the contents matched the information printed on the import documents. This worked more as a psychological than an actual physical control. Physical checks of the contents of transport vehicles occurred in less than 5% of all border crossings, thus there was only a slight chance of actually being caught in a fraudulent transaction.

To avoid a delay in the passage of goods within the E.U., community transportation documents were developed. The registration document which could be used to trace the flow of goods between the Benelux countries was the Benelux 50 document; documents used for transactions with other E.U. countries was the T2-document. The code T2 meant the import of goods was duty-free or free from agricultural levies but national taxes like VAT or excise could be levied. T1-documents were used in situations where the goods entered the E.U. from third countries. All taxes had to be levied upon import and member states were entitled to agricultural restitutions when goods were exported. When goods entered the E.U. and they had to transit various countries before arriving at the place of destination, declaration for import had to be made in the first country. Businesses which continually imported goods employed a customs-accountant (douane expéditeur). This individual prepared the declaration and was responsible for the clearing of customs documents. Customs, which settled the declaration, saved a copy of the document. When the goods arrived at the place of destination and the declaration was made, customs sent a copy of the document to the customs office of the country where the goods entered the E.U.. The document was then ‘cleared’ which meant that proof existed that the goods had reached their intended destination.

13 A customs-accountant is someone who is professionally responsible for assuring the clearance of customs documents for client entrepreneurs.
In principle then, the tax payment occurred at the point of import or when the goods entered the country. Under certain circumstances customs payment at the point of entering the E.U. could be postponed until a later point in time. These exceptions to the rule were adopted in the legislation in the Netherlands in order to facilitate the flow of goods across borders. In the Netherlands, a company which imported goods on a regular basis and maintained a reliable and accurate administration, was given a VAT identification number. With this, the company could import goods without having to pay VAT at the border. The amount owed was delayed until a later point in time and was then submitted with the VAT declaration. This postponement and later payment became known as the ‘transfer rule’.

Transactions at the borders between the Benelux countries were governed by the Benelux Economic Union Treaty.14 For transactions between the Netherlands and Belgium businesses were permitted to delay VAT payments because the legal fiction existed that every business had a VAT identification number. The regulations initiated in the Benelux Economic Union Treaty prior to 1993 set a precedence for the current E.U. regulations.

3.2 E.U. regulations post 1 January 1993

As of 1 January 1993 the formalities applied to the import and export of goods at the inner-borders of the E.U. were abandoned. Among these formalities was the payment of VAT upon import at the border. As a consequence of the abolition of controls at the E.U. member states’ internal borders, the E.U. Commission proposed the following options: VAT could be levied in the country of the one who performs the service or provides the goods, or in the country where the service is being performed or where the goods are being delivered. From these options, the Commission selected a system of levying taxes based upon the so-called ‘country of origin’. Under the new system the ‘zero-tariff’ would disappear, thus there would be no difference between service offered to a domestic customer or to one elsewhere within the E.U.. On the other hand the Commission wanted to let the receipt of taxes wind up in the country in which the goods would be used. Should the ‘country of origin’ principle be unabridgedly adopted, then the VAT income of the countries with high exports would increase, while that of importing countries would decrease. Thus, a system of compensation was suggested. This mutual settlement between the member states is supposed to occur through a ‘clearing institute’. The purpose of this clearing institute is to regulate the inequalities and create a balance between importing and exporting member states. This compensation regulation is thought to be the weak link in the proposed system and the E.U. member states are sceptical about introducing it.

Given that the E.U. was intent upon opening up the borders and abolishing border control in 1993, while at the same time did not want to introduce the new tax system based upon the country of origin until 1997, it was necessary to introduce a new system of controls15 which would minimize the perpetration of fraud. In principle, these new

arrangements are in force for the transitional period of four years and should remain in effect until 1 January 1997. However, "[t]he period of application of the transitional arrangements shall be extended automatically until the date of entry into force of the definitive system and in any event until the Council has decided on the definitive system" (European Commission, 1994; 1).

Title XVIa, Article 28a of the amended Sixth Council Directive of 17 May 1977 addresses the scope of taxation of trade between member states. The transitional rules have by now been incorporated into the legislation of individual member states. *For individuals, the country of origin principle applies*, so that VAT is paid in the country where the item was sold. For example, a person from the Netherlands who purchases a camera in Germany, pays VAT (15%) in Germany instead of the Netherlands (17.5%). The exception to this rule is VAT taxes on new motor vehicles and goods on which excise taxes are levied. *For businesses, or legal persons, the country of destination principle remains in effect for the interim period*. This requires companies to pay VAT in their own country when intra-Community acquisitions are involved. Furthermore, the ‘zero-tariff’ on ICS’s still exists.

Under the above mentioned transitional control system, companies are required to file a quarterly summary to the tax authorities concerning their supplies to businesses in other E.U. member countries. Every member state must have a Central Unit Intra-Community Transaction Base, where information is collected and an overview can be provided of all intra-Community supplies (Regulation 218/92, article 2.2). At the Central Unit files are established and information is compiled concerning things such as the VAT identification number of the supplier, the VAT identification number of the purchaser in the other member state, and the total amount of ICT sales per (domestic) supplier in the given quarter. The total amount of ICS’s per foreign purchaser is provided to the Central Unit of the member state in which the purchaser has his seat of establishment according to the so-called listings. This information can then be compared to the VAT declaration on the regular tax return which the particular business has filed in its own country. In these regular tax returns the business is required to provide information concerning the value of the goods acquired from other member states.

Due to the fact that there may be differences between the listings and a business’ own tax return, questions may be posed to the purchaser by the tax authorities in that particular country: tax authorities in each member state conduct their own VAT audits. At the same time information may be sought from the member state where the supplier has his seat of establishment.

This section has examined the E.U. regulations which govern intra-Community transactions. The following section will provide an overview of the initiatives of the E.U. to prevent fraud and the possibilities for intra-Community cooperation between member states in their fight against fraud.
3.3 European controls and cooperation: the communal fight against fraud

Until now the implications of the Amendment to the 6th Directive on the national regulations and systems of control in the member states have been discussed. Discussion will now centre around the communal fight against fraud. Member states are primarily responsible for the fight against VAT fraud. However, as VAT is the most important source of income for the Union, the E.U. is interested in ensuring correct and consistent methods of collection and payment of VAT in the member states to the E.U. budget. Because of the multiple and complex regulations, possibilities arise which could easily lead to irregularities and fraud. Further discussion will point out the policy established by the E.U. to secure this interest and which provisions have been made to trace and prevent fraud.

In 1989 the Commission established a programme with regard to the fight against fraud. Each year the programme is reviewed to determine whether new directions should be emphasized. Although the Commission introduced a new programme in September 1992, the three main objectives of the 1989 programme still remain valid today. These objectives16 are: prevention, enforcement and cooperation.

3.3.1 Prevention

The first emphasis of the prevention policy is the application of control measures to the communal regulations. A few years ago the authority of the European Commission concerning the control of VAT collection and payment was rather limited in comparison to its authority in the area of agricultural subsidies. In 1989, Council Regulation 1553/89, Article 11, sub 1 was adopted which allowed authorised Commission officials to exercise limited control over the competent tax authorities in the member states. These controls pertain to the way the tax authorities collect data for the establishment of the member state's tax debt, the data themselves and the total amount of the collected VAT profits.

According to the same Council Regulation 1553/89 (Article 12, sub 1), member states were required to inform the Commission about their taxpayer registration procedures, their procedures for the assessment and collection of VAT and about the regulations and results of their VAT control systems. Based upon this report, the Commission consults the involved member state about possible improvements in the procedures to increase the system's effectiveness (Article 12, sub 2). Every three years the Commission writes a report concerning the member states' procedures and formulates possible improvements. The emphasis of the 1989-1991 Commission report17 addressed the issue of voluntary compliance.

In essence then, the extent of the Commission's control is a "control on control": the Commission checks the control of the competent national tax authorities. In this way the Commission contributes to the effectiveness of the national collection and control systems and attempts to introduce consistencies in the method of tax collection.

The second focal point of the prevention policy is the simplification of the regulations. EG-regulations are often complex and for that reason unclear. This has a negative impact upon the application as well as the enforcement of the regulations. Over the last few years the Commission has emphasized the simplification of regulations and has involved experts\textsuperscript{19} whose input has aided in a more efficient application and enforcement of the regulations.

Another emphasis of the prevention policy is carried out by the fraud cells attached to some Directorates-General (DG's): DG VI: agriculture, DG XIX: budget, DG XX: financial control and DG XXI: customs and indirect taxation. At the other DG's one or more persons from the financial department are in charge of fraud prevention.

As a final step in the development of a formally coordinated anti-fraud policy, the Unité de Coordination de la Lutte Anti-Fraude (UCLAF) was founded in 1988.\textsuperscript{19} The UCLAF is a separate Board within the Secretary-General which coordinates the fight against fraud between the DG's on one hand, and the Commission and the member states on the other. The UCLAF is involved in the collection and review of information concerning fraud cases reported by the DG's and the DG's handling of these fraud cases. Additionally, the UCLAF develops initiatives to fill gaps in the regulations and takes part in investigations which have been organized by the fraud prevention teams of the DG's. At the end of 1992 the Commission redefined its programme of action in the fight against fraud. As a result, the UCLAF acquired more responsibility in a number of areas. Last year the UCLAF was restructured with a new emphasis upon operational activities. The Budgetary Control Committee has proposed an amendment to further strengthen the activities of the Commission to fight fraud and in particular of the UCLAF by means of a significant increase in the number of staff.\textsuperscript{20}

\textsuperscript{18} Other experts, to include officials and social scientists, participate in study conferences concerned with the fight against fraud. Certain of the Commission's services study the way communal fraud files are treated by the national courts (van de Beek, 1991).

