

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a  
COUNCIL REGULATION (EEC)  
concerning administrative cooperation in the field of  
indirect taxation

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

### INTRODUCTION

1. The creation of an internal market and the elimination of fiscal frontiers, as provided for by the Treaty will require closer administrative co-operation between Member States' fiscal administrations. This is because Member States will no longer be able to control intra-Community goods for fiscal purposes by means of customs procedures linked directly to the crossing of an internal frontier. Instead they will need to base their controls of traders' accounts principally on standard procedures supported by transaction verification systems as they do currently for the collection of domestic VAT. This implies that they must have the ability to cross check information concerning purchases or sales made in other Member States. This can only be achieved through enhanced administrative co-operation.

The need to strengthen existing provisions for administrative co-operation or mutual assistance in the field of indirect taxes was explicitly recognized in the Commission's fiscal approximation package of 1987. For instance, in document COM(87) 323 of 5 August 1987 it was proposed "that the existing system of mutual assistance should be supplemented by a much more developed and comprehensive system of co-operation" (paragraph 9.1). More recently, the Member States themselves have publicly recognized the need for strengthened systems of administrative co-operation, as the conclusions of the ECOFIN Council of 13 November demonstrate: "Control arrangements must effectively prevent the risk of evasion and will be based primarily on the use by national administrations of business returns, regular exchanges of information and the provision of supporting documents, drawn up by the administration. Such standing co-operation at administrative level must not give rise to any obstacle on grounds of national legislation and will supplement existing mutual assistance procedures" (Council doc. 9543/89, para. 3).

## **CURRENT SITUATION**

2. At present there is no provision in Community legislation for mutual assistance in the administration of excise duties. As far as VAT is concerned, the legal framework is provided by Council Directive 79/1070 EEC which simply extends the direct tax provisions of Directive 77/799 EEC to VAT.

3. In addition in the customs and agricultural field, Community mutual assistance provisions exist in the form of Regulation (EEC) 1468/81 as modified by Regulation (EEC) 945/87. There are also additional provisions for mutual assistance between customs administrations under the Naples Convention of 1967, an international treaty between the Governments of the Member States which does not form part of Community legislation.

4. The existing legal provisions for mutual assistance at Community level provide a good starting point for co-operation, at least insofar as VAT is concerned. However, these provisions have been little used so far because Member States have considered that their national fiscal control measures, based as they are on import/export documentation, could operate satisfactorily in isolation. This situation will necessarily change for the reasons indicated in paragraph 1 above, and the Commission has concluded that the best way of carrying out the Council's mandate to strengthen administrative co-operation between Member States in the indirect tax field is by means of a new legal instrument. This is the subject of the present proposal.

## **BASIS OF THE NEW INSTRUMENT**

5. The new instrument builds on the existing provisions of Directive 79/1070 and modifies them where appropriate in light of customs experience gained in the operation of Regulation 1468/81. The coverage includes excise duties for the first time. Where relevant, the provisions of the as yet unratified OECD/Council of Europe Convention on Mutual Administrative Assistance in tax matters have been taken into account.

6. The instrument is cast in the form of a regulation rather than a directive. This is to ensure greater uniformity in the application of the new provisions, and a more rapid implementation of its provisions. The proposed regulation is based on Article 100a of the Treaty, and therefore requires the cooperation of the European Parliament. The opinion of the Economic and Social Committee should also be sought.

#### UNDERLYING ASSUMPTIONS

7. It is important from the outset to recognize that after 1992 administrative co-operation will have a new dimension which must be adequately reflected in the new legislative instrument. In fact, in the future system there will be two distinct but related categories of co-operation.

8. On the one hand there will be a need to continue and extend existing procedures for dealing with cases of fraud or serious irregularity. These procedures will continue to operate largely on a bilateral basis but will now need to be firmly placed in a Community framework and to be legally based on a Community instrument. The maintenance of the destination principle in the VAT field for a transitional period will increase the opportunity for certain types of frauds and it is likely that there will be a greater volume of fraud-related requests for co-operation.

