



Money laundering and tax evasion risks in free ports

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Money laundering and tax evasion risks in free ports

Study at the request of the Special Committee on
Financial Crimes, Tax Evasion and Tax Avoidance
(TAX3)

This study provides an insight into the money laundering, tax evasion and tax avoidance risks connected with free zones, particularly those that function as (semi-) permanent storage for high value goods, often referred to as 'free ports'.

Conducted at the request of the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) the study follows up on concerns about free zones expressed in recent resolutions by the European Parliament.

The study is based on an analysis of relevant legislation, academic literature, annual and special reports by authorities, think-tanks and operators in the art business, articles in the media, interviews with experts at European level and at the OECD and a case study of the legal and supervisory framework at 'Le Freeport' in Luxembourg.

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Executive summary

Justification

This paper provides an insight into the money laundering, tax evasion and tax avoidance risks connected with free zones, particularly those that function as (semi-) permanent storage for high value goods, often referred to as 'free ports'.

It was conducted at the request of the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) and follows up on concerns about free zones expressed in recent resolutions by the European Parliament.

The paper is based on an analysis of relevant legislation, academic literature, annual and special reports by authorities, think tanks and operators in the art business, articles in mainstream and specialised media, interviews with experts at the European Commission, the OECD, authorities in Luxembourg and one of the licensed operators at 'Le Freeport' in Luxembourg.

The motivation to look into the case of the Luxembourg free port (Chapter 3) was twofold.

- Firstly, the free port in Luxembourg aims at (semi-) permanent storage of art and other high value assets. It imports the business model of the Geneva free port, which - within the EU - is a novelty, and it has one of the private shareholders of Geneva as its owner.
- Secondly, following a national risk assessment, Luxembourgish law makers realised that there were money laundering risks within the free port and, already in July 2015, decided to bring licensed free port operators under national anti-money laundering law almost five years ahead of the obligation to do so. Analysing the consequences of the application of anti-money laundering (AML) laws to the free port and its licensed operators could provide interesting insights into the potential effects on similar facilities elsewhere in the EU after the transposition of the fifth Anti-Money Laundering Directive (AMLD5), the deadline for which is 10 January 2020.

Free zones, free ports and customs warehouses

Free ports are warehouses in free zones, which were – originally – intended as spaces to store merchandise in transit. They have since become popular for the storage of substitute assets, including art, precious stones, antique, gold and wine collections – often on a permanent basis. Apart from secure storage, sales arguments in the free port business include the deferral of import duties and indirect taxes such as VAT or user tax as well as a high degree of secrecy.

The best-known free ports catering for 'investment art' are those in Geneva, Luxembourg, Singapore, Beijing, Monaco and Delaware. It is commonly understood that these jurisdictions consider a free port an addition to their attraction as an offshore financial centre.

However, free ports constitute only a small part of the high-end storage market. Customs warehouses, or bonded warehouses – the market for which is much bigger than for free ports – can offer the same security, indirect tax advantages and secrecy as free ports, even though there may be different administrative procedures in place as they are often managed by private companies.

Money laundering and ownership

Many works of art are still sold from one offshore company to another somewhere in the world, sometimes even paid for in cash or in kind. This makes the art market opaque and exposed to money laundering and tax evasion risks. In most free ports or customs warehouses, Luxembourg being an exception, almost anyone can bring in goods on behalf of someone else without disclosing the ultimate beneficial owner (UBO), which adds just another layer of secrecy for people who want to

hide from (tax) authorities or creditors. Moreover, in most cases the registered value of the goods depends solely on self-declaration, which leaves significant room for over- or under valuing.

In most free ports or customs warehouses, with the exception of the one in Luxembourg, precise information regarding the UBO of the goods is not available. The fifth Anti-Money Laundering Directive will broaden the scope of the directive and explicitly includes free port operators and other actors in the art market. They will become 'non-financial obliged entities' from 10 January 2020 onwards, and will therefore be subject to the same customer due diligence requirements, as for example real estate agents or notaries. They will also take on the role of AML gatekeepers as they will have to report suspicious transactions to the financial intelligence units (FIUs). This may have significant consequences for the success of free ports in the EU and on the art market as such.

When comparing the language in the AMLD5 and the Union Customs Code (UCC) there are inconsistencies that may sow confusion. Firstly free ports are mentioned explicitly in the AMLD5, but not as such in the UCC which considers them as any other 'free zone'.

Moreover, the 'free zone procedure' in the UCC is almost on an equal legal footing with the UCC's 'custom warehousing procedure'. This raises the question as to whether 'customs warehouses' or 'bonded warehouses' are – or should be – within the scope of the AMLD. Given that the market for customs warehousing is much larger than for free ports, it might be good to clarify this well before January 2020. If they are within the scope, this would require a culture change. If they are not covered they may become an attractive option for people who like their identity to remain unknown, who will then move away from AML-regulated free ports.

The fifth EU Directive on Administrative Cooperation (DAC5) provides for tax authorities to have access to UBO information and other information collected by obliged entities under the AMLD, starting from 1 January 2018. As free ports will only become obliged entities by 10 January 2020 under AMLD5, the DAC5 will only become relevant then. Only in Luxembourg does the Direct Tax Office have 'access upon request' to UBO data held by licensed free port operators.

Since 'fishing' in the data held by non-financial obliged entities is not allowed – DAC5 concerns 'access upon request' – direct tax authorities have to know who and what they are looking for before requiring access to UBO information. Without any specific information or a specific lead, UBO records at non-financial obliged entities remain 'unknown unknowns'. The effect of DAC5 in relation to tax evasion may therefore be limited to specific cases where there is prior suspicion and the systemic benefits of DAC5 should not be over-estimated.

This study does not go as far as assessing all the potential effects of the transposition of the amended AML directive on the European art markets. That it will have consequences is certain, as it will do away with certain elements of the traditional discretion that is so common in this trade. Some market players in the EU fear that the EU will lose some of its attraction as an art market since clients and dealers like to remain under the radar and can easily move their business elsewhere. To some extent this has already happened in Le Freeport in Luxembourg.

Tax cooperation

Substitute goods and the sale or inheritance thereof constitute a grey area from a tax point of view, as wealth and capital gains are not taxed everywhere in the same manner, if at all. Beneficial owners may have to report the proceeds of investment art to the tax authorities where they are tax resident, but this differs from one country to another. The same goes for inheritance.

Free ports are not considered 'financial institutions', even though they have features in common. Therefore their data do not qualify for 'automatic exchange of information' between tax authorities under the US Foreign Account Tax Compliance Act (FATCA), the OECD's Common Reporting

Standards (CRS) or the EU's reporting agreements between tax authorities as set out in the DAC. However, in cases of specific suspicion of fraud or money laundering, authorities can exchange information 'spontaneously' or 'on request'.

Since art is often bought and sold through dedicated offshore companies, it is relatively easy to choose where the transaction would be most advantageous from a tax and/or secrecy perspective. The question would then be if the country chosen for the purchase and/or the sale has established a beneficial ownership register and if it takes part in the OECD's automatic exchange of bank account information. If this is not the case, the country where the seller is a tax resident will not be informed automatically. There are still many jurisdictions that have either not committed to identifying beneficial owners of offshore companies or else have obstacles – legal or technical – in place to prevent the sharing of such information.

A case for regulating the art market

Art is increasingly becoming a mainstream asset in a balanced investment portfolio. Investors are generally high net worth individuals from all over the world, but banks, hedge funds and other major investors also tend to consider art a safe bet nowadays. It is not unusual for such investment art to be kept in vaults in free ports for decades. Pledges have been made for greater regulation of the art market, which currently falls short of investment class standards.

The case of Luxembourg

This study takes a critical look at Luxembourg, as it unilaterally introduced some elements of the future AMLD5 directive into national law in July 2015, following a national assessment of money laundering risks relating to Le Freeport. In this national piece of legislation, Luxembourg put licensed free port operators on the same footing as other 'non-financial obliged entities', almost five years ahead of its obligation to do so.

An overview of the roles and responsibilities of the various actors in the supervisory and anti-money laundering framework in Luxembourg, and lessons to be drawn, can be found in Chapter 3.

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Abbreviations

ACD	Direct tax office, Luxembourg (Administration des contributions directes)
AED	Indirect tax office, Luxembourg (Administration de l'enregistrement et des domaines)
AEOI	Automatic exchange of information
AML	Anti-money laundering
AMLD5	Fifth Anti-Money Laundering Directive Directive (EU) 2018/843 of the European Parliament and the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU
CDD	Client due diligence
CRS	Common reporting standards
DAC5	Fifth EU Directive on Administrative Cooperation Council Directive amending Directive (EU) 2011/16 as regards access to AML information by tax authorities
FATCA	US Foreign Account Tax Compliance Act
FATF	Financial action task force
OECD	Organisation for Economic Co-operation and Development
SFAO	Swiss federal audit office
TAX3	European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance
UBO	Ultimate beneficial owner
UCC	Union Customs Code Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code

1. Free zones, free ports and customs warehouses

1.1. Defining free zones

'Free zones' are enclosed areas within the customs territory of the Union where non-Union goods can be introduced free of import duty, other charges (i.e. taxes) and commercial policy measures.

Such goods may, following the period in the free zones, be released for free circulation after payment of import duty and other charges. They may also be placed under another special customs procedures, such as inward processing, temporary admission or end-use procedures and they may also be re-exported.

Union goods may also be placed or stored, moved, used, processed or consumed in free zones. Such goods may afterwards be exported or brought to other parts of the customs territory of the Union.

Since a major objective of creating free zones is to increase exports, most free zones around the world either are ring-fenced enclaves, exempt from national import and export duties or they formally operate outside the customs area of their host country. Governments often add other benefits to the package, such as tax, regulatory, administrative and financial incentives.

Free zones generally fall into one of four categories:¹ free trade zones, export processing zones, special economic zones and industrial zones.

- **Free trade zones**, typically located near seaports or airports, mainly offer exemptions from national import and export duties on goods that are re-exported. Local services gain, though there is little, if any, value added to the goods traded.
- **Export processing zones** go a step further by focusing on exports with a significant value added, rather than only on re-exports.
- **Special economic zones** apply a multisector development approach and focus on both domestic and foreign markets. They offer an array of incentives including infrastructure, tax and custom exemptions, and simpler administrative procedures.
- **Industrial zones** are targeted at specific economic activities, say media or textiles, with infrastructure adapted accordingly.

1.2. Free zones: the global and European dimension

According to the Financial Action Task Force (FATF), the number of Free Trade Zones increased from not even 100 in 1975, to approximately 3 000 in 135 countries in 2008.²

EU Member States can designate part of the customs territory of the Union as 'free zones' and these must be communicated to the European Commission.

In November 2017, 82 free zones had been notified to the European Commission.

Croatia has the most free zones (11) followed by Lithuania (10), the Czech Republic (8), Spain and Poland (7), Romania and Bulgaria (6), Greece and Latvia (4), Estonia (3) and Finland, France, Germany and Italy (2).

¹ [Free zones: Benefits and costs](#), OECD Observer, No 275, November 2009.

² Financial Action Task Force (FATF), [Money Laundering Vulnerabilities of Free Trade Zones](#) (p.4), March 2010.

Nine countries have just one free zone. These are Cyprus, Denmark, Hungary, Ireland, Luxembourg, Malta, Portugal, Slovenia and the United Kingdom.

Austria, Belgium, the Netherlands, Slovakia and Sweden have no free zones.

1.3. Free ports and customs warehouses

In the context of this study, it is important to make a distinction between free ports (free zones) and customs warehouses.

Free ports are warehouses, in free zones, that were – originally – intended as spaces to store merchandise in transit. They have latterly become popular for the storage of valuables, including art, precious stones, gold, antiques and wine collections – often on a permanent basis.

The new generation of free ports is tailored to the needs of high-end art collectors. These free ports are equipped with surveillance cameras, climate and humidity control and private showrooms. They have strong rooms and offices for galleries and art lenders where clients can view, buy and sell art, and they provide a wide range of services including transport and logistics. In addition, firms offering art-related services such as restoration, framing and financing set up shop on the grounds.

These free ports generally cater for two types of art collector. Those who feel uncomfortable keeping their possessions at home and who seek secure and secret storage, sometimes on a temporary basis, and those who collect art purely as an investment.

