

EUROPEAN MONOGRAPHS

**European Cooperation between Tax,
Customs and Judicial Authorities**

The Netherlands, England and Wales,
France and Germany

Edited by:

Professor J.A.E. Vervaele and Professor A.H. Klip

Research Group

Project leaders:

Professor J.A.E. Vervaele and Professor A.H. Klip

Project staff:

Dr A. Berg, M. Dane and Dr O.J.D.M.L. Jansen

Willem Pompe Institute of Criminal Law and Criminology
Centre for Enforcement of European Law, Law Faculty, University of Utrecht

KLUWER LAW INTERNATIONAL
THE HAGUE — LONDON — NEW YORK

Contents

Preface	v
1. Introduction	1
<i>A.H. Klip and J.A.E. Vervaele</i>	
1.1 General context of research	1
1.2 Scope of survey and definition of the problem	2
1.3 Methodology, composition of survey group and justification	5
2. Supranational rules governing cooperation in administrative and criminal matters	7
<i>A.H. Klip and J.A.E. Vervaele</i>	
2.1 Rules and institutional context	7
2.1.1 International law	7
2.1.2 European Union law	8
2.2 Mutual administrative assistance within the European Union	9
2.2.1 Introduction: historical development	9
2.2.2 Mutual administrative assistance as a concept	11
2.2.3 Horizontal mutual administrative assistance in customs and agricultural matters	13
2.2.4 Horizontal mutual administrative assistance in tax matters	19
2.2.5 Vertical cooperation in tax and customs matters: the position of the European Commission	23
2.3 Cooperation in criminal matters within the European Union	28
2.3.1 International mutual assistance in criminal matters: a historical survey	28
2.3.2 Mutual assistance in criminal matters as a concept	33
2.3.3 The 1959 European mutual assistance convention and the Protocol	36
2.3.4 Schengen and the Convention applying the Schengen Agreement	36
2.3.5 Third Pillar cooperation	37
2.3.6 Treaty cooperation along the dividing line between criminal law and other areas of law	39
2.4 Transition between types of cooperation in the case of transnational cooperation	46

Country analyses

3. The Netherlands	49
<i>N.M. Dane</i>	
3.1 Introduction and scope	49
3.2 Tax, customs and agriculture: national anti-fraud measures	49
3.2.1 Formal sources of law: substantive legislation, enforcement legislation and case law	49
3.2.2 Structure of organisation	59
3.2.3 Division of jurisdiction for administrative and criminal law enforcement	63
3.2.4 Instruments: control, investigation and prosecution	67
3.2.5 Judicial and extrajudicial disposal	85
3.2.6 Duty of secrecy – disclosure of information between tax authorities and judicial authorities	89
3.2.7 Rules of evidence: means of evidence, evidential value and use of evidence	91
3.3 Taxation, customs and agriculture: transnational anti-fraud measures	93
3.3.1 Formal sources of law: horizontal and vertical cooperation	93
3.3.2 Structure of organisation for cooperation	101
3.3.3 Powers to cooperate	105
3.3.4 Exceptions to cooperation (grounds for refusal)	108
3.3.5 Information provided for specific purposes	110
3.3.6 Legal protection	111
3.3.7 Use of evidence	113
4. Germany	115
<i>O.J.D.M.L. Jansen</i>	
4.1 Introduction	115
4.2 Tax, customs and agriculture	117
4.2.1 Formal sources of law: substantive legislation, enforcement legislation and case law	117
4.2.2 Structure of organisation	126
4.2.3 Instruments: control, investigation and prosecution	130
4.2.4 Extrajudicial disposal	140
4.2.5 Judicial disposal	143
4.2.6 <i>Una via</i> and cumulation	151
4.2.7 Duty of secrecy	160
4.2.8 Rules of evidence	163
4.3 Transnational anti-fraud measures	168
4.3.1 Horizontal transnational anti-fraud measures	168
4.3.2 Vertical transnational cooperation	180

5. France	181
<i>J.A.E. Vervaele</i>	
5.1 Introduction: <i>Cohabitation à la française?</i>	181
5.2 Tax, customs and agriculture: national anti-fraud measures	183
5.2.1 Formal sources of law: substantive legislation, enforcement legislation and case law	183
5.2.2 Structure of organisation	186
5.2.3 Instruments: control, investigation and prosecution	192
5.2.4 Extrajudicial disposal	200
5.2.5 Judicial disposal	203
5.2.6 <i>Una via</i> and cumulation	205
5.2.7 Duty of secrecy – disclosure of information between tax authorities, customs authorities and judicial authorities	206
5.2.8 Rules of evidence: means of evidence, evidential value and use of evidence	211
5.3 Taxation, customs and agriculture: transnational anti-fraud measures	213
5.3.1 Horizontal transnational anti-fraud measures	213
5.3.2 Vertical transnational cooperation	218
6. England and Wales	219
<i>A.J. Berg</i>	
6.1 Introduction	219
6.2 Tax, customs and agriculture: national anti-fraud measures	219
6.2.1 Formal sources of law: substantive legislation, enforcement legislation and case law	219
6.2.2 Structure of organisation	222
6.2.3 Instruments: control, investigation, prosecution and trial	225
6.2.4 Extrajudicial disposal	231
6.2.5 Judicial disposal	233
6.2.6 <i>Una via</i> and cumulation	234
6.2.7 Duty of secrecy – disclosure of information between tax authorities, customs authorities and judicial authorities	234
6.2.8 Rules of evidence: means of evidence and evidential value	235
6.3 Taxation, customs and agriculture: transnational anti-fraud measures	239
6.3.1 Horizontal cooperation	239
6.3.2 Vertical cooperation	248
6.3.3 Conclusion	248
7. Comparative law conclusions	249
<i>A.H. Klip and J.A.E. Vervaele</i>	
7.1 Supranational rules for cooperation in administrative matters and in criminal matters	249

CONTENTS

7.1.1	Rules governing horizontal cooperation	249
7.1.2	Rules governing vertical cooperation and operational powers of the European Union	252
7.2	The structure of national enforcement systems	253
7.3	The structure of horizontal and vertical cooperation in the Member States	260
7.4	The coordination between mutual assistance in administrative matters and mutual assistance in criminal matters in supranational and national law	263
7.4.1	The coordination between mutual assistance in administrative matters and mutual assistance in criminal matters under supranational law	263
7.4.2	National rules	273
7.5	Use of evidence	277
8.	Problems, directions for possible solutions, and recommendations	283
	<i>A.H. Klip and J.A.E. Vervaele</i>	
8.1	Problems	283
8.2	Possible solutions and recommendations	285
8.3	Conclusion	290
	Literature	293
	Authorities and experts who have assisted in the survey	301