



Towards multilateral automatic information exchange

Current practice of AIE in selected countries

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Executive Summary

Automatic information exchange for tax purposes is far more widespread than thought. Out of the twelve countries reviewed, only Austria does not engage in AIE on bank interest payments. Among the 34 OECD member states, only four countries (Austria, Israel, Switzerland³, Turkey) do not engage in AIE by sending AIE-records to other nations. Opponents of AIE and defenders of strict bank secrecy are an isolated minority.

The available comparative information on current AIE practices is improving, but remains sparse. Specific information on types of income which are most mobile and for which tax evasion is most rampant, such as capital returns (interest, dividends, royalties), is scarce. This study sheds light on a small selection of countries. Many more countries need to be scrutinised and more access to data

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² The only modification since first publication in August 2012 is the inclusion of the reference section on interviews which was omitted by accident from the original version.

³ Strictly speaking, it is unknown whether Switzerland does not actively engage in AIE since Switzerland was the only OECD member state which did not participate in OECD's recent survey on AIE (OECD 2012: 16). This refusal to participate could be understood if Switzerland engaged in AIE in some types of income, at least as a recipient, but the Swiss government would wish to hide policy incoherence and save itself from embarrassment since it is publicly arguing and working against AIE on bank information. It could also be understood as a form of extremist boycotting of AIE.

is required in order to fully assess, improve and spread AIE with the aim of reducing tax evasion and economic inequalities.

A key parameter to assess the effectiveness and efficiency of AIE for countering tax evasion is the automatic matching ratio (AMR). This measures how many of the received AIE-data records (which contain payment information) can be linked automatically to resident taxpaying individuals or companies out of the overall number of received AIE-records. Our research found that these numbers are often not made available and sometimes not collected.

Where AMR have been made available, the ratios have been consistently and substantially higher for exchange processes relying on a strict common protocol for the data format, such as under the European Savings Tax Directive (EUSTD). The ratios for bilateral exchanges ranged between 70% and a minimum of 75% while the ratios for specific and multilateral exchanges ranged between 85% and 99%.

In addition to the common protocol, a key determinant for rising AMRs is the transmission of the birthdate or the residence country's taxpayer identification number of the recipient of the payment. The name and address of the recipient are not considered sufficient to allow for automatic matching. Erroneous taxpayer identification numbers are also a problem.

Another weakness in the existing AIE processes is the ambiguity of the term "recipient" of reportable payments. The AIE processes and underlying reporting obligations appear to leave substantial discretion to the paying agents on how to define the recipient of payments (natural person, company, etc.). As a result beneficial owner information is rarely collected and transmitted.

Denmark stands out in that, at least for bank interest payments, it was the only country reviewed which was found to always collect beneficial owner information for non-resident investors, and transmits this information in all AIE-processes. A review of the implementation of the EUSTD confirms substantial differences in how beneficial owner requirements are interpreted and applied in the EUSTD (EC 2011: 8).

Only a small number of countries apply criminal sanctions in cases of willful misreporting by economic operators, such as banks. Low administrative fines and the absence of criminal sanctions create weak incentives for compliance with reporting obligations. When agents whose information reporting feeds the records used for automatic information exchange are not compliant with reporting obligations, the quality of the data transmitted under AIE suffers accordingly.

Matters relating to the supervision and sanction regime needed to ensure compliance with reporting obligations have largely been ignored by the international community. While the OECD's Global Forum publishes some information about the sanctions available when a bank fails to respond to a request for information, no statistical information on actual performance is published. More importantly, there is no public and comparative information available on what happens if banks fail to properly comply with routine reporting obligations, neither as required by law nor in statistical terms as empirically observed. The latter information appears unavailable even at national level.

The EUSTD currently does not prescribe any sanction mechanism for failure to report even if economic operators acted in bad faith, and the current proposal for amending the EUSTD fails to rectify this omission. As a result, banks are negligent in complying with the EUSTD: for example in Germany where the maximum fine for failing to properly report EUSTD payments is 5000€ even in cases of willful misreporting.

An evaluation and analysis by the EU-Commission suggests that severe compliance issues arise particularly with British Overseas Territories and UK Crown Dependencies (EC 2011: 20) as well as with Switzerland (ibid). More importantly, through triangulation of ECB data the EU-Commission found outstanding and unexplained low ratios of interest payments being reported by the United Kingdom (ibid.: 45-46). To a lesser extent, ECB data also indicates unexplained low ratios of EUSTD coverage for Cyprus, Portugal and Romania (ibid.).

Multilateral procedures for AIE have been shown to yield better automatic matching ratios and thus improve the effectiveness and efficiency of AIE. Reliance on bilateral treaties and procedures for international tax cooperation is problematic⁴. Therefore, existing multilateral processes should be the starting point of an effective global system of AIE instead of a patchwork of bilateral treaties.

Three possible multilateral platforms and processes are currently available. The first is the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters⁵, which only allows, but does not require, its members to engage in AIE. There is no indication that this Convention is currently used for

⁴ For instance, see the ease of avoiding any bilateral treaty through secrecy structures layered over multiple jurisdictions in our analysis of the proposed Swiss final withholding tax deals with UK, Austria and Germany, here:

<http://taxjustice.blogspot.de/2011/10/revealed-loopholes-which-destroy-hmracs.html>; 10.8.2012.

⁵ <http://www.oecd.org/ctp/exchangeofinformation/conventiononmutualadministrativeassistanceintaxmatters.htm>; 10.8.2012.

AIE, nor that it would develop multilateral structures for AIE. Rather, it seems to rely on optional, additional bilateral agreements to implement AIE. As such, it is vulnerable to being through the use of structures stretching across multiple jurisdictions. Furthermore, transparency and governance questions about the Convention remain unaddressed⁶.

The second is the EUSTD and the amendment protocol under discussion since 2008⁷. The amendments could result in an obligation to create trust registries. While this directive and its amendment proposal is limited to (a broad definition of) interest payments, the complementing EU-directive on Administrative Assistance in Tax Matters could expand the scope of payments covered under AIE in the EU to dividends, royalties and capital gains⁸. The amendment currently faces veto by Austria and Luxembourg, both hiding behind the Swiss bilateral deals with Austria, Germany and the UK⁹.

The third potential multilateral platform for AIE is FATCA. FATCA is a US policy entering into force on 1 January 2013 that obliges financial institutions to report bank account information of US accounts to the US tax administration. Unless a bank wants to pay a 30% penalty tax rate on their US investments, which no bank active in the US market can afford, banks with a US connection are obliged to comply with these reporting obligations, including their branches and subsidiaries¹⁰.

In order to ease administrative burden for implementing FATCA and to allow for reciprocity, the US has issued a joint communiqué with the governments of France, Germany, Italy and Spain on 26 July 2012¹¹. In this communiqué, these governments state that:

"This is an important step forward in establishing a common approach to combat tax evasion based on automatic exchange of information. France, Germany, Italy, Spain, the United Kingdom and the United States will, in close cooperation with other partner countries, the OECD and where appropriate the EU, work towards common reporting and due diligence standards to support a move to a more global system to most effectively combat tax evasion while minimising compliance burdens."

⁶ <http://taxjustice.blogspot.de/2012/02/council-of-europeoecd-convention-new.html>; 10.8.2012.

⁷ A detailed analysis of this amending proposal and updates on its current political status can be found here: <http://www.the-best-of-both-worlds.com/>; 10.8.2012.

⁸ <http://taxjustice.blogspot.de/search?q=eu+administrative+assistance>; 10.8.2012.

⁹ <http://blogs.euobserver.com/shaxson/2012/03/08/germany-sides-with-the-tax-havens-in-transparency-fight/>; 10.8.2012.

¹⁰ See <http://taxjustice.blogspot.de/2012/03/fatca-progress-towards-automatic.html> (10.8.2012) and http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1969123& (10.8.2012).

¹¹ www.treasury.gov/press-center/press-releases/Documents/joint%20communique.pdf; 10.8.2012.

While this is a promising statement, the location of these efforts at the OECD's Committee of Fiscal Affairs risks slowing progress towards this common goal due to the OECD's weak track record on automatic information exchange and related subjects, such as their work on taxpayer identification number. Austria, Switzerland and Luxembourg, three outspoken opponents of AIE are members of this Committee and are likely to place endless barriers in the way of progress. Another risk arises from OECD's constituency which lacks representation of developing countries and generally fails to take their interests on board¹², as is demonstrated by the OECD's prominent role in blocking the work of the UN Tax Committee¹³.

The most recent report on AIE published by the OECD in June 2012 provides hope that the OECD might increase its engagement on AIE under the pressure from G20 nations such as India and Australia. Significantly, however, this report was not published by the OECD's Committee of Fiscal Affairs, but by the Secretary General of the OECD instead. The Committee appears constrained in its freedom to pursue AIE, including efforts to multilateralise FATCA, by the vetoes available to steadfast AIE-opponents: Austria, Luxembourg and Switzerland. It remains to be seen whether G20, the FATCA-coalition countries and others succeed in breaking the gridlock imposed by this unholy trinity. Otherwise, fora such as the United Nations, the EU or regional arrangements such as ATAF and CIAT may be better placed to make substantial progress.

¹² See for instance in the area of transfer pricing, here: <http://taxjustice.blogspot.de/2012/06/arms-length-method-is-dead-long-live.html>; 10.8.2012. Or in the area of tax information exchange, here: www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 10.8.2012.

¹³ <http://taxjustice.blogspot.de/2012/03/guest-blog-on-rifts-between-oecd-and.html>; 10.8.2012.

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1. Background

There is a lack of research about the practical experiences made with current automatic tax information exchange (AIE) systems. AIE on capital income such as interest, dividends and royalties has the potential to counter increasing economic inequality by reducing widespread cross-border tax evasion on capital and business income (Grinberg 2012: 34; Meinzer 2012: 12-13), by helping to correct distorted patterns of portfolio investments and macroeconomic imbalances and ecological degradation¹⁴, and by providing developing countries the tools to collect tax revenues due to them.

The OECD and its Global Forum have repeatedly claimed that automatic tax information exchange is not feasible politically and/or technically, and instead promoted information exchange upon request, which is portrayed by OECD/Global Forum as the “internationally agreed standard”¹⁵. As recently as 20 June 2012, the OECD published a report that ended a 12 year period of silence on the actual experiences with automatic tax information exchange (OECD 2012).

Shortly before the G20 summit in November 2011, India’s Prime Minister Singh publicly called for automatic information exchange on bank account related information to be implemented among G20 nations. This has been one of the few public and political expressions by developing country representatives on this subject and was partly reflected in the G20 communiqué.

In the June 2012 Los Cabos G20 summit communiqué, explicit language calls for G20 countries to lead by example in implementing automatic information exchange:

*“We welcome the OECD report on the practice of automatic information exchange, where we will continue to lead by example in implementing this practice. We call on countries to join this growing practice as appropriate and strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance.”*¹⁶

¹⁴ For more details on the global implications of automatic tax information exchange, including concerning environmental considerations, please read pages 24-25 in this briefing paper: http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 6.6.2012.

¹⁵ <http://www.oecd.org/tax/transparency/>; 6.8.2012.

¹⁶ www.g20mexico.org/images/stories/docs/g20/conclu/G20_Leaders_Declaration_2012.pdf; 21.6.2012.

2. Rationale for and state of research

In an OECD-report published in 2000, 11 out of 29 OECD member states were reported to automatically exchange information with their treaty partners. Those countries were Australia, Canada, Denmark, Finland, France, Japan, Korea, New Zealand, Norway, Sweden, United Kingdom (OECD 2000: 40). In follow up reports published in 2003 and 2007, this information was not updated or detailed.

Until June 2012 the OECD failed to support its claim about AIE being technically not feasible or “more cumbersome”¹⁷ with meaningful evidence. One unhelpful consequence of this omission has been the misleading promotion of information exchange upon request in the rest of the world as being the only feasible and practicable mechanism for tax information exchange, while many OECD nations have been engaging actively and increasingly in automatic information exchange amongst themselves for many years¹⁸.

The enhanced efficiency and effectiveness of international tax cooperation based on AIE in comparison to the on request model is summarised by the Global Forum report on France:

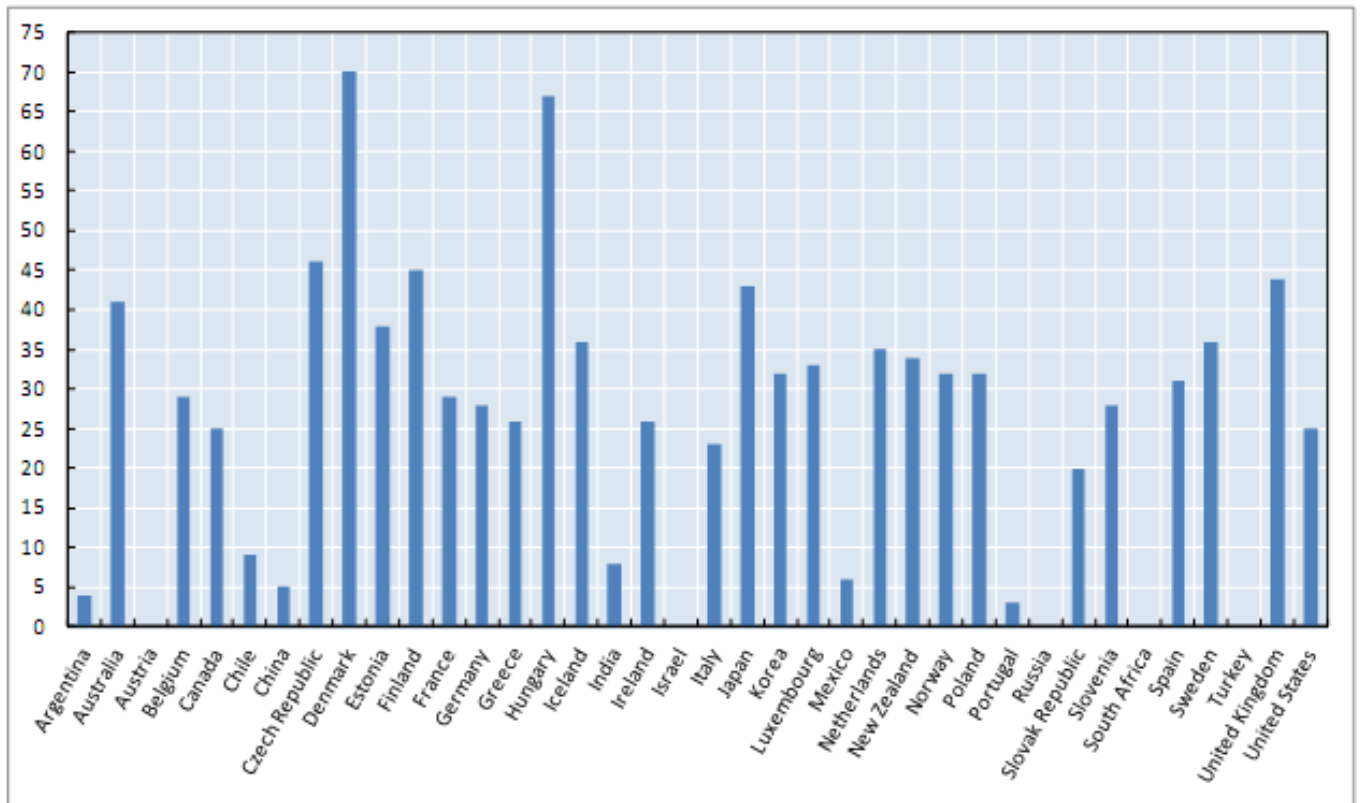
“Automatic (or ex officio) exchanges are by far the most numerous, and more than two millions items are exchanged every year with 20 or so partners, as well as under the Savings Directive. This has an impact on the volume and nature of information requests: on one hand, exchanging information automatically reduces the number of requests by anticipating them. Automatic exchanges can also spark requests that would not otherwise have been made, if the information thus supplied allows a foreign tax authority to detect situations that deserve investigation.” (GF 2011f: 62).

As recently as June 2012, the OECD finally acknowledged the widespread use of AIE and its merits in a report entitled “*Tackling Offshore Tax Evasion. The G20/OECD Continues to Make Progress*” (OECD 2012). Page 16 of this report contains the following graph which highlights the widespread use of AIE.

¹⁷ <http://www.ft.com/cms/s/0/43ee550c-3520-11de-940a-00144feabdc0.html#axzz20IHAAgRV>; 16.7.2012.

¹⁸ Tax Justice Network 2009: Automatic Exchange of Information and The United Nations Tax Committee (Letter Sent 15 December 2009), in: http://www.taxjustice.net/cms/upload/pdf/Info_Exchange_Letter_0912.pdf; 6.3.2010.

Figure 1. Automatic exchange relationships - Information sent automatically to number of countries by



Source: OECD 2012: 16

As the graph above illustrates, of 38 countries reviewed, all except five countries actively engage in AIE by sending information to a number of countries, ranging from a handful to 70 countries. Notably absent from the graph is Switzerland. While details about the underlying types of income of exchanged information are not reported by country, generally the types most frequently exchanged are reported to be "interest, dividends, royalties, income from dependent services and pensions" (OECD 2012: 15).

The same report contains useful information on the amounts involved, illustrating that this kind of reporting already covers substantial sums:

"The survey shows that the amounts represented by records received can range from as little as EUR several million to well over EUR 200 billion for a particular year. Five countries, including Italy, reported receiving records relating to more than EUR 15 billion each in a particular year. Further, most countries reported exchanging information in the EUR billions. While these amounts do not represent tax but income and assets, applying average tax rates to such amounts and even assuming a low noncompliance rate can add up to significant numbers." (OECD 2012: 17).

