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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on administrative cooperation in the field of value added tax

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

There are two different legal bases for administrative cooperation between Member States where VAT is concerned: Directive 77/799/EEC¹ concerning mutual assistance by the competent authorities of the Member States in the fields of direct taxation and value added tax, and Regulation (EEC) No 218/92² on administrative cooperation in the field of indirect taxation (VAT).

When Directive 77/799/EEC was adopted, it covered taxes on income and capital only and did not include VAT. Directive 79/1070/EEC extends it to VAT³.

The Directive creates a legal base for the exchange of information between Member States. However, it lays down that information exchange must be through the "competent authorities" and hence cannot take place directly between two services of two different Member States.

Three categories of information exchange are provided for: exchange on request concerning a particular case, automatic exchange and spontaneous exchange. The Directive makes no specific provisions where VAT is concerned in regard to the latter two categories of information exchange, merely referring to the possibility of concluding bilateral agreements between Member States. However, very few bilateral agreements have been signed with a view to such exchanges in the field of VAT. The Directive also provides for Member States to authorise officials from the applicant Member State to participate in certain controls, but few Member States have availed themselves of this possibility.

The removal as from 1 January 1993 of tax borders between Member States necessitated the strengthening of administrative cooperation. Regulation (EEC) No 218/92 was adopted to supplement the 1977 Directive and to put in place a strengthened system of information exchange for intra-Community supplies and acquisitions of goods.

The main innovation of the 1992 Regulation was provision for an electronic data base (VIES⁴) and for automatic communication to all the other Member States of the total value of all intra-Community supplies to taxable persons identified in those Member States, together with the relevant VAT identification numbers. Where the information available in the data base is insufficient, further information may be requested under Article 5 of the Regulation. The requested authority then has a period of three months in which to reply.

2. A LEGAL ARRANGEMENT UNSUITED TO THE CHALLENGES OF THE INTERNAL MARKET

In the opinion of the officials responsible for controls in the Member States and the Commission, the VIES system and the strengthened administrative cooperation introduced by Regulation (EEC) No 218/92 are effective instruments of control. However, the information exchanged automatically or on request from the recapitulative statements provided by taxable

¹ OJ L 336, 27.12.1977, p. 15.

² OJ L 24, 1.2.1992, p. 1.

³ OJ L 331, 27.12.1979, p. 8.

⁴ VAT Information Exchange System.

persons is not available early enough and cannot be exchanged as quickly as needed, so does not help in fighting fraud effectively. Post-clearance checks are often too late and the provisions of Regulation (EEC) No 218/92 were never intended to deal with individual cases of fraud, which by their nature are immediate. Moreover, the scope of the Regulation does not cover all the transactions that could give rise to fraud. It relates only to intra-Community supplies and acquisitions and not, for instance, to domestic supplies or services. Since most VAT-fraud schemes concern both intra-Community and domestic transactions, the tax authorities are obliged to make use of other legal instruments.

For these reasons, Member States mainly use Directive 77/799/EEC as a legal base for cooperation in fraud matters. However, as Directive 77/799/EEC was originally designed for the exchange of information on direct taxation, it has not been adapted for coping with the specific need for strengthened cooperation in the field of VAT after the introduction of the transitional VAT arrangements on 1 January 1993.

Today the Directive is too weak a framework for truly effective cooperation. This is because the cooperation provided for is too centralised, not sufficiently intensive or adequately defined.

It is too centralised because there is not enough direct contact between local or national anti-fraud offices, the rule being that communication must be between central liaison offices. This leads to inefficiency, under-use by officials and delays.

Cooperation is also not intensive enough, in that apart from the VIES system there are not enough automatic or spontaneous exchanges of information that could help in the detection and prevention of fraud in intra-Community trade.

In addition, there are no clear rules in a whole host of areas (notably in regard to the presence of foreign officials during controls, the possibility of organising multilateral controls or the use to which information communicated by another Member State can be put).

The report presented by the Commission on 28 January 2000 under Article 14 of Regulation (EEC) No 218/92 and Article 12 of Regulation (EEC) No 1553/89⁵ and discussions by the Council's ad hoc group on tax fraud stress that if the present system is to be maintained, there must be a commitment to strengthen control and administrative cooperation.

Accordingly, in its communication to the Council and the European Parliament on a strategy to improve the operation of the VAT system within the context of the internal market⁶, the Commission concluded that the existing Community legal instruments for administrative cooperation and mutual assistance must be strengthened. On 5 June 2000, the Council called on the Commission to present proposals at its earliest opportunity on all the recommendations that were unanimously approved by the ad hoc group.

⁵ COM(2000) 28 final.

⁶ COM(2000) 348 final.

3. THE EXISTENCE OF TWO LEGAL BASES ALSO CAUSES NEEDLESS COMPLEXITY WITH EXTREMELY ADVERSE EFFECTS

In addition to the aforementioned shortcomings and loopholes, the existence of two different legal bases for administrative cooperation in the field of VAT has proved to be a source of complexity which hampers the smooth operation of the system.

The Regulation applies only to intra-Community supplies and acquisitions of goods. The Directive must be referred to for intra-Community supplies of services and other VAT transactions. But the two instruments have different operating rules.

