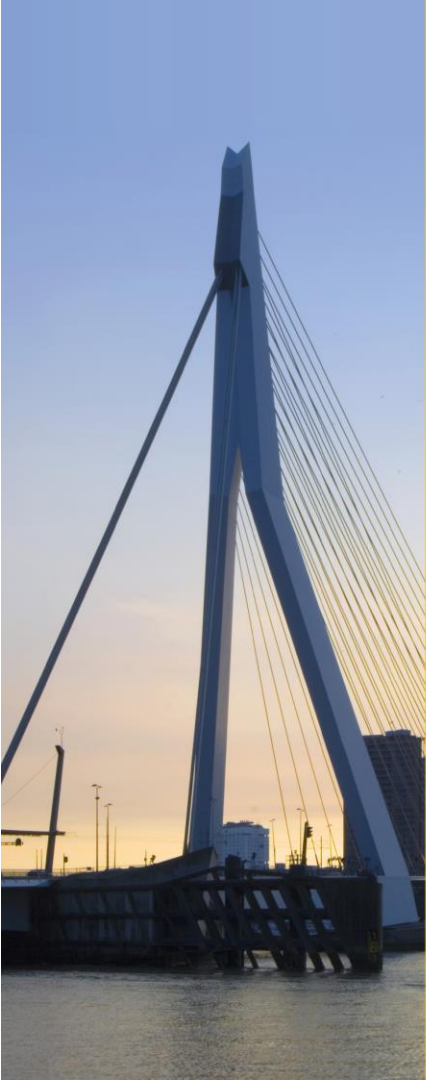


Welcome to

EFS conference ‘Legal protection and certainty in a rapidly changing legislative indirect tax and customs environment’

Erasmus Fiscal Studies

Rotterdam – Thursday 13th February 2025



Introduction

Prof. mr. dr. Madeleine Merkx

Board member EFS

Professor Erasmus School of Law

Partner at BDO

dr. Martijn Schippers

Programma Coördinator EFS

Assistant Professor

Senior Manager at EY

Agenda

- 14.05 – 14.40 **E-invoicing and digital reporting under ViDA: legal protection and fundamental rights** – David Hadwick
- 14.40 – 15.00 **Experience with digital reporting from Poland** – Dr. Pawel Selera
- 15.00 – 15.40 **Developments in legal protection and certainty related to EU customs law**
– Patricio Diaz Gavier
- 15.40 – 16.10 **Refreshment Break**
- 16.10 – 17.00 **Panel discussion** with moderator prof. dr. Madeleine Merkx and panel members dr. Pawel Selera, Bart-Jan Kalshoven, David Hadwick, Shanna van den Maagdenberg
- 17.00 – 18.00 **Closing and networking drinks**



VAT in the Digital Age (ViDA) reform and the future of taxpayers' rights

David Hadwick, Researcher at Centre of Excellence Digitax (Uantwerpen)
Member of Antwerp Centre for Responsible AI (ACRAI)

FWO Fellow, Individual grant (n° 11J1524N)

Project Manager of taxadmin.ai

Agenda



ViDA proposal and its three pillars



Technology in VAT and taxpayers' rights

VAT in the Digital Age



Proposal by the European Commission

8.12.2022



Digital reporting requirements: e-invoicing (near real-time)



Single VAT registration

VAT and the platform economy



The three pillars of ViDA



DRRs

Problem statement:

Uncoordinated & unilateral DRRs across EU Member States

Proposed solution:

Real-time DRRs for cross-border transactions & harmonised e-invoicing with central VIES



Platform Economy

Problem statement:

Traditional & digital businesses not treated equally, creating VAT inequality & distortion of competition

Proposed solution:

New VAT liability for platforms & new place of supply rule for facilitation services by platforms



SVR & IOSS

Problem statement:

Need for businesses to register in more than one Member State, especially in case of cross-border transactions

Proposed solution:

Extension of OSS & IOSS schemes & mandatory application of reverse charge mechanism

Digital Reporting Requirements



ViDA Proposals for Digital Reporting Requirements

E-invoicing

Structured e-invoices as a default rule for all transactions;
Obligatory for B2B cross-border transactions

Reporting obligation and Central VIES

Obligatory reporting of B2B cross border transactions
and creation of central VIES for analysis and sharing of
data

Standardisation of domestic DRRs

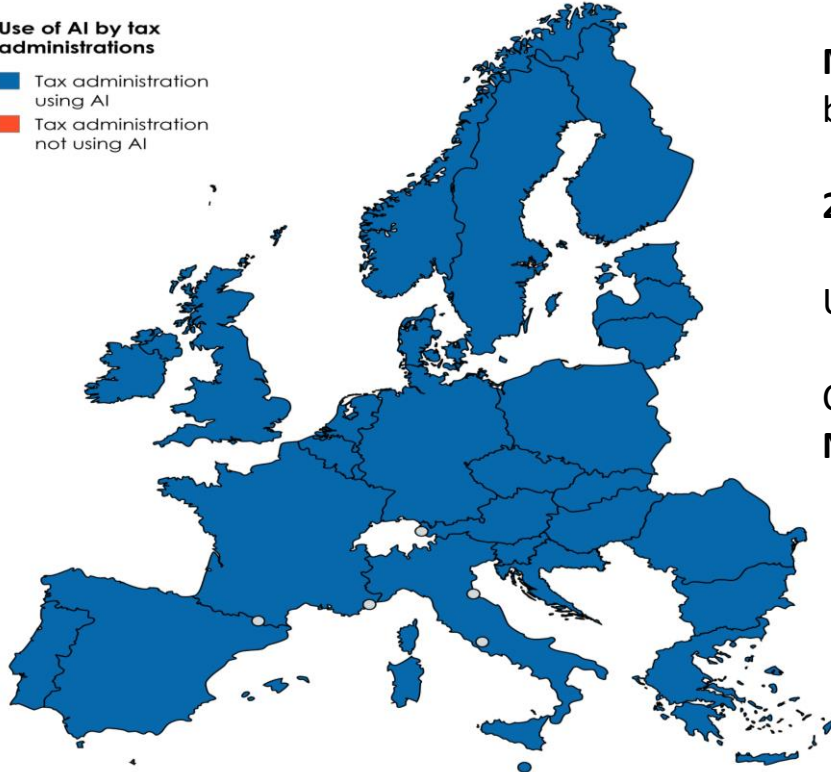
Introduction optional, but need to be interoperable and
follow the EU standards.

DRR – where are we today?

Artificial intelligence used by MS as means to combat fraud and streamline compliance

Use of AI by tax administrations

- Tax administration using AI
- Tax administration not using AI



More than 100 AI systems used by EU tax administrations, based on open access data

26 out of 27 EU MS (96%) make use of AI to ensure compliance

Use of machine-learning data as far back as **2004**, e.g. XENON

Certain systems are **common to all EU States**, e.g. Transaction Network Analysis



<https://taxadmin.ai/>



Artificial intelligence used by MS as means to combat fraud and streamline compliance

Figure 3. Use of data analytics in tax administrations, 2022

Percent of administrations



Note: The figure is based on ITTI data from 52 jurisdictions that are covered in this report and that have completed the global survey on digitalisation

Source: OECD et al (2022), Inventory of Tax Technology Initiatives, <https://www.oecd.org/tax/forum-on-tax-administration/tax-technology-tools-and-digital-solutions/>, Table DM5 (accessed on 13 May 2022).

