EU VAT Forum

Subgroup 7.2 ‘Administrative Sanctions and Interests’

Final Report

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Data gathering and data analysis was finalised in spring 2021 and the draft report was submitted to the EU VAT Forum end of June 2021. Datapoints have not been updated with later changes. Observations referring to the new e-commerce rules are also made prior to these rules entering into effect on 1 July 2021.

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Executive summary

- *In a foreign EU Member State, businesses are 'lost in sanctions'.*

The EU VAT Forum subgroup's report on administrative sanctions and interests answers the call from the EU VAT Forum members to provide clarity and further insights on the different regimes applicable in the European Union, primarily based on the questionnaire answered by 26 Member States during the work started in May 2018.

The subgroup has chosen not only to further analyse the answers to the questionnaire but also to perform desk research as well as a business survey to enrich the data presented in the report.

VAT SANCTION REGIMES IMPACT CROSS-BORDER SUPPLY CHAINS AND TRADE DECISIONS

A key finding in the report, corroborated by the business survey, demonstrates that the VAT sanction regime of a Member State does influence both the cross-border and the domestic supply chain to a non-negligible degree.

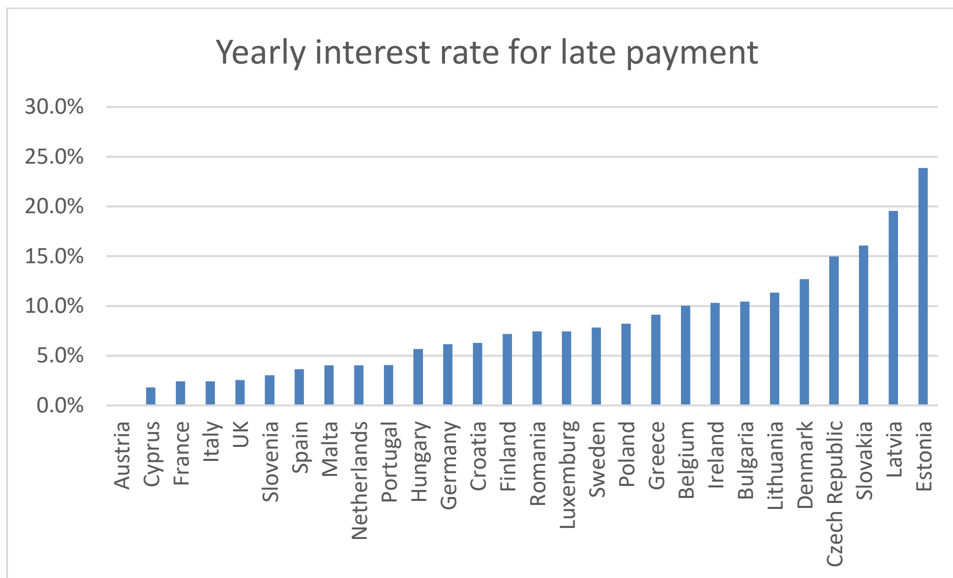
The survey allows for the identification of the key appreciation factors that drive both positive and negative perceptions of the fairness of sanction regimes. For instance, taxpayers do not like uncertainty about potential discussions on big amounts during audits.

This is a very useful instrument for consideration given that the EU Member States have the competence to design and set individual sanction regimes. Key positive factors include voluntary disclosure measures as well as penalties being linked to the actual net amount of VAT underpaid (not the nominal amounts). The most significant negative effects arise from disproportionate penalties on businesses acting in good faith as well as from penalties expressed in terms of a percentage of VAT even when there is no underpayment of VAT. Another driver is mostly linked to behavioural aspects that speak to how the formal rules are applied in practice.

DIVERSITY AND LACK OF TRANSPARENCY IN THE SANCTION REGIMES

The formal analysis of the questionnaires and the desk research clearly demonstrate diversity in the different sanction regimes in the EU. For instance, interest rates per month for late payment allow for large variation, ranging from 0.1 % to 1.85 % per month (equalling an annual interest rate between 1.2 % and 23.9 %). Member States are competent to determine the interest rate per month for late payments as long as they respect the principles of proportionality and neutrality. However, in practice, these principles give rise to significant differences ([1]).

([1]) Please note that some Member States only apply either interest or sanctions, while others apply both.



The diversity is also reflected in different areas such as penalties, possibilities to have fines waived or the appeal systems in place. Regarding incentives to provide voluntary disclosure – a high-ranking condition for the positive/fair perception of a sanction regime – most Member States have included a reduction (but not necessarily a waiver) in the penalties when associated with voluntary disclosures.

By contrast, the desk research does demonstrate some commonalities, for instance around the standard statute of limitations, as well as the starting point for the statute of limitations.

However, one key observation is linked to the actual access to information about the sanction regimes. When preparing the desk research study, a number of different data sources were needed in order to piece together the data sets. The databases used in the desk research would be beyond the price range of the average business and should therefore be considered available only to the largest businesses. Furthermore, it should be noted that even the VAT experts preparing the desk research had to show in-depth knowledge of the complex VAT rules. They had to decipher the information and try to present it in a simple format accessible to the layperson. Therefore, enhanced transparency of the rules and practices surrounding sanctions, penalties and interest rates is needed in order to support the increasing amount of trade in the internal market.

This report also illustrates the diversity of sanctions and interest rates that businesses using the one-stop shop (OSS) may encounter if they, for instance, submit their filing or payment late due to unforeseen circumstances. The key issue is that the relationship between the business and the local tax administrations under the OSS is different from the traditional (one-to-one) direct relationship involving local VAT registrations.

LEGAL BACKGROUND WHEN APPEAL MECHANISMS SET PERIMETERS

This report covers 20 Court of Justice of the European Union (CJEU) cases examined in detail, dated between 1992 and 2017 ([2]) and presented according to the topics discussed. A central conclusion across the cases is that, in the absence of European Union legislation related to sanctions, penalties

([2]) Two relevant CJEU rulings were published after the cut-off date of the analysis. These are briefly mentioned in the section regarding CJEU rulings.

and interest rates in the field of VAT, Member States retain the power to choose whatever penalties seem to them to be appropriate ([3]). However, that power is not unlimited. Member States must exercise it in accordance with European Union law and its general principles, and consequently in accordance with the principle of proportionality and, ultimately, the principle of VAT neutrality, which is the keystone of the functioning of the common VAT system.

Therefore, the CJEU does establish some perimeters in so far as there is a series of basic principles that may not, under any circumstances, be breached by the EU Member States in the imposition of sanctions. This can be seen as a starting point for EU Member States' legislation as regards penalties to take forward the work of the CJEU.

The national appeal systems and administrative courts also play a central role in ensuring legal certainty. The statistics included in the report regarding Greece and Italy demonstrate the importance of this element. Incidentally, a fair – but stable – number of rulings are in favour of the taxpayer.

A HOLISTIC APPROACH TO SANCTIONS AND/OR PENALTIES

It was decided that the report would cover the whole arsenal of penalties (fines, sanctions, interest rates and other means) to sanction VAT mistakes made by *bona fide* companies. It is also acknowledged that measures known as sanctions or interest rates by one Member State are labelled penalties by another. By taking this decision, the subgroup adopts a holistic approach to the topic, avoiding going into a discussion on definitions.

This approach is also taken due to the fact that the Member States themselves are best equipped to explain the actual definitions and interpretations as they are implemented and applied in their national sanction regimes, including for instance administrative offences.

In the analysis, the subgroup has focused on the principles of legal certainty, tax neutrality and proportionality, which are all equally important in the CJEU case-law, for the taxpayers as well as for the Member States.

OBJECTIVE

The objective of the report is to provide an analysis of the different regimes applicable in EU Member States on administrative sanctions and interests. Eventually, the subgroup was encouraged to provide guidance or recommendations relating to overcoming the challenges identified.

RECOMMENDATIONS

The subgroup concluded that sanctions and interest rules are primarily laid down in national law, which, however, is subject to the requirements of EU law. The subgroup also concluded that there is a clear concern about the lack of transparency in this area, both for the small and medium-sized enterprises (SMEs) as well as the multi-national enterprises (MNE's) trading across the European Union.

([3]) https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/_ra_2018_en.pdf
See also Case C-424/12 referenced in the annex or some of the other rulings indicated in Table 4 below.

The subgroup has discussed how to address these issues in an effective manner that both respects the starting point for the discussions and caters to the needs of businesses. The recommendations essentially focus on the following pillars:

1. Increased transparency;
2. Increased dialogue between stakeholders

The subgroup has investigated potential solutions that may be implemented to support the two pillars.

1. ***INCREASED TRANSPARENCY***

- Expansion of the Taxes in Europe Database to cover EU sanction and interest information and support the e-commerce OSS portals by
    - including link(s) to the appropriate descriptions on the websites of the national tax administrations (Phase 1). (short term).
    - expansion to cover EU relevant information (directly and/or by specific link(s)) concerning sanctions and interest to support the e-commerce OSS and I-OSS portals (Phase 2) (short-medium term)
    - adding basic and structured information relevant to the average taxable person that deals with cross border trade directly and/or by specific link(s) on the Taxes in Europe Database (Phase3) (medium term)
  - Issuing of public information (supported by dedicated communication tools) on the staged approach, including
    - phase 1 of the staged approach regarding the information available (short term), as well as on the
    - phase 2 and 3 of the staged approach, including "country factsheets" or "country overviews" based on the information available on the database or the links provided in the database. (short-medium term)

2. ***INCREASED DIALOGUE BETWEEN STAKEHOLDERS***

   These include methods to increase the dialogue between Member States and between businesses and Member States.

- Establishment of a Member State dialogue with stakeholder participation by identifying an appropriate forum for this dialoque to take place, ensuring also that the right competences from the Member States and the stakeholders are represented (short term) and for the dialoque to support the increased transparency efforts (short-medium term)
- The EU VAT Forum is reccomended to facilitate a sharing of experiences of the outcome of the recommendations in this area by the end of the current mandate.

FINAL RECOMMENDATION

The subgroup requests that the EU VAT Forum acknowledges the need to increase the transparency of the administrative sanction and interest regimes, and that it commits to supporting and facilitating the implementation of these recommendations.

• Mandate of the subgroup

The EU VAT Forum subgroup's report on administrative sanctions and interests answers the call from the EU VAT Forum members to provide clarity and further insights on the different regimes applicable in the European Union, primarily based on the questionnaire answered by Member States during the work started in May 2018, as reported to the EU VAT Forum in September 2020.

At the September meeting ([4]), the Forum decided to take the work further and analyse the data collected from the questionnaire with the objective of preparing, in about nine months, a more comprehensive report on administrative sanctions and interest rates.

The area of administrative sanctions and interest rates falls under the competence of the Member States and, to a large extent, the regimes in the different Member States reflect the respective national legal environments and cultures.

Within the mandate given, the subgroup can perform additional desk research supplemented by other information gathering within the time frame. The purpose of this is to enrich the insights gained from the answers to the questionnaires. Even though the primary mandate of the subgroup is to shed further light on the different approaches in the Member States, the mandate also includes drafting recommendations based on these findings.

The subgroup was asked to report back to the EU VAT Forum at the plenary session on 29 June 2021. During the discussion on 29 June 2021 the EU VAT Forum in particular discussed the proposed recommendations and encouraged the subgroup to produce a revised set of recommendations and the subgroup was expanded to ensure a balanced composition.

The subgroup was asked to present the final report for the EU VAT Forum at the plenary session provisionally set for 8 November 2021.

([4]) I.e. the 15th plenary meeting on 28 September 2020. Document reference: III-21-(VAT Forum)-5 Meeting Report Taxud.c.4(2020)6494532 26 October 2020.

• Working methods

The members of the EU VAT Forum subgroup 7.2, 'Administrative sanctions and interests', met several times through online meetings ([5]) to discuss this issue and to prepare this report.

The report builds on the work of the EU VAT Forum subgroup established in 2018 and especially the questionnaire that was circulated among, and answered by, Member State representatives. The report is based on the information collected and analysed by the former subgroup as reported to the EU VAT Forum on September 2020 with subsequent amendments as well as supplementary information collected by subgroup members. It is the result of the collaboration of the subgroup members – EU tax administrations, business representatives and academics – with the support of the Directorate-General for Taxation and Customs Union. The rapporteur of this report ensured the overall coordination and provided substantial input.

The members of the subgroup further analysed the answers to the questionnaires and searched for commonalities and good practices. Due to the format of the original questionnaire it is often very difficult to group or categorise the responses from the questionnaires circulated. The subgroup has tried to overcome this challenge by focusing on softer indicators and broader categories when looking at the responses and to complement the responses with other data. Therefore, the subgroup also:

- performed desk research to identify relevant statistics in the Member States as well as EU statistics, for instance on the VAT gap and trends in administrative courts in terms of time frames and numbers of cases;
- performed database studies in relevant VAT databases to enrich the data in the questionnaires;
- circulated a short survey to VAT experts representing businesses, focusing on their perceptions of the sanction regimes and, more importantly, on understanding the reasons for their perceptions of the legal certainty and fairness of the regimes;
- reached out to Vienna University Global Tax Policy Centre to learn from their research project on cross-border VAT / goods and services tax disputes, focusing on the elements of interest to this report ([6]).

In addition to this, the subgroup made use of case studies and relevant practical experience from the participating experts. The subgroup cast an eye over the recently adopted e-commerce rules that entered into application on 1 July 2021([7]). The subgroup found this to be an area where it is likely that businesses, especially SMEs, may make mistakes, e.g. in defining the place of taxation, and could thus be directly impacted by sanctions, penalties and interest rates imposed in a number of Member States.

Based on the findings, the subgroup took a step back in order to identify the recommendations and overall observations included in Section 7.

([5]) See the list of the 7.2 subgroup meetings in Annex 1.

([6]) The work of Vienna University is still in progress and due to their timeline the results are not ready to be included in the present report.

([7]) The subgroup analysis has been performed in the spring of 2021, before the application off the OSS on 1 July 2021.

1. Approach to the concept of administrative sanctions, penalties and interest rates

The subgroup has taken an approach to penalties and sanctions designed to encompass the whole arsenal of penalties (fines, sanctions, interest rates and other means) used to sanction *bona fide*[8] companies that make VAT mistakes. By doing so, the subgroup adopts a holistic approach to the area instead of going into a discussion on definitions with no workable contributions. The subgroup also recognises, that the purpose of the penalty regime is to ensure a level playing field for all taxpayers, especially for those who fully comply with the VAT rules, and to discourage any failure to comply.

The subgroup acknowledges that what one Member State calls a sanction is labelled by another as a penalty. Equally, interest rates can also turn into sanctions. Further, in some member states non-compliance or late compliance with a vat/tax obligation can be qualified as constituting an administrative offense depending on for instance intent or negligence. However, as the definitions and border lines are different in the member states, the subgroup has chosen not to spend time drawing up a fixed definition. Instead, it has focused on the effect/impact of these levies on the single market and in particular on the way the CJEU has contested them on the basis of general EU principles.

In the analysis, the subgroup has focused on the principles of legal certainty, tax neutrality and proportionality, which are all equally important in the CJEU case-law, for the taxpayers as well as for the Member States.

Additionally, cases of fraud or other circumstances of criminal conduct with regard to VAT have been excluded from our analysis and therefore any reference to administrative penalties, sanctions and interest rates should be viewed in this context.

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[8] By "bona fide" the subgroup understands companies acting without intention to deceive, similar to courts assuming that a company "have acted bona fide". This for instance translated to the term "no bad intentions" in table 8 when discussing the highest administrative fines. The subgroup would like to stress that this is not a legal definition as this necessarily will have to be seen in the context of the national sanction regimes and national legislation.

• Objective of the report

- *'It is just like chaos … you become very tired when going through the answers.*
  Can we provide some light?'

There is no harmonisation of administrative sanctions and interests through EU legal instruments since it is an area with a high level of national competence and is therefore also rooted in the legal and cultural practices embedded in the individual Member States.

When trading within the European Union this imposes a challenge for non-resident traders wanting to comply with the local application of the VAT rules, since they have to understand and adhere to the local regimes. The increase in EU cross-border trade, both in business-to-business as well as business-to-consumer trade, with either local, direct VAT registrations or indirect VAT registrations through the OSS, will drive an increased need in this field. Indeed, complexities around sanctions and interests should preferably not create excessive burdens for businesses, nor cause economic distortions and inefficiencies or have a negative impact on cross-border investment and growth, especially for SMEs. Such complexity could have a negative impact on the functioning of the internal market and on the competitiveness of the EU businesses on the international market At the same time it has to be acknowledged, that sanctions and interests are important for Member States to ensure compliance with national taxation systems including VAT.

The key objective of this report is to shed some light on the different sanction regimes in place in order to facilitate a discussion on how to increase transparency and dialogue driven by Member States when addressing their national sanction regimes. It also aims to document potential hindrances regarding transparency, fairness, proportionality and legal certainty for EU traders.

The report is intended to facilitate discussions between Member States themselves as well as broader discussions with the European Commission and businesses on the EU landscape of sanctions and interest rates in order to support cross-border trade in the single market.

• Policy context

The EU VAT Forum has identified administrative sanctions and interest rates as a topic of common interest for both businesses and Member States.

The rapidly growing number of preliminary questions addressed to the CJEU on this issue demonstrates the importance of this topic, which is turning into an EU-wide issue.

Administrative sanctions and interest rates in the enforcement of VAT rules constitute an important economic risk factor for the taxable persons operating within the single market. Significant differences may also affect the competition conditions and trade patterns.

In its discussions, the EU VAT Forum stressed that the current economic and legal context, including legislation that at the time of the analysis had not yet entered into application, could be an opportunity to explore whether practical measures could be taken that would be beneficial to all stakeholders involved. An example of this is the collaboration that will necessarily have to involve

both sides – Member State tax administrations as well as businesses – in order to make the business-to-consumer OSS a success. Transparency about the sanction and interest regimes will be an important first step, especially for the SMEs covered by the OSS regime.

Looking further at the time horizon, the initiatives around VAT in the digital age, especially in terms of the platform economy, increased reporting obligations and the increased complexity of place of taxation rules driven by new business models, further increase the likelihood of businesses having to fulfil VAT requirements in more than one Member State.

Furthermore, an important element of the post-COVID-19 recovery relies on an increase in cross-border trade. Sanctions and penalties should not hinder the recovery for traders operating in good faith. In this context it is important to ensure that businesses, especially SMEs, not only have easy access to information about sanction and interest regimes, but also are encouraged and able to correct mistakes when identified. Many businesses have already adjusted their cost base in order to survive the pandemic, including by reducing staff. They have also tried to find new sales channels, including increasing the use of online channels and direct sales, and therefore more businesses will be directly affected by different national sanction and interest regimes.

As clearly illustrated in the business survey, the subgroup highlighted the link between the adoption and implementation of sanction regimes and the consequences – intended or unintended – for businesses. At the same time, the subgroup recognises the need for each and every Member State to secure the collection of public revenue in the right place and under the right conditions.

- ### New relationships between businesses and Member States (the one-stop shop)

When looking at the applicable VAT legislation the subgroup focused on the new business-to-consumer e-commerce rules that entered into application on 1 July 2021. These new rules aim at simplifying VAT registration, declaration and payment flows. The key issue from a sanctions and interest perspective is that the new rules will significantly change the interaction between tax administrations and businesses. It will move from a traditional direct interaction between a business and a particular Member State (or a number of Member States if operating more VAT registrations) to an interaction between a business and many Member States through the OSS portal in the country of establishment ([9]), with the aim of simplifying the VAT workflow. By opting to use the OSS the seller will be able to:

- register for VAT electronically in a single Member State for all intra-EU distance sales of goods and for business-to-consumer supplies of services, thus avoiding the need for VAT registration in multiple Member States;
- declare and pay VAT due on all these supplies of goods and services in a single electronic quarterly return;
- work with the tax administration of their own Member State and in their own language, even if their sales are cross-border.

In the context of administrative sanctions and interests, Article 63b of Implementing Regulation (EU)

Box 1. Article 63b of Council Implementing Regulation (EU) 2019/2026 amending Implementing Regulation (EU) No 282/2011

‘Where no VAT return has been submitted, or where the VAT return has been submitted late or is incomplete or incorrect, or where the payment of VAT is late, **any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption**. The taxable person or the intermediary acting on his behalf shall pay such interests, penalties or any other charges directly to the Member State of consumption.’

’ web

2019/2026[10] amending Implementing Regulation 282/2011 is of special interest.

The implication of only making one payment in the OSS is that in the event of a late payment, the taxpayer will potentially be subject to sanction and/or interest regimes in up to 26 Member States, as opposed to the current situation, where the payment dates depend on the local VAT registrations.

Additionally, since the individual national thresholds for distance sales have been lowered to a single EU-wide threshold of EUR 10 000, more SMEs are going to be subject to the new rules on VAT registration and declaration.

Since all supplies made through the OSS are taxable in the place of consumption (according to the destination principle) the supplier will have to apply the VAT rate applicable in that place. In order to facilitate this, the European Commission, together with the Member States, has updated the EU Taxes in Europe Database to contain information regarding reduced VAT rates in Europe, accompanied by a search tool ([11]).

Box 2. Taxes in Europe Database

The Taxes in Europe Database is the European Commission's online information tool covering the main taxes in force in the EU Member States. The system contains information on around 650 taxes, as provided to the European Commission by the ministries of finance of the EU Member States. Access is free for all users. The information can be found quickly and easily using a search tool.

The database contains, for each individual tax, information on its legal basis, assessment base, main exemptions, applicable rate(s) and economic and statistical classification, as well as the revenue generated by it. The information in the database on the main taxes in force is provided by the EU Member States. The European Commission cannot guarantee the accuracy of the data.

The database covers the following types of taxes.