9. On the other hand, there will be a requirement for a new type of administrative co-operation resulting from the need to exchange information on intra-Community VAT and excise operations, as indicated in paragraph 1. As far as VAT is concerned the point of departure will be the normal control procedures using risk assessment techniques and assessment of traders' systems that are currently widely employed in domestic control. These procedures will need to be supplemented insofar as intra-Community trade is concerned by techniques for verifying, on a sampling basis, the validity of the regular declarations submitted by traders. Such verification procedures will form an essential component of the control mechanism required for the definitive origin-based VAT system after the end of the transitional period. Under the transitional system these procedures will be equally necessary, to ensure that goods for which zero-rating is claimed are duly shipped across frontiers and brought under fiscal control in the Member State of destination. The temporary retention of a destination-based VAT system also requires, in the case of triangular traffic, confirmation of the ultimate destination

of goods, to ensure that tax accrues to the appropriate Member State. Similar co-operation will be required in the excise field to ensure the proper functioning of the inter-linked control system for excise goods on which duty has been suspended.

10. In order to provide an acceptable level of control this second type of administrative co-operation will need to be organised on a more regular and routine basis and have the capacity to handle larger volumes of requests than the existing mutual assistance arrangements. In this connection the Commission will carry out a feasibility study for an inter-active computer and telematics network linking the national and Community administrations concerned. A balance must be struck in order to take account of the fundamental requirement laid down by ECOFIN in November 1989 that the burden borne by businesses and administrations must be lessened by comparison with the present situation. The overall aim is to enable each Member State to have reasonable confidence that the tax brought to account by its traders on purchases in other Member States is correct, that goods intended for export are not diverted to the home market, and that invoices or registration numbers are not false. It is important to stress that this would not in itself be a fraud investigation exercise, although of course indications of fraud might emerge as a result of the checking process.

11. The operational details of these systems are a matter for subsequent consultation and co-ordination under the procedure provided for in the present proposal (Article 19). But it is essential at the outset to establish a legal framework capable of providing adequately for both categories of co-operation mentioned above. Such is the purpose of the present proposal.

#### **ARTICLE 1**

12. This article defines the scope of the Regulation. The scope is deliberately broad, and involves co-operation in all aspects of compliance with the law on indirect tax matters and in the process of correctly assessing the taxes in question.

#### **ARTICLE 2**

13. Paragraph 1 defines the principal terms used in the Regulation.

Paragraph 2 requires each Member State to define the authority or authorities which will be responsible for administrative co-operation within its territory and to communicate a list of these authorities to the other Member States and to the Commission. The authorities so defined will in effect be the principal operators of the provisions

of this Regulation. Paragraph 2 also requires each Member State to nominate a central office with responsibility for liaison with other Member States and with the Commission in matters covered by the present proposal [see also Article 19(3)].

## TITLE I

### Administrative co-operation - general provisions

#### ARTICLE 3

14. Article 3 commits the competent authorities to extend the fullest possible co-operation to each other and to the Commission in ensuring compliance with both national and Community provisions in indirect tax matters. The term "compliance" is specifically extended to cover the need for co-operation in control procedures. As with Article 1, the commitment is defined in broad terms and is not limited only to the exchange of information.

Information exchange is, however, the most important component of administrative co-operation and this is covered by a particular reference in the second part of Article 3. A distinction is drawn between the Member States' obligations to each other and to the Commission: broadly speaking Member States will communicate between themselves on matters relating to specific tax cases but will also communicate with the Commission on issues likely to be of interest at Community level. In order to ensure that such information is transmitted effectively and securely, the Commission will study the establishment of computer and telematic networks linking the national and Community administrations concerned.

#### ARTICLE 4

15. This Article contains a standard provision, also to be found in Regulation 1468/81 (mutual assistance in the customs field), which relieves the competent authorities of their obligation to co-operate in the provision of information on documents once a particular case or investigation has been referred to the prosecuting authorities for action before a criminal court. Once criminal proceedings have begun any additional investigations would have to proceed on the basis of arrangements relating to mutual assistance in criminal matters (see also Article 21). However, the judicial authority in the requested Member State may consent on a case-by-case basis to the exchange of information gathered in connection with criminal investigations.

## TITLE II

### Assistance on request

16. Administrative co-operation falls into three broad categories - assistance on request (where the initiative lies with the applicant authority), automatic assistance (where both applicant and requested authorities agree in advance on certain types of information to be collected and exchanged automatically), and spontaneous assistance (where one authority takes the initiative without being requested to do so). Articles 5-10 deal with assistance on request, which is at present the most important of these categories.

