

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1798/2003
of 7 October 2003
on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

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) The tax harmonisation measures taken to complete the internal market should therefore include the establishment of a common system for the exchange of information between the Member States whereby the Member States' administrative authorities are to assist each other and cooperate with the Commission in order to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods.
- (4) Electronic storage and transmission of certain data for VAT control purposes is indispensable for the proper functioning of the VAT system.

(5) The conditions for the exchange of, and direct access of Member States to, electronically stored data in each Member State should be clearly defined. Operators should have access to certain of such data where required for the fulfilment of their obligations.

(6) The Member State of consumption has primary responsibility for assuring that non-established suppliers comply with their obligations. To this end, the application of the temporary special scheme for electronically supplied services that is provided for in Article 26c of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes, Common system of value added tax: uniform basis of assessment ⁽⁴⁾, requires the definition of rules concerning the provision of information and transfer of money between the Member State of identification and the Member State of consumption.

(7) Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) ⁽⁵⁾ established in this respect a system of close cooperation amongst the Member States' administrative authorities and between those authorities and the Commission.

(8) Regulation (EEC) No 218/92 supplements 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 and indirect taxation ⁽⁶⁾.

(9) 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.

⁽¹⁾ OJ C 270 E, 25.9.2001, p. 87.

⁽²⁾ OJ C 284 E, 21.11.2002, pp. 121 and 191.

⁽³⁾ OJ C 80, 3.4.2002, p. 76.

⁽⁴⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2002/92/EC (OJ L 331, 7.12.2002, p. 27).

⁽⁵⁾ OJ L 24, 1.2.1992, p. 1. Regulation as last amended by Regulation (EC) No 792/2002 (OJ L 128, 15.5.2002, p. 1).

⁽⁶⁾ OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.

- (10) The existence of two separate instruments for cooperation on VAT has, moreover, hampered effective cooperation between tax administrations.
- (11) The rights and obligations of all parties concerned are currently ill-defined. Clearer and binding rules governing cooperation between Member States are therefore necessary.
- (12) 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 to bring about more direct contacts between services with a view to making cooperation more efficient and faster.
- (13) 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.
- (14) The provisions on VAT administrative cooperation of Regulation (EEC) No 218/92 and of Directive 77/799/EEC should therefore be joined and strengthened. For reasons of clarity this should be done in a single new instrument which replaces Regulation (EEC) No 218/92.
- (15) This Regulation should not affect other Community measures which contribute to combating VAT fraud.
- (16) For the purposes of this Regulation, it is appropriate to consider limitations of 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(1)(e) of that Directive.
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (18) 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,

HAS 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 VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods 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 any information that may help them to effect a correct assessment of VAT.

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

For the period provided for in Article 4 of Directive 2002/38/EC ⁽³⁾, it also lays down rules and procedures for the exchange by electronic means of value added tax information on services supplied electronically in accordance with the special scheme provided for in Article 26c of Directive 77/388/EEC, and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States' competent authorities.

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 of a Member State', means:

— in Belgium:

Le ministre des finances

De Minister van financiën,

— in Denmark:

Skatteministeren,

— in Germany:

Bundesministerium der Finanzen,

— in Greece:

Υπουργείο Οικονομίας και Οικονομικών,

— in Spain:

El Secretario de Estado de Hacienda,

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 128, 15.5.2002, p. 41.

