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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0004 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on administrative cooperation in the field of taxation

(presented by the Commission)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The Member States' need for mutual assistance in the field of taxation and especially for direct taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross border transactions and of the internationalisation of financial instruments, which makes it more and more difficult for Member States to assess taxes due properly, while they stick to national sovereignty as regards the level of taxes.

This increasing difficulty in assessing taxes correctly affects the functioning of taxation systems and entails double taxation, which itself incites to tax fraud and tax evasion, while the powers of controls remain at national level.

Therefore, one single Member State cannot manage its internal taxation system, especially as regards direct taxation, without information coming from other Member States. In order to overcome the negative effects of this phenomenon, it is indispensable to develop a new administrative cooperation between the Member States' tax administrations.

There is a need for instruments likely to create confidence between Member States, by setting up the same rules, obligations and rights for all Member States. In this regard, it was observed in recent court cases that in practice cooperation mechanisms may not function in an efficient and satisfactory manner, but that however, Member States cannot rely on deficiencies in the cooperation between their tax authorities in order to justify restrictions on fundamental freedoms.

Therefore, a completely new approach must be taken by creating an entirely new text to give Member States the powers to efficiently cooperate at international level to overcome the negative effects of an ever increasing globalisation on the internal market. As such, administrative cooperation raises upward national laws but does not replace nor approximate them.

General context

The existing 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 does not constitute any more the appropriate tool. Its deep weaknesses have been looked into by the high-level Council Working Party on fraud in a May 2000 report (Document 8668/00) and more recently by Commission Communications of 2004 (COM (2004)611 final) and 2006 (COM (2006)254final). They were also covered in the opinion expressed by Member States during the consultation process preceding this Proposal for a Council Directive.

The Directive - even with its later amendments - was designed in a different context from the present internal market requirements. In 1977, there was no free circulation and a very weak integration. Today, Member States need to use instruments other than the Directive into the interests of international mutual assistance. This situation creates uncertainty and runs counter to transparency, equality of treatment, fair competition and the smooth functioning of the internal market. In practice, the existing Directive is no longer able to meet the present requirements of administrative cooperation.

A first approach to limiting the negative taxation effects of internationalised investments is contained in Directive 2003/48/EC on taxation of savings income in the form of interest payments. However, this Directive is concerned only with a certain type of savings. But this Directive on savings also shows that when the uniformity of tools and instruments is created, Member States are able to exchange information properly and efficiently.

A reinforced instrument for administrative cooperation in the taxation sector will ensure and maintain full national sovereignty over the types and level of taxes. Due to the lack of harmonisation in this field, enhanced tax administrative cooperation is the only way of assessing taxes correctly and thus preventing and combating tax fraud and tax evasion. A stronger form of tax administrative cooperation is crucial for the interests of Member States and the EU, the main aim being to protect Member States' financial interests more effectively and to avoid market distortion.

Existing provisions in the area of the proposal

From 1979 until 1992, VAT was part of the scope of Directive 77/799/ECC. Excise duties were also part of the scope of that Directive from 1992 to 2004. However, due to the conclusions of the high-level Council Working Party on fraud in May 2000 report, which identified the incapacity of this Directive to fulfil its objectives, the Commission presented two separated draft Regulations aiming at creating an entirely new environment for administrative cooperation for VAT and excise duties. These Regulations were adopted respectively on 7 October 2003 for VAT (Regulation 1798/2003) and on 16 November 2004 for excise duties (Regulation 2073/2004). VAT and excise duties were therefore withdrawn from the scope of Directive 77/799/EEC.

A similar approach is followed with the current proposal. The new reinforced Directive provides for an organisation chart, common rules of procedures, common forms, formats and channels for exchanging information. It also provides for a committee procedure, to deal with technical measures and the sharing of information, and to create tools and instruments to minimise the obstacles to the efficient exchange of information.

In addition, the scope of Directive 77/799/EEC is limited to direct taxes and insurance premiums, whereas the current proposal covers all indirect taxes that are not yet dealt with in a European Community act, i.e. indirect taxes other than VAT and Excise duties. As such, it creates for the first time a set of rules for a series of taxes that were not covered by any of the existing Community legal framework.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The consultations took place in Working Groups and by means of a questionnaire on suggestions for improving the existing situation.