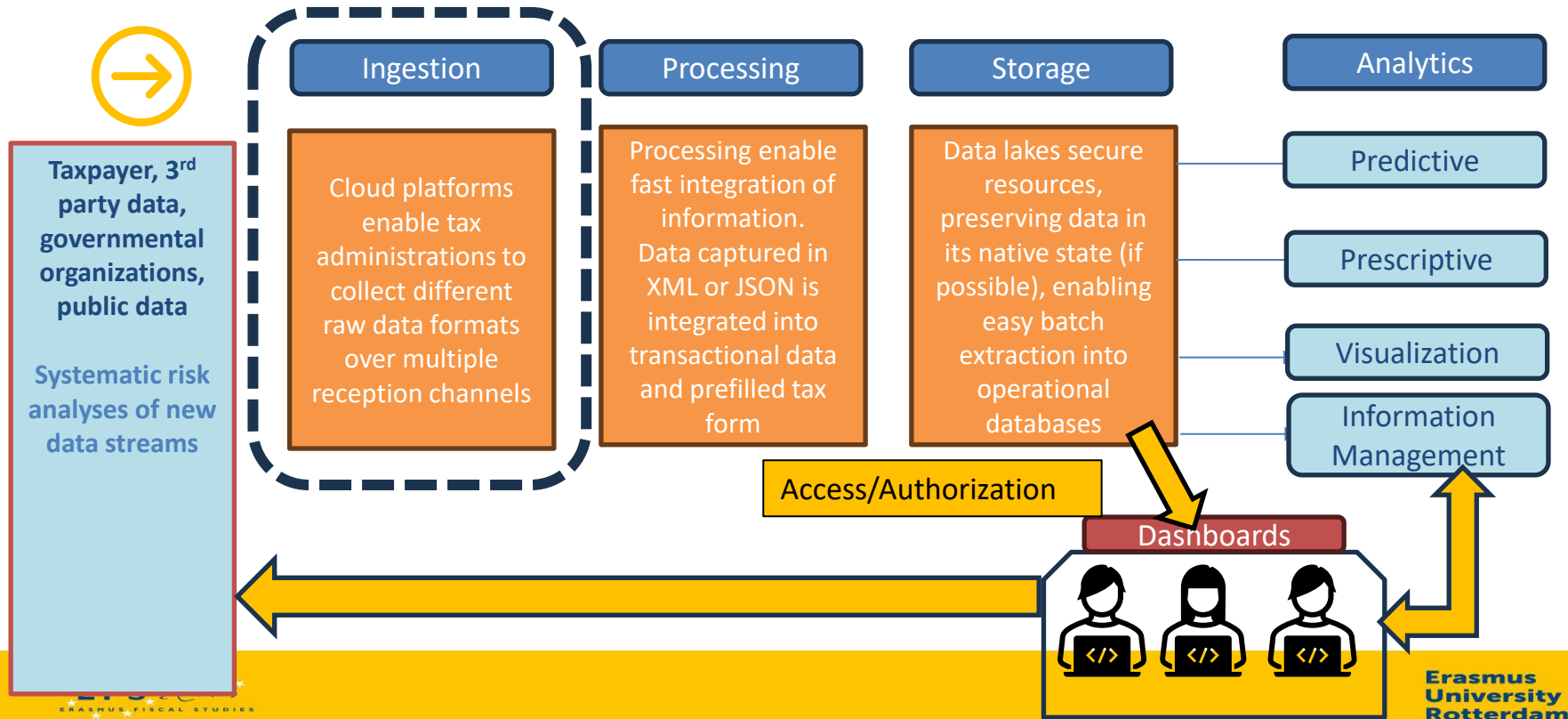
Among respondents of the ISORA, 52 jurisdictions

90% report using AI and BI to uphold tax compliance

Similar figures in Asia (ADB) and in the Americas (CIAT)

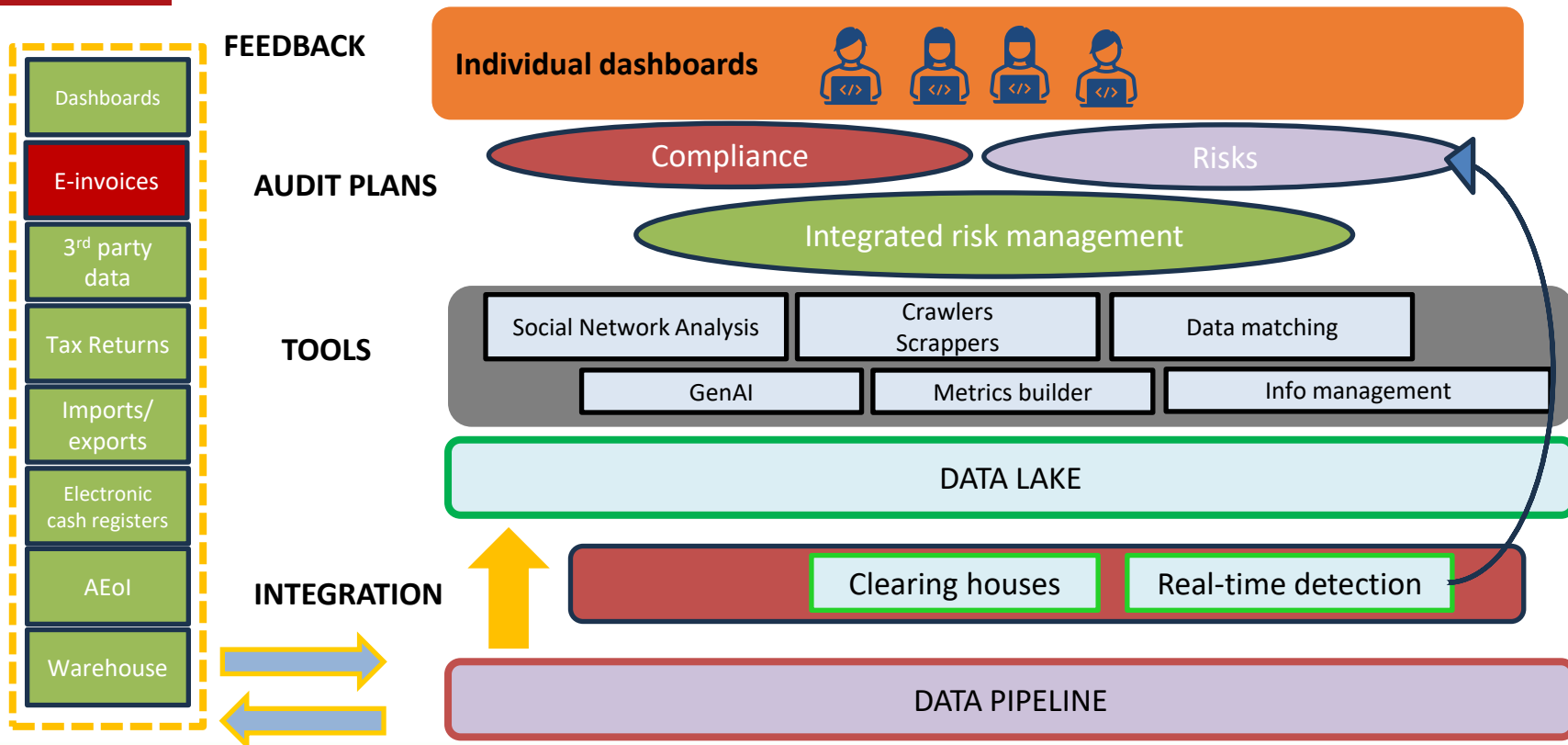
Data pipeline for tax administrations

Fragmentation of e-invoicing approaches, discretion as to the design of technological infrastructure