- All main taxes in revenue terms. These include, notably, personal income taxes, corporate income taxes, VAT and harmonised EU excise duties.
- The main social security contributions.
- Other important taxes yielding at least 0.1 % of gross domestic product.

The database does NOT cover information on customs duties and tariffs. This type of information can be found in the integrated tariff of the European Union ('TARIC') database.

An example of the potential impact on the provisions regarding sanctions and interest rates concerns the filing and collection of VAT. Under the OSS, the registrant will declare and pay the VAT through the national portal in the Member State of registration. If for some reason not foreseen by the SME, the filing and payment are delayed, the consequences of this may be difficult to evaluate even if the company contacts the local tax administration and is granted a postponement, as the other 26 different tax authorities are not bound by that local tax administration. In the worst-case scenario, the SME will be facing penalty and sanction regimes in 26 Member States. This can become very time-consuming and expensive for the following reasons.

([10]) Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.

([11]) https://ec.europa.eu/taxation_customs/tedb/vatSearchForm.html

- The SME will receive letters about the penalties in the national languages of up to 26 Member States.
- The penalties and interest rates differ from one Member State to another and are a burden. For example, in one Member State, an SME would receive:
    - a late-payment penalty
    - a late-filing penalty and
    - late-payment interest.
- If the SME would like to appeal against the decision, the next challenge is that some Member States require the appeal to be conducted in their national language(s), while others accept English. Therefore, the SME would have to understand whether the decision is appealable in the different Member States and spend money on translation services. In addition, the appeal decision itself could take 1–2 years from the date the appeal is filed.

These examples are taken from current experiences of the subgroup members with the mini OSS and illustrate the challenges involved in getting an overview of the different regimes.

The business perspective

As a matter of principle, VAT should be neutral ([12]) to taxable businesses as it is a tax on final consumption. Administrative sanctions and interest rates can undermine this neutrality, especially if levied disproportionately in an instance where no VAT revenue is at stake. Businesses also find it important for taxes to be predictable and for the same problem to be treated the same way.

Many businesses, especially SMEs, have limited means to analyse their VAT risks, but still want (and are clearly expected by politicians) to make use of the single market. For businesses, the administrative sanction and interest regimes in the EU Member States pose a risk due to the increasing complexity of the VAT system, regardless of the efforts they invest in being compliant.

A key objective on the business side is therefore to increase the transparency and level of knowledge regarding the administrative sanction and penalty regimes in place in the different Member States, for instance by providing an overview of, and access to, relevant information in a language the business is capable of working in. Today, the information on potential VAT sanctions may not be clearly and easily available in an understandable manner, even to local companies in the local language. Information translated into English for foreign traders is even rarer. The Taxes in Europe Database does not cover sanctions and interest rates.

The long-term objective on the business side is to increase legal certainty both through easily available information and through increased harmonisation, coordination or alignment of the Member States' practices. This would reduce the significant administrative costs associated with the current different practices across the EU.

Foreign businesses also have to deal with several other challenges relating to the sanction and interest regimes, some of which are more linked to their application by, and the legal and administrative traditions of, the individual Member States.

([12]) CJEU, 19 December 2012, Case C-549/11, Orfey Balgaria EOOD, paragraphs 33–34.

- For all businesses, large ones included, there is often a perception gap ([13]) regarding sanctions in other Member States. This is notably due to the different national and historical natures of sanctions in the EU Member States. The tax and sanction regimes are based on different cultural backgrounds. This gap can put significant strain on businesses' confidence in the foreign countries in which they operate, and, in turn, on the trust the Member States have in the businesses.
- Foreign companies are not aware of 'discussion' rules with the local authorities. Communication misunderstandings about delays, inconsistency between questions in the local language and answers, lack of knowledge about the discussion process (e.g. in the case of a business used to informal discussions with its own tax authorities finding itself dealing with ultra-formal processes in another Member State where a request for further information could be seen as a final answer) may lead to sanctions and penalties not normally imposed on domestic businesses. Different approaches to severity in the Member States may also cause businesses to not properly appreciate or understand the gravity of a certain mistake in the local context. A given technical VAT mistake may trigger totally different reactions in different Member States, from a laissez-faire attitude in the absence of any immediate cost to the treasury to imposing criminal penalties for failing to amend inaccurate VAT returns immediately.
- Transparency and easy access to reliable information are key to overcoming the perception gap and the potential risks (real or perceived) of receiving significant administrative sanctions and penalties. A business's perception or understanding of a sanction and interest regime may be a factor in its decision whether to enter a market, and how to do so. Ultimately, this represents extra product-related costs, and these costs are being passed on to the customers.

• The EU Member States' perspective

For the EU Member States in the EU VAT Forum, sanction and interest regimes are an integral part of the tax administrations' normal practices/tasks and are closely linked to national legal and administrative traditions. The right of Member States to collect taxes and to make use of administrative sanctions and penalties through the exercise of their sovereignty can create obstacles that affect both tax administrations and taxpayers engaged in economic activities. For the EU Member States it is important to remind that the purpose of the penalty regime is to ensure a level playing field for all taxpayers, especially for those who fully comply with the VAT rules, and to discourage any failure to comply.

The One-Stop-Shop also poses additional challenges for the tax administrations to gain access to the appropriate information in order to perform their proper risk assessment and performing tax controls.

A key objective for the Member States is to gather further information on the different regimes and practices in other Member States. The questionnaires clarify the sanctions applied by each Member State in different circumstances by finding ways of analysing and categorising the sanction schemes.

([13]) By 'perception gap' we mean the difference between how businesses expect a regime to work and how it functions in reality.

Member States also recognise the importance of learning from best practices in other Member States, including an understanding of the indicators or drivers of good practices. Therefore, another objective is to start a discussion around these indicators in order to be able to stimulate increased transparency.

However, this can only be achieved over a long-term period because of the differences in national sanction regimes and in the particular characteristics of national economies. In the shorter term there is a need to stimulate discussions between tax authorities and business operators at national and EU level in order to clarify the processing of transactions and to avoid infringements and sanctions.

- ### The tax policy perspective

VAT is a special kind of tax: it is a tax on final consumption, and is therefore neutral to businesses, which only carry out taxable activities. Businesses are mere collectors of VAT. This burden, or task, carried out on behalf of Member States, is costly, but is not remunerated.

In its jurisprudence, the CJEU has stated that the rules of the law must be clear, precise and predictable in their effects and that their application must be foreseeable by those subject to them. The Court of Justice has also pointed out that this principle 'must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which such rules impose on them. … It follows that it is necessary … that taxable persons be aware, before concluding a transaction, of their tax obligations' ([14]). Thus sanctions should not, as a principle, be imposed if the rules of the law are not clear and precise or if their application is not foreseeable.

Managing a VAT system is a challenge for tax authorities. Taking an overly hard-line approach may yield good revenue in the short run but discourage good business from continuing in the country in the longer run. Being too lenient may encourage tax fraud and evasion, which is also detrimental to revenues in the long run. Finding the right balance is the answer – and the challenge.

One way to monitor developments in EU Member States and check whether they are on the right track may be the VAT gap reports from the Commission. The VAT gap is the overall difference between the expected VAT revenue and the amount actually collected. The reasons for this difference are numerous and include causes such as VAT lost in bankruptcies, VAT avoidance, VAT mistakes and, of course, actual VAT fraud.

The EU reports on the VAT gap suggest that it has been quite resilient in recent years. From the 2020 report we learn that, in nominal terms, in 2018 the overall EU VAT gap decreased slightly, by almost EUR 1 billion, falling to EUR 140.04 billion (constituting a decrease of less than 1 %). This was smaller than the decrease seen in 2017, of EUR 2.9 billion (i.e. a decrease of about 2 %). The 2020 report

([14]) Judgment in *Teleos and Others*, Case C-409/04, EU:C:2007:548, paragraph 48. See also judgment in *Plantanol*, Case C-201/08, EU:C:2009:539, paragraph 46 (and the case-law cited): 'The principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them'.

even forecasts a potential increase in the VAT gap for 2020 due to the effects of the coronavirus pandemic on the global economy. The loss is forecast to be EUR 164 billion (an increase of as much as 17 %). This is a peculiar statement. It proves that a bankruptcy trend outside the sphere of influence of tax authorities, can have a very significant effect on the total VAT gap. We expect that it also works the other way round. So, a high or low VAT gap may in fact reflect trends in the Member State’s economy. Therefore, when Member States design specific anti-fraud measures, they should also take into account the additional burden on the general population of taxpayers. Where possible, a more granular approach, protecting honest taxpayers, is preferable.

2. Overall impact of administrative sanctions and interests

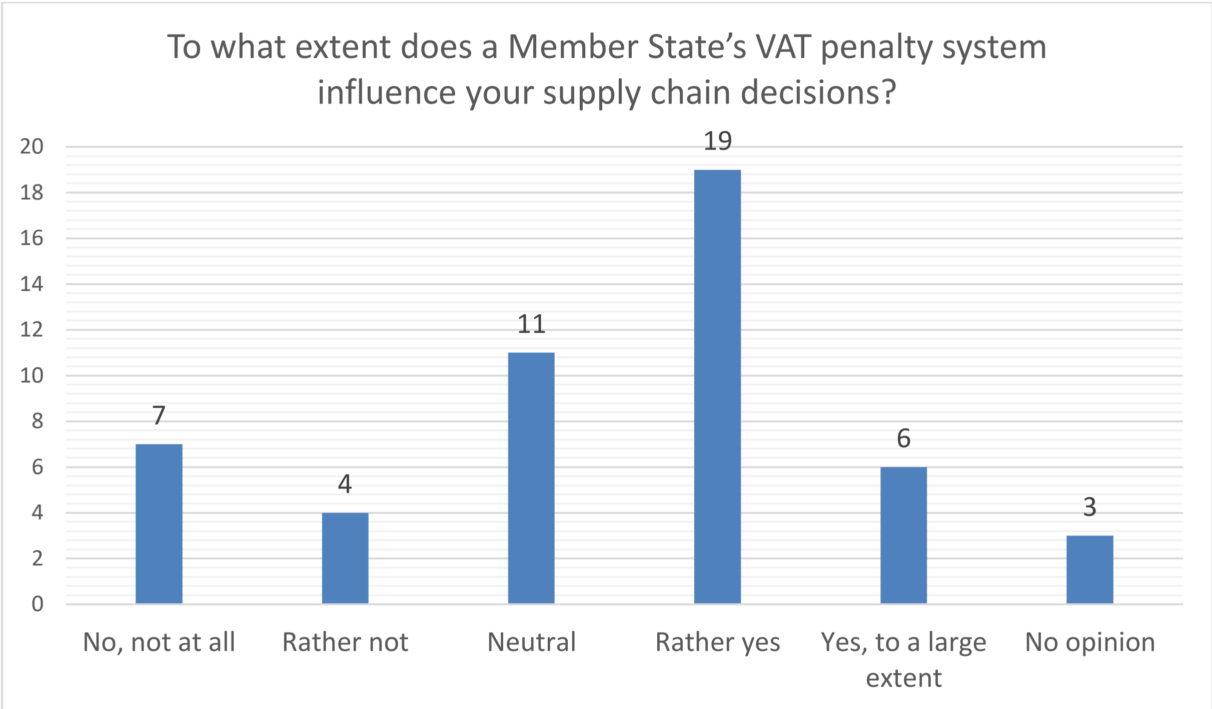
No hard data on the impact of administrative sanctions and interests on businesses/trade are readily available. The subgroup has tried to identify alternative quantitative and qualitative indicators, such as the number of administrative appeals being brought before higher tax authorities, administrative courts or the national first and second courts as indicators of the duration of the process and the ability to achieve legal certainty.

- ## Sources of information

  - ### Subgroup questionnaire circulated to businesses

The subgroup circulated a questionnaire to businesses to gather data and some indicators of the perception of the sanction regimes, the extent to which a Member State's VAT penalty system influences supply chain decisions and the key drivers behind these perceptions.

- *Figure 1. Results from business survey on the impact of a Member State's VAT penalty system on supply chain decisions*



One of the conclusions of this questionnaire is that the VAT sanction system does influence the supply chain decisions to a certain extent. This cannot be neglected and does impact the functioning of the internal market. Taxpayers do not like uncertainty about potential discussions of big amounts during audits. To the extent possible, some business arrangements known to be very prone to discussion (for instance new business models where discussions with tax administrations are important in ensuring the correct VAT treatment) are kept out of reach of those Member States (including the indirect revenue streams). The other aspects of the questionnaire providing insights into the drivers behind the perceptions of sanction regimes and the diversity in how they are perceived are included in Section 6 of the report.

  - ### National statistics on administrative appeal systems

Article 47 of the Charter of Fundamental Rights of the European Union enshrines the right to an effective remedy for anyone whose rights and freedoms, guaranteed by EU law, have been infringed ([15]). For taxable persons this would, for example, translate into the ability to challenge or appeal administrative decisions concerning VAT rules and related sanctions. A well-functioning appeal system is one of the cornerstones of ensuring legal certainty. The number of cases in itself is not necessarily the most relevant indicator, but the trend over time provides some valuable insights.

In **Greece**, the taxable persons, before lodging an appeal before the Greek courts, have their administrative appeals submitted to the Directorate for Settlement of Disputes (DED). Ensuring that all taxpayers receive a decision from the DED, whether positive or negative, within the deadline of 120 days has been a major focus point over the last 5–6 years. As a consequence, the number of overdue (and thus implicitly rejected) appeals has decreased significantly, resulting in an improvement in taxpayers' rights.

- *Table 1. Statistics from the Greek Directorate for Settlement of Disputes covering all taxes and showing trends over time*

Type of statistic from DED	2014	2015	2016	2017	2018	2019	2020 (*)
Number of cases pending at the beginning of the year	721	1 947	2 795	4 107	3 451	2 874	2 079
Total number of cases submitted to the DED (per year)	**10 817**	**13 119**	**12 253**	**10 685**	**8 474**	**7 488**	**8 757**
Number of 'closed' administrative appeals	7 832	9 801	8 711	10 291	8 170	7 138	4 214
Number of decisions accepting an appeal (partially or wholly)	*1 346*	*490*	*1 381*	*2 205*	*3 179*	*2 465*	*1 667*
Number of decisions rejecting an appeal	*2 973*	*4 917*	*5 197*	*7 143*	*4 217*	*3 893*	*2 341*
Number of cases that were withdrawn by the person who made the appeal (and which were filed)		*2*	*142*	*107*	*201*	*30*	*21*
Number of appeals that were overdue and implicitly rejected	*3 513*	*4 392*	*1 991*	*836*	*583*	*750*	*185*
Percentage of appeals that were overdue and implicitly rejected	*44.9 %*	*44.8 %*	*22.9 %*	*7.1 %*	*7 %*	*10.5 %*	*4.4 %*
KPI (**): percentage of administrative appeals that were examined within the deadline established by Greek law (i.e. 120 days)	**55.1 %**	**55.2 %**	**77.1 %**	**92.9 %**	**93.0 %**	**89.5 %**	**95.6 %**
Secondary KPI: percentage of decisions accepting an appeal	***17.2 %***	***5.0 %***	***15.9 %***	***21.4 %***	***38.9 %***	***34.5 %***	***39.6 %***

(*) The latest data for 2020 are from November.
(**) 'KPI' stands for 'key performance indicator' (a measure for evaluating success in an activity).
NB: The data cover all appeals, not just VAT. The trends in the data are more important than the data themselves. The data in absolute numbers are not comparable to other Member States due to differences both in appeal systems and in the different taxes covered.

The percentage of decisions that partially or fully accept an appeal (the secondary KPI) has stabilised over the last 3 years (2018–2020) with 1 in 3 of the 'closed' appeals being decided in favour of the taxpayer, which indicates the importance of ensuring that all appeals are examined in order to uphold taxpayers' legal rights.

In **Italy**, the taxable person can appeal/challenge the decision of the tax authorities concerning infringements of VAT rules and related sanctions. The taxable person can launch an appeal before the tax court of first instance (the Commissione Tributaria Provinciale) within 60 days starting from the notification of the tax assessment notice. The decision of the court can be challenged before the tax court of second instance (the Commissione Tributaria Regionale). With the Italian two-instance system we see that the percentage of rulings in favour of the taxpayer is slightly higher in the court of second instance than in the court of first instance. This corresponds to expectations given the fact

([15]) See for instance the CJEU judgment in Joined Cases C-245/19, *Luxembourg State* v *B* and C-246/19 *Luxembourg State* v *B and Others*; and CJEU Press Release No 127/20, Luxembourg, 6 October 2020 (https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200127en.pdf).

that there are, for instance, costs associated with any appeal. Therefore, we also see a lower number of cases being appealed before the court of second instance.

- *Table 2. Statistics from the Italian tax courts of first and second instance and their trends over time: decisions related to VAT*

Decisions of the Italian tax court of first instance	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Number of administrative appeals 'closed'	18 176	18 128	16 277	15 246	12 744	7 745
*Percentage of decisions **wholly** in favour of the taxpayer*	*31.9 %*	*28.8 %*	*28.5 %*	*26.4 %*	*23.1 %*	*21.2 %*
*Percentage of decisions **partially** in favour of the taxpayer*	*9.4 %*	*10.8 %*	*11.2 %*	*11.5 %*	*11.1 %*	*10.5 %*
*Percentage of decisions **rejecting** an appeal*	*47.9 %*	*49.3 %*	*49.7 %*	*55.1 %*	*54.8 %*	*57.4 %*
Percentage of 'other' decisions (including cessation of dispute, court settlements, etc.)	*10.8 %*	*11.1 %*	*10.6 %*	*11.1 %*	*11.0 %*	*10.9 %*
Decisions of the Italian tax court of second instance						
Number of administrative appeals 'closed'	6 576	7 021	6 557	7 001	6 384	4 621
Percentage of decisions in favour of the taxpayer (partially or wholly)	*43.4 %*	*39.9 %*	*38.4 %*	*34.9 %*	*33.7 %*	*31.4 %*
Percentage of decisions partially in favour of the taxpayer	*8.2 %*	*7.8 %*	*7.8 %*	*7.4 %*	*7.9 %*	*7.3 %*
Percentage of decisions rejecting an appeal	*43.3 %*	*45.8 %*	*46.2 %*	*46.4 %*	*47.2 %*	*49.8 %*
Percentage of 'other' decisions (including cessation of dispute, court settlements, etc.)	*5.2 %*	*6.6 %*	*7.6 %*	*11.4 %*	*11.2 %*	*11.5 %*

A number of cases in Italy are brought before the courts or resolved through alternative mechanisms of resolution. Taking this into consideration, the total number of VAT cases launched in 2015–2020 is slightly lower. The figures for 2020 are also affected by the pandemic.

- *Table 3. Statistics from the Italian tax courts of first and second instance: numbers of VAT cases launched*

VAT cases launched in Italy	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Number before the Italian tax court of first instance	15 702	14 506	12 025	12 512	11 073	9 058
Number before the Italian tax court of second instance	7 558	7 653	6 867	6 130	4 874	5 026
Total	23 260	22 159	18 892	18 642	15 947	14 084

The two case studies demonstrate the importance of having a speedy and effective appeal system in place in the Member States. Even though the numbers do not take into account the number of cases dealt with each day by the tax administrations, they demonstrate that a well-functioning appeal system is important for the taxpayers in ensuring legal certainty.

Without an effective appeal system, the sanctions and interests applied during the appeal could be so costly that the taxpayer is in reality not able to lodge an appeal. Yet the fair percentage of decisions in favour of the taxpayer proves the significant role of an appeal system in ensuring legal certainty (e.g. in arrears subject to legal interpretation). The lower number of cases and higher rate of decisions in favour of the taxpayer in the second instance court is expectable since the added cost (in time – with the concomitant sanctions and interests – and legal fees) has to be balanced against the expected outcome of the appeal.

- ### The practice of the Court of Justice of the European Union

Sanctions, penalties and interest have been discussed in several CJEU cases (see Box 3). We have examined in detail 22 Court of Justice cases, dated between 1992 and 2021. It is important to underline that the below observations/conclusions based on the cases examined don't reflect all Member States interpretations or understanding of the jurisprudence and should not be seen as a formal interpretation of the jurisprudence of the courts.

In the absence of harmonisation of EU legislation, specifically in the field of penalties applicable in cases where conditions laid down by arrangements under such legislation are not complied with, Member States retain the power to choose the penalties that seem to them to be appropriate ([16]). However, that power is not unlimited. Member States must exercise it in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality.

The infringement, penalty and interest cases examined rarely refer to cross-border transactions and disputes where there may exist discrepancies in the interpretation of EU law. Most of the cases examined refer to situations such as non-compliance with national formal VAT requirements or non-payment of a certain VAT debt.

Although the cases reviewed refer to very varied factual situations, their conclusions are all similar, with some nuances.

- The power to impose penalties falls entirely within the competence of the Member States, which have freedom to qualify, quantify, scale and impose the penalties they deem appropriate. This assertion is present in 100 % of the cases analysed.
- The calculation of interest for the purpose of compensating for any losses suffered by both a national administration and the taxable person is, like infringements and penalties, also a matter for the Member States to decide.

However, while the competence to impose penalties and calculate interest is a power of the Member States, the Court of Justice is clear in establishing limits to this power. These limits are the respect for the principles of the *acquis communautaire*, which translates into a very strict respect for the principle of proportionality. The Court of Justice insists in each and every one of the cases analysed that any sanction regimes in the Member States must respect this principle. As far as VAT is concerned, respect for the principle of proportionality of the sanction regime must translate into respect for the neutrality of VAT. In other words, the Member States have the power to establish their own regimes of penalties and interest calculations in so far as these regimes are proportionate and, ultimately, respect the principle of VAT neutrality, which is the keystone of the functioning of the common VAT system.