Summary of responses and how they have been taken into account

The general opinion of Member States is that the current Directive needs to be entirely strengthened. The point was underlined that the Directive in its present form cannot establish a common level of obligation that would serve its intended aims. Precise opinions have also been expressed on the content of the new instrument.

The Commission has taken into account the opinions of the Member States, and the result is a proposal for a Council Directive.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

No impact assessment has been made for this proposal.

The other option considered was to amend the existing Directive. However, for the reasons described before, this was not considered appropriate.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The Commission proposes to the Council to adopt a new Directive on administrative cooperation in the field of taxation.

The aim is to create a legal instrument of high quality for enhancing administrative cooperation in the field of taxation, in order to allow a smooth functioning of the internal market by circumventing the negative effects of harmful tax practices.

Such an approach will have to effect to bring this cooperation into line with the existing provisions in the field of VAT and excise duties administrative cooperation.

Legal basis

Articles 93 and 94 of the EC Treaty.

Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The competence of national tax authorities is traditionally limited to their territory. The fight against tax fraud - as confirmed by many Commission documents - requires action at EU level.

Administrative cooperation between these authorities could be based on bilateral or multilateral agreements. Such provisions are normally incorporated in double taxation agreements, the scope of which is generally limited to income taxes. However, correct assessment of taxes and transnational tax fraud and tax evasion can only be tackled by common measures at EU level.

Community action will better achieve the objectives of the proposal for the following

reason(s).

Member States themselves have expressed the need for a global set of more binding EU rules, applying to all kinds of taxes not yet provided for in European Union legislation. Applying the same conditions, the same methods and the same practices for administrative cooperation with regard to all these taxes should facilitate the work of the authorities and increase the volume, improve the quality of the information exchanged. Adopting a more detailed, enforced directive will help to achieve this objective.

Tax fraud, of which the non-payment of taxes is an essential element, is at a very high level in the European Union. Combating it requires unified efforts which can be better achieved through a stronger Community instrument featuring common rules of procedure and provisions on common methods, forms, formats and communication channels.

The Commission estimates that the types of administrative cooperation will increase in number after adoption of the new directive (more requests for information, spontaneous information, automatic exchanges, simultaneous checks, auditors in another Member State's offices, and sharing of information).

The nature of the subject requires a common approach to conditions and rules of procedures, principles and tools that can only be achieved by a common legal act.

The proposal therefore complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The proposed action only sets out common rules of procedures and instruments to facilitate day-to-day administrative cooperation between Member States, which therefore remain entirely responsible for their internal organisation and allocation of resources, for which cases are covered by international administrative cooperation and for what use is made of the results.

The proposed action will not mean any additional financial and administrative burden for the Community, national governments, regional and local authorities, economic operators and citizens, but should on the contrary rationalise human and financial costs by creating a common approach to international administrative cooperation.

Choice of instruments

Proposed instruments: directive.

Other means would not be adequate for the following reason(s).

This proposal's aim is to reinforce, strengthen and modernise the provisions of the existing Directive in order to achieve a better functioning of the internal market and a more effective administrative cooperation. For this reason it is necessary to replace the Directive's rules in force. The appropriate legal instrument in this case is the directive.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

ADDITIONAL INFORMATION

Simplification

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EU or national), simplification of administrative procedures for private parties.

The legislation is simplified as it comprises common measures which are easy to interpret and apply.

Public authorities will be able to use common tools and instruments in a pre-defined organisational framework. This set of measures will simplify recourse to international administrative cooperation. Extending the scope of EU legislation will mean that administrative authorities will not have to have recourse to different sets of legislation, each with their own rules and conditions, depending on the type of claim for which they are requesting cooperation.

Private parties subject to international administrative cooperation will be treated on an equal footing, with simplified procedures.

Repeal of existing legislation

The adoption of the proposal will lead to the repeal of existing legislation.

Detailed explanation of the proposal

Chapter I deals with general questions. Article 1 defines the aim of the directive and the way in which Member States are to cooperate with each other.

Article 2 concerns the scope of the directive, which extends cooperation between Member States to cover taxes of any kind. This Article takes its lead from the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. The scope extends to indirect taxes not yet covered by European Union legislation on administrative cooperation. It means that apart from VAT and excise duties, the Directive applies to all the other indirect taxes (together with direct taxes) to make cooperation more effective.

Article 3 deals with definitions which are not in the existing provisions at all.