A customs warehouse, or bonded warehouse, is 'a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty'. Such a building does not have to be located in a free zone; it can be anywhere and it can be managed by a private enterprise. It can offer the same services and advantages as a free port, but sometimes a customs bond must be posted with the government to acquire an authorisation.

Within the EU, the major difference between free zones and customs warehouses is that customs authorisation is required for the storage of goods in a private customs warehouse; whereas customs authorisation is not necessary in free zones and public customs warehouses.

In the EU, goods can be introduced to a free zone without presentation to customs and even without declaration to customs.³ The presence of customs in free zones is not mandatory within the EU.

In the EU, there are far more customs warehouses, which can provide the same advantages as free ports, including indirect tax-deferral and secrecy, than there are free ports. Customs warehouses and free ports will therefore be treated equally throughout this report.

1.4. Increase in popularity

The growing demand for free ports has been attributed in part to the increasing crackdown by governments on bank secrecy and tax evasion. The introduction of the Foreign Account Tax Compliance Act (FATCA) in the USA (2010) and the commitment of OECD members to the OECD's 2014 Common Reporting Standards (CRS) – in the EU transposed via the Directive on Administrative Cooperation (DAC) – make it hard for individuals to escape taxation on proceeds of funds held in bank accounts.

³ [UCC](#), Article 245, paragraph 2 and Article 158 respectively.

High net worth individuals have started looking for alternatives and many have substituted their 'bank account money' with replacement goods such as art, diamonds, antiques, wine or bank notes.⁴ Art is considered a smart commodity to buy in times of economic crisis as in general it holds its value over time and in some cases increases in value.

Another underlying reason for the popularity of free ports is an unprecedented art boom, which has been fuelled by the expansion of private collections, a worldwide expansion of museums and the entrance of market players such as new multimillionaires from China, the Middle East and Russia.

There is a growing link between art and finance. In an era of ultra-low interest rates and a booming art market there are increasing numbers of buyers and sellers who consider art to be an investment or a vehicle for speculation. This in turn is attracting financial players who offer financial services or trade art for themselves in search for higher returns.

As interest in art as an investment has grown, the appeal of storing it tax free while it potentially appreciates in value has grown too, spurring the expansion of free ports in Geneva and similar facilities elsewhere in Europe and Asia. Owners do not have to pay import or export taxes when they ship to or from those locations.

Over the past decade, free ports have been established in many places around the globe. The most prominent among them, designed to store high value assets, are located in Switzerland, Singapore (2010), Monaco (2013), Beijing (2014), Luxembourg (2014) and Delaware (2015).

1.5. Money laundering and tax evasion risks

Free ports are conducive to secrecy. With their preferential treatment, they resemble offshore financial centres, offering both high security and discretion and allowing transactions to be made without attracting the attention of regulators or direct tax authorities. A value needs to be declared to store goods in a free port or customs warehouse. The value is generally declared by the owner or a representative ('self-declaration') and in most cases is not checked.

The goods in free ports or under customs warehousing procedures are technically 'in transit' even though in most free ports of this kind, there are no time limits. This system allows the stored goods to gain value and it allows for tax-free sales. Goods can enter a free port, stay there indefinitely and trade an unlimited number of times without ever having been taxed.

Goods entering free ports are not subject to customs duties. Goods sold in the free ports are not subject to value added tax. No withholding tax is collected on capital gains, though sellers may need to report to the tax authority in the country where they are tax resident.

The arts market as well as free ports are under the critical scrutiny of academics and authorities because of money laundering and tax evasion risks. Critics have raised concerns that free ports could be used to hide illegally acquired assets, to launder money or evade tax. Operators of free ports generally reject the suggestion, saying that customs officers in the various jurisdictions have access to inventory data of what is stored in the free ports. This is to some extent true, but with the exception of Luxembourg, there is not one country that obliges free port operators to carry out the type of customer due diligence that binds financial institutions under anti-money laundering laws. Therefore it is relatively simple to hide the UBO's identity behind another layer, which can be an offshore firm, a trust or foundation, a lawyer, a gallery, or a combination of these.

⁴ Of the total of CHF72 billion in cash in circulation in 2016, 62 % was in the form of CHF1 000 notes.

Auction houses and galleries are still reluctant to publicly disclose the prices paid for artworks and, more importantly, the buyers' or sellers' names or identities ('private collection'). As art is one of the few remaining unregulated markets, it can be a means of tax evasion and capital flight.⁵

In addition to its confidentiality, the high level of monetary transactions, the unfamiliarity of enforcement agencies with values and the portable nature of art itself all contribute to the art market being a suitable vehicle for illegal activity. As other money-laundering techniques are coming under closer scrutiny, it has been suggested that smugglers, drug traffickers and arms dealers are increasingly turning to the art market.⁶

In 2010 the Financial Action Task Force on Money Laundering, an intergovernmental body based at the headquarters of the Organisation for Economic Co-operation and Development (OECD) in Paris, published a report⁷ claiming that free-trade zones, which include free ports, were a 'money-laundering and terrorist-financing threat' partly due to inadequate safeguards, relaxed oversight and weak inspections.

Clamping down on problems such as tax evasion and money laundering has become a matter of the utmost urgency. In this context, the Panama Papers drew attention to the dubious role of free zones, and in particular of free ports, as repositories of artworks and other valuables. Some media reports pointed to the connection between the international art trade and offshore secrecy, for example suggesting that 'arts buyers and sellers use the same structures to remain anonymous in the global financial system as dictators, politicians and fraudsters'.⁸

An illustration of the way these offshore structures are used – and how effective they can be in shielding beneficial owners – is the case of the unknown ownership of the Amedeo Modigliani painting 'Seated man with a cane' (1918).

Seated man with a cane, Amedeo Modigliani (1918)

The Nahmad family, well-known art dealers, are said to own the biggest collection of Picasso paintings in the world, apart from the Picasso family. These and other paintings in their collection are supposedly kept in the Geneva freeport to appreciate in value and wait for the right moment to sell. In 2011 they became involved in a Nazi-related restitution claim over 'Seated man with a cane' by Amedeo Modigliani.

The painting was bought for US\$ 3.2 million at a Christie's auction in 1996 by a company called International Art Centre (IAC), registered in Panama by Mossack and Fonseca. A living heir of Oscar Stettiner, the Paris based Jewish art dealer who 'sold' the painting between 1940 and 1944 under dubious circumstances ('anonymous sale'), challenged the ownership by IAC, which was allegedly owned by the Nahmad brothers. The brothers denied owning the painting and denied beneficial ownership of International Art Centre. It was only after six years, in 2017, after the Panama Papers revealed that the Nahmad family had actively controlled IAC for more than twenty years, that a New York judge ruled that IAC and the Nahmad brothers were the same and the case could continue.

⁵ G. David, [Art as an investment in a historical perspective](#), CentER, Center for Economic Research (Tilburg), 2016.

⁶ Georgina Adam, *Big Bucks: The Explosion of the Art Market in the 21st Century*, Ashgate Publishing Ltd., 2014.

⁷ [Money Laundering Vulnerabilities of Free Trade Zones](#), FATF Report, March 2010.

⁸ Jake Bernstein, *Secrecy world, Inside the Panama Papers Investigation of Illicit Money Networks and the Global Elite*, Henry Holt and Company New York, 2017.

1.6. A case for regulating the art market

With increasing regulations and sanctions in the world of finance, the widely unregulated art market is attracting more and more 'high net worth individuals', banks, hedge funds and other financial players who see art as a stable investment and good way to diversify their investment portfolios. In an art market that was estimated to have grown to almost US\$ 64 billion⁹ in 2017, this poses new challenges to financial supervision.¹⁰

The American economist Nouriel Roubini said the sector is vulnerable to money laundering, tax evasion, trading on inside information and price manipulation. He made a plea for greater regulation of the art market. 'As a new and separate asset class, traded in an opaque market with serious distortions and shady behaviour, reform and regulation are needed', he argues.¹¹ Others argue that 'the market still falls short of meeting the investing class, in terms of regulatory structure, information availability and clear title.'¹²

1.7. Free ports in a historic perspective: the Swiss experience

The oldest free port catering for art and other valuables is in Geneva. The city's first free port was set up in 1854. Today, Geneva Free Ports are said to concentrate the greatest amount of art of any storage in the world, much of it of museum quality.

Geneva Free Ports & Warehouses is a limited company. The State of Geneva is its principle shareholder. The free port rents out space to 230 tenants, mainly logistic firms, but also allows small customers to store goods.¹³

The free port offers a wide range of services. One company, Natural Le Coultre, rents almost a quarter of its space. The firm is one of the world's biggest specialist companies for the storage and shipping of art. Its previous owner, Yves Bouvier, plays a key role in the development of the new generation of free ports. He is the biggest private shareholder in Geneva and through one of his companies, EurAsia SA, he owns the Singapore free port and is a majority shareholder of the one in Luxembourg. He is also a consultant to the Beijing free port and an art dealer.

The Bouvier Affair

The Bouvier Affair refers to a number of international lawsuits that began in 2015, and subsequent events. The lawsuits allege that Swiss free port owner, art shipper and dealer Yves Bouvier defrauded his clients by misrepresenting the original cost of art works and subsequently overcharging them. The affair has played out in courts in Monaco, Switzerland, France, the US, Hong Kong and Singapore.

The alleged victims are 'high net worth individuals' in the UK, the US, Asia and Europe, most notably Monaco-based Russian oligarch Dmitry Rybolovlev.

As of early 2018, Bouvier was facing criminal charges in France, Monaco and also in Switzerland after the Geneva Prosecutor opened a new case there.

⁹ Dr Clare McAndrew, *The Art Market 2018* (p.15), Art Basel & UBS, 2018.

¹⁰ Freeports, Art and global finance, 6 November 2016.

¹¹ Speech at the World Economic Forum, Davos, January 2015.

¹² David Schindler, *Deloitte Art and Finance Report 2014* (p.22), 2015.

¹³ [Geneva Free Ports](#) official website.

Geneva's free port has been at the heart of a series of scandals. In 1995 it was discovered that it was a haven for an international network of looted antiquities linked to the Getty Museum in Los Angeles. In 2003 Swiss customs discovered 200 stolen ancient Egyptian treasures, including two mummies. In 2016 an Italian police investigation led to Geneva, where looted Roman and Etruscan artefacts were stored by a bankrupt English art dealer.

Lawsuits such as the one brought by collector Dmitry Rybolovlev against Bouvier, with accusations of excessive commissions, have also drawn attention to the opacity of art world transactions.

The fact is that no one really knows exactly what is stored in Geneva as the inventory is not consistently tracked. Moreover, the beneficial owners of many of the goods are unknown.

The results of an audit by the Swiss Federal Audit Office (SFAO) revealed a huge increase in the value of goods stored in some Swiss customs warehouses and free ports since 2007, led by an increase in high-value goods such as art. Though the audit did not specifically measure the increase in stored artworks, it estimated that there were more than 1.2 million pieces of art in the Geneva Free Ports alone,¹⁴ some of which had not left the buildings in decades. Newspapers have reported that the value of goods warehoused in the Geneva free port comes to CHF 100 billion.

The rise in popularity since 2007 of art as an investment good coincides with the phasing out of bank secrecy in the EU and Switzerland. Many rich individuals who had money hidden in countries such as Luxembourg or Switzerland, established offshore companies – advised by banks – and changed their private accounts to corporate accounts to remain anonymous and avoid the withholding taxes that resulted from the entry into force of the EU Savings Directive.¹⁵ The same motivation drives the purchase of substitute assets, often through offshore companies, which could then be hidden in free ports. These are not subject to withholding taxes or the automatic exchange of financial information in tax matters (AEIO) with the tax office in the home country.

While the free port in Geneva is the best known for storing these types of goods, at least 25 so called 'open customs warehouses' are just as specialised in this segment of the market in Switzerland.

Open customs warehouses are warehouses within Swiss customs territory in which warehouse operators such as importers, carriers, transit agents or freight forwarders can store their own or third-party foreign goods. The goods are moved in transit from the border to the warehouse without any customs duty being paid. At the end of the storage period, the warehouse operator can carry out the import duty assessment directly on site, also initiating a transit procedure and exporting the goods out of Switzerland again.