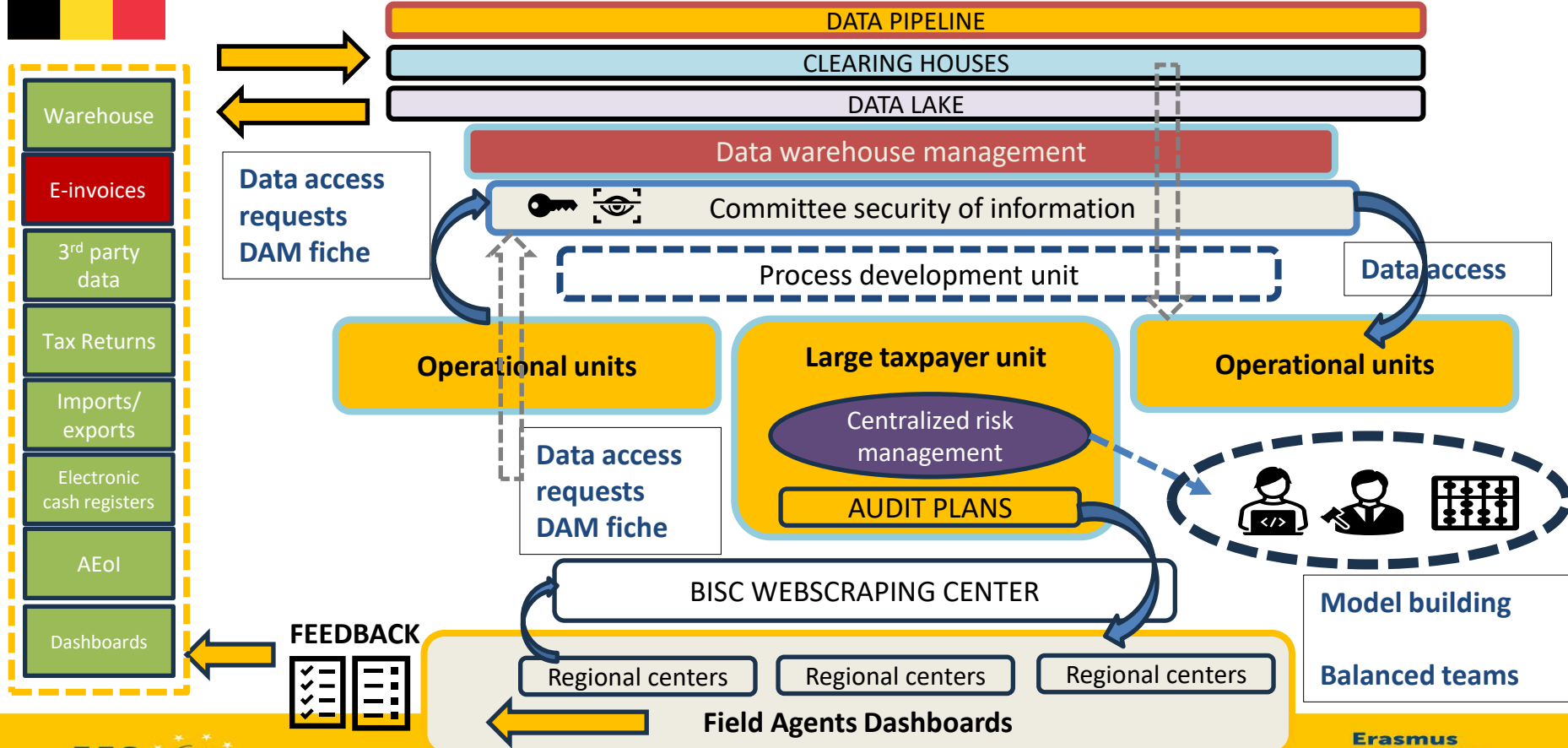


Different data infrastructure for tax administrations

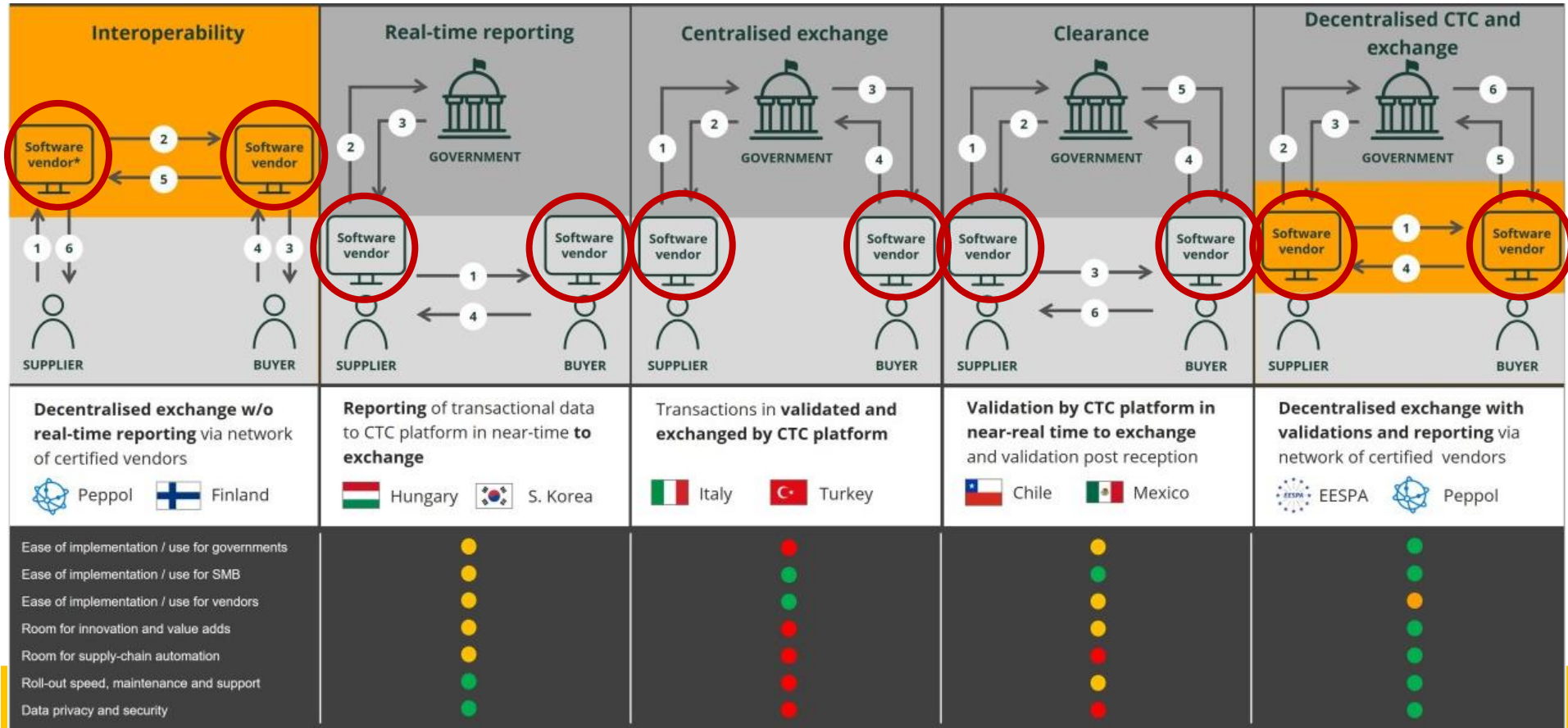




Different data infrastructure for tax administrations



Different e-invoicing approaches for tax administrations



STIR - Poland

Types of STIR bank account blockade

**Short-term
blockade**

Up to 72 hours

**Long-term
blockade**

Up to 3 months

Poland – STIR (*System Teleinformatyczny Izby Rozliczeniowej*)

Enables **exchange of financial transaction data** in among:

- Financial institutions, banks
- National revenue administration
- Central data warehouse

STIR acts as a **central clearinghouse**, scoring individual transactions (15 million per year) through **supervised learning**

STIR sends daily report to department heads who can freeze the transaction, block the account or start an audit.

Central VIES system

- Development of a new VIES – a central system for the exchange of VAT information at the EU level adapted to the specificities of DRRs, to be maintained, hosted and technically managed by the EU Commission;
- Storing (5 years), cross-checking information on taxable persons and their cross-border transaction and sharing the information with the MS;
- Aggregating information as to total value of all B2B intra-Community supplies by individual taxable persons;
- Transmission within 1 day data collected via DRRs to VIES along with the **ID** of taxable persons making intra-Community transactions;
- Analytical tools within VIES (data matching; outlier detection; clustering)
- Data available for Eurofisc (TNA, CESOP).

Transaction Network Analysis (TNA) and Central Electronic System of Payments (CESOP)

SUPPORTING THE FIGHT AGAINST VAT FRAUD IN THE EU (excl. VAT fraud in the sector of means of transports)

EUROFISC ACHIEVEMENTS IN 2023*



3492

FRAUDSTERS IDENTIFIED
In 2022 was 2907

THIS INCLUDES

2296

MISSING TRADER FRAUD
CASES IDENTIFIED
In 2022 was 1953



In 2022 was 10.9 billion

€12.7
billion

IN FRAUDULENT
OR SUSPICIOUS
TRANSACTIONS
UNCOVERED



In 2022 was 116

121

NETWORKS OF
TRADING COMPANIES
CONSIDERED AT
HIGH-RISK OF
FRAUD

2352

SUSPICIOUS
FRAUDSTERS
DEREGISTERED
FOR VAT
In 2022 was 1942

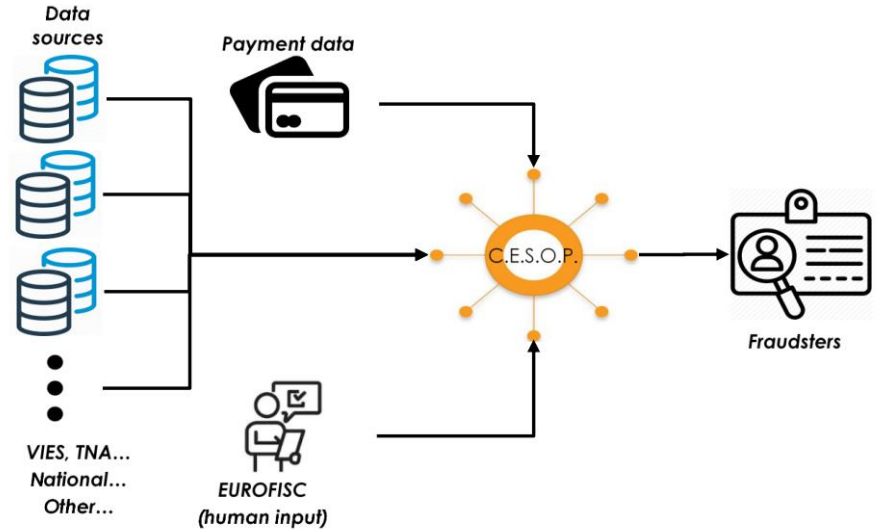


582

COMPANIES LINKED
TO FRAUDULENT
ACTIVITIES IN
THE EU
In 2022 was 632



*These statistics are based on a TNA data extraction on the 12th of February 2024



