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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2073/2004
of 16 November 2004
on administrative cooperation in the field of excise duties

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

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

Whereas:

- (1) 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 ⁽³⁾. Mutual assistance and administrative cooperation in the field of VAT are governed by Regulation (EC) No 1798/2003 ⁽⁴⁾.

- (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.
- (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 products ⁽⁵⁾ 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 should therefore be made for more direct contacts between administrative departments to improve and speed up cooperation.
- (9) There is, also, 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 should be more intensive and speedier if fraud is to be effectively combated.

⁽¹⁾ Opinion delivered on 1 April 2004 (not yet published in the Official Journal).

⁽²⁾ OJ C 112, 30.4.2004, p. 64.

⁽³⁾ OJ L 336, 27.12.1977, p. 15. Directive last amended by Directive 2004/56/EC (OJ L 127, 29.4.2004, p. 70).

⁽⁴⁾ OJ L 264, 15.10.2003, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

⁽⁵⁾ 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).

- (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 should 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. This instrument is without prejudice to the application of the Convention of 18 December 1997 on mutual assistance and cooperation between administrations ⁽¹⁾.
- (11) This Regulation should not hamper other Community measures to combat fraud in the field of excise duties.
- (12) This Regulation incorporates and defines the arrangements contained in Directive 92/12/EEC to facilitate administrative cooperation between Member States. These arrangements include the register of traders concerned and premises and the movement verification system. This Regulation also introduces an early warning system between Member States.
- (13) For the purposes of this Regulation it is appropriate to limit certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of data ⁽²⁾, in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.
- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (15) Since the objective of this Regulation, namely the simplification and the strengthening of administrative cooperation between Member States, which requires a harmonised approach, cannot be sufficiently achieved by the Member States alone, and can, by reason of the uniformity and effectiveness required, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (16) This Regulation respects the fundamental rights and observes the principles which are recognised by the Charter of Fundamental Rights of the European Union,

HAS 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 the application of the legislation on excise duties are to cooperate with each other, and with the Commission, in order to ensure compliance with that legislation.

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

The Regulation also lays down rules and procedures for the exchange of certain types of information by electronic means, and in particular as regards intra-Community trade in excisable products.

2. This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall also be without prejudice to the fulfilment of any obligation in relation to mutual assistance ensuing from other legal instruments, including bilateral or multilateral agreements.

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 who receives the request for assistance on behalf of the competent authority;
4. 'central liaison office' means the office which has been designated under Article 3(3) with principal responsibility for contacts with other Member States in the field of administrative cooperation;

⁽¹⁾ Council Act of 18 December 1997 (OJ C 24, 23.1.1998, p. 1).

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

5. 'liaison department' means any office other than the central liaison office with a specific territorial competence or a specialised operational responsibility which has been designated by the competent authority pursuant to Article 3(4) to exchange directly information on the basis of this Regulation;
6. 'competent official' means any official who can directly exchange information on the basis of this Regulation, for which he has been authorised pursuant to Article 3(5);
7. 'excise office' means any office at which some of the formalities laid down by excise rules may be completed;
8. 'occasional automatic exchange' means the systematic communication of predefined information, without prior request, to another Member State as and when that information becomes available;
9. 'regular automatic exchange' means the systematic communication of predefined information, without prior request, to another Member State at pre-established regular intervals;
10. 'spontaneous exchange' means the occasional communication without prior request of information to another Member State;
11. 'computerised system' means the computerised system for monitoring the movement of excisable products set up by Decision No 1152/2003/EC ⁽¹⁾;
12. 'person' means:
 - (a) a natural person;
 - (b) a legal person; or
 - (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;
13. '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;
14. 'identification number' means the number provided for in Article 22(2)(a) of this Regulation;
15. 'VAT identification number' means the number provided for in Article 22(1)(c), (d) and (e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment ⁽²⁾;
16. '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;
17. '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;
18. '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;
19. 'excise duties' means the taxes which are subject to the Community legislation in the field of excise, and includes the taxes on energy products and electricity under Council Directive 2003/96/EC ⁽³⁾;
20. 'AAD' means the document referred to in Article 18(1) of Directive 92/12/EEC;
21. 'SAAD' means the document referred to in Article 7(4) of Directive 92/12/EEC.