Open customs warehouses have been being established since 1995 in implementation of the agreement with the World Trade Organization, of which Switzerland became a member that year.¹⁶ They have the advantage of allowing customs declarations to be made 'from home' and there is not the on-site presence of customs that Swiss free ports have, making the checks less cumbersome. In 2012, 245 open customs warehouses were in operation in Switzerland.

¹⁴ Swiss Federal Audit Office (SFAO), [Free ports and open customs warehouses](#) - An evaluation of licensing and inspection activities, 2014.

¹⁵ Paragraph 117 (p. 29) in the [Report on the inquiry into money laundering, tax avoidance and tax evasion](#) (2017/2013(INI)), Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion, Brussels, November 2017.

¹⁶ Article 13, [Agreement with the World Trade Organization](#), 'Goods entering Switzerland or Liechtenstein on a temporary basis may be put into a bonded warehouse without customs clearance or the payment of import duties or VAT'.

In parallel to growing numbers of open customs warehouses, the importance of free ports has been waning, with the notable exception of the Geneva free port. In 2013, only 10 of these 'traditional' free ports were still operational, in contrast to 18 in 2008 (SFAO).

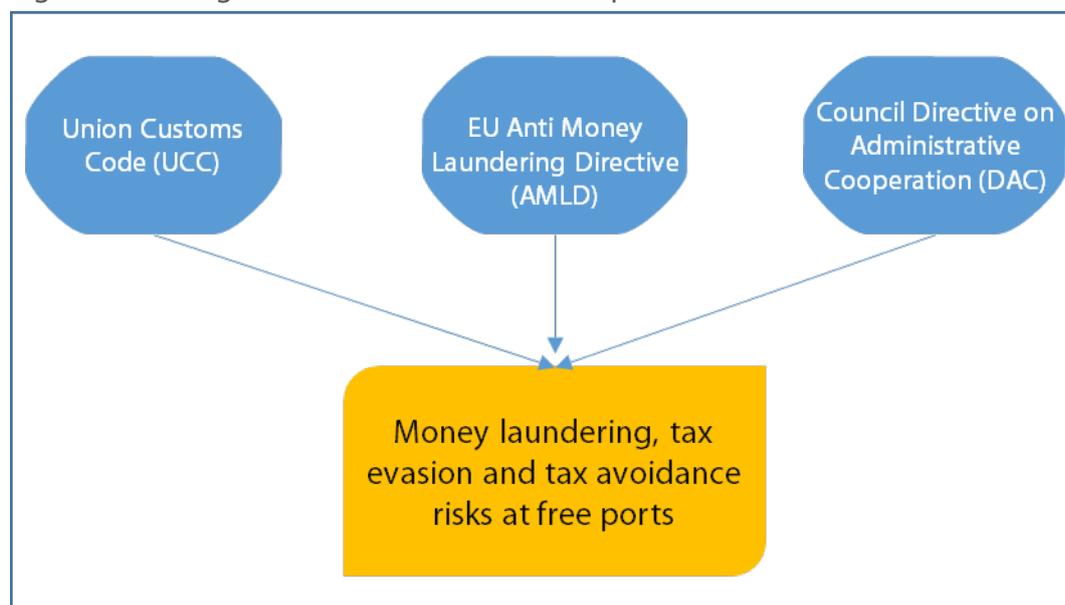
The SFAO found that several warehouses experience very little movement of merchandise, meaning that the goods are stored for long periods of time, sometimes several decades. 'The function of this type of customs warehouse is the management of private or institutional assets and tax optimisation for extremely valuable merchandise (artworks, precious metals), which the SFAO considers not in line with the main function of customs warehouses, or the spirit of the law. Licences should only be granted for warehouses with regular movement of merchandise', it recommended.

Switzerland has made some changes to its laws but these do not go as far as a mandatory customer due diligence procedure to identify each ultimate beneficial owner of goods held on their premises.

2. Free ports and customs warehouses from a legal perspective

This chapter provides an analysis of the EU legal framework and of the extent to which it is relevant and effective when it comes to money laundering, tax evasion and tax avoidance. It specifically reviews the relevant provisions under the Union Customs Code (UCC), the European Anti-money Laundering Directive (AMLD), the Directive on Administrative Cooperation (DAC) and the interplay between them. A separate paragraph is devoted to each of these three pieces of legislation and conclusions are presented at the end of each respective paragraph.

Figure 1 – EU legal framework in view of free ports and customs warehouses



Source: EPRS.

2.1. The Union Customs Code

The Union Customs Code (UCC) defines the legal framework for customs rules and procedures in the EU customs territory.¹⁷ It is a regulation and therefore directly applicable.

The UCC prescribes the procedural rules for the establishment of 'customs warehouses' (Title VII, Chapter 3, Section 2) and 'free zones' (free ports) (Title VII, Chapter 3, Section 3).

The UCC considers the placing of goods in customs warehouses or free zones (free ports) as 'special storage procedures'.

Under a storage procedure, non-Union goods may be stored in the customs territory of the Union without being subject to import duty, other charges as provided for under other relevant provisions in force and commercial policy measures.

¹⁷ [Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code \(UCC\).](#)

There are no limits to the length of time goods may remain under a free zone or customs warehousing procedure (UCC, Article 238).

Goods brought into the customs territory of the Union shall be presented to customs immediately upon arrival at the designated customs office or any other place designated or approved by the customs authorities or in the free zone by one of the following persons:

- a) the person who brought the goods into the customs territory of the Union;
- b) the person in whose name or on whose behalf the person who brought the goods into that territory acts;
- c) the person who assumed responsibility for carriage of the goods after they were brought into the customs territory of the Union.

Notwithstanding the above obligations, presentation of the goods may be effected instead by one of the following persons:

- a) any person who immediately places the goods under a customs procedure;
- b) the holder of an authorisation for the operation of storage facilities or any person who carries out an activity in a free zone.

The holder of the authorisation, the holder of the procedure, and all persons carrying on an activity involving the storage, working or processing of goods, or the sale or purchase of goods in free zones, must keep appropriate records in a form approved by the customs authorities.

The records must contain the information and the particulars to enable the customs authorities to supervise the procedure concerned, in particular with regard to 'identification of the goods placed under that procedure, their customs status and their movements' (UCC, Article 214(1)).

Goods placed under customs warehousing or a processing procedure or in a free zone may undergo usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale (UCC, Article 220).

Customs warehousing

The operation of storage facilities for the customs warehousing of goods requires authorisation from the customs authorities. This authorisation sets out the conditions that permit the operation of storage facilities (UCC Article 211). Under certain conditions, Union goods can also be stored in a customs warehouse, making economic viability more likely.

Goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. Such removal must, except in case of force majeure, be authorised in advance by the customs authorities (UCC Article 240).

The holder of the authorisation and the holder of the procedure are responsible for ensuring that goods under the customs warehousing procedure are not removed from customs supervision, and for fulfilling the obligations arising from the storage of goods covered by the customs warehousing procedure (Article 242 (1)a and b).

Free zones (free ports)

Member States may designate parts of the customs territory of the Union as free zones. For each free zone, the Member State shall determine the area covered and define entry and exit points. Member States must inform the Commission of any free zones in operation on their territories.¹⁸

Free zones have to be enclosed. The perimeter and the entry and exit points of the area of free zones must be subject to customs supervision. Persons, goods and means of transport entering or leaving free zones may be subject to customs controls (UCC, Article 243).

The construction of any building in a free zone shall require the prior approval of the customs authorities.

Subject to customs legislation, any industrial, commercial or service activity shall be permitted in a free zone.

The carrying out of such activities shall be subject to notification, in advance, to the customs authorities. Customs authorities may prohibit persons who do not provide the necessary assurance of compliance with the customs provisions from carrying out an activity in a free zone (UCC, Article 244).

2.1.1. Conclusions

The UCC provides the legal basis for (indirect) tax deferral as it allows for the permanent storage of goods under a free port or customs warehousing procedure. The fact that investment goods in such facilities can be sold tax-free and that they often remain there for decades only to appreciate in value, and defer VAT, import duties and user tax, is a result of the provisions of the UCC.

Customs authorities have to provide supervision regarding indirect taxation (VAT, user tax) and import duties and therefore their focus is on the 'identification of the goods placed under a special procedure, their customs status and their movements'¹⁹, rather than on the persons behind the entities owning the goods on paper.

The UCC allows for significant flexibility as to who presents the goods upon entry and it does not require the holder of the procedure or of the authorisation to provide information to customs about the UBO. It can be anyone, as far as the UCC is concerned.

In many countries a legal basis is required for the exchange of information between customs authorities and other (tax-) authorities. If a painting is sold at a free port, customs are normally informed, but that is as far as the information goes.

If customs thinks a transaction is fraudulent, it has to report to the financial intelligence unit (FIU) and, via the FIU, this information can be shared, for example, with a direct tax office. The direct tax office can then decide to take action if it concerns one of its tax residents or it can spontaneously share the information with foreign tax administrations. However, this only implies exchanges on a case-by-case basis.

Even if national legislation required UBO information to be kept on record, currently the case only in Luxembourg under national money-laundering laws (see Chapter 3), the question remains as to what extent that information is accessible for other authorities and to what extent it could be shared with tax administrations in other countries. Currently there is no automatic exchange either of UBO

¹⁸ For a complete [list of EU free zones](#), see Annex 1.

¹⁹ Article 214(1) of [Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code \(UCC\)](#).

information or about the value of goods, but there can be spontaneous exchanges or exchanges upon request in individual cases.

The scope of the UCC is to ensure that indirect taxes and import duties be paid when goods are officially imported, or that a guarantee is provided when goods are in transit. It is not the role of customs to act as direct tax or anti-money-laundering (AML) supervisor. Under these conditions, the UCC cannot be said to function as a sufficient guarantee against money laundering or tax evasion.

2.2. The Anti-Money-Laundering Directive

The current EU framework on money laundering is provided by the fourth Anti-Money-Laundering Directive (AMLD4),²⁰ which identifies the money laundering risks at three levels: at supranational level, at Member State level and at the level of the obliged entities as part of their customer due diligence (CDD). The AMLD4 entered into force on 16 June 2017.

The AMLD5, which will enter into force on 10 January 2020, will broaden the scope of the directive and explicitly includes free ports, free port operators and actors in the art market:

'Persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses as well as persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports where the value of the transaction exceeds EUR 10 000', were added to the list of 'obliged entities' under the recently adopted AMLD5.²¹

These entities will then be subject to the same customer due diligence requirements as current non-financial obliged entities, such as real estate agents or notaries, and they will also have to report suspicious transactions to the financial intelligence units (FIUs). This may have significant consequences for the success of free ports in the EU and on the art market as such.

Worldwide, sales by dealers account for a market share of 53 % and sales by auction houses for 47 %. The EU, the UK aside, is only a modest market. The three largest markets of the US, China and the UK account for 83 % of total global sales by value. The US comes first with a market share of 42 % of sales by value, followed by China (21 %) and the UK (20 %).²²

The present study does not go as far as assessing all the potential effects of the transposition of the AMLD5 to European art markets and the operators therein. That it will have consequences is certain, as it should do away with certain elements of the traditional discretion that is so common in this trade.

Some market players in the EU fear that the EU will therefore lose some of its attraction as an art market, as investors and dealers can easily move their business elsewhere. On the other hand, some actors in the market are sceptical about attempts to make the market more transparent as AML datasets will be segregated, kept by the obliged entities, and in order to have access a motivated request with some sort of prior suspicion needs first to be tabled by authorities.

²⁰ [Directive \(EU\) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.](#)

²¹ Article 2(3) i and j, [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.](#)

²² Dr Clare McAndrew, [The Art Market 2018](#) (p.15), Art Basel & UBS, 2018.

2.2.1. Conclusions

The wording in the AMLD5 is not consistent with that of the UCC. Firstly 'free ports' are not recognised as such in the UCC, but are formally considered as any other 'free zone'. This may lead to confusion regarding the scope of the directive.

The AMLD5 (Article 2(3j)) explicitly refers to persons 'storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports'. Given that free ports fall under the so called 'free zone procedure' in the UCC, which is almost on the same legal footing as the UCC's 'custom warehousing procedure', it opens a discussion as to whether 'customs warehouses' or 'bonded warehouses' also fall within the scope of the directive. Given that the market for customs warehousing is much larger than for free ports, it might be good to clarify this well before January 2020. If they do fall within the scope, this would require a culture change. If they do not fall within the scope, they may become an appealing option for people who like their identity to remain unknown.