The goal of e-invoicing (realtime reporting) is to shift from **retrospective audits** to a **direct data model**

Digital reporting requirements pave the way for the tax administration 3.0 – a **direct computation model**

Single VAT Registration

Issues

- VAT registration is **costly and burdensome** for businesses
- **Multiple VAT registrations** in different Member States may be required
- **One-Stop-Shop (OSS) and Import-One-Stop-Shop (IOSS)** introduced by VAT e-commerce rules **do not apply to all cross-border transactions**

An example

E-vehicle charging company:

- Recharging energy is a **domestic supply of goods**
- **OSS & IOSS not available** to domestic supply of goods
- **VAT registration in each Member State** where it supplies recharging energy



One-Stop-Shop extension

Extension of OSS to B2C Domestic Supplies of Goods

Introduction of OSS to Transfers of Own Goods

Mandatory Reverse Charge for B2B Cross-Border Supplies of Goods

Extension of the deeming provision for supplies of goods by platforms

Current deeming provision for platforms

- Domestic and intra-EU supplies of goods only to EU consumers (B2C supplies)
- Only non-EU suppliers

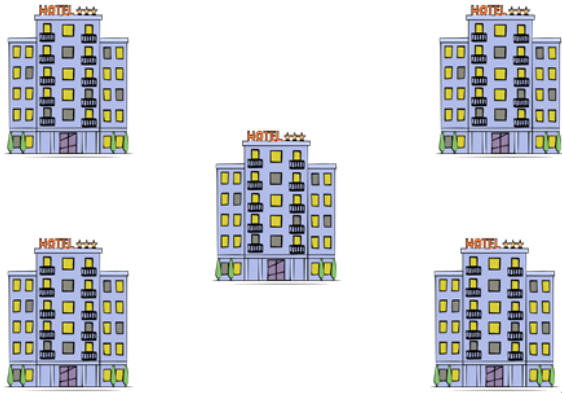
Proposed Article 14a VAT Directive

- Domestic and intra-EU supplies of goods to all EU customers (B2B and B2C supplies)
- Both non-EU and EU suppliers

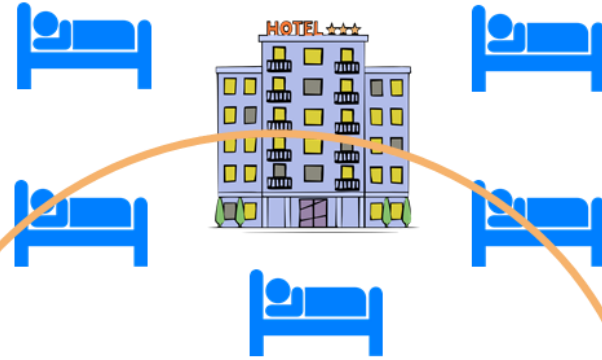
Platform economy



Traditional Hotels



Accommodation Platform



**Inequality, distortions
of competition**

Proposed measures



VAT Equality

Abolishment of VAT exemption on supply of short-term accommodation and passenger transport services



Place of Supply

Facilitation service charged by platform to B2C customer is taxable where the underlying supply is taxable



VAT Collection

Deemed supplier model for platforms which account for VAT on the underlying supply in lieu of the supplier

*VAT technology and
taxpayers' rights*



Technology in VAT - opportunities



Effective tool for
combatting VAT fraud



Facilitates access data, even in
real time, increases tax
transparency



Can facilitate compliance
and protect compliant
taxpayers



Important for effective
functioning of
administrative cooperation

ViDA - Impact on taxpayers' rights

Classic fundamental right liberal framing: what limits to State interference with free... *commerce*

Digital reporting requirements constitute an interference with fundamental rights of taxpayers

Hierarchy of norms - **adoption of secondary law measures does not validate infringements of taxpayers' fundamental rights**, DRR can be challenged in light of EU Charter and ECHR

The ViDA proposal shows little attention to taxpayers' fundamental rights – **asymmetry of powers between State and taxpayers**

Politically, the Commission rests on direct (ease of use, lower admin. burden) and indirect gains (increased State budget)

ViDA - Impact on taxpayers' rights



Initial collection interferes with:

- **Data protection**
- **Informational privacy**

See e.g. CJEU C-698/15 Tele2Sverige 'Bulk data collection, in a general, indiscriminate and undifferentiated manner is contrary to privacy'

Beware, scope of privacy goes beyond data!



Exchange of information

Dissemination of information (in VIES or TNA) interferes with:

- **Data protection**
- **Informational privacy**

Dissemination of taxpayer data should be scrutinized by sending administration:

- **Double tax treaties**
- **Data protection equivalence decision**

**See for instance:
SPF Finances refusal to remit taxpayer data to US**

Bulgaria (2019) cyberattack



Admin./Criminal decision-making interferes with:

- **Transparency**

CJEU C-419/14 WebMind Licenses:

*The addressees of decisions must be placed in a position **where the information on which the authorities intend to base their decision is known (BUT AI features are by law secret in the EU)***

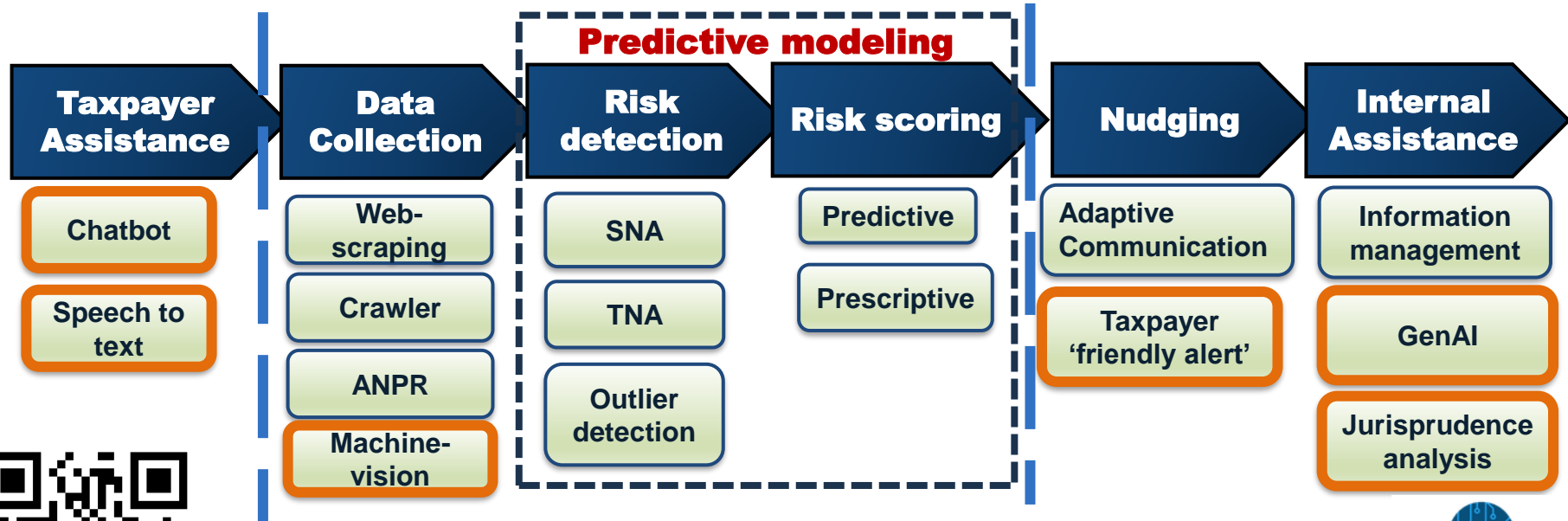
- **Fair trial**
- **Legality**
- **Equality**
- **Right to property**