The OECD appears now to fully subscribe to the benefits of AIE, including the argument of AIE being a necessary smoking gun to trigger new investigations¹⁹ and its benefits over anonymous and final withholding taxes²⁰:

"As a tool to counter offshore non-compliance automatic exchange has a number of benefits. It can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum. It can help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance. Other benefits include its deterrent effects, increasing voluntary compliance and encouraging taxpayers to report all relevant information." (OECD 2012: 18).

The enormous relevance of automatic reporting on compliance rates has been confirmed by the same OECD report. Based on findings about the EUSTD, it suggests that in the absence of reporting obligations, *"over 75% of taxpayers may not have complied with their residence country tax obligations."* (OECD 2012: 18). Norway reports that it analysed automatic information exchange records and carried out targeted investigations into files above a certain threshold, disclosing that in 38.7% of those cases taxable income was not reported (OECD 2012:18). Denmark, in a similar project, reported a non-compliance rate of 40% (ibid.). These are welcome confirmations of TJN's earlier findings²¹.

Another important lesson from the OECD report refers to the importance of taxpayer identification numbers (TIN) for automatically matching the received bulk information files with individual taxpayers. The OECD report notes: "[...] on average the matching rate increases by 30% if the residence country TIN is provided." (OECD 2012: 21). The matching ratio is key to measuring the effectiveness and efficiency of automatic information exchange, yet the OECD failed to publish any indication of the range of matching ratios and what other factors may affect the matching ratio.

Despite the work undertaken by the OECD in this area, many questions remain unanswered, partly because some of the findings and materials produced by the

¹⁹ See TJN's "Creeping Futility"-report on the Global Forum (Meinzer 2012: 3), here: www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 16.7.2012.

²⁰ An anonymous, final withholding model is embodied in the bilateral deals promoted by Switzerland, see here: www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf; 16.7.2012.

²¹ See page 14 in TJN's AIE-background paper of 2010, here: http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf (16.7.2012); and pages 12-13 in TJN's Creeping Futility report, here: <http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf> (16.7.2012).

OECD remain confidential²². Specifically, individual country information, including about the automatic matching ratios and experiences with supervising the reporting obligations and entities, remains unavailable.

Similarly, while the OECD's/Global Forum's peer reviews analyse a country's information exchange system with respect to "upon request" information exchange, these reports seldom contain any empirical information on automatic information exchange²³. If exceptionally this is the case, the information is random and discretionary, and often not sufficiently detailed to draw meaningful lessons and conclusions.

In the context of this identified research gap this study seeks to deepen empirical knowledge about the experiences made with automatic information exchange by a sample of countries and to identify the (national) preconditions necessary for successfully engaging in AIE in an efficient manner.

Because the majority of cross-border tax evasion is likely to occur around the most mobile production factor which is capital, the scope of this research is focused on the categories of interest, dividend and royalty payments which are different types of capital remuneration. Automatic information exchange on these kinds of income payments would deter evasion of income and capital gains taxes by allowing to national authorities to raise questions on fresh principal being deposited in bank accounts.

Four different legal frameworks for information exchange are usually used for automatic exchange processes. The first mechanism used all over the world is based on bilateral double taxation avoidance agreements (DTAs). The second instrument used for bilateral automatic information exchanges in the EU is the Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation²⁴. The third mechanism is the Savings Tax Directive relating to interest payments among European Union member states, including a series of similar arrangements with 16 other jurisdictions. Finally, the "Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters of 7 December 1989"²⁵ (from now on only "Nordic Convention") offers broad

²² For instance the "country profiles" on AIE including data on the type of information exchanged, etc. (OECD 2012: 20).

²³ For more details about the flaws of the "upon request" information exchange and the associated Global Forum peer review process, please read TJN's recent Briefing Paper dating from March 2012, here: <http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf>; 5.6.2012.

²⁴ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_d oc=Directive&an_doc=1977&nu_doc=799; 16.7.2012.

²⁵ <http://www.itdweb.org/documents/NORDIC%20MUTUAL%20ASSISTANCE%20CONVENTION.pdf>; 26.5.2010.

automatic information exchange clauses for five Nordic States (Art. 11, Nordic Convention).

The claim made by the OECD (2012: 14, Para. 13) that the three most common legal frameworks used for AIE would include the Convention on Mutual Administrative Assistance in Tax Matters²⁶, has not been backed by empirical evidence and could not be verified during the research process. While this Convention clearly allows for, but does not require automatic information exchange, the actual use of the corresponding clauses is not documented and has not been confirmed by any state party.

3. Research methodology

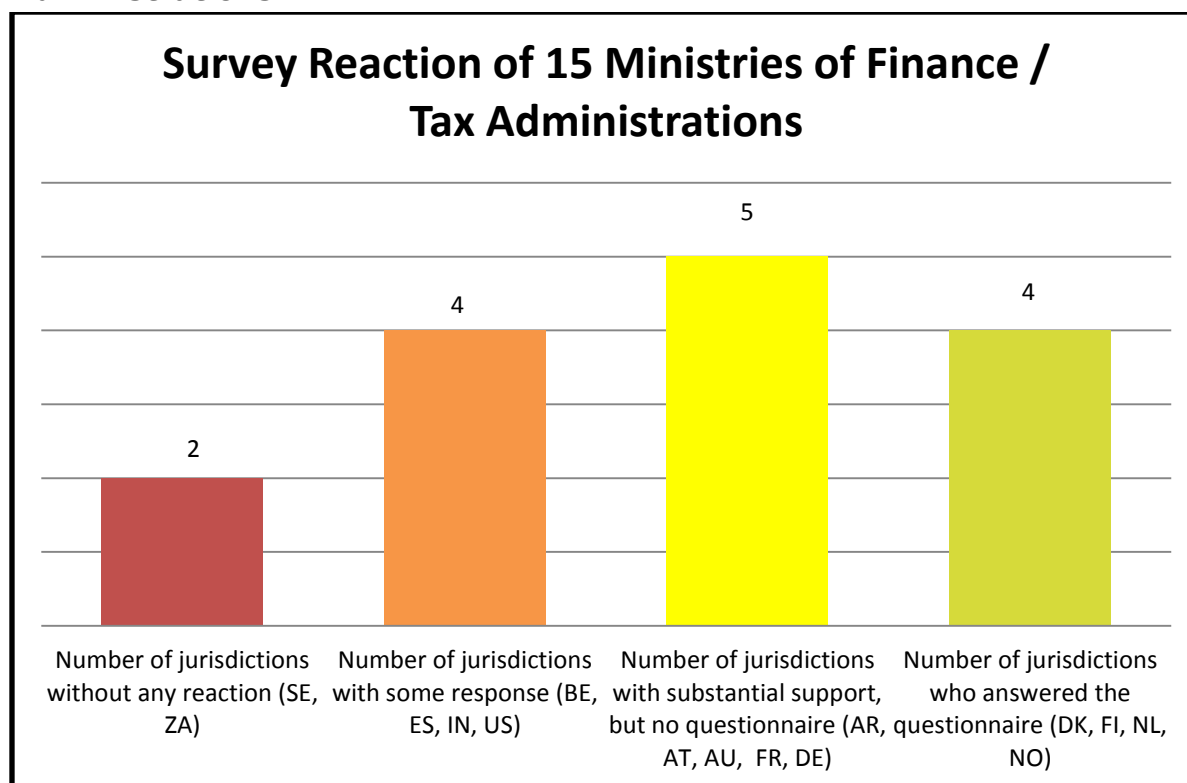
The research process was based predominantly on a questionnaire based survey (see Appendix II) distributed to the Ministries of Finance and/or tax administrations of 15 countries. In addition to the 12 countries covered by our report (see below), 3 countries did not provide sufficient information and we were unable to find information on public record to include these countries in our survey. These three countries were India, South Africa and Sweden.

The following 12 countries were reviewed, while not all Ministries of Finance cooperated with the research and the depth of available information varies greatly:

1. Argentina
2. Australia
3. Austria
4. Belgium
5. Denmark
6. Finland
7. France
8. Germany
9. Netherlands
10. Norway
11. Spain
12. USA

²⁶ Find out about the inherent problems of intransparency in this Convention in our Briefing Paper, here: www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf; 16.7.2012.

Graph 1: Survey Reaction of 15 Ministries of Finance / Tax Administrations



The information from the questionnaires was verified and complemented by extensive follow-up email exchanges, phone calls, through Global Forum peer review reports on the particular country, by individual country reports about information exchange published at the European Association of Tax Law Professors conference in Santiago in 2009²⁷, and by analyses of legal and administrative rules and forms as well as in some cases by available academic literature or evaluation reports by national audit offices. Regional or national TJN-research contacts were also involved in either facilitating contacts with officials or in reviewing draft chapters²⁸.

The selection of countries for the survey was based on various criteria. The most important criterion was indications about experiences with AIE in the relevant categories of income (interest, dividends, royalties). Other criteria for the choice of the countries were (2) access to materials and laws (language) and/or previous good contacts to country experts or officials, (3) relative economic importance of the country, (4) budgetary and time constraints.

²⁷ http://www.eatlp.org/index.php?option=com_content&view=article&id=56&Itemid=59; 21.6.2012.

²⁸ Specific thanks are due to Koos de Bruijn, Mathilde Dupré, Dick Harvey, Heather Lowe, David Spencer, Karoline Spies, Nicole Tichon, Mark Zirnsak. All remaining errors are the author's.

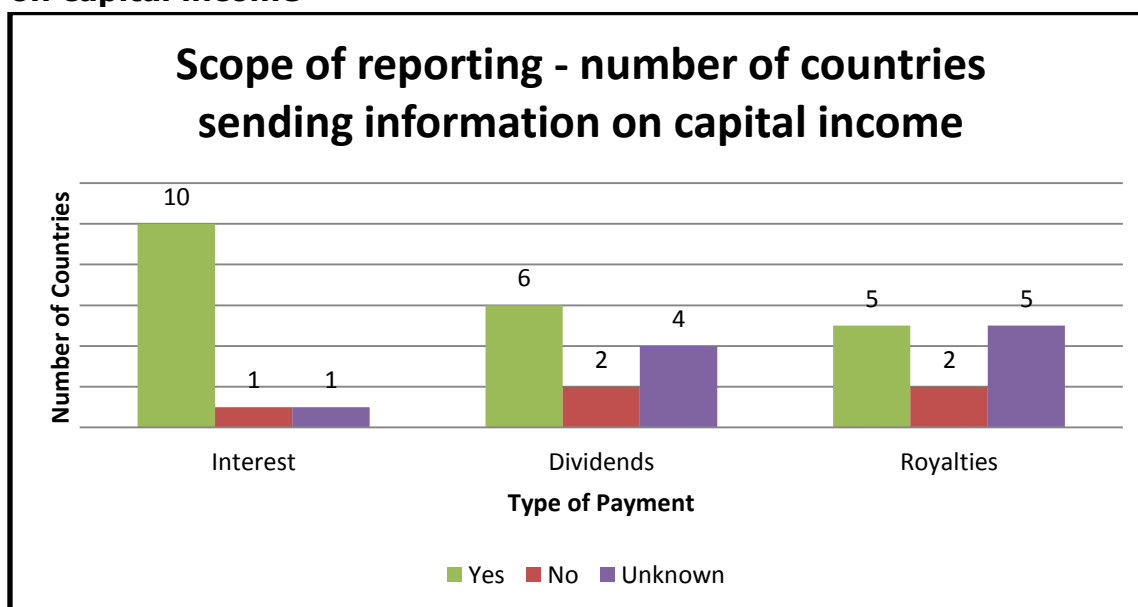
4. Summary of country reviews

The varied level of publicly available information and of cooperation by surveyed administrations prevents us from providing a full and comprehensive picture of all relevant aspects of automatic information exchange on interest, dividend and royalty payments in the 12 countries surveyed. Summary tables of the findings can be found in Appendices I and II.

Empirical observations on automatic information exchange can be broadly broken down into the following analytical categories (see Grinberg 2012: 17-18): the scope of the reporting obligations (**reporting**), identification of the account holder and beneficial owner (**identification**), and the sanction and supervisory regime to enforce reporting and identification obligations (**verification**).

As regards the first dimension (**scope of reporting**), the capital income category on which most information is available is interest. Of the 12 countries reviewed, ten countries send AIE-records on interest payments, while for dividends it is only certain for six countries and for royalties, five countries. Eight of the ten countries which send AIE-records on interest payments do so beyond or apart from the EUSTD²⁹. However, a lack of information about whether information is sent on dividends and royalties for four and five countries respectively precludes us from more closely examining the difference between interest and the other two types of capital payments.

Graph 2: Scope of reporting – number of countries sending information on capital income

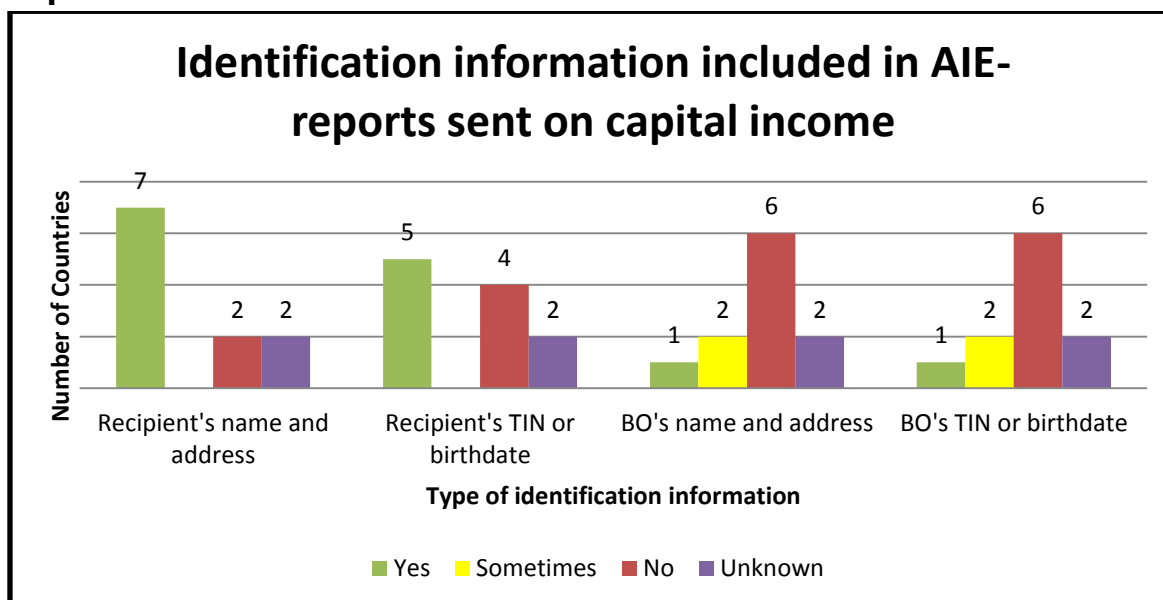


²⁹ The two missing countries being Germany and Spain, for which it is uncertain if AIE is exchanged on interest payments beyond EUSTD.

With respect to the second dimension concerning **identification** of the recipients and beneficial owners of payments, the findings are mixed and relate predominantly to (bank) interest payments. The most important finding is that many countries dispense with stringent identification requirements for beneficial owners of payments, or do not provide sufficient information to fully analyse the identification requirements underlying their automatic information exchange processes. In addition, key identification criteria such as birthdates or tax identification numbers are often absent even when recipient names are reported.

With the exception of Denmark, no country requires full beneficial owner disclosure. In all other countries for which sufficient information was available, either the beneficial owner need not be named at all or need not be named for non-European recipients (and only the account holder instead, e.g. Finland).

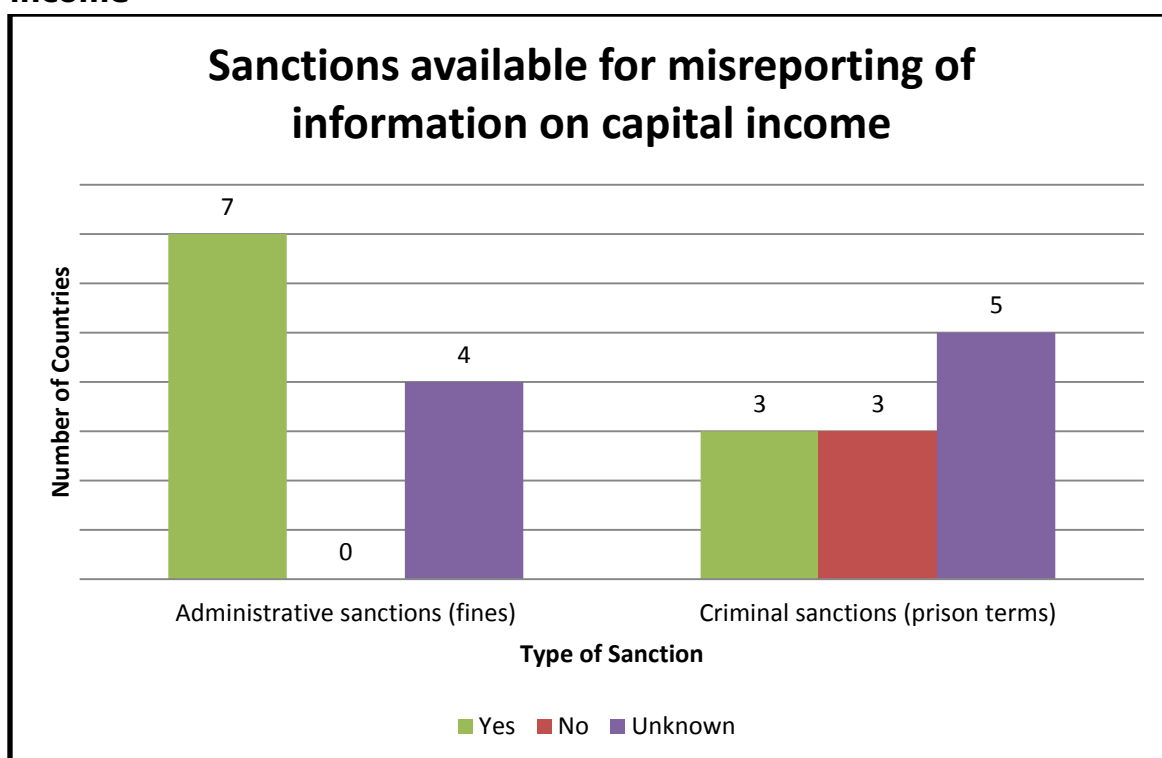
Graph 3: Identification information included in AIE-reports sent on capital income



Note: Austria is omitted from this graph since it does not actively engage in AIE.