Bringing operators such as auction houses and dealers under the AMLD5 will pose tremendous challenges for them, but also for supervisors. The future success of the AMLD5 in the arts market depends to a large extent on the deterrent effect of future supervision as well as on possible sanctions. The poor implementation of the AMLD3 by financial institutions throughout Europe and the failing AML supervision of the financial sector, revealed by the Panama Papers and many other leaks and ongoing scandals, may be taken as a warning.

Pursuant to the Financial Action Task Force (FATF) 2012 recommendations and the Fourth Anti-Money Laundering Directive (AMLD), applicable as of 26 June 2017, tax evasion and tax fraud has become a predicate crime for money laundering. It remains to be seen how this has affected the numbers of suspicious transaction reports filed with FIUs and how FIUs have followed-up on them.²³

Now that tax offences have been made predicate crimes for money laundering, it also remains to be seen how this will affect the arts business from the moment operators in that market fall within the scope of the AMLD5 in 2020. Would an art dealer or free port operator inform a national FIU if a foreign client was possibly evading tax? If this is the case, and FIUs share this information with their direct tax authorities, the number of 'spontaneous exchanges' between tax authorities may increase.

Under DAC5²⁴, as of 1 January 2018, direct tax authorities have 'access upon request' to a wide set of information with regard to UBO information collected under the AMLD, notably:

- consumer due diligence (CDD) obligations by banks and other obliged entities (AMLD4 Articles 13 and 40);
- beneficial ownership information held by companies (AMLD4 Article 30, paragraphs 1 and 2) or trusts (AMLD4 Article 31, paragraphs 1 and 2);
- beneficial ownership registers (AMLD4 Articles 30 and 31, paragraph 3).

It remains to be seen how this would work in practice as there is significant room for flexibility in the AMLD concerning the way data are to be kept. Questions may also arise regarding the circumstances under which direct tax offices can access UBO information held by non-financial obliged entities, such as free port operators.

²³ At the time of writing, many FIUs were still in the process of preparing their annual reports for 2017. This information was not yet therefore available.

²⁴ [Council directive \(EU\) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities](#)

Since authorities are not allowed to 'fish' in data held on record by non-financial obliged entities, it is difficult to predict how this measure would actually have systemic benefits. Unless direct tax authorities have prior information, for example a specific request received from one of their counterpart authorities abroad or information from their national FIU, the information held by the obliged entities are 'unknown-unknowns' to direct tax authorities. In this context, the chances of a foreign UBO who stores his/her assets in a free port becoming known to his/her own tax authorities as a result of exchange of information agreements between tax authorities seems almost negligible.

2.3. The EU directive on administrative cooperation

The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information (AEOI) with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

The legal basis for the automatic exchange of information between EU Member States is the Directive on Administrative Cooperation (DAC1).²⁵ In effect this directive transposes the CRS to EU Member States.

Automatic exchange of information in administrative cooperation means sending predefined tax data regularly without prior request from one Member State to the Member State where a taxpayer is resident. The aim is to provide structured and more detailed tax information about the activities of specific and identified taxpayers who are resident in a given Member State but who have reportable income and capital in another Member State.

In line with the provisions of Article 8(1) of the directive, since 2014 Member States have bilaterally sent information on some of the five categories of income and capital covered by the directive: income from employment (IE), director's fees (DF), life insurance products (LIP), pensions (PEN), ownership of and income from immovable property (IP).

The sending of information on mentioned categories has taken place gradually as planned. The target was for all Member States to exchange information under at least three of the five categories regarding taxable periods as from 1 January 2017.²⁶ The first exchanges took place in 2015 regarding the 2014 taxable period.

The DAC1 also provides for exchange 'upon request' and 'spontaneous exchange' of tax-relevant information.

As of 1 January 2018, under the DAC5²⁷, direct tax authorities are able to access the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of DAC1 and for the functioning of all forms of administrative cooperation provided for in that directive. This means that from 10 January 2020, when the AMLD5 enters into force, direct tax authorities will also have access upon request to client due diligence information collected by free port operators, galleries, auction houses, etc.

²⁵ [Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.](#)

²⁶ [Commission staff working document on the application of Council Directive \(EU\) no 2011/16/EU on administrative cooperation in the field of direct taxation.](#)

²⁷ [Council Directive amending Directive \(EU\)2011/16](#) as regards access to AML information by direct tax authorities.

Table 1 – The evolution of the Directive on Administrative Cooperation

Directive on Administrative Cooperation – DAC						
DAC1 2011/16/EU NON AEOI Applies:1/2013 All exchanges of info except Art. 8 *Exchanges on request *Spontaneous exchanges *Presence in adm. offices *Simultaneous controls *Request for notification *Sharing best practices *Use of standard forms	DAC1 2011/16/EU AEOI ITEMS Applies:1/2015 1 st exchanges on 2014 by: 30.6.2015 Art. 8 *Automatic exchange of information on 5 non-financial categories: *Income from employment *Directors fees *Pensions *Life insurance products *Immovable property (income and ownership)	DAC2 2014/107/EU AEOI ITEMS Applies:1/2016 1st exchanges on 2016 by: 30.9.2017 Art. 8, para 3a Automatic exchange on financial account information: *Interests, dividends or other income generated by financial account *Gross proceeds from sale or redemption *account balances	DAC3 2015/2376/EU AEOI ITEMS Applies:1/2017 1st exchanges by 30.9.2017 Art. 8a Automatic exchange of information (using a central directory as from 1.2018) of: *Advance cross-border rulings *Advance pricing arrangements	DAC4 2016/881/EU: AEOI ITEMS Applies:6/2017 1st exchanges on 2016 by: 30.6.2018 Art. 8aa Automatic exchange of information on country-by-country reports on certain financial information: *Revenues *Profits *Taxes paid and accrued *Accumulated earnings *Number of employees *Certain assets	DAC5 2016/2258/EU NON AEOI Applies:1/2018 Art. 22, para 1a Access by tax authorities to beneficial ownership information as collected under AML rules	DAC6 2018/xx/EU AEOI ITEMS Applies:7/2020 1st exchanges by: 31.8.2020 Art. 8aaa and hallmarks in Annex 4 *Mandatory disclosure rules for intermediaries and *Automatic exchange of information on tax planning cross-border arrangements

Source: European Commission

2.3.1. Conclusions

Substitute goods and the sale or inheritance thereof constitute a 'grey area', as wealth and capital gains are not taxed everywhere in the same manner, if at all. Beneficial owners may have to report the proceeds of investment art to the tax authorities where they are tax resident, but this differs from one country to another. The same goes for inheritance.

The income generated by sales of art or other moveable property in free ports does not fall within any 'automatic exchange category' under the DAC1 (see table). It could however be exchanged 'upon request' or 'spontaneously', provided that the direct tax authority in question had information available.

Free ports are not considered financial institutions, even though they share common features. There is therefore no 'automatic exchange' of information between tax authorities under the US Foreign Account Tax Compliance Act (FATCA), the OECD's Common Reporting Standards (CRS) or the EU's reporting agreements between tax authorities as set out in the DAC.

Under DAC5, direct tax authorities will have access to UBO information. When it comes to free ports, apart from in Luxembourg where free port operators are already obliged entities under national AML-law, this will only be relevant as of 10 January 2020, when free port operators and other actors in the art world such as galleries or auction houses, become obliged entities and will need to collect this information.

Direct tax authorities cannot launch 'fishing operations' in UBO data held by private entities, but should have a motivated request, triggered for example by a request from a foreign counterpart or their national FIU. It could therefore be deemed probable that the DAC5 may not lead to systemic

changes in relation to money laundering or tax evasion risks at free ports, even though it may have an effect in particular cases.

As stated earlier, an important question is whether customs warehouses will also fall within the scope of AMLD5. If this is not the case, they will only have to abide by the rather flexible requirements of the UCC when it comes to client records. Moreover, direct tax authorities will not have access to their data.

UBO information only provides information regarding the real owner of the goods. Information regarding the goods as such, like declared value and origin, is generally kept on record at customs and access to it may require a different legal basis in national law (see Chapter 3).

The fact that goods are stored in a free port in one country, does not imply that proceeds of sales should also be taxed there. Since art is often bought and sold through dedicated offshore companies, it is relatively easy to choose where the transaction would be most advantageous from a tax and/or secrecy perspective. The question would then be if the country chosen for the purchase and/or the sale has established a beneficial ownership register and if it takes part in the OECD's automatic exchange of information. Otherwise the country where the seller is a tax resident will not be informed.

3. 'Le Freeport' Luxembourg: a case study

3.1. Introduction

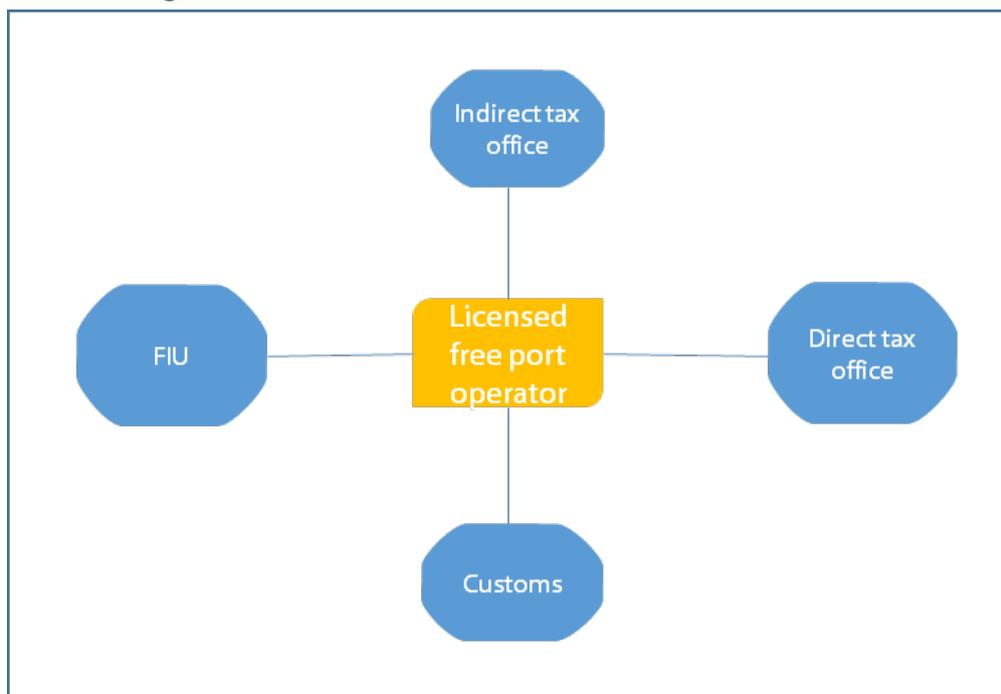
In studying the case of Le Freeport in Luxembourg, an analysis has been made of the transposition of the relevant EU directives, notably the Directive on Administrative Cooperation (DAC) and the Anti-Money Laundering Directive (AMLD) as well as of the implementation of the European Union Customs Code (UCC) in Luxembourg.

The aim of this case study is to establish the roles and responsibilities of the various actors in the fields of the fight against money laundering and tax evasion in relation to Le Freeport. It includes looking at licensing, supervision and the availability, accessibility and exchangeability of information that is relevant when it comes to combatting money laundering and tax evasion. Interviews were held in Luxembourg with the most important actors in AML and the tax co-operation framework, notably:

- the indirect tax office (Administration de l'enregistrement et des domaines, AED),
- the financial intelligence unit (Cellule de renseignement financier, lutte anti-blanchiment et de financement du terrorisme, CRF),
- the Luxembourgish customs authority (Administration des douanes et accises),
- the direct tax office (Administration des contributions directes, ACD)
- Fine Art Logistics, Natural Le Coultre S.A. (one of three licensed operators at Le Freeport).

The role and responsibilities of each authority as well as of the licensed operators is explained below. Graphics are used to illustrate the interplay between authorities, the type of information that is available, how and to whom this information is accessible, and how it is used in relation to the fight against money laundering and tax evasion.

Figure 2 – Actors in the AML and taxation framework relevant for Le Freeport in Luxembourg



Source: EPRS.

