Proposal for a regulation of the European Parliament and of the Council on administrative cooperation in the field of value added tax

(2001/C 270 E/10)

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(Submitted by the Commission on 18 June 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Whereas:

(1) Tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of the conditions of competition. They therefore affect the operation of the internal market.

(2) Combating value added tax (VAT) evasion calls for close cooperation between the administrative authorities in each Member State responsible for the application of the provisions in that field.

(3) Rules should therefore be drawn up whereby the Member States' administrative authorities must assist each other and cooperate with the Commission in order to ensure the proper application of VAT.

(4) Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (1) established in this respect a system of close cooperation amongst the Member States' administrative authorities and between those authorities and the Commission.


(6) Those two legal instruments have proved to be effective but are no longer able to meet the new requirements of administrative cooperation resulting from the ever closer integration of economies within the internal market.

(7) The existence of two separate instruments for cooperation on VAT has, moreover, hampered effective cooperation between tax administrations.

(8) The rights and obligations of all parties concerned are currently ill-defined and clearer and binding rules governing cooperation between Member States are therefore necessary.

(9) There is not enough direct contact between local or national anti-fraud offices, with communication between central liaison offices being the rule. This leads to inefficiency, under-use of the arrangements for administrative cooperation and delays in communication. Provision should therefore be made for more direct contacts between services with a view to making cooperation more efficient and faster.

(10) Cooperation is also not intensive enough, in that apart from the VAT information exchange system (VIES) there are not enough automatic or spontaneous exchanges of information between Member States. Exchanges of information between the respective administrations as well as between administrations and the Commission should be made more intensive and swifter in order to combat fraud more effectively.


(12) Regulation (EEC) No 218/92 and Directive 77/799/EEC were intended not to harmonise tax measures but to ensure the proper functioning of the internal market by facilitating administrative cooperation between national administrations in the field of indirect taxation. This Regulation pursues the same objective.

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This Regulation should not affect other Community measures which contribute to combating VAT fraud.

For the purposes of this Regulation, it is appropriate to limit certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1) in order to safeguard the interests referred to in Article 13(e) of that Directive.

Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

This Regulation respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. This Regulation lays down the conditions under which the administrative authorities in the Member States responsible for the application of the laws on value added tax (VAT) are to cooperate with each other and with the Commission to ensure compliance with those laws.

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

It also lays down rules and procedures for the exchange of certain information by electronic means, in particular as regards VAT on intra-Community trade.

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

Article 2

For the purposes of this Regulation:

1. 'competent authority' means the authority designated under Article 3, paragraph 1;

2. 'requesting authority' means the central liaison office of a Member State or any competent official of that Member State who makes a request for assistance on behalf of the competent authority;

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

4. 'territorial service' means any administrative unit with competence for checking that VAT legislation is properly applied in a given territory or region;

5. 'structured exchange' means the collection of predefined information and its systematic communication to another Member State, without prior request, by the central liaison office or any competent official as and when that information becomes available;

6. 'automatic exchange' means the collection of predefined information and its systematic communication to another Member State, without prior request, by the central liaison office or any competent official at pre-established regular intervals;

7. 'Person' means:

(a) a natural person,

(b) a legal person, or

(c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;

8. 'to grant access' means to authorise access to the relevant electronic data base and to obtain data by electronic means;

9. 'by electronic means' means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;


10. ‘VAT identification number’ means the number provided for in Article 22(1)(c), (d) and (e) in the version given in Article 28h of Council Directive 77/388/EEC (1);

11. ‘intra-Community transactions’ means the intra-Community supply of goods or services;

12. ‘intra-Community supply of goods’ means any supply of goods which must be declared in the recapitulative statement provided for in Article 22(6)(b) in the version given in Article 28h of Directive 77/388/EEC;

13. ‘intra-Community supply of services’ means any supply of services covered by Article 9(2)(e) (2) or Article 28b(C), (D), (E) and (F) of Directive 77/388/EEC;

14. ‘intra-Community acquisition of goods’ means acquisition of the right to dispose as owner of movable tangible property under Article 28a(3) of Directive 77/388/EEC;

15. ‘administrative enquiry’ means all the controls, checks and other action taken by staff of the competent authorities in the performance of their duties with a view to ensuring proper application of VAT legislation.