Article 4 is based on the organisation of tasks as provided for in the existing VAT Regulation on administrative cooperation, with the necessary adaptations.

In Chapter II, devoted to exchange of information, Article 5 and 6 are concerned with the exchange of information on request and administrative enquiries. Article 7 regulates the time limits for the provision of information. Article 7 paragraphs 5 and 6 are inspired by the 2002 OECD Model agreement on exchange of information in tax matters.

Article 8 deals with the automatic exchange of information. The proposal prescribes the automatic exchange of information for a number of income types to be defined

under the comitology procedure. For other types of income, it allows Member States to conclude supplementary agreements.

Article 9 covers the spontaneous exchange of information.

Chapter III deals with other forms of administrative cooperation. Section I regulates the presence of officials in other Member States' administrative offices and their participation in administrative procedures. Officials of the requesting Member State are allowed to exercise the powers of inspection conferred on officials of the requested Member State.

In section II, devoted to simultaneous controls, Article 11 keeps the wording of the existing Article 8b of the Directive which had been adopted in 2004.

In section III, Article 12 on administrative notification is also a relatively new provision in the existing Directive and has therefore been retained.

In section IV, Article 13 strengthens the feedback obligation due to the Member States' wish to introduce a stricter provision. Feedback motivates officials in the field to make better use of the various forms of information exchange.

Article 14 in Section V regulates the Member States' obligation to share their experience. The Article extends the role of the Committee referred in Article 24 as a consultative committee.

In Chapter IV, Article 15 deals with the disclosure of information and documents. The proposal uses a broad approach, the aim being to protect the Member State and taxpayers' interests.

Article 16 introduces the disproportionate administrative burden and exhaustiveness principles and provides for grounds for refusal to cooperate.

Article 17 deals with the limits to these obligations. The first paragraph excludes own tax purposes and domestic interest as bases for refusal and is based on Article 26 paragraph 4 of the OECD Model Tax Convention, while the second paragraph - based on Article 26 paragraph 5 of the OECD Model Tax Convention - is to ensure that the limitations in Article 16 paragraphs 2 and 4 cannot be used to refuse to provide information solely because the information is held by banks and other financial institutions, when this information concerns a person resident for tax purposes in the requesting Member State.

Article 18 introduces the most favoured nation principle, according to which a Member State has to provide cooperation to other Member State under the same conditions as to a third country.

Article 19 deals with common forms and computerised formats for the exchange of information. Common forms are already under construction and in use in a pilot scheme. The automatic exchange of information form will be based on the format used for the automatic exchange of information under Article 9 of the Directive 2003/48/EC (taxation of savings).

Article 20 mirrors the Member States' wishes as regards the threshold and language regime. The use of the CCN/CSI network is common in Member States and meets with the Commission's intentions to get all tax systems using the same channels.

Article 21 contains specific obligations on tax administrative cooperation within and between Member States.

Article 22 in Chapter V determines the relationship between the Commission and the Member States. The Member States have the responsibility to communicate all relevant information on the functioning of the Directive.

Article 23 in Chapter VI regulates relations with third countries. The proposal prescribes the compulsory sharing of information from outside the EU and reflects the recent fraud cases where an EU Member State and a third country were involved.

Article 24 in Chapter VII sets up a Committee on Administrative Cooperation for Taxation to monitor the functioning of the Directive. It can also act as a consultative committee.

Article 25 makes it obligatory to evaluate functioning of this Directive, in this case after five years of entering into force.

Article 26 serves to repeal the existing provisions, while Article 27 relates to the transposition of the Directive by the Member States and Article 28 prescribes the entry into force and the application of this Directive as of 1 January 2010.

Proposal for a

COUNCIL DIRECTIVE

on administrative cooperation in the field of taxation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 and 94 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³

Whereas:

- (1) The Member States' need for mutual assistance in the field of taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross border transactions and of the internationalisation of financial instruments, which makes it difficult for Member States to assess taxes due properly. This increasing difficulty affects the functioning of taxation systems and entails double taxation, which itself incites to tax fraud and tax evasion, while the powers of controls remain at national level. It thus jeopardises the functioning of the internal market.
- (2) Therefore, one single Member State cannot manage its internal taxation system, especially as regards direct taxation, without information coming from other Member States. In order to overcome the negative effects of this phenomenon, it is indispensable to develop a new administrative cooperation between the Member States' tax administrations. There is a need for instruments likely to create confidence between Member States, by setting up the same rules, obligations and rights for all Member States.
- (3) Therefore, a completely new approach must be taken by creating a new text to give Member States the powers to efficiently cooperate at international level to overcome the negative effects of an ever increasing globalisation on the internal market. As such, administrative cooperation raises upward national laws but does not replace nor approximates them.
- (4) In such a context, the existing 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 does not contains any more the appropriate measures. Its deep weaknesses have been looked into by the high-level

¹ OJ C [...], [...], p.[...].