3.2. Le Freeport – establishment and licensing

The Luxembourg free port opened in September 2014. It was established in respect of Title VII, Chapter 3, Section 3, Articles 243 to 249 (regarding storage in free zones) of the Union Customs Code and is part of EU customs territory. At the time it was not subject to AML legislation.

Luxembourg did – in effect - transpose some elements of the future AMLD5 ten months later, in July 2015, following an analysis of money laundering risks at Le Freeport. In this piece of national legislation, Luxembourg put the licensed free port operators on the same footing as, for example, real estate agents – almost five years ahead of its obligation to do so.

The free port is operated by a privately held company, with no ties to the government and is majority-owned by the Swiss businessman and art dealer Yves Bouvier, who is also the largest private shareholder of the free ports of Geneva and the owner of the one in Singapore.

All the operators at Le Freeport need authorisation from the customs authority.

To become a licensed free port operator in Luxembourg, an applicant has to provide, inter alia:

- a lease contract, specifying the exact premises covered by the lease;
- the company's articles of association;
- an excerpt of the trade register;
- authorisation of establishment from the Ministry of the Economy;
- a recent excerpt of the criminal record of the applicant and of people empowered to represent the company;
- the last three balance sheets;
- a commitment to update the preceding list regularly and present it to customs.

The licence of an agreed free port operator is valid as long as the operator does not breach any accreditation conditions or commit any offences.

3.3. Roles and responsibilities of the customs authorities

In the EU, goods can be introduced to a free zone without presentation to customs and even without a customs declaration. Also the presence of customs in free zones is not mandatory within the EU. The Luxembourg government opted for a stricter approach, deciding that goods must be presented to customs and that a declaration (notification) must be made.²⁸ They also decided that customs officers should be present during operating hours at the free port.

The initial legislative regime had, as in the cases of most of the other free zones, a primary focus on the goods entering or leaving the free port, rather the owner of those goods. The main concern for customs are the indirect taxes, notably the import duties, value added tax and user's tax.²⁹

Goods can only enter the free port if the operators have notified customs and they have been cleared. This requires a mandatory physical verification by a customs officer. The same applies when

²⁸ [Article 60 bis of the national VAT law of 1 January 2017, modifying the law of 12 February 1979 concerning value added tax.](#)

²⁹ In Luxembourg this is regulated via Articles 243 to 248 of the Union Customs Code and Article 60 bis of the National VAT Law.

goods leave the free port.³⁰ At the moment of exit, customs wants to know the value, the owner (not the UBO) and the destination of the goods.

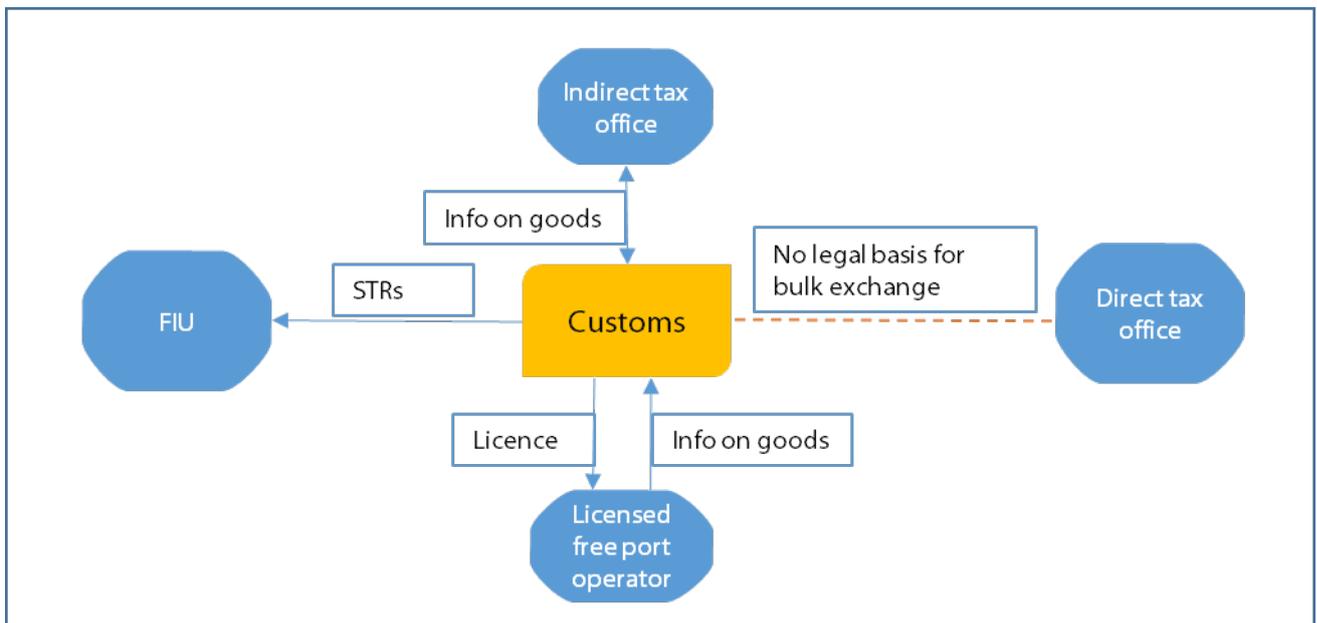
Customs staff at Le Freeport have received training from the Musée national d'Histoire et d'Art in Luxembourg, so that they can check certificates, detect if a work may have been stolen and raise questions if they believe a work of art is over- or undervalued. Sometimes experts of the Ministry of Culture are asked to assist in establishing the origin or authenticity of a painting. These experts are licensed by the Ministry of Justice. Customs has access to the Interpol and Europol databases for stolen goods.

In cases of doubt or suspicion, customs can notify the FIU and/or the indirect tax office, which is the designated competent authority to monitor the compliance of the licensed free port operators with national AML legislation.

The exchange of information between customs and the indirect tax office has its legal basis in Article 8.2.5 of the national anti-money laundering legislation (amended on 13 February 2018). Both authorities can exchange information with the FIU under Article 9.1. of the same law.

Since operations began, customs have submitted three suspicious transaction reports to the FIU. One concerned the owner of an object, who was on the IMF's alleged tax evaders list.³¹ The other two were related to suspicious invoices.

Figure 3 – Role and responsibilities of customs in the AML and taxation framework relevant to Le Freeport in Luxembourg



Source: EPRS.

³⁰ This is a significant difference with the general procedure for customs warehousing, where physical verification is generally not carried out.

³¹ The IMF or 'Lagarde list' is a spreadsheet containing roughly 2 000 potential Greek tax evaders with undeclared accounts at Swiss HSBC bank's Geneva branch.

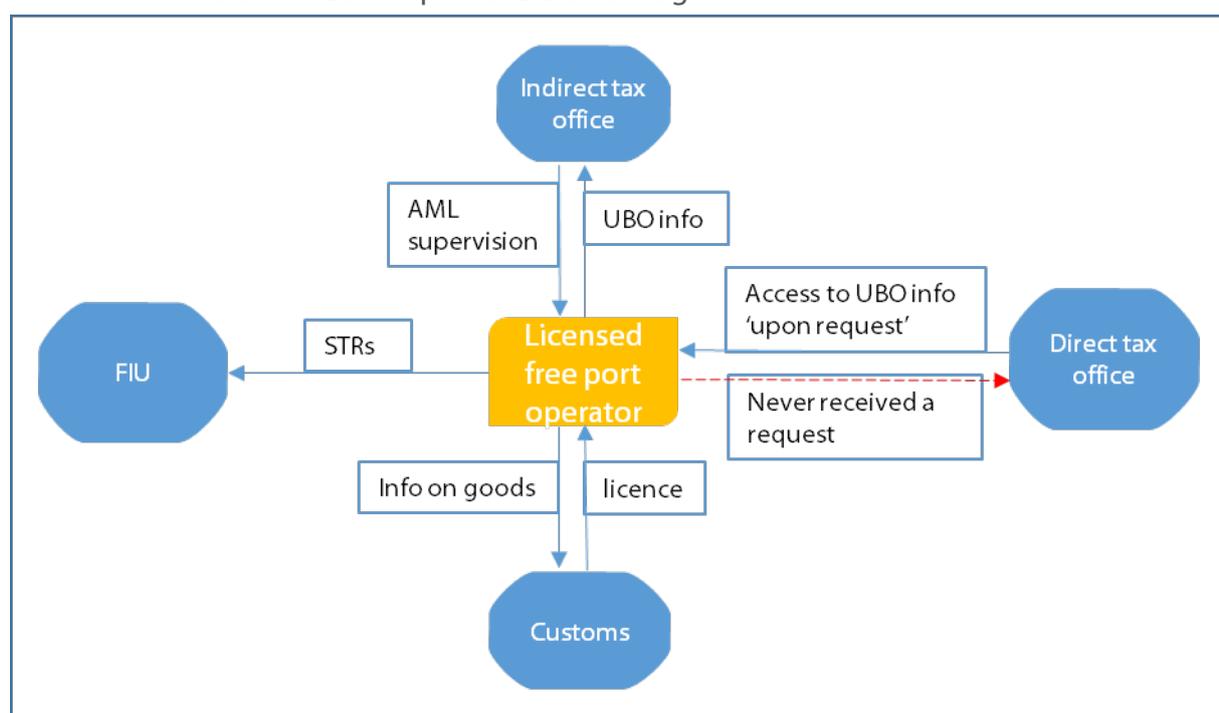
3.4. Roles and responsibilities of licensed operators

Licensed operators rent space at the free port. At the time of the present study there were three licensed operators. They use the storage space and are often specialised in handling, transporting and insuring works of art and other valuables, etc. The operators have to keep and continuously update an inventory list of all the stored goods. If an object is sold, customs need to be notified. When a painting is put on display or is being restored, redecorated or refurbished, customs have to be notified about the change of location of the object, even within the free port.

Since July 2015, licensed operators have been considered to be 'obliged entities' under Luxembourgish AML law.³² This means they have to identify who the ultimate beneficial owners of the stored assets are and keep this information on record. Moreover, licensed operators are bound to report suspicious transactions to the FIU and therefore have a role as AML gate keepers.

The free port operators were given a grace period of one year to update their files and align their procedures with the new national AML requirements. From 1 August 2016 they had to comply fully.

Figure 4 – Role and responsibilities of licensed free port operators in the AML and taxation framework relevant for Le Freeport in Luxembourg



Source: EPRS.

When making their decision to invest in Luxembourg, Le Freeport's owners had not bargained on as rigorous an AML regime on free port operators as was put in place as early as 2015. The investors thought it would be a good extension of the Geneva free port, as 'Geneva was full' and it was part of the idea to roll out a worldwide network of free ports.

The 'Bouvier affair' broke and following a risk analysis of Le Freeport, Luxembourg unilaterally decided to apply AML requirements to Le Freeport's operators.

³² Article 2.14 bis, [Luxembourgish anti-money laundering and anti-terrorism financing law of 24 July 2015](#).

After a year of operation, the licensed operators had to make significant efforts to adapt their practices in order to identify the ultimate beneficial owner of the goods that were brought in by their clients. In addition, the customs procedure for goods in Le Freeport is perceived as cumbersome as compared for example to a secure bonded warehouse.

As a representative of one of the licensed operators explained, 'discretion is a great virtue in the arts business', and the unexpected introduction of new AML requirements had a negative effect on business at Le Freeport. This representative also explained that 'it is quite usual to have two or three intermediaries in the process of selling and buying art. In the past, we have had many galleries as clients, but that is hardly possible these days, as their clients like their privacy and are thus reluctant to provide their data. The same goes for merchants and dealers. We now have to identify the ultimate beneficiary of all the goods they bring in, which is a competitive disadvantage as compared to other free ports where it suffices to register who brings them in'.

The mandatory update of its records has costed the operator twenty to thirty long-standing clients who were not willing to provide information. The representative held that 'it also makes it much more difficult to bring on board new clients. Many old clients, for example offshore companies from Hong Kong, decided on other free ports with more discretion'.

Another factor that did not help Le Freeport was the bad publicity involving the main investor and owner of one of the three licensed operators, Mr Yves Bouvier.

One of his former companies, Natural Le Coultre,³³ rents almost a quarter of the space at the Geneva free port. The firm is one of the world's biggest specialist companies for the storage and shipping of art. Mr Bouvier, is playing a key role in the development of the new generation of free ports. He is the primary owner of the free ports in Luxembourg and Singapore and a consultant to the Beijing free port.