Article 3

1. Each Member State shall inform the other Member States and the Commission which single competent authority it has designated as the authority in whose name this Regulation is to be applied, whether directly or by delegation either to the central liaison office referred to in paragraph 2 or to the officials referred to in paragraph 3.

2. Each competent authority shall designate a single central liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative cooperation. It shall inform the Commission and the competent authorities of the other Member States thereof.

3. Each competent authority shall establish which competent officials are delegated to make or respond to requests for assistance under this Regulation. At least one official in each territorial service must be so designated. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States.

4. The provisions of this Regulation shall not preclude direct contacts, exchange of information or cooperation, in accordance with the conditions laid down herein, between the different Member States’ officials other than those referred to in paragraph 3 who are responsible for applying VAT legislation.

5. Where an official responsible for the application of VAT legislation is contacted directly, pursuant to paragraph 4, by an official from another Member State and the request for assistance requires action outside his territorial area, he must forward that request to the central liaison office. In that case, the deadlines laid down in Article 10 shall apply solely with effect from receipt of the request by the central liaison office.

6. The Commission shall publish and update the list of competent authorities in the Official Journal of the European Communities.

Article 4

The obligation to give assistance provided for in this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 acting with the authorisation or at the request of the judicial authority. However, in the case of requests for assistance, such information or documents shall be provided if the judicial authority, which must be consulted on the matter, gives its consent.

Information concerning the application of VAT legislation obtained in this way, or at least that part of the file required to put a stop to a fraudulent practice, shall in any event be communicated under the administrative cooperation provided for by this Regulation. Such communication must have the prior authorisation of the judicial authority if that is required under national law.

CHAPTER II

COOPERATION ON REQUEST

Section 1

Request for information

Article 5

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.

2. For the purpose of forwarding the information referred to in paragraph 1, the competent authority of the requested Member State shall arrange for the conduct of any enquiries necessary to obtain such information.
3. In order to obtain the information sought, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 6

Requests for information pursuant to Article 5 shall be sent using a standard form adopted in accordance with the procedure referred to in Article 40(2).

Article 7

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

2. Original documents shall be provided only where this is not contrary to the provisions in force in the Member State in which the requested authority is established.

Section 2

Application to conduct administrative enquiries

Article 8

The requested authority shall, at the request of the requesting authority, carry out, or have carried out, the appropriate administrative enquiries concerning:

1. transactions which are, or appear to the requesting authority to be, contrary to the VAT legislation and are deemed to be taxed in the territory of the Member State where the requesting authority is established;

2. transactions which may provide evidence of infringement of VAT legislation in the territory of the Member State in which the requesting authority is established.

Article 9

1. The requested authority or the administrative authority to which it has recourse shall conduct administrative enquiries as though acting on its own account or at the request of another authority in its own country.

2. The requested authority shall communicate the results of administrative enquiries to the requesting authority.

Section 3

Time limit for providing information

Article 10

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

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

Article 11

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

Article 12

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

Section 4

Presence in administrative offices and participation in administrative enquiries

Article 13

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

2. By agreement between the requesting authority and the requested authority, officials designated by the requesting authority may be present during the administrative enquiries. Administrative enquiries shall at all times be carried out by the officials of the requested authority. The requesting authority's officials may not, on their own initiative, exercise the powers of inspection conferred on officials of the requested authority. They shall, however, have access to the same premises and documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.

3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.
Article 14

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

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

Section 5

Simultaneous controls

Article 15

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

They shall conduct simultaneous controls, with a view to exchanging the information thus obtained, whenever such controls would appear to be more effective than controls by only one Member State.

Article 16

1. The competent authority in each Member State shall identify independently the taxable persons whom it intends to propose for a simultaneous control. It shall notify the competent authority in the other Member States concerned of the cases qualifying for simultaneous tax controls. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the limitation rules applicable to the cases proposed for simultaneous control.

2. Each Member State shall then decide whether it wishes to take part in the simultaneous controls. On receipt of a proposal for a simultaneous control, the competent authority shall confirm its agreement or its refusal to its counterpart authority.