² OJ C [...], [...], p.[...].

³ OJ C [...], [...], p.[...].

Council Working Party on fraud in a May 2000 report (Document 8668/00) and more recently by Commission Communications of 2004 (COM (2004)611 final) and 2006 (COM (2006)254final).

- (5) Directive 77/799/EEC, even with its later amendments, was designed in a different context from the present internal market requirements. Today, Directive 77/799/EEC is no longer able to meet the new requirements of administrative cooperation.
- (6) Due to the number and the importance of adaptations to be made, a mere modification of the existing Directive would not be sufficient to fulfil the objectives. Therefore, Directive 77/799/EEC must be repealed and replaced by a new legal instrument. That instrument should apply to direct taxes and indirect taxes that are not yet covered by other Community legislation. To this end, a new Directive is considered to be the proper instrument in terms of effective administrative cooperation.
- (7) In particular, clearer and more precise rules governing administrative cooperation between Member States are necessary.
- (8) There should be more direct contact between local or national offices in charge of administrative cooperation, with communication between taxation central liaison offices being the rule. The lack of direct contacts leads to inefficiency, under-use of the arrangements for administrative cooperation and delays in communication. Provision should therefore be made to bring about more direct contacts between services with a view to making cooperation more efficient and faster.
- (9) The Member States should, on request, exchange information concerning particular cases; the Member State so requested should make the necessary enquiries to obtain such information; it should also respect pre-defined time limits for answering a request.
- (10) The Member States should exchange automatically any information where a Member State has grounds to believe that a failure of compliance with tax laws has been committed or is likely to have been committed in the other Member State, where there is a risk of inappropriate taxation in the other Member State, or where tax has been or may be evaded or avoided for any reason in the other Member State, and especially where there is an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages.
- (11) Spontaneous exchanges of information between Member States should also be strengthened and encouraged.
- (12) It is important that officials of the tax administration of one Member State are allowed to be present in the territory of another Member State and may exercise the powers of inspection conferred on officials of the requested Member State.
- (13) Since the tax situation of one or more persons liable to tax established in several Member States often is of common or complementary interest, it should be made possible for simultaneous controls to be carried out to such persons by two or more Member States, by mutual agreement and on a voluntary basis, whenever such controls appear to be more effective than controls carried out by only one Member State.
- (14) In view of the legal requirement in certain Member States that a taxpayer be notified of decisions and instruments concerning his tax liability and of the ensuing difficulties for the tax authorities, including cases where the taxpayer has relocated to another

Member State, it is desirable that, in such circumstances, the tax authorities should be able to call upon the cooperation of the competent authorities of the Member State to which the taxpayer has relocated.

- (15) Feedback should be given to the Member States which issued a request for information or that sent an information automatically or spontaneously, to encourage international administrative cooperation.
- (16) Collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the sharing of experience and best practices in the fields considered.
- (17) It is important for the efficiency of administrative cooperation that information and documents obtained under this Directive may be used also for other purposes in the Member State that received them, if this is allowed under the legislation of that Member State. It is also important that Member States may transmit that information to a third country.
- (18) The Member State requested to provide information may refuse to transmit it if it cannot provide such information for legal reasons or if this would lead to the disclosure of a commercial, industrial or professional secret or commercial process or disclosure would be contrary to public policy.
- (19) However, a Member States should not refuse to transmit the information because it has no domestic interest or because the information relating to a resident of the other Member State is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
- (20) It should also be made clear that where a Member State provides a wider cooperation to a third country than is provided for under this Directive, it should not refuse to provide such wider cooperation to the other Member States.
- (21) Exchanges of information should be made through standardized forms, formats and channel of communication.
- (22) An evaluation of the effectiveness of administrative cooperation should be made, especially on the basis of statistics.
- (23) The measures necessary for the implementation of this Directive 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 Commission⁴.
- (24) Since the objectives of the action to be taken, namely the efficient administrative cooperation between Member States to overcome the negative effects of the increasing globalisation on the internal market, cannot be sufficiently achieved by the Member States and can therefore, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

⁴ OJ L 184, 17.7.1999, p. 23.