- in France:
le ministre de l'économie, des finances et de l'industrie,
- in Ireland:
The Revenue Commissioners,
- in Italy:
il Capo del Dipartimento delle Politiche Fiscali,
- in Luxembourg:
L'Administration de l'Enregistrement et des Domaines,
- in the Netherlands:
De minister van Financiën,
- in Austria:
Bundesminister für Finanzen,
- in Portugal:
O Ministro das Finanças,
- in Finland:
Valtiovarainministeriö
Finansministeriet,
- in Sweden:
Chefen för Finansdepartementet,
- in the United Kingdom:
The Commissioners of Customs and Excise;
2. 'central liaison office', means the office which has been designated under Article 3(2) with principal responsibility for contacts with other Member States in the field of administrative cooperation;
3. 'liaison department', means any office other than the central liaison office with a specific territorial competence or a specialised operational responsibility which has been designated by the competent authority pursuant to Article 3(3) to exchange directly information on the basis of this Regulation;
4. 'competent official', means any official who can directly exchange information on the basis of this Regulation for which he has been authorised pursuant to Article 3(4);
5. 'requesting authority', means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
6. 'requested authority', means the central liaison office, a liaison department or any competent official of a Member State who receives a request for assistance on behalf of the competent authority;
7. 'intra-Community transactions', means the intra-Community supply of goods or services;
8. '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) of Directive 77/388/EEC;
9. 'intra-Community supply of services', means any supply of services covered by Article 28b(C), (D), (E) and (F) of Directive 77/388/EEC;
10. '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;
11. 'VAT identification number', means the number provided for in Article 22(1)(c), (d) and (e) of Directive 77/388/EEC;
12. 'administrative enquiry', means all the controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring proper application of VAT legislation;
13. 'automatic exchange', means the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals;
14. 'structured automatic exchange', means the systematic communication of predefined information to another Member State, without prior request, as and when that information becomes available;
15. 'spontaneous exchange', means the irregular communication without prior request of information to another Member State;
16. 'person', means:
- a natural person;
 - a legal person; or
 - 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;
17. 'to grant access', means to authorise access to the relevant electronic database and to obtain data by electronic means;
18. '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;
19. 'CCN/CSI network', means the common platform based on the common communication network (CCN) and common system interface (CSI), developed by the Community to ensure all transmissions by electronic means between competent authorities in the area of customs and taxation.

Article 3

1. The competent authorities referred to in point 1 of Article 2 are the authorities in whose name this Regulation is to be applied, whether directly or by delegation.

2. Each Member State 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 other Member States thereof.

3. The competent authority of each Member State may designate liaison departments. The central liaison office shall be responsible for keeping the list of those departments up to date and making it available to the central liaison offices of the other Member States concerned.

4. The competent authority of each Member State may in addition designate, under the conditions laid down by it, competent officials who can directly exchange information on the basis of this Regulation. When it does so, it may limit the scope of such designation. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States concerned.

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

6. Where a liaison department or a competent official sends or receives a request or a reply to a request for assistance, it shall inform the central liaison office of its Member State under the conditions laid down by the latter.

7. Where a liaison department or a competent official receives a request for assistance requiring action outside its territorial or operational area, it shall forward such request without delay to the central liaison office of its Member State and inform the requesting authority thereof. In such a case, the period laid down in Article 8 shall start the day after the request for assistance has been forwarded to the central liaison office.

Article 4

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

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

of the administrative cooperation provided for in this Regulation. Any such communication must have the prior authorisation of the judicial authority if the necessity of such authorisation derives from national law.

CHAPTER II

EXCHANGE OF INFORMATION ON REQUEST

Section 1

Request for information and for administrative enquiries*Article 5*

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

2. For the purpose of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. If the Member State takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

4. In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 6

Requests for information and for administrative enquiries pursuant to Article 5 shall, as far as possible, be sent using a standard form adopted in accordance with the procedure referred to in Article 44(2).

Article 7

1. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information it obtains or has in its possession as well as the results of administrative enquiries, 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

Time limit for providing information*Article 8*

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

However, where the requested authority is already in possession of that information, the time limit shall be reduced to a maximum period of one month.

Article 9

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

Article 10

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

Section 3

Presence in administrative offices and participation in administrative enquiries*Article 11*

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

2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials designated by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present during the administrative enquiries. Administrative enquiries shall be carried out exclusively by the officials of the requested authority. The requesting authority's officials shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.

