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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on administrative cooperation in the field of excise duties

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 taxation, certain excise duties and taxation of insurance premiums and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Mutual assistance between Member States is essential to ensure the proper operation of the internal market, and to facilitate collection of taxes by Member States, equal treatment of traders and effective combating of fraud.

For mutual assistance to be effective, Member States must be able to exchange, easily and quickly, spontaneously or on request, information relating to particular cases which cannot be dealt with by one Member State unaided without information from one or more other Member States. In the field of excise duties the Commission, which acts as guardian of the Treaties and regulator of the internal market, may also need to have access to certain types of information in certain circumstances.

Hence the need for legal rules and technical tools which are both simple and effective.

2. THE PRESENT LEGAL INSTRUMENT DOES NOT MEET THE NEEDS OF THE INTERNAL MARKET

2.1 In the excise field the present legal basis for administrative cooperation between Member States is Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation.¹ When it was adopted it did not cover excise duties. They were brought into its scope by Directive 92/12/EEC.²

Directive 77/799/EEC, which contains a range of general and formal measures on information exchange, does not meet the needs of the internal market in the excise field where precision, speed and flexibility are required.

Cooperation on excise duties is too centralised with too few direct contacts between local and national anti-fraud agencies, standard practice being for information to be exchanged between central liaison offices. This leads to inefficiencies, under-use by officials and excessively long delays.

Cooperation is not sufficiently intensive with too few automatic or spontaneous exchanges of information to detect and prevent fraud in intra-Community trade.

Finally, there is a lack of detailed rules in whole sectors of cooperation, including the presence of foreign officials at inspections, organisation of multilateral controls or the uses made of information provided by another Member State.

Furthermore, the fact that certain provisions governing mutual assistance are contained in Directive 92/12/EEC does not provide the accessibility, legal certainty or uniformity which national authorities and economic operators have the right to

¹ OJ L 336, 27.12.1977, p. 15.

² OJ L 76, 23.3.1992, p.1. Directive last amended by Council Directive 2000/47/EC of 20 July 2000 (OJ L 193, 29.7.2000, p. 73).

expect. Consequently it is proposed that all provisions introducing or facilitating administrative cooperation (including provisions governing the register of traders and warehouses and the monitoring of movements of excisable products) be transferred from Directive 92/12/EEC into a single legal instrument incorporating all the provisions of Directives 77/799/EEC and 92/12/EEC, but improving and simplifying them to provide users with a single and effective instrument of administrative cooperation. This is the purpose of this proposal.

It should also be noted that a draft amendment to Directive 92/12/EEC is being considered to make it possible for accompanying administrative documents to be exchanged electronically and to ensure consistency between excise and customs legislation.

2.2 Because of increasing fraud in the movement of excisable products, the Directors-General for customs and taxation decided on 26 March 1997 to set up an *ad hoc* working party to analyse the situation in the tobacco and alcohol sector and propose solutions. The working party submitted its report on 24 April 1998 and this was accepted by the Directors-General for customs and taxation. It was approved by the Ecofin Council on 19 May 1998.

One of the problems identified in the report is the lack of coordination, including mutual assistance, between national authorities and between these authorities and the Commission. The report concludes there is not sufficient direct communication between authorities to ensure the effective monitoring of movements of excisable products from beginning to end. As in many cases information is exchanged too late, it is impossible to effectively combat fraud. These deficiencies lead to lack of coordinated action, which is seen by the report as a general structural weakness. The report's overall conclusion is that Directive 77/799/CEE is not a sufficiently robust legal framework for effective cooperation.

Consequently it recommends that legislative measures be adopted to improve mutual assistance and administrative cooperation in the excise field. This recommendation covers all excisable products and not just tobacco and alcohol.

The report's main recommendation was to computerise the movement and surveillance of excisable products. The Commission has given priority to the development of such a system.

However, for this technical side to work there must be a system of administrative cooperation which will meet current and future needs and improve and simplify communication between Member States and between Member States and the Commission through direct communication between administrative departments and electronic systems.

The computerised system under development could be used as a vehicle for computerised exchange of information under the mutual assistance arrangements. Electronic information exchange would have the same legal value as the present system of information exchange by post or in paper form, but this will have to be formalised in legislation.

2.3 Finally, an identical exercise was undertaken in the VAT field.³ The same approach has been used in this proposal to ensure consistency, although specific measures relating to excise duties have been incorporated.

3. EXPLANATION OF THE PROPOSED REGULATION

To improve administrative cooperation in the excise field the Commission proposes to strengthen the current instrument (Directive 77/799/EEC) by introducing a more clearly defined legal framework which will be directly applicable in all Member States. The proposal defines clear and binding rules for cooperation between Member States to ensure more direct contacts between administrative departments for more effective and speedier cooperation and more frequent and faster exchange of information between national authorities and between these authorities and the Commission in order to more effectively combat fraud.

3.1. Chapter I – General provisions

3.1.1. Article 1 – Objectives

This Article reflects the fact that the scope of the Regulation will be widened so it will not simply apply to intra-Community transactions but will also define the rules allowing the competent authorities of the Member States to exchange information with the Commission.

It also sets out the principle that the Regulation will not affect the application in Member States of the rules on judicial mutual assistance in criminal matters.

3.1.2. Article 2 – Definitions

A number of definitions which are not contained in Directive 77/799/EEC have had to be introduced as a result of the innovations introduced by this Regulation. These are the "central liaison office", "liaison department", "competent official", "structured automatic exchange", "automatic exchange", "computerised system on the movement and surveillance of excisable products", "by electronic means", "SEED identification number" and "administrative enquiry". Other definitions have been slightly altered.

3.1.3. Article 3 – Decentralisation of administrative cooperation

As a general rule, all exchanges of information have to pass through the competent authority defined in Article 1 of Directive 77/799/EEC. If this procedure is not observed, the information exchanged has no value and cannot be used in legal proceedings.