- *Proportionality of sanctions*

In the words of the Court of Justice, the principle of proportionality must be respected in so far as the penalties do not go beyond what is strictly necessary to achieve the objectives they pursue (see C-210/91, *Commission of the European Communities* v *Hellenic Republic*). Respecting the principle of proportionality is seen by the Court of Justice as a requirement for respecting the principle of VAT neutrality. This is very clearly reflected in several of the cases analysed (C-284/11, *EMS-Bulgaria Transport OOD*; C-259/12, *Rodopi-M 91 OOD*; C-272/13, *Equoland Soc. coop. arl*).

As regards the principle of neutrality, it is important to highlight the clear and strict position taken by the Court of Justice in Case C-272/13, in which it states that a penalty consisting of a refusal of the right to deduct is not compatible with EU law unless attempted tax fraud is involved. Thus the principle of neutrality should apply to the sanctioning of *bona fide* companies that make a VAT mistake, as we have defined the cases in our working method.

([16]) https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/_ra_2018_en.pdf
See also Case C-424/12 referenced in the annex or some of the other rulings indicated in Table 4 below.

It can be said that the above statement clearly reflects the Court of Justice's position that Member States are free to impose penalties for tax infringements as long as they do not affect the functioning of the common system of VAT. In particular, a penalty consisting of a refusal of the right to deduct input VAT incurred by taxable persons is not admissible as long as the objective elements of the exercise of that right are fulfilled.

Furthermore, the imposition of an excessively heavy penalty on the taxable person could fail to respect the principles of proportionality and neutrality and become, in practice, a way of depriving the taxable person of the right of deduction.

What counts as an excessive or a heavy penalty can be difficult to assess. However, the Court of Justice seems to lead the way. In Case C-564/15, *Tibor Farkas*, it mentions that EU law precludes national tax authorities from imposing on a taxable person a tax penalty of 50 % of the amount of VAT that they are required to pay to the tax authority, where that authority suffered no loss of tax revenue and there is no evidence of tax evasion. It would be contrary to the EU law practice whereby a Member State, in cases of non-compliance, allows the deduction of input VAT by the taxable person but at the same imposes a penalty of such a high amount that in practice the taxable person is wholly or partially deprived of the right to deduct input VAT.

- *Proportionality of default interest*

As regards default interest, the Court of Justice's position is similar to the one it holds in relation to penalties. These fall within the sole competence of the Member States and there is no harmonised EU legislation in this respect. Such is the identity that the Court of Justice sees between sanctions and interest rates that it considers default interest to be a penalty in itself (see C-284/11, *EMS-Bulgaria Transport OOD*, paragraph 75: 'The payment of default interest may constitute an adequate penalty'.)

The argument that the principles of neutrality and proportionality must be respected is present in all cases where the Court of Justice has referred to default interest. The same applies to the purpose of the imposition of default interest, which cannot go further than is necessary to attain its objective. In this sense, the Court of Justice seems to impose a hard line that should not be exceeded: the calculation of default interest would be disproportionate if the overall sum of interest demanded was equal to the amount of VAT at stake (see C-284/11, *EMS-Bulgaria Transport OOD*). This would be a case of disproportionate default interest. If this happened, for example, in the case of deductions, the taxable person would effectively be deprived of the right to deduct input VAT; such a deprivation has no place in EU law.

- *Recent CJEU Case C-895/19 – ruling published 18 March 2021*

The CJEU published a ruling on 18 March 2021 in Case C-895/19 ([17]) concerning the neutrality of reverse charge transactions in the context of the possibility of reporting output and input VAT in the same month, restricted by the 3-month period resulting from Polish VAT regulations. This judgment may prove very important for Polish or foreign Polish VAT-registered entities from the perspective of their Polish VAT settlements, especially where significant amounts of late-payment interest (and also

([17]) https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-895/19

e.g. 30 % VAT sanction) were paid in connection with 'delayed' reporting of reverse charge transactions. There is a dispute with the Polish tax authorities in this respect.

This recent case, however, would not affect our conclusions made above. The Court of Justice insists on the argument that the principle of neutrality requires the VAT deduction to be allowed if the substantive legal requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. In this particular case, we are referring to transactions subject to self-assessment. However, the conclusions are the same as any other VAT-taxable activity where suppliers charge VAT.

Moreover, the Court of Justice mentions, once again, that Member States are competent to lay down penalties for failure to comply with the formal requirements relating to the exercise of the right to deduct VAT. EU law does not preclude Member States from imposing, where appropriate, a fine or a financial penalty proportionate to the seriousness of the infringement in order to penalise non-compliance with the formal requirements. However, national legislation which systematically prohibits the exercise of the right to deduct VAT in respect of an intra-Community acquisition in the same period as that in which the same amount of VAT is due, without providing for all the relevant circumstances to be taken into account (in particular, the good faith of the taxable person), goes beyond what is necessary to ensure the correct collection of VAT and would be in breach of EU law.

- *Recent CJEU Case C-935/19 – ruling published 15 April 2021*

The CJEU published another ruling on 15 April 2021, in Case C-935/19 ([18]). This recent decision refers, once again, to Member States' respect for the principle of proportionality when imposing penalties. This particular case refers to a Polish company that purchased real estate and then applied for a refund of the input VAT due.

The VAT refund claim was rejected on the basis that the sale of the supply of real estate should have been exempt from VAT. A penalty of 20 % of the amount of VAT on the real estate purchase was imposed, arguing that the VAT deduction originally declared was unjustified.

The Court of Justice's conclusion is that the penalty imposed does not respect the principle of proportionality to the extent that, according to the Polish local VAT rules, said penalty applies indistinctly to cases where the overestimation of the VAT refund results from a situation where an error of assessment has occurred but also to any other situation where said special circumstances do not occur. This means that penalties that are automatically imposed without considering the special circumstances of each particular case are contrary to the principle of proportionality and, consequently, are not in line with EU law. Member States must consider the particularities of each individual case, especially the behaviour of the taxable persons and whether they have acted in good or bad faith, before imposing a penalty.

- *Conclusions*

According to the above, one possible conclusion is that, despite the lack of harmonisation at EU level with regard to the imposition of sanctions and interests, the CJEU does establish some perimeters in so far as there is a series of basic principles that may not, under any circumstances, be breached by

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([18]) https://eur-lex.europa.eu/legal-content/es/TXT/?uri=CELEX:62019CJ0935

the EU Member States in the imposition of sanctions. This can be seen as a starting point for EU Member States' legislation as regards penalties to take further the work of the Court of Justice.

Moreover, according to the criterion of the CJEU, in order to determine whether the imposition of a penalty is excessive or not, the specific circumstances of each case must always be taken into account, especially in the event of lost VAT revenue or tax evasion. If this is not the case, it seems to be admissible to impose some type of penalty in order to make taxpayers comply with their formal obligations, but the penalty should not be identical to those imposed in cases where there is a loss of tax revenue or even in cases of fraud. It is therefore necessary to distinguish between penalties imposed for non-compliance with mere formal requirements and those imposed in situations where there has been a loss of VAT revenue. This distinction has been made by the CJEU in its judgments about penalties and default interest (see Table 4).

A similar statement can be made in relation to interest rates. These are imposed in cases where the administration has suffered some type of financial loss. Thus, interest should only be imposed in cases of VAT revenue loss by the administration. Therefore, the circumstances of each individual case must always be taken into account also when dealing with automatic imposition of interest. The conclusion could therefore be drawn that default interest should not apply in cases of non-compliance with formal requirements but would be applicable in cases of VAT revenue losses. In the latter case, as mentioned above, the principle of proportionality must always be respected.

In Annex 2 of this document, we have provided key extracts from the cases we have analysed. In Table 4 we have cross-referenced the topics included/mentioned in the quotes with the cases to provide an overview of the case-law examined.

Box 3. Summary of findings from the examination of the court cases

In the absence of harmonisation through EU legislation in the field of penalties, Member States are competent to adopt penalties where appropriate.

- Member States are empowered to choose the sanctions which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law, as follows.
  - Penalties must not go beyond what is (strictly) necessary for the objectives pursued.
  - Penalties must be consistent with the principle of proportionality, for which the nature and the degree of seriousness of the infringement must be taken into account.
  - Penalties and sanctions must be consistent with the principle of VAT neutrality. The CJEU highlights the importance of the right to deduct to achieving VAT neutrality.
  - Penalties must not be disproportionate to the gravity of the incident, especially when no VAT revenue loss is suffered.
- A number of cases deal with formal requirements.
- The CJEU also emphasises other criteria, for instance the VAT revenue at stake.
- Regarding interest, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person be compensated for through the payment

- *Table 4. Cross-referencing the quotes from the CJEU cases in Annex 2 with specific topics relating to penalties, sanctions and interests*

	210/91	110/99	262/99	181/4	502/7	188/9	385/9	591/10	617/10	263/11	284/11	259/12	424/12	431/12	272/13	654/13	183/14	518/14	564/15	574/15
Fundamental principles																				
Member State competence in absence of EU legislation	C					M		M				M	M				M		M	
Compliance with general EU principles	C					M						M	M				M		M	
Principle of proportionality	C					C				C	C		M		C		C		M	
Sanction that does not go beyond what is 'strictly necessary' for the objectives	C																			
Sanction that does not go beyond what is 'necessary' for the objectives											C	C			C		C		C	
Sanction that is not disproportionate to gravity – obstacle to freedoms	C		C								C				C			C	C	
Nature and degree of seriousness										C		C			C		C	C	C	
Principle of neutrality											C	C		C	C					
Good faith			C																	
Legal certainty				C													C			
Effectiveness and equivalence								C								C				
Charter of Fundamental Rights									C											
Types of sanctions/penalties/interest																				
Obligation to repay is not a penalty		C																		
Flat-rate penalties / fixed percentages			C												C				C	
Increased duty/tax up to 10 times original			C																	
Administrative penalties relating to VAT declarations					C															
Principles also apply to surcharges																	C			
Interest may constitute adequate penalty											C		C							
Interest								C						C		C				
No penalty – only the tax				C																
Criminal threshold																				C
Formal requirements																				
Formal requirements						C	C		C	C		C			C		C	C	C	
Temporary restrictions when not complying with formal requirements						C														
Right of deduction							C	C			C				C			C		
Obligation to register																	C			
Not liable for VAT / No VAT revenue lost										C					C				C	

(M = mentioned; C = central element)

NB: Various elements (proportionality, for instance) may be mentioned elsewhere in the rulings, but if they are not included in the quotes in Annex 2, then they will not be marked in the table.

- National courts

The national courts also deal with cases involving sanctions, interest rates and penalties. However, the subgroup has not performed a detailed and systematic study of national court rulings. This report includes a few selected rulings known by the subgroup to demonstrate the links between national court rulings and the EU case-law on the matter.

The cases illustrate the application of the principles of proportionality, equal treatment and neutrality in national courts.

- *Belgium – court of appeal of Antwerp – Case 2017/AR/877, decision of 8 January 2019*

In cases where supplies subject to a local reverse charge mechanism are not declared in the recipient's VAT return and where the tax authorities allow offsetting between the chargeable VAT and deductible VAT, late-payment interest rates are applied until the offset is allowed by the tax authorities, and penalties can be imposed as long as they comply with the principle of proportionality. In the case at hand, the court decided that a proportional penalty amounting to 20 % of the amount of VAT due was not proportional to the infractions made by the taxable person.

- *Germany – federal fiscal court (Bundesfinanzhof) – Case IX B 21/18, decision of 25 April 2018*

The federal fiscal court, in a preliminary decision in proceedings concerning a suspension of execution, voiced serious doubts as regards the constitutionality of the interest rate on tax arrears. The court considered the interest rate – 0.5 % per month (i.e. 6 % per year) – to be unrealistic and to violate the general principle of equal treatment pursuant to Article 3(1) of the *Grundgesetz* (the Basic Law for the Federal Republic of Germany). Furthermore, the court regarded the interest rate as excessive, thereby infringing Article 20(3) of the *Grundgesetz* ([19]).

- *Bulgaria – supreme administrative court – Case 4539, decision of 10 April 2018*

The Bulgarian supreme administrative court concluded that in the case at hand the reality of the supply was not challenged and all preconditions for exercising the right to deduct input VAT were fulfilled, except for the formal requirement for input VAT deduction within the statutory 12-month period. Furthermore, the supreme administrative court held the view that no abuse had been established and there was no tax loss for the Bulgarian budget. Therefore, in the given circumstances, the refusal of input VAT deduction was a disproportionate sanction leading to the violation of the principles of fiscal neutrality and proportionality. As a result, the supreme administrative court allowed the company's input VAT deduction and repealed the tax audit act and the decision of the administrative court of Sofia city ([20]).

([19]) Legal basis for the federal fiscal court's decision: Articles 3(1) and 20(3) of the *Grundgesetz*; Section 238 of the *Abgabenordnung* (the tax code).

([20]) Legal basis for the supreme administrative court's decision: Articles 123(3)(1) and 72(1) of the Bulgarian VAT Act 2006.

- ## Impact of administrative sanctions and interest rates
  - ### Impact on businesses

It is important to understand that for a legitimate business any cost beyond the interest for late payment is considered to be a sanction.

From the business side, a higher level of uncertainty will translate into a risk factor and – at the end of the day – a cost of doing business in that Member State. The business questionnaire referenced in Section 5.1.1 demonstrates this point and the extent to which a Member State's VAT penalty and sanction regime influences supply chain decisions. Businesses can reduce the risk by hiring tax advisers, but this is especially costly for SMEs given the relative cost of advisers compared to the amount of trade done by SMEs.

Another way of reducing the risk is to reduce the level of uncertainty by means of transparency, increased harmonisation or guidance, which will reduce the cost of doing business.

- #### *The fragmented and opaque EU legal landscape of sanctions*

Even though the CJEU has dealt with a number of cases, the legal landscape regarding VAT sanctions in the EU has not seen the same level of internationalisation that has occurred in trade and that we will see even more of in the future – a trend also manifesting itself in the EU VAT legislation in areas like e-commerce.

Member States can freely decide the penalties they deem appropriate, within limits provided and consistently reiterated by the CJEU, such as the principle of proportionality. The CJEU has reined in ultra-formalistic sanction rules by rejecting a formalistic interpretation of the invoicing rules and adopting a substance-over-form approach: rights cannot be rejected based on a failure to comply with formal requirements, according to the above analysis.

- #### *The uncertainty on what, when and why to pay sanctions*

Businesses, especially SMEs, would consider sanctions punitive measures acting as a deterrent against non-compliance, while interest for late payment should only compensate for the cost of time. Although such a distinction may appear clear, the reality can be different, as we have seen in a number of the CJEU cases highlighted above.

Interest rates can substitute for administrative sanctions, blurring the line between penalties and interest rates. Every amount paid in addition to the mere application of interest for late payment is, from a business perspective, a form of sanction, as are 'excessive' interest rates. A number of the cases referred to above deal with the link between the nature and degree of the seriousness of the non-compliance with the conditions and the actual sanction being imposed, but the rulings often refer the actual understanding of these principles back to the national courts, leaving room for different interpretations in the Member States.

For legitimate businesses the link to the actual VAT revenue at stake is essential, and they find it very challenging and unfair to be met with significant sanctions if no VAT is lost or at stake for the Member State in question, and therefore, for businesses, the sanction approach to the increasing number of formal requirements is a serious matter of concern.

- ### Impact on tax administrations

The data and trends of the administrative appeal systems demonstrate the importance of having an effective appeal system in place. Due to the lack of harmonisation in the field of administrative sanctions and interests, there is always the potential for double taxation problems, which will go to the competent authorities of each Member State for settlement and may ultimately end up in the appeal or court systems. This will create more burdens for the EU Member States.

On the other hand, national sanction regimes should support compliance with the tax regime and reflect the differences in national sanction regimes and the particular characteristics of the Member States' economies.

The challenges are not new, and the tax authorities of the Member States and the Commission have already created and contributed to different tools and mechanisms for dispute settlement (SOLVIT, EU pilot cases, the CJEU, etc.).

However, an increase in the number of disputes regarding sanctions, penalties and interest rates between businesses and administrative bodies not only creates more burdens, but also generates a loss of working hours for state employees / tax authorities as dispute-solving processes, including appeal systems, are time-consuming and costly.

Furthermore, dispute-solving processes affect the reputation of Member States as places of business and discourage cross-border investment, having a longer-term economic impact.

Based on this, the Member States recognise the importance of establishing a dialogue in order to increase the understanding of the different national sanction regimes, clarifying the sanctions applied by the individual Member States and ensuring that the increased cross-border trade will not result in an increase in disputes.

Having said this, it is important to understand that every case is examined individually and depends on the facts and circumstances of the situation. Therefore, this must be factored in when going through the examples and when looking for instances in the case-law.

Analysis of current practices

- *'There are different styles of managing the VAT system. It is just like football – everyone wins tournaments, but not in the same year.'*

Getting a structured overview of the different practices regarding administrative sanctions, penalties and interest in the EU Member States is – as clearly indicated above – not easy. The starting point for the analysis is the questionnaires circulated to the EU VAT Forum in 2018 and first presented to the EU VAT Forum in September 2020 ([21]). Therefore, it needs to be understood that legislation and practices in the Member States may have changed since then.

To supplement the answers from the questionnaires, the subgroup conducted desk research based on existing VAT databases most commonly used by businesses to gather further information about the rules on sanctions, penalties and interest.

As a third element, the subgroup conducted the business survey introduced in Section 5.1.1 focusing on businesses' perceptions of sanction regimes and their impact on business decisions. This was done in order to be able to qualify – or, at the very least, calibrate – the analysis of the different practices.

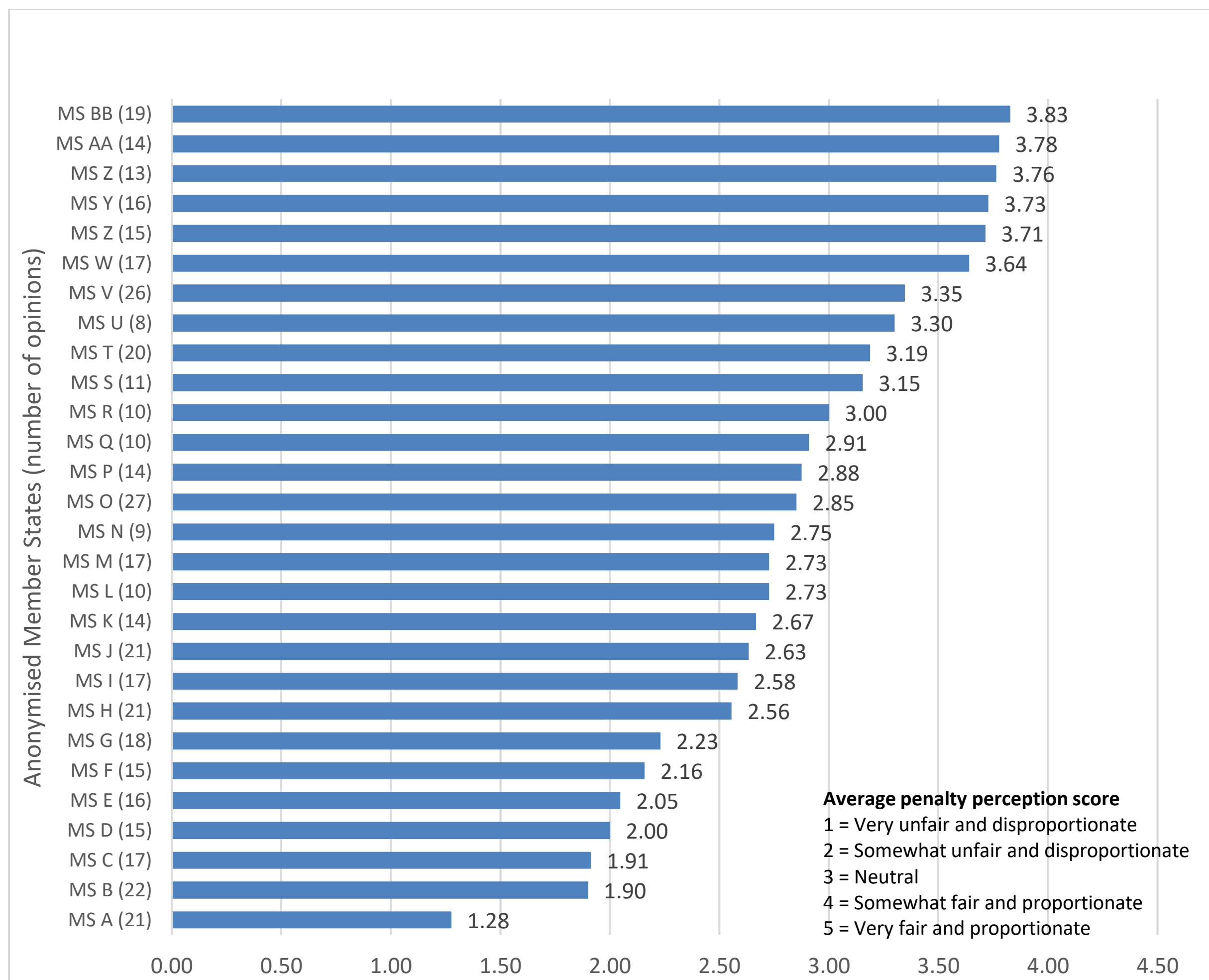
Key drivers behind perceptions of VAT sanction regimes – business survey

Given the different styles of managing the VAT system, the subgroup circulated a survey to businesses to understand the key drivers behind their perceptions of VAT sanction regimes.

The experts were asked to provide an overall perception score on a scale of 1 to 5 of each of the Member States' VAT penalty environments in which they had first-hand experience, i.e. the Member States in which their companies had traded. In the figure below, we have provided the anonymised ranking of the Member States in order to illustrate both the variety of the perception scores and the overall level of perception – i.e. the numbers of opinions given. Due to the number of responses (50), the individual scores of the Member States may change and therefore it was not deemed appropriate to name them individually, but the overall trends are robust.

