

**Opinion of the European Economic and Social Committee on the 'proposal for a Regulation of the European Parliament and of the Council on administrative cooperation in the field of excise duties' and the 'proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products'**

(COM(2003) 797 final - 2003/0309 (COD), 2003/0310 (COD))

(2004/C 112/19)

On 13 January 2004 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 March 2004. The rapporteur was Mr Pezzini.

At its 407<sup>th</sup> plenary session (meeting of 31 March 2004) the European Economic and Social Committee adopted the following opinion by 105 votes to one with one abstention.

## 1. Introduction

various administrations and between them and the Commission.

1.1 In 1992<sup>(1)</sup> the scope of Directive 77/799/EEC was extended also to excise duties in order to ensure that national laws were applied and that fraud was effectively combated. This extension was a response to the alarming proportions reached by cases of fraud and to their consequences, entailing substantial losses of revenue for the Member States and jeopardising the principle of equal treatment of economic operators and the operation of the single market.

1.2.3 On the specific point regarding more rapid and efficient exchange of information, the ad hoc group's main recommendation was to set up a system for computerisation of the movements<sup>(2)</sup> and of the monitoring of all products subject to excise duty (and hence not just tobacco and alcohol) as a cornerstone of strengthening the mechanisms for mutual assistance and administrative cooperation in the sector.

### 1.2 The current system cannot keep up with developments in trade

1.2.1 The current legal system has turned out to be too rigid and inadequate to the needs of the internal market in the excise sector, particularly in view of the accentuated internationalisation of trade and the growth in extra-national movements of people and goods.

1.2.4 Excessively centralised and static cooperation has meant insufficient contacts between the local offices or between the national anti-fraud offices, and has ultimately constituted an obstacle to rapid and precise action as well as to greater flexibility in monitoring.

1.2.2 As early as 1997, given the continuous rise in cases of fraud regarding the circulation of products subject to excise duties, an ad hoc group was set up by the European Commission with the task of analysing the situation relating to tobacco and alcohol and of proposing solutions. In its final report<sup>(2)</sup> this group pointed out the lack of coordination among the

1.2.5 Moreover, the monitoring has turned out to be inefficient because of the lack of precise rules to regulate certain aspects of the cooperation itself, such as the use of ad hoc exchanges, the presence of foreign officials at the time of the checks, the possibility of organising multilateral checks, or the use which can be made of the information provided by a Member State.

<sup>(1)</sup> OJ L 76 of 23.3.1992.

<sup>(2)</sup> Report approved by the ECOFIN Council on 19.5.1998.

<sup>(3)</sup> See the EESC opinion on IDABC (e-Government services): CESE 1610/2003 of 15.12.2003.

### 1.3 *Need for updating*

1.3.1 The social, economic and political context has changed radically from the conditions which gave rise to the drawing-up, the adoption and the extension of the directive on excise duties. Similarly, the size of the internal market and the volume of trade between Member States have changed. The exponential growth in intra-Community transactions and better knowledge of the various national tax systems have led to a growth in cases of fraud, exploiting loopholes in European rules, significant differences in taxation between Member States and, in general, the inefficiencies of the monitoring systems in force <sup>(1)</sup>. In this context there is a clear need to modernise, strengthen, simplify and make more efficient the instrument for administrative cooperation and exchange of information between Member States on excise duties.

1.3.2 The special features of monitoring in the excise sector make it necessary to eliminate from the scope of Directive 77/799/EEC and Directive 92/12/EEC the specific provisions on the subject and to incorporate them together, strengthened and simplified, in a new text, on the lines of what has already been done with regard to VAT monitoring <sup>(2)</sup>.

## 2. **Commission proposals**

2.1 To strengthen administrative cooperation in the excise sector, the Commission proposes a more precise legal framework in the form of a regulation, and thus of an instrument which is directly applicable in every Member State, with clear and binding provisions. In particular, it provides for more effective and more rapid procedures in exchanges between the administrations of the Member States and between them and the Commission, in order to achieve greater efficiency in combating fraud.

