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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.8.2009  
COM(2009) 427 final

2009/0118 (CNS)

Proposal for a

**COUNCIL REGULATION**

**on administrative cooperation and combating fraud in the field of value added tax**

**(Recast)**

## EXPLANATORY MEMORANDUM

### **BACKGROUND**

#### **Grounds for and objectives of the proposal**

The Council has repeatedly stressed the need for a common approach to combating tax fraud, and in particular VAT fraud, to supplement and support national efforts. VAT fraud is often organised on a cross-border basis, which is why Member States need to cooperate to combat it effectively. In its conclusions of 4 December 2007 the Council called on the Commission to make proposals to enhance Member States' management of the European Union's VAT system. In its conclusions of 7 October 2008 the Council called on the Commission to include in its proposal provisions to allow Eurofisc to be established in the near future in accordance with certain guidelines. This proposal for a recast of Council Regulation (EC) No 1798/2003 therefore aims to give Member States the means to combat cross-border VAT fraud more effectively.

#### **General context**

In May 2006 the Commission adopted a Communication concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud. As regards VAT fraud, and particularly intra-Community "carousel" fraud, the Communication distinguished between conventional measures designed to enhance the VAT system without altering its principles and more radical measures with implications for the very principles of VAT collection.

The ensuing discussion in the Council showed that the measures regarded as more radical could not be introduced in the short run. The Commission therefore decided to concentrate its efforts on establishing a number of conventional, mutually complementary measures. Therefore, in its Communication of 1 December 2008 on a coordinated strategy to improve the fight against VAT fraud in the European Union (COM(2008) 807, 1.12.2008), the Commission presented a short-term action programme for the introduction of such measures. A key objective of this programme was to make cooperation between tax administrations more effective. Some of the measures announced in the programme are included in this proposal.

It should also be noted that the European Court of Auditors, in Special Report No 8/2007 concerning administrative cooperation in the field of value added tax, made a number of recommendations concerning the need to improve the exchange of information on intra-Community transactions.

In its resolution of 2 September 2008 on a coordinated strategy to improve the fight against fiscal fraud (2008/2033(INI)), the European Parliament stressed that the Member States cannot combat cross-border fraud in isolation and called on the Commission to propose mechanisms to promote cooperation between Member States. In particular, it invited the Commission to submit proposals on the automated access by all other Member States to certain non-sensitive data held by Member States concerning their own taxable persons (business sector, certain data concerning turnover), and on the harmonisation of the procedures for the registration and de-registration of persons liable for VAT to ensure the swift detection and de-registration of fake taxable persons. It stressed that Member States must take responsibility for

keeping their data up to date, in particular as regards de-registration and the detection of fraudulent registrations. This proposal covers these points.

### **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1798/2003 is the reference Regulation for administrative cooperation on VAT issues. This proposal supplements it by adding provisions for more effective measures against cross-border fraud and better collection of VAT in cases where the place of taxation is different from the place of establishment of the supplier. It is also intended to make the Regulation more coherent, on the basis of the report on the operation of administrative cooperation adopted by the Commission on XXXX<sup>1</sup>.

### **Consistency with the other policies and objectives of the Union**

Combating tax evasion is part of the Lisbon Strategy. In its Communication of 25 October 2005 on the contribution of taxation and customs policies to the Lisbon Strategy, the Commission stressed that tax fraud created a significant distortion in the functioning of the internal market, prevented fair competition and eroded revenue that should be used to fund public services at national level. Increased levels of fraud resulted in an increasing tax burden on businesses that complied with tax rules as governments were forced to make up the resulting shortfall in revenue.

## **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **Consultation of interested parties**

#### *Consultation methods, main sectors targeted and general profile of respondents*

As this Regulation concerns relations between Member States' tax authorities, the parties primarily interested are the tax authorities. They have been consulted via the Commission's Anti-Tax Fraud Strategy (ATFS) expert group and the Standing Committee on Administrative Cooperation referred to in Article 44 of Council Regulation (EC) No 1798/2003. The ATFS group was set up by the Commission following its Communication of May 2006. It is made up of Member State experts who meet to analyse solutions and strategies for combating tax fraud at Community level.

Trade and industry representative organisations have informed the Commission of their approval of this approach as regards the aspects that might affect economic operators, in particular the establishment of common rules on the information to be collected and the checks to be conducted when a VAT identification number is registered in the VIES database. This measure is intended to guarantee the quality of the information in the databases consulted by intra-Community traders.

#### *Summary of responses and how they have been taken into account*

The responses received from both economic operators and national authorities were examined in the ATFS group and have also been the subject of reports and communications to the Council.

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<sup>1</sup> xxxxx

## **Collection and use of expertise**

It has not been necessary to call in outside experts.

## **Impact assessment**

This proposal concerns exchanges between tax authorities and will have no impact on economic operators. Thus it has not been the subject of a formal impact assessment.

The consequences of this proposal will affect Member States' tax authorities. The Member States are in a better position than the Commission to evaluate its precise impact.

## **LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed measures**

This proposal supplements Council Regulation (EC) No 1798/2003. The most changes are the following.

- Member States' responsibility in the field of administrative cooperation is extended to protect the VAT revenue of all Member States.
- The information that Member States must collect and make available to other Member States through an electronic database system is precisely defined. The Regulation also defines access rights to this information in terms of persons and situations.
- A permanent framework is established to guarantee the quality of the information in the databases by laying down common rules on the information to be collected and the checks to be carried out when a VAT identification number is registered in the database. The Regulation specifies the cases in which certain information must be deleted from the databases. It also includes provisions under which Member States are mutually responsible for any erroneous information in their databases or failures to update such information in good time.
- Member States are required to confirm by electronic means the name and address associated with a VAT number. Users are also given guarantees concerning the reliability and use of such information.
- A legal basis is created for establishing a structure for targeted cooperation to combat fraud. This structure will make possible multilateral, swift and targeted exchange of information so that Member States can respond adequately and in a coordinated fashion to combat any new kinds of fraud that emerge. It will be able to draw on jointly organised risk analysis.

In general terms, the proposal is intended to improve the exchange of information between Member States by defining the cases in which they may not refuse to reply to a request for information or for an administrative enquiry and specifying the cases in which Member States must exchange certain information spontaneously, as well as those in which feedback must be supplied, and laying down the procedures for such feedback. The proposal also aims to specify the cases in which Member States may and

must conduct multilateral controls. Lastly, it provides for the setting of precise objectives for the availability and operating procedures of the database system for the exchange of information.

The following aspects of Council Regulation (EC) No 1798/2003 remain unchanged:

- the organisation of the departments responsible for administrative cooperation in the Member States;
- the mechanism for requesting information and specific enquiries;
- the request for administrative notification;
- the principle of officials being present in the administrative departments of another Member State and at simultaneous controls;
- the provisions on services supplied by electronic means and telecommunications and radio broadcasting services;
- the provisions on the refund of VAT to taxable persons established in another Member State;
- the principle of the provisions on relations with third countries;
- the limitations on some of the rights and obligations provided for in 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; these limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of the information to effectively combating fraud.

### **Legal basis**

Article 93 of the EC Treaty

### **Subsidiarity principle**

The principle of subsidiarity applies, as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the reasons below.

The proposal aims in particular to improve the quality and comprehensiveness of information exchanges between Member States on cross-border transactions, particularly where the place of taxation is different from the place of establishment of the supplier.

To monitor these transactions effectively, close and swift cooperation is needed

between Member States, in particular through the use of electronic databases. A Community framework for such cooperation is far more effective than bilateral arrangements between all the Member States, which may leave some Member States without full and rapid access to some information.