However, the Commission considers that direct communication between officials and between anti-fraud units has considerable advantages: information can be exchanged more quickly, both sides can more easily understand what information is needed, officials are more motivated and scarce human resources are not wasted through unnecessary requests. Although the present legal framework authorises such

³ Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 (OJ L 264, 15.10.2003, p. 1).

contacts between officials, Member States rarely make use of this possibility and initiatives in this area are often very disparate, leading to a lack of definition or consistency in procedures.

The proposal therefore introduces a clear legal framework for decentralised cooperation but also gives central liaison offices a pivotal role and formalises their introduction in the excise field.

The structure adopted by Article 3 is the following:

- At official level, information will continue to be exchanged through the competent authorities, but in future this will be a single authority - which may oversee other authorities - in each Member State.
- Each authority will designate a single central liaison office to be responsible for cooperation. This central liaison office will be the main conduit for cooperation (where the requesting authority does not know which local office to contact or where a request is made to a local office which is unable to deal with it). It will also play a central role in the automatic and spontaneous communication of certain types of information.
- Each authority may also designate liaison departments which will be authorised to directly exchange information. Member States will obviously be free to interpret this concept of liaison departments on a case-by-case basis as some Member States are larger than others.
- Each authority may also designate competent officials to directly exchange information under the Regulation.
- Where information is exchanged between liaison departments or between competent officials, it must also be channelled through the central liaison offices. The central liaison office will be the only competent authority where requests for assistance require action outside the territorial or operational jurisdiction of liaison departments or competent officials.
- Finally, central liaison offices will be responsible for keeping the lists of liaison department or competent officials up to date so that they can be made available to other central liaison offices.

3.1.4. Article 4 – Interaction with criminal proceedings

Where the information requested involves cases where the representatives of national authorities are undertaking enquiries on behalf of or for the judicial authorities, exchange of information is often refused or seriously delayed. This makes it impossible for the administrative authority of the requesting Member State to initiate administrative or legal proceedings against criminals operating on its territory in time.

Consequently Article 4 defines Member States' obligations under these administrative mutual assistance arrangements where criminal proceedings are involved, with due regard for the rules on judicial cooperation in criminal matters.

3.2. Chapter II – Cooperation on request

3.2.1. A single and more binding legal framework

Member States must make use of Article 2 of Directive 77/799/EEC for any information they require. Broadly, this allows the competent authority of a Member State to request the competent authority of another Member State to provide any information in a particular case which may assist it in establishing the correct amount of excise duty. The Directive does not lay down a time limit for responses to such requests.

A Chapter governing all measures relating to exchanges on request will be added to make the instrument more effective. The proposal redefines the rights and obligations of Member States and distinguishes between information requests (Section 1), requests for administrative enquiries (Section 2), the presence of officials in administrative offices and their participation in administrative enquiries (Section 4), the use of simultaneous controls (Section 5) and notification requests (Section 6). Section 3 lays down a three-month time limit for communication of information from the date of receipt of a request (one month where information is already available) but also allows other time limits in individual cases.

3.2.2. Section 1: information requests (Article 2 of Directive 77/799/EEC) and requests for administrative enquiries

Article 5(1) will in the future be the legal basis for all information requests.

Under paragraph 2, the requested authority will carry out administrative enquiries if they are necessary to obtain the information requested.

For this purpose paragraph 3 provides that information requests may contain a reasoned request for an administrative enquiry. The requested Member State may, however, decide that no enquiry is necessary but must immediately inform the requesting Member State of the reasons why it has decided not to carry out such an enquiry.

Irrespective of whether it receives a simple information request or a request for an administrative enquiry, the requested authority will proceed as though it were acting on its own account or at the request of another authority in its own Member State. However paragraph 4 must be read in conjunction with Article 32 which gives the requested authority the right to refuse to carry out enquiries or to provide information in a number of circumstances: where the administrative work involved would be disproportionate, the requesting authority has not exhausted the usual sources of information, the legislative or administrative practices of the Member State requested to provide the information do not authorise its tax authorities to carry out enquiries or to gather or use information for their own needs or the provision of information would be prejudicial to public policy or lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.

Article 6 lays down that requests for information and administrative enquiries be forwarded by means of a standard form. Past experience suggests that it would take an extremely long time for 15 Member States to agree on a standard form and it is

therefore proposed that this be adopted under the procedure provided for in Article 35(2) (regulatory committee procedure).

The movement verification form initially provided for in Article 15b of Directive 92/12/EEC and incorporated into the scope of this Regulation is a simplified form of information request. This provision will remove any ambiguity about the role of this form and the procedure it covers. It is also proposed to incorporate the contents of Article 19(6) of Directive 92/12/EEC, which covers spot checks, into the body of the Regulation as these are undertaken on the basis of the movement verification form.

Finally, Article 7 states that information or enquiries may be requested in the form of reports, statements or any other documents or certified true copies or extracts thereof. Original documents may be provided if the provisions in force in the requested Member State allow.

3.2.3. *Section 2: time limit for providing information*

The Commission proposes a maximum time limit of three months for the provision of information.

In special cases, in particular complex fraud cases involving several Member States, another time limit may be set by common consent.

Where the requested authority is unable to respond to the request within the time limit laid down, it must inform the requesting authority immediately of the reasons for its failure to do so and indicate when it is likely to be able to respond.

3.2.4. *Section 3: presence of officials from the tax authorities of other Member States (Article 6 of Directive 77/799/EEC)*

The Fiscalis 2007 programme⁴ provides Community funding for multilateral controls. However, Member States must use the facility provided for in Article 6 of Directive 77/799/EEC in order to take advantage of this funding. Under this Article some Member States have authorised officials from other Member States to enter their territory. However, very few Member States have incorporated this facility in their national legislation and in practice the vast majority of Member States do not authorise foreign officials to enter their territory during controls unless the person liable for payment of excise duties gives his or her consent. Such consent is, however, unlikely to be forthcoming as the whole purpose of a control is to establish whether any fraud has been committed. Furthermore, a few Member States even formally prohibit officials from other Member States from taking part in enquiries on their territory on the grounds of the legal problems this would involve.