Functional taxonomy of AI systems of revenue authorities

Pre-clearance

Clearance

Post-clearance



Advanced models

Source: D. Hadwick (2024) - taxadmin.ai

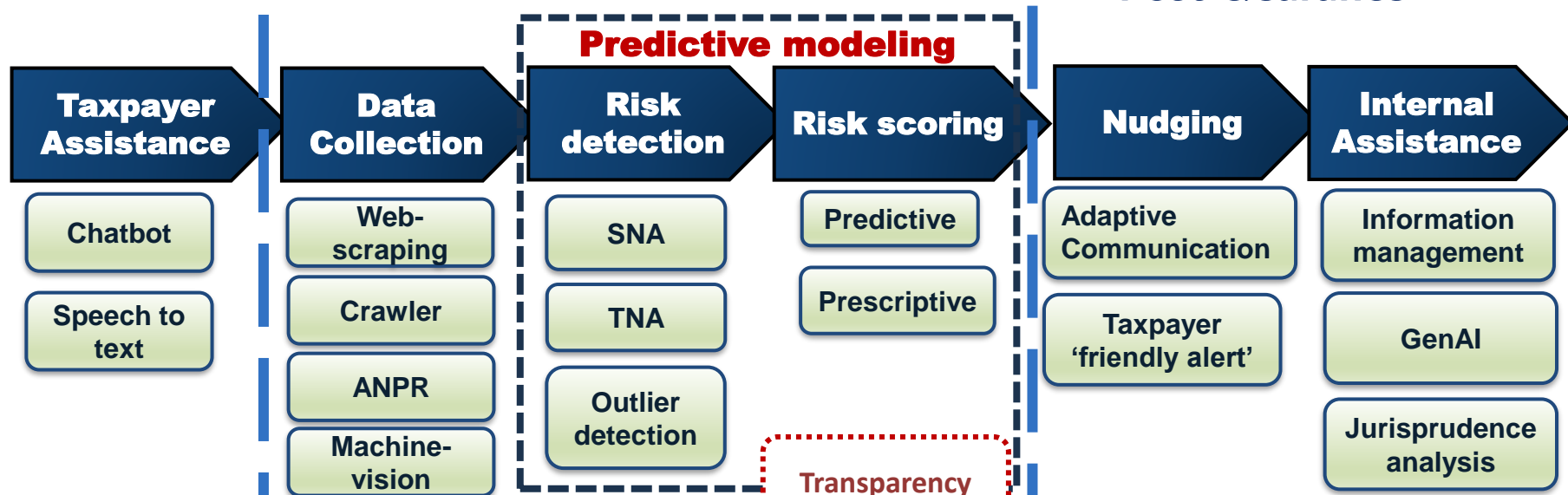


Risks to taxpayers' rights

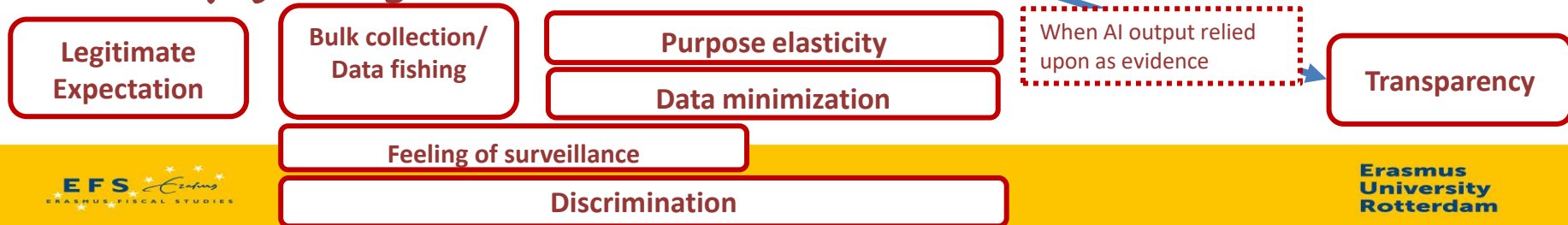
Pre-clearance

Clearance

Post-clearance



Risks to taxpayers' rights



Conclusion: ‘Viva la ViDA or living la vida loca?’

National DRR initiatives inside or outside of the EU have been generally successful in reducing VAT/GST gap
(Commission estimates €11Bn/annum gains over next decade)

But e-invoicing is heavily reliant on technology and software vendors - **always generates a regressive burden on businesses**

Further, while ViDA proposal solves several structural issues of VAT procedure, it generates risks of conflict with taxpayers’ rights

ViDA increases tax administration capabilities with little corresponding safeguards for taxpayers

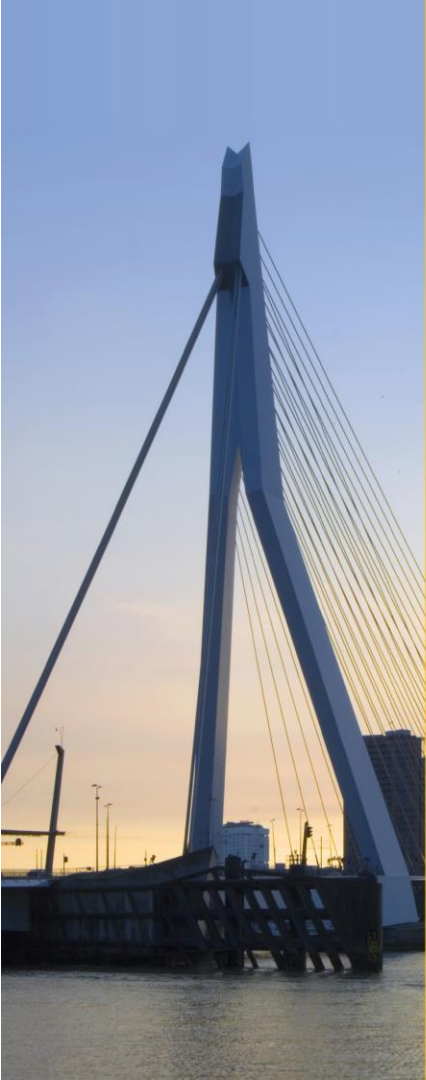
Additional literature



<https://taxadmin.ai/>

- Hadwick & Lan (2021), '**Lessons to be learned from the Dutch Childcare Allowance Scandal**', *World Tax Journal* 13(4)
- Hadwick (2022) '**Behind the one-way mirror: Reviewing the legality of EU tax algorithmic governance**', *EC Tax Review* 32(4)
- Hadwick (2023) '**Error 404 – Match not found: Tax enforcement and law enforcement in the EU AI Act**', *Eucrim*
- Hadwick et al. (2023) '**De toeslagenaffaire in Nederland. Aanleiding tot evaluatie van het fiscaal algoritmisch bestuur in België**' *Tijdschrift voor Fiscaal Recht*
- Hadwick (2024) '**Slipping Through the Cracks, the Carve-outs for AI Tax Enforcement Systems in the EU AI Act**' *European Papers* 9(3)
- Aslett, Hamilton, Gonzalez, Hadwick, and Hardy (2024) '**Understanding Artificial Intelligence in Tax and Customs Administration**' *International Monetary Fund Technical Notes and Manuals* <https://doi.org/10.5089/9798400290435.005>