#### ARTICLE 5

17. This lays a general obligation on all competent authorities to communicate information, broadly defined, when requested to do so. Because the initiative in this matter lies with the applicant State, which may operate certain indirect taxes which are not Community taxes, a more precise description of the taxes to be covered by the co-operation procedures is given at this point. The taxes in question are VAT and the major excise duties which are applied by all Member States and which are the subject of rules laid down at the Community level. The possibility of adding other taxes to the list at a later date is not excluded.

In paragraph 2 there is a standard provision requiring the requested authority to treat requests from another Member State on the same footing it would treat its own enquiries or those conducted for another authority in its own country.

#### ARTICLE 6

18. This requires the requested authority to carry out control enquiries on behalf of another Member State. This may include validation and verification of intra-Community transactions on a sampling basis, to ensure that goods for which exemption or suspension of tax is claimed are duly transferred to the territory of another Member State and brought under fiscal control in that Member State.

#### ARTICLE 7

19. This is a new provision which gives the Member States the possibility of organising coordinated tax examinations, each on its own territory. Such a provision is particularly important in view of the increasing integration of European markets and the tendency for a large proportion of intra-Community trade to be conducted by a relatively small number of linked or closely related groups of companies. The systematic control of such companies requires a global

approach going beyond national boundaries, and this Article encourages the development of such an approach.

#### **ARTICLE 8**

20. This is a standard provision covering the transmission of official documents or attestations to an applicant authority in respect of indirect tax matters.

#### **ARTICLE 9**

21. This, again, is a standard provision relating to the service of documents. There could be difficulties for Member States in serving documents (for example in the case of a tax claim against a non-resident or a resident who has moved to another Member State) and this Article provides for administrative co-operation in such cases. The increased mobility of taxpayers in the internal market will render such a provision more important in the future. Although assistance in the servicing of documents may be requested at all phases of indirect tax proceedings prior to judicial proceedings, assistance will in practice relate mainly to the assessment phase. The aim is to ensure as far as possible that documents such as notices of assessment or reminders actually reach the taxable person, in order to avoid enforcement steps being taken, or penalties imposed, against a person who is genuinely ignorant of a tax claim or liability.

#### **ARTICLE 10**

22. Once again this is a standard provision providing for transmission on request of information relating to indirect tax operations which are suspected of being fraudulent. It covers in particular the transmission of reports or documents from the archives of the requested authority.

### **TITLE III**

#### **Automatic exchange of information.**

#### **ARTICLE 11**

23. Article 11 deals with the automatic exchange of information between the Member States. Although not used at present this type of information exchange could be of real value in the future, as co-operation between fiscal administrations develops and expands. Accordingly, the methods of co-operation to be employed under this Article are left to be defined in the context of the meetings of representatives of Member States to be organised under Article 19.



## TITLE IV

### Spontaneous assistance

#### ARTICLE 12

24. This Article lays a general obligation on the Member States to provide spontaneous assistance to each other. This type of assistance is supplied without either previous request from another Member State or prior agreement on items to be transmitted automatically. Spontaneous information exchanges are likely to prove particularly useful in fraud control because they generally concern data specifically detected and selected by an indirect tax official of the sending Member State during a domestic audit or investigation.

#### ARTICLE 13

25. This Article sets out various instances where the competent authorities of the Member States exchange information, without prior request, in the general field of tax control and compliance. As with Article 7, these provisions have particular relevance to the control of taxable activities by closely related trading groups.

The second paragraph permits the Member States, meeting under the procedures laid down in Article 19, to add new categories to the list of cases where spontaneous exchange of information is appropriate.

As the efficiency of spontaneous exchanges depends almost exclusively on the initiative of the supplying State, it is important that the competent authorities of the latter should take the necessary administrative steps to ensure that information likely to be of interest to another State is brought to its own attention. A requirement to this effect is laid down in the third paragraph of this Article.

#### ARTICLE 14

26. This Article is a parallel provision to Article 13, in the fraud field. Spontaneous transmission of information is to take place immediately and, given the wide scope of potential fraudulent activity, no attempt is made to limit the transmission to particular categories; all information of use in connection with fraudulent operations is to be transmitted.

