



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 June 2002

**Interinstitutional File:
2001/0133 (COD)
2001/0134 (COD)**

10352/02

LIMITE

**FISC 186
CODEC 819**

PUBLIC

NOTE FROM THE DANISH PRESIDENCY

To : Working Party on Tax Questions – Indirect Taxation (VAT)
Subject : Administrative co-operation in the field of value added tax
- Presidency compromise proposal

In meetings on 8 and 30 January and 25 March the Working Party examined the Commission proposal for a regulation and for amendments of directive 77/799/EEC, doc. COM (2001) 294 final, cf. Doc. 10510/01 (FISC 125; CODEC 696).

Still in the meeting on 25 March and in a further meeting on 23 April 2002 the Working Party examined a Presidency compromise proposal concerning Articles 1 - 23 of the regulation (cf. doc. 6812/02 (FISC 71) and doc. 8045/02 (FISC 103)).

From the incoming Danish Presidency delegations will find attached compromise texts on the regulation as well as the directive.

The attached texts contain clear indications as to where modifications and changes have been made in relation to the compromise proposal referred to above (concerning Articles 1 - 23 of the regulation) and the Commission proposal (concerning partly the remaining Articles of the regulation, partly the Directive).

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on administrative cooperation in the field of value added tax

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁴,

Whereas:

- (1) Tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of the conditions of competition. They therefore affect the operation of the internal market.
- (2) Combating value added tax (VAT) evasion calls for close cooperation between the administrative authorities in each Member State responsible for the application of the provisions in that field.
- (3) Rules should therefore be drawn up whereby the Member States' administrative authorities must assist each other and cooperate with the Commission in order to ensure the proper application of VAT.

¹ OJ C
² OJ C
³ OJ C
⁴ OJ C

- (4) Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT)¹ established in this respect a system of close cooperation amongst the Member States' administrative authorities and between those authorities and the Commission.
- (5) Regulation (EEC) No 218/92 supplements Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation², as last amended by the Act of Accession of Austria, Finland and Sweden.
- (6) Those two legal instruments have proved to be effective but are no longer able to meet the new requirements of administrative cooperation resulting from the ever closer integration of economies within the internal market.
- (7) The existence of two separate instruments for cooperation on VAT has, moreover, hampered effective cooperation between tax administrations.
- (8) The rights and obligations of all parties concerned are currently ill-defined and clearer and binding rules governing cooperation between Member States are therefore necessary.
- (9) There is not enough direct contact between local or national anti-fraud offices, with communication between central liaison offices being the rule. This leads to inefficiency, under-use of the arrangements for administrative cooperation and delays in communication. Provision should therefore be made for more direct contacts between services with a view to making cooperation more efficient and faster.
- (10) Cooperation is also not intensive enough, in that apart from the VAT information exchange system (VIES) there are not enough automatic or spontaneous exchanges of information between Member States. Exchanges of information between the respective administrations as well as between administrations and the Commission should be made more intensive and swifter in order to combat fraud more effectively.

¹ OJ L 24, 1.2.1992, p. 1.

² OJ L 336, 27.12.1977, p. 15.

- (11) Regulation (EEC) No 218/92 should therefore be amended accordingly and the provisions of Directive 77/799/EEC on VAT should be included in it. In the interests of clarity, Regulation (EEC) No 218/92 should be replaced.
- (12) Regulation (EEC) No 218/92 and Directive 77/799/EEC were intended not to harmonise tax measures but to ensure the proper functioning of the internal market by facilitating administrative cooperation between national administrations in the field of indirect taxation. This Regulation pursues the same objective.
- (13) This Regulation should not affect other Community measures which contribute to combating VAT fraud.
- (14) For the purposes of this Regulation, it is appropriate to limit certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ¹ in order to safeguard the interests referred to in Article 13(e) of that Directive.
- (15) Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ², they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.
- (16) This Regulation respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

1. This Regulation lays down the conditions under which the administrative authorities in the Member States responsible for the application of the laws on value added tax (VAT) are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help them to effect a correct assessment of VAT.