The third key dimension for sending tax information automatically concerns the supervisory regime and the sanctions (**verification**) available in case of breaches of the reporting and identification obligations. It is remarkable how little information is available on a) the legal and administrative rules governing the supervision and sanctions of reporting and identification requirements and b) the actual practice by way of publishing meaningful statistics. While the available information suggests that all countries apply administrative fines for failure to correctly report payments including payments to non-residents, only Denmark, the Netherlands and the USA were found to have criminal sanctions available for failure to correctly report payments to non-residents.

Graph 4: Sanctions available for misreporting of information on capital income

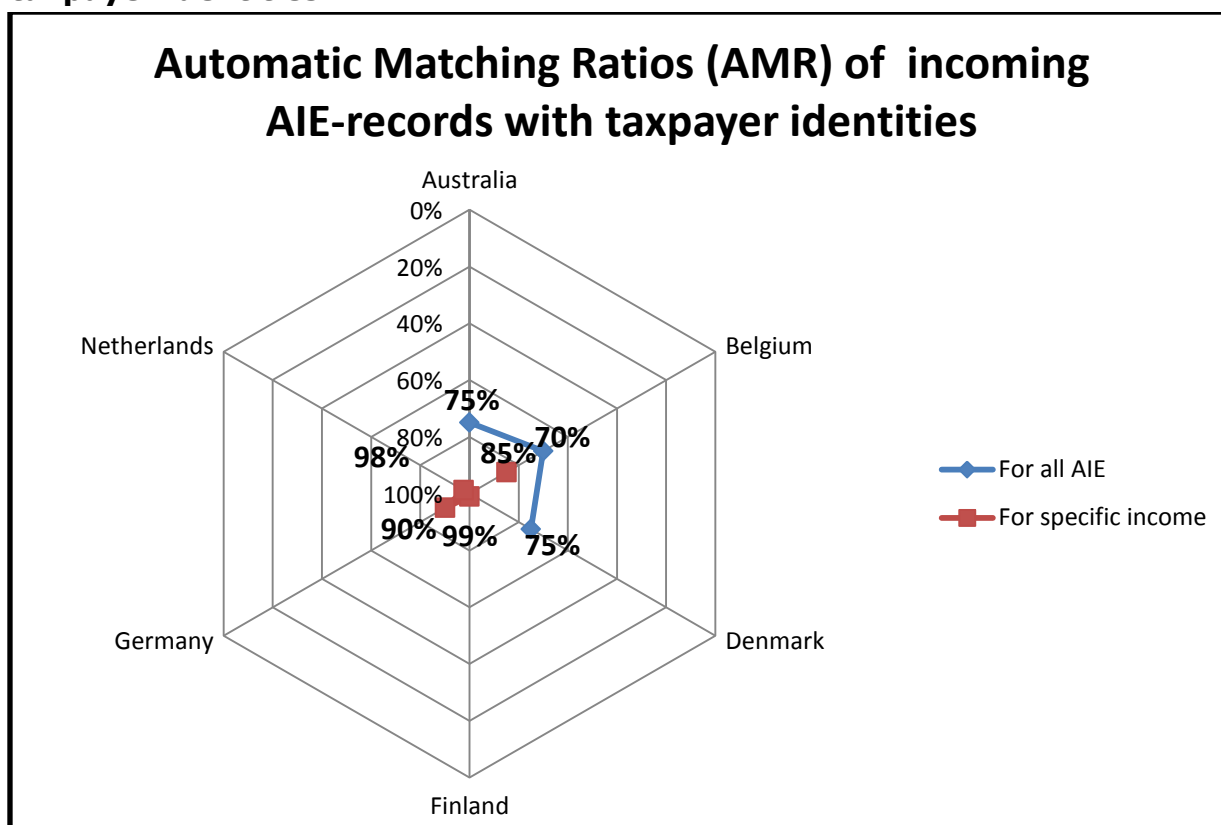


Note: Austria is omitted from this graph as it does not actively engage in AIE.

Finally, a key measure for the efficiency of automatic tax information exchange is the automatic matching ratio (AMR) of incoming AIE-records with the identities of resident taxpayers. An AMR of 100% would mean that all incoming records are automatically matched with the identities of resident taxpayers, and compliance could therefore quickly be checked by comparing tax return information with AIE records.

As the graph below shows, matching ratios are generally higher for specified categories of income than for a broader set AIE-processes. Except for Finland, all of the matching ratios of specified income relates to interest payments under the EUSTD. The key determinant for increasing matching ratios, in partial congruence with OECD's findings, is the transmission of a taxpayer identification number or birthdate in addition to the name.

Graph 5: Automatic Matching Ratios (AMR) of incoming AIE-records with taxpayer identities



5. Individual country reviews

5.1 Argentina

5.1.1 Institutional and research background

The competent authority for automatic tax information exchange is the Argentinean tax administration Administración Federal de Ingresos Públicos³⁰ (AFIP). AFIP provided some answers to our research questions but did not answer the entire questionnaire. There is no public information available about the extent of automatic information exchange practices.

5.1.2 Overview

Since the end of the last year and during 2012 AFIP has started working actively on automatic information exchange with countries with whom there is a double taxation avoidance agreement (DTA) and/or a Tax Information Exchange Agreement that includes provisions for automatic information exchange³¹.

³⁰ <http://www.afip.gov.ar/home/index.html>; 14.6.2012.

³¹ In contrast to the OECD-model TIEA, the CIAT- model of a TIEA includes the possibility of automatic information exchange (see page 4, here:

In previous years, Argentina used to implement automatic information exchange with a number of countries and these practices are currently being strengthened. At the same time, there are ongoing improvements in the taxing process (design of tax return forms and tax assessment process) and in other reporting processes taxpayers are subject to, all with a view to provide the information under the OECD-format.

5.1.3 Statistics about results

It is impossible for AFIP to publish management information about the countries with whom tax information exchange takes place, or about the type of information and the number of records or amounts involved (IV16).

5.1.4 Sanction and supervision of reporting obligations

For simple errors or omissions in complying with reporting obligations there are fines payable ranging from 50%-100% of the misreported amount, which increases to up to 400% in cases of legal entities which misreport cross-border transactions³². In cases of fraud, which presupposes malicious intent, the fine ranges from 200% to 1000% of the misreported amount. Criminal sanctions are not available.

5.2 Australia

5.2.1 Institutional and research background

The Exchange of Information Unit of the Australian Tax Office³³ (ATO) is the agency responsible for automatic information exchange. Australia, through its National Audit Office (ANAO) makes available on public record an extraordinary wealth of very detailed information on automatic information exchange. Generally, the Australian tax office was very supportive of the research project.

The extensive report on AIE published by ANAO in 2010 contains information on the experiences with AIE for the year 2007³⁴. ATO reported that more recent figures are not publicly available.

5.2.2 Overview

ATO has long experience in automatic information exchange. It engages in AIE with its DTA partners and since 2000 has used electronic means (prior to this:

http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf; 14.6.2012).

³² Art. 45, here: <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/18771/texact.htm>; 18.6.2012.

³³ <http://www.ato.gov.au/>; 26.4.2012.

³⁴ While the Australian National Audit Office report (ANAO 2010) does not systematically list all the legal sources for the information provided, this is of no concern because the ANAO is a public body, the report is public and for drafting the report, ANAO closely cooperated with the Australian Tax Office (ATO).

paper form). GF reports that Australia sent 2 million records to DTA partners in 2009, covering interest, dividend, royalty and non-resident withholding payments. In the same year, Australia received 600 000 records under AIE from 14 DTA partners (GF 2011b³⁵: 58, 76).

Australia offers DTA partners automatic information exchange independent of strict reciprocity. If the partner country indicates that it can make use of the information received, ATO will provide this data. The reports sent by Australia typically do not include information about the beneficial owners of the payments, but do include the name and address of the recipients of the payments. The reports do not include Tax File Numbers (or taxpayer identification numbers, TINs) or birthdate- and birth place³⁶ of the non-resident recipients. This may change in financial year 2013 when it is anticipated that date of birth and address will be captured by Australian reporting obligations (IV 18).

Overwhelmingly, ATO receives the incoming data either in OECD's SMF or STF format, while a minority (0,08% of all received records in 2008/2009) was sent in spreadsheet format (ANAO 2010: 33).

The concrete matching exercise is described as follows:

"Identity matching processes enable the Tax Office to match descriptive taxpayer information (e.g. name, address, date of birth) contained in AEOI [administration of automatic exchange of information] records against the Tax File Number (TFN) client register, as a precursor to computer assisted compliance activities. The outcome of an identity matching exercise is the appending of an Australian TFN and confidence indicator to the AEOI record to facilitate further use, including for compliance exercise purposes." (ANAO 2010: 93; [TJN-note]).

The issuance of a confidence indicator may be a special feature of the Australian Tax Office (Norway reports a similar procedure). The Tax Office specifies the reason and use of the confidence levels as follows:

"Outcomes at higher levels of confidence are generally deemed suitable for fully automated compliance and audit work. Outcomes at medium and low confidence levels can be used in manual processes and also form the basis of engine development and data quality initiatives." [...] The Tax

³⁵ http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews-australia-2011_9789264097087-en; 26.4.2012.

³⁶ <http://law.ato.gov.au/atolaw/view.htm?rank=find&act=reg%2F19360094%2F%3F~Inc%20Tax%20Regulations%201936%20%2894%20of%201936%29&criteria=AND~reg%2F19360094%2F%3F~provid~exact&target=reg/19360094/?&style=java&sdoid=REG/19360094/56&recStart=61&PiT=99991231235958&Archived=true&recnum=77&tot=200&pn=:::reg%2F19360094%2F%3F>; 10.5.2012.

Office does not conduct automated compliance exercises which use AEOI data categorised at the unmatched, low or medium identity matching levels. The identity matching software used by the Tax Office has not been significantly upgraded since 2003.” (ANAO 2010: 93).

Fully automated compliance as described above entails sending standard bulk mail to taxpayers deemed non-compliant with their tax obligations based on automated processing of thousands of records. In contrast, the manual process involves individual treatment (IV 19).

5.2.3 Statistics about results

As regards feedback on the exchanged data, the ATO reports relatively little feedback on the data quality by overseas DTA-partners, in contrast to Australia’s sustained feedback:

“The Tax Office has provided a large number of TIES reports to DTA partners, and a sample of fifty four reports were examined by the ANAO. The reports were in the standard format as laid out by the OECD, providing considerable helpful information for the recipients. [...]

The same level of formal feedback was not provided to the Tax Office from its DTA partners. Few formal feedback reports were provided and these were generally not in the OECD format. The Tax Office has highlighted the relevance of such reporting to OECD working parties during 2008.” (ANAO 2010: 55).

The OECD has developed a format to systematically gather feedback on information exchange processes relying on their Standard Magnetic Format (SMF). This feedback tool is called “TIES SMF Auto Data Analysis and Feedback Report³⁷”, or, “TIES Report” (ANAO 2010: 54). TIES reports include data quality parameters, such as identity matching statistics, comments against data fields (incorrectly formatted or missing data), selection or classification errors (related to the correct codification of the country of residence of a taxpayer), and numerical errors (for instance overstatement of amounts by factor 10 or higher through decimal point removals; ANAO 2010: 54-55).

Generally, the OECD acknowledges the importance of providing feedback about the exchanged data:

“Feedback to the sending country is essential to improve the efficiency of automatic exchange of information. Feedback from the receiving country on information exchanged automatically (not purely from an IT perspective) is crucial to make better use of what is exchanged: knowing

³⁷ www.oecd.org/dataoecd/61/14/40502226.pdf; 26.4.2012.

what the source is of data exchanged, the common errors identified, etc. Feedback may also be useful to tax administrations for justifying resources for exchange of information.” (OECD 2006: 6).

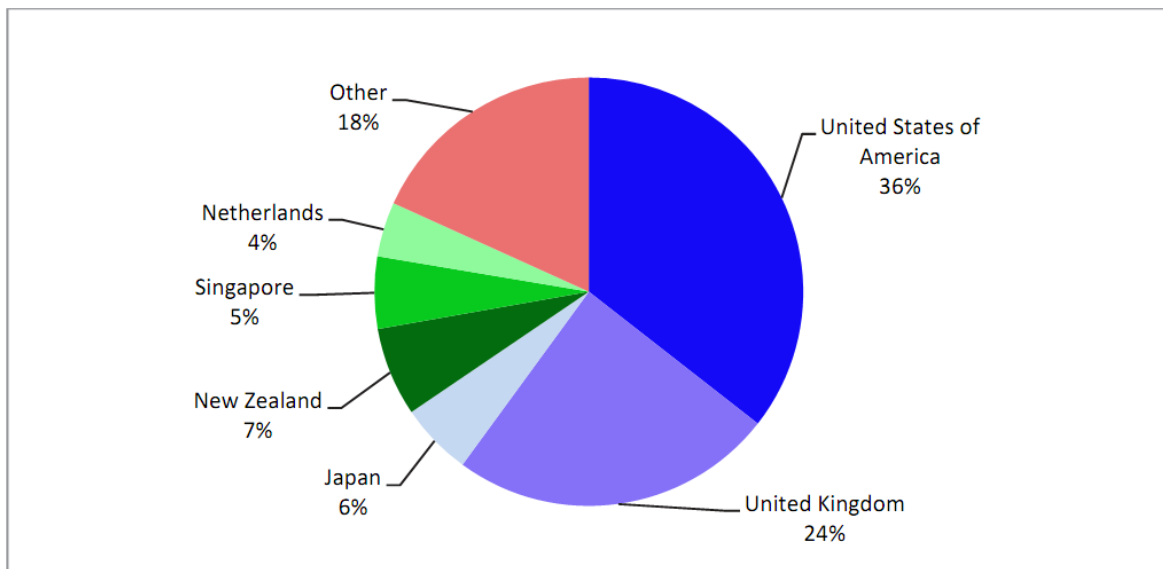
The following statistics’ scope is somewhat broader than the scope of this research project because in addition to dividends, interest and royalties they may also cover automatic information exchange on salaries and pensions (ANAO 2010: 32). However, the information sent by ATO overwhelmingly consists of interest, dividends and royalties.

With respect to Australia’s role as sender of information, the ANAO-report noted that date of birth information, which is *“likely to be important for identity matching”*, is occasionally missing (ANAO 2010: 55). Feedback forms showed that, for example:

“One report stated 97.5 per cent of records related to individuals yet date of birth information was present in only 25.3 per cent of instances; and Country of residence code not matching the physical data label of the data.” (ANAO 2010: 55).

The total amount of income covered by information reports sent by Australia was \$47 billion (AUS) over the period of 2005-2007. The main components of these payments consisted of interest, dividend and royalty payments (ANAO 2010: 46-47). The main recipients of the income and information exchanges can be viewed below:

AEOI outgoing data by dollar value.

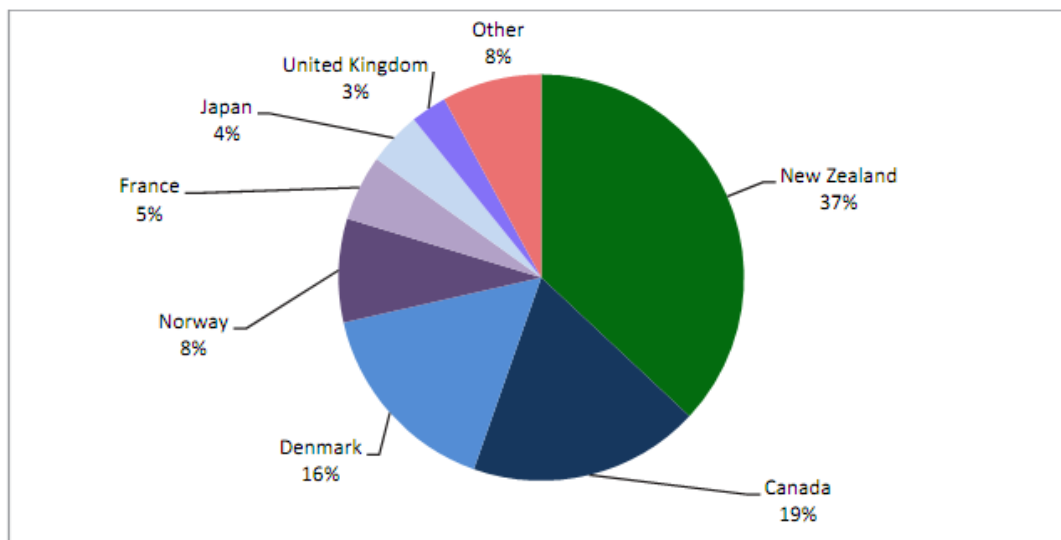


Source: ANAO 2010: 46; ANAO analysis of Tax Office data.

