

CONSIGNMENTS TO BE SPLIT AND REDIRECTED TO DIFFERENT  
DESTINATIONS IN THE FREE ZONES

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**Abstract**

*The current global socio-economic context is different from that of the 1990s. Free ports, free trade zones, industrial parks and free zones have represented an economic boom for users in many territories and states of the world, including traders in the EU member states, and Romania did not miss from this select club of territories with fiscal and customs facilities or other benefits. Reports from the European Court of Auditors and OLAF identified a number of delays in the implementation of customs information systems, which led to inadequate monitoring of the movement of goods to and from free zones. This research seeks to identify a number of solutions and proposals for effective working mechanisms for the issuance of certificates of origin and replacement certificates for shipments to be split and redirected to different destinations in free zones.*

**Keywords:** free zones, origin, replacement certificates, fraud

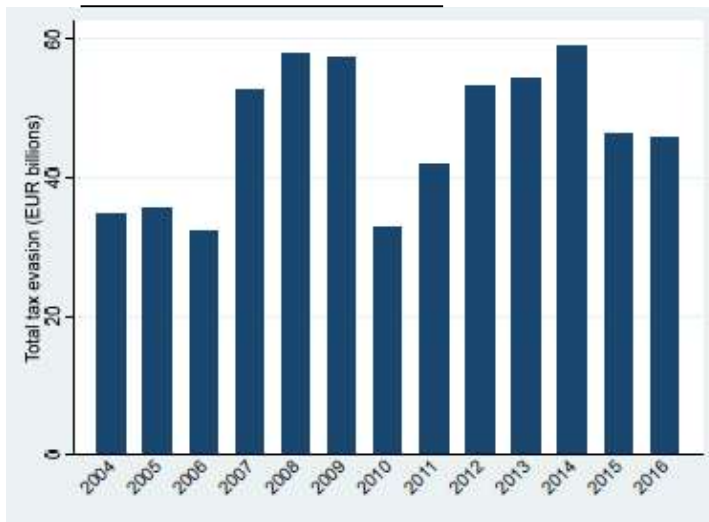
**Introduction**

The European Court of Auditors has consistently highlighted major tax and customs fraud, many of the ingenious methods used by criminals to target transactions in offshore territories and free zones. There is a clear concern from control bodies as they are finding it increasingly difficult to deal with the situation, as fraud methods are becoming more resourceful and research skills are becoming increasingly difficult to establish due to the involvement of transnational criminal networks. Customs duties and excise duties are evaded, value added tax in cross-border operations.

As shown in the figure below, tax evasion is growing sharply, from 32 trillion in 2006 to 59 trillion in 2014. Even if there is a slight decrease in 2015 and 2016, the trend is upward.

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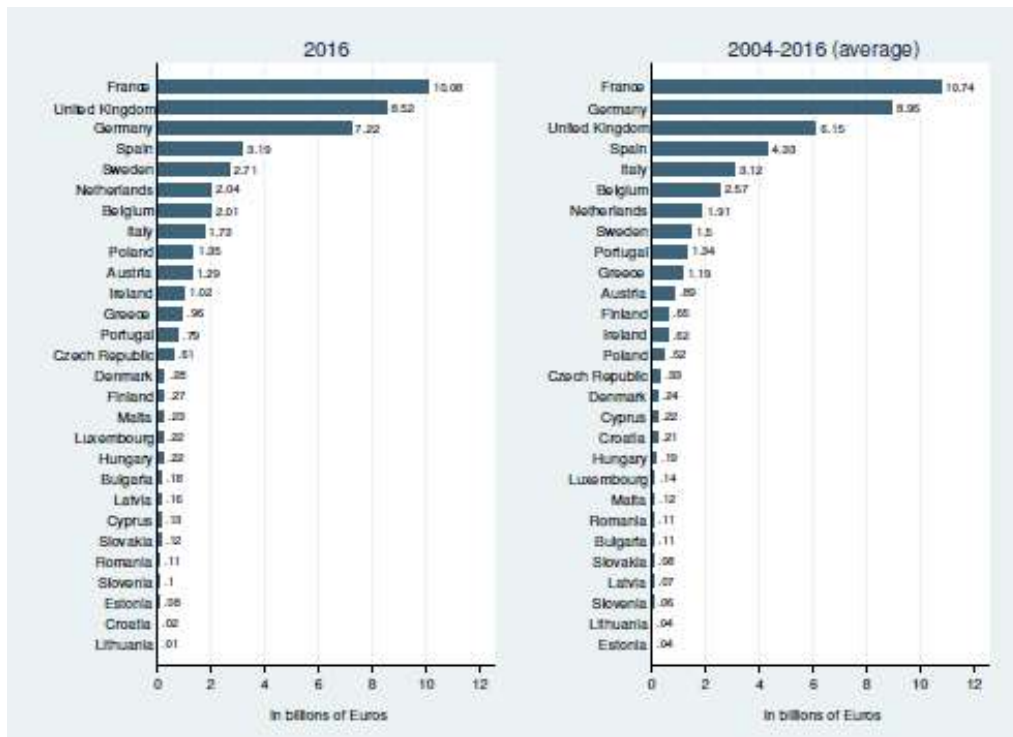