([21]) The consolidated extracts from the questionnaires can be found in Annex 3.

• *Figure 2. Average scores for business perception of Member States' sanction systems based on the business survey*



In the survey, the average overall perception scores ranged from 1.28 to 3.83. A score of 1 is 'very unfair and disproportionate' and a score of 5 is 'very fair and proportionate'. Even though the average score is 2.82, i.e. below 3 and thus generally in the 'somewhat unfair' category, businesses do have nuanced opinions: 10 Member States have an average score of above 3 and are thus considered fair in the survey.

The subgroup also wanted to shed light on the key drivers behind perceptions of fairness. In the survey, we asked the businesses to first indicate the features of a VAT sanction regime that, in the view of the respondents, **improved their perception as businesses** of the fairness of a VAT regime for *bona fide* companies that make a mistake. The responses indicated the drivers of a positive perception and their importance, as shown below.

- *Table 5. Factors that contribute to a positive business perception of a sanction and penalty regime*

Key driver (Each driver was scored on a scale of 0–10 where 10 indicates an extremely positive influence and 0 no influence)	**Average score**
Complete waiver of penalties (but interest rates remain) in the event of voluntary disclosure	8.54
Imposition of penalties expressed as a percentage of the VAT amount only when there is actual net underpayment of VAT (e.g. no such penalty on reverse charge errors if there is no net VAT underpayment/loss)	7.82
Escalation of penalties for repeat errors, starting with no or a very low penalty	7.70
No penalty for first-time error within 4 years	7.64
Late-payment interest rates close to market interest in combination with a separate set of sanctions per error type	6.60
Limit of 20 % on penalties consisting of a percentage of the underpaid VAT	6.32
Other features	5.53
Application of lump-sum fines to errors that did not lead to net underpayment of VAT	4.56

We also asked the respondents to indicate the features that **worsen their perception as businesses** of the fairness of a VAT sanction regime for *bona fide* companies that make a mistake. This resulted in the following drivers of a negative perception and their importance.

- *Table 6. Factors that contribute to a negative business perception of a sanction and penalty regime*

Key driver (Each driver was scored on a scale of – 10–0 where – 10 indicates an extremely negative influence and 0 no influence)	**Average score**
Too-high penalties as a percentage of the VAT (e.g. > 30 %) even in cases of good faith	– 8.74
Quick opening of criminal procedures (pro forma) to make the taxpayer more ‘cooperative’	– 8.74
Penalties expressed as a percentage of VAT even when the mistake (e.g. a reverse charge error) does not lead to underpayment of VAT	– 8.38
Interest rates that are clearly a multiple of the market interest	– 8.22
The practice of imposing a fine that is much too high during audits, and offering a reduction in exchange for not contesting	– 7.86
Ease with which the authorities extend the prescriptive period	– 7.44
Other features	– 4.36

The answers give some clear pointers towards the elements that may impact the perception of fairness. A common denominator is the fact that businesses find it important for a sanction regime to encourage voluntary disclosures. Businesses also put high emphasis on penalties being linked to the actual net amount of VAT underpaid, not the nominal amounts. ‘Other features’ covers text fields where the respondents could add free text. The key elements in the responses were linked to clarity, predictability and the level of sanctions.

The most significant negative impact arises in cases of excessive penalties when businesses were acting in good faith. Another common denominator is penalties expressed in terms of a percentage

of VAT even when there is no underpayment of VAT. The key elements under ‘other features’ are mostly linked to behavioural aspects, for instance:

- delaying refunds by asking endless additional questions or further clarifications;
- telling a taxpayer to go to court to receive their justified interest compensation for a very late refund by the authorities; or
- systematically starting audits very late, which increases interest revenue if an issue is found.

Taken together with the answers on the impact of the perception of the sanction regime on supply chain decisions, the survey highlights the impact of the sanction regime on broader economic decisions, including trade and supply chain decisions.

• Prominent features of the sanction, penalty and interest regimes

The first prominent features from the analysis relate to general aspects regarding the interest rate, the statute of limitations, and penalty reductions in cases of voluntary disclosure.

• *Table 7. Information from desk research on interest rates, statutes of limitations and voluntary disclosures, based on databases*

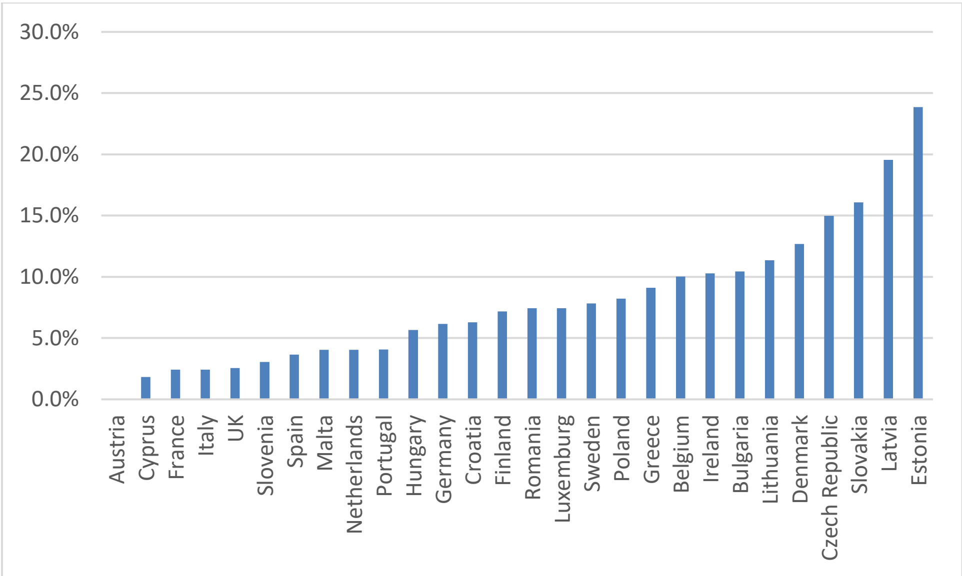
	Interest		**Statute of limitations**		**Voluntary disclosure**
	Interest rate per month for late payment	Starting date for calculation of interest (as stated in the law) for late payment	Standard statute of limitations	Starting date for statute of limitations	Penalty reduction in cases of voluntary disclosure
Austria	None	n/a	5 years	1.1.YYYY + 1	Yes
Belgium	0.80 %	Reporting due date	3 years	1.1.YYYY + 1	Yes
Bulgaria	0.83 %	Day after payment is due	5 years	1.1.YYYY + 1	No
Croatia	0.51 %	Day after payment is due	6 years	DD.MM.YYYY– 1.1.YYYY + 2	No
Cyprus	0.15 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes
Czechia	1.17 %	5th working day after payment is due	3 years	1.1.YYYY + 1	Yes
Denmark	1.00 %	Day after payment is due	5 years	1.5.YYYY + 1	Yes
Estonia	1.80 %	Day after payment is due	3 years	VAT return due date	n/a
Finland	0.58 %	Day after payment is due	3 years	1.1.YYYY + 1	No
France	0.20 %	Reporting due date	3 years	1.1.YYYY + 1	Yes
Germany	0.50 %	1.4.YYYY + 3	4 years	1.1.YYYY + 2	Yes
Greece	0.73 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes
Hungary	0.46 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes
Ireland	0.82 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes
Italy	0.20 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes
Latvia	1.50 %	Day after payment is due	3 years	VAT return due date	Yes
Lithuania	0.90 %	Day after payment is due	3 years	1.1.YYYY + 1	Yes
Luxembourg	0.60 %	Day after payment is due	5 years	1.1.YYYY + 1	n/a
Malta	0.33 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes
Netherlands	0.33 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes
Poland	0.66 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes
Portugal	0.33 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes
Romania	0.60 %	Day after payment is due	5 years	1.1.YYYY + 1	n/a
Slovakia	≥ 1.25 % (at least or 4 times ECB (*) rate)	Day after payment is due	5 years	1.1.YYYY + 1	n/a
Slovenia	0.25 %	Day after payment is due	5 years	Day-on-day	Yes
Spain	0.30 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes
Sweden	Lower limit: 0.1 % Upper limit: 1.35 %	Day after payment is due	6 years	VAT return due date	Yes
United Kingdom	0.21 %	Day after payment is due; calculated on a daily basis	4 years	YYYY + 4	Yes

(*) ECB stands for ‘European Central Bank’.

NB: ‘YYYY + [X]’ represents the year in which the payment was due, plus X number of years: e.g. ‘1.1.YYYY + 1’ represents 1 January of the year after the payment was due.

From the case-law it has been clearly identified that Member States are competent to set their own interest rate per month for late payments as long as they respect the principles of proportionality and neutrality. As we can see from the table and the graph below, there is a wide range of interest rates, from 0.1 % to 1.85 % per month (equalling an annual interest rate of between 1.2 % and 23.9 %). The average interest rate is around 0.63 % per month (7.8 % per year). In some Member States, the interest is calculated on the exact number of days by which the payment is late. In general, the starting point for the interest calculation is the day after the payment is due.

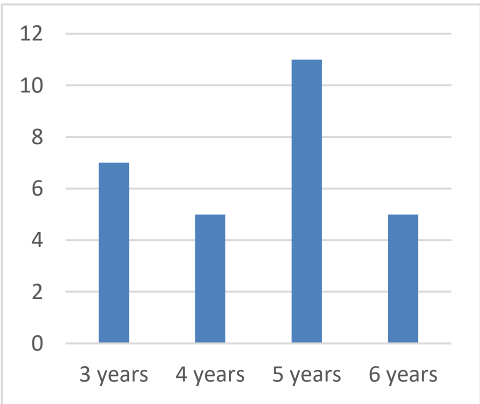
- *Figure 3. Yearly interest rates for late payment based on the data from Table 7*



NB: The rate for Slovakia is calculated based on a 1.25 % monthly rate and the rate for Sweden is based on an average monthly interest rate of 0.63 %.

The standard statute of limitations is 5 years in 11 Member States, while in the other Member States it falls within the range of 3–6 years, giving an average of 4.5 years. In most Member States, the starting point for the statute of limitations is 1 January of the following year (1.1.YYYY + 1).

Figure 4. Statutes of limitations in the Member States based on the data from Table 7



Looking at the incentives to provide voluntary disclosure – a high-ranking driver of a positive/fair perception of a sanction regime – most Member States have included a reduction (but not necessarily a waiver) in the penalties in cases associated with voluntary disclosures. In two Member States, this is not part of the legislation, and data are unavailable for four Member States.

Analysis of the questionnaires and the desk research

Accessibility of data

One of the key issues is gathering information about the sanction regimes in place in the Member States. The questionnaires demonstrated the complexity of the area. In Annex 3, the subgroup has tried to extract summarised information from the answers received on the questionnaires.

The supplementary desk research performed provided a more complete picture. However, there are some discrepancies between the desk research (which would be the starting point for the business risk assessment) and the answers in the questionnaires. This underlines the need for increased transparency.

Box 4. The design of the desk research study

The desk research study conducted on 2020 data supplements and illustrates the diversity of rules and practices in some areas, but also the similarities in other areas. The starting point for the database study was to make use of information that is generally available for businesses that operate in a variety of countries. A key source has been the country tax guides from the International Bureau of Fiscal Documentation database (https://www.ibfd.org/). Where the database was not able to provide the necessary information, use has been made of free-of-charge information from a number of websites such as those of local tax authorities, the big four consulting firms (KPMG, Ernst & Young, PricewaterhouseCoopers and Deloitte) and local consultant offices.

Even though the greatest diligence was taken in retrieving and analysing the information, in cross-checks it sometimes became apparent that some of the information was not aligned and, on occasion, outdated or open to interpretation. Nevertheless, all in all, the outcome of the study provides an overall picture of the similarities and differences between the various regimes.

However, due to the complexity involved in retrieving the information, and although the preparers of the database study did their utmost to find a good balance between accuracy and formulating findings in a crisp way, some nuances have inevitably been lost in the process. Therefore, the results of the database study should primarily be considered for their indicative value. When being used in practice, validation with the original sources or a local expert needs to be performed first.

The fact that a number of different data sources were needed in order to piece together the data sets in the desk research highlights the lack of transparency in this area. The databases used in the desk research would be beyond the price range of the average business and should therefore be considered available only to multinational enterprises.

A key learning from the desk research is the fact that EU-wide information on the penalty and sanction regimes is not easily available, even for VAT experts with access to databases.

Therefore, the subgroup believes that increased transparency regarding the rules and practices on sanctions, penalties and interest rates is needed in order to support the increasing amount of trade in the internal market.

- ### Principles for penalty calculations

According to the desk research, all EU Member States except for Estonia and Croatia operate with penalties defined as a percentage of the VAT amount (in addition to an interest payment). There is a fairly large spectrum, ranging from 0 % in the case of late payments, but timely filing and no bad intentions, to 240 %, the highest administrative fine, for errors committed without any bad intentions. The broad range of penalty calculations is in itself a risk factor that perpetuates flawed perceptions in the business community. It also stimulates discussions with regard to proportionality as well as the CJEU rulings regarding formal errors. The details and ranges of the fines are included in the table below.

- ### *Percentages of the VAT amount for reverse charge errors*

One of the more controversial elements, according to the business survey, is the large number of Member States imposing penalties measured as percentages of the VAT amount for reverse charge errors that have no impact on revenue. According to the desk research, 13 Member States impose fines defined as a percentage of the VAT amount on top of the interest charged for reverse charge errors. Imposing these sorts of fines on errors that have no impact on VAT revenue was ranked as one of the most significant drivers of negative/unfair perceptions in the survey.

- *Table 8. Information from desk research on fines as a percentage of VAT*

	Fines as a percentage of VAT (on top of the interest rates) in cases of late payment but timely filing, and no bad intentions involved	Fines as a percentage of VAT (on top of the interest rates) in cases of late payment and late filing, but no 'bad intentions' involved	Fines as a percentage of VAT in cases of reverse charge errors even if no revenue would have been generated had the process been done correctly	Highest administrative fine as a percentage of VAT in cases of errors where it is assumed there were no 'bad intentions'
Austria	2 %	10 % + 2 %	No	10 %
Belgium	0.8 % for every month overdue	15 %	20 %	100 %
Bulgaria	Yes	Yes	Yes	100 %
Croatia	No	No	n/a	n/a
Cyprus	Yes	Yes	Yes	9 %
Czechia	Yes	Yes	No information	20 %
Denmark	No	Up to 200 %	Yes	Up to 200 %
Estonia	n/a	n/a	n/a	n/a
Finland	10 %	Up to 50 %	Yes	50 %
France	Yes	10–40 %	5 %	80 %
Germany	1 % for every month overdue (Maximum EUR 50 000)	≤ 10 %	n/a	10 %
Greece	EUR 100–500	50 % of additional tax due, plus interest of 0.73 % for every month overdue from 1 January 2014 up to date of enforceable assessment	Yes	Up to 120 %
Hungary	50 % of underpaid tax	50 %	Yes	50 %
Ireland	3–100 %	Yes	n/a	Up to 100 %
Italy	30 %	Up to 240 %	No	240 %
Latvia	30 %	30 %	Yes	30 %
Lithuania	10–50 %	10–50 %	n/a	50 %
Luxembourg	≤ 10 %	≤ 10 %	No	≤ 10 %
Malta	20 %	1 % of the difference, if any, between the amounts of output and deductible input tax	Yes	Up to 20 % of the difference
Netherlands	3 %	3 % for late payment and EUR 68 for late filing	n/a	10 %
Poland	30, 20% or 15%	Yes	No	100 %
Portugal	30–100 %	30–100 %	n/a	100 %
Romania	0.01 % per day	0.01 % per day	n/a	0.01 % per day
Slovakia	≥ 10 % (3 times ECB rate, with minimum of 10 %)	≥ 10 % (3 times ECB rate, with minimum of 10 %)	Yes	≥ 10 % (3 times ECB rate, with minimum of 10 %)

Slovenia	n/a	n/a	No	n/a
Spain	5–20 %	1-15 % surcharge (if voluntarily disclosed) and/or interest	10 %	50 %
Sweden	No	No	5% or max 14 000 euro	Up to 20 %
United Kingdom	2 % first default (after warning)	2 % first default (after warning)	n/a	30 % (standard is 15 %)

The alternative to percentage-based fines is lump-sum fines. In this area, all Member States operate with a lowest lump-sum fine per VAT infraction and almost all Member States apply higher fines for repeat errors. The highest minimum lump-sum fine per VAT infraction is EUR 4 000 while the lowest is EUR 15. One Member State has a daily fine of EUR 3 per VAT infraction. The range of national maximum lump-sum fines is significantly wider, ranging from as low as EUR 120 to as high as EUR 165 000 or EUR 25 000 per day. In 22 Member States there seem to be maximum lump-sum fines defined in public documents. For an SME this range is significant even if the maximum fines are hardly ever used. In the table below, we have listed the findings of the desk research on the lump-sum fines.

- *Potential recidivism and potential quantitative thresholds for criminal procedures*

We have also gathered data on potential recidivism and potential quantitative thresholds for criminal procedures. There is a clear tendency towards higher fines for repeat errors in 16 Member States and the United Kingdom.

- *Table 9. Information from desk research on lump-sum fines*

	Lump-sum fines			**Recidivism**	**When does the procedure become a criminal one?**
	Minimum lump-sum fine per VAT infraction (*)	Maximum lump-sum fine per VAT infraction	Are there maximum lump-sum fines defined in public documents or in the law (e.g. EUR X per infraction but not exceeding EUR Y)?	Are there higher fines for repeat errors and a look-back period defined in public documents or in the law?	Is there any quantitative threshold as of which criminal procedures must be applied?
Austria	Unclear	EUR 5 000	Yes	Yes	No
Belgium	EUR 50	EUR 5 000	Yes	Yes, 4 years' look-back	No
Bulgaria	(EUR 26)	n/a	Yes	Yes	No
Croatia	EUR 130	EUR 26 450	Yes	No (seems not to be the case)	No
Cyprus	EUR 85	EUR 8 543	Unclear	Yes	No
Czechia	EUR 39	EUR 19 500	Unclear	Yes	Yes
Denmark	EUR 135	EUR 1 350	Yes	Yes	No
Estonia	Unclear	EUR 32 000	Yes	Unclear	Unclear
Finland	EUR 3 per day	EUR 5 000	Yes	Seems not to be the case	No (it seems)
France	EUR 15	EUR 1 500	Yes	Yes, 3 years' look-back	No
Germany	≤ EUR 500	EUR 5 000	Yes	Yes	Yes
Greece	EUR 100	EUR 500	Yes	Yes	Yes
Hungary	Unclear. EUR 320	EUR 3 200	Seem to be	Yes	Unclear
Ireland	EUR 4 000	EUR 4 000	Yes	Seems not to be the case	No
Italy	EUR 250	EUR 2 000	Yes	Yes	Yes
Latvia	EUR 70	EUR 700	Yes	Yes	Unclear
Lithuania	EUR 300	EUR 850	Yes	Unclear	Unclear
Luxembourg	EUR 250	EUR 25 000 per day	Unclear	Unclear	Yes
Malta	EUR 20	EUR 250	Yes	No (seems not to be the case)	No
Netherlands	EUR 68 for late filing	EUR 136 for late filing	Yes	Yes	No
Poland	PLN 260 (for non- or late registration)	PLN 24 960 960 (for incomplete or incorrect return	Yes	Yes	Yes

		leading to non-payment)			
Portugal	EUR 150	EUR 165 000	Yes	Yes	No
Romania	EUR 205	EUR 2 870	Unclear	Unclear	Unclear
Slovakia	EUR 30	EUR 32 000	Yes	Unclear	Unclear
Slovenia	EUR 600 (for a person)	EUR 150 000 (for a legal person)	Yes	Unclear	Unclear
Spain	EUR 100	No lump-sum limit	Yes (Maximum percentage)	Yes	Yes
Sweden	EUR 60 (Late filling)	EUR 120 (Late filling)	Yes	No	No
United Kingdom	n/a	n/a	n/a	Yes, see United Kingdom 4 and 5	Potentially

(*) In certain countries, multiple infractions on a single invoice or document are deemed to constitute only one infraction.

- ### Possibilities to have sanctions waived/reduced

For the taxpayer, it is very important to be able to understand how the tax system in another Member State operates. A key element of this is identifying the competent authority and how the right of appeal functions.

In most Member States the taxpayer can ask to have administrative sanctions and/or interest rates reduced or waived. The competent authority for this may vary between the Member States. In 11 Member States, the penalising office has the power to decide in certain instances. The answers to the questionnaires revealed that several Member States have higher administrative bodies in the tax authorities that are also empowered to reduce sanctions and/or interest, and appeals to these administrative bodies are often possible.

In Spain, both Spanish VAT Services Asesores SL and the Spanish tax authorities confirmed that taxpayers could not ask for sanctions and interest rates to be reduced or waived on their own motion of the tax officer. However, the Spanish legal system applies automatic reductions for conformity and/or payment on time and in full, which are equal for all taxpayers.