It also lays down rules and procedures for the exchange of certain information by electronic means, in particular as regards VAT on intra-Community ~~trade~~transactions.

2. This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

Article 2

For the purposes of this Regulation:

- 1) "competent authority" means the authority designated under Article 3, paragraph 1;
- 2) "central liaison office" means the office which has been designated under Article 3, paragraph 2 with principal responsibility for contacts with other Member States in the field of administrative cooperation.
- 34) ~~"liaison department" means any office which has less territorial or operational competence other than the central liaison office with a specific territorial competence or a specialised operational responsibility which has been designated by the competent authority to submit or receive requests for assistance pursuant to article 3 paragraph 3; and which, by delegation of the competent authority and under the central liaison office, may submit or receive requests for assistance. Member States shall determine the number of departments and the criteria for distribution of competence;~~
- 45) "competent official" means any official who can submit or receive those requests for assistance for which he has been authorised pursuant to Article 3 paragraph 4;
- 52) "requesting authority" means the central liaison office, a liaison departments or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
- 63) "requested authority" means the central liaison office, a liaison departments or any competent official of a Member State who receives a request for assistance on behalf of the competent authority;

7) "value-added tax" means the tax levied in each Member State on the supplies of goods and services effected for consideration within the territory of the country by a taxable person acting as such and on the importation of goods.

~~8~~2) "intra-Community transactions" means the intra-Community supply of goods or services;

~~9~~3) "intra-Community supply of goods" means any supply of goods which must be declared in the recapitulative statement provided for in Article 22(6)(b) in the version given in Article 28h of Directive 77/388/EEC;

~~10~~4) "intra-Community supply of services" means any supply of services covered by ~~Article 9(2)(e) of~~ Article 28b(C), (D), (E) and (F) of Directive 77/388/EEC;

~~11~~5) "intra-Community acquisition of goods" means acquisition of the right to dispose as owner of movable tangible property under Article 28a(3) of Directive 77/388/EEC;

~~12~~4) "VAT identification number" means the number provided for in Article 22(1)(c), (d) and (e) in the version given in Article 28h of Council Directive 77/388/EEC ¹;

~~13~~6) "administrative enquiry" means all the controls, checks and other action taken by staff of the competent authorities in the performance of their duties with a view to ensuring proper application of VAT legislation.

~~14~~6) "structured exchange" means the ~~collection of predefined information and its systematic communication of predefined information~~ to another Member State, without prior request, by the central liaison office or a liaison department as and when that information becomes available to the competent authority or its services;

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¹ OJ L 145, 13.6.1977, p. 1.

157) "automatic exchange" means the ~~collection of predefined information and its systematic communication of predefined information communication~~ to another Member State, without prior request, by the central liaison office or a liaison department at pre-established regular intervals;

168) "person" means:

- (a) a natural person,
- (b) a legal person, or
- (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;

179) "to grant access" means to authorise access to the relevant electronic data base and to obtain data by electronic means;

184) "by electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

19) "CCN/CSI network" means the common platform based on the Common Communication Network (CCN) and Common System Interface (CSI), developed by the Community to ensure all transmissions by electronic means between competent authorities in the area of Customs and Taxation;

Article 3

1. Each Member State shall inform the other Member States and the Commission which single competent authority it has designated as the authority in whose name this Regulation is to be applied, whether directly or by delegation either to the central liaison office referred to in paragraph 2, ~~or~~ to the liaison departments referred to in paragraph 3, or to the officials referred to in paragraph 4.