The time-limits for providing information in response to requests are different and the use to which the information received may be put is also different.

In accordance with the requirements of the Regulation, Member States have set up central liaison offices whose primary responsibility is the exchange of information under the Regulation. However, some Member States have put a different entity in charge of the exchange of information under the Directive. This means that there is no synergy between the Regulation and the Directive for VAT control purposes. Some Member States are, for instance, fairly strict on the type of information VAT authorities may request according to the Regulation and the Directive, and often reject requests for assistance on purely formal grounds.

It is also clear that the existence of two different legal bases for administrative cooperation in the VAT field constitutes a real problem because certain transactions are considered as services in some Member States and as goods in others.

The Commission thus considers that the existence of two different legal bases has an adverse impact on cooperation in the field of VAT control. It therefore proposes a single, reinforced legal framework (a new regulation replacing, strengthening and modernising the provisions of the 1992 Regulation and incorporating the provisions of the 1977 Directive) providing the way forward for closer cooperation which is essential today to fight VAT fraud effectively.

The aim of the reform is to create a synergy between the authorities responsible for VAT application and control, removing borders between tax authorities and encouraging officials to cooperate as if they belonged to the same administration. This may seem ambitious but it is absolutely imperative in the fight against fraudsters who operate unhindered by borders.

4. OUTLINE OF THE DRAFT REGULATION

To strengthen administrative cooperation in the field of VAT, the Commission proposes tightening up the legal provisions of Regulation (EEC) No 218/92 and incorporating the provisions of Directive 77/799/EEC. This proposal establishes a single legal framework which sets out clear and binding rules governing cooperation between Member States. The framework provides for more direct contacts between services with a view to making cooperation more efficient and faster. It will also facilitate more intensive and swifter exchanges of information between administrations and between administrations and the Commission for the purpose of combating fraud more effectively. The aim of this proposal is to establish an effective system of mutual assistance and information exchange in order to ensure the proper functioning of the VAT system. Although it confers the role of guardian of the proper functioning of administrative cooperation on the Commission, it does not assign any operational role in investigating or combating tax fraud. VAT fraud within the

Community must nevertheless be met by a response at Community level and it must be countered by joint action by the Member States and the Commission. While the Member States bear primary responsibility for the measures required for the proper operation of the common system of VAT, the Commission's role in this area should be one of coordination and stimulation. For this reason the Commission will submit, under Article 280 of the EC Treaty, a separate proposal for a regulation laying down specific anti-fraud provisions which confer a role on the Commission in coordinating the exchange of information at Community level.

4.1. Chapter I: General Provisions

4.1.1. Article 1: Objectives (Article 1 of Regulation (EEC) No 218/92)

This Article is amended to reflect the fact that the Regulation now covers much more than intra-Community transactions alone and that it lays down rules enabling the competent authorities of the Member States to exchange information with the Commission.

The amended Article also emphasises the fact that the Regulation does not affect the application in the Member States of the rules on mutual assistance in criminal matters.

4.1.2. Article 2: Definitions (Article 2 of Regulation (EEC) No 218/92)

The new arrangements introduced by the Regulation make certain additional definitions necessary: "territorial service", "structured exchange", "automatic exchange", "by electronic means" and "administrative enquiry". Other definitions have been adjusted slightly. In the event of the adoption of the proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means (COM(2000) 349 final of 7 June 2000), a reference to the new point (f) in Article 9(2) of the Sixth Directive would be included in the definition of an intra-Community supply of services.

4.1.3. Article 3: Decentralisation of administrative cooperation (new provision)

In principle, all exchanges of information must go through the competent authority within the meaning of Article 2 of Regulation (EEC) No 218/92 or Article 1 of Directive 77/799/EEC. If this procedure is not respected, the information exchanged will not be considered valid and cannot be used against the fraudster.

The Commission, however, takes the view that there are considerable advantages in direct communication between inspectors or between anti-fraud units: quicker exchange of information, better mutual understanding of the request for information and better motivation of the inspectors involved, no wasting of scarce resources due to unnecessary requests, etc. But although the existing legal framework provides for the possibility to establish direct contact between inspectors, Member States have made little use of this and the initiatives in this area are often of a very disparate nature, creating different and vague procedures to be followed.

The proposal therefore creates a clear legal framework for decentralised cooperation and at the same time gives a pivotal role to the central liaison offices.

The structure of Article 3 is as follows:

- Officially, information will continue to be exchanged via the competent authorities but each Member State must henceforward have a single competent authority (to which several administrations may report).
- Each authority must designate one central liaison office to be responsible for cooperation. That central liaison office (which currently exists under the Regulation) will be responsible for cooperation on request by default (where the requesting authority does not know which local office to contact or where a request is made to a local office which is not competent to deal with it) and will have a central role to play in communicating certain information automatically and spontaneously.
- Each authority will also appoint at least one official per territorial service who will be responsible for information exchange. The concept of territorial service will be applicable by the Member States on a case by case basis, as the situation differs according to the size of the Member State. National control services, where they exist, should also have one official responsible for information exchange.
- Provision is also made for direct contacts between other officials, on condition that the information simultaneously goes through the competent authorities (i.e. by delegation via the central liaison offices or the competent officials).