- (25) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down the rules and procedures under which administrative authorities of the Member States shall cooperate with each other and with the Commission with a view to the correct assessment of the taxes referred to in Article 2, as well as rules and procedures for the exchange of certain information by electronic means.

Article 2

Scope

1. This Directive shall apply to all taxes of any kind, irrespective of the manner in which they are levied, except to indirect taxes already covered by Community legislation on administrative cooperation between Member States.
2. The Directive shall also apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law.
3. This Directive shall apply to taxes as referred to in paragraphs 1 and 2, levied within the territory to which the Treaty applies by virtue of Article 299 thereof.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

1. “competent authority” means any authority designated by a Member State for the application of this Directive, either directly or by delegation;
2. “administrative enquiry” means all controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring proper application of tax legislation;
3. “exchange of information on request” means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case;
4. “automatic exchange” means the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals or as and when that information becomes available;
5. “spontaneous exchange” means the non-systematic communication at any moment and without prior request of information to another Member State;
6. “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;
 - (d) any legal arrangement, including partnerships and trusts, whose income or capital are subject to any of the taxes covered by this Directive;
7. “to grant access”, means to authorise access to the relevant electronic database and to obtain data by electronic means;
 8. “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;
 9. “CCN network”, means the common platform based on the common communication network (CCN), developed by the Community for all transmissions by electronic means between competent authorities in the area of customs and taxation.

Article 4

Organisation

1. Each Member State shall communicate to the Commission at the latest one month after the date of entry into force of this Directive a competent authority for the purposes of this Directive.
The Commission shall inform all Member States of the competent authorities of the Member States.
2. Each Member State shall designate a single taxation liaison office, which shall have principal responsibility for contacts with other Member States in the field of administrative cooperation covered by this Directive.
It shall inform the Commission and the other Member States thereof.
3. The competent authority of each Member State may designate taxation liaison departments.
The taxation liaison department shall be any office other than the taxation liaison office with a specific territorial competence or a specialised operational responsibility. It shall be authorised to exchange directly information on the basis of this Directive.
The taxation liaison office shall be responsible for keeping the list of those departments up to date and making it available to the taxation liaison offices of the other Member States concerned and to the Commission.
4. The competent authority of each Member State may designate competent officials who are authorised to directly engage in administrative cooperation on the basis of this Directive, except where a specific authorisation is required under this Directive.
The taxation liaison office shall be responsible for keeping the list of competent officials up to date and making it available to the taxation liaison offices of the other Member States concerned and to the Commission.
5. The officials engaged in administrative cooperation on the basis of this Directive shall in any case be deemed to be competent officials for that purpose, in accordance with arrangements laid down by the competent authorities.

6. Where a taxation liaison department or a competent official sends or receives a request or a reply to a request for cooperation, it shall inform the taxation liaison office of its Member State under the procedures laid down by that Member State.
7. Where a taxation liaison department or a competent official receives a request for cooperation requiring action outside its territorial or operational competence, it shall forward such request without delay to the taxation liaison office of its Member State and inform the authority that made the request. In such a case, the period laid down in Article 8 shall start the day after the request for cooperation has been forwarded to the taxation liaison office.

CHAPTER II

EXCHANGE OF INFORMATION

SECTION I

EXCHANGE OF INFORMATION ON REQUEST

Article 5

Procedure of the exchange of information on request

1. At the request of the taxation liaison office, a taxation liaison department or any competent official of a Member State (hereinafter "the requesting authority"), the taxation liaison office, a taxation liaison department or any competent official of a Member State who receives a request for cooperation (hereinafter "the requested authority"), shall communicate information which may be relevant for the correct assessment of taxes referred to in Article 2, including any information relating to a specific case or cases.
2. The requested authority shall communicate to the requesting authority any relevant information it has in its possession or it obtains as a result of administrative enquiries.

Article 6

Administrative enquiries

1. The requested authority shall arrange for the carrying out of any administrative enquiries necessary to obtain the information referred to in Article 5.
2. The request referred to in Article 5(1) may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.
3. In order to obtain the requested information or to conduct the administrative enquiry requested, the requested authority shall follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own Member State.