\textsuperscript{19} Unité de Coordination de la Lutte Anti-Fraude, European Commission, Doc. SEC.(89) 8211 (working programme).

3.3.2 Enforcement

In addition to prevention, another emphasis of the Commission's policy to fight fraud is enforcement. However, the E.U. institutions have neither legal authority to enforce the criminal law or to prosecute offenders, nor authority to influence the criminal law or the law of criminal procedure of any of the member states. The investigation, prosecution and punishment of fraud, even E.U. fraud, has always been, and remains a function of the individual member states. Article 5 of the E.U. Treaty (25 March 1957, Rome) dictates that the member states themselves are responsible for enforcement of the Union legislation.

There are, however, limited channels through which the E.U. can exercise its enforcement policy. The European Court has made some demands concerning the enforcement of the Union law. The court declared that the member states should enforce the Union law as if it were national law. A further option lies in Article 155 of the E.U. Treaty. Under this article the European Commission has authority to observe and intervene (in the form of making recommendations) in the way member states fulfil their obligations derived from Article 5.

Finally, the European Commission executes the budget according to Article 205 and this implies that other Union institutions, especially the Parliament, can hold the Commission accountable for losses. This leads to the conclusion that the European Commission is judicially, institutionally and politically responsible for the fight against fraud although it has no executive means to enforce this responsibility.

One possibility, then, would be to provide the Commission with enforcement powers. Although providing the Commission with supranational authority may aid in the fight against cross-border VAT fraud, it is unlikely that in the near future member states will be receptive to forfeiting their autonomy.

3.3.3 Cooperation between member states

"The traditional international legal assistance is no longer sufficient to fight increasing cross-border crime. Member states' suspicion towards each other's legal system must be removed. An effective measure to combat cross-border crime needs a more simple and efficient manner of international cooperation".

These words of the former Dutch Minister of Justice, Dr. Hirsch Ballin, reflect the attempts toward international cooperation in the areas of control and mutual assistance in judicial matters. This is the third focal point of the communal policy to fight fraud. Although the fight against fraud is the primary responsibility of the member states, fraud often has a European, cross-border dimension and for that reason close cooperation between the Commission and the member states is essential. In January

1992 a regulation adopted by the European Council spelled out the VAT control arrangements for administrative cooperation between member states. Article 4 provides that each member state must maintain an electronic data base, the VAT Information Exchange System (V.I.E.S.), to store and process the information collected from the statements submitted by intra-community suppliers within its territory. Other member states must have direct and immediate access to this information. This information can be compared with the value of ICA’s declared on the VAT regular returns. Article 6 makes provision for the maintenance of an electronic database by each member state, containing the VAT identification numbers of its traders. This data base provides for an immediate check on the validity of a VAT identification number in another member state. The tax administrations are able to use it as a first control check on the integrity of their traders who have made ICS’s against the VAT ‘zero-tariff’. Additionally, Article 5 provides for a follow-up request system to supply supplementary information relating to specific intra-Community transactions in cases where the computerised exchanges of information are insufficient for resolving an audit problem.

In the area of the control of, and the fight against VAT-fraud, there are other options available to exchange information between member states. Particularly in the Benelux countries the administrative cooperation is extensive and far-reaching. In addition to administrative cooperation in the fight against fraud, cooperation can occur on two other levels:

- judicial cooperation between member states, and
- cooperation between law enforcement agencies of the member states.

A number of conventions with emphasis upon interstate cooperation in the judicial area have taken place. There is, however, no specific convention in the area concerning the fight against fraud. On the contrary, the existing conventions frequently hinder intra-Community cooperation in fraud cases because of exceptions for fiscal crimes. Even where treaties exist which provide for mutual cooperation in house-searches and seizures, governments are not obliged to, and are often prevented from cooperating in the case of fiscal offenses such as VAT fraud. These barriers to legal assistance with

---

24 Council Regulation 92/218 deals with administrative cooperation in the field of indirect taxation. For more information see Publikatieblad L 24 from 01 February 1992; 218/92.
25 The Convention of Naples of 7 September 1967, for instance, deals with the mutual assistance between the administrative services of the customs branch and with judicial assistance to prevent, detect and fight crimes in the field of customs.
26 The Benelux Treaty concerning the administrative and judicial cooperation (29 April 1969) provides for an intensive administrative cooperation with regard to detecting crimes. Assistance in the area of VAT fraud is possible in cases of cross-border crimes as well as crimes committed within the borders of one of the Benelux countries (Article 33 Benelux Treaty and the Additional Protocol). The legal provisions of this treaty are far-reaching and include such issues as house-search and seizure.
28 The European Treaty of 20 April 1959, for instance, makes provision for mutual legal assistance in criminal cases. Article 2a of this treaty dictates that legal assistance concerning fiscal crimes can be refused. There was, however, an Additional Protocol signed on 17 March 1978 with regard to extradition based on fiscal crimes. Extradition must be allowed for offenses similar in nature to those found in the legislation of the requesting state (Articles 1 and 2 Additional Protocol). Another example is provided by the Benelux Treaty concerning extradition and legal assistance in criminal cases of 27 June 1962. Although this treaty makes no
regard to fiscal crimes were removed for the participating members of the Schengen Treaty.\footnote{The treaty, signed in Schengen on 14 June 1985, was an agreement between the governments of the Benelux countries, the Federal Republic of Germany and France to broaden the authority of law enforcement agencies in fighting cross-border crime.} Under Article 50 of the Schengen Execution Treaty it is possible to provide legal assistance in (VAT) fraud cases.

Until the 1993 Treaty of Maastricht, the international cooperation between police services was performed outside the context of the E.U.. Two approaches were taken: by way of Interpol or by way of the cooperative agreement Terrorisme, Radicalisme et Violence International (TREVI). Interpol, founded in 1923 in Vienna, is an international organisation for cooperation between national police services. Interpol has no executive authority and the handling of requests is dependant upon the local police in the member states (Heijerman, 1993).\footnote{In 1989 Interpol acquired one of the most advanced computer-systems, the Automated Search Facility (ACF), for the input and handling of data. If the requesting office is connected with the Automated Search Facility (a central data bank in Lyon where information about international criminals is stored) it has direct access to this data and questions are immediately answered.}

TREVI refers to an inter-governmental cooperation between police-services of the member states within the E.U.. After almost twenty years TREVI was replaced by the Treaty of Maastricht which entered into practice in November 1993 and established the European Union. The Treaty of Maastricht provided for intergovernmental judicial, police and customs cooperation and affirmed the budget control and the fight against fraud within the E.U..\footnote{Brief van de minister van justitie en van de Staatssecretaris van Buitenlandse Zaken (Letter from the Ministry of justice and from the Secretary of State of Foreign Affairs), "Mislukte en ongevallen gebruik op het gebied van belastingen, sociale zekerheid en subsidies", 17 050 nr.181, 's-Gravenhage, 25 juni 1993; 7.}

A new Article 209a\footnote{Article 209a of the European Community Treaty stipulates that "Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests" (European Commission, 1993; 6).} and Title VI address the necessity for fraud prevention within the E.U..\footnote{Article 209a confirms the obligation of the Member States according to Article 5 and the corresponding jurisprudence, to fight fraud and to protect the financial interests of the E.U. as well as they protect their own financial interests.}

The Treaty of Maastricht also regulates different kinds of cooperation between the Ministries of Justice and Domestic Affairs between member states. Article K.1.5. of the Treaty obliges the member states to consider several issues as a matter of common concern. Mentioned here are international fraud, judicial, customs, as well as law enforcement cooperation.

restriction at all on the legal assistance in criminal cases, there is one exception with regard to house-search and seizure. In this case the offense must also be a crime according to the legislation of the requesting state. This means that foreign requests for legal assistance to affect a house-search or a seizure may be executed only for offenses for which extradition is possible. Because there are no special arrangements addressing this matter, basically no house-search or seizure can be executed on the basis of fiscal crimes.\footnote{Article 209a of the European Community Treaty stipulates that "Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests" (European Commission, 1993; 6).}
Organized crime has become an issue of great concern. One of the targets is the acceleration and implementation of new ways to exchange information between the police, customs and judicial services. Priority has been given to the development of Europol. At present, only the European Drugs Unit is operational. The Europol Treaty has yet to be ratified. After its ratification, information exchanges relating to other forms of cross-border crime will also be included. Europol will complement the already existing Interpol through the exchange of intelligence ('soft information') (Verdelman, 1994). Another potential strength will be the crime analyses of Europol based on the information provided in national data bases. Finally, the extension and employment of data bases and data communication networks has accelerated and improved the exchange of information.34

International cooperation depends heavily upon member states’ political willingness and interest in cooperating with each other in order to fight international crime. This intention is expressed by several inter-governmental treaties which were discussed in this chapter. Inter-governmental meetings, however, often lead to laborious negotiations which end in compromises. Compromises often result in complex and fraud-sensitive regulations. It is clear that in practice more is needed in the effective fight against international crime in the E.U.. Member states’ reservations about forfeiting sovereignty concerning the enforcement of their criminal law is perceptible in the Treaty of Maastricht where police, judicial and customs cooperation has been excluded from the context of communal decision-making (van de Wijngaert, 1994). Until mutual cooperation becomes a reality, the acceleration, improvement and institution of new ways to exchange information between police, customs and judicial services is necessary for an effective fight against cross-border crime.