As for Australia as a recipient of information, the total Australian dollar value of income records for the period 2003-2007 was \$15 billion (AUS; equals roughly

15,4 billion US\$ at exchange rates as of 26.4.2012). This sum can be split by country of origin of the income report as follows:

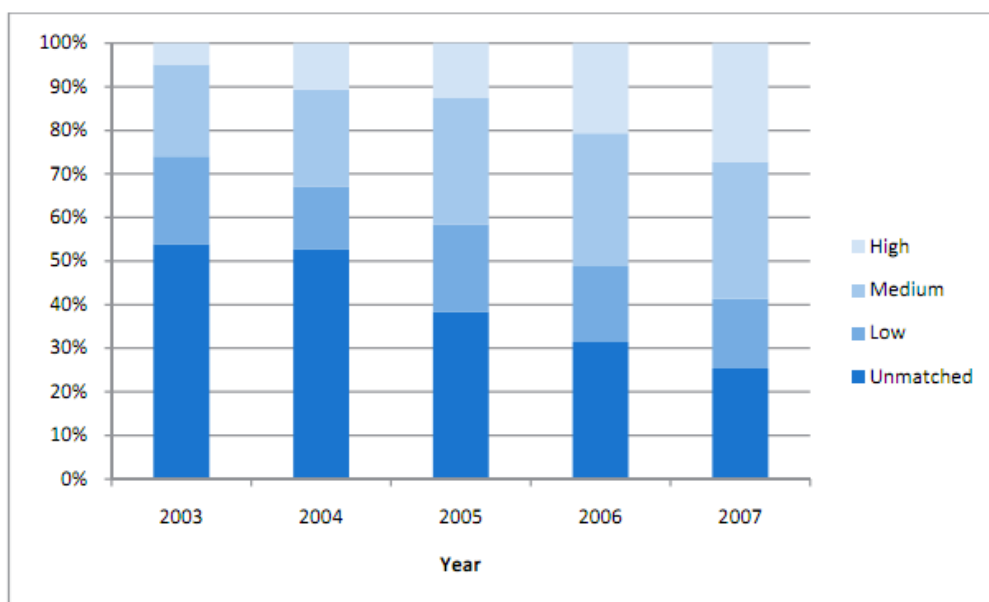
AEOL incoming data by dollar value.



Source: ANAO 2010: 45; ANAO analysis of Tax Office data.

Australia reported a constantly improving identity matching ratio for the records received from abroad for the period 2003 to 2007. The percentage of unmatched records fell from over 50% in 2003 to 25% in 2007 (see graph below). It is reasonable to assume this ratio has further improved. However, ATO has confirmed that more recent actual figures on this question are not publicly available.

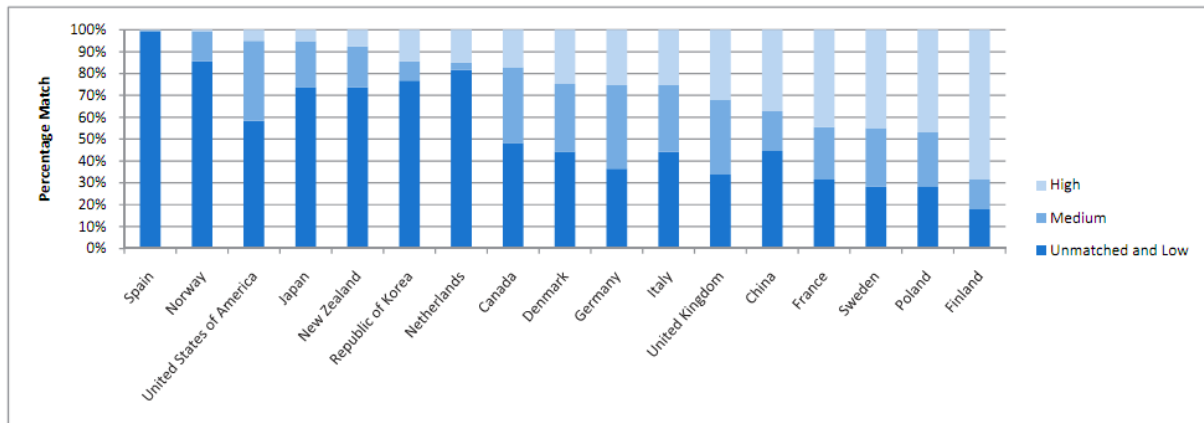
Identity matching of AEOL records over time



Source: ANAO 2010: 94; ANAO analysis of Tax Office data.

The ANAO-report stresses that the data variability in terms of matching confidence depends on the sending jurisdiction (ANAO 2010: 96). Spanish and Norwegian data appears difficult to match, while the quality in terms of matching confidence was highest for data coming from Finland and Poland. The detailed findings are shown in the graph below.

Identity matching confidence achieved by the Tax Office for received AEOI data, for financial period, 2003–2007



Source: ANAO 2010: 95; ANAO analysis of Tax Office data.

A review of an audit programme based on the information reports received from abroad showed that the percentage of those cases with tax adjustments varied considerably. In 2004-05, the rate of adjusted cases as a share of the completed cases was 63% (total number of 1568), with an average change in payable tax of 1332 AU\$; in 2005-06, the rate of adjusted cases was 45% (total number of completed cases was 1212), with an average change in payable tax of 3691 AU\$; and in 2006-07, the percentage of adjusted cases rose to 68% (out of 115 completed cases), with an average adjustment in payable tax of 2591AU\$ (ANAO 2010: 87). However, it remains unclear on what basis the cases had been selected.

5.2.4 Sanction and supervision of reporting obligations

While the ANAO report is silent on the policing and supervision of reporting obligations by financial institutions and others, the GF report only specifies that there are “significant sanctions for non-compliance” in case the ATO uses its powers under a request for exchange of information to compel information from third parties (GF 2011b: 45). The concrete sanctioning regime is described as follows:

“Failure to comply with this request generates the following penalty amounts:

- *a fine not exceeding AUD 2200 for a first offence; or*
- *a fine not exceeding AUD 4400 for a second offence; or*

- *a fine not exceeding AUD 5500, and/or imprisonment not exceeding 12 months, or AUD 27500 for a company, for a third or subsequent offence.*" (GF 2011b: 48).

It is unclear whether these sanctions also apply to the different reporting obligations of interest, dividend and royalty payments to non-residents, or what other sanctions may apply in these cases.

5.2.5 Notes

There are 7.5 full time staffers in the EOI Unit of the ATO, including 4 senior operative staff (GF 2011b: 76).

A particular risk concerning data quality reportedly arises from a lack of verification of third party information by DTA-partners. This involves information transmitted to Australia without relevant checks being made beforehand:

"Data provided by third parties, such as financial institutions, and on forwarded by the DTA partner with limited or no integrity verification, may leave the Tax Office vulnerable to introducing unreliable data into its data warehouse. For example, the Tax Office has received data from a DTA partner where the data was provided to the authorities of that jurisdiction by a financial institution and other third parties with a decimal point error. The error in the data was only detected by the Tax Office through compliance activity. These type of problems highlight how risks, and eventually recipient costs attach to the AEOI dataset." (ANAO 2010: 44).

5.3 Austria

5.3.1 Institutional and research background

The competent authority for exchange of information in Austria is the Federal Ministry of Finance³⁸ (GF 2011e: 46). While filing the questionnaires was agreed by an Austrian MoF-official in February 2012 (IV13), the questionnaires were never answered. Much of the information we have used therefore originates from a phone interview with the same official on 7 December 2011 and on the EATLP-report on Austria (Achatz/Jirousek 2009). In addition, some information from the Global Forum peer review report on Austria (GF 2011e) has been used.

5.3.2 Overview

Austria does not automatically exchange information on interest payments with anybody, neither through bilateral treaties or under any other arrangement (IV13, ADG³⁹). The recent OECD report on AIE confirms that Austria does not

³⁸ <https://www.bmf.gv.at/steuern/start.htm>; 23.5.2012.

³⁹ The Administrative Assistance Implementation Act (ADG) explains that Austria does not infer any obligation for automatic information exchange from OECD guidelines and

engage in sending information under AIE to anybody on any income category (OECD 2012: 16). The statistical data on spontaneous information exchange suggest that Austria applies a narrow definition of spontaneous information exchange which does not extend to quasi-automatic transmission of bulk data (ibid.: 24).

Nonetheless, Austria is reported to have provisions for automatic information exchange in place with Germany, although it is not clear whether these provisions are used in practice:

"Austria has provisions for automatic information exchange with Germany only (Treaty on Legal Protection and Legal Assistance Concerning Tax, of 4 October 1954), without restriction to specific topics." (Achatz/Jirousek 2009: 2).

5.3.3 Statistics about results

Austria has not published statistical information about the automatic information exchange processes established at a local level with Germany (Achatz/Jirousek 2009: 24). With respect to the EUSTD, Austria reports a total of 137,953 records received in 2006.

5.3.4 Sanction and supervision of reporting obligations

The MoF is directly responsible for supervision of the withholding tax arrangements under the EUSTD. There are random on-site inspections (Betriebsprüfung) of paying agents' offices, but the MoF is not aware of the results of these inspections (IV13).

5.4 Belgium

5.4.1 Institutional and research background

The tax agency mainly responsible for exchange of information is the "Service Public Fédéral Finances"⁴⁰ (SPF; GF 2011d:14, 61). While the Belgian tax administration did not respond to our questionnaire, there is a wealth of information on Belgian experiences with automatic tax information exchange available on public record, more specifically in a recent report by the Belgian National Audit Office (Cour des Comptes, CC2011).

5.4.2 Overview

Under existing double taxation agreements (DTAs), Belgium engages in automatic information exchange on interest and royalty payments (among

model treaties. That is why Austria categorically exchanges banking information only upon request (Nolz/Jirousek 2009: 431).

⁴⁰ <http://minfin.fgov.be/portail2/fr/index.htm>; 19.6.2012.

others⁴¹), and under the EUSTD it engages in AIE on interest payments (GF 2011d: 52; CC 2011: 4). This has been possible since September 2009, when the IT-system "Belcotax-on-web international" (BOWint) started operating. The Netherlands and France are mentioned as primary partners in AIE (CC 2011: 4), with France receiving more than 50% of all AIE-records sent by Belgium to OECD countries, and the Netherlands receiving approx. 10% of those records (ibid.: 40).

The total number of countries with whom Belgium engaged in bilateral AIE was 26 in 2010, among them 20 OECD member nations and 6 non-OECD members, namely Ukraine, Rumania, Russia, Estonia, Latvia and Lithuania (ibid.). It is not clear how many of those countries receive information on interest and royalty payments. After reviewing 12 bilateral memoranda of understanding signed by Belgium with third states⁴², it was found that four of these include AIE on interest, dividends and royalties (Canada⁴³, Denmark⁴⁴, Czech Republic⁴⁵, and Ukraine⁴⁶).

In the cases of Canada and Ukraine, birthdate is not required if a tax identification number is unavailable (Canada: page 2, para. 7; Ukraine: page 6, V.C) while the agreements with Denmark and Czech Republic suggest, if possible, to send birthdate and-place if no TIN is available (Denmark page 5, para. 6; Czech Republic: page 2). Sanctions were not addressed in these bilateral arrangements.

The Belgian tax administration reported that a recurrent problem with AIE is the difficulty to match the incoming records with identifiable taxpayers, resulting in delays in data processing (CC 2011: 5). The EUSTD has been commended for achieving better results than AIE under the OECD conventions, both with respect to the matching ratio of records with taxpayers, as well as regarding the tax base broadening as a consequence of AIE (ibid. 5). The report highlights as significant that

"a quarter of the tax base broadening results from taxable income other than interest. The Directive [EUSTD] thus allows identifying other revenues from or parts of assets located abroad." (CC 2011: 5; author's translation).

As a sender of information under the EUSTD, Belgium requires beneficial owners of interest payments to be identified by forename and surname and address and

⁴¹ In addition to salaries, pensions, commissions and professional fees (CC 2011: 4).

⁴² <http://fiscus.fgov.be/interfafznl/fr/international/cooperation/administration.htm>; 25.6.2012.

⁴³ fiscus.fgov.be/interfafznl/fr/downloads/coopCanada_en.pdf; 25.6.2012.

⁴⁴ fiscus.fgov.be/interfafznl/fr/downloads/coopDanemark_en.pdf; 25.6.2012.

⁴⁵ fiscus.fgov.be/interfafznl/fr/downloads/coopTchequie_en.pdf; 25.6.2012.

⁴⁶ fiscus.fgov.be/interfafznl/fr/downloads/coopUkraine_en.pdf; 25.6.2012.

tax identification number, and in case the latter is absent, by including date and place of birth⁴⁷.

5.4.3 Statistics about results

When information packages are received, each record must be linked to a TIN or a company number in order to feed the information into the database BOWint. The automatic matching ratio for bilateral exchanges averages 70%, with 30% of the records remaining for manual processing (ibid.: 41).

The main reasons for matching failures are reported to be a lack of specific information, such as birthdates, the name and the bank account numbers, and a lack of uniformity in the received data. Changes in the matching algorithm have produced substantial improvements in the matching ratios (ibid.).

With respect to the EUSTD, the matching ratio for records concerning the tax year 2006 was 85%, in the first 6 months of operation of the EUSTD (ibid.: 52). The total number of records received in 2006 was 226,860 and 192,753 of those could be matched, and the number of taxpaying households was 106,275. After risk assessment, 6,510 cases have been further analysed and those cases represent around 65% of all the interest payments to Belgian residents covered by the EUSTD.

Of those processed records, 76.7% resulted in an adjustment of the tax base, i.e. in increased tax revenue. As a result of the analysis of 6,510 cases identified through the EUSTD, the tax base for the tax year 2006 increased by 74,998,251€⁴⁸.

5.4.4 Sanction and supervision of reporting obligations

Sanctions are not mentioned in the 4 bilateral memoranda of understanding implementing AIE on interests, dividends and royalties. The Royal Decree implementing the EUSTD⁴⁹ does not suggest that there are any specific sanctions available for paying agents' failure to correctly implement their reporting obligations.

⁴⁷ Art. 4, Royal Decree of the Art. 338bis, §2, of the Income Tax Code 1992 ("27 SEPTEMBRE 2009. — Arrêté royal d'exécution de l'article 338bis, § 2, du Code des impôts sur les revenus 1992"). See *Moniteur Belge*, 1.10.2009, Ed. 2, page 65613.

⁴⁸ The corresponding numbers for 2005 was 67.02%, and 23,002,699€ (CC2011: 51).

⁴⁹ Art. 4, Royal Decree of the Art. 338bis, §2, of the Income Tax Code 1992 ("27 SEPTEMBRE 2009. — Arrêté royal d'exécution de l'article 338bis, § 2, du Code des impôts sur les revenus 1992"). See *Moniteur Belge*, 1.10.2009, Ed. 2, pages -65609-65616.

5.5 Denmark

5.5.1 Institutional and research background

The relevant tax agency is the Customs and Tax Administration (CTA; "Skatteministeriet"⁵⁰). The Danish government answered our questionnaire thoroughly and was available for follow up enquiries.

The legal instruments used for bilateral automatic information exchange are double taxation agreements and the Council Directive concerning mutual assistance 77/799.

5.5.2 Overview

Under bilateral treaties, Denmark automatically sends information on interest and dividends to 69 countries⁵¹, and receives from 18 countries information on interest payments. From 17 countries Denmark receives information on dividend payments, and from 15 countries it receives information on royalty payments. The information mentioned above is exchanged once a year. The OECD Standard Magnetic Format (SMF) is used.

The process of data reception starts with identification of the data and a risk analysis, followed by centrally comparing the data with the taxpayers' tax returns.

It is not entirely clear when Denmark started to exchange information automatically. Since the early 1990s, AIE has become more regular. Concerning the Nordic countries there have been bilateral agreements since the early 1940's and the first convention was signed in 1972.

With respect to spontaneous information exchange, information on royalty, dividends, and interest has been sent and received for several years, including both natural and legal persons. The information received under spontaneous information exchange can be matched to Danish taxpayers in almost 100% of cases by using different methods of matching.

5.5.3 Statistics about results

In 2011, data was sent to 69 countries (Dividends: 81.168 records; Interest: 117.400 records; Royalty: Unknown). Data has been received from respectively 17, 18 and 15 countries (Dividends: 9.958 records; Interest: 15.087 records; Royalty: 1.727 records). Information about the number of taxpayers and the underlying values is not available.

No comprehensive research about the use and impact of the data received under automatic information exchange has been carried out. However, benefit analyses

⁵⁰ <http://www.skm.dk/foreign/>; 29.5.2012.

⁵¹ The number of countries to whom royalty information is sent cannot be extracted from other income types for technical reasons (Questionnaire).

have been carried out on specific projects about which the details are not publicly available. The matching ratio of attributing the received records to Danish taxpayers varies and depends on the files quality and on whether the information contains a TIN or a birthdate. All the different processes concerning matching information with corresponding taxpayers reached a matching ratio of more than 75% in 2009. In case the persons cannot be identified, a feedback procedure is available in the context of EU-member states which is, however, not yet fully implemented. Currently, statistical breakdowns of matching ratios by different types of income, legal frameworks or by the amounts of the records that can be matched are not available for public disclosure.