Similarly, in view of the growth of cross-border VAT fraud, coordinated action to combat fraud at EU level is preferable to a national or even multilateral approach, which might be detrimental to some Member States by encouraging fraud on their territory.

The proposal simply defines a framework for cooperation between Member States, while operational control and application measures are the responsibility of the Member States.

The proposal is also intended to supplement the information provided to Community operators regarding their trading partners and make it more reliable. Full and high-quality information is needed for the correct application of VAT rules, particularly as regards territorial application and the person liable for payment of VAT. All operators should be able to obtain such information easily, wherever their registered office or place of establishment may be.

The proposal therefore complies with the principle of subsidiarity.

### **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

It is to a great extent based on the existing legislative framework, which it supplements only where there are points that need reinforcing, as highlighted by the work of the ATFS group and shown by the report on the operation of administrative cooperation.

Council Regulation (EC) No 1798/2003 made provision for limitations on some of the rights and obligations provided for in 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, and the present proposal maintains these limitations. They are essential to the fight against intra-Community VAT fraud, and are proportionate given the potential loss of revenue for Member States if they were to be removed.

The new provisions do not therefore go beyond what is necessary to enhance administrative cooperation for the purpose of combating cross-border VAT fraud.

### **Choice of instruments**

Proposed instrument(s): Regulation.

Other instruments would not have been appropriate for the following reasons.

Since the existing legislation is a Regulation, it can be amended only by another Regulation.

## **BUDGETARY IMPLICATION**

The proposal has no implications for the Community budget.

## **ADDITIONAL INFORMATION**

### **Repeal of existing legislation**

The adoption of this proposal will mean that some legislative provisions must be repealed.

### **Recasting**

The proposal involves recasting.

### **Detailed explanation of the proposal by chapter or by article**

The first chapter establishes the scope of the Regulation, provides definitions and contains provisions on the organisation of the competent authorities under the Regulation. The main changes in this chapter are the expansion of its scope to cover the establishment of common procedures where a common approach is necessary to the proper application of the common system of VAT, and the introduction of a requirement for Member States to cooperate to protect the tax revenue of other Member States.

The second chapter concerns exchanges of information on request, and the main change is the limitation of cases in which a Member State may refuse to provide information or carry out an enquiry. The provision added to this chapter takes over the wording introduced in Council Regulation (EC) No 143/2008, which will enter into force in 2015.

The third chapter concerns exchanges of information without prior request. This chapter has been amended to specify that such exchanges must in any case take place where certain criteria are met. Practical arrangements are established for the exchange of some specific information that meets these criteria.

The fourth chapter introduces a feedback requirement, the rules and procedures for which are to be established by the committee procedure. Member States had identified the lack of feedback as a weakness in their information exchanges.

The fifth chapter deals with the storage and exchange of information on taxable persons and transactions. It is amended to increase the amount and quality of information exchanged. In particular, it provides that the competent authorities are to be given access to certain information held by the Member States. The proposal also provides for the establishment of common procedures regarding the information to be collected when a taxable person is registered in the database and the updating of the database system.

The sixth chapter concerns requests for administrative notification and has not been amended.

The seventh chapter deals with presence in administrative offices and participation in administrative enquires. Some clarifications have been introduced concerning the non-

exhaustive nature of its provisions.

The eighth chapter concerns multilateral controls. It has been amended to specify the cases in which Member States must conduct this kind of control.

The ninth chapter concerns the information available to taxable persons, and in particular the possibility of obtaining confirmation of the validity of a specific person's identification number, together with the associated name and address. It also provides that the invoicing provisions in force in the Member States that are applicable to taxable persons not established on their territory will be placed on the Commission's website.

The tenth chapter concerns the establishment of a common structure (Eurofisc) which will provide a faster cooperation mechanism for dealing with very large-scale or new fraud patterns.

The eleventh and twelfth chapters have not been amended.

The thirteenth chapter, which covers relations with the Commission, has been amended to specify that Member States must conduct regular audits of the operation of administrative cooperation.

The fourteenth chapter, which covers relations with third countries, has been slightly amended to extend its scope.

The fifteenth chapter, which lays down the conditions governing the exchange of information, has been amended to set precise objectives for the level of service of electronic information exchanges.

The sixteenth chapter sets out the general and final provisions, in which the provisions of Council Regulation (EC) No 143/2008 which are to enter into force on 1 January 2015 have been included.

An annex has been added listing the goods and services to which Article 7(3) applies, based on the list adopted by the Council in Regulation (EC) No 143/2008.

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↓ 1798/2003 (adapted)  
⇒ new

2009/0118 (CNS)

Proposal for a

## COUNCIL REGULATION

**on administrative cooperation ⇒ and combating fraud ⇐ in the field of value added tax  
and repealing Regulation (EC) No 1798/2003**

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,

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

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

Whereas:

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↓ new

(1) 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<sup>4</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity. For the sake of clarity and ease of comprehension, the provisions applicable up to 31 December 2014 and those applicable from 1 January 2015 should be presented separately.

↓ 1798/2003 recital 1

(2) 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.

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<sup>2</sup> OJ C [...].

<sup>3</sup> OJ C [...].

<sup>4</sup> OJ L 264, 15.10.2003, p. 1.

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↓ 1798/2003 recital 3 (adapted)

~~(3)~~(4) 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 ~~the~~ value added tax (VAT) ~~on~~ supplies of goods and services, intra-Community acquisition of goods and importation of goods.

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↓ new

(4) In its Communication to the Council, the European Parliament and the European Economic and Social Committee on a coordinated strategy to improve the fight against VAT fraud in the European Union, of 1 December 2008<sup>5</sup>, the Commission set out the 'conventional' measures to be implemented swiftly to combat tax fraud.

(5) In its conclusions of 4 December 2007 and 7 October 2008 the Council called on the Commission to make proposals to enhance Member States' management of the European Union's VAT system and to include provisions to allow Eurofisc to be established in the near future while respecting the instruments of administrative cooperation mentioned in the Regulation.

(6) In the light of the report on the operation of administrative cooperation in the field of VAT<sup>6</sup>, drawn up under Article 45 of the Regulation and adopted by the Commission on XXXXX 2009, certain editorial and practical clarifications need to be made to the Regulation.

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↓ 143/2008 recital 4

⇒ new

~~(7)~~(4) (4) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but in another Member State<sup>7</sup> ~~simplifies the refund procedure for VAT in a Member State in which the taxable person concerned is not identified for VAT purposes~~ ⇒ requires rules on the exchange and storage of information by Member States ⇐ .

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↓ 143/2008 recital 5 (adapted)

⇒ new

~~(8)~~(5) ~~The extension of the scope of the special scheme and the amendments to~~ ⇒ The establishment of the one-stop scheme introduced in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>8</sup>, as amended by

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<sup>5</sup> COM(2008) 807 final.

<sup>6</sup> OJ C XXXXXXXXXX

<sup>7</sup> OJ L 44, 20.2.2008, p. 23.

<sup>8</sup> OJ L 347, 11.12.2006, p. 1.