Member states are faced with a difficult challenge. In addition to gaining international cooperation in their struggle against VAT fraud, they must also fight the battle on the domestic front. Unlike the war on drugs, a moral offense, for which mutual cooperation is willingly provided, economic offenses, such as VAT fraud, often raise little concern. This is clearly exhibited in treaties and conventions which allow refusal to cooperate in cases of economic offenses (see footnote 28). Member states must recognize the danger inherent in economic crimes and their impact upon the business climate. Perhaps a willingness to recognize the problem is the first step toward gaining international mutual cooperation.

While this chapter focused on the fight against fraud from the intra-Community standpoint, the next chapter provides a description of the situation in the Netherlands with regard to systems of detection, investigation and settlement of VAT fraud.

34 Commissie van de Europese Gemeenschappen, Jaarverslag van de Commissie over de fraudebestrijding, COM(93) 141 def., 20 april 1993, pages 36/37. Some examples of these data bases are: IRENE (Irregularités, Enquêtes, Exploitation), DAF (Documentation Antifraude), SCENT and SCENT-FISCAL (Systems Customs Enforcement Network), CIS (Customs Information System).
4 The detection and settlement of VAT fraud within the Netherlands

4.1 Detection

The detection of VAT fraud within the Netherlands is the responsibility of the Tax Administration (Belastingdienst) and is carried out by different institutions. The Enterprise Unit (Ondernemingseenheid) of the Tax Administration is responsible for the audit and identification of tax practices to include irregularities or fraud. The examination of intra-Community transactions are conducted at the national level and are handled by the Central Unit.

Larger cases of VAT fraud will be investigated in more detail by the Fiscal Intelligence and Investigation Department (FIOD). Their investigations, conducted by regional offices, may either result in an administrative penalty, or end up in the criminal justice system. More detailed information concerning the functioning of these agencies is provided below.

4.1.1 Control by the Enterprise Unit (Ondernemingseenheid)

The Tax Administration in the Netherlands is divided into five divisions (North, South, Large Enterprises, Individuals and Customs). The various divisions are further divided into units, responsible for the imposition, levying and control of diverse taxes. An Enterprise Unit (Ondernemingseenheid) is further subdivided into teams.

Within the units, various levels of expertise exist. The training for revenue-officers (commies)\(^\text{35}\) is 2½ years, for auditors, 3½ years. Both are capable of carrying out audits or inspections. More difficult cases are turned over to accountants or inspectors (those who have studied or have a degree in fiscal law).

The enterprise units are tasked with carrying out audits, on average, once every 6.7 years. In practice, audits of high-risk businesses are conducted more frequently, which results in less frequent audits of low-risk businesses. Special attention is provided to 'starters', new businesses or those which have been purchased by other businesses.

The necessity for an audit is dictated by a number of factors. On the one hand, it is influenced by the nature of the group - whether the enterprise is a large, medium or small concern.\(^\text{36}\) Another influencing factor is the fiscal necessity of auditing a specific enterprise (is it an enterprise which has a large tax base, or rather, do the tax authorities risk losing large sums of money if an audit is not carried out?). Fiscal risk also dictates the necessity for an audit (is the business in a fraud-sensitive branch?). A last factor is the trustworthiness of a particular enterprise. The criteria used to

\(^{35}\) The 'commies' fulfils the role of both clerk and auditor. The educational level and training are less than that of a tax auditor.

\(^{36}\) Large businesses, particularly multi-nationals, appear to make use of, or manipulate, the law in order to avoid high taxes, or in the commission of fraud. Fraud committed by smaller enterprises is usually done by concealing or falsifying information concerning taxes (Verbrak, 1995).
determine the level of trust or 'trust category', as defined by the Tax Administration, include the method of payment, the presence or absence of a tax advisor, how an enterprise files its regular tax return, and whether or not there have been previous inconsistencies or the enterprise has committed fraud in the past.

Fraud signals\(^37\) take on various forms. When, during the course of an audit, an auditor is alerted to an irregularity, the decision must be made whether the situation calls for further investigation. A risk-analysis, based upon the 'trust category' and the branch, will help determine if further examination is necessary. Generally, the auditor sends a letter requesting information. The decision may be made to examine the company’s books, or the officer may conduct a complete field audit. Tax officials have special investigative powers limited to fiscal crimes. Without warrants issued by an examining magistrate, tax officials may enter a business office and confiscate all files. In practice, however, this is discouraged by the Tax Administration, except in cases where there is reason to believe that the individual may destroy evidence.

If, in fact, an inconsistency exists, but does not meet the legal requirements set forth in the directive concerning fiscal affairs, AFZ\(^38\) 93/2858, (for individuals the threshold sum is 5,500 ECU’s and for enterprises, 11,500 ECU’s), the auditor may settle the affair administratively. This means that the individual is responsible for payment to the tax authorities, of the sum which was evaded. If the tax evasion was due to fraudulent practices, the auditor may administer a fine, 100% above the sum which was originally due. This administrative application ends here.

If the sum evaded exceeds the amount mentioned above, the auditor must report the suspected activity to the fraud-coordinator within the enterprise unit. If the case meets the requirements outlined in the AFZ then the fraud-coordinator brings the case to the selection committee (Selectie-Overleg). The participating members are the fraud-coordinator, the team leader from the FIOD, and the official responsible for the enforcement of the General National Tax Law (contactambtenaar AWR). If these participating members determine that enough evidence exists to move the case from the administrative sphere over to the legal sphere, then the case is turned over to the tripartite committee (Tripartite-Overleg). Here a definitive decision will be made in terms of whether further investigation is necessary. In view of the seriousness of a case, the decision will be made whether to settle the case administratively by imposing a penalty, to initiate a criminal investigation or to waive prosecution in lieu of payment (transaction).\(^39\)

---

37 The tax authorities may be alerted to fraud as a result of any of the following signals: exceeding the individual 'negative norm', no regular tax returns over a longer period of time, information concerning interest rates from banks, articles from the newspaper concerning bankruptcy of a particular enterprise, information from the Chamber of Commerce, letters of warning concerning unusual practices submitted by enterprises in the same branch, mismatches or irregularities from the ICT-base, or information concerning an enterprise which may have turned up during a control at another place of business.


39 The first option is an administrative possibility, the last two are penal measures.
Whether a case is settled administratively or whether the case enters the criminal justice system will determine the authority and guidelines which set parameters for the investigation and treatment of the tax evader. The Tax Administration conducts audits and only administrative settlements are within the scope of its authority. Information collected, at this point, is for the purpose of establishing the appropriate collection of taxes. When the ‘audit’ transforms into an ‘investigation’ for the purpose of gathering evidence to be used in the criminal justice system, and as soon as enough evidence exists to change the tax payer’s status to that of suspect, then the investigation must be conducted by the FIOD and the individual must be provided the same basic rights as any other criminal suspect.\(^{40}\)

This section reviewed the audit of VAT and the path taken by the tax authorities in the Netherlands when detection of VAT inconsistencies arise. Both the Tax Administration and the Central Unit have audit or inspection functions. The following section discusses the operation of the Central Unit and the detection of VAT fraud comparing international data. Section 4.2 addresses investigation and settlement in the Netherlands.

### 4.1.2 Control of intra-community transactions

Information between the Netherlands and other E.U. member states regarding ICS’s is exchanged via the Central Unit Intra-Community Transactions. Dutch companies are required to provide the Central Unit with a quarterly return listing ICS’s to companies in other E.U. member states. The Central Unit feeds this information into a computer base (the Intra-Community Transaction or ICT-base). No more than three months after the end of the quarter the Central Unit sends the results of ICS’s\(^{41}\) from the Netherlands to the Central Units in the respective countries. This information is sent via the Value Added Tax Information Exchange System (VIES) network. In essence, a six month time period may elapse between the initial transfer of goods and the ICS report being returned. By the same token, information concerning the supply by foreign companies to Dutch companies\(^{42}\) is obtained by the Dutch ICT-base.

Without waiting for the information from other E.U. member states concerning ICT’s, a comparison can be made between a company’s quarterly ICS and its quarterly VAT declaration using the information provided in Section 3b on the tax return, where the total ICS’s form a separate rubric. Differences will eventually result in action being taken by the tax authorities. A letter will be sent to the company asking for an explanation or clarification of the problem. If the tax authorities deem the response insufficient, the Central Unit will begin an investigation into the business concerned. The same procedure occurs if a business fails to submit an ICS declaration. Another

\(^{40}\) A criminal suspect is guaranteed the following rights: to be told the reason for the interrogation, the right to remain silent, the right to legal assistance, the right to examine all materials relevant to the case against him and the right to a speedy handling of the case.

\(^{41}\) All information concerning ICS’s from Dutch companies to a particular foreign purchaser are totalled.

\(^{42}\) The Central Unit in the Netherlands obtains information from the Central Units in other member states concerning the supplies of goods from all businesses in the foreign country to that particular company in the Netherlands.
proactive measure is to check the validity of VAT identification numbers in an early stage of the transaction process. The differences in ICT figures with VAT declarations can, in theory, be an indication of fraud (but then one by a rather unintelligent, or inexperienced fraudster). Both transactions are derived from the same administration. Ignorance or lack of knowledge of the new system of declaration and laxness on the part of businesses in filling in declaration forms probably accounted for the majority of differences found during the initial months of operation. Some businesses chose to ignore the legal requirement to file these returns. Those who are recalcitrant (at the time of the research, approximately 200 businesses) are forced to prove each ICS individually if they intend to profit from the ICS against the ‘zero-tariff’. The subsequent supply of this information to the tax authorities costs the business just as much time and effort as it does to supply this information in a timely (and legal) fashion. Furthermore, failure to submit a regular tax return in the Netherlands may result in a penal sanction of maximum 10,000 Dutch guilders (Article 68, sub 2, General Tax Law, the Netherlands). It is expected that differences in declarations, and the refusal to submit declarations will decrease for the most part if the Central Unit consistently continues to supervise and exercise control.