Information received under the EUSTD includes in most cases a date of birth, which gives a higher matching ratio. Generally, Denmark is reported to be effective at matching information, partly because the Danish tax administration is centrally analysing the data (IV8).

5.5.4 Sanction and supervision of reporting obligations

Generally, financial companies have committed to reporting correct information but a few problems have arisen when correcting data from the charities and unions. Danish legislation allows enforcing the provision of documentation from the companies with daily fines. These sanctions, however, are rarely used in practice.

With respect to the routine reporting obligations which provide the information for AIE, criminal sanctions are available for failure to report. The Global Forum wrote on the sanction mechanism:

"If any person, including a bank, declines to comply with the provisions about automatic reporting of information to the CTA, it may impose a daily fine of at least DKK 1000 (EUR 135), which is scaled in accordance with the size of the company, until reporting occurs (Tax Control Act s.9). [...] Whoever intentionally or with gross negligence fails to provide the CTA with information is punishable by a fine (s.14(2)).

Anyone who intends to conduct tax fraud, or with gross negligence gives false or misleading information to the CTA, may be subject to a fine equal to the amount of the fraud. If the amount of the fraud is between DKK 250 000 and DKK 500 000, the person is also liable to imprisonment for up to 18 months (s.13 and s.14(1)). Particularly serious tax fraud is punishable under the Criminal Code s.289 by imprisonment for up to 8 years." (GF 2011: 42-43).

While prison terms are generally applicable only if fraud or gross negligence resulted in or would have resulted in Danish taxes being evaded, a Danish bank could be penalised for submitting false or misleading information about a foreign taxpayer's relationship if the reporting of false or misleading information would

have been a criminal offense in the residence country of the taxpayer (IV 15). Criminal proceedings will normally be dealt with in the state receiving the (misleading) information, but criminal proceedings can also be performed in Denmark pursuant to Penal Code § 8, No. 6.

So far, there have not been any criminal prosecutions (under §14, Para. 1) for failure to (routinely) report tax information.

5.6 Finland

5.6.1 Institutional and research background

The Finnish tax administration⁵² is responsible for automatic information exchange. The Finnish Government answered our questionnaire thoroughly and was available for interview and follow up enquiries. The main sources for our findings were a) the answered questionnaire and b) the interview and follow up communication with the Finnish tax authority and Ministry of Finance.

5.6.2 Overview

In 2011, Finland automatically sent tax information on interest, royalties and dividends to a total of 66 countries and received information on the same categories of income from approximately the same number of countries. The list of these countries is not 100% congruent with the list of countries with DTAs, because often in a DTA country, there may be no source for a Finnish owned interest or dividend payment and therefore no actual reporting, although it would be reported if there was relevant income. Automatic information exchange in these income categories started in the 1990s.

The basis for the exchange of information varies, sometimes the exchange is conducted under bilateral DTAs, sometimes on Nordic Convention or the EUSTD. For some countries under DTAs, there are additional administrative agreements on the exchange procedures (memorandum of understanding). Finland requires reciprocity for sending this information, while reciprocity is interpreted in a historical perspective: if at some stage a country has provided information to Finland, it receives this AIE from Finland annually.

If the information sent from abroad is available before April, it can be used for the prefilling of tax returns. However, EUSTD data is usually received in June.

Finland sends out information in electronic STF format. Otherwise, for interest payments the EUSTD-format FISC39 is used. Very few countries still provide information on paper.

⁵² http://www.vero.fi/en-US/Tax_Administration; 21.3.2012.

The path of the outgoing information is as follows:

- a) Finnish payers report to Tax Administration once a year all payments to non-residents;
- b) this information is classified under the OECD Model Tax Treaty articles;
- c) transposed to OECD-format;
- d) sent to the country of residence of the recipient.

Finland receives the corresponding information from tax treaty countries, the income and recipient are identified, the information is forwarded to the local tax offices, and the income is investigated by them. If the income was not reported by the recipient, the information is used in the taxation process, if it is of significance. Other state agencies can access this information, for example for criminal investigations.

The matching ratio of automatic datasets and taxpayers is not available because currently there is no automated matching rate evaluation system in place in Finland. However, the matching ratio may become available in the future. Recently, Finland started a special project for AIE with Sweden on pensions, which yielded a matching ratio of 99%. Poor matching is usually the result of inadequate identification details, such as mis-spelling of a recipient's name and/or missing or inaccurate Finnish TIN. In mid 2012, the EU will commence a program called "TIN on Europe" which will allow third parties (such as banks) to check for the consistency in the format of the provided TIN.

Finland recommends third parties to collect foreign TINs in addition to full names and address, but currently this is not mandatory. However, the birthdate needs to be provided by any third party in Finland if a TIN is not collected. In case of payments under the EUSTD, the "actual beneficiary" of the payment must be identified⁵³ as recipient (unless it is a payment to another paying agent). For other payments, the form to be filled by payers (e.g. banks) allows discretion as to whether to report the account holder ("recipient") or beneficial owner ("beneficiary") of the payment.

Within the EU, CCN (Common Communication Network) is used for exchanging the data. This is a European-wide secured email channel, it has nothing to do with the format of information, it is only a channel. The advantage is that before sending an email, it is not necessary to check the addressee, one can just "hit the send button" because the EU-governments are responsible to define the CCN-recipients as the competent authorities. There are different boxes of CCN, one for direct taxation. As the system may be opened for non-member states, it

⁵³ See section "Payments under the Savings Directive" here: [http://www.vero.fi/en-US/Precise_information/Forms/Employer Payroll Report and other annual information return forms/Annual information return for payments t%2820100%29](http://www.vero.fi/en-US/Precise_information/Forms/Employer_Payroll_Report_and_other_annual_information_return_forms/Annual_information_return_for_payments_t%2820100%29); 6.6.2012.

is possible to apply to participate in it. Norway is currently doing so and the Commission is studying options to open it.

5.6.3 Statistics about results

EATLP reported the following in 2010:

"Finnish tax administration gathers information separately for double taxation conventions, VAT and automatic exchange of information. Public statistics are not available. There are no statistics on annual information received on basis of the 'Council Directive 2003/48/EC on taxation of savings income in the form of interest payments'."
(Äimä/Lahdenperä/Soinila 2009: 9-10).

Finland does not disclose systematic information about the number of taxpayers covered by AIE, or about the total amounts involved, or about follow-up investigations as a consequence of AIE. However, in general terms the Finnish tax administration has confirmed that information received from abroad through AIE has triggered new investigations, the drafting of information requests, and has helped with fraud detection.

One exception relates to the EUSTD, where there is a requirement laid down by the EU-Commission to all member countries to signal any increase in taxable income due to the information received. There is evidence that through the information transmitted by the EUSTD, around 8% of the reported income has been added to the taxable income in 2010 in Finland.

5.6.4 Sanction and supervision of reporting obligations

The reporting by domestic payers for AIE purposes is not subject to a supervisory regime and sanctions. However, the instructions on reporting are updated annually on the website and poor reporting quality by domestic payers may trigger a tax audit. Willful failure to report may result in a maximum fine of 15.000€ (Act on Assessment Procedure 22a§).

5.6.5 Notes

A reported problem concerning the EUSTD is that there is no minimum tax requirement: small amounts are therefore always reported.

5.7 France

5.7.1 Institutional and research background

The French tax administration "Direction générale des finances publiques"⁵⁴ (DGFIP) is responsible for information exchange. DGFIP did not respond to our

⁵⁴ <http://www.impots.gouv.fr/portal/dgi/home>; 18.6.2012.

questionnaire. The Global Forum (2011f) report on France was the only available source of information.

5.7.2 Overview

The Global Forum reports that France annually sends almost 2 million tax records to around 20 jurisdictions under automatic information exchange, in addition to AIE happening under the EUSTD (GF 2011f: 62). However, it is unclear from this source what types of income are covered by these exchanges. Research undertaken within the framework of the FSI 2011 revealed that France sends information on interest, dividends, and royalties to at least one other nation, but probably to more nations.

The Indian Express has reported that France exchanges bank information automatically with India⁵⁵.

5.7.3 Statistics about results

No information was available.

5.7.4 Sanction and supervision of reporting obligations

It is unclear what sanctions and supervision apply to regular reporting obligations for the bank account registry and for interest payments.

5.8 Germany

5.8.1 Institutional and Research background

There is no centralised tax administration in Germany. Instead, every Bundesland operates its own tax administration. Some IT-services are handled centrally at the Bundeszentralamt für Steuern⁵⁶ (BZST).

While the questionnaires were not answered, some research support was provided through emails and phone interviews. The "Zinsinformationsverordnung"⁵⁷ transposes the EUSTD into national German Law.

Germany engages in automatic information exchange on the relevant income categories

- 1) under the EU-Savings Tax Directive as regards interest payments, and
- 2) to an unknown extent under bilateral exchange arrangements.

⁵⁵ <http://www.indianexpress.com/news/india-in-talks-with-switzerland-to-bring-home-tax-on-undeclared-money/920074/2>; 12.3.2012.

⁵⁶ http://www.bzst.de/DE/Home/home_node.html; 14.6.2012.

⁵⁷ <http://www.gesetze-im-internet.de/ziv/index.html>; 2.3.2012.

Part one will specify details on the information exchange taking place under the EUSTD, while part two provides details about the bilateral information exchange processes.

5.8.2 EUSTD

Process of incoming information

The central agency receiving incoming data from abroad is the central tax agency (Bundeszentralamt für Steuern⁵⁸, BZSt). Information arrives in email format and zipped. If it comes from a non EU member, the information arrives on paper or in Excel (IV8).

Since 2012 (IV7), the process is as follows: the incoming data is checked to see whether it conforms to the necessary structure for processing and the content is plausible. Subject to plausibility checks, the data will be used for further processing or returned to the foreign competent authority for correction. This happens if the minimum default information required by the data structure format is not included in the data.

The next step in processing is an automatic allocation of the tax identification number (TIN) to the persons concerned. Afterwards, the processed data is transmitted to the state tax authorities who in turn forward it to the local tax offices of the place of residence of the respective persons. The local tax offices carry out the controls of tax return information with the EUSTD-data (IV6).

According to the tax administration, the BZSt carries out a second level of checks according to a risk analysis and may inform local tax officials about particular cases (IV9). This would include retrieving the tax returns from the local tax offices submitted by the taxpayers for whom a report has been received under the EUSTD and which has been selected on a risk basis, and matching the information from EUSTD and the tax return data. If a mismatch is found, a notice will be sent to the respective local tax office (IV9).

Process of sending information

Similarly, data transmitted by domestic paying agents undergo a check for plausibility. Domestic paying agents are required to transmit the reports electronically.

⁵⁸ http://www.bzst.de/DE/Home/home_node.html; 2.3.2012. In fact, the processing is not undertaken directly by the BZSt. The IT-department of the fiscal administration of the state-government of Northrhine-Westfalia (Rechenzentrum der Finanzverwaltung des Landes Nordrhein-Westfalen; <http://www.rzf-nrw.de/>) is implementing the processing on behalf of BZSt (IV4).

Generally, the account holder and recipient of the payment is deemed to be the beneficial owner and in cases where doubts exist as to whether both are identical, the paying agents are required to opt for the account holder being the beneficial owner after carrying out investigations into the identity of the beneficial ownership⁵⁹. The recipient needs to be identified by name and town of residence. In addition, the account number, currency and amount of interest paid must be reported. Supply of other information is optional or conditional upon certain facts. For instance, for accounts opened on or after 1 January 2004 there is a requirement to have the paying agent provide either the correct TIN of the resident country of the recipient, or the correct date and place of birth⁶⁰.

In the case of accounts held in the name of legal structures which are unknown to the German legal system, as is the case for instance for accounts managed on behalf of trusts, it must be made clear whether the account is opened in the name of the trust or in the name of a trustee. If the account is opened in the name of a trustee, then the bank must check if the trustee is an economic operator who makes interest payments as part of his profession or trade. If so, as is the case for lawyers or notaries, then the trustee will become a paying agent himself (Art.4, Para. 1 EUSTD) and has a duty to report interest payments to the settlor/beneficiary (Treugeber). The bank has no reporting duties in this case.

Instead, if the single trustee is not acting as a paying agent, then the bank has to determine and report the identity and residence of the settlor/beneficiary (Treugeber, according to Art. 2, Para. 2 EUSTD).

If the account is opened in the name of a foreign trust, then this trust is treated as a paying agent (Art. 4, Para. 2 EUSTD). A reporting duty of the German bank exists if the paying agent is resident in another member state.

Statistics about results

Annually, the incoming information ranges between 1-3 million records (BMF 2010: 19).

⁵⁹ See Para 7, 8, and 10 of the German implementing regulations of the law implementing the EUSTD, here: <http://treffer.nwb.de/completecontent/dms/content/000/287/Content/000287882.htm>; 22.6.2012.

⁶⁰ See Table "Aufbau Satzart 1 (wirtschaftlicher Eigentümer)" in Annex II of this publication: Because of differences in the processing capacity and IT-systems among the different Länder, there seem to be differences in the way and speed of data forwarding. The details reported below have not been possible to verify by a second source. <http://treffer.nwb.de/completecontent/dms/content/000/287/Content/000287882.htm>; 6.3.2012.

The automatic matching ratio of incoming reports is 90% in the case of the EUSTD (IV6). However, it remains unclear for what year this ratio is applicable (most likely tax years 2005-2008, processed in 2010), what share of the total interest payment volume is covered by the 90% matched records, and what is done about the remaining 10% of records.

Because of differences in the processing capacity and IT-systems among the different Länder, the processes of data handling and sharing with the Länder appears to vary from Land to Land (see BMF 2010: 20).

For the tax years 2005-2008, a delay was reported in processing and distributing the complete datasets (IV7, IV8) because the German Länder demanded that BZSt attributes a taxpayer identification number to the records before sending the reports to the local tax offices. Those complete records were sent only in 2010 (IV8). The complete datasets for the years 2009 and 2010 were expected to be sent to the Länder in May 2012 (IV7). It is expected that from 2012 onwards, there will be a constant annual flow and processing of the received information (IV8).

In 2009, a sample of the data was sent to the local tax offices. BZSt forwarded 20,000 of the most financially significant interest reports to the tax offices of the Länder (relating to the tax years 2005 and 2006). It is reported that in most of these cases, there was no additional fiscal revenue due to the reports (Fahrenschon 2010: 35-36). However, the total increased revenue yield has not been quantified. Sim

The Ministry of Finance reported in 2010 that out of a total of 19,117 analysed records transmitted under EUSTD, 687 (3.6%) records resulted in a higher tax yield (BMF 2010: 20). However, it is unclear what year(s) this information relates to, and it is also unclear what amounts were involved.

Sanction and Supervision regime for failure to comply with reporting obligation

German income tax law sanctions paying agents such as banks who fail to properly report the income as required by the EUSTD as a misdemeanor with a fine of up to 5000€ (§50e, EStG⁶¹). According to one interviewee from the private banking sector, banks and bankers do not pursue the reporting under EUSTD with great vigour since a breach would constitute a misdemeanor ("Ordnungswidrigkeit") rather than a criminal offence (IV10).

⁶¹ http://www.gesetze-im-internet.de/estg/_50e.html; 13.3.2012.

There is anecdotal evidence that regular onsite inspections at banks by tax offices do not include checks on the reporting obligations under the EUSTD. Since 2005, there is no evidence about a single onsite inspection (Depotprüfung) that would have included a check on the reporting obligations under EUSTD. (IV10).

Notes

A reported problem concerns the loose information format of the EUSTD. E.g. while there are fields for each address element (road, postcode, etc), there is also a field where all info can be entered as a block – this makes automatic identification difficult. Generally, with forename, surname and birthdate a good matching can be achieved. But birthdate is no obligation. TINs are often of no use because they are frequently false (IV8).

In addition, there is a problem with interpretation of the data (IV10). Some tax offices take the data they are receiving as constituting taxable income, while the report is only about payments. An example concerns a person resident in a neighbouring country (country X) who received a notice to pay tax on a huge sum of capital gains because of his German deposit and interest paid thereon. However, the reason for the payment notice arose from a misinterpretation of the data. The report sent by the German financial institution was only about “gross proceeds” and not about “net gains” – the cost of buying the securities was not subtracted in the number reported, but the authorities of country X treated them as such. This creates some administrative work for the person concerned as he has to explain to the authorities what the situation is (IV10). However, it was impossible in this study to determine whether such errors are commonplace.

5.8.3 Bilateral Arrangements

Germany has agreed MoUs for exchanging information automatically with DTA-treaty partners who are EU-members. The definition of interest is the same in Art. 11 of the OECD-Model tax convention. There is no such MoU with the USA or Canada (IV 6). Germany’s Ministry of Finance only answered very vaguely on the questions asked so more specific details about the types of income covered or the factual bilateral automatic information exchange cannot be provided. The German MoF indicated, without specifying a reason, that more detailed questions of bilateral MoUs cannot be answered (IV6). The Indian Express has reported that Germany exchanges bank information automatically with India⁶².

In 2010, the Ministry of Finance published some information on the countries with whom Germany exchanges tax information spontaneously and automatically

⁶² <http://www.indianexpress.com/news/india-in-talks-with-switzerland-to-bring-home-tax-on-undeclared-money/920074/2>; 12.3.2012.

(BMF 2010: 8-9). However, it is not clear whether this includes income tax information and what kinds of income.