Yet, the presence of officials from another Member State in administrative offices and their participation in administrative enquiries may be very useful, particularly where there is evidence of serious irregularities or fraud in more than one Member State or in cases which are so complex that their presence would be desirable. This is why Article 14 of the proposal allows officials from the tax authorities of one

⁴ Decision No 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007) (OJ L 341, 17.12.2002, p. 1).

Member State to enter the territory of another Member State where both States agree that this is necessary. Articles 11 and 12 also introduce provisions defining the rights and obligations of all parties and the procedures to be observed by national officials carrying out enquiries in another Member State.

3.2.5. *Section 4: use of simultaneous controls*

The Commission considers that simultaneous controls should form an integral part of Member States' standard control plans. Certain multilateral controls will be financed by the Fiscalis 2007 programme to encourage Member States to include simultaneous controls in their control plans. The Fiscalis 2007 Decision only provides a legal basis for the exchange of information in multilateral controls. Officials taking part in such controls must therefore use one of the legal bases authorising the exchange of tax information (Directive 77/799/EEC).

This proposal also allows Member States to use simultaneous controls whenever they appear more effective than national controls (Article 14). It also introduces provisions defining the rights and obligations of all the parties involved and outlines the procedures to be used (Article 14).

3.2.6. *Section 5: notification requests*

Article 5 of Directive 76/308/EEC⁵ allows the addressee to be notified of all instruments and decisions, including those of a judicial nature, relating to a claim or its recovery from the Member State in which the requesting authority is situated.

However, since the cases in question do not yet involve claims, the present legal framework does not provide for the notification of acts or decisions by the tax authorities of other Member States. Article 15 of the proposal therefore defines a clear legal basis for such notification. Articles 16 and 17 set out the relevant implementing provisions.

3.3. Chapter III – Exchange of information without prior request

3.3.1. *Articles 18 to 22: Structured automatic and automatic exchanges of information in risk sectors (Articles 3 and 4 of Directive 77/799/EEC)*

Although most Member States support the idea of more frequent exchanges of pertinent information, the Commission has found that such exchanges are still far from common practice. Article 18 defines certain situations in which Member States will be required to exchange information in order to facilitate detection and prevention of fraud in intra-Community trade:

(a) situations where fraud is suspected in another Member State;

Example: as copy 3 of the accompanying administrative document has not been returned, it is suspected that the excisable goods dispatched have been diverted in the Member State of destination;

⁵ Council Directive 76/308/EEC of 15 March 1976 (OJ L 73, 19.3.1976, p. 18), last amended by Directive 2001/44/EC (OJ L 175, 28.6.2001, p. 17).

(b) situations where there is a serious risk of fraud in another Member State;

Example: excise duties are paid in a Member State where the rate is low and goods are diverted to the market of the Member State where the rate is high;

(c) situations where fraud is discovered in the territory of a Member State which could have ramifications in another Member State;

Example: the Member State which discovers the irregular physical presence of excisable products suspects that fraud might have committed in the Member State of departure involving an AAD for a non-existent trader or a trader who has no knowledge of the transaction.

The present legal framework clearly does not cover any of these situations. At the moment there is no real obligation on Member States to automatically or spontaneously exchange information. It is therefore essential that the categories of information which must be exchanged be defined in Community legislation itself.

The proposal therefore provides for two types of spontaneous information exchange: structured automatic exchanges and automatic exchanges. The difference between structured automatic exchanges and automatic exchanges lies in the ability of the authority responsible for sending the information to collect, at regular intervals, the information to be exchanged. A Member State where there is no obligation on persons liable for excise duty to provide such information will obviously be unable to automatically exchange information and an exchange would in this case be a structured automatic exchange.

The proposal defines a framework which is both flexible and effective for the exchange of information between Member States. All the proposal does is define the circumstances where information has to be exchanged. The exact categories of information for each Member State, whether exchanges are automatic or structured automatic exchanges and, where appropriate, the frequency of exchanges will be decided under the procedure provided for in Article 35(2).

Decisions taken under the committee procedure may under no circumstances affect the obligations of persons liable for excise duty under Article 24 of Directive 92/12/EEC and therefore concern information which is already available to tax authorities.

3.4. Chapter IV – Storage and exchange of information specific to intra-Community transactions

The four Articles of this Chapter lay down the general principles governing the arrangements and time limits for storage of information. They also define how the information held should be exchanged.

The register of traders and warehouses (SEED), the early warning system and the movement verification system (MVS) introduced by Directive 92/12/EEC will be removed from the Directive by amendment (repealing Articles 15a, 15b and 19(6) of the Directive) and incorporated into this Regulation after a review of their content. The objective is to make them an instrument of administrative cooperation.

Article 24 introduces the principle of an early warning system. Article 26 provides for the use of the computerised system referred to in the first paragraph of this Article, once it becomes operational, for exchanges of information under this Regulation.

3.5. Chapter V – Relations with the Commission

The aim of the proposal is to put in place effective arrangements for mutual assistance and information exchange which will prevent fraud in the intra-Community movement of excisable products. It gives the Commission responsibility for overseeing administrative cooperation but does not in any way give the Commission an operational role in the detection and combating of tax fraud.

However, because of the intra-Community dimension of fraud involving excise duties, it is essential that it be tackled at Community level through the combined efforts of the Member States and the Commission. Although responsibility for the measures required to prevent fraud in intra-Community movements of excisable products lies with the Member States, the Commission will play a coordinating and facilitating role.

Consequently it is explicitly stated that Member States must provide all the statistical information needed for such an evaluation and the data to be provided will be defined under the committee procedure.

Member States must also provide any other information concerning the methods and practices used or presumed to be have been used to contravene excise duty legislation so that deficiencies or weaknesses can be identified in the administrative cooperation arrangements under this Regulation or under excise legislation.

It must also be spelt out that Member States must also provide the Commission, at its request, with detailed information on intra-Community movements of excisable products where these movements are covered by customs procedures.