4.1.4. Article 4: Interference with criminal procedures (Article 3 of Regulation (EEC) No 218/92)

When the requested information relates to cases in which representatives of Member States' national administrations conduct enquiries with a mandate from or under the authority of the judicial authorities, the exchange of any information is often refused or substantially delayed. As a consequence, the administrative authority in the applicant Member State is often unable to launch in good time administrative or criminal proceedings against fraudsters operating on its territory.

Article 4 sets out the Member States' obligations in regard to administrative mutual assistance where there is interference with criminal proceedings, in line with the rules governing mutual assistance in criminal matters.

4.2. Chapter II: Cooperation on request

4.2.1. A single and more binding legal framework

Under Article 5 of Regulation (EEC) No 218/92, further information may be requested in particular cases concerning, in particular, invoice numbers, dates and values for individual intra-Community transactions. To obtain any other information, the Member States must refer to Article 2 of Directive 77/799/EEC, which is a very general provision enabling the competent authority of a Member State to ask the competent authority of another Member State to communicate to it, in regard to a specific case, any information which might enable them to effect a correct assessment of VAT. Under Article 5 of the Regulation, the requested authority has

three months in which to respond to the request for information; however, the Directive does not set a deadline for providing information.

A single legal basis will be established by means of a single Chapter covering exchange on request (whether concerning additional information to that available in the VIES system, or any other information). The proposal redefines Member States' rights and obligations and distinguishes between a request for information (Section 1), a request for administrative enquiries (Section 2), presence in administrative offices and participation in administrative enquiries (Section 4), simultaneous controls (Section 5) and request for notification (Section 6). Section 3 lays down a deadline of three months from receipt of the request for information (and one month when the information is already available), but provides for the possibility of setting a different deadline in specific cases.

4.2.2. *Section 1: Request for information (Article 5 of Regulation (EEC) No 218/92 and Article 2 of Directive 77/799/EEC)*

Article 5(1) and (2) correspond to Article 2 of Directive 77/799/EEC and Article 5 of Regulation (EEC) No 218/92, and will henceforward be the sole legal basis for all information requests.

Under Article 5(3), to obtain the information sought, the requested authority must proceed as though acting on its own account or at the request of another authority in its own country. However, this paragraph must be read in conjunction with Article 36. Under that Article, the requested authority may refuse to carry out enquiries or to transmit information where the administrative burden is disproportionate; where the requesting authority has not exhausted the usual sources of information; where the legislation or administrative practice of the Member State called on to furnish information prevents it from carrying out enquiries or from collecting or using this information for its own purposes; where the provision of information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process. Requests for information are made on a standard form. Experience having shown that for 15 Member States to reach an agreement on a standard form is a very lengthy process, it is proposed that the form be adopted in accordance with the procedure provided for in Article 40(2) (regulatory procedure).

Article 7 specifies that information may be requested in the form of reports, certificates and any other such documents or certified true copies or extracts thereof. Original documents will be provided only where this is not contrary to the legislation in force in the requested Member State.

4.2.3. *Section 2: Application to conduct administrative enquiries (new provision)*

In the event of fraud and in particular where simulated or fictitious transactions are involved, requests for information on the basis of Article 5 may be inappropriate, not allowing the requesting authority to obtain the necessary items of evidence.

It is therefore proposed giving the requesting authority the possibility of asking the requested authority to conduct the appropriate administrative enquiries for transactions which breach or appear to the requesting authority to breach VAT legislation and the taxation of which is deemed to take place on the requesting

authority's territory, and for transactions which may provide evidence of a breach of VAT legislation in the territory of the applicant Member State.

Under Article 9, the requested authority must proceed as if acting on its own account or at the request of another authority of its own country, within the limits to the exchange of information provided for by Article 36 (see 4.2.2).

4.2.4. *Section 3: Deadline for providing information (Article 5(1) of Regulation (EEC) No 218/92)*

The Commission considers that the excessive time taken to provide information is chiefly due to the overly centralised nature of the current legal framework. For this reason, it proposes decentralised contacts under Article 3.

The three-month deadline set by Article 5(1) of Regulation (EEC) No 218/92 for providing information remains unchanged. However, where the requested authority is already in possession of that information, the time-limit is reduced to one month. For certain special cases, in particular involving carousel fraud or complex controls, a different deadline may be set under the procedure referred to in Article 40(2).

Where the requested authority is unable to respond to the request by the deadline, it must inform the requesting authority forthwith of the reasons for its failure to do so and state when it will be able to respond.

4.2.5. *Section 4: Presence of officials of the tax administrations of other Member States (Article 6 of Directive 77/799/EEC)*

Although the Fiscalis programme⁷ provides for Community funding for multilateral controls, Regulation (EEC) No 218/92 does not create a legal base for the presence of officials from the tax administration of the other Member States. Again, the Member States have to exploit the possibility offered by Article 6 of Directive 77/799/EEC. However, this is only an option provided for by the Directive and few Member States have used it. Pursuant to that Article, some Member States have authorised the presence on their territory of tax officials from other Member States, but most of the Member States have not provided for that possibility in their national legislation and in practice the vast majority of Member States only permit the presence of foreign officials during controls with the permission of the taxable person. However, the taxable person is unlikely to give permission where the purpose of the control is to investigate suspected fraud. Moreover, a small number of Member States even formally forbid an official of another Member State to be present at an investigation on the territory of the other Member State, claiming legal problems.