Staat	Spontanauskünfte	Automatische Auskünfte
Australien	×	×
Belgien	×	×
Bulgarien	×	
China	×	
Dänemark	×	×
Estland	×	×
Finnland	×	×
Frankreich	×	×
Griechenland	×	
Großbritannien	×	×
Irland	×	×
Island	×	×
Italien	×	×
Japan	×	×
Kanada	×	×
Korea (Süd)	×	
Lettland	×	×
Litauen	×	×
Luxemburg	×	
Malta	×	
Neuseeland	×	×
Niederlande	×	×
Norwegen	×	×
Österreich	×	×
Polen	×	
Portugal	×	×
Rumänien	×	
Russland	×	
Schweden	×	×
Slowakei	×	
Slowenien	×	×
Spanien	×	×
Tschechien	×	×
Türkei	×	
Ukraine	×	
Ungarn	×	×
USA	×	×
Weißrussland	×	
Zypern	×	

Source: BMF 2010: 8-9

The total number of records sent automatically to (first row) and by Germany (second row) are as follows:

Automatische Auskünfte			
	2007	2008	2009
an Deutschland	232 018	337 905	295 706
aus Deutschland	111 666	34 578	208 730

Source: BMF 2010: 10

These numbers may include other than income taxes. In addition, the high volume of records reported under spontaneous information exchange (below) indicate that at least some of these exchanges can be characterised as automatic information exchange processes:

Spontanauskünfte			
	2007	2008	2009
an Deutschland	958 446	359 716	1 403 001
aus Deutschland	9 206	25 247	26 389

Source: BMF 2010: 10

It is notable that Germany in both tables on automatic and spontaneous information exchange is a net recipient of information. This finding is confirmed by older data on information exchange. Germany received between 5 times and 25 times more information records related to taxes from income than it sent in the period from 1999 and 2002 (see below). All available evidence indicates that

Germany is by far a net-recipient of bilateral, automatic and spontaneous information exchange processes.

The following two tables are taken from the EATLP publication. While EATLP calls this kind of information exchange “spontaneous” information exchange, the amounts of records exchanged indicate that it is automatic information exchange:

“Spontaneous exchange of information from abroad to Germany”	
Year	concerning taxes from income
1999	194.044
2000	510.629
2001	650.326
2002	557.474
Source: Drüen/Gabert 2009: 39; taken from Hendricks 2004: 412; based on material by the Federal Tax Office.	
“Spontaneous exchange of information from Germany to foreign countries”	
Year	concerning taxes from income
1999	37.560
2000	36.455
2001	26.355
2002	70.406
Source: Drüen/Gabert 2009: 40; taken from Hendricks 2004: 412; based on material by the Federal Tax Office.	

Unfortunately, these statistics only break down the records into information concerning taxes from income, but none of them specify what income categories are covered by the exchanged information, and if interest, dividends or royalties are covered. In 2000, Germany was reported not to engage in automatic information exchange on bank interest (OECD 2000: 40).

5.9 The Netherlands

5.9.1 Institutional and research background

The Netherlands tax administration (“Belastingdienst”)⁶³ is the competent authority for automatic information exchange.

The Netherlands government answered our questionnaire thoroughly and was available for follow up enquiries. On prior occasions, the Netherlands government has been supportive of TJN-research enquiries on AIE and other subjects.

The sources for this section were primarily the answer to the questionnaire, earlier discussions with staff from the Netherlands tax administration, and the report by De Goede/Hemels/Schenk (2009).

5.9.2 Overview

Apart from the EUSTD, the Netherlands automatically exchanges information on interest payments with two countries (Australia, Japan) and on dividend payments with four countries (Australia, Japan, Denmark, Sweden; IV14), and does not implement AIE on royalty payments. Under the Savings Directive the Netherlands delivers interest data automatically to the other 26 EU countries, Aruba, Curacao, St. Maarten, British Virgin Islands, Isle of Man, Jersey, Guernsey and Montserrat.

The Netherlands will start to provide tax data on interest and dividend payments automatically to Australia and Japan and on dividend payments to Denmark and Sweden as of tax year 2012 (IV14). The legal base for this are the bilateral tax treaties with those countries and additional MoU’s/administrative arrangements. The MoU’s are published in the national gazette⁶⁴. Australia has delivered interest data automatically to the Netherlands since 2001. The Netherlands is able to reciprocate the automatic exchange from tax year 2012.

Since 1996, the Netherlands has a policy of concluding MoU’s for automatic and spontaneous information exchange and other forms of administrative cooperation and is actively pursuing the signature of new MoU’s. Generally, the Netherlands has had favourable experiences with AIE.

After identification and verification of the received data, the data is uploaded to the database of the tax administration to be used for the administration and enforcement of the tax laws. If the received data gives rise to additional questions, the tax administration (via the competent authority) of the Netherlands will put forward a request to the treaty partner. The treaty partner will probably gather the requested additional information from the financial institution concerned.

⁶³ <http://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuels/>; 22.3.2012.

⁶⁴ www.overheid.nl; 1.6.2012.

The received data may also be subjected to special and targeted (inquiry) projects, e.g. interest data received from countries with fiscal bank secrecy. In a publication of 2010, some more details are given about the analytical processes undertaken by the Netherlands tax administration:

"The data files received from the other country are sent to the competent authority, which after registration sends it to the ICT-department. There the files are read, and put to the disposal of the risk management department. After a process of weighing this information against other (domestic) information, decisions will be taken about what will be done with the data. There are three possibilities:

- the most valuable information will be put into the computerised assessment system as one of the elements to establish the assessment of a taxpayer by the central computer.(i.e.information about wages or pensions received from other countries).*
- other valuable information will be sent to the regional risk management departments to work with it actively. There the information can serve as an indication that some investigation is needed on certain branches of commerce.*
- other information is put in a database, and made available to the tax administration more as an accessory source of knowledge when the central computer has already decided that a certain taxpayer has to be scrutinised by an individual tax official because of some other item."* (De Goede/Hemels/Schenk 2009: 15).

The Netherlands does not have a tracking system to follow up on the use of the received data by the tax administration. However, spot checks are executed to assess the impact of the automatic exchange.

The Netherlands uses the most recent OECD format (STF), but is also able to use information sent in the SMF format. Transmissions take place at least once a year.

With respect to spontaneous information exchange, data on savings or other bank information, data on securities and data on royalties may be spontaneously exchanged with all treaty partners. The legal basis for this exchange is the bilateral tax treaty, the EU-directive 77/799/EEC and/or the OECD/COE Convention on Mutual Assistance in Tax Matters.

5.9.3 Statistics about results

The Netherlands are reported to be effective at automatically matching information with taxpayers because they are centrally analysing the data (IV8). Information about the automatic matching ratios is not available for publication (IV14).

The percentage of data received for which the tax administration can find a corresponding taxpayer automatically differs per country. For data that cannot be linked to tax payers automatically a manual procedure is available. De Goede/Hemels/Schenk (2010: 25) mention that only 2,4% of the information received under the EUSTD could not be used in 2007:

"In answer to questions of members of Parliament the Dutch undersecretary of Finance stated in the summer of 2007 that that the Netherlands received about 96.000 data concerning payments of interest in the second half of 2005. About 4000 data were incomplete which made it impossible to identify the receiver of the interest. These data were returned to the country of origin. The other data were used in the tax assessments. In 2007, again most information was exchanged because of the Savings Directive: 207,000 data on interest payments to 33 countries were exchanged and 165,000 data from 31 countries were received. [...] Taking into account that only about 2,4% of this large bulk of information could not be used, it seems that this automatic exchange of information seems to be relatively efficient." (De Goede/Hemels/Schenk 2009: 25).

In general, the Netherlands Ministry of Finance explained the following determinants for matching ratios apply: if data are received in a strictly structured form the matching rates are the highest. The use of free text fields can cause obstacles. Other obstacles are language and spelling differences. The matching ratio for the EUSTD-data is higher than the data received under bilateral agreements.

For the first time the Netherlands MoF published statistics on the automatic and spontaneous exchange of information in June 2012, which contain total numbers of exchanged records per country, but not by type of income⁶⁵ and without relevant additional details.

In general, spontaneous information is considered very useful, as this will normally be information detected by a tax official of the sending country who suspects irregularities on the basis of his findings in tax returns or during tax examinations.

5.9.4 Sanction and supervision of reporting obligations

If paying agents fail to correctly report the information they are obliged to report, the sanction of Article 4 p (EUSTD) and 11 NIAA juncto Article 68 or 69 GSTA apply. With regard to all information, including bank information, these articles provide that any person failing to comply with a request for information

⁶⁵ On page 28, and 84-85, here: <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/jaarverslagen/2012/05/16/bijlage-kamerbrief-over-beheerverslag-belastingdienst-2011/bijlage-kamerbrief-over-beheerverslag-belastingdienst-2011.pdf>; 13.8.2012.

will be penalised by a term of imprisonment of up to six months or a fine of EUR 7,600.

If the failure is intentional, defaults may be sanctioned by a term of imprisonment of up to four years (or six years in case of falsifications) or the highest of the following amounts: a fine of the fourth category (EUR 19,000), or of the fifth category (EUR 76,000) in case of falsifications, or 100% of the unlevied tax (IV14).

The Tax and Customs Administration may also file an appeal with a civil court to obtain a court order to provide information. Simultaneously, the tax authorities will request and the court will grant damages imposed on a daily basis in case of non-compliance.

5.10 Norway

5.10.1 Institutional and research background

The Norwegian tax administration ("Skatteetaten"⁶⁶) is the competent authority for automatic information exchange. Not all questions in the questionnaire were answered by the Norwegian Ministry of Finance. Furthermore, the response demanded that no further contact be made with the responding authorities.

While highlighting Norwegian leadership on automatic tax information exchange, the Global Forum peer review report of Norway is surprisingly silent on any details about Norwegian experiences and practices of automatic tax information exchange (GF 2011c: 14; 62).

5.10.2 Overview

Because the relevant questions have not been answered, the number of countries Norway exchanges relevant income information with on an automatic basis under bilateral tax treaties remains unknown. The Norwegian MoF reported, however, that the transmission of such data occurs once a year, about six to eight months after the tax year end, in the format of OECD's SMF (standard magnetic format). Broadly speaking, the information received from a foreign tax authority is transmitted from the central Norwegian competent authority (Norwegian tax administration) to the local/regional tax office.

With respect to the Nordic Convention, the process is similar. Additionally, it has been reported that the incoming information is both automatically and manually matched with the beneficial owner and quality assessed by the Directorate of Taxes before distribution to local tax offices. The local tax office compares the received data with the information provided in the tax return of the identified beneficial owner of the foreign income. If foreign income is not reported by the

⁶⁶ <http://www.skatteetaten.no/en/International-pages/>; 14.6.2012.

beneficial owner it might be an indication on tax evasion and the beneficial owner will then be subject to investigation. The automatic information exchange under the Nordic Convention includes interest, dividend and royalty payments.

Information on financial accounts with banks will be sent as spontaneous information exchange if the taxpayer is not liable to tax in Norway for the reported income and if the data is not already sent as automatic exchange of information.

5.10.3 Statistics about results

With respect to both AIE under the Nordic Convention and under bilateral exchange processes, according to the MoF, no extensive analyses or impact assessments have been carried out. However, there is an annual analysis on -

- a) how many of the reports received through the automatic exchange are subject to assessment at the local tax offices;
- b) how many of these reports include income information that has not been reported previously in the beneficial owners' tax returns; and
- c) the amount of income these pieces of information are representing. The amounts are not broken down into dividends, royalties and interests but include every payment type.

Regarding bilateral information exchange, the primary problem for increased matching ratios is reported to be the lack of transmitted TINs and/or the date of birth. Most foreign data providers (third parties; e.g. banks, employers etc.) do not report the foreign TIN to their tax administrations. Therefore, they are not able to include such information in the automatic exchange and the receiving country (i.e. Norway) only has the name and address information to use in the matching process. With respect to spontaneous information exchange under bilateral treaties, the MoF reports that neither analyses nor an impact assessment of the spontaneous exchanges have been carried out.

However, the OECD reported in 2012 (18):

*"In 2009, Norway received automatic exchange of information from a number of its treaty partners. Files above a certain threshold were verified against the returns of income filed by taxpayers in Norway. Results of the investigation disclosed that in **38.7% of the cases income** which was taxable in Norway **had not been reported**."* (OECD 2012: 18; emphasis in original).

The main problems for processing the data received under the Nordic Convention are reported to be the matching of the data with the correct beneficial owner of the income and identifying the precise nature of the payments. Cross-country differences in defining income types and different tax-year ends, resulting in double taxation and other technical assessment issues are reported to be

problematic when using the AIE-data in the tax assessment process. In addition, the verification of situations in which the beneficial owner denies having received foreign income reported through AIE may pose problems. The main causes for matching problems are again the lack of TINs and/or the date of birth of beneficial owners.

Banks were mentioned as being obliged to report regularly to the tax administration. However, the terms under which Norway collects the information necessary to reciprocate automatic information exchange as a provider of information have not been specified.

5.10.4 Sanction and supervision of reporting obligations

No information on the sanction or supervision of the reporting obligations has been provided.

5.11 Spain

5.11.1 Institutional and research background

The Spanish tax administration ("Agencia Tributaria"⁶⁷) did not respond to our questionnaire. EATLP confirmed in 2009 that detailed information on AIE in Spain is not publicly available (Herrera 2009: 6). Because no other meaningful publicly available sources on AIE-practices in Spain have been identified, the Spanish experience with AIE remains largely undocumented.

5.11.2 Overview

The Spanish tax administration has entered into agreements on automatic information exchange with a number of countries. However, these agreements are not made public and their scope remains unknown. Herrera reported in 2009:

"Firstly, one can make reference to the agreements on automatic exchange of information. We did not have direct information about them as they are not published officially. We made contact with the Ministry of Economic and Treasury but we were not able to have access to these agreements. Therefore, one can not get to know the actual scope of their content." (Herrera 2009: 6).

The OECD reported that Spain engages in automatic information exchange with 31 countries (OECD 2012: 16), which corresponds to the number of countries implementing compulsory AIE under the EUSTD by end of 2011⁶⁸.

⁶⁷ <http://www.agenciatributaria.es/AEAT.internet/Inicio.shtml>; 28.3.2012.

⁶⁸ http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/rules_applicable/index_en.htm; 8.8.2012.

5.11.3 Statistics about results

As for EU-member states, disaggregated numbers for AIE under the EUSTD and under bilateral treaties are not available. For the tax year 2005, Spain reported having sent information affecting 20 countries, and concerning 1,854,821 taxpayers (Herrera 2009: 32). The number of affected countries is lower than the number of 22 EU-member states that participated in the AIE under EUSTD (EC 2008: 11).

In the category of non-EU member states, Spain is reported to have received AIE files for the tax year 2006 from the following countries: Australia, Canada, Chile, Iceland, Japan, South Korea, Norway, USA, Mexico (ibid.: 37). It is unclear to how many countries Spain sent information.

5.11.4 Sanction and supervision of reporting obligations

No information about the enforcement of sanctions or supervision under EUSTD or other AIE mechanisms has been found.

5.12 United States

5.12.1 Institutional and research background

The agency responsible for collecting and sending tax related information in the USA is the Internal Revenue Service⁶⁹ (IRS).

While the USA did not reply to our questionnaire, the USA makes publicly available substantial information about its practice of automatic information exchange. A report published by the Government Accountability Office (US GAO 2011) provides either legal references for the information provided or relies upon direct input by the Internal Revenue Service. One of the main findings of the report is that better performance information on exchange of tax information would improve overall effectiveness (ibid.: 33-35).

Recently, the IRS published new regulations on the reporting of interest paid to non-resident individuals with US bank deposits which will enter into force on 1 January 2013 and which will be relevant for the US automatic information exchange policy (IRS 2012; Spencer 2011).

5.12.2 Overview

Specific questions about matching ratios or the precise list of countries with whom the USA exchanges tax information automatically on the relevant categories of payments or income could not be answered. The report explicitly mentions that such information is confidential:

⁶⁹ <http://www.irs.gov/>; 11.5.2012.

"Automatic exchange partners are not listed because that information is confidential." (US GAO 2011: FN 30, 27).

The legal arrangements under which the USA may engage in AIE on the relevant types of payments include DTAs, TIEAs and reciprocity agreements on FATCA⁷⁰.

Overall, the USA engages in AIE with 25 countries (US GAO 2011: 23). However, the GAO-report explains that there is no more specific information available, and more specific information cannot be inferred from the existence or absence of a particular clause or treaty on the actual practice of automatic information exchange:

"In general, the text of tax treaties and TIEAs is written broadly, allowing for specific, automatic, and spontaneous tax information exchanges. [...] Some arrangements contain provisions that outline particular types of information-gathering measures beyond specific exchanges upon request. For example, the U.S.-Austria treaty explicitly states that 'states shall spontaneously or upon request exchange information' and that 'states may agree on information to be furnished on a regular basis.' Several other tax treaties state that exchange of information shall be on a 'routine basis' or 'upon request' with reference to particular cases. [...]"

Several TIEAs specifically provide for automatic and spontaneous exchange of information in addition to providing information upon request [FN 23: Specific mention of automatic or spontaneous information exchanges does not appear in TIEAs signed after 1991.]. The presence of automatic or spontaneous exchange language in an agreement does not mean such exchanges necessarily happen, and the absence of such language does not mean automatic or spontaneous exchanges do not occur, as treaties and TIEAs are generally broad enough to permit such types of exchange." (US GAO 2011: 16-18; [TJN-note: Footnote 23 on page 18 of US GAO 2011).