In the beginning emphasis was given in the Netherlands to the first method of control (comparing the information concerning ICS’s and checking the existence of VAT identification numbers) in order to ascertain that the information concerning ICS’s which were destined for other E.U. member states, was as accurate and trustworthy as possible. Recently the Central Unit also began to check to determine whether differences exist between the regular tax return concerning ICA’s by Dutch companies and the figures (submitted by the Central Units in other member states) concerning supply to these same Dutch companies by foreign businesses. This has resulted in a current backlog in the intended audits.

In the first instance it appears that after comparing the total ICA’s by a company with the total ICS’s to that same company by businesses in other countries, 80% of the comparisons result in mismatches. Not all differences are a result of fraud. Small differences can occur as a result of different courses in the currency exchange rate or as a result of the acquisition declaration being filed in a different time period than the ICS from a foreign country.

When a mismatch occurs the Central Unit in the Netherlands utilizes the VIES system to examine the data provided by the country from which the goods were allegedly delivered (according to the tax declaration provided by the Dutch company). Additional audits may determine whether other foreign businesses have made deliveries to a Dutch company (deliveries that may not be listed on the regular tax return). When inconsistencies in a particular country have been determined, a letter is then sent to the

---

43 A bill is currently under consideration by the Dutch legislature concerning a business’ failure to submit or to intentionally file a false quarterly ICS-listing. If this bill becomes law, the aforementioned actions could result in an administrative sanction.

44 In 1993 the initial response to the requirement to file a return was 60%, of which 50% was correct. After warning notices and summons, and attempts to provide additional information, the response rate increased to 95%, with approximately 95% accuracy of those returns. The initial responses from 1994 stands at approximately 85%, of which 85% is correct (De Die, 1994).
Dutch company requesting specific information concerning all deliveries made to that company by each individual company in the country in question. This information provided by the Dutch company is then compared with information in the data base in that particular country. It should eventually become clear if there are inconsistencies, and if so, with which suppliers inconsistencies still remain. The Enterprise Unit then selects certain of the "true" mismatches for further investigation. Due to the above mentioned priority approach the investigation into tax declarations from 1993 have just now begun in August 1994. If no discrepancies appear in a comparison between the quarterly tax return on acquisitions and the information provided by foreign suppliers, that is no guarantee that fraud is not being perpetrated. Both declarations could have been falsified for the purpose of committing fraud. The schemes diagrammed in chapter 5 provide examples of fraudulent practices where no mismatches occur in the intra-Community transaction base.

4.2 Investigation and settlement

4.2.1 Investigation of VAT fraud by the Fiscal Intelligence and Investigation Department (FIOD)

The Fiscal Intelligence and Investigation Department (FIOD), founded in 1945, is the investigative branch of the Tax Administration. The Director-General of Taxes of the Ministry of Finance is primarily responsible for the FIOD. The task of the FIOD is the collection of data which are relevant for levying, control and payment of taxes on the one hand, and the criminal investigation of tax, customs and excise crimes on the other. In addition to the main FIOD office there are numerous regional offices throughout the Netherlands. The main office of the FIOD executes inter-regional (national) and international investigations. The regional offices conduct investigations at the regional level and provide support services to the main office. Within the main FIOD office a special value-added tax division has been established.

The FIOD is divided into an intelligence service and an investigative service. The intelligence service provides information to both the regional units of the FIOD and the Tax Administration which is necessary to determine the accuracy of tax declarations. The investigative service executes investigations in cases involving suspicion of incorrect tax declarations as well as in cases involving breach of regulations concerning import, export and the transit of goods. The investigative service comprises approximately 450 detectives. FIOD investigators must complete three years of training as auditors or customs inspectors, similar to that provided individuals preparing for a position as an auditor with the Enterprise Unit. Upon completion, they must participate in a seven- to eight-week course to become a 'special investigative officer'. This is followed by an additional two years of job training with a mentor.

The FIOD does not always work independently of other investigative organizations. The investigation of large-scale fraud operations may comprise multi-disciplinary teams including the police. The FIOD also provides international assistance to foreign services with similar tasks. The FIOD's Mutual Assistance Bureau checks, registers and provides
information to audit and investigative services in member states when information uncovered in an investigation points towards problems in those member states.

In situations where the Enterprise Unit uncovers cases of suspected fraud and further investigation is necessary, an investigation by the FIOD will be initiated. In addition to this reactive investigation, often based upon inconsistencies discovered during a tax audit, the FIOD also manages a proactive style of operation. It links and compares several data bases examining the data for inconsistencies. Especially fraud-sensitive branches like computers, audio/video and textiles are regularly checked within a certain time period. On the basis of the comparison of these data, the appearance of fraud signals may result in an investigation being initiated by a regional FIOD office. The final decision for (further) investigation will again be made in the tripartite committee.

The authority granted FIOD investigators allows them to enter a place of business without a warrant and confiscate all evidence relevant to an investigation of tax fraud. Investigators at the FIOD are special police officials attached to the Tax Administration. They have general investigative competence, but this is limited to crimes such as fraud, embezzlement, corruption and other fiscal offenses. They may conduct house-searches and arrange for wire-taps, however, a warrant is required. Nevertheless, in emergencies, the chief of a team at the FIOD, in deliberation with the prosecutor's office, has the authority to give permission for house-searches (but not for wire-taps). When enough evidence has been obtained to pursue the case further, the case is turned over to the public prosecutor.

4.2.2 The public prosecutor and cases involving serious fraud

At present, there is no specific research into penal settlement of VAT fraud cases. However, recent research concerning the management of serious fraud cases reveals that the public prosecutor's office encounters severe difficulties in the prosecution and penal settlement of such cases (Nelen, et al., 1994). In the first place, the regular police forces have little interest in this field. As a result, the public prosecutor relies heavily on special law enforcement agencies, like the aforementioned FIOD. Furthermore, the results of the criminal justice process are highly unsatisfactory, especially in the 'corporate crime' cases. General appeals and appeals for cassation at the Supreme Court are quite common in cases involving serious fraud. These legal means serve suspects well, as one-sixth of initially guilty verdicts are reversed by appellate courts. Furthermore, sentences meted out by courts of appeal are significantly lower than those of the district courts. This difference is due primarily to the duration of the judicial process. On average, nearly

45 Seven out of forty-three cases were identified as VAT fraud.
46 In general, one quarter of the criminal proceedings against main suspects end in acquittal. Of all main suspects found guilty, slightly over half receive sentences that include unconditional imprisonment; financial penalties (fines, transactions, etc.) are rare.
47 General appeals are handled by courts of appeal and factual issues as well as points of law may be considered. Appeals for cassation are examined by the Supreme Court (Hoge Raad) in the Netherlands only on aspects of law. Factual matters may not be raised as an issue in appeals for cassation.
six years expire between the beginning of an investigation and the irreversible settlement of criminal cases. In one case (of VAT fraud) it took almost ten years to wind up the criminal proceedings.

The time necessary for settlement is subsequently affected by the limited capacity of the judicial institutions, delaying tactics used by suspects and a lack of guidance from the public prosecutor in the criminal investigation. As a result of this latter state of affairs, criminal investigations in serious fraud cases lack coordination; case evidence is often extensive and unmanageable.

Nelen, et al. (1994) conclude that public prosecutors are also seriously limited in their ability to direct cases because of unsatisfactory organizational facilities. The (frequent) shortage of administrative support is a serious obstacle. According to these authors, inadequate transmission of open cases and generally poor transfer of specialized knowledge to newcomers within the public prosecution offices is further cause for concern.
5  A preliminary look at cases of fraud

5.1  Possibilities to commit fraud

One of the main goals of this study is to identify major patterns of fraud, with the intent of being able to distinguish typologies of fraud offenses and offenders. The ultimate goal is to provide insight into the degree of organization behind criminal enterprises and (fraudulent operations') links, if any, to forms of organized crime. In the following sections a brief description, followed by one or more diagrams, will portray the patterns of fraud identified in the initial stages of this research. This list is by no means exhaustive. The Final Report will provide the reader with a more detailed and in-depth description of the organizations and patterns of fraud. The following briefly outlines the ways in which VAT fraud with ICT's has been perpetrated.

With the 1993 abolition of border controls on the import of goods from, and the export to other E.U. countries, in principle, the possibility to commit fraud via the zero-rated ICS quarterly declaration has increased. The disappearance of physical controls at the border removed the fear of being inspected, thus goods no longer had to be physically moved from one country to another. As a result of the changes, problems arose in furnishing proof of transactions in that there were no longer customs documents to suggest or prove a possible import or export. The burden of proof is upon the company to support its allegation of transaction. The company must prove that the goods were sold and transported to another member state through the use of invoices, proof of payment, transport documents, transportation insurance and correspondence. If the company can not prove this, then the tax authorities in the Netherlands may assume that a domestic transaction is involved (Value-Added Tax Law, Article 32, the Netherlands) and the company may be held responsible for VAT payment.

The possibility to commit fraud exists due to the fact that the quarterly ICS declarations from other E.U. countries, which are then matched against the regular tax return, arrive long after the actual fraud has been committed - sometimes as much as six months. An even longer period of time often elapses before the tax administration is able to effect an audit. When the tax authorities uncover the fraudulent operation the fraudster has in the meantime made so much money that he simply dissolves the company and creates new ones. This time lag is one of the most important, but certainly not the only weakness in the current system.

