

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tax and repealing Regulation (EEC) No 218/92 (repealed)

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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

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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.
- (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⁽⁷⁾ in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

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- (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⁽⁸⁾.
- (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:

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- (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.
- (7) OJ L 281, 23.11.1995, p. 31.
- (8) OJ L 184, 17.7.1999, p. 23.

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