- *Table 10. Overview of competent authorities, possibilities of appeal and length of decision times, based on the questionnaire*

	Can the taxable person ask to have administrative sanctions or interest waived/reduced?	If "yes/yes,but/no,but", then who is competent (tax authorities (VAT officials or other recovery officials, court, other)?			Length of time before decision is made	Are appeals possible?
	Yes / Yes, but / No, but (*) / No	The penalising office (including in decisions not to penalise)	Higher tax authorities / administrative body	Court	< 3 months / 3–6 months / not predictable (NP) (i.e. no limits defined)	Yes / No
Austria	Yes	Yes	n/a	n/a		n/a
Belgium	Yes	Yes	Yes	Yes		Yes
Bulgaria	Yes	Yes	Yes	Yes	< 3	Yes
Croatia	Yes	Yes	n/a	Yes	NP	Yes
Cyprus	Yes	Yes	Yes	No	< 3	No
Czechia	Yes, but	Yes	Yes	Yes	< 3	Yes
Denmark	n/a	n/a	n/a	n/a		n/a
Estonia	Yes	n/a	Yes	n/a	< 3	Yes
Finland	n/a	n/a	n/a	n/a		n/a
France	Yes	No	Yes	Yes	< 3	Yes
Germany	No, but	n/a	Yes	Yes	NP	Yes
Greece	Yes	n/a	Yes	Yes	3–6	Yes
Hungary	Yes, but	n/a	Yes	Yes	< 3	Yes
Ireland	Yes, but	n/a	n/a	Yes	NP	Yes
Italy	Yes	Yes	n/a	Yes		Yes

Latvia	n/a	n/a	n/a	n/a		n/a
Lithuania	n/a	n/a	n/a	n/a		n/a
Luxembourg	Yes, but	No	Yes	Yes	< 3	Yes
Malta	n/a	n/a	n/a	n/a		n/a
Netherlands	n/a	n/a	n/a	n/a		n/a
Poland	No, but	Yes	n/a	Yes	< 3	Yes
Portugal	n/a	n/a	n/a	n/a		n/a
Romania	n/a	n/a	n/a	n/a		n/a
Slovakia	Yes, but	Yes	Yes	Yes	< 3	Yes
Slovenia	Yes, but	No	Yes	Yes		Yes
Spain	No, but	Yes	Yes	Yes	3-6	Yes
Sweden	Yes	Yes	No	Yes		Yes
United Kingdom	Yes	No	No	Yes		Yes
EPMF (**) (EU)	Yes	Yes	Yes	Yes		Yes
Spanish VAT Services Asesores SL	No, but	Yes	n/a	Yes	NP	Yes

(*) 'Yes, but' indicates 'yes, subject to conditions'; 'No, but' indicates 'no, except under certain conditions'.

(**) EPMF stands for 'European Precious Metal Federation'.

• Voluntary compliance/disclosure

In the beginning of the section we looked at whether penalty reductions in cases of voluntary disclosure are implemented in the Member States according to the desk research. Voluntary disclosure was also mentioned in the original questionnaire. Combining the two results, we see a few discrepancies, but we also see the challenge in identifying the answer in the questionnaires, given the number of unknown answers. Rebates or even waivers are important matters for taxpayers when considering a VAT sanction regime, as compliant businesses would like to be able to correct errors without suffering from what they perceive to be unfair sanctions and/or interest rates.

The differences between the results in the table below may of course be a reflection of the actual practice, at least under the circumstances described in the questionnaire, versus the broader approach of the desk research. Having said this, the table demonstrates that most Member States take voluntary disclosure into consideration when charging interest and/or penalties. This consideration may result in cancellation or a reduction of the interest/penalty. Waiving or reducing penalties in cases of voluntary disclosure is considered very important for businesses, as indicated in the beginning of the section, and will from their perspective be considered a best practice.

• *Table 11. Comparison of information on voluntary disclosure received from the desk research and from the questionnaire*

	Desk research	**Questionnaire**	
	Are penalty reductions applied in cases of voluntary disclosure?	Under what circumstances or conditions can the taxpayer ask for a rebate of sanctions and/or interest? Is there a rebate for voluntary disclosure?	Is whether the interest is charged following a tax audit or whether there was a voluntary disclosure taken into account?
Austria	Yes	n/a	No
Belgium	Yes	Yes	Yes
Bulgaria	No	No	No
Croatia	No	No	No
Cyprus	Yes	No	No
Czechia	Yes	n/a	No
Denmark	Yes	n/a	n/a

Estonia	n/a	n/a	n/a
Finland	No	n/a	n/a
France	Yes	Yes	Yes
Germany	Yes	No	No
Greece	Yes	Yes	Yes
Hungary	Yes	n/a	Yes
Ireland	Yes	Yes	Yes
Italy	Yes	n/a	No
Latvia	Yes	n/a	n/a
Lithuania	Yes	n/a	n/a
Luxembourg	n/a	n/a	n/a
Malta	Yes	n/a	n/a
Netherlands	Yes	n/a	n/a
Poland	Yes	Yes	Yes
Portugal	Yes	n/a	n/a
Romania	n/a	n/a	n/a
Slovakia	n/a	Yes	Yes
Slovenia	Yes	Yes	Yes
Spain	Yes	Yes	Yes
Sweden	Yes	No	No
United Kingdom	Yes	n/a	n/a

Voluntary disclosure procedures are meant to encourage the correction of mistakes for transactions which have already taken place, usually in the context of an audit. However, businesses report that the approach to voluntary disclosures is very different from one Member State to another. There are different patterns which are difficult for businesses to understand, especially SMEs with limited legal knowledge.

- In many Member States the voluntary disclosure process stimulates legitimate business behaviour by triggering no or symbolic sanctions.
- In some Member States, the voluntary disclosure process is a legal instrument by which, under certain conditions, a company can limit the sanctions it receives for errors.
- In extreme cases, voluntary disclosure could lead to higher sanctions than those arising due to an audit.

- ### Specific circumstances or conditions

The questionnaires do not provide a full overview of the circumstances or conditions for a reduction in administrative sanctions, penalties or interest. However, some commonalities do seem to materialise when looking at the regimes next to each other. The general trend is to allow for reductions on a discretionary, case-by-case basis and for cases provided for in the law, providing predictability.

The picture is less clear when looking at the possibility of having penalties / interest rates reduced during audits or the ability of the tax inspector to encourage the taxpayer's cooperation during audits. Especially for SMEs with few legal measures at their disposal, predictability and fairness are key.

The ability of a VAT sanction regime to make use of interest reductions as a bargaining tool is something that has a highly negative impact on the perception of the fairness of a sanction regime if misused. There is a fine line between the benefits of being able to find practical solutions during audits, giving the taxpayer a choice between a disproportionate sanction / interest rate with the right to appeal, and waiving the right to appeal in exchange for a deduction; this could be seen as a

violation of rights of defence in extreme cases. Therefore, this is an area where more clarity across the EU would be beneficial in order to identify best practices on how to achieve this balance.

- *Table 12. Circumstances and conditions for a penalty reduction according to the questionnaire and the desk research*

	Questionnaire				**Desk research**
	Under what circumstances or conditions can a reduction be obtained?				Can the auditing tax inspector encourage the taxpayer's 'cooperation' during audit or encourage them not to contest the claim by guaranteeing substantially lower fines?
	On a discretionary (case-by-case) basis	In cases provided for in legislation	In exchange for paying without contesting	By negotiating amount down during audit	
Austria	Yes	n/a	n/a	n/a	No
Belgium	Yes	Yes	No	No	No
Bulgaria	Yes	n/a	n/a	No	Unclear
Croatia	n/a	n/a	Yes	Yes	No
Cyprus	No	No	No	No	Yes
Czechia	Yes	Yes	n/a	n/a	Unclear
Denmark	n/a	n/a	n/a	n/a	No
Estonia	Yes	No	n/a	n/a	n/a
Finland	n/a	n/a	n/a	n/a	No (not really substantial)
France	Yes	n/a	n/a	n/a	No
Germany	Yes	n/a	No	No	No
Greece	Yes	Yes	Yes	No	Yes
Hungary	No	Yes	n/a	No	Yes
Ireland	Yes	Yes	n/a	n/a	No (not substantial)
Italy	n/a	n/a	Yes	n/a	Yes
Latvia	n/a	n/a	n/a	n/a	Yes
Lithuania	n/a	n/a	n/a	n/a	Yes
Luxembourg	Yes	n/a	No	No	No
Malta	n/a	n/a	n/a	n/a	No (not substantial)
Netherlands	n/a	n/a	n/a	n/a	Yes, but not standard practice
Poland		Yes			Yes
Portugal	n/a	n/a	n/a	n/a	No
Romania	n/a	n/a	n/a	n/a	n/a
Slovakia	n/a	Yes	n/a	n/a	No
Slovenia	Yes	Yes	Yes	No	No
Spain	No	Yes	Yes, but	Yes, in certain cases	Yes
Sweden	Yes	Yes	No	No	No
United Kingdom	Yes	n/a	n/a	n/a	Yes, but not standard practice
EPMF (EU)	Yes/no	Yes	Yes/no	Yes/no	
Spanish VAT Services Asesores SL	No	No	Yes	Yes	

- ## Specific situations such as hardship

Reductions of sanctions and/or interest rates can also be obtained in certain situations such as hardship, lack of intent or the simple fact that no revenue has been lost. The CJEU has repeatedly argued for proportionality, linking sanction reductions to cases involving breaches of formal requirements.

Of the responding Member States, 16 do take at least one of the specific situations such as those mentioned above into account when applying, reducing or waiving sanctions. In some Member States, this is regulated by legislation. The desk research has identified 17 Member States that take elements of this into consideration. In 1 Member State, there is a discrepancy between the results of the desk research and those of the 2018 questionnaire.

Looking in more detail at the results from both the questionnaire and the desk research, we see that factors like hardship and intent are considered. Only in 2 Member States have we identified a positive consideration of the revenue loss when looking at reductions. It is important to consider the value that taxpayers place on the link to the actual VAT revenue at stake when assessing a VAT sanction regime.

- *Table 13. Specific situations*

	Questionnaire				**Desk research**
	Are any specific situations (e.g. hardship) taken into account?				Are penalties reduced in 'special circumstances' (e.g. hardship, first-time error and made in good faith, unclear law) after the assessment has been done?
	Hardship	Revenue loss	Intent/negligence	Other	
Austria	n/a	n/a	Yes	Yes	n/a
Belgium	Yes	n/a	n/a	Yes	Yes
Bulgaria	n/a	n/a	Yes	n/a	Yes
Croatia	No	No	No	No	Only on appeal
Cyprus	No	No	No	No	No
Czechia	n/a	n/a	Yes	Yes	Yes
Denmark	n/a	n/a	n/a	n/a	Yes
Estonia	Yes	n/a	Yes	n/a	n/a
Finland	n/a	n/a	n/a	n/a	Yes
France	Yes	n/a	Yes	Yes	Yes
Germany	Yes	n/a	n/a	Yes	Yes
Greece	No	No	No	No	Yes
Hungary	Yes	n/a	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	n/a	n/a	n/a	Yes
Latvia	n/a	n/a	n/a	n/a	Yes
Lithuania	n/a	n/a	n/a	n/a	Yes
Luxembourg	Yes	Yes	Yes	Yes	n/a
Malta	n/a	n/a	n/a	n/a	Yes
Netherlands	n/a	n/a	n/a	n/a	Yes
Poland	Yes	n/a	Yes	Yes	Yes
Portugal	n/a	n/a	n/a	n/a	n/a
Romania	n/a	n/a	n/a	n/a	n/a
Slovakia	Yes	n/a	Yes	Yes	n/a
Slovenia	n/a	n/a	Yes	Yes	No
Spain	Yes	Yes	Yes	n/a	Yes
Sweden	Yes	No	No	Yes	Yes
United Kingdom	Yes	n/a	Yes	Yes	Yes
EPMF (EU)	Yes	Yes/no	Yes	Yes	
Spanish VAT Services Asesores SL	n/a	No	Yes	n/a	

- ## The wide diversity of sanction regimes

Another conclusion when looking both at the questionnaire and at the desk research is the diversity in the different sanction regimes. For certain areas, such as the ones indicated above, there are similarities, but for instance when looking at the circumstances of reduction, lump-sum fines and percentage-based fines, the picture is not as clear.

This is not a surprise since this follows directly from the lack of EU harmonisation of rules. The diversity is a challenge when a taxpayer is caught between two or more sanction regimes, for instance due to different interpretations of the EU VAT rules or different assessments of the facts and circumstances of a transaction or in the case of a late filing in the OSS.

This diversity is directly identified in the four case studies involved in the 2018 questionnaire. However, this difference in treatment could also – as one of the cases demonstrates – lead to sanctions being applied even if the taxpayer is compliant with the VAT legislation in one out of two Member States and cannot be compliant in both Member States at the same time.

These concerns were also identified in a previous report on double taxation issued by the EU VAT Forum in 2019 ([22]). In the time it takes for two or more Member States decide on a common VAT treatment of a transaction, the costs for business, in terms of both double VAT and/or penalties and interest, are too high to continue with transactions, resulting in a change in, for instance, the supply chain or simply abstaining from transactions.

From the case studies in the 2018 questionnaire, two specific questions illustrate this point as they deal with both how the next VAT periods are going to be resolved (even if a uniform decision between the two Member States has not been reached) and whether it is taken into account that VAT has been paid in another Member State.

- *Table 14. Overview of answers to selected questions in the questionnaire case studies*

	Case 3.2 – Will the VAT due with regard to the next VAT periods be charged?	Case 4.2 – Will the fact that the VAT was effectively paid (in another Member State) be taken into account?
Possible responses	Yes / Yes, with penalties / Yes, with interest / Yes, with penalties and interest / Yes, with exceptions / No	No / No – but possible to get reduction / Yes
Austria		No
Belgium	Yes, with penalties and interest	No – but possible to get reduction
Bulgaria	No	No
Croatia	Yes, with penalties and interest	
Cyprus		No
Czechia	Yes, with penalties and interest	No
Denmark	Yes	No
Estonia	Yes	Yes
Finland		
France		
Germany		
Greece	Yes, with penalties and interest	No – but possible to get reduction
Hungary		No
Ireland	Yes, with penalties and interest	No
Italy	Yes, with penalties and interest	No
Latvia	Yes, with exceptions	No
Lithuania		
Luxembourg		No
Malta		No
Netherlands		Yes
Poland	Yes, with penalties and interest	No
Portugal	Yes, with penalties and interest	No
Romania		
Slovakia		No
Slovenia	Yes, with penalties and interest	No
Spain	Yes	Yes
Sweden	Yes, with penalties and interest	No – but possible to get reduction

([22]) https://ec.europa.eu/taxation_customs/sites/default/files/01-2020-executive-note-eu-vat_forum.pdf

The two selected questions highlight that the Member States will in most instances continue to charge VAT – with interest and penalties – going forward, based on the legal assessment in their jurisdiction and, in general, it will not be taken into account that VAT has effectively been paid in another Member State. This may very likely lead to double taxation if the business continues with transactions without changing its arrangements.

The general diversity of approaches has made it difficult to extract clear answers from several questionnaires. This is especially true in the case studies. This is in itself an important issue as it leads to uncertainty for the taxpayer.

Based on the above, the overall learning is that different tax authorities have different styles of managing the VAT system. This is reflected in the rules as they are outlined in, for instance, the legislation, practice statements or the administrative guidance. However, the tax inspectors on the ground and the tone at the top in the tax administrations also play an equally important role when assessing whether the taxpayer is confronted with a very formal application of the rules or a more pragmatic approach.

- e-Commerce file (implementation of the one-stop shop)

In Section 4.1.1 the new general aspects of the OSS were discussed, with special attention to the fundamental change in the initial relationship between businesses and tax authorities. Reflecting on the example of the SME that, for some unforeseen reason, submitted its filing and payment a week late, the analysis leads to the below matrix, which demonstrates not only the complexity in terms of the different consequences, but also the fact that in a number of instances we were not able to provide a clear answer based on the sources of information available.

- *Table 15. Table compiling the relevant answers for the case of late filing and payment in the OSS*

	Table 7 – Desk research		**Table 8 – Desk research**	**Table 10 – Questionnaire**	**Table 13 – Desk research**
	Interest rate per month for late payment	Starting date for calculation of interest (as stated in the law) for late payment	Fines as a percentage of VAT (on top of the interest rates) for late payment and late filing, but no 'bad intentions' involved	Can the taxable person ask to have administrative sanctions or interest waived/reduced (Yes / Yes, but / No, but (*) / No)	Are penalties reduced in 'special circumstances' (e.g. hardship, first-time error and made in good faith, unclear law) after the assessment has been done?
Austria	None	n/a	10 % + 2 %	Yes	n/a
Belgium	0.80 %	Reporting due date	15 %	Yes	Yes
Bulgaria	0.83 %	Day after payment is due	Yes	Yes	Yes
Croatia	0.51 %	Day after payment is due	No	Yes	Only after appeal
Cyprus	0.15 %	Day after payment is due	Yes	Yes	No
Czechia	1.17 %	5th working day after payment is due	Yes	Yes, but	Yes
Denmark	1.00 %	Day after payment is due	Up to 200 %	n/a	Yes
Estonia	1.80 %	Day after payment is due	n/a	Yes	n/a
Finland	0.58 %	Day after payment is due	Up to 50 %	n/a	Yes
France	0.20 %	Reporting due date	10–40 %	Yes	Yes
Germany	0.50 %	1.4.YYYY + 3	≤ 10 %	No, but	Yes
Greece	0.73 %	Day after payment is due	50 % of additional tax due, plus interest of 0.73 % for every month overdue from 1 January 2014 up to date of enforceable	Yes	Yes

			assessment		
Hungary	0.46 %	Day after payment is due	50 %	Yes, but	Yes
Ireland	0.82 %	Day after payment is due	Yes	Yes, but	Yes
Italy	0.20 %	Day after payment is due	Up to 240 %	Yes	Yes
Latvia	1.50 %	Day after payment is due	30 %	n/a	Yes
Lithuania	0.90 %	Day after payment is due	10–50 %	n/a	Yes
Luxembourg	0.60 %	Day after payment is due	≤ 10 %	Yes, but	n/a
Malta	0.33 %	Day after payment is due	1 % of the difference, if any, between the amounts of output and deductible input tax	n/a	Yes
Netherlands	0.33 %	Day after payment is due	3 % for late payment and EUR 68 for late filing	n/a	Yes
Poland	0.66 %	Day after payment is due	Yes	No, but	Yes
Portugal	0.33 %	Day after payment is due	30–100 %	n/a	n/a
Romania	0.60 %	Day after payment is due	0.01 % per day	n/a	n/a
Slovakia	≥ 1.25 % (at least or 4 times ECB rate)	Day after payment is due	≥10 % (3 times ECB rate, with minimum of 10 %)	Yes, but	n/a
Slovenia	0.25 %	Day after payment is due	n/a	Yes, but	No
Spain	0.30 %	Day after payment is due	1-15 % surcharge (if voluntarily disclosed) and/or interest	No, but	Yes
Sweden	Lower limit: 0.1 % Upper limit: 1.35 %	Day after payment is due	No	Yes	Yes
United Kingdom	0.21 %	Day after payment is due; calculated on a daily basis	2 % first default (after warning)	Yes	Yes

(*) 'Yes, but' indicates 'yes, subject to conditions'; 'No, but' indicates 'no, except under certain conditions'.

Looking at the details of the answers, the SME would most likely be met with 26 different reactions with very diverse interest rates and fines, with a fine of up to potentially 240 % of the VAT due and an interest rate as high as 23.9 % per year. At the other end of the spectrum, no fines may be applied, and the interest rate may be as low as 0. From the table it is clear that the sanctions and interest rates vary from country to country and this will be a challenge, especially for SMEs.

The same issues arise if the taxpayer identifies a mistake and would like to correct it. Then the rules regarding voluntary disclosure and its consequences, as presented in Tables 7, 11 and potentially 13 (in specific situations) become relevant. This could, for instance, occur when realising that transactions fall under the scope of the OSS and not under other VAT schemes.

The key issue is that if the OSS becomes successful, as both businesses and Member States hope and are aiming for, then there will in fact be an increase in the underlying VAT registrations (including an increase in the countries covered by the individual taxpayers) and thus an increased need for easily accessible information about the different sanction and interest regimes. The analysis has demonstrated the diversity of sanction regimes and this will hopefully stimulate further considerations.

- ### Overall impression

The general impression given by the different results is one of a high level of diversity in the administration of VAT sanction regimes. Looking in more detail, we see similarities between the Member States but also areas with large differences underlining the importance of transparency in this area.

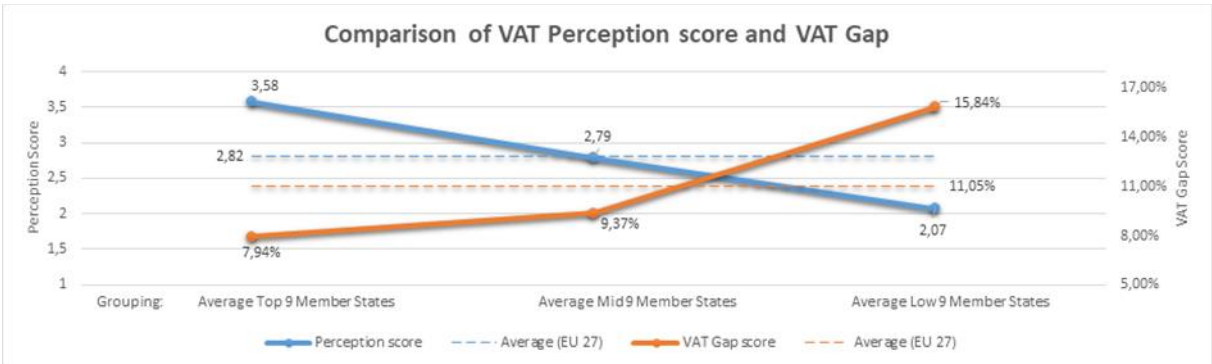
Taken together, the business survey, the questionnaire and the desk research clearly indicate that the issues relate not only to the formal rules and practices in place, but also to the application of the practices – the behavioural aspects. This is demonstrated by the business survey and the relevant factors for evaluating the fairness of a sanction regime. It could be said that, from the businesses' perspective, proportionality is key.

Based on the business survey and the statistics, identifying a best-in-class standard **from a business perspective** is only feasible for a limited number of parameters, but would include the following general aspects.