Finally, any other information, including information on particular cases, should be supplied to the Commission on a voluntary basis. The Commission will be required to forward this information to the competent authorities of the other Member States concerned which have not yet received such information.

3.6. Chapter VI – Exchange of information with non-EU countries

The present legal framework does not provide a legal basis for the exchange of information with non-EU countries. Where excise duty fraud involves import or export operations use may be made of customs cooperation instruments.

Information from non-EU countries may, however, be useful to supplement information available at national level. Consequently Article 28(1) lays down a legal basis under which any Member State may obtain information from a non-EU country under a bilateral agreement. Where information is of Community interest it may also be forwarded to the Commission.

Article 28(2) states that information obtained under this Regulation may be communicated to a non-EU country with the consent of the competent authorities which provided such information.

3.7. Chapter VII – Conditions governing the exchange of information

3.7.1. Article 29: Exchanges in electronic form

Under this Article information is provided, as far as possible, in electronic form according to the arrangements to be adopted under the committee procedure.

3.7.2. Article 30: Translations

Requests for assistance and supporting documents will be drawn up in any language chosen by common consent and may be accompanied by a translation into the official language(s) of the requested authority but only in specific substantiated cases.

The aim of this provision is to facilitate and speed up the exchange of information.

3.7.3. Article 31: Limits on information exchange

Under this Article the requested authority has the right to refuse to carry out enquires or to provide information where the administrative burden would be disproportionate, the requesting authority has failed to exhaust the usual sources of information, the legislative or administrative practices of the Member State requested to provide the information do not authorise its tax authorities either to carry out such enquires or to gather or use this information for its own purposes, or where transmission of this information would be contrary to public policy or lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.

Paragraph 2 has been added to align Article 31 of this Regulation on Article 18 of Directive 76/308/EEC which allows Member States to agree to reimburse the costs actually incurred where there are particular problems or the costs involved are excessively high or are incurred in combating organised crime.

Article 31(4) of this proposal and Article 14 of Directive 76/308/EEC provide that the requested authority must inform the requesting authority and the Commission of the reasons for refusing a request for mutual assistance.

3.7.4. Article 32(1) and (2): Limits on the use of information (Article 7(1) and (3) of Directive 77/799 EEC)

Under Article 7(1) of Directive 77/799/EEC information from the requested Member State may be used without restriction in the requesting Member State only for administrative and tax purposes. In practice this Article has been interpreted in different ways by Member States. According to some Member States, the explicit authorisation of the requested Member State must be obtained if such information is to be disclosed publicly in judicial proceedings. According to others, tacit authorisation is sufficient.

Article 32 indicates that information communicated in any form under this Regulation is confidential. However some information may be used for judicial or administrative proceedings involving sanctions initiated as a result of infringements of tax law.

It may also be used for the purposes of establishing the assessment base, collection and control of excise duties and monitoring of movements of excisable products.

Such information may also be used to determine other levies, duties or charges covered by Article 2 of Directive 76/308/EEC of 15 March 1976. This provision is consistent with the recommendation of the High-Level Working Group on coordination between tax and customs policies that was set up to examine whether a system for the exchange of information between the customs and tax authorities could be introduced. This provision will provide the legal basis for exchanges of information relating to excise duties. It will also provide a legal basis for exchanges between the excise authorities and other tax authorities in the same Member State.

Paragraph 3 also limits access to information at Community level to persons duly accredited by the Security Accreditation Authority of the European Commission only in so far as is necessary for the maintenance and development of the CCN/CSI network.

3.7.5. *Article 32(3): Need for the consent of the requested authority to communicate information to another Member State (Article 7(4) of Directive 77/799/EEC)*

Article 7(4) of Directive 77/799/EEC defines the procedure under which the consent of the Member State providing the information must be obtained for such information to be made available to another Member State. These procedures may prevent or delay transmission of information to the Member States where it is needed.

Article 32(3) no longer requires such consent. Where the requesting authority considers that the information it has received from the requested authority may be useful to the competent authorities of a non-EU country it may transmit it to them.

3.7.6. *Article 32(4): Obstacles to the exchange of personal data*

Several Member States have problems in exchanging personal data because of the restrictions enshrined in their national legislation. They have indicated that data protection rules severely restrict the possibility of information exchange. They have also pointed out that 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 data⁶ may also be an obstacle to the exchange of personal data in some cases, even where fraud has been identified, or an even greater obstacle in cases where there is evidence that fraud is very likely to have been committed.

Member States have therefore to rely on Article 13 of the above Directive, which provides for derogations from the normal rules to safeguard the financial interests of a Member State (including tax interests). Consequently Article 32(4) provides that Member States may restrict the scope of the obligations and duties defined in Articles 6(1) to 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC to ensure that their personal data protection laws do not hinder the effective operation of this Regulation.

In some Member States the person concerned must be informed of any exchange of information by law. If fraud is involved such notification would obviously make any

⁶ OJ L 281, 23.11.1995, p. 31.

action less effective. The fact that some Member States systematically inform the person concerned of any requests for information discourages other Member States from using the mutual assistance arrangements when they suspect fraud has been committed.

3.7.7. Article 33: Evidence

Article 33 indicates that reports, statements or any other documents, certified true copies and any information obtained by officials of the requested authority and communicated to the requesting authority may be used as evidence by the competent bodies of the requesting authority on the same basis as similar national documents.

3.7.8. Article 34

The purposes of this provision is to ensure effective coordination at national and Community level by requiring Member States to take all measures necessary to this end.

3.8. Chapter VIII: Final provisions

3.8.1. Articles 35 and 36: Consultation and committee procedures

The measures required to implement this Regulation are of a general scope and their purpose is to implement the core provisions of the basic instrument. Consequently the regulatory committee procedure provided for in Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission must be used.

3.8.2. Article 37: Report by the Commission to the European Parliament and the Council

The frequency at which the Commission has to report to the European Parliament and the Council is extended from two to five years.

3.8.3. Article 38: Applicability of wider provisions on mutual assistance (Article 11 of Directive 77/799/EEC)

Paragraph 1 of this Article corresponds to Article 11 of Directive 77/799/EEC and paragraph 2 to Article 9(3). The wording has been slightly changed.