**TITLE V**

**Conditions governing assistance**

**ARTICLE 15**

27. This Article establishes the general principle that the competent authorities of the Member States should take steps to ensure that their obligations to furnish information are carried out swiftly. Provision is made for the laying down of more precise time limits for particular categories of information, in accordance with the procedures of Article 19. Requested information sent under the provisions of Articles 5 to 10 is subject in any case to a maximum time limit of three months unless the applicant authority itself proposes a longer period. Three months is the time limit to which Member States felt able to commit themselves during earlier discussions on administrative co-operation. The second paragraph requires a competent authority to keep its interlocutor informed if any obstacles arise which prevent it from furnishing the requested information on time. Obstacles in this context clearly mean obstacles beyond the control of the authority in question.

**ARTICLE 16**

28. In this Article, rules are laid down governing direct collaboration between the officials of Member States. In the first instance the Article envisages such contact taking place between duly authorized officials of the applicant authority and the requested authority at the offices of the latter. The official from the applicant authority is to be given full access to whatever documentation the staff of the requested authority have available to them.

29. The second paragraph takes the process of direct collaboration a stage further by permitting officials from the applicant authority to be present, by agreement, at a specific tax examination in the requested Member State.

The justification for this further stage of collaboration must always be both practical and specific. It is understood that this extended form of assistance should not be asked for unless the competent authority of the applicant state is convinced that the examination in another Member State will contribute substantially to the solution of a domestic indirect tax problem. This procedure is a logical extension of the provisions for coordinated tax examinations in Article 7.

30. Paragraphs 2 and 3 of this Article taken together make it clear that the decision as to whether representatives of the applicant authority should be allowed to be present or not is taken by the requested authority. However, it should be noted that the fact that the requested authority has the decisive role in this respect does not in any way restrict

the obligation on that authority to furnish information requested under any other Article of this proposed Regulation.

31. If the request is approved the requested authority is called upon in paragraph 3 to indicate the time and place of the examination and any other relevant particulars, such as the official responsible for the examination and any specific conditions stipulated for its conduct. All decisions on how the examination is to be carried out have to be taken by the official of the requested authority in charge of the examination. There is no question of any exercise of authority in the strict sense of the word by the official of the applicant authority, but at the discretion of the requested authority he or she may be permitted to co-operate actively.

32. The final paragraph provides that the detailed application of this Article shall be discussed and if necessary determined in the context of the meetings to be organised under Article 19.

#### **ARTICLE 17**

33. This Article lays down standard provisions regarding the confidentiality of the information exchanged as part of administrative co-operation. The rules broadly define two categories of access:

- firstly, those persons directly involved in the assessment or administrative control of indirect tax. This category is specifically extended to include appropriate officials of the Community institutions, in keeping with parallel provisions made in the customs field (Reg. 1468/81, paragraph 19).
- secondly, persons who are directly involved in judicial or administrative proceedings involving sanctions relating to indirect tax assessment.

34. Paragraph 2 permits a Member State which for domestic purposes operates narrower limits than those indicated above to insist that an applicant authority operates the same narrower limits in respect of information supplied by it. Paragraph 3 goes in the opposite direction by permitting the applicant authority to allow wider access to the information in question, subject to the consent of the requested authority, if such wider access is available in the requested Member State. Paragraph 4 is a standard provision which allows one Member State to transmit information received from another Member State to a third Member State, subject to the consent of the Member State which provided the information.

## **ARTICLE 18**

35. The first paragraph contains a standard provision limiting the obligation to provide co-operation where considerations of public policy ("ordre public") of the State itself are concerned. This is very much a fall-back provision which will not be invoked in most normal circumstances.

36. When assistance is refused, the Member State in question is required under the provisions of the second paragraph to give its reasons.

## **TITLE VI**

### **Consultation and Co-ordination Procedures**

## **ARTICLE 19**

37. This Article contains the nub of the organizational procedures envisaged in connection with the new type of administrative co-operation. While the basis of this co-operation remains essentially bilateral, between individual Member States, the introduction of co-operation in the fields of validation and verification of day-to-day control procedures implies the need for a central forum in which practical problems of general concern can be discussed and in which standard operating procedures can be agreed. It is the aim of the first paragraph of this Article to provide such a central forum. The text draws on the experience gained in the customs field (Regulation 1468/81) but is specifically orientated towards the needs of indirect tax control in the post-1992 situation.