- Interest should be kept close to market levels and only reflect the financial disadvantage experienced by authorities.
- The absolute amount of a penalty should be predictable and proportional to the mistake made. If necessary, an escalation scale, linked to the compliance history of the business, could also be provided for by law for repeat cases within a certain time frame.
- Penalties as a percentage of the VAT should only apply to actual underpaid VAT.
- Voluntary disclosure should not be penalised or should be penalised at a fairly low level (and this should be guaranteed by the law).
- The option to discuss issues with tax authorities upfront without fear of being heavily penalised should be guaranteed by law.
- Tax authorities should abide by fair play during audits. Retroactive changes in the interpretation of the law are difficult to comply with.
- Innocence and good-faith behaviour should be presumed until the contrary is proven.

In order to measure the effectiveness of sanction regimes against perceptions of them in the business survey, we have tried to match the VAT gap with the perception scores given to the Member States in the survey in Section 6.1. When comparing the average perception scores of the top 9, middle 9 and bottom 9 with the average VAT gap ([23]), the results suggest that the better-perceived sanction regimes perform better on the VAT gap. However, in each tier there are some exceptions that pull the overall score in the opposite direction, and it should also be underlined that the link is not based on any detailed statistical models and is only an empirical observation.

- *Table 16. Comparison of VAT sanction regime perception scores and VAT gaps in Member States*



([23]) Data are from the 2020 VAT gap report (https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1579).

Looking at the data in detail, one important observation is that the answer is unclear at best in several areas, indicating that data are not readily available. We have also identified some discrepancies between the data extracted from the questionnaires and those from the desk research. In the absence of centralised data, businesses will take their initial decisions based on the database information.

The highest diversity occurs in the actual interest and sanctions, an area that will become very relevant when looking at matters like the new e-commerce rules entering into force on 1 July 2021. In the table above we have demonstrated an example of this diversity. It should be noted that when facing an interest rate of potentially 23.9 % per year, time and limitation periods become extremely important for the taxpayer, while the opposite is the case when no interest is applied.

• Recommendations

The subgroup concluded that sanctions and interest rules are primarily laid down in national law, which, however, is subject to the requirements of EU law. Regarding sanctions, penalties and interests in the VAT field, Member States retain the power to choose the penalty regimes which seem to them to be appropriate.([24])

From the detailed analysis of the questionnaires and the supplementary desk research as well as the business survey, the lack of transparency in this area is a clear concern. The lack of transparency is very challenging for businesses, both for SMEs and MNE's trading across the European Union, because a lack of transparency decreases predictability. A key example is the new e-commerce rules that entered into application on 1 July 2021, which will increase the number of businesses that are de facto registered in other EU Member States due to the registration in the OSS.

The subgroup has discussed how to address these issues in an effective manner that both respects the starting point for the discussions and caters to the needs of businesses. The recommendations essentially focus on the following pillars:

1. Increased transparency;
2. Increased dialogue between stakeholders

The subgroup investigated potential solutions that may be implemented to support the two pillars. This section is the result of those discussions.

• Increased transparency

The subgroup stressed that communication and transparency are a prerequisite in any discussions on improving the current practices and would also be a significant contributor to the smooth functioning of new initiatives like the expanded OSS in the area of e-commerce. In order to find effective ways of facilitating this increased transparency, the subgroup discussed and recommend the following initiatives.

• *Expansion of the Taxes in Europe Database to cover EU sanction and interest information and support the e-commerce OSS portals*

- The EU should expand the Taxes in Europe Database (TEDB)([25]) with information regarding administrative sanctions and interest rates in the EU Member States, primarily to support the e-commerce rules since OSS registrants are registered in all Member States through the OSS, being subject to sanctions and interest rules of all the Member States of consumption.
- The expansion should include information on both:
  - general principles like the statute of limitations, interest rates for late payment, standard procedures for communicating with taxpayers (decisions/rulings/rights) and
  - more detailed information regarding, for instance, applicable interest rates for late payment, implications of voluntary disclosure, errors regarding the Member State of consumption (taxpayer identification), etc.

[24] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/_ra_2018_en.pdf
See also C-424/12 referenced in the Annex or some of the other rulings indicated in Table 5 below
[25] The "Taxes in Europe" database is explained in a footnote in section 6.5.1.

- The expansion of TEDB with the above datapoints should be developed based on a staged approach:
    - Phase 1 - including the link(s) to the appropriate descriptions on the websites of the national tax administrations. Guidance about the information that should be made available for the taxpayer at a national level should be defined through a dialogue between the stakeholders explaining
        - what kind of information/transparency is needed on the MS website
        - what are the needs of the tax payers - what do they need to know.
    - Phase 2 – adding information relevant to support the OSS and the I-OSS on the TEDB. The identification of the needed information should be supported by the evaluation of the current experiences of the OSS and the I-OSS and the dialogue between stakeholders and may result in expansion of information on national websites and/or TEDB.
    - Phase 3 – making basic and structured information relevant to the average taxable person that deals with cross border trade on the TEDB and/or on the national websites with the relevant links. The details of the information for this phase will have to be agreed based on the dialogue between stakeholders and should focus on sanctions and interests' regimes.

Transparency –Factsheets - public information on the phases

- In order to support the transparency in this area, the different phases should be supported by dedicated communication tools highlighting the key information available. Starting from Phase 2, the communication tools could include "country factsheets" or "country overviews" based on the information in the TEDB.
- Together with the Member States, the European Commission should design the template for a brief factsheet with standardised information on the administrative sanction and interest regimes. The purpose of the template is to provide guidance to the Member States on what kind of information could be made available for the taxable person thus facilitating greater clarity and predictability for the companies, while also providing the links to the detailed guidance on the member states national websites.

Increased dialogue between stakeholders

Establishment of a Member State dialogue with stakeholder participation

- The subgroup believes that it is important to establish a structured and recurring dialogue regarding sanctions and interests between the EU Member States with stakeholder participation. This dialogue is very important to ensure that the recommendations regarding increased transparency are effective. Therefore, a key purpose of the dialogue is to agree on the templates and information needed on the TEDB. However, the EU-VAT Forum also believes that the dialogue is becoming important for instance in the evaluation of the OSS and I-OSS.
- A structured and recurring dialogue allowing for discussions on sanctions and interest regimes would assist the Member States in exercising this competence. The recurring dialogue could facilitate the inclusion of cross-border aspects when initiating or adjusting the sanction regimes in the Member States.
- The subgroup encourages the EU-Commission to best identify the appropriate forum for these discussions, ensuring also that the right competences from the Member States and the stakeholders are represented. The appropriate forum can be facilitated through digital meetings.

- *Sharing of experience of the efforts*

- The subgroup also believe that it is important to share the experiences of the outcome of the recommendations. Therefore, the subgroup recommends that the EU-VAT forum facilitates this by the end of the mandate of the current EU VAT Forum, for instance in the form of an open debate on the last plenary meeting under the current mandate.

Key messages to the EU VAT Forum

Administrative sanctions and interest rates play an important role in the perception of, and trust in, the EU VAT regime. The constant increase in cross-border transactions and the increased use of technology have expanded the number of taxpayers facing different tax regimes every day. The EU VAT system and the interpretation of the rules have also increased in complexity as modern commerce, the sharing economy and servitisation[26] have become the norm in trade. The latest developments designed to simplify the VAT system by introducing the OSS also have the consequence of increasing de facto VAT registrations in the Member States even though a significant amount of the compliance burden has been simplified. A lack of transparency on the sanction and interest regimes in the Member States drives misconception, and a high number of businesses factor these regimes into their decisions regarding supply chains. This impacts the neutrality of the VAT system and triggers inconsistent business behaviours and additional costs and is a hindrance to the correct functioning of the internal market.

The subgroup recommends that the EU VAT Forum adopt its analysis and findings in terms of the current sanction regimes. From the analysis, it can be concluded that:

- there is a clear concern about the lack of transparency in this area;
- there is a need for increased dialogue between stakeholders in this area in order to increase predictability, especially for SMEs trading across the European Union;
- the new e-commerce rules that entered into force on 1 July 2021 will increase the number of businesses that are de facto registered in other EU Member States due to the registration in the OSS.

The key actions recommended by the subgroup are the following.

Short-term actions

Increased transparency

- Expansion of the Taxes in Europe Database to cover EU sanction and interest information and support the e-commerce OSS portals by including link(s) to the appropriate descriptions on the websites of the national tax administrations (Phase 1).
- Issue public information (supported by dedicated communication tools) on the phase 1 of the staged approach regarding the information available

Increased dialogue between stakeholders (including methods to increase the dialogue between Member States and between businesses and Member States)

- Establishment of a Member State dialogue with stakeholder participation by identifying an appropriate forum for this dialogue to take place, ensuring also that the right competences from the Member States and the stakeholders are represented.

Medium-term actions

Increased transparency

[26] The delivery of a service component as an added value, when providing products.

- Expansion of the Taxes in Europe Database and/or national websites to cover sanction and interest information relevant to support the OSS and the I-OSS (Phase 2) as well as making basic and structured information relevant to the average taxable person that deals with cross border trade available on the Taxes in Europe Database and/or on the national websites with the relevant links (Phase3)
- Issue public information on the phase 2 and 3 of the staged approach, including “country factsheets” or “country overviews” based on the information in the TEDB or the links provided in the TEDB.

Increased dialogue between stakeholders (including methods to increase the dialogue between Member States and between businesses and Member States)

- The subgroup believe that it is important to share the experiences of the outcome of the recommendations. Therefore, the subgroup recommends that the EU-VAT forum facilitates this by the end of the mandate of the current EU VAT Forum.

Final recommendation

The subgroup requests that the EU VAT Forum acknowledges the need to increase the transparency of the administrative sanction and interest regimes, and that it commits to supporting and facilitating the implementation of these recommendations.

Annexes

Annex 1. List of the 7.2 subgroup meetings and members

Date	Meetings/documents
28.9.2020	15th **plenary meeting.** Discussions resulting in the mandate to relaunch the subgroup in order to report back at the next EU VAT Forum meeting.
9.12.2020	**1st subgroup meeting.** Subgroup kick-off meeting to agree on work plan, working method, objectives, initial distribution of tasks, etc.
17.12.2020	**2nd subgroup meeting.** First discussion in more detail on the content and straw man of the report.
15.1.2021	**3rd subgroup meeting.**
19.1.2021	**4th subgroup meeting.**
3.2.2021	**5th subgroup meeting.**
24.2.2021	**6th subgroup meeting.**
9.3.2021	**7th subgroup meeting.** Detailed analysis.
16.3.2021	**8th subgroup meeting.** First discussion of full draft report and recommendations.
22.3.2021	**9th subgroup meeting.** Second discussion of full draft report and recommendations.
9.4.2021	**10th subgroup meeting.** Finalisation of draft report to be circulated to the EU VAT Forum.
7.5.2021	**11th subgroup meeting.** Fine-tuning of draft report to be circulated to the EU VAT Forum.
10.5.2021	**Draft report sent to the EU VAT Forum for comments.**
25.5.2021	**EU VAT Forum.** Deadline for comments on draft report.
26.5.2021	**12th subgroup meeting.** Final subgroup meeting with discussion of comments from the EU VAT Forum.
22.6.2021	**Final draft report sent to the EU VAT Forum.**
29.6.2021	**Presentation to and discussions with the EU VAT Forum.**
20.9.2021	**13th subgroup meeting.** First discussion on revisions based on the discussions with the EU Vat Forum

8.10.2021	**14th subgroup meeting.** Finalisation on revisions to the report
19.10.2021	**Final report sent to the EU VAT Forum.**
8.11.2021	**Presentation to and discussion with the EU VAT Forum.**

The subgroup is composed of the following members of the EU VAT Forum:

- BusinessEurope (Rapporteur)
- CFE Tax Advisers Europe
- European Holiday Home Association
- European Precious Metal Federation (EPMF)
- Finland (tax administration)
- Greece (tax administration)
- International Chamber of Commerce
- International VAT Association
- Italy (tax administration)
- Spanish VAT Services Asesores SL.

Following the plenary on 29 June 2021, the subgroup was joined by

- Belgium (tax administration)
- Spain (tax administration)
- Sweden (tax administration)

Annex 2. Court of Justice of the European Union cases – selected extracts

- *C-210/91. Commission of the European Communities* v *Hellenic Republic*

'19. It should be noted firstly that in the absence of harmonization of Community legislation in the field of customs offences, **the Member States are competent to adopt such penalties as appear to them to be appropriate** (see, inter alia, Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergewassen* [1977] ECR 137, paragraph 33, and Case 240/81 *Einberger v Hauptzollamt Freiburg* [1982] ECR 3699, paragraph 17). When making use of that competence they are, **however, required to comply with Community law and its general principles, and consequently, with the principle of proportionality**.

20. As the Court has repeatedly held, **the administrative measures or penalties must not go beyond what is strictly necessary for the objectives pursued and the control procedures must not be accompanied by a penalty which is so disproportionate to the gravity of the infringement that it becomes an obstacle to the freedoms** enshrined in the Treaty (see, inter alia, Case 203/80 *Casati* [1981] ECR 2595, paragraph 27; Joined Cases 286/82 and 26/83 *Luisi and Carbone* v *Ministero del Tesoro* [1984] ECR 377; and Case 68/88 *Commission* v *Greece* [1989] ECR 2965).'

- *C-110/99. Emsland-Stärke*

'56. Contrary to the assertions of Emsland-Stärke, the obligation to repay refunds received in the event that the two constituent elements of an abuse are established would not breach the principle of lawfulness. **The obligation to repay is not a penalty for which a clear and unambiguous legal basis would be necessary, but simply the consequence of a finding that the conditions required to obtain the advantage derived from the Community rules were created artificially**, thereby rendering the refunds granted undue payments and thus justifying the obligation to repay them.'

- *C-262/99. Paraskevas Louloudakis* v *Greek State*

'71. The answer to the second and third questions must therefore be that national legislation which provides, in the event of infringement of the temporary importation arrangements laid down by the directive, for a series of penalties including, in particular:

— **fines set at a flat rate on the basis of the sole criterion of the vehicle's cubic capacity, without taking its age into account,**
— **increased duty which can amount to up to ten times the taxes in question**

is compatible with the principle of proportionality only in so far as it is made necessary by overriding requirements of enforcement and prevention, when the gravity of the infringement is taken into account.

[…]

77. The answer to the fourth question must therefore be that, in proceedings concerning infringements relating to temporary importation of certain means of transport, neither the directive nor other rules of Community law prevent its being excluded that ignorance of the applicable rules should lead to automatic exoneration from all penalties. None the less, where determination of the arrangements applicable has given rise to difficulties, account must be taken of **the good faith of the offender when determining the penalty actually imposed on him**.'

- *C-181/04. Elmeka*

'29. According to the Italian Government, balancing **the principles of legal certainty and protection of legitimate expectations on the one hand, and the need to comply with Community VAT rules on the other, should lead one to conclude that, in the main proceedings, the Greek State should not impose any penalty or even require payment of interest, but that the tax itself should be paid**.'

- *C-502/07 K-1 sp. z o.o.*

'20. **The principle of a common system of VAT does not preclude the introduction by the Member States of measures penalising irregularities committed** when declarations are made as to the amount of VAT due. On the contrary, Article 22(8) of the Sixth VAT Directive provides that Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax.

21. In those circumstances, the answer to the first question is that the common system of VAT, as defined in the first and second paragraphs of Article 2 of the First VAT Directive and in Articles 2 and 10(1)(a) and (2) of the Sixth VAT Directive, **does not preclude a Member State from providing in its legislation for an administrative penalty which may be imposed on persons liable to VAT**, such as the 'additional tax' provided for in Article 109(5) and (6) of the Law on VAT'.

- *C-188/09. Profaktor*

'29. It is necessary to point out in this connection that, **in the absence of harmonisation** of European Union legislation in the field of sanctions applicable where conditions laid down by arrangements under that legislation are not complied with, **Member States are empowered to choose the sanctions which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law** and its general principles, and consequently in accordance with the principle of proportionality (Case C-262/99 *Louloudakis* [2001] ECR I-5547, paragraph 67).

[…]

39. It follows from the foregoing that the answer to the first question is that the common system of VAT, as defined in Article 2(1) and (2) of the First VAT Directive and in Articles 2, 10(1) and (2) and 17(1) and (2) of the Sixth VAT Directive, **does not preclude a Member State from imposing a temporary restriction on the extent of the right of taxable persons who have not complied with a formal requirement to keep accounting records of their sales to deduct input tax paid, on condition that the sanction thus provided for complies with the principle of proportionality**.'

- *C-385/09. Nidera Handelscompagnie*

'51. It follows from the foregoing that a **taxable person for VAT purposes cannot be prevented from exercising his right of deduction on the ground that he had not been identified as a taxable person for those purposes** before using the goods purchased in the context of his taxed activity.

52. **It is, however, true that a taxable person for VAT purposes who does not comply with the formal requirements laid down in Directive 2006/112 may be subject to an administrative penalty, in accordance with the national measures** transposing that directive into national law. In addition, as the Commission rightly observed, if exercise of the right of deduction of VAT were not limited as to time, legal certainty would not be fully possible. The obligation on taxable persons to **identify**

themselves for VAT purposes would be rendered meaningless if the Member States were not entitled to impose a reasonable time-limit in that regard.'

- *C-591/10. Littlewoods Retail*

'26. It follows from that case-law that the principle of the obligation of Member States to repay with interest amounts of tax levied in breach of EU law follows from that law.

27. In the absence of EU legislation, **it is for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and its method of calculation** ...

34. In the light of the foregoing, the answer to the questions referred is that **EU law must be interpreted as requiring that a taxable person who has overpaid VAT which was collected by the Member State contrary to the requirements of EU VAT legislation has a right to reimbursement of the tax collected in breach of EU law and to the payment of interest on the amount of the latter**. It is for national law to determine, in compliance with the principles of effectiveness and equivalence, whether the principal sum must bear "simple interest", "compound interest" or another type of interest.'

- *C-617/10. Hans Åkerberg Fransson*

'... The *ne bis in idem* principle laid down in Article 50 of the **Charter of Fundamental Rights of the European Union** does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.'

- *C-263/11. Ainārs Rēdlihs*

'47. In order to assess whether the penalty here at issue is consistent with **the principle of proportionality, the nature and the degree of seriousness of the infringement which that penalty seeks to sanction must, inter alia, be taken into account**, as must also the means of establishing the amount of that penalty.

[...]

55. The answer to the second question is therefore that European Union law must be interpreted as meaning that it **is possible that a rule of national law allowing a fine to be imposed, fixed at the level of the rate of VAT normally applicable for the value of the goods transferred in the supplies made, on an individual who has failed to fulfil his obligation to register in the register of taxable persons for VAT purposes and who was not liable for that tax, may be contrary to the principle of proportionality. It is for the national court to determine whether the amount of the penalty does not go further than is necessary** to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised.'

- *C-284/11. EMS-Bulgaria Transport OOD*

‘75. **The payment of default interest may constitute an adequate penalty, provided that it does not go further than is necessary** to attain the objective, referred to in paragraph 67 of this judgment, of preventing evasion and ensuring the correct collection of VAT.

76. As is apparent from paragraphs 68 et seq. of this judgment, **such a penalty would be disproportionate if the overall sum of interest demanded corresponded to the amount of tax deductible, which would effectively deprive the taxable person of his right to deduct**. It is for the national court to assess whether the penalty is proportionate.

77. Consequently, the answer to the second question is that **the principle of fiscal neutrality precludes a penalty consisting in a refusal of the right to deduct if VAT is accounted for belatedly, but does not preclude the payment of default interest, provided that that penalty complies with the principle of proportionality**, which it is for the national court to determine.’

- *C-259/12. Rodopi-M 91 OOD*

‘31. **The VAT Directive does not lay down expressly a system of penalties** in the event of infringement of the obligations referred to in that directive which are owed by taxable persons. However, it is settled case-law that, in the absence of harmonisation of European Union legislation in the field of the penalties applicable in cases where conditions laid down by arrangements under such legislation are not complied with, **Member States retain the power to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law** and its general principles (see, to this effect, Case C-263/11 *Rēdlihs* [2012] ECR, paragraph 44 and the case-law cited).

32. Thus, **the penalties which the Member States may adopt** in order to ensure the correct collection of VAT and to prevent evasion, and in particular in order to ensure that taxable persons comply with their obligations regarding rectification of their accounts following cancellation of an invoice on the basis of which they have made a deduction, **cannot, in the first place, undermine the neutrality of VAT, which is a fundamental principle of the common system of VAT** and prevents economic operators carrying out the same transactions from being treated differently in relation to the levying of VAT (see, to this effect, Case C-188/09 *Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski* [2010] ECR I-7639, paragraph 26 and the case-law cited, and Case C-500/10 *Belvedere Costruzioni* [2012] ECR, paragraph 22).

[…]

38. In the second place, **the penalties referred to in paragraph 32 of the present judgment must not go beyond what is necessary to attain the objectives of ensuring the correct collection of tax and preventing evasion**. In order to assess whether a penalty is consistent with the principle of proportionality, **account must be taken inter alia of the nature and the degree of seriousness of the infringement** which the penalty seeks to sanction and of the means of establishing the amount of the penalty (see *Rēdlihs*, paragraphs 46 and 47 and the case-law cited).

[…]

43. In the light of all the foregoing considerations, the answer to the questions referred is that **the principle of fiscal neutrality does not preclude the tax authorities of a Member State from**

imposing upon a taxable person who has not fulfilled within the period prescribed by national legislation his obligation to record in the accounts and to declare matters affecting the calculation of the VAT for which he is liable a fine equal to the amount of the VAT not paid within that period where the taxable person has subsequently remedied the omission and paid all the tax due, together with interest. **It is for the national court to determine**, in view of Articles 242 and 273 of the VAT Directive, whether in the light of the circumstances of the main proceedings – in particular the period within which the irregularity was rectified, the seriousness of that irregularity, and the presence of any evasion or any circumvention of the applicable legislation that is attributable to the taxable person – **the amount of the penalty imposed goes beyond what is necessary** to attain the objectives of ensuring the correct collection of tax and preventing evasion.'