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

Section 6

Request for notification

Article 17

The requested authority shall, at the request of the requesting authority, and in accordance with the rules governing the notification of similar instruments in the Member State in which it is established, notify the addressee of all instruments and decisions which emanate from the administrative authorities and concern the application of VAT legislation in the territory of the Member State in which the requesting authority is established.

Article 18

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

Article 19

The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of transmission of the decision or instrument to the addressee.

CHAPTER III

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

Article 20

Without prejudice to the provisions of Chapter IV, the competent authority of each Member State shall, by structured or automatic exchange, forward the information referred to in Article 1 to the competent authority of any other Member State concerned, in the following cases:

1. where taxation is deemed to take place in the Member State of destination and the effectiveness of the control system necessarily depends on the information provided by the Member State of origin;

2. where an infringement of VAT legislation has been committed or is likely to have been committed in the other Member State;

3. where there is a risk of tax evasion or tax avoidance in the other Member State;

4. where an infringement of VAT legislation which has been committed or is likely to have been committed in the territory of one Member State might have repercussions in the other Member State.

Article 21

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

1. the exact categories of information;

2. for each Member State, whether the exchange is structured or automatic and, in the latter case, the frequency of the exchanges;

3. the methods of exchanging information.
Article 22
The competent authorities of the Member States may in any case spontaneously forward to each other, without prior request, the information referred to in Article 1 of which they are aware.

Article 23
Member States shall take the necessary administrative and organisational measures to facilitate the exchanges provided for in this Chapter.

Article 24
A Member State cannot be obliged, for the purposes of implementing the provisions of this Chapter, to impose new obligations on persons liable for VAT with a view to collecting information.

CHAPTER IV
STORAGE AND EXCHANGE OF INFORMATION SPECIFIC TO INTRA-COMMUNITY TRANSACTIONS

Article 25
1. The competent authority of each Member State shall maintain an electronic data base in which it shall store and process the information that it collects in accordance with Article 22(6)(b) in the version given in Article 28h of Directive 77/388/EEC.

To enable that information to be used in the procedures provided for in this Regulation, the information shall be stored for at least five years from the end of the calendar year in which access to the information is to be granted.

2. Member States shall ensure that their data bases are kept up to date, and are complete and accurate.

Criteria shall be defined, in accordance with the procedure referred to in Article 40(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article 26
On the basis of the data stored in accordance with Article 25, the competent authority of a Member State shall have communicated to it automatically and without delay by any other Member State all the following information, to which it may also have direct access:

1. VAT identification numbers issued by the Member State receiving the information;

2. the total value of all intra-Community supplies of goods to persons holding a VAT identification number by all operators identified for the purposes of VAT in the Member State providing the information.

The values referred to in (2) shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

Article 27
On the basis of the data stored in accordance with Article 25 and solely in order to combat tax fraud, the competent authority of a Member State shall, wherever it considers it necessary for the control of intra-Community acquisitions of goods or services, obtain directly and without delay, or have direct access to by electronic means, any of the following information:

1. the VAT identification numbers of the persons who effected the supplies referred to in Article 26(2);

2. the total value of such supplies from each such person to each person holding a VAT identification number referred to in Article 26(1); and

3. the full address and details of the relevant territorial service which can be contacted for any additional information about any such persons.

The values referred to in (2) shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

Article 28
1. Where the competent authority of a Member State is obliged to grant access to information under Articles 25, 26 and 27, it shall, as regards the information referred to in Articles 26 and 27, do so as soon as possible and within three months at the latest of the end of the calendar quarter to which the information relates.

2. By way of derogation from paragraph 1, where information is added to a data base in the circumstances provided for in Article 25, access to such additional information shall be granted as quickly as possible and no later than three months from the end of the quarter in which it was collected.

3. The conditions under which access to the corrected information may be granted shall be laid down in accordance with the procedure referred to in Article 40(2).
Article 29
Where, for the purposes of Articles 25 to 28, the competent authorities of the Member States store information in electronic data bases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article 37.

Article 30
1. The competent authority of each Member State shall maintain an electronic data base containing a register of persons to whom VAT identification numbers have been issued in that Member State.

2. At any time the competent authority of a Member State may obtain directly or have communicated to it, from the data stored in accordance with Article 25, confirmation of the validity of the VAT identification number under which a person has effected or received an intra-Community supply of goods or services.