4. EXPLANATION OF THE PROPOSED DIRECTIVE

Since all parts of Directive 77/799/EEC concerning excise duties have been replaced these will now be excluded from the scope of the Directive.

Directive 92/12/EEC must also be amended to remove from its scope Articles 15a, 15b and 19(6) which will be incorporated, after being amended, in the proposed Regulation on administrative cooperation in the field of excise duties.

5. CONCLUSION

The purpose of this proposal is to strengthen cooperation between tax authorities by providing them with a simple and effective legal framework to combat fraudsters on equal terms.

The Commission is submitting this proposal under Article 95 of the Treaty as it considers that the measures proposed are not tax harmonisation measures, their aim being simply to ensure the proper functioning of the internal market as regards the exchange of information between Member States in the excise field.

The proposal does not seek to change the obligations of persons liable for excise duties or to change the rules governing the implementation of legislation in this field. Its objective is simply to adapt administrative cooperation arrangements to the challenges of the internal market.

Article 95 forms the legal basis for the approximations of laws, regulations and administrative provisions of Member States that directly affect the establishment or functioning of the common market.

In accordance with paragraph 2 of Article 95, paragraph 1 of that Article does not apply to tax provisions which are governed by Article 93.

The Commission considers the derogation provided for in paragraph 2 of Article 95 cannot exclude the application of the general rule laid down in paragraph 1 of this Article since tax provisions are not the principle objective of the measure proposed.

The aim of this Regulation is simply to facilitate administrative cooperation between Member States by laying down common rules for the exchange of information and access to such information. The fact that the content of this information may be useful for the correct assessment and collection of excise duties does not mean that taxation is its principal objective. It is simply a consequence of it.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on administrative cooperation in the field of excise duties

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,⁷

Having regard to the opinion of the European Economic and Social Committee,⁸

Acting in accordance with the procedure laid down in Article 251 of the Treaty,⁹

Whereas:

- (1) Cross-border fraud in the European Union has serious consequences for national budgets and may lead to distortions of competition in movements of excisable products. It therefore has an impact on the operation of the internal market.
- (2) Close cooperation is required between the administrative authorities of each Member State responsible for implementing the measures adopted in this field in order to combat excise fraud.
- (3) It is therefore essential to define the rules under which the administrative authorities of the Member States must afford each other mutual assistance and cooperate with the Commission to ensure that the rules relating to the movement of excisable products and the collection of excise duties are correctly applied.
- (4) Mutual assistance and administrative cooperation in the field of excise duties are governed by 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 taxation, certain excise duties and taxation of insurance premiums.¹⁰
- (5) Although this legal instrument has proved to be effective, it will not be able to cope with new administrative cooperation imperatives resulting from increasing economic integration within the internal market.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ OJ L 336, 27.12.1977, p. 15. Directive last amended by Directive 2003/93/EC (OJ L 264, 15.10.2003, p. 23).

- (6) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products¹¹ also introduced a number of information exchange instruments. Their procedures will have to be defined within a general legal framework for administrative cooperation in the field of excise duties.
- (7) There is also a need for clearer and more binding rules on cooperation between Member States as the rights and obligations of all the parties concerned are not sufficiently defined.
- (8) There are not sufficient direct contacts between local or national anti-fraud agencies as standard practice is for information to be communicated between central liaison offices. This leads to inefficiencies, under-use of the administrative cooperation arrangements and excessive delays in communication of information. Provision must therefore be made for more direct contacts between administrative departments to improve and speed up cooperation.
- (9) There is, finally, a need for closer cooperation as, with the exception of movement verification under Article 15b of Directive 92/12/EEC, there are few automatic or spontaneous exchanges of information between Member States. The exchange of information between national authorities and between those authorities and the Commission must be more intensive and speedier if fraud is to be effectively combated.
- (10) There is consequently a need for a specific instrument in the field of excise duties to incorporate the provisions of Directive 77/799/EEC in this field. This instrument must also focus on the areas where cooperation between Member States can be improved through the introduction and improvement of systems for the transmission of information on the movement of excisable products.
- (11) It was not the objective of Directive 77/799/EEC to harmonise tax provisions. Its aim was to ensure the proper functioning of the internal market by facilitating administrative cooperation between national authorities in the field of indirect taxation. This Regulation has the same aim.
- (12) This Regulation must not hamper other Community measures to combat fraud in the field of excise duties.
- (13) This Regulation incorporates, and defines, the arrangements contained in Directive 92/12/EEC to facilitate administrative cooperation between Member States (these include the register of traders concerned and premises and the movement verification system). This Regulation also introduces an early warning system between Member States.
- (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

¹¹ OJ L 76, 23.3.1992, p. 1. Directive last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

processing of personal data and on the free movement of data,¹² in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

- (15) The measures necessary for the implementation of this Regulation in compliance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹³ must be adopted.
- (16) The objectives of these measures to simplify and strengthen administrative cooperation between Member States cannot be achieved by the Member States alone, and a harmonised approach is required, and can be better undertaken at Community level in view of the uniformity and effectiveness desired. The Commission may therefore take measures in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty. In accordance with this principle this Regulation does not go beyond that which is required to attain these objectives.
- (17) This Regulation respects the fundamental rights and observes the principles which are recognised 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 responsible in the Member States for implementing legislation on excise duties are to cooperate in exchanging any useful information with each other, and with the Commission, in order to ensure compliance with that legislation.

To that end, it lays down rules and procedures enabling 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 correctly assess excise duties.

The Regulation also lays down rules and procedures governing the exchange of certain types of information by electronic means, and in particular that concerning intra-Community trade in excisable products.
2. This Regulation shall not affect the application in the Member States of the rules on mutual judicial assistance in criminal matters.

¹² OJ L 281, 23.11.1995, p. 31.

¹³ OJ L 184, 17.7.1999, p. 23.