2. Each competent authority shall designate a single central liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative cooperation. It shall inform the Commission and the competent authorities of the other Member States thereof.
3. Each competent authority ~~shall~~ may designate liaison departments. The central liaison office shall be responsible for keeping the list of those departments up to date and making it available to the central liaison offices of the other Member States.
4. ~~The provisions of this Regulation shall not preclude direct contacts, exchange of information or cooperation, in accordance with the conditions laid down herein, between the different Member States' officials authorised by the competent authority or the central liaison office. Any official authorised to exchange information by virtue of this paragraph shall be identified as such by a standardised message contained in the CCN/CSI. The content of the message shall be agreed pursuant to the procedure laid down in Article 40(2) of this Regulation. The officials referred to in Articles 13 and 16(3) shall be authorised in accordance with the provisions of this paragraph. The officials referred to in this paragraph shall be regarded as competent officials. The central liaison office and the liaison departments may in addition designate, under the conditions laid down by them competent officials who can directly exchange information on the basis of the present regulation. When they do so they can limit the scope of such a delegation. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States.~~
The central liaison office and the liaison departments may in addition designate, under the conditions laid down by them competent officials who can directly exchange information on the basis of the present regulation. When they do so they can limit the scope of such a delegation. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States.
5. The officials exchanging information under Articles 13 and 15 are in any case deemed to be competent officials for this purpose, in accordance with conditions laid down by the competent authorities.

65. ~~Where an liaison department or a competent official sends or receives a request or a reply to a request for assistance, it shall inform the central liaison office of its Member State under the conditions laid down by the latter, submits a request for assistance pursuant to paragraph 4, he must forward a copy of that request and of the reply received to the central liaison office at the latest within ten days. Until such time the information received may not be used for the purposes laid down in Article 1.~~
7. Where a liaison department or a competent official receives a request for assistance requiring action outside his territorial or operational area, it shall forward without delay such a request to the central liaison office of his Member State and inform the requesting authority thereof. In such a case, the period laid down in Article 8 shall start the day after the request for assistance has been forwarded to the central liaison office.
8. The Commission shall publish and update the list of competent authorities in the *Official Journal of the European Communities*.

Note: discussions on previous meetings have shown that most delegations would accept a certain degree of decentralisation in the area of the exchange of information. However the decentralisation needed varies from Member State to Member State. Therefore some Member States will not need to create “liaison departments” while others can do so.

Article 4

The obligation to give assistance provided for in this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 acting with the authorisation or at the request of the judicial authority. However, in the case of requests for assistance, such information or documents shall be provided if the judicial authority of the Member State in which the requested authority is established, which, if necessary, ~~must~~ shall be consulted on the matter, gives its consent.

~~[In so far as permitted under national legislation, the competent authority shall strive to communicate under the administrative cooperation provided for by this Regulation, the information concerning the application of VAT legislation obtained in this way, or at least that part of the file required to put a stop to a fraudulent practice in another Member State.]~~

Note: The Presidency considers that it will not be possible to reach agreement on the second subparagraph of Article 4. This subparagraph has therefore been deleted.

Chapter II

Exchange of information ~~Coöperation~~ on request

SECTION 1

REQUEST FOR INFORMATION AND FOR ADMINISTRATIVE ENQUIRIES

Article 5

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.
2. For the purpose of forwarding the information referred to in paragraph 1, the ~~competent authority of the requested Member State~~ requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.
3. The request referred to in paragraph 1, may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary it shall immediately inform the applicant authority of the reasons thereof.
4. ~~3-~~In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 6

Requests for information and for administrative enquiries pursuant to Article 5 shall, as far as possible, be sent using a standard form adopted in accordance with the procedure referred to in Article ~~3740~~(2).

Article 7

1. At the request of the requesting authority, the requested authority shall communicate to it any relevant–pertinent information it obtains or in its possession as well as the results of administrative enquiries, in the form of reports, statements and any other documents, or certified true copies or extracts thereof.
2. Original documents shall be provided only where this is not contrary to the provisions in force in the Member State in which the requested authority is established.

Note: the working group has not reached consensus on the need for two different procedures (articles 5 and 8). Therefore Article 8 is deleted, but Article 5 is redrafted in order to provide a clear legal base to ask for administrative enquiries needed. This can be usefull, on the one hand, in cases of abuse of intra-community exemptions (e.g. Carousel fraud) when there is need to request, for instance:

- **to check the authenticity of an invoice (or the supply) to a customer in another Member State;**
- **to check the authenticity of a taxable person (address, activity, assets, identity of directors,...);**
- **to collect more evidence for presumable irregular actions, etc..**

On the other hand, a specific request for an administrative enquiry may also be necessary in the case of a domestic company storing all its accounts in another MS and refusing access to its own tax administration. In such a situation (which is common today with businesses storing all their documentation in an electronic format), it is important to make it possible for a Member State to ask for an audit (possibly a computer audit) to be carried out by another MS, without asking for specific information. This need is reflected in SCAC document n° 330 on computer audit, that has been endorsed unanimously by Member States on 29 May 2002.