In strictly legal terms, and not implying that actual AIE takes place with those jurisdictions, seven of US TIEAs included a provision for automatic information

⁷⁰ For instance with Mexico

(http://www.alacrastore.com/storecontent/BNA_Banking_Daily-Clears_Way_for_Mexico_Authorities_To_Investigate_Its_Citizens_U_S_Accounts-2101-6416; 11.5.2012) and with France, Germany, Italy, Spain and the United Kingdom (<http://www.treasury.gov/press-center/press-releases/Documents/020712%20Treasury%20IRS%20FATCA%20Joint%20Statement.pdf>; 11.5.2012) and with the Netherlands (<http://94.228.135.80/nieuws/2012/03/08/nederland-bereid-om-aan-te-sluiten-bij-joint-statement-vs-en-g5-inzake-fatca.html>; 11.5.2012). The proposed regulations 2002 to reciprocate EUSTD never entered into force. See Spencer (2005) for details about these 2002 proposed regulations.

exchange (US GAO 2011: 69). These TIEAs are the ones with the Marshall Islands, Honduras, Peru, Dominican Republic, Mexico, St. Lucia and Grenada.

With respect to the new bank deposit reporting obligations entering into force on 1 January 2013, the data collected by the US through these regulations is announced to be exchanged automatically with all those tax treaty partners which IRS deems to respect confidentiality requirements and to reciprocate in automatic information exchange (IRS 2012: 23393). However, it is important to remember that those new reporting requirements are bypassed through the qualified intermediary programme which offers foreign financial institutions exemption from these reporting obligations under certain conditions⁷¹. Therefore, the automatic information exchange the USA is able to offer currently and beginning in 2013 is severely limited in scope.

5.12.3 Statistics about results

The only available statistical information on AIE states that the USA engaged in 2010/2011 in AIE with 25 countries and that the USA sends approximately 2.5 million records and receives 2.1 million records (US GAO 2011: 23).

The kinds of underlying payments were not specified in detail:

"Through automatic exchange of information, the United States provides some treaty partners with information on taxable income and federal tax withholding related to certain types of income received by U.S. nonresidents.

IRS officials told us that the information that the United States receives through automatic exchange of information varies by treaty partner and includes data on wages, interest, dividends, and other forms of income." (US GAO 2011: 23-24).

With respect to spontaneous information exchanges, the low numbers suggest that the US spontaneous information exchange does not include unilateral provision of bulk data (which some countries qualify as spontaneous information exchange):

"Regarding spontaneous exchanges, the United States sends about 10 spontaneous exchanges of information to its treaty partners annually, according to EOI/OO officials. They also said that the United States receives around 300 spontaneous exchanges of information annually, mostly from developed countries with sophisticated tax systems, and that the number fluctuates widely from year to year. [...]"

⁷¹ See TJN's database reported on USA in 2011:
http://www.secrecyjurisdictions.com/sj_database/USA.xml#t30; 14.5.2012.

Nevertheless, officials noted that spontaneous exchanges have led to some significant tax assessments, including several of \$100,000 or more. Taxpayers affected by spontaneous exchanges have at times alerted IRS to others who turned out to have significant additional tax liabilities. In at least some cases, IRS would not have known about the noncompliance in the absence of the spontaneously shared information." (ibid.: 24).

5.12.4 Sanction and supervision of reporting obligations

In the GAO-report, there is no information available on supervision of reporting entities, nor is there any detail about the reporting entities. There are no special sanctions either under the regular reporting obligations or the new regulations if banks or other payers fail to properly report payments (including identification of the beneficial owners).

The general sanctions/penalties rules apply to all persons who fail to file forms when required, to withhold taxes when required, to provide information when required. This applies equally to QIs and withholding agents etc. who are reporting information for AIE purposes to the IRS.

However, it is not clear how the general supervisory and sanction regime relates to failure to report information.

6. EUSTD - legal implementation, administrative practice and economic consequences

6.1 Overview

By end of 2011, through the EUSTD and associated treaties, 31 jurisdictions have implemented compulsory and reciprocal automatic information exchange on interest payments. By July 2012 this had increased to 33⁷². Since 2010, the European Commission has published two reports on the functioning of the EUSTD.

The first "*Ad hoc report on the correct and effective application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income*" (EC 2011⁷³) was published in 2011. It reviewed the way in which the EUSTD has been implemented by EU-members and came to the conclusion that variance exists in the implementation of the directive (e.g. in relation to trusts and foundations), but that those differences would be remedied by the current proposal for amending the EUSTD.

⁷²http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/rules_applicable/index_en.htm; 8.8.2012.

⁷³[http://ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/savings_tax/implementation/sec\(2011\)775_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/savings_tax/implementation/sec(2011)775_en.pdf); 13.3.2012.

Two kinds of specific complaints directed at named countries stand out in the first review. In relation to the agreements with non-EU territories and countries, Spain commented that the data format used by all except Switzerland and the Netherlands dependencies is deficient (EC 2011: 20; most likely on paper or Excel-sheets). Portugal repeated concerns about inconsistencies in the format of the transmitted data specifically for Guernsey, the Isle of Man and Gibraltar ('a file for each paying agent using different formats inclusive within the same file'; EC 2011: 20).

A second kind of specific concern relates to the amounts and quality of the transmitted data. Spain observed that hardly any information is provided by the "Caribbean territories and that **Andorra, Liechtenstein, Monaco and San Marino hardly provide any information to ES authorities.**" (ibid.; emphasis in original). France stated that Swiss banks have established mechanisms to circumvent the EUSTD, and Portugal claims that Switzerland "*does not comply with the rules on identifying beneficial owners, since it provides neither their tax identification number nor their date of birth.*" (ibid.).

The second "*Report from the Commission to the Council in accordance with Article 18 of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments*" (EC 2012a⁷⁴) was published on 1 March 2012. The report claims that "*Member states that have carried out an assessment have reported positive compliance results.*" (page 4).

This report is based on a more detailed "*Commission Staff Working Document presenting an evaluation for the second review of the effects of the Council Directive 2003/48/EC*" (EC 2012b⁷⁵). The aim of the Working Document and the report was to provide for an economic evaluation and for more information about the functioning of the EUSTD, including the way the data is analysed at national level. To this end, a questionnaire about the use of the data was sent to the EU-member states in July 2011, and the results were discussed in September 2011. Due to a lack of available data, however, the working document does not contain hard and fast results concerning the fiscal or economic consequences of the Directive.

Because the working document is 84 pages long and densely packed with highly complex analyses, it is impossible to reproduce its findings with all their nuances here. However, it paints an in-depth picture of the functioning and mechanisms of (multilateral) automatic information exchange and therefore is highly

⁷⁴[http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/com\(2012\)65_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/com(2012)65_en.pdf); 8.3.2012.

⁷⁵[http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/swd\(2012\)16_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/swd(2012)16_en.pdf); 8.3.2012.

recommended reading for anybody interested in the subtleties of this subject. The most relevant findings are summarised below.

6.2 Implementation and Evaluation

Feedback given by most EU-member states is that both the data quality and usefulness of the data has improved during the lifespan of the EUSTD, and that the data quality is higher than the quality of data received under bilateral treaties, largely because of the more structured data format (EC 2012b: 11). It was broadly agreed by most member states that the absence of a correct tax identification number (TIN) and the simultaneous absence of the date of birth in any given record poses serious problems for data processing (ibid.).

Most member states used the information received for specific audits on taxpayers. However, only four member states reported statistics about these audits (not published), and most member states were not aware of the number or results of these audits (ibid.: 10). As to whether the reported information has led to investigations on the sources of the underlying funds independent of the tax on the interest, most member states replied that either they had not used the data for this purpose or are not aware of the results of such investigations since the information was used for audits without receiving feedback on those audits (ibid.: 12).

Most member states appear not to have carried out a quantitative assessment on the effects of the EUSTD on taxpayer compliance. Those that have undertaken such assessments reported positive compliance results (ibid.). A particular problem for the assessment of compliance appears to be that the internal tax control systems of member states do not provide sufficiently specific information to measure increased compliance (ibid.: 13).

The overall amount of interest covered by the EUSTD peaked in 2007 with EUR 38.9 billion. The largest share of this (EUR 23.4 billion) was reported by the UK and concerned the sales proceeds of shares or units in certain investment funds by German non-resident investors (ibid.: 14). According to independent ECB-data, the total amount of (underlying) euro-area household cross-border deposits has remained stable over recent years and peaked in September 2008 at EUR 287,4 billion dropping slightly to EUR 280,7 billion in May 2011 (ibid.: 19).

However, the annual amounts of interest reported by individual member states under the EUSTD display a high level of fluctuation which is largely unexplained by changes in asset composition and interest using the same ECB-data (17-19). In addition, there is also noticeable fluctuation in the number of paying agents in member states although for most member states this number has stabilised over the last years. Furthermore, *"there is noticeable fluctuation from one year to the*

next of the number of beneficial owners reported by many Member States. Given the stability of cross-border deposits, one would have expected to observe more continuity in the number of beneficial owners reported by Member States under the Directive.” (ibid.: 19).

This points to a possible failure of correct reporting by paying agents. Indeed, on the question of the completeness of interest payments reported by paying agents, most member states indicated that they had not carried out any audits to check paying agents’ correct implementation of the reporting requirements (ibid.: 19).

More importantly, the EU-Commission arrived at startling results using ECB statistics on the balance of deposits in monetary financial institutions in each of the member states placed by non-resident households (individuals) from the euro-area. The ECB made these statistics available in detailed breakdowns and together with other ECB-data they allowed the Commission to produce a detailed estimate of the ratio of coverage of the EUSTD (ibid.: 41-44).

Because of various data mismatches between the ECB-statistical data and the categories used in the EUSTD, this method would give *“only the absolute minimum of coverage of the underlying tax base, since the scope of the ECB data would always be smaller than the scope of classical interest income [...] Therefore, any coverage above 100%, even substantially higher, should be common. On the contrary, actual coverage, which is substantially lower than 70% consistently across all of the four years surveyed would merit further investigation and follow-up with the relevant Member States.”* (ibid.: 44).

The most significant problem was found in the UK where the coverage between 2006 and 2009 was on average 12.83% without a clear trend of improvement. Similarly, Cyprus, Portugal and Romania were also extremely problematic (with the values 47.18%, 27.35% and 36.17% respectively). In comparison, Finland has an average coverage ratio of 2,484% (Sweden 4,733%, Italy 959%; pages 45-46).

The ECB data further suggests that there was no substantial flight of deposits from EUSTD-countries before or after the introduction of the EUSTD (ibid.: 19; 47). However, BIS data indicates that deposits within some EUSTD-countries from non-EU member states continued to grow around the introduction of the EUSTD, whereas those from EU member states stagnated. While many country’s refusal to publish more detailed breakdowns of BIS data only allowed the analysis of 8 member states and Switzerland from 2002-2006, and this data does not allow differentiation between corporate and individual deposits, those 9 countries exhibit a trend of stagnating inward cross-border bank deposits (liabilities) from EU member states while those deposits from non-EU member

states continued to grow (EC 2012b: 37-38). This could be attributed to a reluctance of EU-investors to invest in countries that are subject to the EUSTD.

Another finding of the BIS data concerns the possible interposition of offshore intermediary structures such as trusts or shell companies to hold the deposits in EU member states. Using aggregate BIS data for all non-bank deposits in offshore centres, the study concluded that:

"The vis-à-vis results revealed that a significant share of the non-bank deposits in Member States, and in within the network of the Savings agreements, are held by customers located in offshore jurisdictions." (EC 2012b: 41).

This finding is further corroborated by data provided by the Swiss National Bank (ibid.: 50-56) and underlines the necessity of including paying agent upon receipt provisions in the third country agreements of the EUSTD, as is planned in the amendment proposal to the EUSTD.

7. Conclusions

Automatic information exchange for tax purposes is far more widespread than previously thought. Among the 34 OECD member states, only four countries (Austria, Israel, Switzerland⁷⁶, Turkey) do not actively engage in AIE by sending AIE-records to other nations. Of the twelve countries reviewed in this report, only Austria does not engage in AIE on bank interest payments. The opponents of AIE and the defendants of strict bank secrecy are an isolated and tiny.

The available comparative information on existing AIE is improving, but remains unsatisfactory. Specifically, information on those types of income which are most mobile and for which tax evasion is most rampant, such as capital returns (interest, dividends, royalties), is scarce. This study has merely shed a narrow spotlight on a few countries. Many more countries need to be scrutinised and enhanced access to data is needed to fully assess, improve and spread AIE with the aim of reducing tax evasion and international and national economic inequalities.

A key parameter to assess the effectiveness and efficiency of AIE for countering tax evasion is the automatic matching ratio (AMR). This measures how many of

⁷⁶ Strictly speaking, it is unknown whether Switzerland does or does not actively engage in AIE since Switzerland was the only OECD member state which did not participate in OECD's recent survey on AIE (OECD 2012: 16). This refusal to participate could be understood if Switzerland engaged in AIE in some types of income, at least as a recipient, but the Swiss government would wish to hide policy incoherence and save itself from embarrassment as it is publicly arguing and working against AIE on bank information. It could also be understood as a step of extremist boycotting of AIE.

the received AIE-data records (which contain payment information) can be connected automatically to resident taxpaying individuals or companies out of the overall number of received AIE-records. Our research found these numbers are often not made available and sometimes are not collected.

Where AMR have been made available, the ratios have been consistently and substantially higher for exchange processes relying on a strict common protocol for the data format, such as under the European Savings Tax Directive (EUSTD). The ratios for bilateral exchanges ranged between 70% and a minimum of 75% while the ratios for specific and multilateral exchanges ranged between 85% and 99%. This finding has been confirmed by a number of respondents.

In addition to the common protocol, a key determinant for rising AMRs is the transmission of the birthdate or the residence country's taxpayer identification number of the recipient of the payment. The name and address of the recipient are not considered sufficient to allow for automatic matching. Erroneous taxpayer identification numbers have also been mentioned as a problem.

Another weakness in the existing AIE processes is the ambiguity of the term "recipient" of reportable payments. The AIE processes and underlying reporting obligations appear to leave substantial discretion to the paying agents on how to define the recipient of payments (natural person, company, etc.). Therefore, beneficial owner information is rarely collected and transmitted.

Denmark stands out in that, at least for bank interest payments, it was the only country reviewed which was found to always collect beneficial owner information for non-resident investors, and transmits this information in all of their AIE-processes. A review of the implementation of the EUSTD confirms substantial differences in how beneficial owner requirements are interpreted and applied in the EUSTD (EC 2011: 8).

Only a small number of countries apply criminal sanctions in cases of willful misreporting by economic operators, such as banks. If economic operators whose information reporting feeds the records to be sent out under automatic information exchange are not compliant with reporting obligations, the quality of the data transmitted under AIE suffers accordingly. Low administrative fines and the absence of criminal sanctions create weak incentives for compliance with reporting obligations.

The issues of compliance and use of criminal sanctions have not received sufficient attention from policy makers. While OECD's Global Forum publishes some information about the sanctions available for a bank's failure to respond to a request for information, no statistical information on empirical experiences has been published. More importantly, there is no public and comparative information

available on what happens when banks fail to properly comply with routine reporting obligations. The latter information appears not to be available in meaningful breakdowns even in the national context. The EUSTD currently does not prescribe any sanction mechanism for failure to report even when economic operators act in bad faith, and the current proposal for amending the EUSTD fails to change this omission.

An evaluation and analysis by the EU-Commission suggests that severe compliance issues arise particularly with British Overseas Territories and UK Crown Dependencies (EC 2011: 20) as well as with Switzerland (ibid). More importantly, through triangulation of ECB data the EU-Commission found outstanding and unexplained low ratios of interest payments being reported by the United Kingdom (ibid.: 45-46). To a lesser extent, ECB data also indicates unexplained low ratios of EUSTD coverage for Cyprus, Portugal and Romania (ibid.).

Multilateral procedures of automatic information exchange were shown to yield better automatic matching ratios and thus to improve the effectiveness and efficiency of AIE. Reliance on bilateral treaties and procedures for international tax cooperation seems to be highly problematic for other reasons as well in a globalised economy⁷⁷. Therefore, existing multilateral processes should be the starting point of an effective global system of AIE instead of a patchwork of bilateral treaties.

Three possible multilateral platforms and processes are currently available. The first is the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters⁷⁸. However, this platform only allows, but does not require, its members to engage in AIE. There is also no indication that this Convention is currently used for AIE, or that it would develop multilateral structures for AIE. Rather, it seems to rely on optional, additional bilateral agreements to implement AIE. As such, it is vulnerable to avoidance using structures involving multiple jurisdictions. Furthermore, transparency and governance questions about the Convention remain unaddressed⁷⁹.

⁷⁷ For instance, see the ease of avoiding any bilateral treaty through secrecy structures layered over multiple jurisdictions in our analysis of the proposed Swiss final withholding tax deals with UK, Austria and Germany, here:

<http://taxjustice.blogspot.de/2011/10/revealed-loopholes-which-destroy-hmracs.html>; 10.8.2012.

⁷⁸ <http://www.oecd.org/ctp/exchangeofinformation/conventiononmutualadministrativeassistanceintaxmatters.htm>; 10.8.2012.

⁷⁹ <http://taxjustice.blogspot.de/2012/02/council-of-europeoecd-convention-new.html>; 10.8.2012.

The second is the EUSTD and the amendment protocol under discussion since 2008⁸⁰. The proposed amendments could result in an obligation to create trust registries. While this directive and its amendment proposal is limited to (a broad definition of) interest payments, the complementing EU-directive on Administrative Assistance in Tax Matters could expand the scope of payments covered under AIE in the EU to dividends, royalties and capital gains⁸¹. The amendment is currently blocked by vetoes from Austria and Luxembourg, both hiding behind the Swiss bilateral deals with Austria, Germany and the UK⁸².