Article 3

1. Each Member State shall inform the other Member States and the Commission of the 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 for contacts with other Member States in the field of administrative cooperation. It shall inform the Commission and the competent authorities of the other Member States thereof.

⁽¹⁾ OJ L 162, 1.7.2003, p. 5.

⁽²⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

⁽³⁾ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

3. The central liaison office shall have principal responsibility for exchanges of information on movements of excisable products and in particular, it shall have principal responsibility for;

(a) the exchange of data stored in the electronic register provided for in Article 22;

(b) the early warning system provided for in Article 23;

(c) verification requests to or from other Member States provided for in Article 24.

4. 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. The competent authorities shall ensure that the list of these departments is kept up to date and made available to central liaison offices of the other Member States concerned.

5. The competent authority of each Member State may also designate, under the conditions laid down by it, competent officials who can 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.

6. The officials exchanging information under Articles 11 and 13 shall be deemed to be competent officials for this purpose, in accordance with the conditions laid down by the competent authorities.

7. Where liaison departments or competent officials send or receive requests for assistance or responses to such requests for assistance, they shall inform the central liaison office of their Member State under the conditions laid down by the latter.

8. Where a liaison department or a competent official receives requests for assistance requiring action outside its territorial or operational area, it shall immediately forward them to the central liaison office of its Member State and inform the requesting authority thereof. In such a case, 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

1. The obligation to give assistance as provided for in this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 acting with the authorisation or at the request of the judicial authority.

2. However, where a competent authority has, in accordance with national law, the powers to communicate the information referred to in paragraph 1, it may be communicated as part of the administrative cooperation provided for in this Regulation.

Any such communication shall 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 communicating 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, as far as possible, be sent using a standard form adopted in accordance with the procedure referred to in Article 34(2). However, under the circumstances referred to in Article 24, the standard movement verification document for excisable products provided for in Article 24(2) 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 as quickly as possible, and no later than three months following the date of receipt of the request.

Article 9

In certain special categories of cases, time 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 authorities 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 carried out exclusively 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 shall at all times be able to produce a written authority indicating their identity and their official capacity.

SECTION 4

Simultaneous controls*Article 12*

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 carried out by only one Member State.

Article 13

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 specify 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 reasoned refusal to its counterpart authority.

3. Each competent authority shall appoint a representative to be responsible for supervising and coordinating the control operation.

4. Following a simultaneous control, the competent authorities shall inform the excise liaison offices of the other Member States without delay of the fraud techniques identified during such a simultaneous control, when it is deemed that such information is of particular interest to other Member States. The competent authorities may also inform the Commission.

SECTION 5

Request for notification of administrative decisions and measures*Article 14*

At the request of the requesting authority, the requested authority shall, in accordance with the rules governing similar notifications in force in its own Member State, notify the addressee of all administrative decisions and measures taken by the administrative authorities of the requesting Member State concerning the application of legislation on excise duties, except those referred to in Article 5 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures⁽¹⁾.

⁽¹⁾ OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 2003 Act of Accession.

Article 15

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

Article 16

The requested authority shall, without delay, 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 measure to the addressee, or of the reason for any inability to transmit. A request may not be refused on the grounds of the content of the decision or measure to be notified.

CHAPTER III

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST*Article 17*

Without prejudice to Chapter IV, the competent authority of each Member State shall, by occasional automatic or regular 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 an irregularity or an infringement of excise duty legislation has occurred, or is suspected to have occurred, in the other Member State;
2. where an irregularity or an infringement of excise duty legislation which has occurred, or is suspected to have occurred, in the territory of one Member State may have repercussions in another Member State;
3. where there is a risk of fraud or a loss of excise duty in the other Member State.

Article 18

The following shall be determined in accordance with the procedure referred to in Article 34(2):

1. the exact categories of information to be exchanged;
2. the frequency of such exchanges;
3. the practical arrangements for the exchange of information.

Each Member State shall determine whether it will take part in the exchange of a particular category of information, as well as whether it will do so by means of regular automatic or occasional automatic exchange.

Article 19

The competent authorities of the Member States may in any case 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 20

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

Article 21

A Member State cannot be obliged, for the purposes of implementing this Chapter, to impose new obligations on persons for the purposes of collecting information, nor to bear disproportionate administrative burdens.