Article 2

For the purposes of this Regulation:

- 1) "competent authority" means the authority designated in accordance with Article 3(1);
- 2) "requesting authority" means the central liaison office of a Member State or any liaison department or competent official of that Member State requesting assistance on behalf of the competent authority;
- 3) "requested authority" means the central liaison office of a Member State or any liaison department or competent official of that Member State receiving a request for assistance on behalf of the competent authority;
- 4) "structured automatic exchange" means the systematic communication of predefined information, without prior request, to another Member State as and when that information becomes available;
- 5) "automatic exchange" means the systematic communication of predefined information, without prior request, to another Member State at pre-established regular intervals;
- 6) "computerised system" means the computerised system for monitoring the movement of excisable products set up by Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003;¹⁴
- 7) "person" means:
 - a) a natural person;
 - b) a legal person;
 - 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 database 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) "SEED identification number" means the number provided for in Article 24(2)(a) of this Regulation;
- 11) "VAT identification number" means the number provided for in Article 22(1)(c), (d) and (e) of Council Directive 77/388/EEC;¹⁵

¹⁴ OJ L 162, 1.7.2003, p. 5.

¹⁵ OJ L 145, 13.6.1977, p. 1.

- 12) "intra-Community movement of excisable products" means the movement between two or more Member States of excisable products under the suspension arrangements for excise duties within the meaning of Title III of Directive 92/12/EEC or of excisable products released for consumption within the meaning of Articles 7 to 10 of Directive 92/12/EEC;
- 13) "administrative enquiry" means all the controls, checks and other action taken by officials or the competent authorities in the performance of their duties with a view to ensuring the proper application of excise legislation;
- 14) "CCN/CSI network" means the common platform based on the common communication network (CCN) and common system interface (CSI), developed by the Community to ensure all transmissions by electronic means between the competent authorities in the area of customs and taxation.

Article 3

1. Each Member State shall inform the other Member States and the Commission of the single competent authority it has designated as the authority in whose name this Regulation is to be applied, whether directly or by delegation.
2. Each Member State shall designate a central liaison office to which principal responsibility shall be delegated:
 - (a) for contacts with other Member States in the field of administrative cooperation;
 - (b) management and surveillance of the procedures and systems for the movement of excisable products provided for by Community legislation, and in particular the electronic register of data provided for in Article 23;
 - (c) the early warning system provided for in Article 24;
 - (d) verification request to or from other Member States provided for in Article 25;
 - (e) any exchange of information on movements of excisable products.

It shall inform the Commission and the competent authorities of the other Member States thereof.

3. The competent authority of each Member State may also designate liaison departments other than the central liaison office to directly exchange information under this Regulation. These liaison departments shall consist of any office with specific territorial responsibility or specialised operational responsibility. The central liaison office shall be responsible for keeping the list of these departments up to date and making it available to central liaison offices.
4. The competent authority of each Member State may also designate under the conditions laid down by it competent officials to directly exchange information under this Regulation. When it does so, it may limit the scope of such delegation. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States concerned.

5. The officials exchanging information under Articles 11 and 14 shall be deemed to be competent officials for this purpose, in accordance with the conditions laid down by the competent authorities.
6. Where liaison departments or competent officials send or receive requests for assistance or responses to such requests for assistance, they shall inform the liaison office of their Member State under the conditions laid down by the latter.
7. Where liaison departments or competent officials receive requests for assistance requiring action outside their territorial or operational jurisdiction, they shall immediately forward them to the central liaison office of their Member State and inform the requesting authority. In such cases, the time limits laid down in Article 8 shall begin on the day following that on which the request for assistance was forwarded to the central liaison office.

Article 4

The obligation to provide assistance under 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, where a competent authority has the powers in accordance with national law to communicate the information referred to in the first paragraph, this may be communicated under the administrative cooperation arrangements provided for in this Regulation. Any such communication must have the prior authorisation of the judicial authority if such authorisation is required under national law.

Chapter II

Cooperation on request

SECTION 1

REQUEST FOR INFORMATION AND FOR ADMINISTRATIVE ENQUIRIES

Article 5

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.
2. For the purposes of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3. The request referred to in paragraph 1 may include a reasoned request for a specific administrative enquiry. If the Member State decides that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons for its decision.
4. In order to obtain the information requested or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 6

Requests for information and for administrative enquiries pursuant to Article 5 shall be sent using a standard form adopted in accordance with the procedure referred to in Article 35(2). However, under the circumstances referred to in Article 25, the standard movement verification document for excisable products provided for in Article 25(3) of this Regulation shall be a simplified form of information request.

Article 7

1. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information in its possession in the form of reports, statements and any other documents, or certified true copies or extracts thereof and the results of administrative enquiries.
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

TIME LIMIT FOR PROVIDING INFORMATION

Article 8

The requested authority shall provide the information referred to in Articles 5 and 7 without delay, and no later than three months following the date of receipt of the request.

Article 9

In certain special cases, limits different from those provided for in Article 8 may be agreed between the requested and the requesting authorities.

Article 10

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

SECTION 3

PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES

Article 11

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may be present in the offices where the administrative departments of the Member State in which the requested authority is established carry out their duties, with a view to exchanging the information referred to in Article 1. Where the requested information is contained in the documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies of the documents containing the requested information.
2. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials designated by the requesting authority may be present during the administrative enquiries with a view to exchanging the information provided for in Article 1. Administrative enquiries shall be conducted solely by the officials of the requested authority. The requesting authority's officials shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.
3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 must at all times be able to produce a written authority indicating their identity and their official capacity.

Article 12

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.

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 4

SIMULTANEOUS CONTROLS

Article 13

With a view to exchanging the information referred to in Article 1, two or more Member States may agree to conduct simultaneous controls, in their own territory, of the excise duty situation of one or more persons who are of common or complementary interest, whenever such controls would appear to be more effective than controls by only one Member State.