- *C-424/12. SC Fatorie SRL*

'50. Concerning the default interest, it must be observed that, **in the absence of harmonisation of European Union legislation in the field of the penalties** applicable in cases where conditions laid down by arrangements under such legislation are not complied with, **Member States retain the power to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law** and its general principles, and, consequently, in accordance with the **principle of proportionality** (see, to that effect, inter alia, Case C-210/91 *Commission* v *Greece* [1992] ECR I-6735, paragraph 19 and the case-law cited; Case C-213/99 *de Andrade* [2000] ECR I-11083, paragraph 20; and *Rodopi-M 91*, paragraph 31)'.

- *C-431-12. Rafinăria Steaua*

'23. For the same reasons, **when the refund to the taxable person of the excess VAT is not made within a reasonable period**, the **principle of fiscal neutrality** of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue are **compensated through the payment of default interest**.

[…]

26. In the light of those considerations, the answer to the question is that Article 183 of the VAT Directive must be interpreted as **precluding a situation** in which a taxable person, having made a claim for a refund of excess input VAT over the VAT which it is liable to pay, **cannot obtain from the tax authorities of a Member State default interest on a refund made late by those authorities** in respect of a period during which administrative measures precluding the refund, which were subsequently annulled by a court ruling, were in force.'

- *C-272/13. Equoland Soc. coop. arl*

'33. **It is therefore legitimate for a Member State, in order to ensure the correct collection of VAT on importation and to prevent evasion, to provide, in its national legislation, appropriate penalties** for failure to observe the obligation to physically place imported goods in the tax warehouse.

[…]

34. **Such penalties must not, however, go further than is necessary to attain those objectives** (see, to that effect, judgments in *Ecotrade*, C-95/07 and C-96/07, EU:C:2008:267, paragraphs 65 to 67; *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 67; and *Rēdlihs*, EU:C:2012:497, paragraph 47).

35. In order to assess whether such a penalty is consistent with the principle of proportionality, **the nature and the degree of seriousness of the infringement which that penalty seeks to sanction must, inter alia, be taken into account**, as must also the means of establishing the amount of that penalty.

36. As regards, in the first place, **the nature and seriousness of the infringement, it must be recalled**, on the one hand, that the obligation to physically place imported goods in the tax warehouse is, as has been found in paragraph 29 above, a formal requirement.

[…]

41. In that regard, without it being necessary to examine the compatibility of that part of the penalty with the principle of proportionality, it suffices to recall, first, that the Court has repeatedly held that, in view of the preponderant position which the right to deduct has in the common system of VAT, which seeks to ensure complete neutrality of taxation of all economic activities, that neutrality presupposes that a taxable person may deduct the VAT paid or payable in the course of all his economic activities, **a penalty consisting of a refusal of the right to deduct is not compatible with the Sixth Directive where no evasion or detriment to the budget of the State is ascertained** (see, to that effect, judgments in *Sosnowska*, C-25/07, EU:C:2008:395, paragraphs 23 and 24, and *EMS-Bulgaria Transport*, EU:C:2012:458, paragraphs 68 and 70).

[…]

44. **Next, in relation to the part of the penalty consisting of an increase of the tax at a fixed percentage, it suffices to point out that the Court of Justice has already held that such a procedure for establishing the amount of the penalty – which does not include any possibility of gradation – may go further than is necessary to ensure the correct levying and collection of the VAT** and the prevention of evasion (see, to that effect, judgment in *Rēdlihs*, EU:C:2012:497, paragraphs 45 and 50 to 52).

45. In this case, having regard to the level of the percentage used for **the increase laid down by national legislation and the impossibility of adapting it to the specific circumstances of each case, it is possible that the procedure for establishing the amount of the penalty and, therefore, the part corresponding to that increase, may prove to be disproportionate** (judgment in *Rēdlihs*, EU:C:2012:497, paragraph 52).'

- *C-654-13. Delphi (order from the Court)*

'39. EU law, and in particular Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that **it precludes legislation and practice of a Member State, such as those at issue in the main proceedings, which prevent the payment of default interest on amounts of value added tax which were not recoverable** within a reasonable period and on account of a national provision held to be contrary to EU law. In the absence of EU legislation on the subject, **it is for the national law to establish, in conformity with the principles of equivalence and effectiveness, the procedure for the payment of such interest**, which must not be less favourable than that applicable to actions based on infringement of domestic law with a similar purpose and cause of action to those based on the infringement of the EU law or be arranged such as to render the exercise of the rights conferred by the European Union legal order

impossible in practice or excessively difficult, which it is for the referring court to ascertain in the case before it. The national courts are required, if necessary, to disapply any provision of national law contrary to EU law'.

- *C-183/14. Salomie and Oltean*

'50. As regards, in the third and final place, the conformity with EU law of the surcharges applied in this case by the tax authority, it must be borne in mind that, **in the absence of harmonisation of EU legislation** in the field of the penalties applicable in cases of non-compliance with the conditions laid down by arrangements established under such legislation, **Member States retain the power to choose the penalties which seem to them to be appropriate**. They must, however, exercise that power in accordance with EU law and its general principles, and, consequently, in **accordance with the principle of proportionality** (see judgment in *Fatorie*, C-424/12, EU:C:2014:50, paragraph 50 and the case-law cited).

51. Thus, although Member States may, in order to ensure the correct levying and collection of the tax and to prevent fraud, inter alia, lawfully lay down, in their respective provisions of national law, **appropriate penalties to sanction the failure to observe the obligation to register persons taxable for VAT purposes, such penalties must not, however, go further than is necessary to attain those objectives**. It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and the prevention of fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised (see, to that effect, judgment in *Rēdlihs*, C-263/11, EU:C:2012:497, paragraphs 45, 46 and 54).

52. **The same principles apply to surcharges**, which, if they are in the nature of tax penalties (this being a matter for the referring court to determine), must not be excessive in relation to the seriousness of the breach, by the taxable person, of his obligations.

53. Accordingly, the answer to the first two questions is that **the principles of legal certainty and of the protection of legitimate expectations do not preclude, in circumstances such as those of the dispute in the main proceedings, a national tax authority from deciding, following a tax audit, to subject transactions to VAT and to impose the payment of surcharges, provided that that decision is based on clear and precise rules** and that that authority's practice has not been such as to give rise, in the mind of a prudent and well-informed trader, to a reasonable expectation that that tax would not be levied on such transactions, this being a matter for the referring court to determine. The surcharges applied in such circumstances must comply with the **principle of proportionality**.'

- *C-518/14. Senatex GmbH*

'42. At the hearing, the German Government submitted that **the postponement of the right to deduct VAT until the year in which the invoice is corrected was the equivalent of a penalty. However, to penalise the failure to comply with formal requirements, penalties other than the refusal of the right to deduct tax in respect of the year in which the invoice was drawn up might be considered, such as the infliction of a fine or financial penalty proportionate to the seriousness of the offence** (see, to that effect, judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 63). Moreover, under the legislation at issue in the main proceedings, the postponement of that right, entailing the application of interest for late payment, occurs in any event

without account being taken of the circumstances necessitating the correction of the invoice originally drawn up, which goes further than is necessary to attain the objectives referred to in the preceding paragraph of this judgment.'

- *C-564/15. Tibor Farkas*

'59. It is necessary to point out that, **in the absence of harmonisation of EU legislation in the field of sanctions applicable** where conditions laid down by arrangements under that legislation are not complied with, **Member States remain empowered to choose the sanctions which seem to them to be appropriate**. Nevertheless, the Member States must exercise that power in accordance with EU law and its general principles and, consequently, in **accordance with the principle of proportionality** (see, to that effect, inter alia, judgments of 7 December 2000, *de Andrade*, C-213/99, EU:C:2000:678, paragraph 20, and of 6 February 2014, *Fatorie*, C-424/12, EU:C:2014:50, paragraph 50).

60. Thus, **such penalties must not go beyond what is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud**. In order to assess whether a penalty is consistent with the principle of proportionality, **account must be taken inter alia of the nature and the degree of seriousness of the infringement which the penalty seeks to sanction, and of the means of establishing the amount of the penalty** (see, to that effect, judgments of 8 May 2008, *Ecotrade*, C-95/07 and C-96/07, EU:C:2008:267, paragraphs 65 to 67, and of 20 June 2013, *Rodopi-M 91*, C-259/12, EU:C:2013:414, paragraph 38).

[…]

66. **In those circumstances, the imposition on Mr Farkas of a fine of 50 % of the amount of the VAT applicable to the operation at issue appears to be disproportionate, this being a matter for the referring court to determine**.

67. Having regard to the foregoing considerations, the answer to the second question is that **the principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50 % of the amount of VAT which he is required to pay to the tax authority, where that authority suffered no loss of tax revenue and there is no evidence of tax evasion, this being a matter for the referring court to determine**.'

- *C-574/15. Mauro Scialdone*

'Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 4(3) TEU, and Article 325(1) TFEU must be interpreted as not precluding national legislation which provides **that failure to pay, within the time limit prescribed by law, the value added tax (VAT) resulting from the annual tax return for a given financial year constitutes a criminal offence punishable by a custodial sentence** only when the amount of unpaid VAT exceeds a criminalisation threshold of EUR 250 000, whereas a criminalisation threshold of EUR 150 000 is laid down for the offence of failing to pay withholding income tax.'

Annex 3. Tables extracted from the subgroup questionnaire

- *Table 17. Overview of answers to the general questions*

	Can the taxable person ask – or ought to be able to ask – to have administrative sanctions or interest waived/reduced?	If “yes/yes, but/no, but”, then: — who is competent (tax authorities (VAT officials or other recovery officials, court, other), and — is there any differentiation within the competence to adjust sanctions (e.g. in cases of sanctions above a specific threshold)?					Under what circumstances or conditions can this reduction be obtained? — Is it or can it be part of a negotiation or transaction? — Can it be requested on a pre- or post-payment basis? — Do you (agree to) apply a lower interest rate in cases where payment arrangements have been agreed (and are respected)?				
Possible responses	Yes / Yes, but / No, but (*) /No	The penalising office (including in decisions not to penalise)	Higher tax authorities / administrative body	Court	Other	Differentiation (e.g. does sanction size matter?)	Reduction in cases provided for in legislation	Rebate for voluntary disclosure	Reduction in exchange for paying without contesting	Option of negotiating sanction down during audit	Reduction on a discretionary (case-by-case) basis
Austria	Yes	Yes	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Yes
Belgium	Yes	Yes	Yes	Yes	n/a	No	Yes	Yes	No	No	Yes
Bulgaria	Yes	Yes	Yes	Yes	n/a	n/a	n/a	No	n/a	No	Yes
Croatia	Yes	Yes	n/a	Yes	n/a	n/a	n/a	No	Yes	Yes	n/a
Cyprus	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	No
Czechia	Yes, but	Yes	Yes	Yes	n/a	n/a	Yes	n/a	n/a	n/a	Yes
Denmark	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Estonia	Yes	n/a	Yes	n/a	n/a	n/a	No	n/a	n/a	n/a	Yes
Finland	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
France	Yes	No	Yes	Yes	n/a	n/a	n/a	Yes	n/a	n/a	Yes
Germany	No, but	n/a	Yes	Yes	n/a	n/a	n/a	No	No	No	Yes
Greece	Yes	n/a	Yes	Yes	Yes	n/a	Yes	Yes	Yes	No	Yes
Hungary	Yes, but	n/a	Yes	Yes	n/a	n/a	Yes	n/a	n/a	No	No
Ireland	Yes, but	n/a	n/a	Yes	n/a	n/a	Yes	Yes	n/a	n/a	n/a
Italy	Yes	Yes	n/a	Yes	n/a	n/a	n/a	n/a	Yes	n/a	n/a
Latvia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Lithuania	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Luxembourg	Yes, but	No	Yes	Yes	n/a	n/a	n/a	n/a	No	No	Yes
Malta	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Netherlands	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Poland	No, but	Yes	n/a	Yes	n/a	n/a	Yes	Yes			
Portugal	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Romania	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Slovakia	Yes, but	Yes	Yes	Yes	n/a	Yes	Yes	Yes	n/a	n/a	n/a
Slovenia	Yes, but	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Spain	No, but	Yes	Yes	Yes	n/a	n/a	Yes	Yes	Yes, but	Yes, in certain cases	No
Sweden	Yes	Yes	No	Yes	No	No	Yes	No	No	No	Yes
United Kingdom	Yes	No	No	Yes	No		n/a	n/a	n/a	n/a	Yes
EPMF (EU)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes/no	Yes/no	Yes/no

Spanish VAT Services Asesores SL	No, but	Yes	n/a	Yes	n/a	n/a	No	No	Yes	Yes	No

(*) 'Yes, but' indicates 'yes, subject to conditions'; 'No, but' indicates 'no, except under certain conditions'.

- *Table 18. Overview of answers to the general questions (continued)*

	Is whether the interest is charged following a tax audit or whether there was a voluntary disclosure taken into account?	Are any specific situations (e.g. hardship) taken into account?				How long does it take to provide a decision?				Are appeals possible?
Possible responses	Yes/No	Hardship	Revenue loss	Intent/negligence	Other	< 3 months	3–6 months	> 6 months	Not predictable (no time limits defined)	Yes/No
Austria	No	n/a	n/a	Yes	Yes				n/a	n/a
Belgium	Yes	Yes	n/a	n/a	Yes				n/a	Yes
Bulgaria	No	n/a	n/a	Yes	n/a	X				Yes
Croatia	No	No	No	No	No				X	Yes
Cyprus	No	No	No	No	No	X				No
Czechia	No	n/a	n/a	Yes	Yes	X				Yes
Denmark	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Estonia	n/a	Yes	n/a	Yes	n/a	X				Yes
Finland	n/a	n/a	n/a	n/a	n/a				n/a	n/a
France	Yes	Yes	n/a	Yes	Yes	X				Yes
Germany	No	Yes	n/a	n/a	Yes				X	Yes
Greece	Yes	No	No	No	No		X			Yes
Hungary	Yes	Yes	n/a	Yes	Yes	X				Yes
Ireland	Yes	Yes	Yes	Yes	Yes				X	Yes
Italy	No	Yes	n/a	n/a	n/a				n/a	Yes
Latvia	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Lithuania	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Luxembourg	n/a	Yes	Yes	Yes	Yes	X				Yes
Malta	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Netherlands	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Poland	Yes	Yes	n/a	Yes	Yes	X				Yes
Portugal	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Romania	n/a	n/a	n/a	n/a	n/a				n/a	n/a
Slovakia	Yes	Yes	n/a	Yes	Yes	X				Yes
Slovenia	Yes	n/a	n/a	Yes	Yes				n/a	Yes
Spain	Yes	Yes	Yes	Yes	n/a		X			Yes
Sweden	No	Yes	No	No	Yes				n/a	Yes

United Kingdom	n/a	Yes	n/a	Yes	Yes				n/a	Yes
EPMF (EU)	Yes	Yes	Yes/no	Yes	Yes				Varies	Yes
Spanish VAT Services Asesores SL	No	n/a	No	Yes	n/a				X	Yes

- *Table 19. Overview of answers to selected questions in the case studies (continued)*

	Case 3.2 – Will the VAT due with regard to the next VAT periods be charged?	Case 4.2 – Will the fact that the VAT was effectively paid (in another Member State) be taken into account?
Possible responses	Yes / Yes, with penalties / Yes, with interest / Yes, with penalties and interest / Yes, with exceptions / No	No / No – but possible to get reduction / Yes
Austria		No
Belgium	Yes, with penalties and interest	No – but possible to get reduction
Bulgaria	No	No
Croatia	Yes, with penalties and interest	
Cyprus		No
Czechia	Yes, with penalties and interest	No
Denmark	Yes	No
Estonia	Yes	Yes
Finland		
France		
Germany		
Greece	Yes, with penalties and interest	No – but possible to get reduction
Hungary		No
Ireland	Yes, with penalties and interest	No
Italy	Yes, with penalties and interest	No
Latvia	Yes, with exceptions	No
Lithuania		
Luxembourg		No
Malta		No
Netherlands		
Poland	Yes, with penalties and interest	No
Portugal	Yes, with penalties and interest	No
Romania		
Slovakia		No
Slovenia	Yes, with penalties and interest	No
Spain	Yes	Yes
Sweden	Yes, with penalties and interest	No – but possible to get reduction

Annex 4. Tables extracted from the desk research

- *Table 20. Overview of information extracted from the desk research*

	Interest		Statute of limitations		Voluntary disclosure	During audit
	Interest rate per month for late payment	Starting date for calculation of interest (as stated in the law) for late payment	Standard statute of limitations	Starting date for statute of limitations	Penalty reduction in cases of voluntary disclosure	Can the auditing tax inspector encourage the taxpayer's 'cooperation' during audit or encourage them not to contest the claim by guaranteeing substantially lower fines?
Austria	None	n/a	5 years	1.1.YYYY + 1	Yes	No
Belgium	0.80 %	Reporting due date	3 years	1.1.YYYY + 1	Yes	No
Bulgaria	0.83 %	Day after payment is due	5 years	1.1.YYYY + 1	No	Unclear
Croatia	0.51 %	Day after payment is due	6 years	DD.MM.YYYY–1.1.YYYY + 2	No	No
Cyprus	0.15 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes	Yes
Czechia	1.17 %	5th working day after payment is due	3 years	1.1.YYYY + 1	Yes	Unclear
Denmark	1.00 %	Day after payment is due	5 years	1.5.YYYY + 1	Yes	No
Estonia	1.80 %	Day after payment is due	3 years	VAT return due date	n/a	n/a
Finland	0.58 %	Day after payment is due	3 years	1.1.YYYY + 1	No	No (not really substantial)
France	0.20 %	Reporting due date	3 years	1.1.YYYY + 1	Yes	No
Germany	0.50 %	1.4.YYYY + 3	4 years	1.1.YYYY + 2	Yes	No
Greece	0.73 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes	Yes
Hungary	0.46 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes	Yes
Ireland	0.82 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes	No (not substantial)
Italy	0.20 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes	Yes
Latvia	1.50 %	Day after payment is due	3 years	VAT return due date	Yes	Yes
Lithuania	0.90 %	Day after payment is due	3 years	1.1.YYYY + 1	Yes	Yes
Luxembourg	0.60 %	Day after payment is due	5 years	1.1.YYYY + 1	n/a	No
Malta	0.33 %	Day after payment is due	6 years	1.1.YYYY + 1	Yes	No (not substantial)
Netherlands	0.33 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes	Yes, but not standard practice
Poland	0.66 %	Day after payment is due	5 years	1.1.YYYY + 1	Yes	Yes
Portugal	0.33 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes	No
Romania	0.60 %	Day after payment is due	5 years	1.1.YYYY + 1	n/a	n/a
Slovakia	≥ 1.25 % (at least or 4 times ECB rate)	Day after payment is due	5 years	1.1.YYYY + 1	n/a	No
Slovenia	0.25 %	Day after payment is due	5 years	Day-on-day	Yes	No
Spain	0.30 %	Day after payment is due	4 years	1.1.YYYY + 1	Yes	Yes
Sweden	Lower limit: 0.1 % Upper limit: 1.35 %	Day after payment is due	6 years	VAT return due date	Yes	n/a
United Kingdom	0.21 %	Day after payment is due; calculated on a daily basis	4 years	YYYY + 4	Yes	Yes, but not standard practice
NB: 'YYYY + [X]' represents the year in which the payment was due, plus X number of years: e.g. '1.1.YYYY + 1' represents 1 January of the year after the payment was due.						

- *Table 21. Overview of information extracted from the desk research (continued)*

	Fines as a percentage of VAT				
	Alongside the interest, are other penalties, defined as a percentage of the VAT amount, possible?	Fines as a percentage of VAT (on top of the interest rates) for late payment but timely filing, and no 'bad intentions' involved	Fines as a percentage of VAT (on top of the interest rates) in cases of late payment and late filing, but no 'bad intentions' involved	Fines as a percentage of VAT in cases of reverse charge errors even if no revenue would have been generated had the process been done correctly	Highest administrative fine as a percentage of the VAT in cases of errors where is it assumed there were no 'bad intentions'
Austria	Yes	2 %	10 % + 2 %	No	10 %
Belgium	Yes	0.8 % for every month overdue	15 %	20 %	100 %
Bulgaria	Yes	Yes	Yes	Yes	100 %
Croatia	No	No	No	n/a	n/a
Cyprus	Yes	Yes	Yes	Yes	9 %
Czechia	Yes	Yes	Yes	n/a	20 %
Denmark	Yes	No	Up to 200 %	Yes	Up to 200 %
Estonia	No	n/a	n/a	n/a	n/a
Finland	Yes	10 %	Up to 50 %	Yes	50 %
France	Yes	Yes	10–40 %	5 %	80 %
Germany	Yes	1 % for every month overdue (Maximum EUR 50 000)	≤ 10 %	n/a	10 %
Greece	Yes	EUR 100–500	50 % of additional tax due, plus interest of 0.73 % for every month overdue from 1 January 2014 up to date of enforceable assessment	Yes	Up to 120 %
Hungary	Yes	50 % of underpaid tax	50 %	Yes	50 %
Ireland	Yes	3–100 %	Yes	n/a	Up to 100 %
Italy	Yes	30 %	Up to 240 % (*)	No	240 %
Latvia	Yes	30 %	30 %	Yes	30 %
Lithuania	Yes	10–50 %	10–50 %	n/a	50 %
Luxembourg	Yes	≤ 10 %	≤ 10 %	No	≤ 10 %
Malta	Yes	20 %	1 % of the difference, if any, between the amounts of output and deductible input tax	Yes	Up to 20 % of the difference
Netherlands	Yes	3 %	3 % for late payment and EUR 68 for late filing	n/a	10 %
Poland	Yes	30, 20% or 15%	Yes	No	100 %
Portugal	Yes	30–100 %	30–100 %	n/a	100 %
Romania	Yes	0.01 % per day	0.01 % per day	n/a	0.01 % per day
Slovakia	Yes	≥ 10 % (3 times ECB rate, with minimum of 10 %)	≥ 10 % (3 times ECB rate, with minimum of 10 %)	Yes	≥ 10 % (3 times ECB rate, with minimum of 10 %)
Slovenia	Yes	n/a	n/a	No	n/a
Spain	Yes	5–20 %	1-15 % surcharge (if voluntarily disclosed) and/or interest	10 %	50 %
Sweden	Yes	No	No	5% or max 14.000 EUR	Up to 20 %
United Kingdom	Yes	2 % first default (after warning)	2 % first default (after warning)	n/a	30 % (standard is 15 %)

(*) Sanctions are reduced if yearly VAT return is submitted by the deadline for the following VAT return.