Directive 2008/8/EC<sup>9</sup>, and ⇐ the refund procedure for taxable persons not established in the Member State of refund ☒ provided for in Directive 2008/9/EC, ⇐☒ mean that the Member States concerned will need to exchange ☒ a large amount of ☒ considerably more information. The required exchange of information should not make any excessive administrative demands on the Member State concerned. ~~This exchange of information should thus take place electronically under existing systems for exchanging information.~~

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⇓ new

- (9) The Member State of establishment should collect or be in a position to collect certain information on cross-border transactions so that transactions which are taxable in a Member State other than that in which the supplier is established can be supervised effectively.
- (10) In the interests of effectiveness and speed and on grounds of cost, it is essential that the information communicated under this Regulation should be provided by electronic means wherever possible.
- (11) For the purposes of collecting the tax owed, the Member States must ensure collectively that VAT is correctly assessed in every Member State. The Member States must therefore monitor the correct application of tax owed on their own territory, but also of tax relating to activity on their own territory but owed in another Member State.
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⇓ 1798/2003 recital 2  
⇒ new

- ~~(12)(3) Combating VAT value-added tax~~ evasion calls for close cooperation between the administrative authorities in each Member State responsible for the application of the provisions in that field. ⇒ Those authorities must also cooperate with the structure responsible for targeted and swift action to combat specific acts of fraud. ⇐
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⇓ new

- (13) In many cases of cross-border transactions, monitoring the correct application of the tax by the Member State of taxation depends on information which is held by the Member State of establishment of the taxable person or can be much more easily obtained by that Member State.
- (14) In view of the repetitive nature of certain requests and the linguistic diversity within the Community, it is important to spread the use of standard forms in the exchange of information so that information requests can be processed more quickly.
- (15) Where Member States agree on time limits for responding other than those provided for in this Regulation, those time limits must be shorter than the ones provided for in this Regulation.
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<sup>9</sup> OJ L 44, 20.2.2008, p. 11.

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↓ 1798/2003 recital 4  
⇒ new

(16)(4) Electronic storage and transmission of certain data for VAT control purposes is indispensable for the proper functioning of the VAT system ⇒ and to facilitate the fight against fraud, particularly in the case of certain cross-border transactions for which the tax is owed in the Member State of the recipient of the goods or services ⇐ .

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↓ new

(17) In such situations, it is important to specify the obligations of each Member State so that the tax can be effectively monitored in the Member State in which it is owed.

(18) Apart from the principle that information must be communicated, the cases should be specified in which such communication is compulsory, as should the categories of information for which a systematic procedure needs to be established to facilitate that communication.

(19) In accordance with the conclusions of the report on the operation of administrative cooperation adopted by the European Commission on XXXXX 2009<sup>10</sup> and in order to continually improve the quality of the information exchanged, provision should be made for systematic application of the principle of feedback.

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↓ 1798/2003 recital 5  
⇒ new

(20)(5) The conditions for the exchange of, and ~~direct~~ ⇒ automated ⇐ 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.~~

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↓ new

(21) To combat tax fraud, Member States need to be enabled to exchange very rapidly certain reliable information which they hold concerning the taxable persons established on their territory. This can be achieved by enhancing the databases on VAT-taxable persons and their intra-Community transactions through the inclusion in those databases of a range of information on the taxable persons and their transactions and by establishing procedures to increase the reliability of the information in those databases.

(22) Broader access to the information which this database system contains on intra-Community supplies of goods and services where the recipient is the person liable for the tax will be a valuable asset in the fight against tax fraud.

(23) The databases containing the information on the taxable persons and their intra-Community transactions are an essential tool for combating VAT fraud. The

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<sup>10</sup>

information they contain should therefore be up-to-date and reliable. To make this information easy for Member States to use, common procedures should be established to ensure that the information is comparable and of good quality.

- (24) Establishing risk analysis mechanisms for the information entered in the databases and the information which is already there will give Member States an additional assurance as to the reliability of the information.
- (25) In the light of the report on the operation of administrative cooperation adopted by the European Commission on XXXXX 2009<sup>11</sup>, it needs to be made clear that possibilities of being present in administrative offices set out in the Regulation are not listed exhaustively.
- (26) In view of the increase in cross-border trade within the internal market, the scope of multilateral controls should be clarified and extended and the introduction and conduct of such controls should be facilitated, with regard to both legitimate and fraudulent business.
- (27) Online confirmation of the validity of VAT identification numbers is a tool increasingly used by operators. However, the differences in procedures for the registration and updating of information on taxable persons in national databases and the differences in the information confirmed mean that the information given may mislead the requesting operators and give rise to disputes. Identifying the operators who request confirmation of the validity of a VAT identification number also provides very useful information for Member States' risk analysis systems. The system for confirming the validity of VAT identification numbers should therefore be adapted to provide automated confirmation of more information to operators. Moreover, making this information such that it may be relied upon in dealings with other Member States considerably increases the legal certainty of operators.
- (28) Some taxable persons are subject to specific obligations different from those in force in the Member State in which they are established, particularly as regards invoicing, simply because they supply goods or services to customers established on the territory of another Member State. A mechanism should be established to enable those taxable persons to be informed of such obligations.
- (29) Recent practical experience of the application of Regulation (EC) No 1798/2003 in the fight against carousel fraud has shown that in some cases it is essential to establish a much faster mechanism for the exchange of information, covering much more, and more targeted, information in order to combat fraud effectively. This mechanism should be included within the framework of the Regulation while keeping sufficient flexibility to adapt to new types of fraud. Eurocanet (European Carousel Network), established on the initiative of Belgium and supported by the Commission, is an example of this kind of cooperation.

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<sup>11</sup>

↓ 1798/2003 recital 6

~~(30)(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 Chapter 6 of Title XII of Directive 2006/112/EC ~~Article 26e 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~~<sup>12</sup>, 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.

↓ new

(31) Information received from third countries may be very useful to other Member States in the context of combating VAT fraud. The exchange of such information should be extended as much as possible.

(32) National rules on banking secrecy should not stand in the way of the application of this Regulation.

(33) As the scope of administrative cooperation in the field of VAT has been extended, the rules on the protection of information exchanged or collected should be reinforced.

↓ 1798/2003 recital 7

~~Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT)~~<sup>13</sup> established in this respect a system of close cooperation amongst the Member States' administrative authorities and between those authorities and the Commission.

↓ 1798/2003 recital 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~~<sup>14</sup>.

↓ 1798/2003 recital 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.~~

<sup>12</sup> ~~OJ L 145, 13.6.1977, p. 1. Directive as last amended by Council Directive 2002/92/EC (OJ L 331, 7.12.2002, p. 27).~~

<sup>13</sup> ~~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).~~

<sup>14</sup> ~~OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession~~

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↓ 1798/2003 recital 10

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

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↓ 1798/2003 recital 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.~~

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↓ 1798/2003 recital 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.~~

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↓ 1798/2003 recital 13

~~Cooperation is also not intensive enough, in that, apart from the VAT information exchange system (VIIES), 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.~~

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↓ 1798/2003 recital 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.~~

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↓ 1798/2003 recital 15

~~(34)(16)~~ This Regulation should not affect other Community measures which contribute to combating VAT fraud.

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↓ 1798/2003 recital 16

⇒ new

~~(35)(17)~~ 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<sup>15</sup> in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

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<sup>15</sup> OJ L 281, 23.11.1995, p. 31.

⇒ Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of this information to effectively combating fraud. ⇐

↓ new

(36) As the measures necessary to implement 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<sup>16</sup>, they must be adopted in conformity with the regulatory procedure provided for in Article 5 of that Decision.

↓ 1798/2003 recital 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<sup>17</sup>.~~

↓ 1798/2003 recital 18 (adapted)

~~(37) 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,~~

↓ 1798/2003 (adapted)

⇒ new

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 ~~⊗~~ value added tax (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 ⇒, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays

<sup>16</sup> OJ L 184, 17.7.1999, p. 23.

<sup>17</sup> ~~OJ L 184, 17.7.1999, p. 23.~~

down rules and procedures for Member States to collect and exchange such information by electronic means.

~~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.~~

↓ new

2. This Regulation lays down the conditions under which the authorities referred to in paragraph 1 are to act to protect VAT revenue in all the Member States.