38. Paragraph 2 provides for Member States to continue to communicate directly with each other on matters of bilateral interest where no wider need for consultation arises. This is a standard provision, taken from the existing Directive on tax co-operation (77/799/EEC).

39. Paragraph 3 is a provision, based on Regulation 1468/81, which requires Member States to ensure that domestic co-ordination between the different national authorities concerned is adequate, so that external co-operation with other Member States can operate smoothly.

40. Paragraph 4 envisages a process of constant monitoring, in which the Member States and the Commission jointly participate, to assess the effectiveness of the co-operation procedures which have been set up under the provisions of paragraph 1. The aim is to improve and refine the co-operation procedures on an ongoing basis and, where appropriate, to incorporate these improvements in administrative rules or procedures to be applied by common

agreement. The pooling of experience concerning new means of tax avoidance or evasion is one of the important aspects of this process.

41. Finally, paragraph 5 lays down a specific task for the Commission in disseminating information provided to it by individual Member States or other reliable sources and likely to be of general interest in ensuring compliance with and proper control of any indirect tax measures. This is a provision drawn from experience in the customs area (Regulation 1468/81). Taken together with paragraphs 2 and 4 it provides a broad outline of the respective roles to be played in this field by individual Member States, by the Member States and the Commission jointly, and by the Commission specifically.

## TITLE VII

### Final Provisions

#### ARTICLE 20

42. Paragraph 1 is a standard provision requiring Member States to keep the Commission informed of their administrative co-operation arrangements in indirect tax matters with third countries.

43. Paragraph 2 is once again a standard provision governing the problem of costs. The general rule, as in previous Community legislation on this subject, is that each Member State shall bear the costs arising from its provision of administrative co-operation, except in respect of fees paid to experts in certain circumstances. Article 19(1) provides a forum for resolving any disputes which may arise in connection with this subject.

44. The third paragraph is a necessary provision which enables Member States, wherever feasible, to use computer technology in the exchange of information or documents provided for under this proposal.

#### ARTICLE 21

45. The first paragraph requires the Member States to keep the Commission informed of any national laws which they subsequently adopt in the areas covered by this proposal. The second paragraph is a standard provision designed to ensure that the present proposal does not limit other possible avenues of co-operation. When Member States are bound both by the obligations of the present proposal and by obligations imposed by other instruments, or arrangements in this field, the most effective instrument can be used in any particular situation. The third paragraph is designed to ensure that existing rules applicable in the Member States concerning mutual assistance in criminal matters are not affected by the provisions of this proposal.

## ARTICLE 22

46. The present proposal incorporates and expands on the provisions of Directive 79/1070/EEC. In addition it extends administrative co-operation to the field of excise duties and thus provides a comprehensive umbrella instrument covering all requirements for co-operation in indirect tax matters. In these circumstances Directive 79/1070/EEC is redundant and must be repealed to avoid confusion or legal uncertainty.

## ARTICLE 23

47. This Article provides for the present proposal to come into operation on 1 January 1992, one year before the date laid down by Articles 8a and 100a of the Treaty for eliminating fiscal frontiers and for establishing the internal market. There is no technical reason why the Member States should not implement this proposal in advance of other measures forming part of the fiscal approximation package and experience gained in its operation in the intervening year will enable the competent authorities of the Member States to face the ending of border-related controls on 31 December 1992 with greater confidence than would otherwise be the case. In particular, the intervening year should enable the practical control procedures envisaged under Article 19(1) to be agreed and implemented while the support provided by border controls is still available.

Proposal for a  
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**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament(1),

Having regard to the opinion of the Economic and Social Committee(2),

Whereas the establishment of the internal market in accordance with Article 8a of the Treaty requires the creation of an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas the free movement of goods, persons and services requires, in particular, the elimination of customs-related controls within the Community;

Whereas in order to give full effect to the abolition of frontier controls while avoiding fiscal revenue losses for Member States, the fiscal harmonisation measures taken for completion of the internal market and for the transitional period require the establishment of a common system of administrative cooperation between the competent authorities of the Member States;

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(1) OJ No

(2) OJ No

Whereas the provisions of this Regulation which provide for this cooperation system are designed to permit the abolition of frontier controls in accordance with the aims set out in Article 8a of the Treaty, and not to harmonise fiscal provisions in the sense of Article 100a(2); whereas it is moreover necessary that the transitional taxation system should be effectively established without risks of fraud which might lead to distortions of competition;