Table 22. Overview of information extracted from the desk research (continued)

	Lump-sum fines				Recidivism	Waivers	When does the procedure become a criminal one?
		Minimum lump-sum fine per VAT infraction	Maximum lump-sum fine per VAT infraction	Are there maximum lump-sum fines defined in public documents or in the law (e.g. EUR X per infraction but not exceeding EUR Y)?	Are there higher fines for repeat errors and a look-back period defined in public documents or in the law?	Are penalties reduced in 'special circumstances' (e.g. hardship, first-time error and made in good faith, unclear law) after the assessment has been done?	Is there a quantitative threshold as of which criminal procedures must be applied?
Austria	Yes	Unclear	EUR 5 000	Yes	Yes	Unclear	No
Belgium	Yes	EUR 50	EUR 5 000	Yes	Yes, 4 years' look-back	Yes	No
Bulgaria	Minimal threshold	(EUR 26)	n/a	Yes	Yes	Yes	No
Croatia	Yes	EUR 130	EUR 26 450	Yes	No (seems not to be the case)	Only on appeal	No
Cyprus	Yes	EUR 85	EUR 8 543	Unclear	Yes	No	No
Czechia	Yes	EUR 39	EUR 19 500	Unclear	Yes	Yes	Yes
Denmark	Yes	EUR 135	EUR 1 350	Yes	Yes	Yes	No
Estonia	Yes	Unclear	EUR 32 000	Yes	Unclear	Unclear	Unclear
Finland	Yes	EUR 3 per day	EUR 5 000	Yes	Seems not to be the case	Yes	No (it seems)
France	Yes	EUR 15	EUR 1 500	Yes	Yes, 3 years' look-back	Yes	No
Germany	Yes	≤ EUR 500	EUR 5 000	Yes	Yes	Yes	Yes
Greece	Yes	EUR 100	EUR 500	Yes	Yes	Yes	Yes
Hungary	Yes	Unclear. EUR 320	EUR 3 200	Seems to be	Yes	Yes	Unclear
Ireland	Yes	EUR 4 000	EUR 4 000	Yes	Seems not to be the case	Yes	No
Italy	Yes	EUR 250	EUR 2 000	Yes	Yes	Yes	Yes
Latvia	Yes	EUR 70	EUR 700	Yes	Yes	Yes	Unclear
Lithuania	Yes	EUR 300	EUR 850	Yes	Unclear	Yes	Unclear
Luxembourg	Yes	EUR 250	EUR 25 000 per day	Unclear	Unclear	Unclear	Yes
Malta	Yes	EUR 20	EUR 250	Yes	No (seems not to be the case)	Yes	No
Netherlands	Yes	EUR 68 for late filing	EUR 136 for late filing	Yes	Yes	Yes	No
Poland	Yes	PLN 260 (for non- or late registration)	PLN 24 960 960 (for incomplete or incorrect return leading to non-payment)	Yes	Yes	Yes	Yes
Portugal	Yes	EUR 150	EUR 165 000	Yes	Yes	Unclear	No
Romania	Yes	EUR 205	EUR 2 870	Unclear	Unclear	Unclear	Unclear
Slovakia	Yes	EUR 30	EUR 32 000	Yes	Unclear	Unclear	Unclear
Slovenia	Yes	EUR 600 (for a person)	EUR 150 000 (for a legal person)	Yes	Unclear	No	Unclear
Spain	Yes	EUR 100	No limit	None found	Yes (Maximum percentage)	Yes	Yes
Sweden	Yes	EUR 60	EUR 120	Yes	No	Unclear	No
United	No	n/a	n/a	n/a	Yes, see United Kingdom 4	Yes	Potentially

Kingdom					and 5		

Annex 5. Survey of businesses' perception of VAT penalty regimes

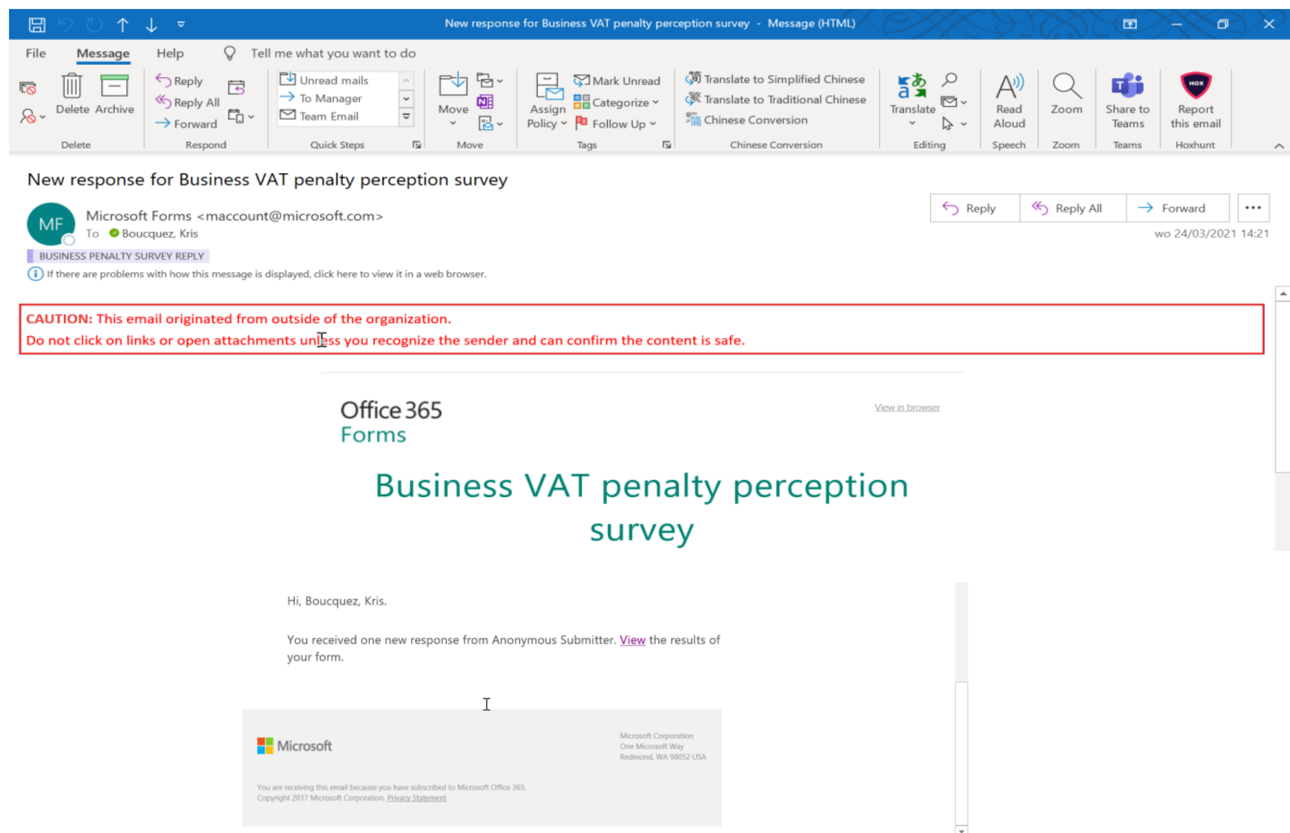
- **Introduction**

The survey aimed at mapping businesses' perception of the VAT penalty regimes in each of the 27 Member States. It also tried to understand the relative importance of the features of the regimes that lead to a positive or negative perception. In this survey, 'penalties' encompass the whole arsenal of penalties (fines, interest rates and other means) to sanction *bona fide* companies that make a VAT mistake. These include mistakes that may or may not have led to an underpayment of VAT, misreporting and other errors subject to penalty.

Because of the sensitivity of the topic and the deep reluctance to communicate openly, the questionnaire was conducted under a double-blind approach. This means that the person responsible for distributing the questionnaire knows for certain that it is being sent to people professionally involved with matters of EU VAT, but does not know who actually replies. When the replies are received, the respondent's identity is irreversibly anonymised by the system.

We are aware that our methodology could be criticised from a statistical point of view. However, with 50 responses received, from about 20 Member States, and from companies ranging from those only active domestically to those with EU-wide activities, we believe the study provides insights into the general tendencies.

Below is a screenshot showing how the replies were received.



- **Questions asked**

The study itself involved a limited number of questions, as follows.

(1) Questions designed to categorise the respondents (anonymously).

1. What is your main nationality (as respondent) ? *

Enter your answer

2. What is the nationality of your company/group HQ? *

Enter your answer

3. How many EU Member States (+ UK) is your company/group dealing with? *

Enter your answer

(2) Questions to give Member States' VAT penalty regimes an overall score (or no opinion).

4. Please rate your perception of the VAT penalty regime per country according to the below scale from "Very unfair & disproportional" to "Very fair & proportional" *

	Very unfair & disprop.	Somewhat unfair & disprop.	Neutral	Somewhat fair & prop.	Very fair & prop.	No opinion
Austria	○	○	○	○	○	○
Belgium	○	○	○	○	○	○
Bulgaria	○	○	○	○	○	○

(3) Questions to find out what features improve the respondents' perception of the regimes.

What features improve the business VAT penalty perception?

What features of a VAT penalty regime, do in your opinion, most IMPROVE YOUR BUSINESS PERCEPTION of quality of a VAT penalty regime for bona fide companies making a mistake ? Please score on a scale from 0 to 10 the degree in which a described feature below positively influences your perception of a VAT penalty system.

6. Late payment interests close to market interest in combination with a separate set of sanctions per error type. *

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

7. Only penalties expressed as a percentage of the VAT amount when there is actual net underpaid of VAT (e.g. No such penalty on reverse charge errors if no net VAT underpayment) loss) *

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

9. Complete waiver of penalties (but interests remain) in case of voluntary disclosure? *

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

11. Escalation of penalties for repeat errors, starting with no or very low penalty ? *

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

12. Height of penalties as a percentage of the underpaid VAT is limited to 20%? *

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

13. Other features

0	1	2	3	4	5	6	7	8	9	10

No influence — Extremely positive influence

14. What "other features", if any, may in your opinion improve the perception of the VAT penalty system in a country?(Optional)

Enter your answer

(4) Questions to find out what features make the respondents’ perception of the regimes worse.

What features make the business VAT penalty perception worse?

What features of a VAT penalty regime, do in your opinion, most WORSEN YOUR BUSINESS PERCEPTION of the quality of a VAT penalty regime for bona fide companies making a mistake ? Please score on a scale from 0 to 10 the degree in which a described feature below, negatively influences your perception of a VAT penalty system.

15. Penalties expressed as a percentage of VAT even when it does not lead to underpayment of VAT (e.g. reverse charge errors). *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

16. Interests that are clearly a multiple of the market interest *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

17. Too high penalties as a percentage of the VAT even in case of good faith (e.g. >30%) *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

18. The technique during audit to impose a much too high fine and offer a reduction in exchange for not contesting. *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

18. The technique during audit to impose a much too high fine and offer a reduction in exchange for not contesting. *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

19. Quickly opening of criminal procedures (pro forma) to make the taxpayer more "cooperative". *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

20. Ease with which the authorities prolong the prescription period. *

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

21. Other features

0	1	2	3	4	5	6	7	8	9	10

No influence Extremely negative influence

22. What other features may, if any, in your opinion, make the perception of the VAT penalty system worse in a country? (Optional)

Enter your answer

(5) Question related to the influence of VAT penalty regimes on supply chain decisions.

23. To what extent does a country's VAT penalty system influences your supply chain decisions? *

- No, not at all
- Rather not
- Neutral
- Rather yes
- Yes, to a large extent
- No opinion

- **Replies received**
  - *Demographics of the respondents*
- 50 companies of 19 different nationalities, covering individuals of 20 different nationalities (including 2 non-EU respondents).

What is the nationality of your company/group HQ?	Total
Austrian	1
Belgian	3
British	4
Bulgarian	1
Czech	5
Finnish	2
French	4
German	10
Greek	1
Hungarian	1
Italian	2
Luxembourgish	1
Polish	3
Portuguese	1
Slovenian	2
Swiss	2
USA	5
Norwegian	1
South African	1
Grand Total	**50**

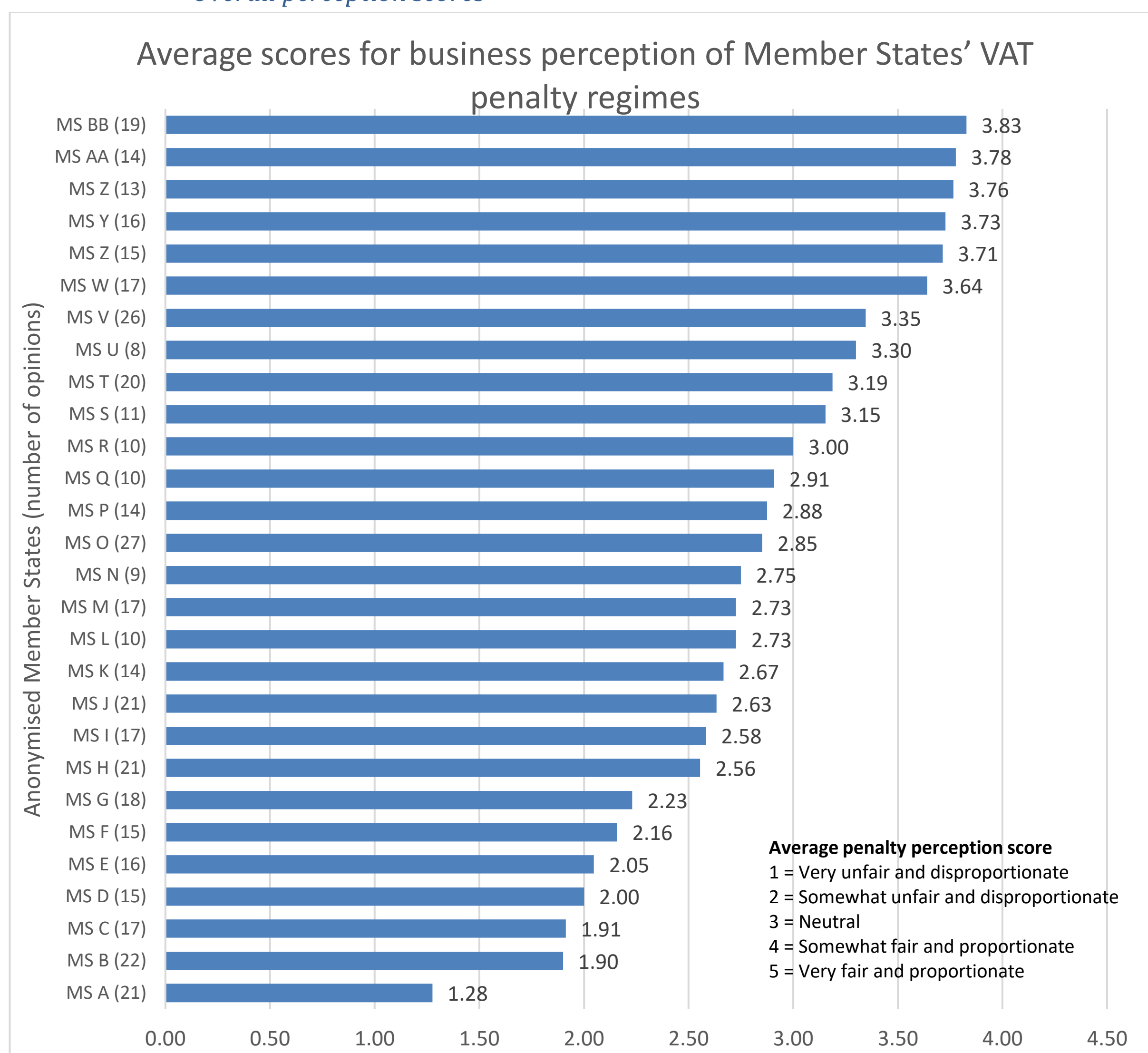
What is your main nationality (as respondent) ?	Total
Austrian	1
Belgian	5
Belgium	1
British	5
Bulgarian	1
Czech	7
Dutch	3
Finnish	2
French	4
German	6
Greek	1
Hungarian	1
Italian	2
Polish	3
Portuguese	1
Romanian	2
Slovenian	2
South Africa	1
Spanish	1
Swiss	1
Grand Total	**50**

4. Respondents ranged from companies only active domestically (i.e. in 1 country) to multinationals operating across the EU and in the United Kingdom (i.e. in 28 countries).

How many EU Member States (+ UK) is your comp	Total
1	6
2	1
3	1
4	1
5	1
6	2
8	3
10	3
11	1
14	1
19	1
20	4
22	1
23	1
24	1
25	2
27	4
28	16
Grand Total	**50**

5.

- *Overall perception scores*



NB: Member States interested in their own scores can obtain them on an individual basis.

- *Quantified input on predefined perception drivers*

Key driver (Each driver was scored on a scale of 0–10 where 10 indicates an extremely positive influence and 0 no influence)	**Average score**
Complete waiver of penalties (but interest rates remain) in the event of voluntary disclosure	8.54
Imposition of penalties expressed as a percentage of the VAT amount only when there is actual net underpayment of VAT (e.g. No such penalty on reverse charge errors if no net VAT underpayment loss)	7.82
Escalation of penalties for repeat errors, starting with no or a very low penalty	7.70
No penalty for first-time error within 4 years	7.64
Late-payment interest rates close to market interest in combination with a separate set of sanctions per error type	6.60
Limit of 20 % on penalties as a percentage of the underpaid VAT	6.32
Other features	5.53
Application of lump-sum fines to errors that did not lead to net underpayment of VAT	4.56

Key driver (Each driver was scored on a scale of – 10–0 where – 10 indicates an extremely negative influence and 0 no influence)	Average score
Too-high penalties as a percentage of the VAT (e.g. > 30 %) even in cases of good faith	– 8.74
Quick opening of criminal procedures (pro forma) to make the taxpayer more ‘cooperative’	– 8.74
Penalties expressed as a percentage of VAT even when the mistake (e.g. a reverse charge error) does not lead to underpayment of VAT	– 8.38
Interest rates that are clearly a multiple of the market interest	– 8.22
The practice of imposing a fine that is much too high during audits, and offering a reduction in exchange for not contesting	– 7.86
Ease with which the authorities extend the prescriptive period	– 7.44
Other features (*)	– 4.36

(*) Refers to the open question in which respondents could provide further examples of drivers. This is covered in the section on qualitative perception drivers in the following.

- *Qualitative input on perception drivers – ‘other features’*

‘Other features’ refers to the open question allowing respondents to name drivers not already covered by the survey, and the average score for this question. According to the responses, the main features to implement if a Member State wants to **drive a positive perception** of its penalty system are the following.

(1) **Clarity** – the severity of sanctions should be clearly explained before being imposed (and businesses should have access to the right of defence and certainly the right of appeal).

(2) **Objective contextual elements should be taken into account and lead to lower penalties** (in particular, in cases where no revenue has been lost, the fine should be significantly reduced to almost zero; there should be internal control procedures). Businesses spoke of bad experiences in Member States where penalties were set on the basis of inspectors’ interpretation of ‘soft elements’ (e.g. neglect or carelessness).

(3) **Ability to talk to or discuss issues with authorities without fear** (i.e. legal guarantee of no penalty in the case of voluntary disclosure).

(4) **Interest rates on tax arrears should only be set at fair heights**.

(5) **Faster feedback** from authorities (they receive a lot of information and should be able to give better feedback sooner).

According to the responses, the main features that **drive negative perceptions** and that should be avoided if a Member State wants to improve perceptions are the following.

(1) Forcing the taxpayer to go to court to get benefits that should be given without discussion, such as interest in the case of a late refund (systems are counting on the exhaustion of the taxpayer’s resources).

(2) Tax authorities exploiting procedural or penalty law to boost revenues through:

(a) conducting late audits or protracting the duration of audits to increase interest due;

(b) applying too high penalties for ‘revenue-neutral errors’ or ‘small-impact errors’;

(c) double penalising a single error (e.g. through an administrative and a criminal sanction; combining high interest with penalties on top that are a percentage of the VAT due and advising against a request to mitigate).

(3) In specific cases:

(a) penalising a business because it can only comply with one of a number of Member States that are in disagreement;

(b) not agreeing to offset a big outstanding VAT credit period 1 with VAT debt period 2 and calculate the penalty interest.

- *Impact on supply chains*

To what extent does a Member State's VAT penalty regime influence your supply chain decisions?	Number of responses
Not at all	7
Not much	4
Neutral	11
To some extent	19
To a large extent	6
No opinion	3

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