↓ 1798/2003

~~3.2.~~ This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

↓ 143/2008 Art. 1, pt 1 (adapted)

~~4. For the period provided for in Article 357 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>18</sup>, it~~  This Regulation  also lays down rules and procedures for the exchange by electronic means of VAT value added tax information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax 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.

↓ 143/2008 Art. 2, pt 1 (adapted)

~~This Regulation also lays down rules and procedures for the exchange by electronic means of value added tax information on services in accordance with the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC and also for any subsequent exchange of information and, as far as services covered by those special schemes are concerned, for the transfer of money between Member States' competent authorities.~~

↓ 1798/2003 (adapted)  
→<sub>1</sub> 143/2008 Art. 2, pt 2

## Article 2

→<sub>1</sub> 1. ← For the purposes of this Regulation:

~~1. "competent authority of a Member State", means:~~

– ~~in Belgium:~~

~~Le ministre des finances~~

<sup>18</sup> ~~OJL 347, 11.12.2006, p. 1~~

~~De Minister van financiën~~

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↓ 1791/2006 Art. 1, pt 1 and Annex, pt 7

– ~~in Bulgaria:~~

~~Изпълнителният директор на Националната агенция за приходите~~

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↓ 885/2004 Art. 1 and Annex, pt 5

– ~~in the Czech Republic:~~

~~Ministerstvo financí~~

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↓ 1798/2003

– ~~in Denmark:~~

~~Skatteministeriet~~

– ~~in Germany:~~

~~Bundesministerium der Finanzen~~

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↓ 885/2004 Art. 1 and Annex, pt 6

– ~~in Estonia:~~

~~Maksuamet~~

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↓ 1798/2003

– ~~in Greece:~~

~~Υπουργείο Οικονομίας και Οικονομικών~~

– ~~in Spain:~~

~~El Secretario de Estado de Hacienda~~

– ~~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~~

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↓ 885/2004 Art. 1 and Annex, pt 6

- ~~in Cyprus:~~  
~~Υπουργός Οικονομικών ή εξουσιοδοτημένος αντιπρόσωπος του,~~
- ~~in Latvia:~~  
~~Valsts ieņēmumu dienests,~~
- ~~in Lithuania:~~  
~~Valstybinė mokesčių inspekcija prie Finansų ministerijos,~~

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↓ 1798/2003

- ~~in Luxembourg:~~  
~~L'Administration de l'Enregistrement et des Domaines,~~

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↓ 885/2004 Art. 1 and Annex, pt 6

- ~~in Hungary:~~  
~~Adó- és Pénzügyi Ellenőrzési Hivatal Központi Kapcsolattartó Irodája,~~
- ~~in Malta:~~  
~~Dipartiment tat-Taxxa fuq il-Valur Mizjud fil-Ministeru tal-Finanzi u Affarijiet Ekonomiki,~~

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↓ 1798/2003

- ~~in the Netherlands:~~  
~~De minister van Financiën,~~
- ~~in Austria:~~  
~~Bundesminister für Finanzen,~~

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↓ 885/2004 Art. 1 and Annex, pt 6

- ~~in Poland:~~  
~~Minister Finansów,~~

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↓ 1798/2003

- ~~in Portugal:~~

O Ministro das Finanças;

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↓ 1791/2006 Art. 1, pt 1 and Annex, pt 7

– in Romania:

Agencia Națională de Administrare Fiscală

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↓ 885/2004 Art. 1 and Annex, pt 6

– in Slovenia:

Ministrstvo za finance;

– in Slovakia:

Ministerstvo financií;

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↓ 1798/2003

– in Finland:

Valtiovarainministeriö

Finansministeriet;

– in Sweden:

Chefen för Finansdepartementet;

– in the United Kingdom:

The Commissioners of Customs and Excise;

21. "central liaison office" means the office which has been designated under Article 43(12) with principal responsibility for contacts with other Member States in the field of administrative cooperation;

32. "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 43(23) to exchange directly information on the basis of this Regulation;

43. "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 43(34);

54. "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;

65. "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;

76. "intra-Community transactions" means the intra-Community supply of goods or services;

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↓ 143/2008 Art. 1, pt 2

87. "intra-Community supply of goods" means any supply of goods which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

98. "intra-Community supply of services" means any supply of services which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

109. "intra-Community acquisition of goods" means the acquisition of the right under Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;

110. "VAT identification number" means the number provided for in Articles 214, 215 and 216 of Directive 2006/112/EC;

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↓ 1798/2003

1211. "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;

1312. "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;~~

1316. "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;

~~17. "to grant access", means to authorise access to the relevant electronic database and to obtain data by electronic means;~~

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↓ new

14. "automated access" means the possibility of access at any time to a database to consult certain information in it by electronic means;

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↓ 1798/2003

~~1518.~~ "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;

~~1619.~~ "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;

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↓ new

17. "multilateral control" means coordinated checks on the tax situation of a taxable person or related taxable persons, organised by two or more participating Member States with common or complementary interests;

18. "strategic analysis" means research into and presentation of the general trends in transactions in breach of VAT legislation through evaluation of the threat posed by those transactions and of their scale and impact, with a view to setting priorities, formulating hypotheses or recommendations, gaining a better picture of the phenomenon or threat and reorienting action to prevent or detect fraud.

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↓ 143/2008 Art. 2, pt 2 (adapted)

2. ~~From~~ From 1 January 2015, ~~the~~ the definitions contained in Articles 358, 358a and 369a of Directive 2006/112/EC shall also apply for the purposes of this Regulation.

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↓ 1798/2003 (adapted)

⇒ new

### 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:

– in Belgium:

Le ministre des finances

De Minister van financiën.

- in Bulgaria:  
Изпълнителният директор на Националната агенция за приходите
- in the Czech Republic:  
Ministerstvo financí,
- in Denmark:  
Skatteministeren,
- in Germany:  
Bundesministerium der Finanzen,
- in Estonia:  
Maksamet,
- in Greece:  
Υπουργείο Οικονομίας και Οικονομικών,
- in Spain:  
El Secretario de Estado de Hacienda,
- 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 Cyprus:  
Υπουργός Οικονομικών ή εξουσιοδοτημένος αντιπρόσωπος του,
- in Latvia:  
Valsts ieņēmumu dienests,
- in Lithuania:  
Valstybinė mokesčių inspekcija prie Finansų ministerijos,
- in Luxembourg:

L'Administration de l'Enregistrement et des Domaines,

– in Hungary:

Adó- és Pénzügyi Ellenőrzési Hivatal Központi Kapcsolattartó Irodája,

– in Malta:

Dipartiment tat-Taxxa fuq il-Valur Miżjud fil-Ministeru tal-Finanzi u Affarijiet Ekonomiki,

– in the Netherlands:

De minister van Financiën,

– in Austria:

Bundesminister für Finanzen,

– in Poland:

Minister Finansów,

– in Portugal:

O Ministro das Finanças,

– in Romania:

Agentia Națională de Administrare Fiscală

– in Slovenia:

Ministrstvo za finance,

– in Slovakia

Ministerstvo financií,

– in Finland:

Valtiovarainministeriö

Finansministeriet,

– in Sweden:

Chefen för Finansdepartementet,

– in the United Kingdom:

The Commissioners of Customs and Excise.

#### Article 4

~~1.2.~~ 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.

~~2.3.~~ 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.

~~3.4.~~ 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.

~~4.5.~~ The officials exchanging information under Articles ~~11 and 13-29~~, 30 and 31 shall in any case be deemed to be competent officials for this purpose, in accordance with conditions laid down by the competent authorities.

#### Article 5

~~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.

#### Article 6

~~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 ~~108~~ 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 ~~75~~*

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~~  an  administrative enquiry is  not  necessary, it shall immediately inform the requesting authority of the reasons thereof.