It is regrettable that in a single market where fraudsters can operate unhindered by borders, the tax authorities still work in isolation from each other and it is so difficult, if not impossible, for them to "cross" the borders between them. The inspectors' presence from another Member State in administrative offices and their participation in administrative enquiries can be extremely useful, in particular where

⁷ Decision No 888/98/EC of the European Parliament and of the Council of 30 March 1998 establishing a programme of Community action to ameliorate the indirect taxation systems of the internal market (Fiscalis programme), OJ L 126, 28.4.1998, pp. 1-5.

there are indications of irregularities or large-scale cross-border fraud in one or more Member States; in cases whose complexity makes the presence of officials desirable; or in cases for which the prescription period is due to expire and where the presence of officials can speed up the enquiry. Article 13 of the proposal accordingly permits the presence of officials of the tax authorities of one Member State on the territory of another Member State if both the States concerned consider it desirable. At the same time, Articles 13 and 14 create a legal structure specifying the rights and obligations of all the parties and the procedures to be followed by the national officials who conduct investigations in another Member State. Article 13(1) provides for the presence of officials of the tax authorities of one Member State in the administrative offices of another Member State. Article 13(2) defines a legal structure governing the presence of the officials appointed by the requesting authority to undertake the administrative enquiries of taxable persons. These Articles constitute a legal base making the tax administration no longer dependent on the consent of the taxable person.

4.2.6. *Section 5: Simultaneous controls (new provision)*

The Commission considers that simultaneous controls should be an integral part of the normal control plans of the Member States. To encourage the Member States to include simultaneous controls in their control plans, some multilateral controls are funded from the Fiscalis programme budget. However, the Fiscalis decision does not constitute a legal base for exchanging information within the framework of a multilateral control. Simultaneous control is basically a structured framework for exchanging information between several tax administrations. The inspectors who participate in such a control therefore need to use one of the legal bases for exchanging tax information (Directive 77/799/EEC or Regulation (EEC) No 218/92).

This proposal provides for an obligation of principle for the Member States to use simultaneous controls wherever these seem more effective than national controls. It also creates a legal structure specifying the rights and obligations of all parties and the broad outline of the procedures to be followed. Article 16 sets out the provisions of the existing bilateral agreement in this field.

4.2.7. *Section 6: Request for notification (new provision)*

Article 5 of Directive 76/308/EEC⁸ provides for notification to the addressee of all instruments and decisions, including those of a judicial nature, relating to a claim or to its recovery, which emanate from the Member State in which the requesting authority is situated. However, where no claim has yet arisen, the current legal framework does not provide for notification of the instruments or decisions emanating from the tax authorities of other Member States. Article 17 of this proposal provides a clear legal base for such notification.

⁸ Council Directive 76/308/EEC, 15 March 1976, OJ L 73, 19.3.1976, p. 18.

4.3. Chapter III: Exchange of information without prior request

4.3.1. Articles 20 to 24: Structured and automatic exchanges of information in high-risk sectors (Articles 3 and 4 of Directive 77/799/EEC)

To increase the possibilities of detecting and preventing fraud in intra-Community trade, Member States should also exchange at Community level information other than the VIES data. The Commission became aware that although most of the Member States support the idea of an intensified exchange of relevant information, this information is, in fact, rarely exchanged. In order to increase the possibilities of detecting and preventing fraud in intra-Community trade, Member States should at least exchange information in the following situations:

- (a) cases where taxation is deemed to take place in the Member State of destination and the efficiency of the control system necessarily depends on the information provided by the Member State of origin

Examples: intra-Community supplies of new vehicles (land vehicles, vessels and aircraft referred to in Article 28a(2) of Directive 77/388/EEC) or distance sales not taxed in the state of origin;

- (b) cases where there is a suspicion of fraud in the other Member State

Examples: intra-Community services of a character deemed irregular (for example, because they are not invoiced to their actual recipients) or discrepancies between intra-Community supplies and acquisitions (cases where the information communicated under Article 4(3) of Regulation (EEC) No 218/92 departs significantly from the declared value of intra-Community acquisitions);

- (c) cases which generally represent a higher risk for tax fraud or avoidance in the other Member State

Examples: potential phoenix companies (such as companies which, in their initial years of trading, supply a large number of intra-Community goods and services to customers in another State); VAT refunds to taxable persons not established in the territory of the country (Council Directive 79/1072/EEC) or the allocation of VAT identification numbers to operators based in the other Member State;

- (d) where a case of fraud has been discovered on the territory of a Member State which might have repercussions in the other Member State

Example: shadow companies which have carried out intra-Community transactions or taxable persons convicted for VAT fraud in intra-Community trade.