Article 14

1. A Member State shall identify independently the persons whom it intends to propose for a simultaneous control. The competent authority of that Member State shall notify the competent authority in the other Member States concerned of the cases proposed for simultaneous controls. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall indicate the period of time during which such controls should be carried out.
2. The Member States concerned shall then decide whether they wish to participate 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. Each competent authority shall appoint a representative to supervise and coordinate the control operation.
4. The competent authorities shall notify the Commission without delay when a simultaneous control is conducted and shall inform it of the fraud techniques identified during such a control and described in the control reports and evaluations drawn up. The Commission shall inform the Committee referred to in Article 35(1).

SECTION 5

REQUEST FOR ADMINISTRATIVE NOTIFICATION

Article 15

At the request of the requesting authority, the requested authority shall, 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 legislation on excise duties in the territory of the Member State in which the requesting authority is established.

Article 16

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.

The standard form for the notification request shall be adopted according to the procedure laid down in Article 35(2).

Article 17

The requested authority shall immediately inform the requesting authority 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 18

Without prejudice to the provisions of Chapter IV, the competent authority of each Member State shall, by structured automatic 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 excise duty legislation has been infringed or is suspected of having been infringed in the other Member State;
- 2) where there is a risk of fraud in the other Member State;
- 3) where an infringement or suspected infringement of excise duty legislation in the territory of one Member State may have repercussions in another Member State.

Article 19

The following shall be determined in accordance with the procedure referred to in Article 35(2):

- 1) the exact categories of information;
- 2) for each Member State, whether exchanges are structured or automatic and, in the latter case, the frequency of such exchanges;
- 3) the practical arrangements for the exchange of information.

Article 20

The competent authorities of the Member States may always forward to each other, without prior request, and by means of spontaneous exchange, the information referred to in Article 1 of which they are aware.

Article 21

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

Article 22

A Member State cannot be obliged, for the purposes of implementing the provisions of this Chapter, to impose new obligations on persons liable for payment of excise duties for the purposes of collecting information.

Chapter IV

Storage and exchange of information specific to intra-Community transactions

Article 23

1. The competent authority of each Member State shall maintain an electronic database containing the following registers:
 - a) a register of persons who are authorised warehousekeepers or registered traders for excise purposes within the meaning of Article 4(a) and (d) of Directive 92/12/EEC;
 - b) a register of premises authorised as tax warehouses.
2. The register shall contain the following information made available to other Member States:
 - a) the identification number issued by the competent authority in respect of the person or premises;
 - b) the name and address of the person or premises;
 - c) the category and nomenclature of the products which may be held or received by the person or which may be held or received at these premises;
 - d) identification of the competent authority from which further information may be obtained;

- e) the date of issue, amendment and, where applicable, the date of cessation of validity of the identification number;
 - f) the information required to identify authorised warehousekeepers, registered traders and premises authorised as tax warehouses;
 - g) the information required to identify persons who have assumed the obligations within the meaning of Article 15(3) of Directive 92/12/EEC;
 - h) the information required to identify persons involved on an occasional basis in the movement of excisable products;
 - i) the information concerning the compulsory movement guarantee referred to in Article 13(a) of Directive 92/12/EEC.
3. Each national register shall be made available to other Member States.
 4. The information to be entered in the registers defined in paragraph 2, the detailed arrangements for introducing and updating registers, the harmonised standards for recording excise numbers and collecting the information needed to identify persons and premises referred to in paragraph 2 and the arrangements for making available the registers to all Member States as set out in paragraph 3 shall be defined according to the procedure provided for in Article 35(2).
 5. Where a trader can be identified only by means of a VAT identification number, Article 27 of Regulation (EC) No 1798/2003 of the European Parliament and of the Council on administrative cooperation in the field of value added tax shall apply.¹⁶

Article 24

1. Member States shall introduce an electronic early warning system under which the central liaison office or a liaison department referred to in Article 3(2) and (3) in the Member State of departure of the excisable products can send an information or warning message to the liaison office in the Member State of destination before the products are dispatched. As part of this exchange of information the central liaison offices shall carry out a risk analysis before sending and receiving messages.
2. The information to be exchanged and the relevant arrangements shall be determined according to the procedure referred to in Article 35(2).

Article 25

1. In accordance with Article 5, during or after the movement of excisable products, the central liaison office of a Member State may request information from the central liaison office of another Member State. As part of this exchange of information central liaison offices shall carry out a risk analysis when sending and receiving requests.

¹⁶ OJ L 264, 15.10.2003, p. 1.

2. Member States shall also cooperate for the purposes of carrying out spot checks which may be carried out by means of computerised procedures.
3. The exchange of information referred to in paragraphs 1 and 2 shall be carried out on the basis of a standard verification document of the movements in question. The form and content of this document and the arrangements for exchange of information shall be laid down according to the procedure provided for in Article 35(2).
4. Where a consignor of excisable products fails to receive copy 3 of the accompanying administrative document (AAD) and has exhausted all the means available to provide proof that the movement of products under the suspension arrangements has been cleared, the trader in question may request the central liaison office of the Member State in which he is established to use the document provided for in paragraph 3. The central liaison office shall decide whether to comply with this request. If it does so, this is in no way releases the consignor from his tax obligations.

Article 26

1. Where monitoring of the movement of and surveillance of excisable products are carried out by means of a computerised system, the competent authority of each Member State shall keep and process the information in this system.

The information shall be kept for at least three years from the end of the calendar year in which access to the information is to be granted so that information can be used for the procedures provided for in this Regulation.

2. Member States shall ensure that the information stored in the system is kept up to date, and is complete and accurate.

Chapter V

Relations with the Commission

Article 27

1. 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. Member States shall communicate to the Commission any information relating to their implementation of this Regulation, including any statistical data needed for the evaluation of its implementation. The relevant statistical data shall be determined in accordance with the procedure referred to in Article 35(2).
3. Member States shall communicate to the Commission any information on the methods or practices used or suspected of having been used to contravene excise duty legislation which has revealed shortcomings or lacunae in the operation of the

administrative cooperation arrangements provided for in this Regulation or in the provisions governing excise duties.