↓ new

Notwithstanding the first paragraph and without prejudice to Article 56, a request for an administrative enquiry into supplies of any of the goods or services listed in the Annex which are provided by a taxable person established in the Member State of the requested authority and are taxable in the Member State in which the requesting authority is situated may be refused by the requested authority only if the requested authority has already supplied information on the same taxable person, obtained in an administrative enquiry held less than two years previously, to the requesting authority.

However, with respect to the requests referred to in the second subparagraph of this paragraph made by the requesting authority and assessed by the requested authority in conformity with a Statement of Best Practices concerning the interaction of this paragraph and Article 56(1), to be adopted in accordance with the procedure referred to in Article 60(2), a Member State which refuses to conduct an administrative enquiry on the basis of Article 56 shall communicate to the requesting authority the dates and values of any relevant supplies made over the last two years by the taxable person in the Member State of the requesting authority.

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↓ 143/2008 Art. 2, pt 3 (adapted)

~~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.~~

~~Notwithstanding the first subparagraph and without prejudice to Article 40 of this Regulation, an enquiry into the amounts declared by a taxable person in connection with the supply of telecommunications services, broadcasting services and electronically supplied services which are taxable in the Member State in which the requesting authority is situated and for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, may only be refused by the requested authority if information on the same taxable person obtained in an administrative enquiry held less than two years previously, has already been supplied to the requesting authority.~~

~~However, with respect to the requests referred to in the second subparagraph made by the requesting authority and assessed by the requested authority in conformity with a Statement of Best Practices concerning the interaction of this paragraph and Article 40(1) to be adopted in accordance with the procedure referred to in Article 44(2), a Member State which refuses to hold an administrative enquiry on the basis of Article 40 shall provide to the requesting authority the dates and values of any relevant supplies made over the last two years by the taxable person in the Member State of the requesting authority.~~

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↓ 1798/2003 (adapted)

⇒ new

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 ~~86~~*

Requests for information and for administrative enquiries pursuant to Article ~~75~~ shall, ~~as far as possible,~~ ⇒ except in the cases referred to in Article 52 or in exceptional cases for reasons duly substantiated, ⇐ be sent using a standard form adopted in accordance with the procedure referred to in Article ~~6044~~(2).

#### *Article ~~97~~*

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 ~~108~~*

The requested authority shall provide the information referred to in Articles ~~5 and 7~~ 7 and 9 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 ~~119~~*

~~In certain special categories of cases, ¶~~ Time limits ~~different from~~ ⇨ shorter than ⇨ the ones provided for in Article ~~108~~ may be agreed between the requested and the requesting authorities.

---

↓ new

#### *Article 12*

The requested authority shall confirm receipt of the request by electronic means without delay, and in any event no more than five working days after receiving it.

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↓ 1798/2003 (adapted)

#### *Article ~~1310~~*

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.

## CHAPTER ~~III~~IV

### EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

#### *Article ~~1417~~*

~~1. 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 information provided by the Member State of origin is necessary for the effectiveness of the control system of the Member State of destination 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.

↓ 143/2008 Art. 2, pt 4 (adapted)  
⇒ new

~~2. For the purposes of the first paragraph, each Member State of establishment shall cooperate with each Member State of consumption so as to make it possible~~ From 1 January 2015, ~~the competent authority of each Member State shall in particular exchange data automatically in order to enable each Member State of consumption~~ to ascertain whether the taxable persons established on its territory declare and pay correctly the VAT due with regard to telecommunications services, broadcasting services and electronically supplied services for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC. The Member State of establishment shall inform the Member State of consumption of any discrepancies of which it becomes aware.

↓ new

#### *Article 15*

The competent authorities of the Member States shall spontaneously forward to the competent authorities of the other Member States any information referred to in Article 1 of which they are aware and which may be useful to the competent authorities of the other Member States.

↓ 1798/2003

#### *Article ~~16~~<sup>18</sup>*

↓ new

1. The information exchanged under this Chapter shall be forwarded by means of standard forms or files adopted in accordance with the procedure referred to in Article 60(2).
2. The frequency of and practical arrangements for the exchange of certain categories of information which meet the criteria set out in Article 14 shall be determined in accordance with the procedure referred to in Article 60(2).

---

↓ 1798/2003

~~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.~~

---

↓ 143/2008 Art. 2, pt 5

~~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. However, each Member State shall take part in exchanges of the information available to it with regard to telecommunications services, broadcasting services and electronically supplied services for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC.~~

---

↓ 1798/2003

#### ~~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.~~

---

↓ new

## CHAPTER IV

### FEEDBACK

#### *Article 17*

The information exchanged under Chapters II and III shall be the subject of feedback to the requested authority that supplied it, using the arrangements and observing the frequency determined in accordance with the procedure referred to in Article 60(2).

---

↓ 1798/2003 (adapted)

## CHAPTER V

### ~~⊗ DATABASES ⊗ STORAGE AND EXCHANGE OF INFORMATION SPECIFIC TO INTRA-COMMUNITY TRANSACTIONS~~

#### *Article ~~18~~*

↓ 143/2008 Art. 1, pt 3 (adapted)  
⇒ new

1. Each Member State shall maintain an electronic database ⇒ system ⇐ in which it shall store and process the ⇒ following ⇐ information ⇒ : ⇐

⊗(a) information ⊗ which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC;

---

↓ new

(b) data on the identity, activity or legal form of persons to whom a VAT identification number has been issued in that Member State, collected pursuant to Article 213 of Directive 2006/112/EC;

(c) data on the turnover of the persons referred to in point (b), and in particular data collected pursuant to Article 250 of Directive 2006/112/EC;

(d) data on the history of the exchange of information referred to in Chapters II and III concerning the persons referred to in point (b) of this paragraph;

(e) information which it collects pursuant to Articles 360, 361, 364 and 365 of Directive 2006/112/EC.

2. From 1 January 2015 every Member State shall add to the data referred to in paragraph 1(e) the information which it collects pursuant to Articles 369c, 369f and 369g of Directive 2006/112/EC.

3. From 1 January 2015, or before that if it has the data available in structured form, every Member State shall add the following data to the database system referred to in paragraph 1:

(a) additional data on the identity, activity or legal form of persons to whom a VAT identification number has been issued in that Member State;

(b) more detailed data on the turnover of the persons referred to in paragraph 1(b), collected pursuant to Article 250 of Directive 2006/112/EC;

(c) data on compliance by the persons referred to in paragraph 1(b) with their tax obligations, for example late submission of returns or existence of tax debts;

(d) data specific to transactions involving particular goods, allowing those goods to be identified.

3. The list and details of the data referred to in paragraph 1(b), (c) and (d) and paragraph 2 of this Article shall be adopted in accordance with the procedure referred to in Article 60(2).

↓ 1798/2003 (adapted)

#### Article 19

To enable ~~that~~  the  information  referred to in Article 18  to be used in the procedures provided for in this Regulation, ~~that the~~ information shall be stored for at least five years from the end of the  first  calendar year in which access to the information is to be granted.

#### Article 20

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 ~~6044~~(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

↓ new

#### Article 21

1. All the information referred to in Article 18 shall be placed in the database system without delay.

2. By way of derogation from paragraph 1 of this Article, the information referred to in Article 18(1)(a) shall be placed in the database system referred to therein no later than one month after the end of the period to which the information relates.

3. By way of derogation from paragraphs 1 and 2 of this Article, where information is corrected in or added to the database pursuant to Article 20, the information must be entered no later than one month after the period in which it was collected.