Whereas Member States nevertheless have a continuing need to exercise controls over intra-Community traffic in goods and services similar to those which they exercise over domestic transactions affected by indirect tax obligations; whereas lack of such controls can lead to tax evasion and tax avoidance extending across the frontiers of Member States with consequent budgetary losses, violation of the principles of fair taxation and distortion of conditions of competition between Member States;

Whereas collaboration between indirect tax administrations within the Community, and between such administrations and the Commission, should therefore be strengthened in accordance with common principles and rules to ensure the establishment and the functioning of the internal market;

Whereas in making the appropriate arrangements for carrying out administrative cooperation the Member States shall pay particular attention to the need for validation and verification of intra-Community transactions in goods and services, given that the kinds of controls formerly exercised over such transactions are no longer applicable;

Whereas the Member States should, on request, exchange information concerning particular cases; whereas the Member State so requested should make the necessary enquiries to obtain such information;

Whereas the Member States should exchange, even without any request, any information which appears relevant for the control of indirect taxes, in particular where such taxes have been or may be evaded or avoided for any reason whatever;

Whereas it is important that officials of the indirect tax administration of one Member State be allowed to be present in the territory of another Member State if both the States concerned consider it desirable;

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so that the basic rights of citizens and enterprises are safeguarded; whereas it is therefore necessary that the authority receiving such information should not use it, without the authorization of the authority supplying it, other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the Member States concerned; whereas it is also necessary that the receiving authority affords the information the same degree of confidentiality which it enjoyed in the Member State which provided it, if the latter so requires;



Whereas a Member State which is called upon to carry out enquiries or to provide information shall have the right to refuse to do so where its laws prevent its indirect tax administration from carrying out such enquiries or from collecting or using such information for its own purposes, or where the provision of such information would be contrary to public policy;

Whereas collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the pooling of experience in the fields considered, with the aims of improving those procedures and preparing appropriate Community rules, and of detecting any activity contrary to indirect tax laws.

HAS ADOPTED THIS REGULATION ;

#### Article 1

This Regulation lays down the ways in which the administrative authorities responsible in the Member States for the application of the law on indirect tax matters shall cooperate with those in the other Member States and with the Commission in order to ensure compliance with the law and a correct assessment of the taxes in question.

#### Article 2

1. For the purposes of this Regulation :

- the "law on indirect tax matters" means all provisions applicable in the laws of the Member States and all Community provisions relating to value added tax and to excise duties as defined in Article 5(1).
- "applicant authority" means the competent authority of a Member State which makes a request for assistance,
- "requested authority" means the competent authority of a Member State to which a request for assistance is made.

2. Each Member State shall communicate to the other Member States and to the Commission a list of the competent authorities which are appointed to act as correspondents for the purposes of applying this Regulation. In addition, each Member State shall nominate a central office with principal responsibility for liaison with other Member States in the field of administrative co-operation.

In this Regulation "competent authorities" means those authorities appointed to act as correspondents under the first subparagraph.

## TITLE I

### Administrative cooperation - general provisions

#### Article 3

The competent authorities of the Member States shall cooperate with each other and with the Commission, to the fullest extent possible, in ensuring that national and Community provisions relating to indirect taxes are complied with and properly controlled.

In particular the competent authorities shall exchange between themselves any information that is relevant to the assessment and collection of indirect taxes. They shall also communicate any specific or general information to the Commission when this may be of interest at Community level.

#### Article 4

The obligation to provide assistance laid down by this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 at the request of the judicial authority.

However, in the case of an application for assistance, such information or documents shall be provided in all cases where the judicial authority, to which reference must be made, gives its consent.

## TITLE II

### Assistance on request

#### Article 5

1. At the request of the applicant authority, the requested authority shall communicate to it all information likely to enable the former to ensure compliance with the provisions laid down by the law on indirect tax matters with particular regard to:

- value added tax,
- excise duty on manufactured tobacco products,
- excise duty on alcoholic beverages and on the alcohol contained in other products,
- excise duty on mineral oils.

2. In order to obtain this information, the requested authority or the administrative authority which it has addressed shall

proceed as though it were acting on its own account or at the request of another authority in its own country.