Article 7

Time limits

1. The requested authority shall provide the information referred to in Article 5 as quickly as possible, and no later than six months following the date of receipt of the request.

However, where the requested authority is already in possession of that information, the information shall be transmitted within one month of that date.
2. In certain special categories of cases, including complex cases, deadlines other than those provided for in paragraph 1 may be agreed between the requested and the requesting authorities.
3. The requested authority shall confirm immediately and in any event no later than five working days after receipt, by electronic means receipt of a request to the requesting authority.
4. The requested authority shall notify the requesting authority of any deficiencies in the request and of the need for any additional background information, within one month of receipt of the request.
5. Where the requested authority is unable to respond to the request by the deadline, it shall inform the requesting authority immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond.
6. Where the requested authority is unable to respond to the request for information or refuses to respond, it shall inform the requesting authority immediately of the reasons, and in any event within one month of receipt of the request.

SECTION II

AUTOMATIC EXCHANGE OF INFORMATION

Article 8

Scope and conditions of automatic exchange of information

1. The competent authority of each Member States shall, by automatic exchange, forward information on specific categories of income and capital to the other Member States.
2. The Commission shall adopt, in accordance with the procedure referred to in Article 24(2), within two years of the entry into force of this Directive:
 - (a) the categories of income and capital to be covered
 - (b) the type of information to be exchanged;
 - (c) any specific condition or restriction within the categories referred to in point (a);
 - (d) the frequency of the exchanges;
 - (e) the practical arrangements for the exchange of information.
3. In addition to the categories of income and capital referred to in paragraph 2, the competent authority of each Member State shall, by automatic exchange, forward

information necessary for the correct assessment of taxes referred to in Article 2 to the competent authority of any other Member State concerned, in any of the following cases:

- (a) where taxation is deemed to take place in the Member State of destination of the information, and the effectiveness of the control system may be facilitated by the information provided by the Member State of origin,
 - (b) where a Member State has grounds to believe that a failure of compliance with tax laws has been committed or is likely to have been committed in the other Member State,
 - (c) where there is a risk of inappropriate taxation in the other Member State,
 - (d) where tax has been or may be evaded or avoided for any reason in the other Member State, and especially where there is an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages.
4. Where Member States conclude bilateral or multilateral agreements with a view to the correct assessment of the taxes referred to in Article 2, they shall provide for automatic exchange of information relating to certain categories of income and capital. For that purpose, they shall specify in those agreements the following elements:
- (a) the categories of income and capital to be covered;
 - (b) the type of information to be exchanged;
 - (c) any specific condition or restriction within the categories referred to in point (a);
 - (d) the frequency of the exchanges;
 - (e) the practical arrangements for the exchange of information.

Member States shall forward to the Commission the agreements they have concluded. The Commission shall make these agreements available to all the other Member States.

The Commission shall adopt a model agreement in accordance with the procedure referred to in Article 24(2).

SECTION III

SPONTANEOUS EXCHANGE OF INFORMATION

Article 9

Scope and conditions

The competent authorities of the Member States may, in any case by spontaneous exchange, forward to each other any information referred to in Article 1 of which they are aware, and in particular where taxation is deemed to take place in the Member State of destination of the information, and where the effectiveness of the control system may be facilitated by the information provided by the Member State of origin.

CHAPTER III
OTHER FORMS OF ADMINISTRATIVE COOPERATION
SECTION I
PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN
ADMINISTRATIVE ENQUIRIES

Article 10

Scope and conditions

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1,
 - (a) be present in the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties;
 - (b) be present during administrative enquiries carried out in the territory of the requested Member State.

Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies of such documentation

2. Where officials of the requesting authority are present during administrative enquiries pursuant to the paragraph 1, they may exercise the powers of inspection conferred on officials of the requested authority, under the condition that they exercise these powers in accordance with the laws, regulations or administrative provisions of the requested Member State.

Any refusal by the person under investigation to respect the inspection measures of the officials of the requesting authority shall be treated by the requested authority as if this refusal was committed against officials of the latter authority.

3. Officials authorised by the requesting Member State present in another Member State in accordance with paragraph 1 must at all times be able to produce written authority stating their identity and their official capacity.