---

↓ 1798/2003 (adapted)  
⇒ new

#### Article ~~2223~~

~~On the basis of the data stored in accordance with Article ~~2322~~, the competent authority of a Member State shall have communicated to it automatically and without delay by any other Member State the following~~ ⇒ Every Member State shall grant the competent authorities of any other Member State automated access to the ⇐ information, ⇒ contained in the databases referred to in Article 18. In the case of the information referred to in Article 18(1)(a), at least the following details shall be accessible ⇐:

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

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↓ 143/2008 Art. 1, pt 4  
→<sub>1</sub> Corrigendum

2. the total value of all intra-Community supplies of goods and the total value of all intra-Community supplies of services to persons holding a VAT identification number →<sub>1</sub> referred to in point (1) ← by all operators identified for the purposes of VAT in the Member State providing the information;=

---

↓ new

3. the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point 2;

4. the total value of supplies of goods and services referred to in point 2 from each person referred to in point 3 to each person holding a VAT identification number referred to in point 1;

5. the total value of the supplies of goods and services referred to in point 2 from each person referred to in point 3 to each person holding a VAT identification number issued by another Member State.

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↓ 37/2009 Art. 1, pt 1 (adapted)  
⇒ new

The values referred to in points 2 ⇒ , 4 and 5 ⇐ of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.

#### Article 24

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↓ 143/2008 Art. 1, pt 5

~~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 or intra-Community supplies of services taxable in its territory, 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 carried out the supplies of goods and services referred to in point 2 of the first paragraph of Article 23;~~

~~2. the total value of supplies of goods and services from each such person to each person holding a VAT identification number referred to in point 1 of the first paragraph of Article 23.~~

---

↓ 37/2009 Art. 1, pt 2

~~The values referred to in point 2 of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.~~

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↓ 1798/2003

#### Article 25

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↓ 37/2009 Art. 1, pt 3

~~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, at the latest, within one month of the end of the period 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 one month after the end of the period in which it was collected.~~

---

↓ 1798/2003

~~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).~~

---

↓ new

#### Article 23

1. To guarantee the quality and reliability of the information contained in the database system referred to in Article 18, Member States shall perform checks on the information supplied when taxable persons and non-taxable legal persons are identified for VAT purposes under Article 214 of Directive 2006/112/EC. They shall ensure that information concerning a taxable person or a non-taxable legal person is not stored in the database system referred to in Article 18 until it is complete and correct.

2. The information to be collected and the checks to be performed in application of paragraph 1 of this Article shall be decided in accordance with the procedure referred to in Article 60(2). This information and these checks shall relate to the activity of the taxable person and the identity of the taxable person or of its management.

3. On the basis of the information and checks referred to in paragraph 2 of this Article and the information contained in the database system referred to in Article 18, the Member States shall, no later than a year after the VAT identification of the taxable persons and non-taxable legal persons, perform a risk analysis on those persons.

4. The Member States shall inform the Committee referred to in Article 60 of the measures implemented at national level to perform the risk analysis referred to in paragraph 3 of this Article.

#### *Article 24*

1. Member States shall without delay give notification in the database system referred to in Article 18 of the following situations:

(a) persons identified in the database who have ceased economic activity and therefore must no longer be identified for VAT purposes;

(b) persons who declare that they will not be engaging in economic activity for a specific period;

(c) particular risks identified in the course of a risk analysis referred to in Article 23(3).

2. Where there are no indications of any economic activity for a year, Member States shall check that the information referred to in Article 23(1) is still correct and shall, if appropriate, give the notification provided for in paragraph 1 of this Article.

3. The rules and procedures for the application of paragraphs 1 and 2 of this Article shall be adopted in accordance with the procedure referred to in Article 60(2).

↓ 1798/2003 (adapted)  
⇒ new

#### *Article ~~25~~<sup>26</sup>*

Where, for the purposes of Articles ~~22 to 25~~ 18 to 22, 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 ~~57~~<sup>41</sup>.

## **CHAPTER VIII**

### **REQUEST FOR ADMINISTRATIVE NOTIFICATION**

#### *Article ~~26~~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 ~~27~~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 ~~28~~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.

## **SECTION 3 CHAPTER VII**

### **PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES**

#### *Article ~~29~~11*

1. By agreement between the requesting authority and the requested authority ~~and in accordance with the arrangements laid down by the latter,~~ ⇒ competent ⇐ officials authorised by ⇒ of ⇐ the requesting authority may, with a view to exchanging the information referred to in Article 1, be present in the offices ⇒ , or any other place, ⇐ 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,~~ ⇒ competent ⇐ officials authorised by ⇒ of ⇐ 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~~ **CHAPTER VIII**

### ~~SIMULTANEOUS~~ **MULTILATERAL** **CONTROLS**

#### *Article ~~30~~<sup>12</sup>*

~~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.~~ ⇒ Member States shall conduct multilateral controls ⇐ whenever such controls would appear to be more effective than controls carried out by only one Member State.

↓ 1798/2003 (adapted)  
⇒ new

#### *Article ~~31~~<sup>13</sup>*

1. A Member State shall identify independently the taxable persons whom it intends to propose for a ~~simultaneous~~  multilateral  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~~  multilateral  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 ⇒ Within two weeks of ⇐ receipt of a proposal for a ~~simultaneous~~ ⇒ multilateral ⇐ 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.

↓ new

4. The information collected shall be exchanged spontaneously between the Member States concerned.

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↓ 1798/2003 (adapted)

## CHAPTER IX

### **⊗ PROVIDING INFORMATION TO TAXABLE PERSONS ⊗**

#### *Article ~~3227~~*

~~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.~~

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↓ 143/2008 Art. 1, pt 6 (adapted)

~~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 357 of Directive 2006/112/EC, non-established taxable persons supplying electronically supplied services, in particular those referred to in Annex II of that Directive, are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.~~

~~During the period provided for in Article 357 of Directive 2006/112/EC, the Member States shall provide such confirmation by electronic means in accordance with the procedure referred to in Article 50(2) of this Regulation.~~

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↓ 143/2008 Art. 2, pt 6 (adapted)  
⇒ new

41. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II of Directive 2006/112/EC, are allowed to obtain ⇒ , for the purposes of such transactions, ⇐ confirmation ⊗ by electronic means ⊗ of the validity of the VAT identification number of any specified person ⇒ as well as the associated name and address. This information shall correspond to the data referred to in

Article 18(1)(b) and take account of the situations of which Member States must give notification in the database systems without delay under Article 24 ↩ .

⊗ During the period provided for in Article 357 of Directive 2006/112/CE, the first subparagraph shall not apply to non-established taxable persons supplying telecommunications services and radio and television broadcasting services. ⊗

~~The Member States shall provide such confirmation by electronic means in accordance with the procedure referred to in Article 44(2) of this Regulation.~~

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↓ new

2. Taxable persons may rely on the confirmation obtained under paragraph 1 in their dealings with the administrations and courts of all the Member States, provided that they specified their own VAT number in their request.

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↓ 1798/2003

~~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.~~

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↓ new

### Article 33

1. Each Member State shall inform the Commission of the details of the provisions implementing Chapter 3 of Title XI of Directive 2006/112/EC applicable to taxable persons not established on its territory so that this information can be published on the Commission's website. This information shall be forwarded to the Commission no later than 1 March each year, or when the provisions become applicable.

2. The details of the list of information to be submitted and the format in which it must be sent shall be decided in accordance with the procedure provided for in Article 60(2).

## CHAPTER X

### MULTILATERAL COOPERATION

### Article 34

1. A common structure for combating VAT evasion and avoidance shall be established under this Regulation. It shall perform the following tasks:

- (a) organise the swift multilateral exchange of information with or without prior request;

- (b) promote the exchange of information based on risk analysis procedures;
  - (c) promote the exchange of information based on strategic analysis procedures.
2. The competent authorities of the Member States shall determine the fields of investigation to be covered by the structure referred to in paragraph 1.
  3. For each field of investigation the competent authorities of the Member States shall designate one or more Member States within the structure to supervise and guide performance of the tasks referred to in paragraph 1.