In practice some Member States have already developed informal bilateral procedures on the basis of Directive 77/799. The Regulation should now provide a clear and unique legal base and procedure for all Member States.

SECTION 2

APPLICATION TO CONDUCT ADMINISTRATIVE ENQUIRIES

Article 8

The requested authority shall, at the reasoned request of the requesting authority, carry out, or have carried out, the appropriate administrative enquiries concerning:

1) — transactions which are, or appear to the requesting authority to be, contrary to the VAT legislation and are deemed to be taxed in the territory of the Member State where the requesting authority is established.

Article 9

1. — The requested authority or the administrative authority to which it has recourse shall conduct administrative enquiries as though acting on its own account or at the request of another authority in its own country.

. — The requested authority shall communicate the results of administrative enquiries to the requesting authority.]

SECTION 3 2

TIME LIMIT FOR PROVIDING INFORMATION

Article ~~10~~ 8

The requested authority shall provide the information referred to in Articles 5, and 7 ~~and 9~~ as quickly as possible and no later than three months following the date of receipt of the request.

However, where the requested authority is already in possession of that information the time-limit is reduced to a maximum period of one month, ~~it shall forward such information as quickly as possible and in any event within one month.~~

Article ~~11~~ 9

In certain special categories of cases, ~~different the competent authorities could set time limits to the ones shorter than those provided for in Article 8~~ may be agreed between the requested and the requesting authorities, ~~the previous Article.~~

Note: Article 9 introduces certain flexibility so that the authorities concerned can agree on shorter or longer time limits.

Article ~~12~~ 10

Where the requested authority is unable to respond to the request by the deadline, it shall inform the requesting authority in writing forthwith of the reasons for its failure to do so, of the enquiries it has undertaken and of when it expects to ~~state when it will~~ be able to respond.

SECTION 43

PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES

Article ~~13~~11

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present in the travel to the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties. Where the requested information is contained in documentation to which the officials have access, the officials of the requested authority will be given copies of the said documentation. ~~of the requested authority for the purpose of exchanging the information referred to in Article 1 relating to one or more specific cases. The requested authority shall supply the requesting authority with such information in the form provided for in Article 7 of this Regulation.~~
2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down ~~conditions set~~ by the latter, officials designated by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present during the administrative enquiries. Administrative enquiries shall, at all times be carried out by the officials of the requested authority. The requesting authority's officials may not, ~~on their own initiative,~~ exercise the powers of inspection conferred on officials of the requested authority. They ~~shall~~may, however, have access to the same premises and documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.
3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

Note: the changes introduced in Article 11 are needed to clarify that in all cases, the competent officials of the requested authority are responsible for handing over any documentation needed to fulfil the request. It is they who determine the arrangements for foreign competent officials to be present at their offices or during an enquiry. They will also determine whether those officials will have access to premises or documents during the conduct of the enquiry.

SECTION 54

SIMULTANEOUS CONTROLS

Article 14 12

With a view to ~~For the purposes of exchanging the information referred to in Article 1, two or more Member States may agree to conduct simultaneous controls, independently and in their own territory, of the tax situation of one or more taxable persons who are of common or complementary interest. Member States shall endeavour to conduct simultaneous controls, with a view to exchanging the information thus obtained,~~ whenever such controls would appear to be more effective than controls by only one Member State.