48  Anticipated date of publication is January 1996.
5.2 Fraud constructions

VAT fraud involving ICT’s can be differentiated into the non-declaration of ICA’s and fictitious ICS’s. This applies to both actual and fictitious goods. The basic principles of VAT fraud using the transitional regulations are therefore quite simple and will be advanced in this chapter. In addition to these basic schemes, the term carousel-fraud will be used for those instances in which the goods are brought back into the country from which they came. Based upon the cases examined by the researchers, fraud patterns will be described and presented to the reader in diagram form in sections 5.2.1-5.2.3. These constructions are quite basic but they can often take on different and more complex forms. This ploy is used by fraudsters for the purpose of making law enforcement investigation more difficult.

The following section provides the reader with a description of specific patterns of fraud with accompanying diagrams. The reader must be able to recognize the following abbreviations in order to completely understand the schemes:

**NVR:** (No VAT Return) a company that files no VAT return because it is defunct or its VAT identification number is being used without knowledge or permission.

**Shell company:** a company that only exists on paper. Usually the address is nothing more than a post office box. The director is a non-existing person or a strawman, someone who is paid for the use of his name and signature, but has nothing more to do with the company. This company probably has a VAT registration number.

**ICS:** intra-Community supply

**ICA:** intra-Community acquisition
5.2.1 Fictitious intra-Community supply, real goods

Scheme IA portrays the basic form of fictitious ICS. The fictitious supply from one company (X2) to another company (Y1) in another E.U. country (Y) is dealt with administratively in the books and inconsistencies are covered up through the use of fictitious sales invoices. The so-called ‘payment’ can be made to oneself (X2) with guaranteed bank cheques. Y1 (who is not an accomplice in the fraud organization) does not report this ICA so that at some point in time a mismatch will occur between the quarterly ICS’s (reported by X2) and the regular tax return submitted by Y1. Based upon X2’s ICS declaration Y1 will be questioned. When the authorities turn up nothing here, they must turn the investigation over to country X, where X2 must be investigated. This process can easily take up to six months. Company X2 remains adamant that it delivered the goods to Y1 which must have kept the acquisition off the books. X2 may even produce a transport document. In an ideal situation X2 may be uncovered, but this is no guarantee that the organization has been exposed.

---

**Scheme I A:**

**FICTITIOUS ICS WITH REAL GOODS**

<table>
<thead>
<tr>
<th>Member State X</th>
<th>Member State Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company X1</td>
<td></td>
</tr>
<tr>
<td>A) X2 purchases from X1</td>
<td></td>
</tr>
<tr>
<td>B) resulting in correct VAT refund to X2</td>
<td></td>
</tr>
<tr>
<td>C) Fraudulent Company X2</td>
<td>Company Y1: NVR or a legitimate company, unaware that its VAT registration number has been used</td>
</tr>
<tr>
<td>B) fictitious supply</td>
<td>Y1 does not file a return on this ICA so no VAT will be collected here</td>
</tr>
<tr>
<td>X2 reports this ICS (quarterly) and files a regular tax return on this zero-rated ICS</td>
<td></td>
</tr>
<tr>
<td>Market</td>
<td></td>
</tr>
</tbody>
</table>

profit: VAT evasion through the fictitious sale B

On paper it involves an ICS from X2 to Y1, but in reality the goods are sold VAT-free domestically (or in another Member State). X2 is the fraudulent company. X1 and Y1 are not necessarily involved. Before 1/1/1993 the goods had to be physically transported across the border and then smuggled back into Country X to be sold there.
Scheme IB is a variation of IA. Company Y1 in another E.U. country is now an accomplice involved in the fraud construction and does file a regular tax return on its ICA but does not resell the goods so no VAT is paid. Y1 assumes the tax authorities will not immediately notice or may entirely overlook the inconsistency. In order to complicate matters, Y1 may file quarterly declarations on ICS’s and declare these ‘sales’ on its regular tax return as though it had sold the goods to a company in a third E.U. country. Under this circumstance the fraudulent practice would take even longer to come to light and the investigation and prosecution would become even more difficult.

### Scheme IB: FICTITIOUS ICS WITH REAL GOODS
(similar to IA, the difference being Y1 does file a return on the ICA so no mismatch is found)

<table>
<thead>
<tr>
<th>Member State X</th>
<th>Member State Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company X1</td>
<td>Company Y1</td>
</tr>
<tr>
<td>A)</td>
<td>B)</td>
</tr>
<tr>
<td>↑</td>
<td>← fictitious payment →</td>
</tr>
<tr>
<td>↓ X2 purchases from X1</td>
<td>fictitious supply →</td>
</tr>
<tr>
<td>↓ resulting in correct VAT refund to X2</td>
<td>→</td>
</tr>
<tr>
<td>↓</td>
<td>C)</td>
</tr>
<tr>
<td>Fraudulent</td>
<td>X2 reports this ICS (quarterly) and</td>
</tr>
<tr>
<td>Company X2</td>
<td>files a regular tax return on this zero-rated ICS</td>
</tr>
<tr>
<td>↑</td>
<td></td>
</tr>
<tr>
<td>↑ Market</td>
<td>Y1 does file a return on this ICA, but no</td>
</tr>
<tr>
<td></td>
<td>resales follow so</td>
</tr>
<tr>
<td></td>
<td>no VAT will be collected here</td>
</tr>
</tbody>
</table>

Company X2 as well as Company Y1 are part of the fraudulent organization. On paper there is an ICS from X2 to Y1, but in reality the goods are sold VAT-free domestically (or in another Member State). When in Member State Y the ICS’s from Member State X are compared with their own information on ICA’s, no mismatch is found. Y1 is gambling on the fact that the tax authorities will not notice the unusual fact that goods are constantly being purchased but not resold.
The fraud portrayed in diagram IC is, in principle, described in the above portrayed schemes. Here, too, the problem of the investigative authorities lies in determining which business is responsible for paying VAT taxes. Further problematic is the fact that often only the last link in the chain is investigated, thus leaving the rest of the operation unexposed.

Scheme IC:

---

**FICTITIOUS ICS WITH REAL GOODS**

(similar to IA and IB).

---

**Member State X**

- Company Y1
  - Y2 purchases from Y1
  - resulting in correct VAT refund to Y2
  - Company X1 (shell company)
    - payment
    - supply
    - fictitious payment
  - X1 files a return on this ICA

**Member State Y**

- Company Y2
  - Y2 reports this ICS (quarterly) and files regular tax return on the zero-rated ICS
  - Company Y3
    - NVR (shell company), or a legitimate company, unaware that its VAT registration number is being used
    - X1 reports this ICS (quarterly) and files a regular tax return on this zero-rated ICS
    - Y3 does not file a return on this ICA (scheme IA) or (as an accomplice) does file a return (II B)
  - no VAT will be collected here

**Company X2**

**Market**

profit: VAT evasion through the fictitious sale C

Instead of the fictitious transaction C, the goods in reality are sold to X2. The goods will probably be transported directly from Y2 to X2.
5.2.2 Fictitious intra-Community supply, fictitious goods

Scheme II portrays a fictitious transaction of goods which results in the refund of pre-paid VAT. Company X5 fictitiously purchases goods within its own country. It then proceeds as if it were supplying the goods to company Y1 in E.U. country Y. The administration of this ICT is handled through the use of fictitious sales invoices and so-called cash payment by the foreign receiver. This results in X5 requesting reimbursement of prepaid VAT on its fictitious purchase; at the same time it does not have to pay VAT on the ICS. In order to hinder investigation of the operation a number of fictitious companies and transactions can be situated between X1 and X5.

As a result of the abolition of customs control at the internal borders the perpetration of this type of fraud has become easier. However, control of ICT's between these X companies and company Y will result in a mismatch. Eventually X1 and X5 will be exposed by the tax authorities, however the organization has, by no means, been harmed. This operation involves non-existent ('shell') companies with fictitious persons or strawmen as directors. Those businesses identified by tax or law enforcement authorities are simply replaced by other shell companies.

---

**Scheme II:**

**FICTITIOUS ICS WITH FICTITIOUS GOODS**

<table>
<thead>
<tr>
<th>Member State X</th>
<th>Member State Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company X1 (X2, X3, etc.): NVR (shell company)</td>
<td>Company Y1 (Y2, Y3, etc.): NVR or a legitimate company, unaware that its VAT registration number has been used</td>
</tr>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>A) ↓ X5 purchases fictitious goods from X1</td>
<td>↓</td>
</tr>
<tr>
<td>↓ The payment is also fictitious</td>
<td>↓</td>
</tr>
<tr>
<td>↓ resulting in VAT refund to X5</td>
<td>↓</td>
</tr>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>← ----------------- fictitious payment ← -----------------</td>
<td>← ----------------- fictitious payment ← -----------------</td>
</tr>
<tr>
<td>Company X5 (X6, X7, etc.) (shell company)</td>
<td>Company Y1 (Y2, Y3, etc.): NVR or a legitimate company, unaware that its VAT registration number has been used</td>
</tr>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>B) fictitious supply</td>
<td>fictitious supply</td>
</tr>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>X5 reports this ICS (quarterly) and files a regular tax return on this zero-rated ICS</td>
<td>Y1 does not file a return on this ICA so no VAT will be collected here</td>
</tr>
<tr>
<td>profit: unjust VAT repayment to X5</td>
<td>profit: unjust VAT repayment to X5</td>
</tr>
</tbody>
</table>

This scheme involves transactions on paper with false invoices. The "profit" is made in that company X5 requests and receives a refund of the so-called "pre-paid" VAT on transaction A and at the same time X1 does not file a tax return (and therefore pays no VAT) on the same transaction. X1 and X5 are part of the fraud organization.
### 5.2.3 Non-declaration of intra-community acquisitions

Scheme IIIA provides the basic principle in the non-declaration of ICA's. Company X1 purchases goods from Y1. X1 personally picks up the goods from Y1 and pays cash for them. Y1 reports the ICS on its quarterly declaration; X1 does not declare the ICA on its regular tax return. While an ICT mismatch will occur in country X, a number of months will have passed. In the interim, company X has made a quick profit. Investigation reveals a strawman as director; the organization remains, for the most part, out of reach. If X1 orders the goods using the name and VAT identification number of another company the investigation and exposure of the scheme is made even more difficult.