#### *Article 35*

The structure established under Article 34 shall be made up of competent officials designated by the competent authorities of the Member States. It shall be provided with technical, administrative and operational support by the Commission.

#### *Article 36*

1. The structure established under Article 34 shall be authorised to use all the administrative cooperation instruments provided for in this Regulation.
4. The arrangements for the exchange of information specific to the structure established under Article 34 shall be determined in accordance with the procedure provided for in Article 60(2) of this Regulation.

#### *Article 37*

The competent authorities of the Member States may mandate the structure established under Article 34 to perform a risk analysis or a common strategic analysis.

#### *Article 38*

2. The structure established under Article 34 shall process the information which it receives and forward the result of that processing to all the Member States to which the results may be useful.
5. Where necessary, the recipients of the information shall in turn process the information received and forward the result of that processing to the structure established under Article 34.

#### *Article 39*

The structure established under Article 34 shall submit an annual account of its activities to the Committee referred to in Article 60.

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↓ 1798/2003

**CHAPTER ~~XIV~~**

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↓ 143/2008 Art. 1, pt 7 (adapted)

**~~PROVISIONS CONCERNING THE SPECIAL SCHEME IN CHAPTER 6  
OF TITLE XII OF DIRECTIVE 2006/112/EC~~**

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↓ 143/2008 Art. 2, pt 7 (adapted)

**PROVISIONS CONCERNING THE SPECIAL SCHEMES IN CHAPTER 6  
OF TITLE XII OF DIRECTIVE 2006/112/EC**

**⊠ SECTION 1 ⊠**

**⊠ PROVISIONS APPLICABLE UNTIL 31 DECEMBER 2014 ⊠**

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↓ 143/2008 Art. 1, pt 8

*Article ~~4028~~*

The following provisions shall apply concerning the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC. The definitions contained in Article 358 of that Directive shall also apply for the purpose of this Chapter.

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↓ 1798/2003

*Article ~~4129~~*

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↓ 143/2008 Art. 1, pt 9 (adapted)

1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted ⊠ by electronic means ⊠. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article ~~6044~~(2) of this Regulation.

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↓ 1798/2003

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 ~~6044~~(2).

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

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*Article ~~4230~~*

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↓ 143/2008 Art. 1, pt 10 (adapted)

The return with the details set out in Article 365 of Directive 2006/112/EC is to be submitted ☒ by electronic means ☒ . The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article ~~6044~~(2) of this Regulation.

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↓ 1798/2003

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 ~~6044~~(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.

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↓ 143/2008 Art. 1, pt 11 (adapted)

*~~Article 31~~*

~~The provisions in Article 22 of this Regulation shall apply also to information collected by the Member State of identification in accordance with Articles 360, 361, 364 and 365 of Directive 2006/112/EC.~~

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↓ 143/2008 Art. 2, pt 11 (adapted)

*~~Article 31~~*

~~The provisions in Article 22 of this Regulation shall apply also to information collected by the Member State of identification in accordance with Articles 360, 361, 364, 365, 369e, 369f and 369g of Directive 2006/112/EC.~~

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↓ 1798/2003 (adapted)

*Article ~~43~~<sup>32</sup>*

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<sup>5</sup>, 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<sup>2</sup> 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 ~~44~~<sup>33</sup>*

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 ~~43~~<sup>32</sup>.

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.

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↓ 143/2008 Art. 1, pt 12 (adapted)

*Article ~~34~~*

~~Articles 28 to 33 of this Regulation shall apply for the period provided for in Article 357 of Directive 2006/112/EC.~~

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↓ 143/2008 Art. 2, pt 8 (adapted)

⊗ SECTION 2 ⊗

⊗ PROVISIONS APPLICABLE FROM 1 JANUARY 2015 ⊗

*Article ~~45~~<sup>28</sup>*

The following provisions shall apply concerning the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.

*Article ~~46~~<sup>29</sup>*

1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted  $\boxtimes$  by electronic means  $\langle \boxtimes \rangle$ . The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article ~~44~~ 60(2) of this Regulation.

2. The Member State of identification shall transmit the information referred to in paragraph 1 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 taxable person not established within the Community. Similar details for the identification of the taxable person applying the special scheme under Article 369b of Directive 2006/112/EC shall be transmitted within 10 days from the end of the month during which the taxable person stated that his taxable activities under that scheme commenced. 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 ~~60~~ 44(2) of this Regulation.

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a taxable person not established in the Community or a taxable person not established in the Member State of consumption is excluded from the special scheme.

*Article 47*

The return with the details set out in Articles 365 and 369g of Directive 2006/112/EC is to be submitted  $\boxtimes$  by electronic means  $\langle \boxtimes \rangle$ . The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article ~~44~~ 60(2) of this Regulation.

The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State of consumption concerned at the latest 10 days after the end of the month in which the return was received. The information provided for in the second paragraph of Article 369g of Directive 2006/112/EC shall also be transmitted to the competent authority of the Member State of establishment concerned. 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~~ 60(2) of this Regulation.

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↓ 1798/2003

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 48

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.

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↓ 143/2008 Art. 2, pt 12

Concerning the payments to be transferred to the Member State of consumption in accordance with the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, the Member State of identification shall, of the amounts referred to in the first and second paragraphs, be entitled to retain:

- (a) from 1 January 2015 until 31 December 2016 — 30 %,
  - (b) from 1 January 2017 until 31 December 2018 — 15 %,
  - (c) from 1 January 2019 — 0 %.
- 

↓ 1798/2003

#### Article 49

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 48.

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.

CHAPTER ~~XI~~XI~~BIS~~

~~PROVISIONS CONCERNING THE EXCHANGE AND CONSERVATION OF INFORMATION IN THE CONTEXT OF THE PROCEDURE~~ ☒ ~~FOR THE REFUND OF VAT TO TAXABLE PERSONS NOT ESTABLISHED IN THE MEMBER STATE OF REFUND BUT ESTABLISHED IN ANOTHER MEMBER STATE~~ ☒ ~~PROVIDED FOR IN DIRECTIVE 2008/9/EC~~

Article ~~50~~50~~a~~

1. Where the competent authority of the Member State of establishment receives an application for refund of value added tax under Article 5 of Directive 2008/9/EC ~~of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State~~ and Article 18 of that Directive is not applicable, it shall, within 15 calendar days of its receipt and by electronic means, forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant as defined in Article 2(5) of Directive 2008/9/EC is a taxable person for the purposes of ~~VAT value added tax~~ and that the identification or registration number given by this person is valid for the refund period.

2. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States of any information required by them under Article 9(2) of Directive 2008/9/EC. 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 ~~60~~60~~44~~(2) of this Regulation.

3. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States if they want to make use of the option to require the applicant to provide the description of business activity by harmonised codes as referred to in Article 11 of Directive 2008/9/EC.

The harmonised codes referred to in the first subparagraph shall be determined in accordance with the procedure provided for in Article ~~60~~60~~44~~(2) of this Regulation on the basis of the NACE classification established by Council Regulation (EEC) No ~~3037/90~~<sup>19</sup> 1893/2006<sup>20</sup>.

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<sup>19</sup> OJ L 293, 24.10.1990, p. 1.  
<sup>20</sup> OJ L 393, 30.12.2006, p. 1.

↓ 1798/2003

⇒ new

## CHAPTER ~~XIII~~<sup>IV</sup>

### RELATIONS WITH THE COMMISSION

#### Article ~~51~~<sup>35</sup>

1. The Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working ⇒ . In particular, the Member States shall conduct audits of the operation of those arrangements ⇐ . 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.