Article 15 13

1. The competent authority ~~in each of a Member State shall identify~~ identifies independently the taxable persons whom it intends to propose for a simultaneous control. It shall notify the competent authority in the other Member States concerned of the cases ~~qualifying proposed~~ for simultaneous tax controls. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the time period during which such controls should be conducted. ~~expiry date of its powers of verification relating to the cases proposed for simultaneous control.~~

2. ~~Each~~The competent authorities of the Member States concerned shall then decide whether it wishes to take part in the simultaneous controls. On receipt of a proposal for a simultaneous control, the competent authority shall confirm its agreement or communicate its reasoned refusal to its counterpart authority.
3. ~~Each~~The competent authorities of the Member States concerned shall appoint a representative to be responsible for supervising and coordinating the control operation.

~~SECTION 6~~

Chapter III

Request for administrative notification

Article ~~16~~ 14

The requested authority shall, at the request of the requesting authority, and in accordance with the rules governing the notification of similar instruments in the Member State in which it is established, notify the addressee of all instruments and decisions which emanate from the administrative authorities and concern the application of VAT legislation in the territory of the Member State in which the requesting authority is established.

Article ~~17~~ 15

Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.

Article ~~18~~ 16

The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of transmission of the decision or instrument to the addressee.

Chapter ~~III~~IV

Exchange of information without prior request

Article ~~17~~19

Without prejudice to the provisions of Chapter ~~IV~~, the competent authority of each Member State shall, by structured or automatic exchange, forward the information referred to in Article 1 to the competent authority of any other Member State concerned, in the following cases:

- (1) where taxation is deemed to take place in the Member State of destination and the effectiveness of the control system necessarily depends on the information provided by the Member State of origin;
- (2) where a Member State has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other Member State;
- (3) where there is a risk of tax loss in the other Member State;

Article ~~18~~20

~~Each Member State shall determine whether it exchanges the information referred to in annex A in a structured or an automatic way.~~

~~For each of the categories of information listed in Annex A, t~~The following shall be determined in accordance with the procedure referred to in Article ~~40~~37(2):

- (1) ~~the detailed particulars~~exact categories of information to be exchanged;
- (2) the frequency of the exchanges;
- (3) the practical arrangements for the exchange of information.

Each Member State shall determine whether it will take part in the exchange of a particular category of information, as well as whether it will do so in a structured or an automatic way.

Note: no agreement was reached in the matter of how to determine the areas in which Member States should engage in automatic or structured exchange. It would seem appropriate for the Committee to determine, the categories and practical arrangements of the exchange of information, and let Member States then decide whether to take part on the exchange of a particular category of exchanges.

Article ~~21~~ 19

The competent authorities of the Member States may in any case spontaneously forward to each other, without prior request, any information referred to in Article 1 of which they are aware.

Article ~~22~~ 20

Member States shall take the necessary administrative and organisational measures to facilitate the exchanges provided for in this Chapter.

[Article ~~23~~ 21]

A Member State cannot be obliged, for the purposes of implementing the provisions of this Chapter, to impose new obligations on persons liable for VAT with a view to collecting information.]

Note: The Presidency is inclined to believe that the Article is now superfluous.

Chapter IV

Storage and exchange of information specific to intra-Community transactions

Article ~~25~~ 22

1. The competent authority of each Member State shall maintain an electronic data base in which it shall store and process the information that it collects in accordance with Article 22(6)(b) in the version given in Article 28h of Directive 77/388/EEC.

To enable that information to be used in the procedures provided for in this Regulation, the information shall be stored for at least five years from the end of the calendar year in which access to the information is to be granted.

2. Member States shall ensure that their data bases are kept up to date, and are complete and accurate.

Criteria shall be defined, in accordance with the procedure referred to in Article ~~40~~37(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article ~~26~~23

On the basis of the data stored in accordance with Article ~~25~~22, the competent authority of a Member State shall have communicated to it automatically and without delay by any other Member State the following information, to which it may also have direct access:

- (1) VAT identification numbers issued by the Member State receiving the information;
- (2) the total value of all intra-Community supplies of goods to persons holding a VAT identification number by all operators identified for the purposes of VAT in the Member State providing the information.

The values referred to in (2) shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

Note: although one delegation expressed concerns on the matter of the “direct access”, such possibility is already defined in article 4(2) of Regulation 218/1992.