Mr Bouvier was arrested in Monaco in February 2015 on suspicion of fraud through the sale of works of art at inflated prices to Dmitry Rybolovlev, the billionaire Russian owner of Monaco football club (see paragraph 1.7).

Even though the direct tax authority has 'access upon request' to the UBO info collected by the licensed operator, there have not been any requests in this context.

3.5. Roles and responsibilities of the indirect tax office

The Luxembourgish indirect tax office (AED) is one of three tax authorities in Luxembourg together with the direct tax office (Administration des contributions directes, ACD) and the customs authority. All fees, taxes and duties relating to the legal circulation of goods in particular fall under its responsibility and constitute the bulk of indirect taxation.

The AED is relevant to Le Freeport as it is the AML supervisor. Its primary task is to check whether the operator has complete files on its customers, identifying the ultimate beneficial owner.

The AED and the customs authority cooperate and exchange information in support of their supervisory work at Le Freeport, based on Article 8.2.5 of the Luxembourgish anti-money laundering law.

When the AED wishes to carry out a control of licensed operators, the first step would normally be to ask customs colleagues for an inventory. These lists do not contain information concerning the

³³ Since October 2018, NLC Geneva has been owned by André Chenue.

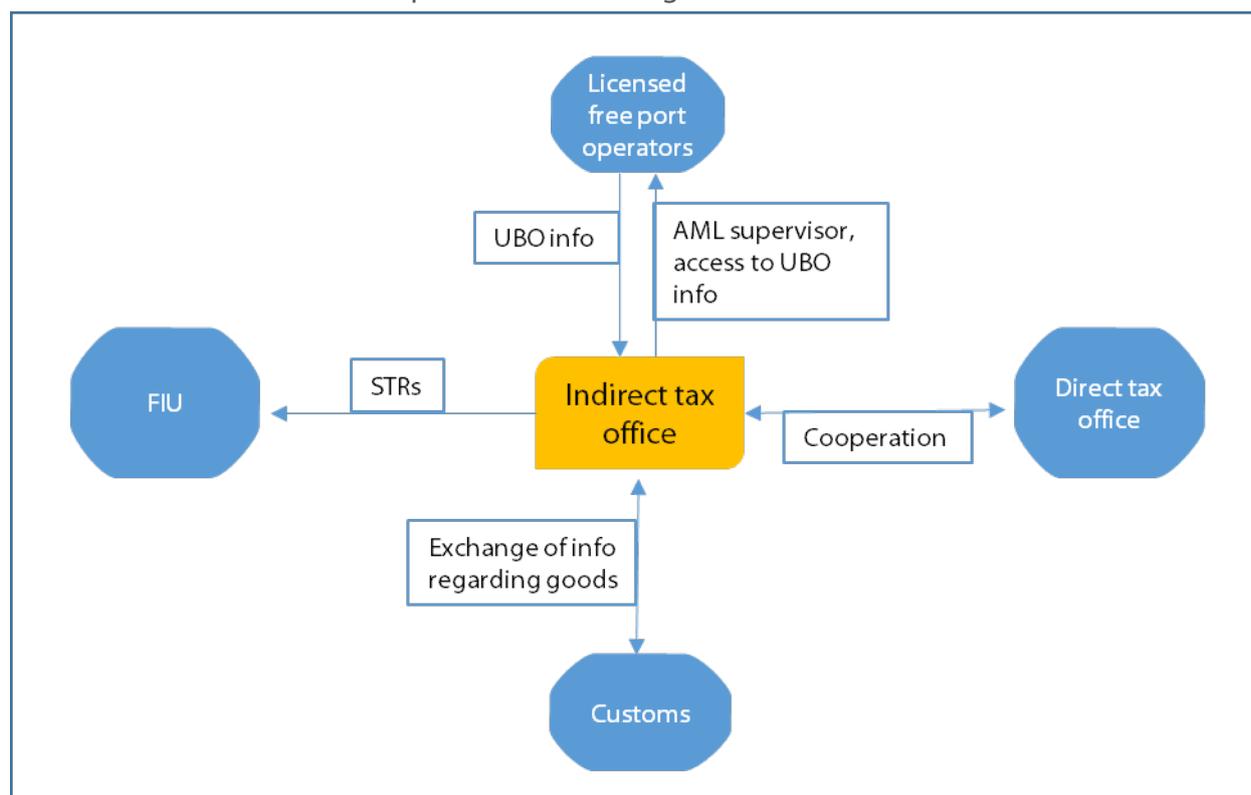
beneficial owner. They merely register who brings in the goods: often museums, art dealers, companies, trusts, foundations or lawyers.

The second step is then to identify the beneficial owner of the declared goods. This information is held by the licensed operator. 'If the licensed operator is not forthcoming with information, a transaction can be stopped or a suspicious transaction report is sent to the FIU', an AED representative explained. 'The question of ownership is of crucial importance in AML supervision. It does not suffice to know that it is a museum, or a trust or a company. We want precise ownership information'.

If a check results in an unknown beneficial owner, the AED wants to know what the operator has done to identify the UBO. 'Did they do everything that is possible? How much time has gone by? If it has taken too long, the FIU will be informed', an AED representative explained. For both customs and the AED, the legal basis for exchange of information with the FIU is Article 9.1 of the national AML law, as modified on 13 February 2018.

The AED considers Le Freeport to be high risk in relation to money laundering. At the end of 2016 the AED carried out a check, which was repeated in July 2018. The 2016 checks detected some problems with clients from before 2016. Two of the three operators received an administrative fine.

Figure 5 – Role and responsibilities of the indirect tax office in the AML and taxation framework relevant to Le Freeport in Luxembourg



Source: EPRS.

3.6. Roles and responsibilities of the financial intelligence unit

The FIU (Cellule de renseignement financier, CRF) in Luxembourg is established under the 'administrative surveillance' of the general prosecutor. It receives all the suspicious transaction

reports (STRs) submitted under Luxembourgish anti-money laundering and terrorism financing law.³⁴

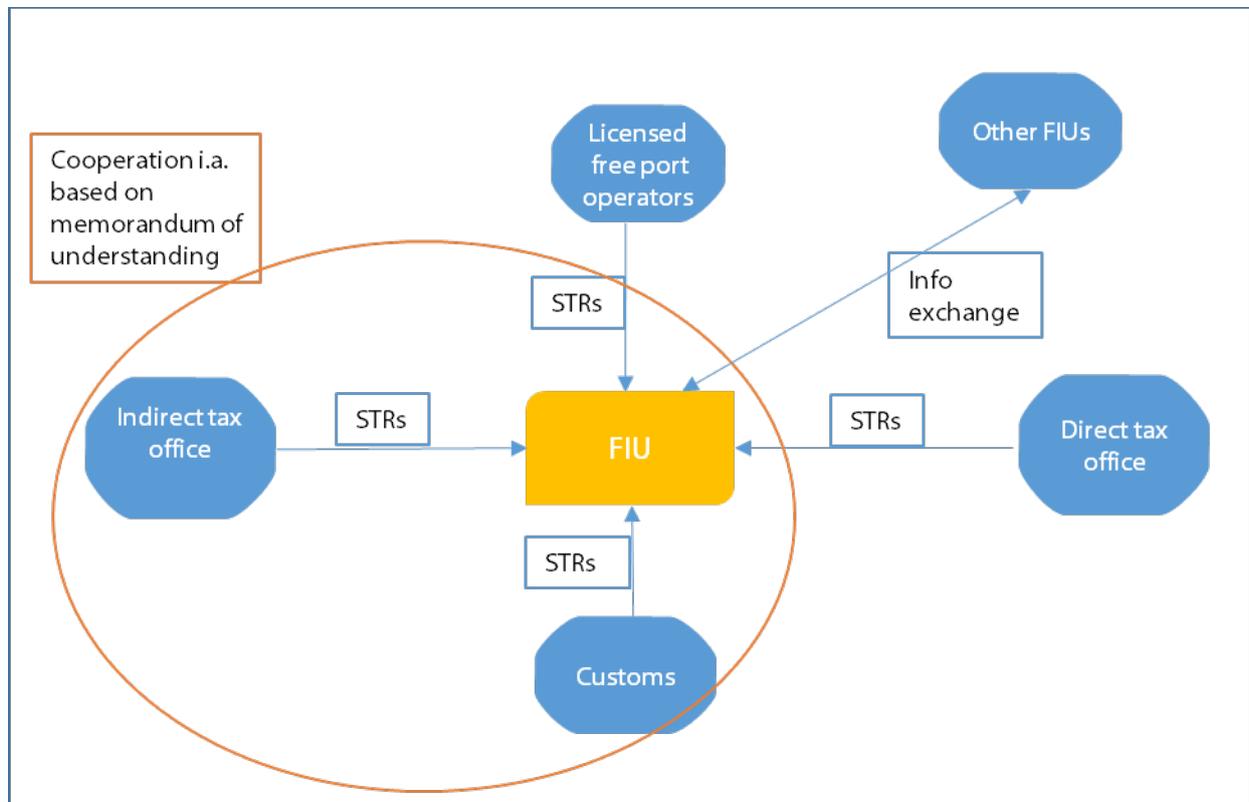
The FIU is the national authority with exclusive competence for receiving, requesting, analysing and following-up on STRs and other information regarding potential money laundering or terrorist financing. An exception was made for STRs by lawyers, who must first address their STRs to the president of the Bar (Bâtonnier de l'Ordre des Avocats) before whom the disclosing lawyer is enrolled. In this case, the president of the Bar verifies compliance with legal privilege conditions and where there is compliance, transmits the STR to the CRF.

One of the recent changes to Luxembourgish AML Law (effective since 1 January 2017 and transposing AMLD4) is the extension of money laundering offences to include aggravated tax fraud and tax evasion. If there is a suspicion of tax evasion, obliged entities as well any government official have to report this to the financial intelligence unit. The FIU can also request information, it analyses the reports and shares them with foreign counterparts where appropriate. In 2017, the FIU received just under 600 STRs in connection with tax-related offences.

At the time of the interview (July 2018), the FIU had received five or so STRs in connection with Le Freeport. The majority concerned questions of authenticity of works and invoicing.

In addition to Article 9-1 of the Luxembourgish AML Law, the customs authority, the AED and the FIU are in the process of establishing a memorandum of understanding to further coordinate their action regarding Le Freeport in the area of fraud, money laundering and terrorist financing.

Figure 6 – Role and responsibilities of the FIU in the AML and taxation framework relevant for Le Freeport in Luxembourg



³⁴ [Modified law of 12 November 2004 regarding the fight against money laundering and terrorism financing.](#)

Source: EPRS.

3.7. The roles and responsibilities of the direct tax office

Within the scope of its mandate, the direct tax office (ACD) has to determine and collect personal income tax, corporate tax and local commercial tax. Resident natural and legal persons are subject to tax on their worldwide income. Taxable income in Luxembourg can include gains realised on movable goods or capital gains if the goods or capital are held for less than six months following acquisition.

Luxembourgish tax residents are obliged to declare all taxable income, including income realised on movable goods such as paintings, jewellery or antiquities. This information, as well as all other tax relevant information, is used by the ACD, which can also conduct tax investigations to acquire additional tax relevant information concerning Luxembourgish tax residents.

The ACD is part of an inter-administrative cooperation framework that allows it to request and/or receive tax relevant information, including possible information relating to taxable gains on movable goods. By virtue of this inter-administrative cooperation framework, the ACD is able to exchange information with the indirect tax office, the public prosecutor and the FIU.