CHAPTER IV

STORAGE AND EXCHANGE OF INFORMATION SPECIFIC TO INTRA-COMMUNITY TRANSACTIONS*Article 22*

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 combined nomenclature relating to excise products 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 central liaison office or the excise office from which further information may be obtained;
- (e) the date of issue, amendment and where applicable, the date of cessation of validity of the authorisation as an authorised warehousekeeper or as a registered trader;
- (f) the information required to identify persons who have assumed the obligations within the meaning of Article 15(3) of Directive 92/12/EEC;

(g) the information required to identify persons involved on an occasional basis in the movement of excisable products, where such information is available.

3. Each national register shall be made available, for excise duty purposes only, to the competent authorities of the other Member States.

4. The central liaison office or a liaison department of each Member State shall ensure that persons involved in the intra-Community movement of products subject to excise duty are allowed to obtain confirmation of the information held under this Article.

5. The detailed information referred to in paragraph 2, the detailed arrangements for introducing and updating registers, the harmonised standards for recording identification 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 34(2).

6. Where a trader can be identified only by means of a VAT identification number, Article 27 of Regulation (EC) No 1798/2003 shall apply for that purpose.

Article 23

1. Member States shall introduce an electronic early warning system under which the central liaison office or a liaison department 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 as soon as that liaison office or liaison department is in possession of the AAD information, and at the latest when the products are dispatched. As part of this exchange of information, a risk analysis based on the AAD information shall be carried out before a message is sent, and if it is considered necessary, after it is received.

2. The information to be exchanged and the relevant arrangements shall be determined according to the procedure referred to in Article 34(2).

Article 24

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 or a liaison department of another Member State. For the purposes of this exchange of information a risk analysis, based on the AAD or SAAD information, shall be carried out before a

request is sent, and if it is considered necessary, after it is received.

2. The exchange of information referred to in paragraph 1 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 34(2).

3. The relevant authorities of the Member State in which a consignor of excisable products is established may grant assistance, using the document provided for in paragraph 2, where such consignor fails to receive Copy 3 of the AAD or SAAD and where such consignor has exhausted all the means available to him to obtain proof that the movement of products has been cleared. If such assistance is granted, this in no way relieves the consignor of his tax obligations.

The relevant authorities of the Member State of destination shall make every effort to comply with any request made to them by the relevant authorities of the Member State of the consignor in the course of such assistance.

Article 25

1. Where monitoring of the movement of and surveillance of excisable products is 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 the movement was initiated in order that such 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 26

1. Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. For the application of this Article, the Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements. To this end, the information delivered by the Member States shall not contain individual or personal data.

2. Member States shall communicate to the Commission any available information relevant to their application 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 34(2), and shall be communicated only in so far as they are available and the communication is not likely to involve administrative burdens which would be unjustified.

3. Member States shall communicate to the Commission any available information on the methods or practices used or suspected of having been used to contravene excise duty legislation which have revealed shortcomings or lacunae in the operation of the administrative cooperation arrangements provided for in this Regulation where it is deemed that such information is of particular interest to other Member States.

4. 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 available information referred to in Article 1.

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

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES

Article 27

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 in any event, to all those which request it, in so far as permitted by assistance arrangements with that particular third country. 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.

CHAPTER VII

CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

Article 28

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 34(2).

Article 29

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed between the requested and requesting authority. The said 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 when the requested authority gives a reason for asking for such a translation.

Article 30

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 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.

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 categories of grounds for such refusals on an annual basis for statistical purposes.

7. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure referred to in Article 34(2).

Article 31

1. Information communicated pursuant to this Regulation shall be covered by the obligation of official 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, for risk analysis 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 defendants and witnesses in such proceedings.

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

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 care, 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.

4. Member States shall restrict the scope of the obligations and rights provided for in 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 32

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 33

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 34

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article 24(1) of Directive 92/12/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 35

1. Every five years from the date of entry into force of this Regulation and based in particular on the information provided by the Member States, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

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

Article 36

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 37

This Regulation shall enter into force on 1 July 2005.

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

Done at Brussels, 16 November 2004.

For the Council
The President
G. ZALM