#### Article 6

At the request of the applicant authority, the requested authority shall carry out appropriate enquiries or arrange for such enquiries to be carried out to enable it to supply the necessary information within the definition of Article 3.

#### Article 7

1. At the request of an applicant authority, two or more of the administrative authorities referred to in Article 2 shall consult together for the purposes of determining cases and procedures for co-ordinated tax examinations. Each authority involved shall decide whether or not it wishes to participate in a particular co-ordinated tax examination.

2. For the purposes of this Regulation, a "co-ordinated tax examination" means an arrangement between two or more authorities to examine, each in its own territory, the indirect tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

#### Article 8

At the request of the applicant authority, the requested authority shall supply to it any attestation, document or official copy of a document which it has or which it obtains in the manner referred to in Article 5 (2) and which relates to operations covered by the law on indirect tax matters.

#### Article 9

1. At the request of the applicant authority, the requested authority shall, while observing the rules in force in the Member State in which it is situated, notify any person or have that person notified of all acts or decisions which emanate from the administrative authorities and concern the application of the law on indirect tax matters.

2. Requests for notification, mentioning the subject of the act or decision to be communicated, shall be accompanied by a translation in the official language or one of the official languages of the Member State in which the requested authority is situated, without prejudice to the latter's right to waive such a translation.

#### Article 10

At the request of the applicant authority, the requested authority shall supply to it any information in its possession

or which it can obtain as prescribed in Article 5(2), in particular in the form of reports and other documents or official copies of or extracts from such reports or documents, concerning operations detected or planned which are or appear to the applicant authority to be contrary to the law on indirect tax matters.

However, such communication shall be in the form of original documents and other material only if the provisions in force in the Member State in which the requested authority has its headquarters do not preclude this.

### **TITLE III**

#### **Automatic exchange of information**

##### Article 11

For categories of cases which shall be determined under the procedures laid down in Article 19 the competent authorities of the Member States shall regularly exchange the information referred to in Article 3 without prior request.

### **TITLE IV**

#### **Spontaneous assistance**

##### Article 12

The competent authorities of each Member State shall, as laid down in Articles 13 and 14, provide assistance to the competent authorities of the other Member States without prior request of the latter.

##### Article 13

1. Where they consider it relevant in connection with compliance with the law on indirect tax matters, the competent authorities of a Member State shall without prior request forward the information referred to in Article 3, of which it has knowledge, to the competent authority of any other Member State concerned, when:

- (a) the competent authority of the one Member State has grounds for supposing that there may be a loss of indirect tax in the other Member State;
- (b) a person with an indirect tax liability obtains a reduction in or an exemption from indirect tax in the one Member State which would give rise to an increase in indirect tax or to liability to indirect tax in the other Member State;
- (c) the competent authority of a Member State has grounds for supposing that a saving of indirect tax resulting from

artificial transfers of supplies of goods or services through one or more countries, particularly between closely related trading groups, accrues to an unentitled person;

- (d) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to indirect tax in the latter Member State.

2. The competent authorities of the Member States may, under the procedures laid down in Article 19 extend the exchange of information provided for in paragraph 1 to cases other than those specified therein.

3. The competent authorities of each Member State shall take such measures and implement such procedures as are necessary to ensure that the information referred to in paragraphs 1 and 2 will be made available for transmission to other Member States.

#### Article 14

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States concerned all information of use in connection with operations which are or appear to them to be contrary to the law on indirect tax matters.

### **TITLE V**

#### **Conditions governing assistance**

#### Article 15

1. The competent authority of a Member State which under the preceding articles is called upon to furnish information shall forward it as swiftly as possible and in any case within time limits to be agreed under the procedures laid down in Article 19. Information which is provided on request shall be furnished within three months of the receipt of the request, unless the time limit is extended by the applicant authority.

2. If a competent authority encounters obstacles in furnishing the information it shall forthwith inform the other authority or authorities concerned to this effect, indicating the nature of the obstacles.

#### Article 16

1. By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, officials duly authorized by the applicant authority may obtain, from the offices where the administrative authorities of the Member State in which the requested authority is situated exercise their functions, information concerning the

application of the law on indirect tax matters which is needed by the applicant authority and which is derived from documentation to which the staff of those offices have access. These officials shall be authorized to take copies of the said documentation.