The existing legal framework is clearly unsuited to all these situations. Currently, there are no real obligations as regards automatic or spontaneous exchanges of information. These two types of exchanges are provided for in principle, but under the relevant provisions the exchange of information is not mandatory for any information category. Only very few bilateral agreements have been concluded on

this basis. The categories of information to be exchanged must therefore be stipulated in the Community legislation itself.

This proposal now therefore provides for two types of spontaneous exchange: structured and automatic exchanges. The sole difference between structured exchange and automatic exchange will be where the authority responsible for transmission is unable to collect the information to be exchanged on a regular basis. It will be impossible, for example, for a Member State to exchange information automatically where taxable persons in that Member State are under no obligation to communicate such information.

This proposal also sets out a framework within which the Member States will establish such information exchanges. The framework will have the advantage of being both flexible and effective. The proposal is restricted to determining in which types of situation information exchange should take place; for each Member State, the exact categories of information, whether the exchange is automatic or structured and the frequency of the exchanges, will be decided in accordance with the procedure referred to in Article 40(2). The flexibility of the system lies in the fact that under the procedure it will be possible to conclude an agreement under which 10 Member States will exchange information automatically while the other five do so in a structured way.

The decisions taken under committee procedures must under no circumstances affect the obligations of persons liable for payment as laid down by Article 22 of Directive 77/388/EEC and must therefore relate to information which is already available within the tax administration.

4.3.2. *Obstacles hampering the exchange of personal data (new provision)*

A number of Member States have difficulties in exchanging personal data because of the restrictions contained in their national law. They claim that the rules on data protection seriously restrict the information which can be exchanged. In particular, they claim that the implementation of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁹ hampers the exchange of personal data even in cases where fraud is known to exist and even more so in respect of information indicating a high risk of fraud.

The Member States should therefore make use of Article 13 of the abovementioned Directive, which provides for exemptions from the normal rules in order to safeguard the financial interests of a Member State (including taxation matters). For this reason, Article 37(4) stipulates that the Member States shall restrict the scope of the obligations and rights provided for in Articles 6(1), 10, 11(1) and 12 to 21 of Directive 95/46/EC so that their national legislation on the protection of individuals with regard to the processing of personal data does not prejudice the interests referred to in Article 13(e) of that Directive.

⁹ OJ L 281, 23.11.1995, p. 31.

4.4. Chapter IV: Storage and exchange of information specific to intra-Community transactions

4.4.1. Articles 25 to 29 (Article 4 of Regulation (EEC) No 218/92)

Article 4 of Regulation (EEC) No 218/92 has been split into five separate Articles in the interests of clarity. This Article remains unchanged in substance, with the exception of the incorporation into VIES of specific information on the local office to be contacted in order to obtain further information on each operator included in the data base. This will facilitate direct exchange of information without the need to go through the national authorities (central liaison offices) (see Article 3).

4.4.2. Article 30 (Article 6 of Regulation (EEC) No 218/92)

This Article is unchanged, with the exception of a provision whereby the validity of a person's VAT identification number can be confirmed by electronic means.

4.5. Chapter V: Relations with the Commission (Article 31)

Article 31(1) corresponds to Article 11 of Regulation (EEC) No 218/92 and provides for joint evaluation of the functioning of the Regulation by the Member States and the Commission.

However, the information which the Member States are obliged to provide for the purposes of the evaluation are described at greater length.

First, it is explicitly stated that the Member States must provide all the statistical data required for such an evaluation and that the exact detail of the data to be sent is to be decided by the committee procedure.

The Member States must also provide any information on methods or practices used or suspected of having been used to circumvent VAT legislation which has helped to reveal shortcomings or lacunae in the arrangements for administrative cooperation provided for in this Regulation. Such information is an indication of how effective the system of administrative cooperation is in combating tax evasion.

For the same reason, it might be useful for the Member States to forward to the Commission any other information, including information on specific cases, purely on a voluntary basis. The Commission must communicate this information to the competent authorities of the other Member States concerned to whom the information has not yet been transmitted.

4.6. Chapter VI: Exchanging information with third countries (Article 32: new provision)

The current legal framework does not provide a legal base for exchanging information with non-EU countries. When VAT fraud is linked to import/export transactions, customs cooperation instruments can be used. However, there are many loopholes, for instance for fraud relating to services or in cases of fraud committed inside the Community but where the evidence is located outside.

Article 32(1) therefore provides a legal base for communicating to Member States information emanating from a non-EU country by virtue of a bilateral agreement.

Under Article 32(2), information obtained under the present Regulation may be communicated to a non-EU country with the consent of the competent authorities that supplied it.

4.7. Chapter VII: Conditions governing the exchange of information (Articles 33 to 39)

4.7.1. Article 33: Exchanges by electronic means (new provision)

Under this Article, all information is to be provided, as far as possible, by electronic means under arrangements to be adopted by committee procedure.

4.7.2. Article 34: Translation (new provision)

Requests for assistance and attached documents will be accompanied by a translation into the official language or one of the official languages of the requested authority under arrangements to be adopted by the committee procedure.