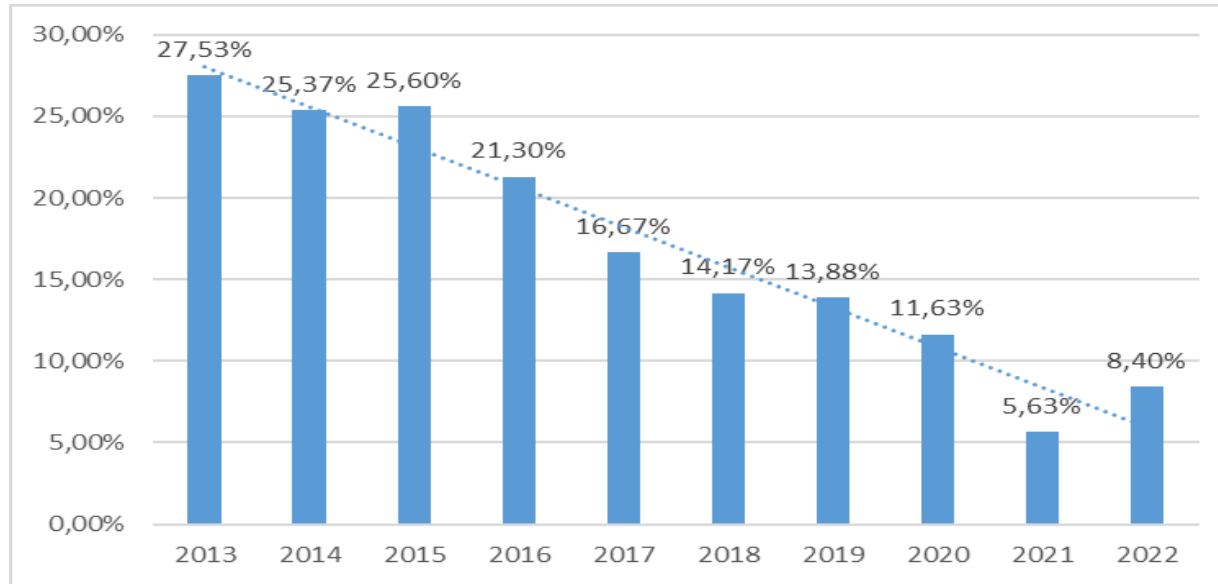




Experience with digital reporting from Poland

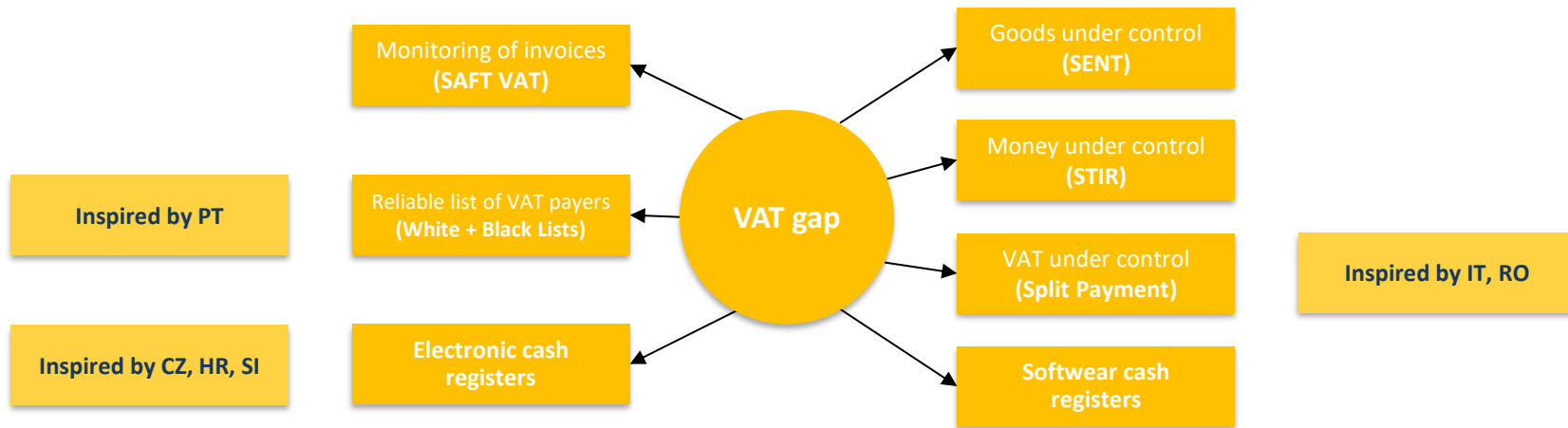
Dr Paweł Selera, LL.M., Tax Adviser, MDDP
Rotterdam – 13 February 2025

Dynamics of decreasing of the VAT compliance gap in Poland (2013-2022)



Source: European Commission, CASE, Poniatowski, G., Bonch-Osmolovskiy, M., Braniff, L., Harrison, G., Luchetta, G., Neuhoﬀ, J., Śmietanka, A., Zick, H., VAT gap in the EU – Report 2024, Publications Office of the European Union, Luxembourg, 2024.

Tackling the VAT Gap in Poland



2022/2026



Inspired by IT

SAF-T (JPK_VAT)

Problem



Solution

SAF-T (JPK_VAT)

- Set of information on purchases /sales invoices facilitating audit checks submitted online on a monthly basis without the tax authority's request
- Based on the Standard Audit File for Tax structure
- Automated cross-checking of sales and purchase invoices

Online cash registers

Split Payment Mechanism

SAF-T (JPK_VAT)

STIR

SENT

White List

Recapitulative statements

Standard Audit Files for VAT (SAF-T)

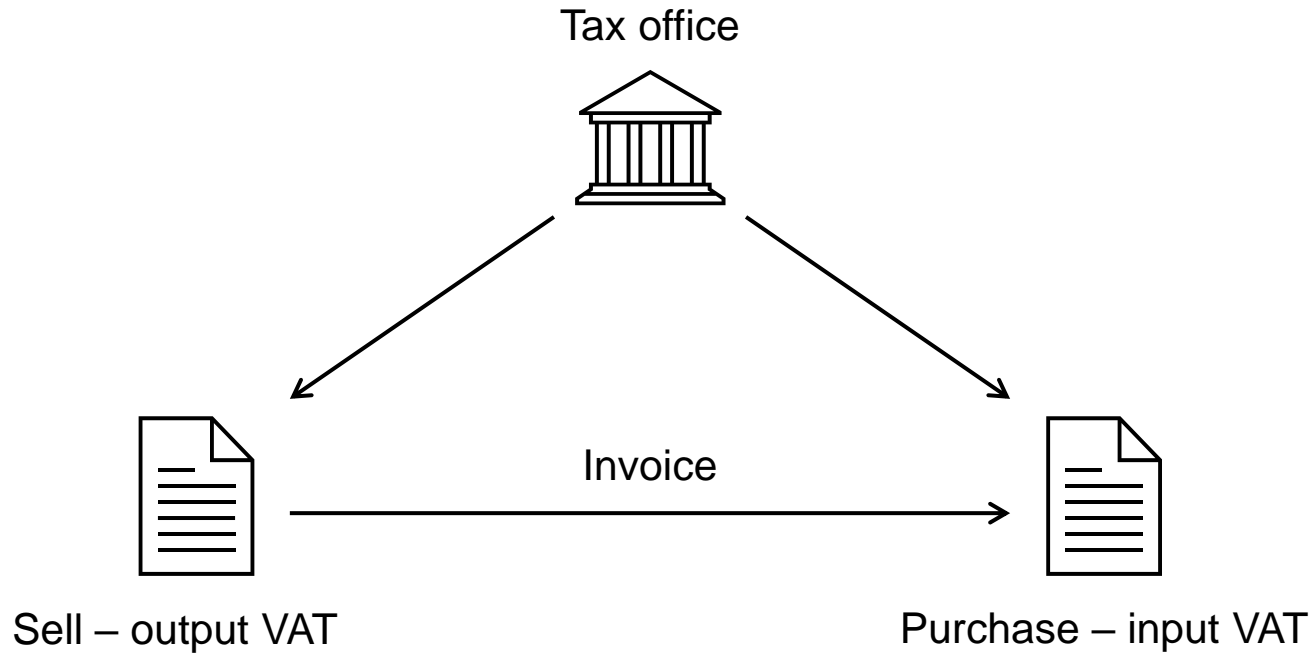
BEFORE

- x Tax officials had no automatic access to VAT records of VAT payers
- x No analysis of transactions; paper form of reporting on demand
- x No immediate access to VAT records and information about transaction
- x No crossing of output and input VAT declared by taxpayers on the same transaction

AFTER

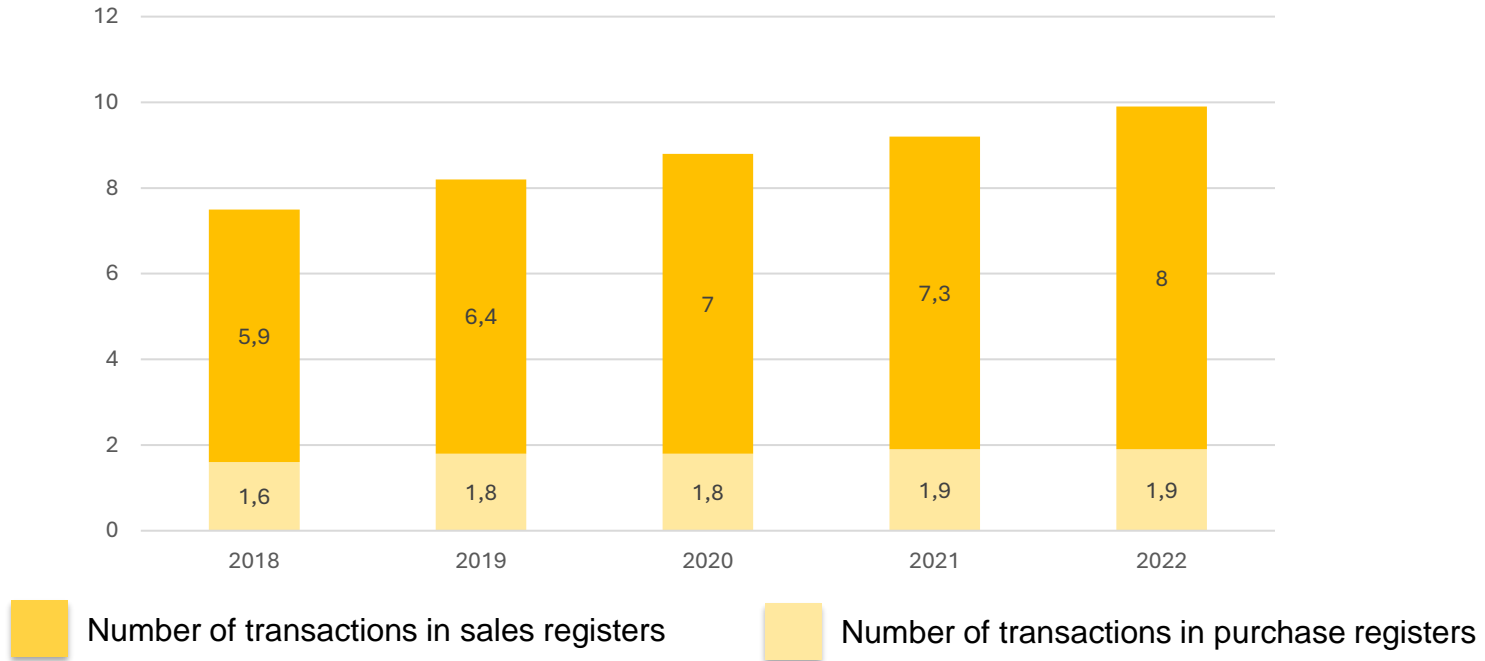
- ✓ Access to SAF-T data enables tax officials effective analysis of transactions
- ✓ Tax officials gain full knowledge of transactions performed
- ✓ Quick and effective pre-control of VAT payers
- ✓ Tax officials tracking VAT fraudsters by eliminating empty invoices

