

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 218/92**

**of 27 January 1992**

**on administrative cooperation in the field of indirect taxation (VAT)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the establishment of the internal market in accordance with Article 8a of the Treaty requires the creation of an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas the internal market requires changes in the legislation on value added tax as provided in Article 99 of the Treaty;

Whereas in order to avoid tax revenue losses for Member States the tax harmonization measures taken to complete the internal market and for the transitional period must include the establishment of a common system for the exchange of information on intra-Community transactions between the competent authorities of the Member States;

Whereas in order to permit the abolition of fiscal controls at internal frontiers in accordance with the aims set out in Article 8a of the Treaty the transitional value added tax system introduced by Directive 91/680/EEC <sup>(4)</sup>, amending Directive 77/388/EEC <sup>(5)</sup>, must be effectively established without the risk of fraud which might cause distortions of competition;

Whereas this Regulation provides for a common system for the exchange of information on intra-Community transactions, supplementing Directive 77/799/EEC <sup>(6)</sup>, as last amended by Directive 79/1070/EEC <sup>(7)</sup>, and intended to serve tax purposes;

Whereas the Member States should provide the Commission with any value added tax information which may be of interest at Community level;

Whereas the establishment of a common system of administrative cooperation may affect individuals' legal positions, in particular because of the exchange of information concerning their tax positions;

Whereas care must be taken to ensure that the provisions concerning the control of indirect taxes are in balance with administrations' needs for effective control and the administrative burdens imposed on taxable persons;

Whereas the operation of such a system requires the establishment of a standing committee on administrative cooperation;

Whereas the Member States and the Commission must establish an effective system for the electronic storage and transmission of certain data for value added tax control purposes;

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so that the basic rights of citizens and undertakings are safeguarded; whereas it is therefore necessary that an authority receiving such information should not, without the authorization of the authority supplying it, use it for purposes other than taxation or to facilitate legal proceedings for failure to comply with the tax laws of the Member States concerned; whereas the receiving authority must also accord such information the same degree of confidentiality as it enjoyed in the Member State which provided it, if the latter so requires;

<sup>(6)</sup> OJ No L 336, 27. 12. 1977, p. 15.

<sup>(7)</sup> OJ No L 331, 27. 12. 1979, p. 8.

<sup>(1)</sup> OJ No C 187, 27. 7. 1990, p. 23 and OJ No C 131, 22. 5. 1991, p. 5.

<sup>(2)</sup> OJ No C 328, 24. 12. 1990, p. 265 and opinion delivered on 17 January 1992. (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 332, 31. 12. 1990, p. 124.

<sup>(4)</sup> OJ No L 376, 31. 12. 1991, p. 1.

<sup>(5)</sup> OJ No L 145, 13. 6. 1977, p. 1.

Whereas the Member States and the Commission must collaborate on the continuous analysis of cooperation procedures and the pooling of the experience gained in the fields in question, with the aims of improving those procedures and drawing up appropriate Community rules,

HAS ADOPTED THIS REGULATION:

#### Article 1

This Regulation lays down the ways in which the administrative authorities in the Member States responsible for the application of laws on value added tax shall cooperate with each other and with the Commission to ensure compliance with those laws.

To that end it lays down procedures for the exchange of value added tax information on intra-Community transactions by electronic means and any subsequent exchange of information between Member States' competent authorities.

#### Article 2

1. For the purposes of this Regulation:

- 'competent authority' shall mean the authority appointed to act as correspondent as defined in paragraph 2,
- 'applicant authority' shall mean the competent authority of a Member State which makes a request for assistance,
- 'requested authority' shall mean the competent authority of a Member State to which a request for assistance is made,
- 'person' shall mean:
  - a natural person,
  - a legal person or,
  - where the possibility is provided for under the legislation in force, an association of persons recognized as having the capacity to perform legal acts but lacking the legal status of a legal person,
- 'to grant access' shall mean authorizing access to the relevant electronic data base and providing data by electronic means,
- 'value added tax identification number' shall mean the number provided for in with Article 22 (1) (c), (d) and (e) of Directive 77/388/EEC,
- 'intra-Community transactions' shall mean the intra-Community supply of goods and the intra-Community supply of services as defined in this paragraph,
- 'intra-Community supply of goods' shall mean any supply of goods which must be declared in the recapitulative statement provided for in Article 22 (6) (b) of Directive 77/388/EEC,

— 'intra-Community supply of services' shall mean any supply of services covered by Article 28b (C), (D) or (E) of Directive 77/388/EEC,

— 'intra-Community acquisition of goods' shall mean acquisition of the right to dispose as owner of movable tangible property as defined in Article 28a (3) of Directive 77/388/EEC.