4.7.3. Article 35: Costs of applying this Regulation (Article 13 of Regulation (EEC) No 218/92)

Paragraph 2 has been added to bring Article 35 of the Regulation into line with Article 18 of the proposal amending Directive 76/308/EEC¹⁰, which offers the Member States the possibility of agreeing to reimburse expenses actually incurred in cases where mutual assistance poses particular difficulties, involves high costs or relates to the fight against organised crime.

4.7.4. Article 36: Limits to the exchange of information (Article 7(1) of Regulation (EEC) No 218/92 and Article 8 of Directive 77/799/EEC)

Under this Article, the requested authority may refuse to carry out enquiries or to transmit information where the administrative burden is disproportionate; where the requesting authority has not exhausted the usual sources of information; where the legislation or administrative practices of the Member State called on to furnish information prevents it from carrying out enquiries or from collecting or using this information for its own purposes; and where the provision of information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.

Article 36(4), like Article 14 of Directive 76/308/EEC, states that the requested authority must inform the requesting authority and the Commission of the grounds for refusing a request for mutual assistance.

4.7.5. Article 37(1) and (2): Limits to the use of information (Article 9(1) and (2) of Regulation (EEC) No 218/92 and Article 7(1) and (3) of Directive 77/799/EEC)

Under Article 7(1) of Directive 77/799/EEC, unrestricted use of information from the requested Member State may only be made in the applicant Member State for administrative and tax purposes. In practice, this Article is interpreted in different ways by the Member States. In some Member States, explicit permission is required

¹⁰ COM(1998) 364 final; COM(1999) 183 final.

from the requested Member State when the information is used publicly in judicial proceedings. In other Member States, tacit permission is sufficient.

Article 37 states that any information communicated in whatever form pursuant to the Regulation is of a confidential nature. However, in all circumstances, the information may be used in connection with judicial or administrative proceedings that may involve sanctions, initiated as a result of infringements of tax law.

The information may also be used for the assessment of other taxes, duties and charges covered by Article 2 of Directive 76/308/EEC of 15 March 1976. This provision is in response to the recommendation of the High-level Working Party on Consistency between Taxation and Customs Policy to investigate the possibility of setting up information exchanges between customs and tax administrations. Not only does it provide a legal base for the exchange of such information in relation to VAT, but also for exchanges between the administrations responsible for VAT and other tax authorities within a Member State.

4.7.6. *Article 37(3): Requirement to obtain the consent of the requested authority for communication of information to a Member State (Article 9(3) of Regulation (EEC) No 218/92 and Article 7(4) of Directive 77/799/EEC)*

Article 9(3) of Regulation (EEC) No 218/92 and Article 7(4) of Directive 77/799/EEC establish a procedure whereby the consent of the Member State furnishing the information must be obtained before the information can be made available to another Member State. These procedures can prevent or delay the transmission of information to Member States that need it.

Article 37(3) no longer requires this agreement. 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.

4.7.7. *Article 37(4): Obstacles hampering the exchange of personal data (new provision)*

See point 4.3.2.

4.7.8. *Prior notification to the person concerned of the exchange of information*

The legislation in force in some Member States provides that the person concerned be notified of the exchange of information. It is clear that in cases of fraud such notification hampers the efficiency of controls. The fact that some Member States systematically notify any request for information to the taxable person means that other Member States are reluctant to make use of the mutual assistance arrangements in cases of suspected fraud.

Article 8 of Regulation (EEC) No 218/92 provides that the person concerned be notified of the exchange of information. Such provisions are obstacles to efficient cooperation between tax administrations since they hamper the requesting authority in its fight against fraud. This proposal no longer provides for this notification and stipulates that the requested authority must proceed as though acting on its own account or at the request of another authority in its own country. The Commission takes the view that since the taxable person does not have to be notified in exchanges

of information between the national tax authorities, this should also not be the case in exchanges of information between competent authorities.

4.7.9. Article 38: Evidence (new provision)

Article 38 clarifies the fact that findings, statements, information, documents, certified true copies and any intelligence obtained by the officials of the requested authority and transmitted to the requesting authority may be used as evidence by the competent bodies of the requesting authority on the same basis as equivalent national documents.

4.7.10. Article 39 (Article 12(2) and (3) of Regulation (EEC) No 218/92)

This Article corresponds exactly to Article 12(2) and (3) of Regulation (EEC) No 218/92.

4.8. Chapter VIII: Final Provisions

4.8.1. Articles 40 and 41: Consultation and committee procedures (Article 10 of Regulation (EEC) No 218/92)

The measures required to implement this Regulation are of general scope and are designed to apply essential provisions of the basic instrument. Consequently, the regulatory procedure should be followed as provided for in Article 5 of the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC).

4.8.2. Article 42: Commission report to the European Parliament and to the Council (Article 14 of Regulation (EEC) No 218/92)

The frequency of the Commission's report to the European Parliament and to the Council is increased from every two to every three years.

4.8.3. Article 43: Application of other provisions relating to mutual assistance (Article 3(2) of Regulation (EEC) No 218/92 and Article 11 of Directive 77/799/EEC)

Paragraph 1 of this Article corresponds to Article 11 of Directive 77/799/EEC while the second corresponds to Article 9(3). The wording has been changed slightly.