SAF-T / cross-check



SAF-T

- Number of transactions verified [in billion]



Split Payment Mechanism

Problem



Solution

Split Payment Mechanism

- Applicable to domestic B2B transactions settled via bank transfers upon decision of the customer
- A "VAT account" created automatically and maintained by banks for all B2B settlement accounts in Poland
- One money transfer: the invoiced amount is split automatically into two separate accounts: (1) the net amount to the settlement account and (2) the VAT to the VAT account of the taxable person
- Ownership aspect: the VAT account and funds deposited thereon belong to the taxable person

Online cash registers

Split Payment Mechanism

SAF-T (JPK_VAT)

STIR

SENT

White List

Recapitulative statements

Split Payment Mechanism

BEFORE

- x Lack of effective measure to tackle VAT fraud such as the missing-trader fraud
- x Lack of protection for honest businesses

AFTER

- ✓ Protection against VAT frauds
- ✓ Due diligence (no joint-several liability)
- ✓ Faster VAT refund

Online cash registers

Split Payment Mechanism

SAF-T (JPK_VAT)

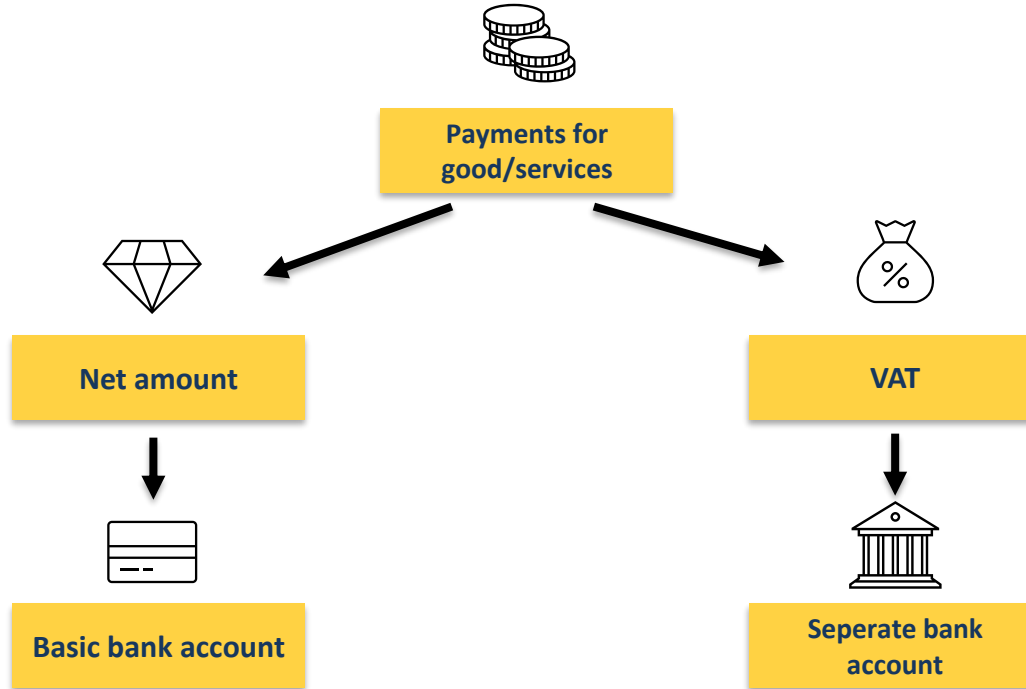
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White List

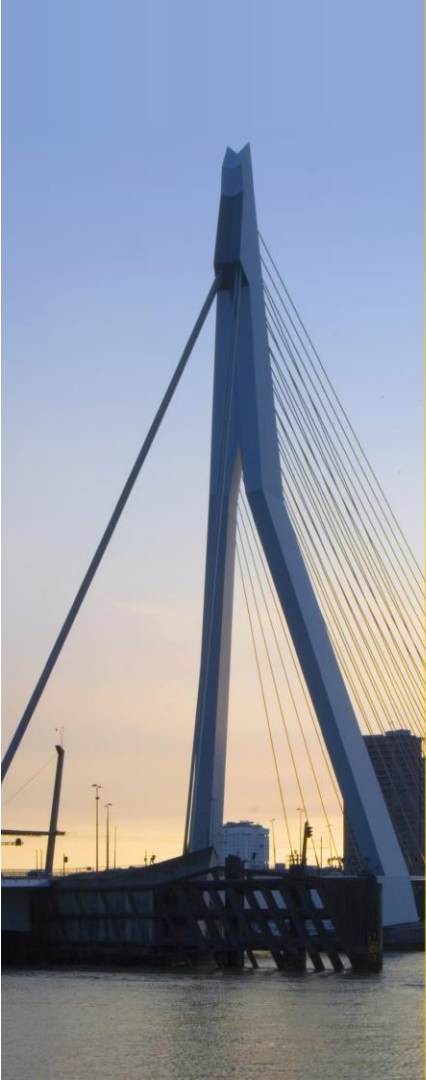
Recapitulative statements

Split Payment Mechanism



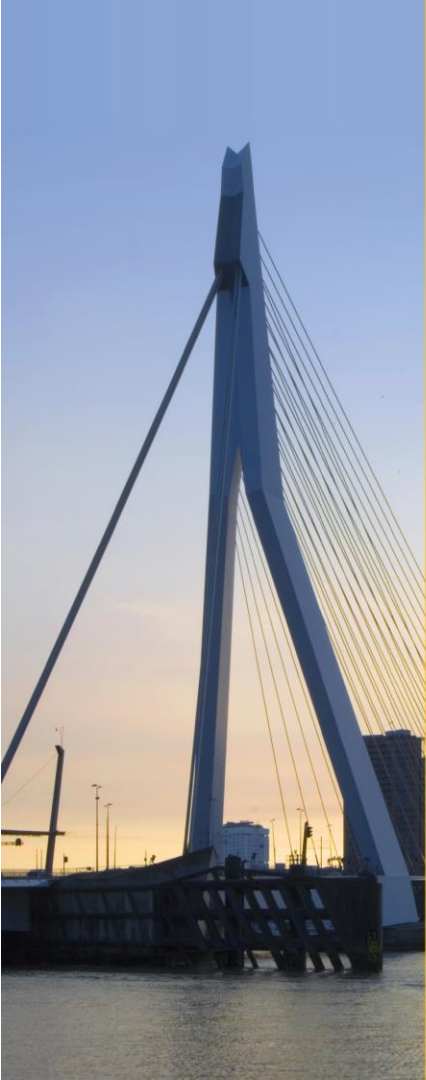
Popularity of the split payment mechanism from July 2018 to December 2022

Period	Number of SPM transactions (payments)	Gross value of transactions (PLN million)	SPM's share of output VAT (%)
July 2018 – October 2019	24,582,825	399,253	11%
November 2019 – December 2020	94,698,087	1,578,947	49%
January – December 2021	93,130,585	1,769,597	56%
January – December 2022	93,914,086	2,179,063	60%



**Thank you
for your attention**

Dr Paweł Selera, LL.M., Tax Adviser, MDDP



Developments in legal protection and certainty related to EU customs law : *Practical challenges in preliminary ruling proceedings and national litigation*

Patricio Diaz Gavier

Rotterdam – 13 February 2025

1. Publication of submissions: after vs. during the proceedings:

- To enhance transparency and provide more context to the decisions of the Court of Justice in preliminary rulings, the Court has decided to publish the written submissions of the parties involved in the proceedings on its website within a reasonable period after the closure of the case.