SECTION II

SIMULTANEOUS CONTROLS

Article 11

Simultaneous controls

1. Where two or more Member States agree to conduct simultaneous controls, in their own territory, of one or more persons of common or complementary interest to them with a view to exchanging the information thus obtained, paragraphs 2, 3 and 4 shall apply.
2. The competent authority in each Member State shall identify independently the persons for whom it intends to propose a simultaneous control. It shall notify the competent authority in the other Member States concerned of any cases for which it proposes a simultaneous control, giving reasons for its choice.
It shall specify the period of time during which those controls shall be conducted.
3. The competent authority of each Member State concerned shall decide whether it wishes to take part in simultaneous controls. The competent authority of the Member State shall confirm its agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control.
4. Each competent authority of the Member States concerned shall appoint a representative with responsibility for supervising and coordinating the control operation.

SECTION III

ADMINISTRATIVE NOTIFICATION

Article 12

Request for notification

1. At the request of the competent authority of a Member State, the competent authority of another Member State shall, in accordance with the rules governing the notification of similar instruments in the requested Member State, notify the addressee of any instruments and decisions which emanate from the administrative authorities of the requesting Member State and concern the application in its territory of legislation on taxes covered by this Directive.
2. Requests for notification shall indicate the subject of the instrument or decision to be notified and shall specify the name and address of the addressee, together with any other information which may facilitate identification of the addressee.
3. The requested authority shall inform the requesting authority immediately of its response and, in particular, of the date of notification of the decision or instrument to the addressee.

SECTION IV FEEDBACK

Article 13

Conditions

1. Member States' competent authorities shall send feedback to other Member States, as soon as possible and no later than three months after making use of any answer to a request for information or spontaneous information
2. Member States' competent authorities shall send feedback on automatic exchanges of information to the other Member States concerned once a year. Where the feedback relates to information granted pursuant to Article 8(1) (2), the date by which the feedback shall be sent shall be determined in accordance with the procedure referred to in Article 23(2). Where the feedback relates to information granted pursuant to Article 8(3) (4), the date by which the feedback shall be sent shall be determined by agreement between the Member States concerned.
3. The Commission shall determine the practical arrangements in accordance with the procedure referred to in Article 24(2).

SECTION V SHARING OF BEST PRACTICES AND EXPERIENCE

Article 14

Scope and conditions

1. The Member States shall, together with the Commission, monitor administrative cooperation pursuant to this Directive and shall share their experience, with a view to improving such cooperation and, where appropriate, drawing up rules in the fields concerned.
2. The Commission may adopt guidelines in accordance with the procedure referred to in Article 23(3), in particular as regards:
 - a) country profiles aimed at sharing information on national legislation enforced in each Member State in the field of administrative cooperation for taxation;
 - b) risk management techniques;
 - c) any other action deemed necessary for sharing best practices and sharing experience.

CHAPTER IV
CONDITIONS GOVERNING ADMINISTRATIVE COOPERATION

Article 15

Disclosure of information and documents

1. Information and documents obtained by the requesting or requested authority pursuant to this Directive may be disclosed to other authorities within the same Member State, in so far as this is allowed under the legislation of that Member State, even if that information could be used for other purposes than those referred to in Article 2.
2. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit that information to the latter competent authority, provided this transmission is in accordance with the rules and procedures laid down in this Directive.
3. Information, reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the requested authority and communicated to the requesting authority in accordance with this Directive may be invoked/used as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar information, reports, statements and any other documents provided by another authority of that country.

Article 16

Obligations

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 5 provided that:
 - a) the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority;
 - b) 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. This Directive shall impose no obligation upon a Member State from which information is requested to carry out inquiries or to communicate information, if it would be contrary to the legislation of that Member State to conduct such inquiries or to collect the information requested for its own purposes.
3. The competent authority of a requested Member State may decline to provide information where the requesting Member State is unable, for legal reasons, to provide similar information.
4. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

5. The requested authority shall inform the requesting authority of the grounds for refusing a request for information.
6. 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.

Article 17

Limits

1. If information is requested by a Member State in accordance with this Directive, the other Member State shall use its measures aimed at gathering information to obtain the requested information, even though that other Member State may not need such information for its own tax purposes. This obligation is without prejudice to paragraphs 2, 3 and 4 of Article 16, the invocation of which shall in no case be construed as permitting a Member State to decline to supply information solely because it has no domestic interest in such information.
2. In no case shall Article 16(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information concerning a person resident for tax purposes in the Member State of the requesting authority solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 18

Wider cooperation

Where a Member State provides a wider cooperation to a third country than is provided for under this Directive, it may not refuse to provide such wider cooperation to the other Member State.