4.8.4. Article 44: Repeal of Regulation (EEC) No 218/92

Regulation (EEC) No 218/92 is repealed and all references made to that Regulation are to be understood as made to this Regulation.

5. EXPLANATION OF THE PROPOSAL FOR A DIRECTIVE

As it is necessary to replace Regulation (EEC) No 218/92 in its entirety and Directive 77/799/EEC in relation to VAT, the latter is now excluded from the scope of the Directive. On the other hand, the scope of the Directive is extended to cover certain taxes on

insurance premiums to take account of the need expressed by the Member States in the negotiations within the Council on the proposal amending Directive 76/308/EEC¹¹.

6. CONCLUSION

The aim of this proposal is to reinforce cooperation between tax administrations, providing them with a simple and efficient legal framework to fight fraudsters on equal terms.

This proposal is not designed to change in any way the obligations of taxpayers or the rules governing the application of VAT legislation, but rather to gear administrative cooperation to the challenges of the internal market. That is why the Commission is submitting it under Article 95 of the Treaty.

In taking Article 95 of the Treaty as the legal base, the Commission is consistent with its proposal for Regulation (EEC) No 218/92 of 19 June 1990 (COM(90) 183), in which it proposed Article 100a of the EC Treaty (now Article 95) as an appropriate legal base.

Article 95 constitutes the legal base for the adoption of "measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market." Under paragraph 2 of Article 95, paragraph 1 does not apply to fiscal provisions, the legal base for the harmonisation of indirect taxation being Article 93.

According to the Commission's interpretation, the exemption provided for in paragraph 2 can only preclude application of the general rule laid down in paragraph 1 of Article 95 where fiscal provisions constitute the main purpose of the proposed measure. This might be the case if the proposed instrument concerned the obligations of liable persons or rules concerning the scope of tax, for instance. However, it is not the case here as the regulation is confined to building bridges between tax administrations.

¹¹ COM(1998) 364 final; COM(1999) 183 final.

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 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) 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.
- (4) Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT)⁵ established in this respect a system of close cooperation amongst the Member States' administrative authorities and between those authorities and the Commission.

¹ OJ C

² OJ C

³ OJ C

⁴ OJ C

⁵ OJ L 24, 1.2.1992, p. 1.

- (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 taxation⁶, 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.
- (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 data⁷ in order to safeguard the interests referred to in Article 13(e) of that Directive.

⁶ OJ L 336, 27.12.1977, p. 15.

⁷ OJ L 281, 23.11.1995, p. 31.

- (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 Commission⁸, 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,

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 and with the Commission 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.

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) 'requesting authority' means the central liaison office of a Member State or any competent official of that Member State who makes a request for assistance on behalf of the competent authority;
- (3) 'requested authority' means the central liaison office of a Member State or any competent official of that Member State who receives a request for assistance on behalf of the competent authority;

⁸ OJ L 184, 17.7.1999, p. 23.

- (4) 'territorial service' means any administrative unit with competence for checking that VAT legislation is properly applied in a given territory or region;
- (5) 'structured exchange' means the collection of predefined information and its systematic communication to another Member State, without prior request, by the central liaison office or any competent official as and when that information becomes available;
- (6) 'automatic exchange' means the collection of predefined information and its systematic communication to another Member State, without prior request, by the central liaison office or any competent official at pre-established regular intervals;
- (7) '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;
- (8) 'to grant access' means to authorise access to the relevant electronic data base and to obtain data by electronic means;
- (9) '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;
- (10) '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/EEC⁹;
- (11) 'intra-Community transactions' means the intra-Community supply of goods or services;
- (12) '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;
- (13) 'intra-Community supply of services' means any supply of services covered by Article 9(2)(e)^{*} or Article 28b(C), (D), (E) and (F) of Directive 77/388/EEC;
- (14) '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;

⁹ OJ L 145, 13.6.1977, p. 1.

^{*} [In the event of the adoption of the proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means (COM(2000) 349 final of 7 June 2000), a reference to the new point (f) in Article 9(2) of the Sixth Directive would be included in the reference.]

- (15) '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.

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 officials referred to in paragraph 3.
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 establish which competent officials are delegated to make or respond to requests for assistance under this Regulation. At least one official in each territorial service must be so designated. 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.
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 other than those referred to in paragraph 3 who are responsible for applying VAT legislation.
5. Where an official responsible for the application of VAT legislation is contacted directly, pursuant to paragraph 4, by an official from another Member State and the request for assistance requires action outside his territorial area, he must forward that request to the central liaison office. In that case, the deadlines laid down in Article 10 shall apply solely with effect from receipt of the request by the central liaison office.
6. The Commission shall publish and update the list of competent authorities in the *Official Journal of the European Communities*.

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, which must be consulted on the matter, gives its consent.

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, shall in any event be communicated under the administrative cooperation provided for by this Regulation. Such communication must have the prior authorisation of the judicial authority if that is required under national law.