Source: European Commission: *Taxation Papers nr.76 - 2018*, p.81

The regulatory framework of the European Union does not encourage the functioning of free zones as most of the benefits offered to traders have not been returned to local or regional budgets in the form of taxes and duties as a result of possible profits that should have arisen. The table below contains data on revenue lost due to international tax evasion by Member States. On average during the period under review, 14 of the Member States with the lowest estimated lost income represent less than 5% of the EU-28 total (Lithuania, Estonia, Slovenia, Latvia, Slovakia, Romania, Bulgaria, Malta, Luxembourg, Hungary, Croatia, Cyprus, Denmark and the Czech Republic<sup>2</sup>

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<sup>2</sup> European Commission: *Taxation Papers nr.76 - 2018*, p.86



Source: European Commission: *Taxation Papers nr.76 - 2018*, p.88

### The origin of goods

The issue related to free zones is regulated by art. 37 of Decision no. 71/2015 of the EEA Joint Committee of 20 March 2015 replacing Protocol 4 (rules of origin) to the Agreement on the European Economic Area [2016/754] (see, to this effect, Official Journal of the European Union no. L129 / 56 of 19.5.2016).

*"1. The Contracting Parties shall take all necessary measures to ensure that products marketed on the basis of a proof of origin and which, during transport, are relocated in a free zone situated in their territory, are not replaced by other goods and are not subject to manipulations other than normal operations intended to prevent their deterioration".*

However, issues related to the documents of origin required for shipments to be distributed and redirected to different destinations are covered by the provisions of Articles 18 and 19 of Protocol 4. For the granting of preferential tariff treatment, those may be considered as originating products wholly obtained "in one part exclusively from materials which are classified as originating" under the Protocol defining the concept of "originating products" and methods of administrative cooperation (See, to this effect,

Official Journal of the European Union no. L 127/1344 of 14.5.2011).

When a consignment of originating goods is split, the resulting small quantities, exported to countries other than the country of initial destination, must be accompanied by EUR 1 certificates issued on the basis of the proof of origin made for the initial consignment. When the entire quantity of goods entered on the original EUR 1 certificate is redirected to a country in the pan-European cumulation of origin area, the EUR 1 certificate shall be issued.

In the case of any EU Member State, when a consignment is sent to the free zone, it is divided for re-export, the part destined for that State will be accompanied by the original EUR 1 certificate. The customs office serving the free zone will issue replacement EUR 1 certificates to cover the quantity of goods exported to another country in the cumulation area of origin. These certificates shall be issued only by the customs office serving the free zone.

For the purposes of the provisions of Protocol 4, the customs office serving the free zone to which the replacement EUR 1 certificates are requested must:

- take all measures necessary to ensure that goods marketed in the free zone under cover of a EUR 1 certificate are not replaced by other goods, which are subject only to operations which enable them to be kept in good condition;

- establish customs supervision of goods traded under cover of a EUR 1 certificate in the free zone and carry out physical checks on the goods whenever there are suspicions as to the originating nature of the goods or when there are suspicions as to the type and quantity of goods covered by the initial EUR 1 certificate and the goods as such continue in the means of transport or stored in the free zone, for which the exporter completes the replacement EUR 1 certificate.

### **Origin control**

The customs authorities shall assist each other in verifying origin control in all situations. Moreover, an integrated customs system at EU level must allow the exchange of data to work efficiently and in real time. Mutual assistance agreements concluded with a number of other countries outside the customs territory of the Union would be a step towards combating customs fraud. Authenticity of proof of origin would be a first point of interest, and subsequent controls could be the solution to not block borders and to allow the free movement of goods. Where appropriate, customs staff in the risk analysis departments may send copies of proof of origin and the commercial documents on which the request for facilities was based, indicating the reasons for the suspicions of incorrectness, to the counterparts.

Finally, "if the customs authorities of the importing Party decide to suspend the preferential treatment of the products concerned pending the

results of the inspection, they shall grant the importer relief from customs duties on the products, subject to any precautionary measures they deem necessary (*idem* art.27 alin. (5) ).

If *a posteriori* control of the initial EUR 1 certificates is requested, by sampling or when there are valid suspicions as to the origin of the goods covered by them, the type, quantity, etc., legal action may be taken in case of invalidation by the issuing customs authorities.

## Conclusions

The fight against fraud is considered inefficient at the level of the European institutions, with poor results in detecting major fraud (Turksen, Abukari, 2018, p. 3), so it is proposed to reform OLAF and strengthen the role of the new European Public Prosecutor's Office under the PIF Directive (Directive (EU) 2017/1371). The fight against crime affecting the financial interests of the European Union should have a strategy for the cooperation of the specialized structures in the Member States, including legislative measures leading to better harmonization of the specific rules of national law of the Member States.

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