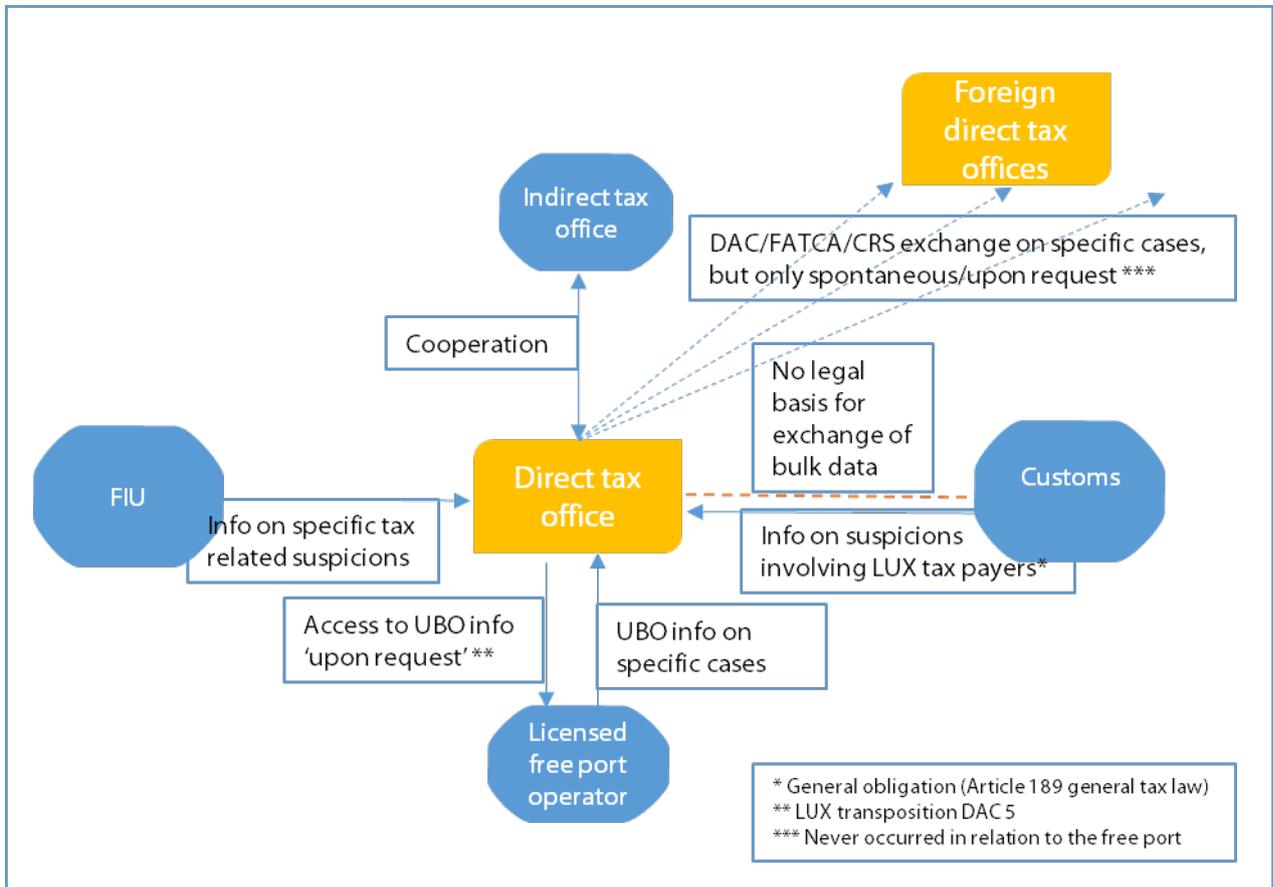
According to Luxembourgish criminal law, 'aggravated tax evasion' and 'tax fraud', even committed abroad, are predicate offences to money laundering.³⁵ As such, the various operators involved in Le Freeport (such as licensed operators), administrations involved in the supervision process (such as the AED and customs) have to report any suspicious transaction they notice, including tax fraud suspicion. In turn, suspicious transaction reports transmitted to the FIU are processed and potentially relevant tax information received is disseminated to the competent tax authorities, such as the ACD.

Luxembourg has transposed DAC5, which allows the ACD to have 'access upon request' to tax-relevant UBO information. Such requests must be justified with specific information, which can be information provided by the FIU or by another direct tax administration. However, thus far and despite its legal entitlement to do so, the ACD has never submitted a request to any of the licensed operators.

The ACD does cooperate fully and exchange tax-relevant information under the DAC framework, including tax information relating, for instance, to the value of investment goods.

³⁵ This is a transposition of EU AMLD4, which entered into force in June 2017.

Figure 7 – Role and responsibilities of the direct tax office in the AML and taxation framework relevant for Le Freeport in Luxembourg



Source: EPRS.

3.8. Conclusion

Luxembourg is the only country that has put licensed free port operators on the same footing as non-financial obliged AML entities, and done so almost five years ahead of its obligation to act.

The main focus in Luxembourg is, as is the case for other warehouses under special customs procedures, on the goods and indirect taxes related to the goods, not on possible direct tax consequences. Customs procedures are stricter than in other free zones within the EU or in customs warehouses.

Information about the value of goods or change of ownership of the goods as a result of sales or inheritance is not shared automatically with direct tax authorities. Customs has information about the goods, but has no legal basis for sharing information automatically or systematically with the direct tax office, for example following the sale of an object within Le Freeport.

The indirect tax office has access to the beneficial ownership information that is kept on record by the licensed operators for supervisory purposes.

The Luxembourgish transposition of DAC5 entered into force on 10 August 2018, allowing the Luxembourg direct tax office to have 'access upon request' to UBO information collected by obliged entities under AML. This includes the information itself and the documents, and also the mechanism

and process triggered by the professionals when they are performing their due diligence duties towards their clients.

The direct tax office has, at the point of publishing this study, never requested access to UBO data held by licensed free port operators and could therefore not have exchanged any information, whether spontaneous or upon request, under DAC, FATCA or CRS, originating from them.

Mr Bouvier is the main private investor in the Geneva free port and majority owner of the free ports in Luxembourg and Singapore. He has an advisory role as a consultant for the free port in Beijing. Moreover, through different companies he holds licenses to operate at these free ports and he is an art dealer. This concentration of a worldwide network of connected free ports and different roles could imply a risk of conflicting interests and insider trading. The fact that Mr Bouvier is entangled in an affair involving alleged fraud and insider trading, may justify such considerations. He has not been convicted, but the case has apparently caused reputational damage to Le Freeport.

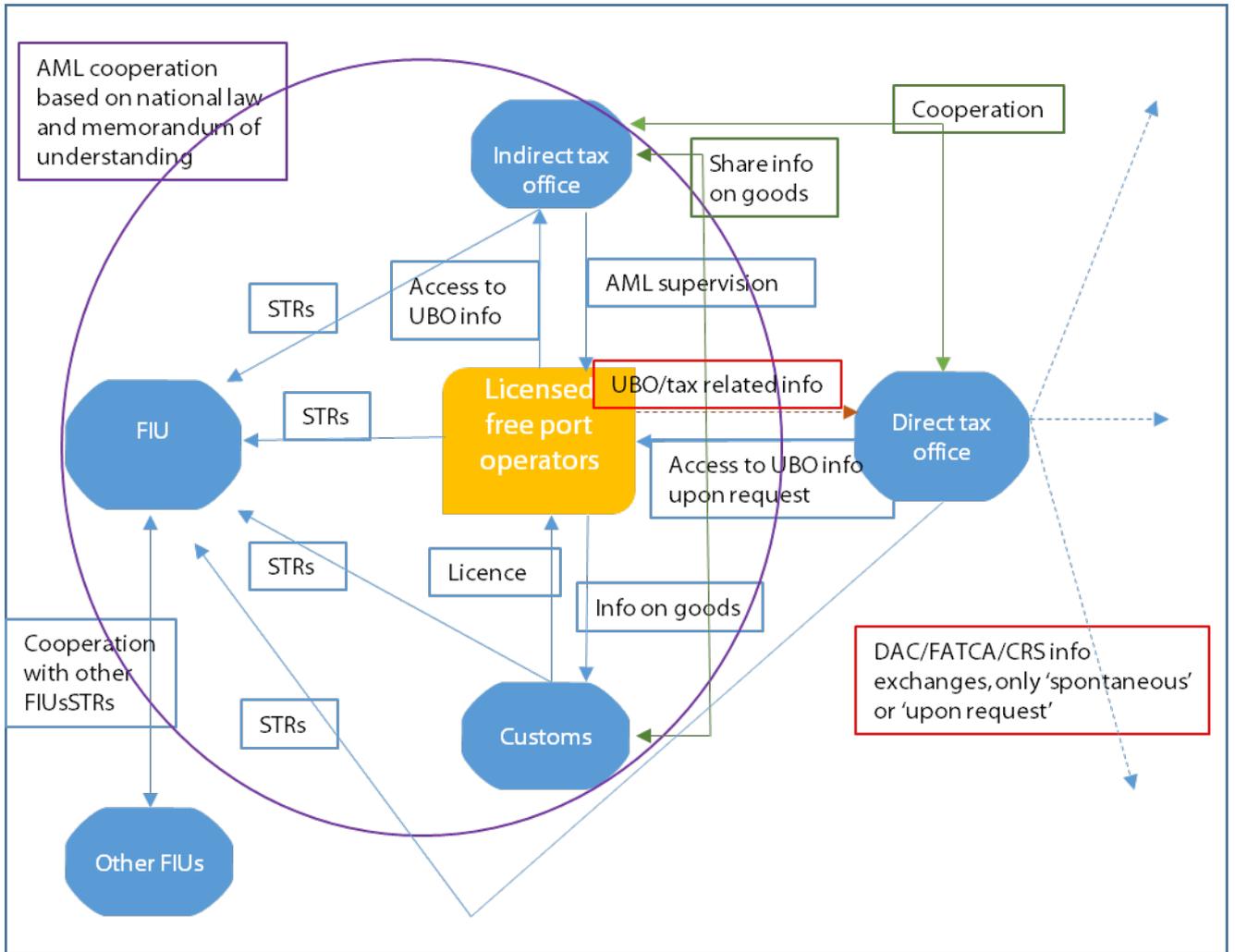
The decision to bring free port operators under national AML law just one year after the start of operations came as an unexpected setback for the investors. They did not expect this 'early adoption' during the years of preparation and realisation of the business plan. Following a grace period of one year, the licensed operators at Le Freeport became de facto obliged entities under AML law in August 2016 and this implied that they had to keep records of the real owners of the stored goods. Moreover, they had to start reporting suspicious transactions to the FIU.

The occupancy rate in Luxembourg is falling behind expectations. Le Freeport operators lost clients after the AML legislation entered unilaterally into force in Luxembourg in 2015 and they had to carry out customer due diligence (CDD). Some existing clients refused to provide information concerning beneficial ownership of the goods and took their business elsewhere. It also became much more difficult for operators to bring new clients on board as a result of this clampdown on secrecy. Owners can no longer use offshore companies, trusts, their lawyers, nominees or galleries to shield their ownership of goods in the Luxembourg free port from the AML authorities.

In Luxembourg, the customs authorities are not allowed to share information systemically with the direct tax office because there is no legal basis to do so. If the Luxembourgish direct tax office were to request information on proceeds of sales in Le Freeport, they would not be entitled to receive it from customs. The only direct access the direct tax office has is to AML information, upon request, from the licensed operator.

An overview of the different actors in the Luxembourgish anti-money laundering and tax evasion framework in relation to Le Freeport, the nature of their cooperation, the types of information available to them and the way they share information, is outlined in Figure 8 below.

Figure 8 – The Luxembourgish AML and tax framework in relation to the Le Freeport



Source: EPRS.

4. Summary conclusions

Free ports are conducive to secrecy. In their preferential treatment, they resemble offshore financial centres, offering both high security and discretion and allowing transactions to be made without attracting the attention of regulators and direct tax authorities.

Goods sold in free ports, often works of art or antiques, are not subject to value added tax. No withholding tax is collected on capital gains or inheritance, though sellers may need to report to the tax authority in the country where they are tax resident.

The high level of monetary transactions, the unfamiliarity of enforcement agencies with values and the portable nature of art itself all contribute to making the art market a suitable vehicle for illegal activity. As art is still one of the few unregulated markets, it can be a means of tax evasion and capital flight and a case can be made for regulating the market for investment art.

As of 10 January 2020, free port operators as well as other actors in the arts market, such as auction houses or galleries, will become obliged non-financial entities under the EU's AMLD5. This means they will become AML gate keepers as they will have to report suspicious transactions to FIUs and have to carry out client due diligence research in order to identify the beneficial owner of the stored goods.

Proceeds of sales of art or the possession of substitute goods such as art, antiques or jewellery do not fall within the categories for automatic exchange of information between tax authorities under DAC1. As free port operators are not financial institutions, they are not obliged to provide bulk data regarding their clients to tax authorities under the FATCA, CRS or DAC1 and therefore the exchange of such information between tax authorities is likely to be limited.