Chapter II

Cooperation on request

SECTION 1

REQUEST FOR INFORMATION

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 shall arrange for the conduct of any enquiries necessary to obtain such information.
3. In order to obtain the information sought, 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 pursuant to Article 5 shall be sent using a standard form adopted in accordance with the procedure referred to in Article 40(2).

Article 7

1. At the request of the requesting authority, the requested authority shall communicate to it any information it obtains or in its possession 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.

SECTION 2

APPLICATION TO CONDUCT ADMINISTRATIVE ENQUIRIES

Article 8

The requested authority shall, at the 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;
- (2) transactions which may provide evidence of infringement of VAT legislation in the territory of the Member State in which 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.
2. The requested authority shall communicate the results of administrative enquiries to the requesting authority.

SECTION 3

TIME LIMIT FOR PROVIDING INFORMATION

Article 10

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

However, where the requested authority is already in possession of that information the time-limit is reduced to one month.

Article 11

In certain special cases, a different time-limit to the one provided for in Article 10 may be set in accordance with the procedure referred to in Article 40(2).

Article 12

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

SECTION 4

PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES

Article 13

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 obtain, from the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties, information concerning the application of VAT legislation which is needed by the requesting authority and which is contained in documentation to which the officials in those offices have access. Those officials shall be authorised to take copies of the said documentation.
2. By agreement between the requesting authority and the requested authority, officials designated by the requesting authority may 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, 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.

Article 14

Where national provisions on criminal proceedings reserve certain duties to officials specifically designated by national law, the requesting authority's officials shall not take part in such duties.

In any event, they shall not participate in searches of premises or the formal questioning of persons under criminal law. They shall, however, have access to the information thus obtained subject to the conditions laid down in Article 4.

SECTION 5

SIMULTANEOUS CONTROLS

Article 15

Member States shall independently conduct simultaneous controls, in their own territory, of the tax situation of one or more taxable persons who are of common or complementary interest.

They shall 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 16

1. The competent authority in each Member State shall identify 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 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 limitation rules applicable to the cases proposed for simultaneous control.
2. Each Member State 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 its refusal to its counterpart authority.
3. The competent authorities shall appoint a representative to be responsible for supervising and coordinating the control operation.

SECTION 6

REQUEST FOR NOTIFICATION

Article 17

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 18

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 19

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

Exchange of information without prior request

Article 20

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 an infringement 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 evasion or tax avoidance in the other Member State;
- (4) where an infringement of VAT legislation which has been committed or is likely to have been committed in the territory of one Member State might have repercussions in the other Member State.

Article 21

The following shall be determined in accordance with the procedure referred to in Article 40(2):

- (1) the exact categories of information;
- (2) for each Member State, whether the exchange is structured or automatic and, in the latter case, the frequency of the exchanges;
- (3) the methods of exchanging information.

Article 22

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

Article 23

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

Article 24

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.

Chapter IV

Storage and exchange of information specific to intra-Community transactions

Article 25

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(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article 26

On the basis of the data stored in accordance with Article 25, the competent authority of a Member State shall have communicated to it automatically and without delay by any other Member State all 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.

Article 27

On the basis of the data stored in accordance with Article 25 and solely in order to combat tax fraud, 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(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(1); and
- (3) the full address and details of the relevant territorial service 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

1. Where the competent authority of a Member State is obliged to grant access to information under Articles 25, 26 and 27, it shall, as regards the information referred to in Articles 26 and 27, 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, 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(2).

Article 29

Where, for the purposes of Articles 25 to 28, 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.

Article 30

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 25, 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(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.

Chapter V

Relations with the Commission

Article 31

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 information relating 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 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. 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. The Commission shall forward the information referred to in paragraphs 2, 3 and 4 to the other Member States concerned.

Chapter VI

Relations with third countries

Article 32

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.

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 VII

Conditions governing the exchange of information

Article 33

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 40(2).

Article 34

Requests for assistance, including requests for notification, and attached documents shall 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, 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.

Article 35

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 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

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 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.
4. 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. 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(2).

Article 37

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, such information shall be 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.

It may be used in connection with judicial or administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, and for the assessment of other taxes, duties and charges covered by Article 2 of Council Directive 76/308/EEC¹⁰.

2. 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. 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.
4. Member States shall restrict the scope of the obligations and rights provided for in Article 6(1), Article 10, Article 11(1) and Articles 12 to 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.

Article 38

Findings, statements, information, documents, certified true copies and any intelligence 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.

¹⁰ OJ L 73, 19.3.1976, p. 18.

Article 39

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 VIII

General and final provisions

Article 40

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

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.

Article 42

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 the provisions of national law which they adopt in the field covered by this Regulation.

Article 43

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 44

Regulation (EEC) No 218/92 is repealed.

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

Article 45

This Regulation shall enter into force on the 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.

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

- (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.
- (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 indent of Article 3 of Council Directive 76/308/EEC*."

* 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 .../2001 [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 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

FINANCIAL STATEMENT

When adopted, the proposed Regulation will have no adverse effect on Community own resources. Indeed, since its intention is to strengthen mutual assistance between the Member States' tax administrations, the aim of this Regulation is to increase VAT revenue. The effect on the Community budget will therefore be positive even if it cannot be quantified.