#### Scheme III A: NON-DECLARATION OF ICA’S INVOLVING REAL GOODS

<table>
<thead>
<tr>
<th>Member State X</th>
<th>Member State Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y1 reports this ICS (quarterly) and files a regular tax return on this zero-rated ICS</td>
<td></td>
</tr>
<tr>
<td>Company X1 A) Company Y1 (Y2, Y3 etc.)</td>
<td></td>
</tr>
<tr>
<td>[ \text{Market} ]</td>
<td>[ \text{profit: no collection of VAT} ]</td>
</tr>
</tbody>
</table>

Y1 is not involved in the fraud. Control of the ICT’s results in a mismatch. To hinder the investigation company X1 can also purchase the goods using the name and the VAT registration number of another company in Country X. If X1 doesn't record transaction A at all it is "obliged" to sell these goods without paying company tax or income tax on the profit it makes. Alternatively X1 can pretend to have purchased these goods domestically (see III B).

If, under the scheme diagrammed in IIIA, Y1 reports the ICS but X1 does not, a mismatch will occur. However, if both X1 and Y1 do not report this ICT, no mismatch will occur. In this situation the goods are simply smuggled across the border for the purpose of evading taxes. This type of situation could easily occur where the VAT rates between countries differ. Illegal trade in goods as a result of not reporting ICT’s between businesses in country A (15% VAT rate) and country B (25% VAT rate) could produce a considerable profit for businesses in both countries. An entrepreneur in country B pays the company in country A the price of the goods plus the VAT paid by the company when the goods were originally purchased. The company in member state B does not claim the ICA, thus it pays no VAT to its government. The two companies split the profit. The abolition of the inner-border controls has certainly facilitated this type of situation, although countries like France and Italy use 'flying brigades' that stop vehicles for 'spontaneous checks'. The chance of being stopped and checked, of course, is relatively low.

Another offense is also being committed here. Any time goods are brought into the country and a company does not file a regular tax return on its ICA, the company avoids paying VAT on the goods. As a result of the goods being sold illegally in the country, the company may also avoid paying a company tax (vennootschaps belasting) or income tax on the income generated by the sale of these goods. Thus, the company avoids both VAT and company taxes.
A variation on this theme is presented in scheme IIIB. On paper X1 is involved in business transactions with a legitimate business, Company Y1. X1 is, however, a shell company. In reality business is being transacted between X10 and Y1, and the goods are being delivered to X10. X10 keeps the books in order by making it appear as if the goods were purchased domestically from company X5 (a shell company, as well). While an ICT mismatch will occur in country X, this will point to company X1. Because there is no evidence linking X1 to any of the other companies the initial trail runs cold. If, after some time, the fraudulent practice by X5 (not having paid VAT) is discovered, X10 can continue to maintain that he legitimately purchased the goods from X5 but that X5 must have kept the transactions off of the books.

<table>
<thead>
<tr>
<th>Scheme III B: NON-DECLARATION OF ICA'S INVOLVING REAL GOODS (variation of III A)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Member State X</strong></td>
</tr>
<tr>
<td>Company X1 (X2 etc.)</td>
</tr>
<tr>
<td>X1 is NVR (shell company)</td>
</tr>
<tr>
<td><em>X1 does not file a return on this ICA,</em></td>
</tr>
<tr>
<td><em>it never files returns</em></td>
</tr>
<tr>
<td><em>no VAT will be collected here</em></td>
</tr>
<tr>
<td>Company X5 (X6, X7 etc.)</td>
</tr>
<tr>
<td>X5 is NVR or a legitimate business not recording these transactions, so no VAT will be paid by X5</td>
</tr>
<tr>
<td>B) fictitious supply (invoices)</td>
</tr>
<tr>
<td>and fictitious payment</td>
</tr>
<tr>
<td>resulting in a refund of the so-called prepaid VAT</td>
</tr>
<tr>
<td>† Company X10 goods → Exchange Broker payments →</td>
</tr>
<tr>
<td>† VAT will be collected from X10</td>
</tr>
<tr>
<td>† (administration of X10 is in order)</td>
</tr>
<tr>
<td>C) Market</td>
</tr>
</tbody>
</table>

profit: VAT evasion through the fictitious purchase A

On paper the goods are sold by Y1 to X1 and at the same time X10 buys them from X5. In reality the goods flow from Y1 directly to X10. X1 is a non-VAT payer. X1 to X10 are part of the fraud organization. The payments are done through an exchange broker to hide the precise flow of money. Because there is no administrative link between X1 and X5 it is difficult for the tax authorities to get a picture of the whole organization. X1 and X5 are the actual fraudulent businesses but exist usually only on paper. X10 maintains that it has indeed received the goods from X5 but that company (X5) must have failed to keep records of these transactions.
The carousel-fraud committed in Scheme IV is based, as well, on the failure to file a regular tax return on the ICA's and thus, non-payment of VAT. Company X2 purchases goods (from X1) and delivers them (VAT-free) to company Y1 in another E.U. country. Y1 delivers domestically to Y2 but, not having filed a tax return on its ICA, does not pay the required VAT. Y2 in turn sells the goods to X3 (a shell company). Y2 does not have to pay VAT on this transaction with X3, whereas it claims a VAT refund on the transaction with Y1. The companies (Y1 and X3), which in fact are committing VAT fraud, will eventually (after a few months) be identified through the control of ICT's. Upon discovery, their limited liability as shell companies with a strawman as director allows them to be easily sacrificed.

Since 1/1/93 the actual transportation of goods is no longer necessary. The goods may be brought directly from X1 to X4. It is even possible to construct a carousel-fraud with fictitious goods. X2, X3, X4, Y1 and Y2 are part of the fraudulent organization. X3 and Y1 are committing the actual fraud: they make no VAT payments to the tax authorities on the "sales". If they are investigated and the fraud is discovered, they simply desist their operation and are replaced by new fake enterprises. A number of buffer companies can be established between Y1 and Y2 as well as between X3 and X4 in order to make the exposure of the organization more difficult.
6 Concluding remarks

This report has attempted to clarify for the reader the basic laws and regulations which regulate the taxation of trade between E.U. member states. Changes were introduced into law in January of 1993 which greatly affected not only the levying of taxes, but the flow of goods across borders, and the manner in which fraud could now be perpetrated. Insight was provided into a number of treaties and conventions promoting intra-Community cooperation between member states, as well as an E.U. approach to regulating the problem.

With the introduction of the transitional regime in January 1993 opportunities to commit VAT fraud changed but certainly did not decrease. Under the old system, VAT had to be paid at the borders and controls existed which resulted in the possibility of physical inspection of the vehicle and goods. Fraud was then perpetrated by falsifying T2-documents or customs stamps, or bribing customs officials. Although they occurred infrequently, the abolition of such controls resulted in the removal of a psychological barrier.

Under the transitional system the payment of VAT occurs with the regular return. The abolition of physical controls made the new system, in comparison to that which existed previously, more sensitive to fraud. Improvements, however, were made in the administration and under the current system controls are carried out through the use of the computerized system VIES. A company’s ICS-listings are matched against its regular VAT returns, and these regular VAT returns are matched against the ICS-listings submitted to the Central Unit by the Central Units in other countries. A major weakness in the present system is the time lag between the alleged transaction and the information being submitted to the Central Unit. Even then, the system relies heavily upon the accuracy and veracity of the data, and upon identifying mismatches in information. As shown in chapter 5, fraud may very well be perpetrated without a mismatch ever occurring. And mismatches may result from non-fraudulent practices. This implies then, that control and enforcement agencies must take a proactive rather than a reactive approach to identifying VAT fraud.

The present system of allowing for VAT payments to be delayed and submitted with the regular returns, and for transacting ICS’s against the ‘zero-tariff’ provides ample opportunity to commit fraud. It is relatively simple to falsify invoices and other documents. If fraud is suspected in criminal cases, then the burden is upon the prosecutor to prove that invoices have been falsified and fraud has occurred. Legal burden of proof in such cases is extremely difficult to establish, making the processing of VAT fraud cases through the criminal justice system an arduous task.

49 Under the system prior to 1993 no national administrative tracking system existed to regulate VAT-practices. The Central Unit in the Netherlands claims that this new administrative control has actually reduced the opportunities to commit fraud.
A further problem in the investigation of VAT fraud, particularly in carousel-fraud, is the tendency to control or investigate only the last link in the chain. Carousel-frauds are often complex and involve numerous businesses and transactions. Exposure of one segment of the operation does not close the operation down, but simply alters its structure.

If the fight against fraud is to succeed it is clear that certain conditions must be met: recognition, cooperation, and proactive enforcement. Fraud must be recognized as a serious problem both in terms of economic losses, but possibly more importantly for the damage it inflicts upon legitimate businesses and the consumers’ trust in trade and industry practices. The victims of VAT fraud are numerous. Such fraud affects the E.U. and member states’ treasuries. Businesses are threatened by damaging practices and society’s trust in the market is destabilized. This demands that action be taken to fight fraud, and the approach must be a proactive one; waiting for ICS’s to be processed through Central Units for comparison with regular tax returns gives fraudsters too much time and may allow sophisticated schemes to go unnoticed. Additionally, the fight against fraud will be successful only if countries are willing to cooperate with one another to avoid a ‘displacement’ effect.