Article 19

Standard forms and computerised formats

1. Requests for information and for administrative enquiries pursuant to Article 5 and their answers, acknowledgement, request for additional background information, inability or refusal pursuant to Article 6 shall, as far as possible be sent using a standard form adopted by the Commission in accordance with the procedure referred to in Article 24(2).

The standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof.
2. Spontaneous information pursuant to Article 8, requests for administrative notifications pursuant to Article 12 and feedback information pursuant to Article 13 shall be sent using the standard form referred to in paragraph 1.
3. Automatic exchanges of information pursuant to Article 7 shall be sent using a standard computerised format aimed at facilitating the automatic exchange of information and based on the existing computerised format in application of Article 9

of Council Directive 2003/48/EC⁵, to be used for all types of automatic exchange of information, adopted by the Commission in accordance with the procedure referred to in Article 24(2).

Article 20

Practical arrangements

1. Information communicated pursuant to this Directive shall, as far as possible, be provided by electronic means using the common communication network/common system interface (CCN network).

Where necessary, the Commission shall adopt practical arrangements necessary for the implementation of the first subparagraph in accordance with the procedure referred to in Article 24(2).

2. The Commission will be responsible for whatever development of the CCN network necessary to permit the exchange of this information between Member States.

Member States will be responsible for whatever development of their systems necessary to enable this information to be exchanged using the CCN network.

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Directive except, where appropriate, in respect of fees paid to experts.

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

4. Requests for cooperation, including requests for notification, and attached documents may be made in any language agreed between the requested and requesting authority.

Those 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 states its reason for requesting a translation.

5. The Commission may adopt a minimum threshold of taxes involved triggering a request for cooperation, an automatic exchange of information or a spontaneous exchange of information in accordance with the procedure referred to in Article 24(2).

Article 21

Specific obligations

1. Member States shall take all necessary measures to:
 - a) ensure effective internal coordination between the authorities referred to in Article 4;
 - b) establish direct cooperation between the authorities referred to in Article 4;
 - c) ensure the smooth operation of the administrative cooperation arrangements provided for in this Directive.

⁵ OJ L 157, 26.6.2003, p. 38.

2. The Commission shall communicate to each Member State any general information concerning the implementation and application of this Directive which it receives and which it is able to provide.

CHAPTER V

RELATIONS WITH THE COMMISSION

Article 22

Evaluation

1. The Member States and the Commission shall examine and evaluate the functioning of administrative cooperation provided for in this Directive.
2. Member States shall communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance.
3. The Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information as referred to in Article 8, as well as the practical results achieved. The form and the conditions of communication of that yearly assessment shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2).
4. The Commission shall, in accordance with the procedure referred to in Article 24(2), determine a list of statistical data which shall be provided by the Member States for the purposes of evaluation of this Directive.

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES

Article 23

Exchange of information with third countries

1. Where the competent authority of a Member State receives information with a view to the correct assessment of the taxes referred in Article 2 from a third country, that authority shall provide that information to the competent authorities of Member States for which that information might be useful and, in any event, to all those which request it, in so far as this is not excluded by international agreements with that third country.

Member States shall ensure that future agreements they conclude with third countries contain no such exclusion.
2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country, provided that all of the following conditions are met:
 - (a) all competent authorities which supplied the information have consented to that communication;
 - (b) the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of

transactions which appear to contravene or constitute an abuse of tax legislation.

CHAPTER VII GENERAL AND FINAL PROVISIONS

Article 24

Committee

1. The Commission shall be assisted by a committee referred to as the “Committee on Administrative Cooperation for Taxation”.
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 on Administrative Cooperation for Taxation shall, in addition to its tasks under paragraph 2, examine any matters raised by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of this Directive.

Article 25

Reporting

Not later than five years from the date of transposition of this Directive as referred to in the first sentence of paragraph 1 of Article 27, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

Article 26

Repeal of Directive 77/799/EEC

Directive 77/799/EEC is repealed with effect from 1 January 2010

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

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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

Article 28

Final provisions

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

Article 29

This Directive is addressed to the Member States.

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Done at Brussels,

*For the Council
The President*