2.2 Chapter I of the new regulation concentrates on general provisions and procedures. The EESC fully endorses the types of procedure suggested by the Commission, because these would achieve decentralisation of cooperation and make it possible to reduce the many bureaucratic and regulatory barriers which too often hinder the fight against fraud.

2.2.1 The results of these changes should be more rapid exchanges, better motivated officials and more effective use of

technical resources, particularly as regards e-Government. The EESC also takes note of the limits currently placed on the requested cooperation in cases where it might interfere with criminal proceedings. These limits jeopardise or indeed sometimes prevent the identification and punishment of those responsible for frauds in the territory of the requesting administration. The EESC hopes that these limits can be overcome and suggests working with a view to coordination of national criminal proceedings, preferably by setting up an anti-fraud police body at European level with greater powers than the present one.

2.3 Chapter II (divided into five sections) regulates cooperation on request, and redefines the rights and obligations of Member States. It maps out a single legal framework which would be more binding than the previous rules.

2.3.1 With reference to Section 1 governing the procedure for requesting information, the EESC takes the view that the addressee authority is still allowed too much discretion in its response to the request for information.

2.3.2 Section 2 lays down the time limit for providing information in response to such a request, while Section 3 governs the presence of officials from the tax authorities of other Member States in the administrative offices and at administrative enquiries. Such officials can take action within limits, and only subject to previous agreements between the two national authorities concerned.

2.3.3 With regard to Section 3, the EESC would point out how, here too, the legislation of the addressee authority, particularly in criminal matters, could in effect vitiate cooperation, even if the latter is assisted with specific funding <sup>(3)</sup>.

2.3.4 Section 4 regulates the use of simultaneous controls, listing precisely the rights and obligations of the parties concerned and the procedures to be followed.

2.3.5 Here, too, the EESC feels that too much discretion is left to the addressee authority in taking action on simultaneous controls.

2.3.6 Section 5 regulates the procedure for requesting administrative notification.

<sup>(1)</sup> See the EESC opinion on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation.

<sup>(2)</sup> 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 (OJ L 264 of 15.10.2003, p. 1).

<sup>(3)</sup> Decision No. 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007), OJ L 341 of 17.12.2002, page 1.

2.3.7 The EESC endorses Section 5 and in particular the obligation to use only the single form for the notification procedure.

2.4 Chapter III lays down the rules for exchange of information without prior request.

2.4.1 The Commission proposal establishes a flexible, effective framework for increasing exchanges between national authorities. However, it is confined to specifying the situations in which such exchanges should take place, while leaving other important aspects to the regulatory committee procedure <sup>(1)</sup>.

2.5 Chapter IV deals with the principles governing the storage and exchange of information specific to intra-Community transactions.

2.5.1 The EESC endorses the setting up and/or updating of computerised cooperation systems. The use of modern information and communication technology is a decisive step towards achieving greater and more efficient control.

2.6 Chapter V governs relations between the national authorities and the Commission. The latter has no operational role, but only tasks of coordination and stimulus as the guarantor of the proper functioning of administrative cooperation.

2.6.1 The EESC acknowledges the fundamental importance and the completeness of the means provided by the regulation to oblige national authorities to provide precise information to the Commission.

2.7 Chapter VI deals with relations with non-EU countries, providing a legal basis for communicating information from a non-EU country to any Member State under a bilateral agreement.

2.7.1 The EESC underlines the importance of extending information exchange to non-EU countries.

2.8 Chapter VII lays down the conditions governing the exchange of information.

2.8.1 It is emphasised that some of the limits laid down in Chapter VII are due to national practices or laws which unfortunately reduce the efficiency of the system, to the extent that in some cases the Member States avoid making use of the

<sup>(1)</sup> Articles 5, 7 and 8 of the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC).

provisions on mutual assistance, if it is a matter of suspected fraud.

2.9 Chapter VIII concerns the final provisions, among which it is stressed in particular that to implement the present regulation the regulatory committee procedure mentioned above must be used.

2.9.1 The EESC has no special comment to make on this part, except that the proposed five-year frequency for the presentation of the report on the way the regulation is applied seems to be more suitable than the present two-year frequency.