On specific request, the requested authority shall also communicate the date of issue and, where appropriate, the expiry date of the VAT identification number.

3. On request, the competent authority shall also provide without delay the name and address of the person to whom the number has been issued, provided that such information is not stored by the requesting authority with a view to possible use at some future time.

4. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or services are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

The sending of such confirmation by electronic means shall be authorised subject to conditions to be laid down in accordance with the procedure referred to in Article 40(2).

5. Where, for the purposes of paragraphs 1 to 4 of this Article, the competent authorities of the Member States store information in electronic data bases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article 37.

CHAPTER V
RELATIONS WITH THE COMMISSION

Article 31
1. The Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. The Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements.

2. The Member States shall communicate to the Commission any information relating to their application of this Regulation, including any statistical data needed for evaluation of its application.

The relevant statistical data shall be determined in accordance with the procedure referred to in Article 40(2).

3. The Member States shall also communicate to the Commission any information on methods or practices used or suspected of having been used to infringe VAT legislation which has helped reveal shortcomings or lacunae in the arrangements for administrative cooperation provided for in this Regulation.

4. With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax avoidance, Member States may communicate to the Commission any other information referred to in Article 1.

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

CHAPTER VI
RELATIONS WITH THIRD COUNTRIES

Article 32
1. When the competent authority of a Member State receives information from a third country, that authority is obliged to pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it.

Such information must also be communicated to the Commission whenever it is of relevance at Community level.

2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions which appear to contravene VAT legislation, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities which supplied the information, in accordance with their domestic provisions applying to the communication of personal data to third countries.

CHAPTER VII
CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

Article 33
Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under arrangements to be adopted in accordance with the procedure referred to in Article 40(2).
Article 34

Requests for assistance, including requests for notification, and attached documents shall be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is established, under arrangements to be laid down in accordance with the procedure referred to in Article 40(2).

The requested authority shall have the right to waive such a translation.

Article 35

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

2. Where mutual assistance poses particular difficulties involving considerable expense or forms part of action against organised crime, the requesting authority and the requested authority may agree special reimbursement procedures on a case-by-case basis.

3. The arrangements for implementing paragraph 2 shall be laid down in accordance with the procedure referred to in Article 40(2).

Article 36

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 1 provided that:

(a) the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority,

(b) that requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2. This Regulation shall impose no obligation to have enquiries carried out or to provide information if the laws or administrative practices of the Member State which would have to furnish the information do not authorise the competent authority to carry out those enquiries or collect or use that information for that Member State's own purposes.

3. Where the requesting authority considers that information it has received from the requested authority is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter authority.

4. Member States shall restrict the scope of the obligations and rights provided for in Article 6(1), Article 10, Article 11(1) and Articles 12 to 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(e) of that Directive.

Article 37

1. Information communicated in any form pursuant to this Regulation shall be confidential. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to similar information under both the national law of the Member State which received it and the corresponding provisions applicable to Community authorities.

2. By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the requesting authority, if, under the legislation of the Member State of the requested authority, the information can be used for similar purposes.

3. Where the requesting authority considers that information it has received from the requested authority is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter authority.

4. Member States shall restrict the scope of the obligations and rights provided for in Article 6(1), Article 10, Article 11(1) and Articles 12 to 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(e) of that Directive.

Article 38

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

Article 39

1. For the purpose of applying this Regulation, Member States shall take all necessary measures to:

(a) ensure effective internal coordination between the competent authorities referred to in Article 3;

(b) establish direct cooperation between the authorities authorised for the purposes of such coordination;

(c) ensure the smooth operation of the information exchange arrangements provided for in this Regulation.

2. The Commission shall communicate to the competent authority of each Member State, as quickly as possible, any information which it receives and which it is able to provide.

CHAPTER VIII
GENERAL AND FINAL PROVISIONS

Article 40

1. The Commission shall be assisted by the Standing Committee on Administrative Cooperation, hereinafter referred to as 'the Committee', composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 41

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

Article 42

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

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

Article 43

1. The provisions of this Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements.

2. Where the competent authorities conclude arrangements on bilateral matters covered by this Regulation other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the competent authorities of the other Member States.

Article 44

Regulation (EEC) No 218/92 is repealed.

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

Article 45

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

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