Access to these UBO records held by obliged non-financial entities is available to the AML supervisor only for supervision purposes. Direct tax authorities are not allowed to 'fish' in these data, but they can have access 'upon request' since the entry into force of DAC5 on 1 January 2018. However, given that the identities of beneficial owners in free ports, but also in customs warehouses, are 'unknown unknowns' to these authorities, they will need to have a prior suspicion in order to substantiate such a request. In this context, the likelihood of a 'spontaneous exchange' or 'exchange upon request' with other direct tax authorities is small.

Tax fraud and tax evasion have been considered predicate offences for money laundering since the entry into force of AMLD4 in June 2017. The effects of this remain to be seen as it is almost impossible for a free port operator to establish whether a client who has sold or inherited a piece of 'investment art' should have declared capital gains or inheritance or establish if this client actually did make a declaration to the direct tax authorities in the country of tax residence.

The UCC allows for significant flexibility as to who presents the goods upon entry and it does not require the holder of the procedure or of the authorisation to provide customs with information about the UBO. For the moment it can be anyone, as far as the UCC is concerned.

Currently, apart from Luxembourg, there is not one country in the world that has made free port operators subject to AML legislation. As UBO data are not required it is relatively simple to hide the UBO's identity behind another layer of secrecy, which can be an offshore firm, a trust or foundation, a lawyer or a gallery, or a combination of these.

The UCC provides the legal basis for (indirect) tax deferral as it allows for the permanent storage of goods under a free port or customs warehousing procedure. The fact that investment goods in such

facilities can be sold tax-free implies, if they are sold, that indirect taxes have in effect been avoided by the seller.

The wording in the AMLD5 is not consistent with that of the UCC. Firstly, 'free ports' are not recognised as such in the UCC, but are formally considered as any other 'free zone'. This might lead to confusion regarding the scope of the AMLD5.

The AMLD5 (Article 2(3j)) explicitly refers to persons 'storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports'. Given that free ports fall under the so called 'free zone procedure' in the UCC, which is almost on the same legal footing as the UCC's 'customs warehousing procedure', it opens the discussion as to whether 'customs warehouses' or 'bonded warehouses' also fall within the scope of the directive.

Bringing operators such as auction houses and dealers under AMLD5 will pose challenges for them, but also for supervisors. The future success of AMLD5 in the arts market depends on the willingness of these new obliged entities to report suspicions to FIUs and on the deterrent effect of future supervision and possible sanctions. The poor implementation of the AMLD3 by financial institutions throughout Europe and the failing AML supervision of the financial sector, revealed by the Panama Papers and many other leaks and ongoing scandals in the banking sector, may be taken as a warning.

Luxembourg is the only country to have put licensed free port operators on the same footing as non-financial obliged AML entities – almost five years ahead of its obligation to do so. Free port operators lost clients after the AML legislation entered unilaterally into force in Luxembourg in 2015 and they had to carry out customer due diligence (CDD). Some existing clients refused to provide information concerning beneficial ownership of the goods and took their business elsewhere. It also became much more difficult for operators to bring new clients on board as a result of this clampdown on secrecy. Owners can no longer use offshore companies, trusts, their lawyers, nominees or galleries to shield their ownership of goods in the Luxembourg free port from AML-authorities, and for some this appears to be a problem.

Despite the strict AML regime in Luxembourg – and as of 2020 throughout the EU – the success of the AML framework will depend heavily on the good faith of obliged entities and their willingness to act as AML gatekeepers by reporting suspicions. Even after the entry into force of AMLD5, the likelihood of exchange of information between tax authorities is low as a consequence of limited access to AML data kept by non-financial obliged entities.

Annex

The 82 free zones operating in the customs territory of the European Union as of 17 November 2017

(N.B. This list of free zones does not include the very high number of customs warehouses, which fulfil many of the same purposes.)

Member State	Free zones
Austria	None
Belgium	None
Bulgaria	<ol style="list-style-type: none"> 1 Free Zone Bourgas Plc 8000 Bourgas 5, Trapezitsa Street P.O.Box 154 2 Free Zone Vidin Plc 3700 Vidin 3 North Industrial Zone Free Zone Dragoman Plc 2210 Dragoman 16,Zahari Stoianov Street 4 Free Zone Plovdiv Plc 4003 Plovdiv 242a, Vasil Levski Street (Karlovsko Shose) P.O.Box 75 5 Free Zone Rousse Plc 7000 Rousse 71, Tutrakan Blvd. P.O.Box 107 6 Free Zone Svilengrad Plc 6500 Svilengrad 60, Bulgaria Blvd.
Croatia	<ol style="list-style-type: none"> 1 Slobodna zona Zagreb Slobodna zona Luka Rijeka – Škrljevo 2 Slobodna zona Kukuljanovo nije aktivna/is not active 3 Krapinsko - zagorska slobodna zona 4 Podunavska slobodna zona 5 Vukovar 6 Slobodna zona Osijek 7 Slobodna zona Splitsko - dalmatinska <ol style="list-style-type: none"> a) dio Smokovik b) dio Sinj c) dio Postira d) dio Nerežišća e) dio Klis/Sinj 8 Slobodna zona luke Ploče 9 Slobodna zona luke Pula 10 Slobodna zona luke Rijeka <ol style="list-style-type: none"> a) Bazen Rijeka b) Bazen Bakar c) Bazen Raša

Member State	Free zones
	11 Slobodna zona luke Split
Cyprus	1 Customs Headquarters, Customs & Excise Department, Customs Warehousing & Free Zones Section
Czech Republic	1 Free zone Ostrava akciová společnost, Mošnov 313, 742 51 Mošnov IČ: 136 42 693 2 GRADDO, a.s., U Bulhara, 11000 Praha 1 IČ 005 45 937 3 Free zone Pardubice a.s., Pardubice U Panasonicu 375 PŠČ 530 06 IČ: 601 12 255 4 Merka Spedition, s. r.o., Vážní 857, 500 03 Hradec Králové IČ: 150 63 828 5 ESCES spol. s r.o., Tiskařská 563/6, Praha 10 IČ 480 39 471 6 SPEDQUICK s. r.o., Vinohrady, Závěšova 2518 Praha 4, 140 00, IČ: 005 53 018 B.F.C.W. Logistics s.r.o. - Veverské Knínice 311 664 81 Veverské Knínice IČ.277 23 631 7 B.F.C.W. Logistics s.r.o. Veverské Knínice 311 664 81 Veverské Knínice IČ : 277 23 631
Denmark	1 SKAT Copenhagen
Estonia	1 Muuga Free Zone 2 Sillamäe Free Zone 3 Paldiski free zone
Finland	1 Hangon Vapaasatama (Hanko Freeport) 2 Oulun Vapaasatama
France	1 Zone franche du Verdon – Port de Bordeaux (Free Zone of Verdon – Port de Bordeaux) 2 Zone franche de Guyane
Germany	1. Freihafen Bremerhaven (Freeport of Bremerhaven) 2. Freihafen Cuxhaven (Freeport of Cuxhaven)
Greece	1 (Free Zone of Piraeus)

Member State	Free zones
	2 (Free Zone of Thessaloniki) 3 (Free Zone of Heraclion) 4 Free Zone of Platigiali, Astakos Etoloakarnanias
Hungary	1 Customs free zone, Záhony
Ireland	None
Italy	1 Punto franco di Trieste (Free Zone of Trieste) 2 Punto franco di Venezia (Free Zone of Venice)
Latvia	1 Rīgas brīvosta (Free port of Riga) 2 Liepājas speciālā ekonomiskā zona (Liepaja Special Economic Zone) 3 Ventspils brīvosta (Free port of Ventspils) 4 Rēzeknes speciālā ekonomiskā zona (Rezekne Special Economic Zone)
Lithuania	1 UAB 'Vingės logistika', Verslo g. 11, LT-94102 Klaipėda (Free zone Vinges logistika, Verslas street 11, LT-94102 Klaipėda) 2 UAB 'Ad rem lez', Švepelių g. 5A, LT-94103 Klaipėda (Free zone Ad rem lez, Svepeliai street 5A, LT-94103 Klaipėda) 3 UAB „Vingės transsphere Logistika', Maišinės k., LT-21401 Trakų r. (Free zone Vinges transsphere logistika Maisine village, LT-21401 Trakai region) 4 UAB „Transekspedicija', Galinės g. 1, Galinės k., LT-14247 Vilniaus r. (Free zone Transekspedicija, Galine street 1, Galine village, LT-14247 Vilnius region) 5 UAB „Vingės terminalas', Bareikiškių k., LT-13176 Vilniaus r. (Free zone Vinges terminalas, Bareikiskes village, LT-13176 Vilnius region) 6 UAB 'Vilniaus transimeksa' Sausupio g. 15, LT-02301 Vilnius (Free zone Vilniaus transimeksa Sausupis street 15, LT-02301 Vilnius) 7 UAB 'Premuita',

Member State	Free zones
	<p>Kirtimų g. 69, LT-02244 Vilnius (Free zone Premuita Kirtimai street 69, LT-02244 Vilnius</p> <p>8 UAB 'Rikusta' Lakūnų g. 3, LT-77103 Šiauliai (Free zone Rikusta Lakunai street 3, LT-77103 Siauliai)</p> <p>9 UAB 'Lavisos koncernas' Taikos pr. 98A, LT-51177 Kaunas (Free zone Lavisos koncernas Taika avenue 98A, LT-51177 Kaunas)</p> <p>10 UAB 'Aviacijos paslaugų centras' Pievų g. 1, Karmėlava, LT-54459 Kauno r. (Free zone Aviacijos paslaugu centras Pievos street 1, Karmelava, LT-</p>
Luxembourg	1 Luxembourg Freeport, Parishaff.
The Netherlands	None
Poland	<p>1 Wolny Obszar Celny na terenie Portu Lotniczego im. Fryderyka Chopina w Warszawie ul. Żwirki i Wigury 1 00-906 Warszawa</p> <p>2 Wolny Obszar Celny w Gliwicach ul. Portowa 28 44-100 Gliwice</p> <p>3 Wolny Obszar Celny w gminie Terespol ul. Wojska Polskiego 47 21-550 Terespol</p> <p>4 Wolny Obszar Celny w Szczecinie ul. Bytomska 7 70-603 Szczecin</p> <p>5 Wolny Obszar Celny w Świnoujściu ul. Jana Sołtana 1 72-602 Świnoujście</p> <p>6 Wolny Obszar Celny w Gdańsku ul. Zamknięta 18 80-955 Gdańsk</p> <p>7 Wolny Obszar Celny w Mszczonowie w województwie mazowieckim ul. Fabryczna 6/10 96-320 Mszczonów</p>
Portugal	1 Zona Franca da Madeira (Caniçal)
Romania	<p>1 Free zone Curtici Arad</p> <p>2 Free zone Galati</p> <p>3 Free zone Giurgiu</p> <p>4 Free zone Braila</p> <p>5 Free zone Sulina</p>

Member State	Free zones
	6 Free zone Constanta Sud si Basarabi
Slovakia	None
Slovenia	1 Luka Koper, Prosta cona Koper
Spain	1 Zona franca de Barcelona (Free Zone of Barcelona)
	2 Zona franca de Cádiz (Free Zone of Cádiz)
	3 Zona franca de Vigo (Free Zone of Vigo)
	4 Zona franca de Las Palmas de Gran Canaria (Free Zone of Las Palmas de Gran Canaria)
	5 Zona Franca de Sevilla (Free Zone of Sevilla)
	6 Zona Franca de Santander (Free Zone of Santander)
	7 Zona Franca de Tenerife (Free Zone of Tenerife)
Sweden	None
United Kingdom	1 Isle of Man Free Zone and Business Park

Source: EPRS.

This study provides an insight into the money laundering, tax evasion and tax avoidance risks in relation to free zones, particularly those that function as (semi-) permanent storage for high-value goods, often referred to as 'freeports'.

It was conducted at the request of the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) and follows-up on concerns about free zones that had been expressed in recent resolutions by the European Parliament.

The study is based on an analysis of relevant legislation, academic literature, annual and special reports by authorities, think-tanks and operators in the art business, articles in different media, interviews with experts at the European level and at the OECD and a case study of the legal and supervisory framework at 'Le Freeport' in Luxembourg

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