2. By agreement between the applicant authority and the requested authority the latter shall allow officials duly authorized by the applicant State to be present at the appropriate part of a tax examination in the requested Member State.

3. If the request is acceded to, the requested authority shall, as soon as possible, notify the applicant authority about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions laid down by the requested authority for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested authority.

4. The details for applying the preceding provisions shall be discussed and, as appropriate, determined under the procedures laid down in Article 19.

#### Article 17

1. Any information communicated in whatever form pursuant to this Regulation shall be of a confidential nature. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to like information under both the national law of the Member State which received it and the corresponding provisions applying to the Community authorities.

In any case such information:

- may be made available only to the persons directly involved in the assessment or administrative control of indirect tax or to persons within the Community institutions whose duties require that they have access to it. It may not be used for purposes other than those provided for in this Regulation, unless the authority supplying it has expressly agreed and insofar as the provisions in force in the Member State where the authority which received it is situated do not preclude such communication or use,
- may, in addition, be made known in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing of the indirect tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgments if the requested authority raises no objection,
- 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, making or reviewing the tax assessment.

2. Paragraph 1 shall not oblige a Member State whose legislation lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the applicant authority does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information shall permit it to be used for other purposes in the applicant State, if, under the legislation of the requested State, the information could be used in the requested State for similar purposes.

4. Where the applicant authority considers that information which 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 with the agreement of the requested authority.

#### Article 18

1. This Regulation shall not bind the administrative authorities of the Member States to grant each other assistance where to do so would be likely to prejudice public policy of the State in which they are situated.

2. Reasons shall be stated for refusal to grant assistance.

#### TITLE VI

##### Consultation and Co-ordination Procedures

#### Article 19

1. The Commission shall organise meetings with the representatives of the Member States during which:

- the operation of the arrangements for administrative co-operation provided for in this Regulation shall be examined in general terms, with particular regard to the development of standard practices for the validation and verification of intra-Community transactions,
- common practical procedures for forwarding the information referred to in Article 3 shall be laid down, taking due account of any agreements made under Article 11,
- the information sent to the Commission pursuant to Article 3 shall be examined with a view to drawing the relevant conclusions, determining the measures required to put an end to any operations found to be contrary to the law on indirect tax matters and, where necessary, suggesting amendments to

existing Community provisions or the drawing up of additional ones,

- cases and procedures concerning co-ordinated tax examinations provided for in Article 7 shall be examined and discussed.

2. On matters of bilateral interest, the competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may, by mutual agreement, permit authorities designated by them to communicate directly with each other in specified cases or in certain categories of cases.

3. For the purposes of applying this Article, Member States shall take all the necessary steps to:

- (a) ensure sound internal coordination between the competent authorities referred to in Article 1;
- (b) establish direct cooperation between the authorities specially empowered for the purposes of such coordination;
- (c) make suitable arrangements for ensuring the smooth operation of the arrangements for administrative cooperation provided for in this Regulation, including the nomination of a central office as required under Article 2(2).

4. The Member States shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Article and shall pool their experience, especially concerning new means or methods of tax avoidance or evasion with a view to improving such cooperation and, where appropriate, drawing up a body of rules as described in paragraph 1.

5. The Commission shall communicate to the competent authorities of each Member State, as soon as it is available, any information which it receives under the provisions of Article 3, or any other relevant information which it is able to supply.

## TITLE VII

### Final Provisions

#### Article 20

1. Member States shall advise the Commission of any arrangements for administrative co-operation in the field of indirect taxation carried out with third countries.

2. Member States shall waive all claims for the reimbursement of expenses incurred pursuant to this Regulation except, as appropriate, in respect of fees paid to experts.

3. For the purposes of this Regulation "document" includes information held in or transmitted by computerised systems.



Article 21

1. Member States shall communicate to the Commission the texts of any provisions of national law which they subsequently adopt in the field covered by this Regulation.

2. The arrangements provided for by this Regulation do not limit, nor are they limited by, those contained in other agreements or instruments which relate to co-operation in tax matters.

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

Article 22

Council Directive 79/1070/EEC<sup>1</sup> is hereby repealed.

Article 23

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

It shall apply from 1 January 1992.

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

Done at Brussels,

For the Council

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<sup>1</sup> OJ No L 331, 27.12.1979, p. 8.



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