2. Each Member State shall notify the other Member States and the Commission of the competent authorities appointed to act as correspondents for the purpose of applying this Regulation. In addition, each Member State shall nominate a central office with principal responsibility for liaison with other Member States in the field of administrative cooperation.

3. The Commission shall publish a list of competent authorities in the *Official Journal of the European Communities* and, where necessary, update it.

### TITLE I

#### Exchange of information — General provisions

#### Article 3

1. 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 at the request of a judicial authority.

However, in cases of applications for assistance, such information and documents shall be provided whenever the judicial authority, to which reference must be made, gives its consent.

2. This Regulation shall not restrict the application of provisions of other agreements or instruments relating to cooperation on tax matters.

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

### TITLE II

#### Exchange of information relating to value added tax in connection with intra-Community transactions

#### Article 4

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) of Directive 77/388/EEC. To allow the use of this information in the procedures provided for in this Regulation the information shall be stored for at least five years after the end of the calendar year in which access to the information was to be granted. Member

States shall ensure that their data bases are kept up to date, complete and accurate. Under the procedure laid down in Article 10 criteria shall be defined to determine what amendments that are not significant, material or useful need not be made.

2. From the data collected in accordance with paragraph 1, the competent authority of a Member State shall obtain directly and without delay from each Member State, or may have direct access to, the following information :

- the value added tax identification numbers issued by the Member State receiving the information, and
- the total value of all intra-Community supplies of goods made to the persons to whom those numbers were issued by all operators identified for the purposes of value added tax in the Member State providing the information; the values shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

3. From the data collected in accordance with paragraph 1 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, obtain directly and without delay, or have direct access to, the following information :

- the value added tax identification numbers of all persons who have made the supplies referred to in the second indent of paragraph 2, and
- the total value of such supplies from each such person to each person to whom one of the value added tax identification numbers referred to in the first indent of paragraph 2 has been issued; the values shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters.

4. Where the competent authority of a Member State is obliged to grant access to information under this Article it shall, as regards the information referred to in paragraphs 2 and 3, do so within three months of the end of the calendar quarter to which the information relates. By way of derogation from this rule, where information is added to a data base in the circumstances provided for in paragraph 1, access to such additions shall be granted as quickly as possible and in any event no more than three months after the end of the quarter in which the additional information was collected; the conditions under which access to the corrected information may be granted shall be defined by means of the procedure laid down in Article 10.

5. Where, for purposes of the application of this Article, the competent authorities of the Member States

keep information in electronic data bases and exchange such information by electronic means they shall take all measures necessary to ensure compliance with Article 9.

#### *Article 5*

1. Where the information provided under Article 4 is insufficient, the competent authority of a Member State may at any time and in specific cases request further information. The requested authority shall provide the information as quickly as possible and in any event no more than three months after receipt of the request.

2. In the circumstances described in paragraph 1 the requested authority shall at least provide the applicant authority with invoice numbers, dates and values in relation to individual transactions between persons in the Member States concerned.

#### *Article 6*

1. The competent authority of each Member State shall maintain an electronic data base which shall contain a register of persons to whom value added tax 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 collected in accordance with Article 4 (1), confirmation of the validity of the value added tax identification number under which a person effected or received an intra-Community supply of goods or of services. On specific request the requested authority shall also communicate the date of issue and, where appropriate, the date of cessation of the validity of the value added tax identification number.

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

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

5. Where, for purposes of the application of this Article, the competent authorities of the Member States keep information in electronic data bases and exchange such information by electronic means they shall take all measures necessary to ensure compliance with Article 9.

## TITLE III

**Conditions governing the exchange of information***Article 7*

1. A requested authority in one Member State shall provide an applicant authority in another Member State with the information referred to in Article 5 (2) provided that:

- the number and the nature of the requests for information made by the applicant authority within a specific period of time do not impose a disproportionate administrative burden on that requested authority,
- that applicant authority exhausts the usual sources of information which it can use in the circumstances to obtain the information requested, without running the risk of jeopardizing the achievement of the desired end,
- that applicant authority requests assistance only if it would be able to provide similar assistance to the applicant authority of another Member State.