Article ~~27~~24

On the basis of the data stored in accordance with Article ~~25-22~~ and solely in order to ~~combat tax fraud~~ prevent a breach of VAT-legislation, the competent authority of a Member State shall, wherever it considers it necessary for the control of intra-Community acquisitions of goods ~~or services~~, obtain directly and without delay, or have direct access to by electronic means, any of the following information:

- (1) the VAT identification numbers of the persons who effected the supplies referred to in Article ~~26~~23(2);
- (2) the total value of such supplies from each such person to each person holding a VAT identification number referred to in Article ~~26~~23(1); and
- (3) the full address and details of the relevant ~~territorial service~~ liaison department referred to in Article 3 (3), which can be contacted for any additional information about any such persons.

The values referred to in (2) shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

Article ~~28~~25

1. Where the competent authority of a Member State is obliged to grant access to information under Articles ~~25~~22, ~~26~~23 and ~~27~~24, it shall, as regards the information referred to in Articles ~~26~~23 and ~~27~~24, do so as soon as possible and within three months at the latest of the end of the calendar quarter to which the information relates.
2. By way of derogation from paragraph 1, where information is added to a data base in the circumstances provided for in Article ~~25~~22, access to such additional information shall be granted as quickly as possible and no later than three months from the end of the quarter in which it was collected.
3. The conditions under which access to the corrected information may be granted shall be laid down in accordance with the procedure referred to in Article ~~40~~37(2).

Article ~~29~~26

Where, for the purposes of Articles ~~25~~22 to ~~28~~25, the competent authorities of the Member States store information in electronic data bases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article ~~37~~34.

Article ~~30~~27

1. The competent authority of each Member State shall maintain an electronic data base containing a register of persons to whom VAT identification numbers have been issued in that Member State.
2. At any time the competent authority of a Member State may obtain directly or have communicated to it, from the data stored in accordance with Article ~~23~~24, confirmation of the validity of the VAT identification number under which a person has effected or received an intra-Community supply of goods or services.

On specific request, the requested authority shall also communicate the date of issue and, where appropriate, the expiry date of the VAT identification number.

3. On request, the competent authority shall also provide without delay the name and address of the person to whom the number has been issued, provided that such information is not stored by the requesting authority with a view to possible use at some future time.
4. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or services are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

The sending of such confirmation by electronic means shall be authorised subject to conditions to be laid down in accordance with the procedure referred in Article ~~40~~37(2).

5. Where, for the purposes of paragraphs 1 to 4 of this Article, the competent authorities of the Member States store information in electronic data bases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article ~~37~~34.

Chapter VI

Relations with the Commission

Article ~~31~~28

1. The Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. The Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements.
2. The Member States shall communicate to the Commission any available information ~~relating~~ relevant to their application of this Regulation, including any statistical data needed for evaluation of its application.

The relevant statistical data shall be determined in accordance with the procedure referred to in Article ~~37~~40(2)
3. ~~The Member States shall also communicate to the Commission any information on methods or practices used or suspected of having been used to infringe VAT legislation which has helped reveal shortcomings or lacunae in the arrangements for administrative cooperation provided for in this Regulation~~
- 4.3 With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax avoidance, Member States may communicate to the Commission any other information referred to in Article 1.
- 5.4. The Commission shall forward the information referred to in paragraphs 2,3 and 4 3 to the other Member States concerned.

Chapter VII

Relations with third countries

Article ~~3229~~

1. When the competent authority of a Member State receives information from a third country, that authority is obliged to pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it, in so far as permitted by assistance arrangements with that country.

~~Such information must also be communicated to the Commission whenever it is of relevance at Community level.~~

2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions which appear to contravene VAT legislation, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities which supplied the information, in accordance with their domestic provisions applying to the communication of personal data to third countries.

Chapter VIII

Conditions governing the exchange of information

Article ~~3330~~

Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under arrangements to be adopted in accordance with the procedure referred to in Article ~~3740~~(2).