The third potential multilateral platform for AIE is FATCA. FATCA is a US policy entering into force on 1 January 2013 that obliges financial institutions to report bank account information of US accounts to the US tax administration. Unless a bank wants to pay a 30% penalty tax rate on their US investments, which no bank active in the US market can afford, banks with a US connection are obliged to comply with these reporting obligations, including their branches and subsidiaries⁸³.

In order to ease the administrative burden for implementing FATCA and to allow for reciprocity, the US has issued a joint communiqué with the governments of France, Germany, Italy and Spain on 26 July 2012⁸⁴. In this communiqué, these governments state that:

"This is an important step forward in establishing a common approach to combat tax evasion based on automatic exchange of information. France, Germany, Italy, Spain, the United Kingdom and the United States will, in close cooperation with other partner countries, the OECD and where appropriate the EU, work towards common reporting and due diligence standards to support a move to a more global system to most effectively combat tax evasion while minimising compliance burdens."

While this is a promising statement, the location of these efforts at the OECD's Committee of Fiscal Affairs risks slowing progress towards this common goal due to the OECD's weak track record on automatic information exchange and related subjects, such as their work on taxpayer identification number. Austria, Switzerland and Luxembourg, three outspoken opponents of AIE are members of

⁸⁰ A detailed analysis of this amending proposal and updates on its current political status can be found here: <http://www.the-best-of-both-worlds.com/>; 10.8.2012.

⁸¹ <http://taxjustice.blogspot.de/search?q=eu+administrative+assistance>; 10.8.2012.

⁸² <http://blogs.euobserver.com/shaxson/2012/03/08/germany-sides-with-the-tax-havens-in-transparency-fight/>; 10.8.2012.

⁸³ See <http://taxjustice.blogspot.de/2012/03/fatca-progress-towards-automatic.html> (10.8.2012) and http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1969123 (10.8.2012).

⁸⁴ www.treasury.gov/press-center/press-releases/Documents/joint%20communique.pdf; 10.8.2012.

this Committee and are likely to place endless barriers in the way of progress. Another risk arises from OECD's constituency which lacks representation of developing countries and generally fails to take their interests on board⁸⁵, as is demonstrated by the OECD's prominent role in blocking the work of the UN Tax Committee⁸⁶.

The most recent report on AIE published by the OECD in June 2012 provides hope that the OECD might increase its engagement on AIE under the pressure from G20 nations such as India and Australia. Significantly, however, this report was not published by the OECD's Committee of Fiscal Affairs, but by the Secretary General of the OECD instead. The Committee appears constrained in its freedom to pursue AIE, including efforts to multilateralise FATCA, by the vetoes available to steadfast AIE-opponents: Austria, Luxembourg and Switzerland. It remains to be seen whether G20, the FATCA-coalition countries and others succeed in breaking the gridlock imposed by this unholy trinity. Otherwise, fora such as the United Nations, the EU or regional arrangements such as ATAF and CIAT may be better placed to make substantial progress.

⁸⁵ See for instance in the area of transfer pricing, here: <http://taxjustice.blogspot.de/2012/06/arms-length-method-is-dead-long-live.html>; 10.8.2012. Or in the area of tax information exchange, here: www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 10.8.2012.

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tax.org/jurisdictions/AT#peerreview](http://www.eoi-tax.org/jurisdictions/AT#peerreview); 19.9.2011.

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Interviews

Unless stated otherwise, most parts of the country chapters are based on the answered questionnaires and follow-up emails and phone calls with the corresponding officials. Occasionally, a reference to specific interviewees (either by email or phone) was made by indicating the IV (=interviewee) and a number. The list below gives a rough indication of the kind of institution the corresponding interviewee represents. The questionnaire can be found in Appendix III below.

Interviewee-Code	Institution	Country
IV1	Tax Administration	Germany
IV2	Ministry of Finance	Germany
IV3	BAFIN	Germany
IV4	Tax Administration	Germany
IV5	BAFIN	Germany
IV6	Ministry of Finance	Germany
IV6	Ministry of Finance	Germany
IV7	Tax Administration	Germany
IV8	Tax Administration	Germany
IV9	Tax Administration	Germany
IV10	Private Bank	Germany
IV11	Ministry of Finance	Finland
IV12	Tax Administration	Spain
IV13	Ministry of Finance	Austria
IV14	Ministry of Finance	Netherlands
IV15	Ministry of Finance	Denmark
IV 16	Tax Administration	Argentina
IV 17	Academic	USA
IV 18	Tax Administration	Australia
IV 19	Civil Society	France

Appendix I: Summary Table of Country Reviews

Information automatically sent by country											Information received	
Types of Income Covered				Types of Identification Information				Supervision and sanction of reporting obligations		Automatic Matching Ratio (AMR)		
	Interest	Dividends	Royalties	Recipient's name and address	Recipient's TIN or birthdate	BO's name and address	BO's TIN or birthdate	Administrative sanctions (fines)	Criminal sanctions (prison terms)	For all AIE	For specific income	
Argentina	?	?	?	Y	N	N	N	Y	N	?	?	
Australia	Y	Y	Y	Y	N	N	N	?	?	75%	?	
Austria	N	N	N	NA	NA	NA	NA	NA	NA	?	?	
Belgium	Y	N	Y	N/?	N/?	Y/?	Y/?	?	?	70%	85%	
Denmark	Y	Y	?	Y	Y	Y	Y	Y	Y	>75%	?	
Finland	Y	Y	Y	Y	Y	Y/N	Y/N	Y	N	?	99%	
France	Y	Y	Y	Y	Y	N	N	?	?	?	?	
Germany	Y	?	?	N	Y	N	N	Y	N	?	90%	
Netherlands	Y	Y	N	Y	Y	N	N	Y	Y	?	98%	
Norway	Y	Y	Y	?	?	?	?	Y	?	?	?	
Spain	Y	?	?	?	?	?	?	?	?	?	?	
United States	Y/N	?	?	Y	N	N	N	Y	Y	?	?	

Appendix II: Table of Country Reviews

Information automatically sent by country										Information received		
	Types of Income Covered			Types of Identification Information				Supervision and sanction of reporting obligations		Automatic Matching Ratio (AMR)		Notes
	Interest	Dividends	Royalties	Recipient's name and address	Recipient's TIN or birthdate	BO's name and address	BO's TIN or birthdate	Administrative sanctions (fines)	Criminal sanctions (prison terms)	For all AIE	For specific income	
Argentina	?	?	?	Y	N	N	N	Y	N	?	?	Refers only to domestic bank interest reporting, which very likely feeds AIE. Monthly reports include all (fresh) deposits per financial account, account balance, and the names and addresses of account holders. Reports about accounts of nonresident individual account holders are not required to include any identification number. Therefore it is assumed that the available information is also included in automatic information exchange records (i.e. name and address of account holders).
Australia	Y	Y	Y	Y	N	N	N	?	?	75%	?	The matching ratio relates to tax year 2007 and to all received income records, while the majority of these records concern the three types of income relevant for this research. In case of non-residents, birthdate is not required in the annual investment reports. It is unclear if the same sanctions apply to routine reporting obligations as apply for failure to comply with requests for information. In the latter case, the third offense leads to criminal sanctions.
Austria	N	N	N	NA	NA	NA	NA	NA	NA	?	?	While Austria receives AIE-records from international partners, it does not send information about non-residents.
Belgium	Y	N	Y	N/?	N/?	Y/?	Y/?	?	?	70%	85%	The matching ratios refer to records for the tax year 2006. More up to date numbers have not been available. The identification information refers only to the EUSTD context. The Royal Decree implementing the EUSTD does not suggest that there are any specific sanctions available for paying agents' failure to correctly implement the reporting obligations.
Denmark	Y	Y	?	Y	Y	Y	Y	Y	Y	>75%	?	Identification section is certain only for interest payments. Birthdate and birthplace and country of birth or TIN are only required for accounts opened after 31 December 2003.
Finland	Y	Y	Y	Y	Y	Y/N	Y/N	Y	N	?	99%	There is a difference in the identification requirements between EU and non-EU recipients of interest payments. While payments made under the EUSTD require the beneficial owner of payments to be reported, payments which do not fall under EUSTD allow financial institutions discretion as to whether to include the account holder or beneficial owner of the bank account as the recipient of the payment. Currently, Finland has no matching statistics available except for one special project with Sweden on pensions.
France	Y	Y	Y	Y	Y	N	N	?	?	?	?	As for the bank account registry system FICоба, identity information about account holders must be reported (including address and birthdate) but not for differing beneficial owners of accounts. Therefore it is assumed that this information is also included in automatic information exchange records. Interest payments on savings deposit accounts paid to residents is reported apart from FICоба.
Germany	Y	?	?	N	Y	N	N	Y	N	?	90%	This section refers only to the reporting obligations under the EUSTD as other information has not been made available. Generally, the account holder is to be taken as the beneficial owner, and only in very exceptional circumstances (e.g. in case of doubt or if the account holder demonstrates that he/she does not beneficially own the payments) does the bank need to enquire about the beneficial owner. After finalising unspecified investigations and in case of continuing doubt, the bank can opt for the account holder being reported as the beneficial owner. The matching ratio of 90% relates to the incoming EUSTD-data.
Netherlands	Y	Y	N	Y	Y	N	N	Y	Y	?	98%	The matching ratio refers to data received under the EUSTD in 2007, and may include additional manual matching processes. The identification information refers to interest payments alone and may differ for dividend payments. Beneficial owners other than account holders need never to be reported, while account holders are always reported with TIN or birthdate/place and for non-residents in addition the full address.
Norway	Y	Y	Y	?	?	?	?	Y	?	?	?	It is not entirely clear if the criminal charges available for failures to comply with requests for information are also applicable for the routine reporting of information.
Spain	Y	?	?	?	?	?	?	?	?	?	?	It is only certain that Spain engages in automatic information exchange on interest income through EUSTD but it remains unclear if Spain also exchanges information on interest and dividends and royalties under bilateral agreements.
United States	Y/N	?	?	Y	N	N	N	Y	Y	?	?	Under interest reporting obligations in force from 1 January 2013, certain non-US recipients must be identified only by name and address, while (diverging) non-resident beneficial owners of bank accounts and interest payments are not explicitly required. This information will be used for AIE under certain conditions. However, QI arrangements offer an exemption from all reporting for all non-US persons investing in US bank accounts (and other passive investments) under certain conditions.

Appendix III: Questionnaire

PART I: Automatic and spontaneous information exchange under bilateral arrangements (e.g. double taxation avoidance agreements, memorandum of understanding, etc.)

1. With how many countries, if any, does your tax authority **automatically exchange** information on either **interest, dividend or royalty** payments on a regular basis (bilateral arrangements only)?
2. In case you automatically exchange information mentioned in question 1 above, please provide the **list of countries** with which you do automatically exchange tax information, the **type of income** covered, the **legal or administrative instrument** used for automatic exchange and the **year** you started implementing automatic tax information exchange with the respective jurisdiction.
3. In case you automatically exchange information mentioned under question 1 above, please specify the **volume of data** sent and received annually, if possible indicating the number of **taxpayers** covered, the **value** of the payments covered, if **natural and/or legal** persons were concerned, split by **country** and **type of income**.
4. In case you automatically exchange information mentioned under question 1 above, what is the **format used for transmitting the data**, and **how often** do transmissions occur?
5. How does your administration **process the received data** mentioned under question 1? Please describe the **concrete path the information is taking** and the role different paying agents and agencies are performing along the way.
6. **Has any research been carried out to analyze the use of the data** mentioned under question 1 and what consequences (i.e. tax penalties, prosecutions initiated, civil tax proceedings, portfolio investment patterns, etc.) may have resulted from the information exchange? Is there an **impact assessment** of the automatic exchange by your tax agency?
7. What is the **ratio of automatically matching** the received information described under question 1 above with tax returns of residents of your country (or how many pieces of information received under arrangements mentioned under question 1 do you receive annually, and for how many of those can you automatically find a corresponding taxpayer)?
8. What are the primary **problems or obstacles** in increasing the ratio mentioned in question 7 above?

9. Considering your country's role as a provider of tax information under existing treaty arrangements: what measures are in place to **supervise paying agents** who are responsible for providing information? What **sanctions** can be applied when paying agents fail to correctly report relevant information? Please guide us to the legal/administrative source for this information.

10. Does your tax administration **automatically** exchange any information about **other types of income or payments** than is mentioned under question 1 above? Please specify and guide us to a legal or administrative source for this.

11. In case your country **spontaneously** exchanges information on interest, dividend, or royalty payments, list the countries with which information has been exchanged spontaneously, the **types of income** covered, the **legal or administrative instrument** used for spontaneous exchange and the **year** you started implementing spontaneous tax information exchange with the respective jurisdiction(s):

12. In case you **spontaneously** exchange information mentioned under question 11 above, please specify the **volume of data** sent and received annually, if possible indicating the number of **taxpayers** covered, the **value** of the payments covered, if **natural or legal** persons were concerned, split by **country** and **type of income**.

13. Have you carried out any kind of **analysis about the use of the data** mentioned under question 11 above and what consequences (i.e. tax penalties, prosecutions initiated, civil tax proceedings, portfolio investment patterns, etc.) may have resulted from the information exchange? Has an **impact assessment** of the spontaneous exchange been carried out by your tax agency?

14. What is the **ratio** of automatically **matching** the received information described under question 11 above with tax returns of residents of your country?

15. What role do **registries of legal persons and/or arrangements** (such as a commercial registry) play in the automatic or spontaneous information exchange?

16. What role do **bank account registries** or automatic reporting obligations play in the automatic or spontaneous information exchange?

PART II: EUSTD - Legal Implementation and Administrative Practice

1. How does your administration **process the data** on interest payments received under the EU-Savings Directive ([Council Directive 2003/48/EC](#))? Please describe the **concrete path the information is taking** and the role different **agencies** are performing along the way.

2. Please describe to us **how** the information received through the mechanism mentioned under question number 1 above is **analysed with a view to identifying possible tax evasion**.
3. What are the **problems**, if any, arising with the processing and analysing of the data mentioned in question number 1 above?
4. How does the automatic **matching** of information received under the mechanisms mentioned under question 1 with information contained in individual tax returns work in practice? What **ratio** of the received information can automatically be "matched" to a resident taxpayer?
5. What are the primary **problems** or obstacles in increasing the **ratio** mentioned in question 4 above?
6. Please specify the **volume of data** sent and received annually under the mechanism mentioned under question 1 above, if possible indicating the number of **taxpayers** covered, the **value** of the payments covered, how many **bank accounts** of natural persons were concerned, split by **country**.
7. What happens if in an account covered by the mechanism mentioned under question 1 above there is **no interest accruing**, e.g. because clients agreed with their bank to have interest on a deposit to accrue in a country not covered by the EUSTD?
8. Did you carry out any kind of **analysis** about the use of the data mentioned under question 1 and what results (i.e. tax penalties, prosecutions initiated, etc.) may have been achieved through the data? Is there an **impact assessment** of the directive by your tax agency? What are the results?
9. Taking the opposite point of view (your country as a sender of the information mentioned under question 1): What kind and result of **supervision** does exist concerning the paying agents/economic operators? What **sanctions** are applied for a failure of correctly applying the reporting obligations? Please guide us to a legal/administrative source for this information.
10. Do you carry out **consistency checks** on the information **sent** in accordance with the provisions mentioned in question 9 above? What are the results of these consistency checks? What are the problems occurring?

PART III: Automatic and spontaneous information exchange under the Nordic Convention

1. How does your administration process information received on the basis of Article 11.1 of the Convention? What information is arriving from which country? Please describe the **concrete path the information is taking** and the role different agencies are performing along the way.

2. Please describe to us **how** the information received through the mechanism mentioned under question number 1 above is **analysed with a view to identifying possible tax evasion**.
3. What are the **problems**, if any, arising with the processing and analysing of the data mentioned in question number 1 above?
4. How does the automatic **matching** of information received under the mechanisms mentioned under question 1 with information contained in individual tax returns work in practice? What **ratio** of the received information can automatically be "matched" to a resident taxpayer?
5. What are the primary **problems** or obstacles in increasing the **ratio** mentioned in question 4 above?
6. Please specify the **volume of data** sent and received annually under the mechanism mentioned under question 1 above, if possible indicating the number of **taxpayers** covered, the **total value by type** of the payments covered, how many **bank accounts** of natural persons were concerned, split by **country**.
7. Have you carried out any **analysis** into the use of the data mentioned under question 1 and what results (i.e. tax penalties, prosecutions initiated, etc.) have been achieved through the data? Is there an **impact assessment** of the Convention by your tax agency? What are the results?
8. Considering your country's role as a provider of tax information under existing treaty arrangements: what measures are in place to **supervise paying agents** who are responsible for providing information? What **sanctions** can be applied when paying agents fail to correctly report relevant information? Please guide us to the legal/administrative source for this information.
9. What role do **registries of legal persons and/or arrangements** (such as a commercial registry) play in the spontaneous information exchange?
10. What role do **bank account registries** or automatic reporting obligations play in the spontaneous information exchange?
11. Does your country's legislation or administrative practice require the **publication of tax returns** natural persons and legal persons (companies) in a public space? If so, please specify what information may be omitted, to what persons such a publication requirement applies and how the information is published / who can view it. Please direct us to a legal/administrative source for this information. Are you aware of any instances in which this information has ever been abused?