2. Absence of a procedural calendar

- The parties involved in a preliminary ruling procedure are completely unaware of when the Court of Justice will issue its judgment. Why can't the Court of Justice set a date for the judgment when registering the request?

3. Short deadline for written observations versus the absence of a procedural calendar/ long waiting period

- Parties must submit their written observations to the Court of Justice within two months and ten days after registration. Why is this deadline imposed when there is often a waiting period of more than a year afterward? (Procedure calendar, also for replies).

4. No comment on other written observations

- The interested persons are requested to submit any observations they may make on the questions referred by a national court or tribunal on the same day, without as a general rule knowing the position adopted by the other interested persons on those questions (§13 Practical directions to parties concerning cases brought before the court).

5. Oral hearings are exceptional

- The preliminary ruling procedure does not provide for an automatic oral hearing. Why are the parties who wish it not given the opportunity to present their position orally, and the problem of setting a date for the oral hearing? What about 96.2 of the rules of procedure of the Court of Justice of the European Union: Non-participation in the written part of the procedure does not preclude participation in the oral part of the procedure.

6. Only the judiciary can initiate preliminary ruling proceedings.

- The jurisdiction of the Court of Justice and of the General Court to give a preliminary ruling on the interpretation or validity of EU law is exercised exclusively on the initiative of the national courts and tribunals, whether or not the parties to the main proceedings have expressed the wish that a question be referred for a preliminary ruling.

7. Necessity of a decision to solve the national case

- A request for a preliminary ruling is made when a national judge determines that an interpretation or validation of EU law is necessary to render a judgment (see second paragraph of **Article 267 TFEU**). According to **Article 94.c) of the Rules of Procedure**, the request for a preliminary ruling shall contain “a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law (...)”.

8. Importance of written observations versus page limit

- The written part of the procedure plays an essential role in the Court's understanding of the case. It must allow the Court, by reading the written pleadings, statements of case or observations lodged, to acquire a detailed and accurate idea of the subject matter of the case before it and the issues raised by that case (§13 Practice directions to parties concerning cases brought before the Court, 2024/2173, PB L 30.08.2024) ... but written observations lodged in a preliminary ruling case should not exceed 20 pages (§15).

9. No third-party intervention / amicus curiae briefs.

- Pursuant to Article 23 of the Statute, the following shall be authorised to submit observations to the Court: *(a) the parties to the main proceedings, (b) the Member States, (c) the European Commission (...)* (Article 96 Rules of Procedure of the Court of Justice). No possibility for interested natural or legal persons to intervene in a preliminary ruling procedure versus the benefit of having all relevant arguments before the court or amicus curiae briefs?
- (An **amicus curiae** brief, also known as a "friend of the court" brief, is a legal document submitted to a court by someone who is not a party to the case but has a strong interest in the matter. The purpose of this brief is to provide the court with additional information, legal arguments, or perspectives that the parties to the case might not have presented, which could assist the court in making a more informed decision).

10. The lack of suspension of implementation of a negative decision vs. urgency

Article 45 UCC 1. The submission of an appeal *shall not* cause implementation of the disputed decision to be suspended.// 2. The customs authorities shall, *however, suspend implementation* of such a decision in whole or in part where they have *good reason* to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned.// 3. In the cases referred to in paragraph 2, where the disputed decision has *the effect of causing import or export duty to be payable*, suspension of implementation of that decision shall be conditional upon the provision of a guarantee, unless it is established, on the basis of a documented assessment, that such a guarantee would be likely to cause the debtor serious economic or social difficulties.

11. The impact of national law on the application of EU customs law – same facts, different MS treatment?

- **Article 195.1 UCC:** Where the placing of goods under a customs procedure gives rise to a customs debt, the release of the goods shall be conditional upon the payment of the amount of import or export duty corresponding to the customs debt or the provision of a guarantee to cover that debt. // **Article 42.1 UCC:** Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be effective, proportionate and dissuasive. **Belgian application** : verification, request for guarantee and countervalue of the goods. Defense?

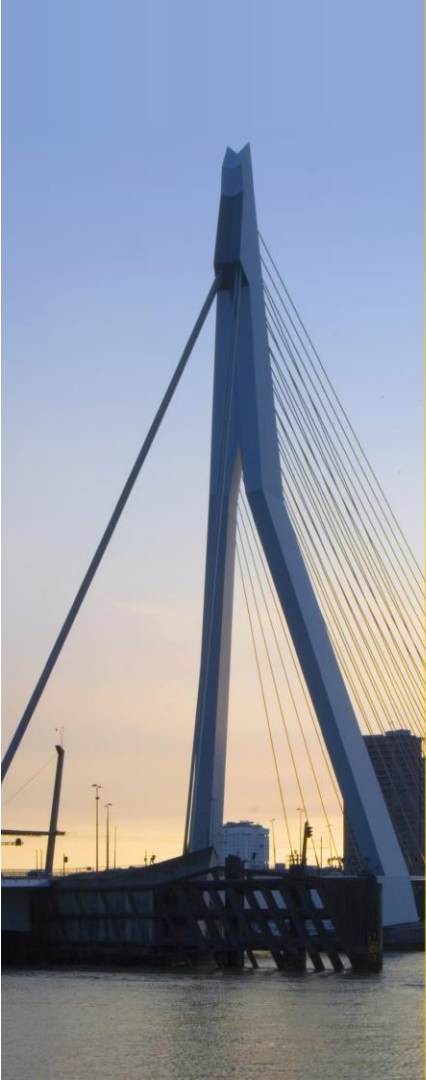
12. [...] – example 2

- **Article 103 UCC limitation of the customs debt:** 1. No customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred.// 2. Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period laid down in paragraph 1 shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law.

13. [...] – example 3

- **EPPO** and inadmissibility?

- Patricio Diaz Gavier, Advocaat (Belgium),
- pdg@diazgavier.com,
- +32 497 287740

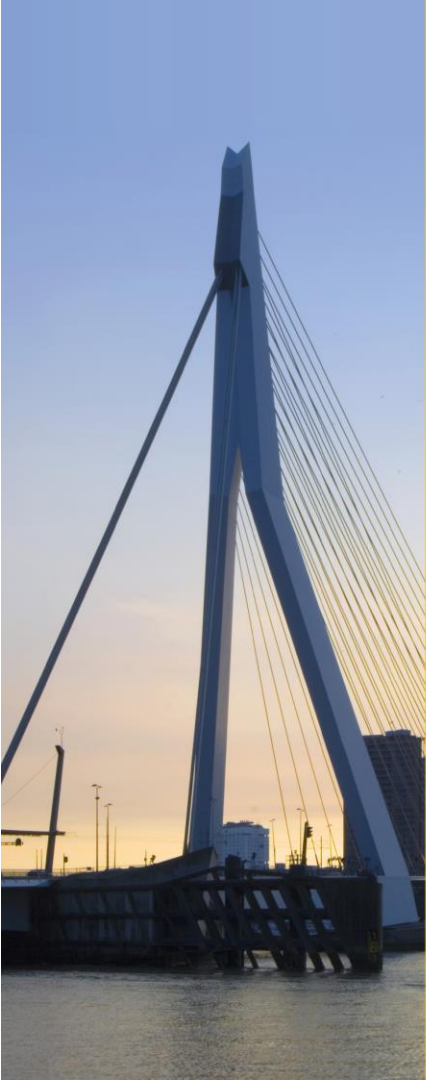


Refreshment Break

15.40 – 16.10

EFS Agenda 2025

- **Post-Master Internationaal en Europees Belastingrecht (in Dutch)**
Module 1: Monday 3 March till Friday 7 March 2025
Module 2: Monday 2 June till Friday 6 June 2025
- **Top-Level Seminar in EU Customs Law (in English)**
Wednesday 18 June till Friday 20 June 2025
- **Post-Master in EU Customs Law (in English)**
Module 1: Monday 22 September till 26 September 2025
Module 2: Monday 3 November till 7 November 2025
- **Post-Master Indirecte Belastingen (in Dutch)**
Tuesday early September till Tuesday early December 2025 (every Tuesday)
- **Top-Level Seminar 'EU VAT: Recent Developments and Outlook' (in English)**
Wednesday 24 September till 26 September 2025



Panel discussion

Madeleine Merkx – moderator

**David Hadwick, Bart-Jan Kalshoven, dr. Pawel Selera,
Shanna van den Maagdenberg**

Rotterdam – 13th February 2025



**Thank you for attending the
conference!**

Join us at the networking drinks in the entrance hall!