Article ~~3431~~

Requests for assistance, including requests for notification, and attached documents may be made in any language agreed between the requested and requesting authority. The said requests shall only be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is established, when the requested authority asks for it. ~~under arrangements to be laid down in accordance with the procedure referred to in Article 40(2).~~

~~The requested authority shall have the right to waive such a translation.~~

Note: Most requests for information will be made using a standard form (Article 6) which should facilitate comprehension of requests in other languages. It is common practice to issue a request for information in a language that the authorities involved have agreed. In addition, it is easier to translate from a foreign language into the official language, as vice versa. It should be noted that the European Parliament has also insisted on the need to speed up the exchange of information by not requiring a translation.

Article ~~35~~32

1. Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation except, where appropriate, in respect of fees paid to experts.
- ~~2. Where mutual assistance poses particular difficulties in involving considerable expense or forms part of action against organised crime, the requesting authority and the requested authority may agree special reimbursement procedures on a case-by-case basis.~~
- ~~3. The arrangements for implementing paragraph 2 shall be laid down in accordance with the procedure referred to in Article 40(2)~~

Article ~~36~~33

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 1 provided that:
 - (a) the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority,
 - (b) that requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2. This Regulation shall impose no obligation to have enquiries carried out or to provide information if the laws or administrative practices of the Member State which would have to furnish the information do not authorise the competent authority to carry out those enquiries or collect or use that information for that Member State's own purposes.
3. The competent authority of a Member State may refuse to provide information where the Member State concerned is unable, for legal reasons, to provide similar information. The Commission shall be informed of the grounds of the refusal.

Note: one Delegation has insisted on maintaining the requirement for legal reciprocity which now exists in Article 8(3) of Directive 77/799/EEC.

- ~~3.4~~ The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.
- ~~5.5.~~ The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance. ~~The Commission shall also be informed of the grounds for the refusal.~~
- ~~5.6.~~ ~~The methods of calculating a~~ minimum VAT-threshold triggering a request for assistance shall be adopted in accordance with the procedure referred to in Article ~~40~~37(2)

Article ~~37~~34

1. Information communicated in any form pursuant to this Regulation ~~shall be confidential. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to similar information under both the national law of the Member State which received it and the corresponding provisions applicable to Community authorities.~~

~~In any case, s~~Such information shall may be used for the purpose of establishing accessible only to the persons directly concerned by the assessment base or the collection or administrative control of tax for the purpose of establishing the assessment base, or to persons employed by the Community whose duties require that they have access to it.

The information may also be used for the assessment of other levies, duties, and taxes covered by Article 2 of Council Directive 76/308/EEC¹.

In addition, it may be used in connection with judicial proceedings that may involve penalties, initiated as a result of infringements of tax law, and for the assessment of other taxes and for the assessment of other taxes, duties and charges covered by Article 2 of Council Directive 76/308/EEC².

¹ OJ L 73, 19.3.1976, p. 18.

² OJ L 73, 19.3.1976, p. 18.

Note: the exclusion of VAT from Directive 77/799/EEC should not lead to the impossibility of using information obtained under this Regulation from being used for the purposes of other taxes. Directive 77/799 should contain a similar rule in order to make it possible to use information obtained under the Directive for the purpose of VAT.

2. Persons duly accredited by the Security Accreditation Authority of the European Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the CCN/CSI network.
3. By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the requesting authority, if, under the legislation of the Member State of the requested authority, the information can be used for similar purposes.
3. 4. Where the requesting authority considers that information it has received from the requested authority is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter authority. It shall inform the requested authority thereof.
5. Member States shall for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Article 6(1), Article 10, Article 11(1), and Articles 12 to and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(e) of that Directive.

Note: Several delegations and the European Parliament have expressed concerns regarding paragraph 5. The new wording addresses some of those concerns.

Article 3835

~~Findings, statements, information, documents, certified true copies and any intelligence~~Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the staff of the requested authority and communicated to the requesting authority under the assistance provided for by this Regulation may be invoked as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar documents provided by another authority of that country.