In accordance with the procedure laid down in Article 10 and taking into account experience of the new administrative cooperation system during its first year of operation, the Commission shall submit general criteria for the definition of the scope of these commitments before July 1994.

2. If an applicant authority is unable to comply with the general provisions of paragraph 1 it shall notify the requested authority accordingly without delay, stating its reasons. If a requested authority considers that the general provisions of paragraph 1 are not complied with and that it is therefore not obliged to provide the information, it shall notify the applicant authority accordingly without delay, stating its reasons. The applicant authority and the requested authority shall attempt to reach agreement. If they fail to reach agreement within one month of notification either authority may request that the matter be examined under Article 11.

3. This Article shall be without prejudice to the application of Directive 77/799/EEC as regards the exchange of information referred to in Article 5 (1).

*Article 8*

In cases of exchanges of information as defined in Article 5, where the national legislation in force in a Member State provides for notification of the person concerned of the exchange of information, those provisions may continue to apply except where their application would prejudice the investigation of tax evasion in another Member State. In the latter event, at the express

request of the applicant authority, the requested authority shall refrain from such notification.

*Article 9*

1. Any information communicated in whatever form pursuant to this Regulation shall be of a confidential nature. 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.

In any case, such information:

- may be made available only to the persons directly concerned with the bases of assessment, collection or administrative control of taxes for the purpose of the assessment of taxes, or to persons employed by Community institutions whose duties require that they have access to it,
- may in addition be used in connection with judicial or administrative proceedings that may involve sanctions, initiated as a result of infringements of tax law.

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 applicant authority, if, under the legislation of the Member State of the requested authority, the information could be used in the Member State of the requested authority for similar purposes.

3. Where the applicant authority considers that information which 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 with the agreement of the requested authority.

## TITLE IV

**Consultation and coordination procedures***Article 10*

1. The Commission shall be assisted by a Standing Committee on Administrative Cooperation in the field of Indirect Taxation, hereinafter referred to as 'the Committee'. It shall consist of representatives of the Member States and have a representative of the Commission as chairman.

2. The measures required for the application of Articles 4 and 7 (1) shall be adopted in accordance with the procedure laid down in paragraphs 3 and 4 of this Article.

3. The Commission representative shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on that draft within a time limit which the chairman may lay down according to the urgency of the matter. The Committee's opinion

shall be delivered by a majority, the Member States' votes being weighted in accordance with Article 148 (2) of the Treaty. The chairman shall not vote.

4. The Commission shall adopt the measures contemplated where they are in accordance with the Committee's opinion.

Where those measures are not in accordance with the Committee's opinion or if the Committee does not deliver an opinion, the Commission shall without delay submit to the Council a proposal on the measures to be adopted. The Council shall act by a qualified majority.

If within three months of the proposal's being submitted to it the Council has not acted, the proposed measures shall be adopted by the Commission, unless the Council has decided against those measures by a simple majority.

#### *Article 11*

The Member States and the Commission shall examine and evaluate the operation of the arrangements for administrative cooperation provided for in this Regulation and the Commission shall pool the Member States' experience, in particular that concerning new means of tax avoidance and evasion, with the aim of improving the operation of those arrangements. To that end the Member States shall also communicate to the Commission any value added tax information on intra-Community transactions that may be of interest at Community level.

#### *Article 12*

1. On matters of bilateral interest, the competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may by mutual agreement permit authorities designated by them to communicate directly with each other in specified cases or categories of cases.

2. For the purpose of applying this Regulation, member States shall take all necessary steps to:

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

Done at Brussels, 27 January 1992.

- (a) ensure efficient internal coordination between the competent authorities referred to in Article 1;
  - (b) establish direct cooperation between the authorities specially empowered for the purposes of such coordination;
  - (c) make suitable arrangements to ensure the smooth operation of the arrangements for the exchange of information provided for in this Regulation.
3. 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 supply.

### TITLE V

#### Final provisions

#### *Article 13*

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

#### *Article 14*

1. Every two years after the date of entry into force of this Regulation, the Commission shall report to the European Parliament and the Council on the conditions of application of this Regulation on the basis, in particular, of the continuous monitoring procedures provided for in Article 11.

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

#### *Article 15*

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

No exchange of information under this Regulation shall take place before 1 January 1993.

*For the Council*

*The President*

A. MARQUES DA CUNHA