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

Section 4

Simultaneous controls*Article 12*

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

Article 13

1. A Member State shall identify independently the taxable persons whom it intends to propose for a simultaneous control. The competent authority of that Member State shall notify the competent authority in the other Member States concerned of the cases proposed for simultaneous controls. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

2. The Member States concerned shall then decide whether they wish to take part in the simultaneous controls. On receipt of a proposal for a simultaneous control, the competent authority of the Member State shall confirm its agreement or communicate its reasoned refusal to its counterpart authority.

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

CHAPTER III

REQUEST FOR ADMINISTRATIVE NOTIFICATION*Article 14*

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 15

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 16

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 notification of the decision or instrument to the addressee.

CHAPTER IV

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST*Article 17*

Without prejudice to the provisions of Chapters V and VI, the competent authority of each Member State shall, by automatic or structured 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 a Member State has grounds to believe that a breach 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 loss in the other Member State.

Article 18

The following shall be determined in accordance with the procedure referred to in Article 44(2):

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

Each Member State shall determine whether it will take part in the exchange of a particular category of information, as well as whether it will do so in an automatic or structured automatic way.

Article 19

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.

Article 20

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

Article 21

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

CHAPTER V

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

1. Each Member State shall maintain an electronic database 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 databases are kept up to date, and are complete and accurate.

Criteria shall be defined, in accordance with the procedure referred to in Article 44(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article 23

On the basis of the data stored in accordance with Article 22, the competent authority of a Member State shall have communicated to it automatically and without delay by any other Member State 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 point 2 shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

Article 24

On the basis of the data stored in accordance with Article 22 and solely in order to prevent a breach of VAT legislation, the competent authority of a Member State shall, wherever it considers it necessary for the control of intra-Community acquisitions of goods, 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 point 2 of Article 23; and
2. the total value of such supplies from each such person to each person holding a VAT identification number referred to in point 1 of Article 23.

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

Article 25

1. Where the competent authority of a Member State is obliged to grant access to information under Articles 23 and 24, it shall 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 database in the circumstances provided for in Article 22, 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 44(2).

Article 26

Where, for the purposes of Articles 22 to 25, the competent authorities of the Member States store information in electronic databases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article 41.

Article 27

1. Each Member State shall maintain an electronic database 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 22, 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 of services and, for the period provided for in Article 4 of Directive 2002/38/EC, persons supplying services referred to in the last indent of Article 9(2)e of Directive 77/388/EEC are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

For the period provided for in Article 4 of Directive 2002/38/EC Member States shall, in particular, provide such confirmation by electronic means in accordance with the procedure referred to in Article 44(2).

5. Where, for the purposes of paragraphs 1 to 4, the competent authorities of the Member States store information in electronic databases and exchange such information by electronic means, they shall take all measures necessary to ensure compliance with Article 41.

CHAPTER VI

PROVISIONS CONCERNING THE SPECIAL SCHEME IN ARTICLE 26C OF DIRECTIVE 77/388/EEC*Article 28*

The following provisions shall apply concerning the special scheme provided for in Article 26c in Directive 77/388/EEC. The definitions contained in point A of that Article shall also apply for the purpose of this Chapter.

Article 29

1. The information from the non-established taxable person to the Member State of identification when his activities commence set out in the second subparagraph of Article 26c(B)(2) of Directive 77/388/EEC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2).

2. The Member State of identification shall transmit this information by electronic means to the competent authorities of the other Member States within 10 days from the end of the month during which the information was received from the non-established taxable person. In the same manner the competent authorities of the other Member States shall be informed of the allocated identification number. The technical details, including a common electronic message, by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 44(2).

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a non-established taxable person is excluded from the identification register.

Article 30

The return with the details set out in the second subparagraph of Article 26c(B)(5) of Directive 77/388/EEC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2).

The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State concerned at the latest 10 days after the end of the month that the return was received. Member States which have required the tax return to be made in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The technical details by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 44(2).