Although the member states of the E.U. subscribe to the concept of cooperation in the fight against international crime, it is to be expected that VAT fraud will continue to maintain a low public profile. This is due to a number of reasons. First, offenses such as VAT fraud violate economic regulations; they infringe upon economic interests rather than violating moral codes, thus, public concern does not rank enforcement of such violations as a top priority. It is questionable whether VAT fraud is even perceived as an offense in some countries, which are either unaware of, or deny its existence entirely, or devote little energy in the investigation of the offence. Furthermore, a paradox exists in the enforcement of VAT regulations. Effective law enforcement may be counter-productive to the creation of an optimal business climate. The more fervently investigating and control agencies pursue VAT violators, the greater the possibility that law-violating businesses will go abroad. This in turn may have a negative impact upon legitimate businesses in a particular country.

A number of treaties regulate cooperation between member states in the area of legal assistance. However, the European Commission has limited authority in regulating intra-Community cooperation. It must also be kept in mind that while mention is made of a European ‘Union’, the E.U. in fact comprises 15 countries with differences in language, fiscal rates and markets, fiscal law enforcement organizations, and penal codes and practices. Furthermore, a deep mistrust between countries exists which impacts negatively upon their mutual cooperation.50 One possible solution to the problem would be to give the Commission supranational authority concerning the fight against fraud. It appears, however, that in the near future member states will not be receptive to involvement of a supranational authority or giving up their autonomy.51

This report was conceived to provide the reader with a basic understanding of the phenomenon. The main focus of the project is a criminological or sociological one. In essence, we are trying to understand the techniques of VAT fraud being used, to what degree the operation is organized, who is participating in the operation (legitimate businesses, enterprising criminals or criminal entrepreneurs). The following chapter provides the reader with some theoretical insight into those perpetrators behind the operation and their degree of organization. This will be used as a basic model. Further research must determine whether it is in fact possible to classify offenders and operations into the categories so neatly described by experts in the field.
7 Plan for the future

7.1 Theoretical underpinnings

Chapter 5 addressed basic patterns of fraud discovered in our preliminary research. The ideas presented here will be expanded upon in the second phase of the research. These fraud patterns, however, provide little understanding of what type of people are behind such practices or the structures of the organizations themselves, issues raised in section 2.3 of this report. A closer look at the material introduced in the following sections provides the theoretical underpinnings for analysis of fraudulent operations, scheduled for the second phase of our research.

7.1.1 Organized crime vs. corporate crime

When one thinks of large-scale fraud operations, naturally, organized crime comes to mind. To create an automatic link between these two phenomenon is both naive and incorrect. Based upon extensive case studies of files involving fraud in the Netherlands and Belgium, van Duyne (1993) has sketched a more accurate picture of the crime entrepreneurs. Tax fraud is a crime of opportunity. For fraud operations to become organized and operate successfully, the market must remain stable for a period of time to allow fraudsters to make the proper business connections. What may eventually result is an operation with ties to legitimate, as well as to illegitimate businesses. Levi (1993) has adopted the term "enterprise crime" as the distinction between "white collar" and "organized crime" becomes more obscure. In his study, van Duyne found that rather than highly organized crime operations, fraud operations were often chaotic, "non-organizations" functioning in the form of a small cooperative operating from one project to the next while being surrounded by a network of aides, facilitators and frontmen. Given enough time these organizations may transform into a "stable criminal trading community" (van Duyne, 1993; 10). Rather than "diabolical creative geniuses", fraudsters are "mobile risk takers responding to changing opportunities and law enforcement by trial and (custodial) error" (van Duyne, 1993; 11); they are "organizing criminals".

That leads to the question of whether one should differentiate, or if there is even a difference between criminal entrepreneurs and enterprising criminals. The degree of organization and the intention behind the operation are two indicators. The criminal entrepreneur is an opportunist who supplements his otherwise legitimate business with illegal activities. In contrast, the enterprising criminal establishes his entire operation for the sole purpose of defrauding the tax authorities. Both can inflict equally severe financial damage upon businesses and the tax authorities in the countries in which they are operating, as well as to the E.U. budget. The extent of organized business crime will never be known as "it is virtually impossible to differentiate between ‘normal’ fraud by otherwise legitimate enterprises and enterprises set up to defraud other
companies, the inland revenue or the E.C." (van Duyne, 1993; 19). Further file analysis and interviews with experts in phase II of this research project will study the organizational structure of the fraudsters' operations in an attempt to gain more insight into whether crime entrepreneurs or criminal enterprises are involved. While it may not be clear which legitimate businesses are committing fraud, and to what extent, file analysis and interviews with experts from investigative agencies may expose the type of highly structured crime-enterprises which exist for the sole purpose of committing VAT fraud.

The existence of certain conditions and lax law enforcement allow large-scale fraud to operate over long periods of time. Without the opportunity and a stable demand for a particular market, a crime-enterprise cannot expand and flourish. Additionally, there must be a low complaint rate to fiscal police or the Chamber of Commerce and Industry. This is not an uncommon occurrence. Legitimate businesses which often profit from the illegal practices of other businesses are hardly likely to complain to fiscal or law enforcement officers. Furthermore, the investigation of such fraudulent business operations is often complex requiring the investigating officers to understand the complicated practices of such schemes. Last, but not less important, is the fact that underworld operations cannot often exist without access to, and the cooperation of, the upperworld. This includes cooperation of legitimate businesses, customs officials, inspectors and law enforcement officers.

7.1.2 The fraudsters and their organizations

It is clear from studying large-scale fraud cases that the construction of such operations may take on various forms. In its most basic form, fraudulent operations can be divided into two groups. There are those who are interested in making a large and quick profit, who establish (and later sacrifice) shell companies for the sole purpose of making money. These are the enterprising criminals. On the other hand there are those who gradually build up their business and contacts. Their business is, for the most part, legitimate. They may be facing financial difficulties. An opportunity presents itself to make a little extra money. The profit is small; the fraudulent practice continues over a long period of time. These are the criminal entrepreneurs.

Are fraudsters involved in other forms of criminal activity? While Levi (1993) reports that most fraudsters never commit any other type of crime, some of the individuals involved in professional smuggling are also involved in the transportation of drugs, help to evade VAT, and commit subsidies-fraud against, and evade excise duties on items to be paid to the European Union. Previous experience over the last ten years in smuggling drugs across European borders has proven useful to the smuggling of goods across those same borders for the purpose of avoiding VAT. Years of previous experience in the labour racketeering field provided VAT fraudsters with the expertise in creating "smoke screens with false invoices spread over numerous front companies" (van Duyne, 1993; 21). This was evident in the Benelux where networks professionalised and expanded into neighbouring countries (France and Germany). Cores developed in the Benelux; principal organizers and their aides formed a "trading crime community".
A fraud scheme may exhibit characteristics of both relatively legitimate and purely fraudulent enterprises. Even when a crime-enterprise is uncovered by an investigating agency, it is highly unlikely that the organization will be entirely exposed or that all information concerning the complete operation will be available. Given the material available through both the interviews with experts as well as the review of case files, an attempt will be made to characterize the individuals and organizational structure of the cases of fraud studied.

7.2 Future activities

While the initial research was concerned with the identification of E.U. VAT laws and regulations, and control and enforcement authorities in the Netherlands and Belgium, it set the groundwork for the second phase of research which will now apply the theoretical underpinnings to the information provided by experts and through file analysis. Work will continue in Belgium and one or two other countries will be selected as a basis for comparison. To date, Ireland, Germany, Spain and England have expressed an interest in the project and a willingness to assist us. A meeting has been scheduled in February with representatives from Her Majesty's Customs and Excise, International Policy Division in England to discuss the details for conducting research in the U.K. The U.K's island status may provide interesting examples of VAT fraud not found in the Netherlands or Belgium.

Contact was established with Professor Dannecker from the University of Bayreuth, Germany during a meeting in Bayreuth in October 1994. While the focus of the two projects on VAT fraud within the E.U. are somewhat different, we anticipate a mutually cooperative working relationship. It is the desire of the research team to conduct research in Germany as well, due to the fact that Germany borders non-E.U. countries and, as is the case with the UK, may provide examples of various types of fraud not witnessed in the Benelux. A cooperative research project with Professor Dannecker may facilitate contacts and help provide a more thorough understanding of the phenomenon in the Federal Republic of Germany.

The final report will contain information on the control and enforcement mechanisms in the countries researched. Time and financial restraints will require us to limit the study to four countries. Unless we encounter problems with the countries previously mentioned, the final report will focus upon the Netherlands, Belgium, the United Kingdom and Germany.

More detailed information from chapter five on the patterns of VAT fraud will be provided in the final report. We will elaborate upon existing models and add to those any new models discovered during our future research. Additionally, more detailed descriptions of case studies involving fraudulent practices will be given. The study will be limited to 25 or 30 cases depending upon the level of complexity and the amount of information available in the files, from experts working with the cases and from other sources.
We will continue to develop and refine the questionnaire (Appendix B) and outline to be utilized with files (Appendix A).

A preliminary schedule is provided below:

**Schedule**

**February:**
- Complete file analysis in Netherlands
- Continue file analysis in Belgium
- Interviews scheduled with inspection and investigative agencies in Belgium
- Meeting with representatives from Her Majesty's Customs and Excise, International Policy Division, U.K.
- Begin data analysis - Netherlands

**March:**
- Complete file analysis in Belgium
- Continue data analysis - Netherlands and Belgium
- Preparation of data collection - U.K and Germany

**April - July**
- Data collection in the United Kingdom and Germany

**August - December**
- Data analysis and production of Final Report
References


Aujean, Michel, Head of the DG XXI, Commission of the European Communities, Brussels. Discussion during the Academy of European Law conference on "What should the VAT System look like in a Genuine Single Market?", Trier, Germany, December 8th-9th, 1994.