4. At the request of the Commission, Member States shall provide all the relevant information relating to the release for consumption, export or placing under duty-suspension arrangements or arrangements with economic impact within the meaning of Council Regulation (EEC) No 2913/92¹⁷ of excisable products.
5. With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax fraud, Member States may communicate to the Commission any other information referred to in Article 1.
6. The Commission shall forward the information referred to in paragraphs 2, 3 and 5 to the other Member States concerned.

Chapter VI

Relations with third countries

Article 28

1. When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of any Member States which might be interested in it and, under all circumstances, to all those which request it, where the assistance arrangements in force in this country allow.

Such information may also be passed on to the Commission whenever it is of Community interest.

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 excise duty 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.

¹⁷ OJ L 302, 19.10.1992, p 1.

Chapter VII

Conditions governing the exchange of information

Article 29

Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under the arrangements to be adopted in accordance with the procedure referred to in Article 35(2).

Article 30

Requests for assistance, including requests for notifications, and any supporting documents may be made in any language agreed between the requested and requesting authority. These requests 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 only in special cases where the requested authority gives the grounds for doing so.

Article 31

1. The requested authority in one Member State shall provide the requesting authority in another Member State with the information referred to in Article 1 provided that:
 - a) the number and the nature of the request for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on the requested authority;
 - b) the 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. Where mutual assistance involves particular problems leading to excessive costs or involves measures to combat organised crime, the requesting and requested authorities may agree on special reimbursement arrangements in the cases in question.
3. 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 provide the information do not authorise the competent authority to carry out those enquiries or to collect or use that information for that Member State's own purposes.
4. The competent authority of a Member State may refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information. The Commission shall be informed of a refusal by the requested Member State to provide such information.

5. 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 where its disclosure would be contrary to public policy.
6. 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.
7. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure referred to in Article 35(2).

Article 32

1. Information communicated 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.

Such information may be used for the purpose of establishing the assessment base, for collection or administrative control of excise duties, the monitoring of movements of excisable products and for enquiries.

It may be used in connection with judicial or administrative proceedings that may involve penalties initiated as a result of infringements of tax law, without prejudice to the general rules and legal provisions governing the right of the accused and witnesses in such proceedings.

It may also be used to establish other taxes, duties and charges covered by Article 2 of Council Directive 76/308/EEC.¹⁸

Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as this is necessary for the maintenance and development of the CCN/CSI network.

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 the legislation of the Member State of the requested authority allows the information to be used for similar purposes.
3. Where the requesting authority considers that information it has received from the requested authority may be useful to the competent authority of a third Member State, it may forward it to the latter authority. It shall inform the requested authority that it has done so. The requested authority may make the communication of information to a third Member State subject to its prior consent.

¹⁸ OJ L 73, 19.3.1976, p. 18.

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 and 21 of Directive 95/46/EC where that is necessary to safeguard the interests referred to in Article 13(e) of that Directive.

Article 33

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

Article 34

1. For the purposes of applying this Regulation, a Member State 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 system provided for in this Regulation.
2. The Commission shall communicate without delay to the competent authority of each Member State any information which it receives and which it is able to provide.

Chapter VIII

General and final provisions

Article 35

1. The Commission shall be assisted by the Excise Committee, hereinafter referred to as the Committee.
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 Articles 7 and 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
3. The Committee shall adopt its internal rules of procedure.

Article 36

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

Article 37

1. Every five years from the date of entry into force of this Regulation, the Commission shall report to the European Parliament and to the Council on the implementation 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 38

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 instruments, 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 39

This Regulation shall enter into force on 1 January 2005.

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 taxation, certain excise duties and taxation of insurance premiums and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,¹⁹

Having regard to the opinion of the European Economic and Social Committee,²⁰

Acting in accordance with the procedure laid down in Article 251 of the Treaty,²¹

Whereas:

- (1) Closer cooperation between Community tax authorities and between the latter and the Commission based on common principles is required to effectively combat excise duty fraud.
- (2) Regulation (EC) No .../2004 of the European Parliament and of the Council of 2003 on administrative cooperation in the field of excise duties²² incorporates all the provisions designed to facilitate administrative cooperation in the field of excise duties contained in 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 taxation, certain excise duties and taxation of insurance premiums²³ and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products,²⁴ with the exception of mutual assistance provided for by Council Directive 76/308/EEC of 15 March 1976 concerning mutual assistance for the recovery of claims relating to levies, duties, charges and other measures.²⁵
- (3) Directives 77/799/EEC and 92/12/EEC should therefore be amended accordingly,

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

²¹ OJ C , , p. .

²² OJ L [...], [...], p. [...].

²³ OJ L 336, 27.12.1977, p. 5. Directive last amended by Directive 2003/93/EC (OJ L 264, 15.10.2003, p. 23).

²⁴ OJ L 76, 23.3.1992. Directive last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

²⁵ OJ L 73, 19.3.1976, p. 18. Directive last amended by the Act of Accession of 2003.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/799/EEC is hereby amended as follows:

1) The title is replaced by the following title:

"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 taxation and taxation of insurance premiums".

2) Paragraph 1 of Article 1 is replaced by the following:

"1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital, and any information relating to the establishment of taxes on insurance premiums referred to in the sixth indent of Article 3 of Council Directive 76/308/EEC."

Article 2

Directive 92/12/EEC is hereby amended as follows:

- 1) Article 15a is deleted.
- 2) Article 15b is deleted.
- 3) Article 19(6) is deleted.

Article 3

References to Directive 77/799/EEC in respect of excise duties shall be construed as references to Regulation (EC) No [.../....].

References to Directive 92/12/EEC in respect of administrative cooperation in the field of excise duties shall be construed as references to Regulation (EC) No [.../...].

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2005 at the latest. They shall forthwith inform the Commission thereof.

Where Member States adopt these 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 transmit the provisions of national law that they adopt in the field covered by this Directive to the Commission.

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

Once it has been adopted the proposed Regulation will not have any financial consequence either positive or negative for Community own resources. Excise duties are exclusively national resources. The Commission's role is solely to improve the operation of the internal market.