The Member State of identification shall transmit by electronic means to the Member State of consumption the information needed to link each payment with a relevant quarterly tax return.

Article 31

The provisions in Article 22 shall apply also to information collected by the Member State of identification in accordance with Article 26c(B)(2) and (5) of Directive 77/388/EEC.

Article 32

The Member State of identification shall ensure that the amount the non-established taxable person has paid is transferred to the bank account denominated in euro, which has been designated by the Member State of consumption to which the payment is due. Member States which required the

payments in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The transfer shall take place at the latest 10 days after the end of the month that the payment was received.

If the non-established taxable person does not pay the total tax due, the Member State of identification shall ensure that the payment is transferred to the Member States of consumption in proportion to the tax due in each Member State. The Member State of identification shall inform by electronic means the competent authorities of the Member States of consumption thereof.

Article 33

Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments according to Article 32.

Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the standard tax rate.

Article 34

Articles 28 to 33 shall apply for a period provided for in Article 4 of Directive 2002/38/EC.

CHAPTER VII

RELATIONS WITH THE COMMISSION

Article 35

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 available information relevant to their application of this Regulation.

3. A list of statistical data needed for evaluation of this Regulation shall be determined in accordance with the procedure referred to in Article 44(2). The Member States shall communicate these data to the Commission in so far as they are available and the communication is not likely to involve administrative burdens which would be unjustified.

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 VIII

RELATIONS WITH THIRD COUNTRIES

Article 36

1. When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it, in so far as permitted by assistance arrangements with that particular third country.

2. Provided the third country concerned has given an 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 IX

CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

Article 37

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 44(2).

Article 38

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

Article 39

For the period provided for in Article 4 of Directive 2002/38/EC, the Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Articles 29 and 30 are operational. The Commission will be responsible for whatever development of the common communication network/common system interface (CCN/CSI) is necessary to permit the exchange of this information between Member States. Member States will be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI.

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.

Article 40

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 supply the information do not authorise the Member State to carry out those enquiries or collect or use that information for that Member State's own purposes.

3. The competent authority of a Member State may refuse to provide information where the Member State concerned is unable, for legal reasons, to provide similar information. The Commission shall be informed of the grounds of the refusal by the requested Member State.

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 assistance.

6. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure referred to in Article 44(2).

Article 41

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

Such information may be used for the purpose of establishing the assessment base or the collection or administrative control of tax for the purpose of establishing the assessment base.

The information may also be used for the assessment of other levies, duties, and taxes covered by Article 2 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ⁽¹⁾.

In addition, it may be used in connection with judicial proceedings that may involve penalties, initiated as a result of infringements of tax law without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in such proceedings.

2. 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 care, maintenance and development of the CCN/CSI network.

3. 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.

4. 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. It shall inform the requested authority thereof in advance. The requested authority may require that the transmission of the information to a third party be subject to its prior agreement.

5. Member States shall, for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 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.

⁽¹⁾ OJ L 73, 19.3.1976, p. 18. Directive as last amended by Directive 2001/44/EC (OJ L 175, 28.6.2001, p. 17).

Article 42

Reports, statements and any other documents, or certified true copies or extracts thereof, 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 43

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 each Member State, as quickly as possible, any information which it receives and which it is able to provide.

CHAPTER X

GENERAL AND FINAL PROVISIONS*Article 44*

1. The Commission shall be assisted by the Standing Committee on Administrative Cooperation, (hereinafter referred to as the Committee).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

Article 45

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 any provisions of national law, which they adopt in the field covered by this Regulation.

Article 46

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 Member States conclude bilateral arrangements on 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 other Member States.

Article 47

Regulation (EEC) No 218/92 is hereby repealed.

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

Article 48

This Regulation shall enter into force on 1 January 2004.

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

Done at Luxembourg, 7 October 2003.

For the Council

The President

G. TREMONTI