Commissie van de Europese Gemeenschappen, Jaarverslag van de Commissie over de fraudebestrijding, COM(93) 141 def., 20 april 1993.


De Die, J.J.H., director, Central Unit, the Netherlands, interview on 31 August 1994.

De Smet, Bart, "Verslag van de Discussies", in Fijnaut, Cyrille, Luc Huybrechts and Chris van den Wijngaert (editors), EG-fraudebestrijding in de praktijk, Antwerpen: Maklu Uitgevers, 1994; 301-312.


European Commission, Unité de Coordination de La Lutte Antifraude, Doc. SEC.(89) 8211 (working programme).


FIOD (Fiscale Inlichting and Opsporings Dienst), Fraudecursus S.S.R., no publication date.


Leeuwen, van, Arthur, "Smile, hier is de FIOD", Elsevier, 30 April 1994; 34-36.


Ministerie van Financiën, Taak en organisatie van de FIOD, Director-General der Belastingen, Afdeling Diensten en Communicatie, in samenwerking met de FIOD, January 1990.

"Misbruik en oneigenlijk gebruik op het gebied van belastingen, social zekerheid en subsidies (Note inzake EG-fraude)", Brief van de Minister van Justitie en van de Staatssecretaris van BiZa aan de Voorzitter van de Tweede Kamer, 1993.


Tjalkens, R., "Omzetbelasting en fraude", *Dossier*, nr. 7, 1992; 158-164.


Verdelman, F., "Interpol est mort, vive Europol?", *Algemeen Politieblad*, Nr.9, 30 april 1994; 20-22.


Appendix A

FILE ANALYSIS

I. Offense Variables: Methods and (Criminal) Organization

1. Code name (for each case)
2. Description of the criminal offense(s)
3. Use/transfer of real goods or fictitious transactions?
4. History of the organization
5. Which means were used?
   a. how were contacts initiated and maintained?
   b. storage of goods / warehouses
   c. subsidiary enterprise
   d. mailbox-incorporated companies
6. Over what period of time was the organization in operation?
   a. beginning date
   b. end date
   c. suspected period of time of operation
   d. what time frame can be proven?

II. Offender Characteristics (per offender)

1. Person(s) involved
2. Age
3. Gender
4. Nationality
5. Antecedents
   a. criminal career (involvement in previous criminal activities)
   b. history of drug or alcohol use
   c. (history of) financial problems
   d. known to tax or law enforcement authorities
6. Function and place within the group
   a. inner/outer circle
   b. leadership role
   c. financial advisor/bookkeeper
   d. strawman/helper
   e. courier
   f. chauffeur
7. In which enterprises or businesses was (s)he involved?
8. Penalty
   a. administrative court
   b. criminal court
      1. fine
      2. prison sentence
      3. other
III. Organization of the Criminal Enterprise and the Environmental Variables (per enterprise)

1. Theoretical structure of the organization
   a. hierarchy
   b. division of labour
   c. family relationships/organization

2. Practical structure
   a. who made the decisions
   b. who gave the orders
   c. mutual relationships
   d. sanctions
      1. violence
      2. threats

3. Agreements and connections with other criminal matters, criminal networks

4. External contact with the legitimate networks/businesses
   a. lawyers
   b. financial advisors
   c. political contacts
   d. payment to customs officers
   e. corruption of other (law enforcement) officials

5. Organized crime or corporate crime
   a. characteristics of the operation

6. Businesses involved
   a. main activity
   b. secondary activity
   c. number of businesses
   d. legitimate or criminal enterprises
   e. country of operation (foreign country?)
   f. task or function of the business
   g. role within the organization

7. Brief description of the branch in which the criminal enterprise is actively involved
   a. to what degree is the branch in question sensitive to contamination by fraud or other forms of criminality

IV. Financial Overview

1. Source of capital to begin fraudulent practices
2. Criminal gains
3. Costs
4. Investments of the criminal enterprise
   a. reinvested in the operation
   b. invested in other operations
   c. invested in drug operations
   d. foreign banks
V. Investigation

1. Cause for the investigation
   a. the first sign of fraud
   b. date of the first sign of fraud
   c. did investigation begin as VAT fraud or was it a result of investigation into other offenses (drugs)

2. Investigating agency
   a. tax authorities
   b. law enforcement
      (special fiscal police)
   c. cooperation with foreign countries

3. Length of investigation

4. Size of investigation
   a. how many agencies were involved
   b. how many officers were involved

5. Description of the investigation
   a. special investigative tools
      1. wiretaps
      2. undercover officers

VI. Other
Appendix B

QUESTIONNAIRE FOR EXPERTS

I. General

1. Is the VAT transitional regime concerning the transactions of goods and services more or less sensitive to fraud than the previous regulations? Why or why not?

2. Will the possibility to commit fraud be reduced with the introduction of the "country of origin" regulation scheduled to go into effect on 1 January 1997?

3. Is a sanction imposed upon a business which fails to file a return or providing incorrect or incomplete information on the quarterly tax return?

4. Is it possible to make use of the different VAT tariffs in member states to commit VAT fraud? If so, how is this done?

5. Which modus operandi are used to commit fraud?

6. What changes have been ascertained in VAT fraud modus operandi since the transitional regime on 1 January 1993?

7. In general, do fraudsters adopt a permanent modus operandi or do they select different modus operandi each time?

8. Are fraudsters involved in small, middle-sized or large enterprises?

9. Do fraudsters themselves possess special professional knowledge or do they obtain this from others (bookkeepers, accountants, lawyers?)

10. How do fraudsters select and recruit other entrepreneurs into their fraud-carousels?

11. What is the prosecution's policy in dealing with cases of VAT fraud?

12. Is a businessman obligated to determine (research) the trustworthiness of his business partner?

13. Are there loopholes in the law which can be used for the purpose of evading VAT? How can the law be revised to prevent this?

14. Can recommendations be made for improvements in the control system, the investigative system, and/or the prosecution or settlement system in terms of VAT?
15. Are there European Union institutions which have a coordinating, policy-making or operational role in the fight against (VAT) fraud? If so, to what degree and what impact do these institutions have at the national level?

16. Is the introduction of a supranational control/investigative system (in the area of VAT) necessary in addition to the present national agencies?

17. Do linguistic problems form a barrier to international cooperation and if so, how are these problems overcome?

II. Central Unit

18. The Central Unit (CU) processes information concerning ICS's and sends these data, after a three-month period, to the CU's in other member states. In practice, is this three-month period adhered to?

19. Are countries required to exchange information concerning mismatches? In practice does this (always) occur? Does it occur in a timely fashion?

20. To what degree does the Central Unit compare the VAT declaration with the quarterly report? When inconsistencies occur comparing these two documents, what occurs in practice? How important does the CU judge this comparison?

21. To what degree and with which documents does the CU compare information from foreign CU's with information which is available from the domestic tax authorities? In practice, what occurs when a mismatch is identified?

22. How many mismatches occur and what percentage of these involve fraud?

23. Are the VAT identification numbers of foreign companies checked by the Central Unit?

III. Investigative and audit services

24. What are the responsibilities, operating procedures and the authority of the investigative or auditing agency concerned?

25. Is there a specific unit within the investigative/audit agency that is responsible for work in the area of VAT fraud?

26. To what degree is there a difference between auditing and investigating agencies and what consequences does this have for the fight against fraud?

27. What signals alert auditing/investigative agencies to fraud? How often do legitimate businesses report on-going fraud-carousels to law enforcement or tax authorities?

28. What is done when a fraud signal is discovered? What authority and which means (resources) are available to deal with the situation? In which area is there a shortage of means or authority?
29. How are investigative agencies alerted to fraud when there is no case of mismatch?

30. Can you describe in general the manner in which most fraud is committed? Does it involve transportation of the goods or fraud with invoices? fictitious or real transactions? domestic or cross-border fraud? within the E.U. or with third countries? small scale fraud over a long period of time or the quick ‘big sting’? organized fraud-carousels or fraud committed by entrepreneurs while exploiting their business?

31. Are officers involved in the investigation/audit of VAT fraud provided with additional (expert) training?

32. Do investigative services cooperate with other investigative services or control agencies in the investigation of VAT fraud? If yes, please explain.

33. Do the investigative/audit agencies make use of the data from the Central Unit or other data banks (IRENE, SCENT-FISCAL, CIS, etc.)? What has been your experience thus far with the reliability and usefulness of these data?

34. Are companies allowed to submit a yearly tax return? If so, does this create problems in the investigation of or fight against fraud?

35. Do investigating agencies work proactively in relation to VAT fraud? Are directed risk analyses conducted or is the proactive investigation a general one?

36. Are there branches which are particularly sensitive to fraud? If so, which are these and why?

37. Do investigating and auditing agencies take preventive measures to fight VAT fraud?

38. How is international cooperation with other E.U. member states in the processing of VAT fraud cases on the following levels?
   - administratively
   - judicially
   - politically
   - other: (e.g. personal networks and contacts)

39. How many cases of VAT fraud were discovered in the period 1991-1992 and how many of these were settled administratively (fine, transaction or other administrative settlement) and how many were processed through the criminal justice system? The same applies to the periods 1992-1993 and 1993-1994?
Appendix C

ABBREVIATIONS

Benelux  Belgium, the Netherlands and Luxembourg
DG       Directorate-General
ECU      European Currency Unit
E.U.     European Union
FIOD     Fiscal Information and Investigation Service
IC       Intra-Community
ICA      Intra Community Acquisition
ICS      Intra Community Supply
ICT      Intra Community Transaction
NVR      No Vat Return
UCLAF    Unité de Coordination de la Lutte Anti-Fraude
VAT      Value Added Tax
VIES     VAT Information Exchange System