#### 2.10 *Proposal to amend Directives 77/799/EEC and 92/12/EEC*

2.10.1 The parts concerning excise duties – which would be updated and covered by the proposed regulation – would now be completely excluded from the scope of Directive 77/799/EEC. The same applies to the articles on excise duties in Directive 92/12/EEC, which would now be incorporated, as amended, in the same proposed regulation.

### 3. Conclusions

3.1 The EESC appreciates the new rules on cooperation between Member States proposed by the Commission, and agrees with the need to update and strengthen the system of information exchange between Member States in order to combat fraud relating to excise duties. It also notes that the growth in the size and operation of the internal market, together with the increase in taxable persons operating in more than one Member State, calls for greater efforts at cooperation between national administrations.

3.1.1 This is extremely topical when one considers that the EESC has repeatedly stressed the need to strengthen and improve cooperation between the Member States, bearing in mind their inability to make use of existing cooperation mechanisms <sup>(2)</sup> for preventing fraud.

3.2 The Committee, while it acknowledges the specific characteristics of each sector, emphasises that an effective system of checks and mutual assistance between the competent authorities of the Member States cannot operate without greater, more constant coordination between the existing monitoring systems for direct taxation, indirect taxation and excise duties.

<sup>(2)</sup> EESC opinion: OJ C 80 of 3.4.2002, page 76.

3.3 The Committee reiterates its view <sup>(1)</sup> that the existing differences between the Member States in administrative procedures jeopardise the effectiveness of checks, lengthen the time taken for them and represent a significant obstacle to the operation of the internal market.

3.3.1 In the light of the above, absolute priority should be given to any measure intended to introduce more common rules covering every Community citizen.

3.3.2 In this context the 1998 report to the European Court of Auditors <sup>(2)</sup> pointed out that the fight against fraud lacked a precise strategy. Indeed, it noted a contradiction between the existence of a single market for fraud and the absence of a single market for applying the law. In terms of VAT alone, the Court estimated the extent of fraud <sup>(3)</sup> at EUR 70 billion, corresponding to 21 % of the total revenue of the Member States.

3.4 Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests. As already pointed out by the EESC <sup>(4)</sup>, administrative cooperation and prevention of fraud must go hand in hand with modernisation and simplification of tax systems. This is all the more true in an enlarged Union, in which harmonisation takes on even greater importance. There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States.

3.5 It would be desirable to combine supranational legal instruments such as that of the European company with suitable taxation instruments and related procedures for monitoring and information exchange. In other words, one could envisage a 'European' exchange and monitoring system,

uncoupled from the current national procedures and to be applied gradually.

3.6 The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition.

3.7 It is curious that reference is often made in general to the constitutional principles of fairness in taxation, in relation to the potential distortions of the European internal market, while in practice differences and privileges arising from national laws and procedures, and which affect other Member States, are accepted.

3.8 Taking account of national procedures in force and of the political reluctance to change these structures radically, the EESC accepts the proposed amendments as a point of convergence and as a further step, albeit insufficient, towards modernising cooperation between Member States. For example, it welcomes giving equal legal force to information exchanged electronically and information exchanged on paper. It also calls on the relevant authorities of the Member States to react in good time to cooperation requests from other administrations, without subordinating such practices to purely national enquiries. In this context it points out that the technology of monitoring and exchange instruments must be adapted to the most highly developed forms of fraud and evasion, which themselves make use of the most modern technology.

3.9 The EESC suggests that it is advisable to give the European Commission greater operational and investigative powers, for example through the OLAF which could take on broader supranational powers of monitoring, investigation and action.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> EESC Opinion on the Proposal for a Council Directive amending Directive 77/388/EEC — OJ C 19 of 21.1.1998, page 56.

<sup>(2)</sup> OJ C 349 of 17.11.1998, page 15.

<sup>(3)</sup> Ibidem.

<sup>(4)</sup> EESC Opinion on the Proposal for a Council Regulation amending Council Regulation (EEC) No. 218/92 — OJ C 116 of 20.4.2001, page 59.