Article 3836

1. For the purpose of applying this Regulation, Member States shall take all necessary measures to:
 - (a) ensure effective internal coordination between the competent authorities referred to in Article 3;
 - (b) establish direct cooperation between the authorities authorised for the purposes of such coordination;

- (c) ensure the smooth operation of the information exchange arrangements provided for in this Regulation.
2. The Commission shall communicate to the competent authority of each Member State, as quickly as possible, any information which it receives and which it is able to provide.

Chapter IXVIII

General and final provisions

Article ~~40~~37

1. The Commission shall be assisted by the Standing Committee on Administrative Cooperation, hereinafter referred to as 'the Committee', composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

[Article ~~41~~38

The Committee may examine all matters relating to the application of this Regulation raised by its chairman, either on his own initiative or at the request of the representative of a Member State.]

Note: Legal service to be consulted on the necessity of this Article.

Article ~~42~~39

1. Every three years from the date of entry into force of this Regulation, the Commission shall report to the European Parliament and the Council on the application of this Regulation.
2. Member States shall communicate to the Commission the text of any ~~the~~ provisions of national law which they adopt in the field covered by this Regulation.

Article ~~43~~40

1. The provisions of this Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements.

2. Where the competent authorities conclude arrangements on bilateral matters covered by this Regulation other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the competent authorities of the other Member States.

Article 4441

Regulation (EEC) No 218/92 is repealed.

References made to the repealed Regulation shall be construed as references to this Regulation.

Article 4542

This Regulation shall enter into force on the first of April 2004.~~twentieth day following that of its publication in the *Official Journal of the European Communities*.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁴,

Whereas:

- (1) In order to combat value added tax (VAT) evasion it is necessary to strengthen cooperation between tax administrations within the Community and between the latter and the Commission in accordance with common principles.
- (2) To that end, Council Regulation (EEC) No 218/92⁵, which supplemented, as regards VAT, the system of cooperation established by Council Directive 77/799/EEC⁶, as last amended by the Act of Accession of Austria, Finland and Sweden, has been replaced by Regulation (EC) No .../2001 of the European Parliament and of the Council of ... 2001 on administrative cooperation in the field of value added tax⁷. The latter Regulation sets out all the provisions relating to administrative cooperation in the field of VAT, with the exception of mutual assistance as provided for by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures⁸, as last amended by Directive 2001/.../EC⁹.
- (3) The scope of mutual assistance laid down by Directive 77/799/EEC must be extended to taxation of the insurance premiums referred to in Directive 76/308/EEC so as to better protect the financial interests of the Member States and the neutrality of the internal market.

¹ OJ C

² OJ C

³ OJ C

⁴ OJ C

⁵ OJ L 24, 1.2.1992, p. 1.

⁶ OJ L 336, 27.12.1977, p. 15.

⁷ OJ L

⁸ OJ L 73, 19.3.1976, p. 18.

⁹ OJ L

(4) Directive 77/799/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/799/EEC is amended as follows:

(1) The title is replaced by the following:

"Council Directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums".

(2) In Article 1 (1), the first indent is replaced by the following:

"Taxation of insurance premiums referred to in the ~~fourth~~ sixth indent of Article 3 of Council Directive 76/308/EEC^{*}".

(3) Article 7 (1), is replaced by the following:

All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its domestic legislation. In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,

- may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings ; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection, ___

- in addition, the information may also be used for the assessment of other levies, duties and taxes covered by Article 2 of Council Directive 76/308/EEC¹.

- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

¹ OJ L 73, 19.3.1976, p. 18.

Note: due to the exclusion of VAT from the scope of the Directive, it is necessary to amend article 7.1 of Directive 77/799/EEC in order to use the information obtained under the Directive for the purpose of the assessment of VAT. The reference to the scope of Directive 308/76 provides in addition a legal base to use the information for the assessment of custom duties.

* OJ L 73, 19.3.1976, p. 18."

Article 2

References made to Directive 77/799/EEC in relation to value added tax (VAT) shall be construed as references to Regulation (EC) No .../2002 [on administrative cooperation in the field of value added tax].

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the ~~first of January~~ April 2004, ~~twentieth day following that~~ of its publication in the ~~Official Journal of the European Communities~~.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