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↓ new

3. Member States shall notify the Commission of any bilateral or multilateral information exchange agreement which they conclude with each other which has requirements more stringent than this Regulation.

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↓ 1798/2003

~~43~~. A list of statistical data needed for evaluation of this Regulation shall be determined in accordance with the procedure referred to in Article ~~60~~<sup>44</sup>(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.

~~54~~. 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.

~~65~~. The Commission shall forward the information referred to in paragraphs ~~2, 3 and 4~~ to 5 to the other Member States concerned.

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↓ new

7. Where necessary, in addition to what is required elsewhere in this Regulation, the Commission shall send to the competent authorities of each Member State any information that might enable them to combat fraud in the field of VAT as soon as it obtains such information.

8. The Member States and the Commission may exchange the results of any strategic analysis conducted pursuant to this Regulation.

9. The Commission may provide expert opinions, technical or logistical assistance, information campaigns or any other operational support for the Member States with a view to attaining the objectives of this Regulation.

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↓ 1798/2003  
⇒ new

## CHAPTER ~~XIV~~<sup>VIII</sup>

### RELATIONS WITH THIRD COUNTRIES

#### *Article ~~52~~<sup>36</sup>*

1. 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~~ ⇒ this is not ruled out ⇐ 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 ~~XV~~<sup>XIX</sup>

### CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

#### *Article ~~53~~<sup>37</sup>*

1. 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 ~~60~~<sup>44</sup>(2).

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↓ new

2. The level of service of the electronic exchange of information shall be decided in accordance with the procedure referred to in Article ~~60~~<sup>44</sup>(2).

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↓ 1798/2003 (adapted)

*Article ~~5438~~*

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 ☒ only ☒ in special cases when the requested authority gives a reason for asking for such a translation.

*Article ~~5539~~*

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↓ 143/2008 Art. 1, pt 14

~~For the period provided for in Article 357 of Directive 2006/112/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~~41 and ~~30~~42 of this Regulation 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.

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↓ 143/2008 Art. 2, pt 14 (adapted)

~~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.~~

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↓ 1798/2003 (adapted)

⇒ new

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 ~~5640~~*

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  $\Rightarrow$  on a particular case  $\Leftarrow$  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  $\boxtimes$  requested  $\boxtimes$  Member State may refuse to provide information where the  $\boxtimes$  requesting  $\boxtimes$  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.

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$\Downarrow$  new

5. Paragraphs 2 to 4 should on no account be interpreted as authorising the requested authority of a Member State to refuse to supply information on a taxable person identified for VAT purposes in the Member State of the requesting authority on the sole grounds that this information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a legal person.

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$\Downarrow$  1798/2003 (adapted)  
 $\Rightarrow$  new

~~56~~. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance.

~~57~~. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure referred to in Article ~~6044~~(2).

#### *Article ~~5744~~*

1. Information communicated  $\Rightarrow$  or collected  $\Leftarrow$  in any form pursuant to this Regulation  $\Rightarrow$ , including any information to which an official has had access in the circumstances set out in Chapters VII, VIII and X, and in the cases referred to in paragraph 2 of this Article,  $\Leftarrow$  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. They shall be used only in the circumstances provided for in this Regulation  $\Leftarrow$ .

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~~ 2008/55/EC ~~of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures~~<sup>21</sup>.

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. ⇒ All storage or exchange of information referred to in this Regulation is subject to the provisions implementing Directive 95/46/EC. However, ⇐ 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.

#### *Article ~~5842~~*

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 ~~5943~~*

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

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<sup>21</sup> OJ L 150, 10.6.2008, p. 28.

- (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 ~~XVIX~~**

### **~~GENERAL AND FINAL PROVISIONS~~**

#### *Article ~~6044~~*

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. 3. The Committee shall adopt its rules of procedure.~~

#### *Article ~~6145~~*

1. ~~⇒~~ Within ~~⇐~~ ~~Every~~ three years from the date of entry into force of this Regulation, ~~⇒~~ and thereafter every five years, ~~⇐~~ 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 ~~6246~~*

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 ~~⇒~~, in particular under Article 11, ~~⇐~~ other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the other Member States.

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↓ 1798/2003 (adapted)

*Article ~~6347~~*

Regulation (EEC) ~~No 218/92~~ No 1798/2003 is repealed.

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↓ 1798/2003 (adapted)  
⇒ new

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

*Article ~~6448~~*

This Regulation shall enter into force on ~~1 January 2004~~ the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 40 to 44 shall apply until 31 December 2014. Articles 45 to 49 shall apply from 1 January 2015.

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

Done at Brussels,

*For the Council  
The President*

**ANNEX I****List of supplies of goods and services to which Article 7(3) applies:**

1. distance selling (Articles 33 and 34 of Directive 2006/112/EC);
2. supply with installation or assembly (Article 36 of Directive 2006/112/EC)
3. services connected with immovable property (Article 45 of Directive 2006/112/EC);
4. cultural, artistic, sporting, scientific, educational, entertainment or similar activities and services ancillary to those activities (Article 52 of Directive 2006/112/EC);
5. services ancillary to transport (Article 52 of Directive 2006/112/EC)
6. valuation of or work on movable tangible property (Article 52 of Directive 2006/112/EC);
7. telecommunication services, radio and television broadcasting services and electronically supplied services supplied after 1 January 2015.



## **ANNEX II**

### **Repealed Regulation and successive amendments**

Council Regulation (EC) No 1798/2003	OJ L 264, 15.12.2003, p. 1
Council Regulation (EC) No 885/2004	OJ L 168, 1.5.2004, p. 1
Council Regulation (EC) No 1791/2006	OJ L 363, 20.12.2006, p. 1
Council Regulation (EC) No 143/2008	OJ L 393, 20.2.2008, p. 1.
Council Regulation (EC) No 37/2009	OJ L 393, 20.1.2009, p. 1.

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**ANNEX III**

**CORRELATION TABLE**

Regulation (EC) No 1798/2003	This Regulation
First and second subparagraphs of Article 1(1)	First and second subparagraphs of Article 1(1)
Third subparagraph of Article 1(1)	-
Fourth subparagraph of Article 1(1)	Article 1(4)
Article 1(2)	Article 1(3)
Article 2(1)(1)	Article 3
Article 2(1)(2)	Article 2(1)(1)
Article 2(1)(3)	Article 2(1)(2)
Article 2(1)(4)	Article 2(1)(3)
Article 2(1)(5)	Article 2(1)(4)
Article 2(1)(6)	Article 2(1)(5)
Article 2(1)(7)	Article 2(1)(6)
Article 2(1)(8)	Article 2(1)(7)
Article 2(1)(9)	Article 2(1)(8)
Article 2(1)(10)	Article 2(1)(9)
Article 2(1)(11)	Article 2(1)(10)
Article 2(1)(12)	Article 2(1)(11)
Article 2(1)(13)	Article 2(1)(12)
Article 2(1)(14)	-
Article 2(1)(15)	-
Article 2(1)(16)	Article 2(1)(13)
Article 2(1)(17)	-
Article 2(1)(18)	Article 2(1)(15)
Article 2(1)(19)	Article 2(1)(16)

Article 3(1)	Article 3
Article 3(2)	Article 4(1)
Article 3(3)	Article 4(2)
Article 3(4)	Article 4(3)
Article 3(5)	Article 4(4)
Article 3(6)	Article 5
Article 3(7)	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
Article 5(3)	First subparagraph of Article 7(3)
Article 5(4)	Article 7(4)
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 13
Article 11	Article 29
Article 12	Article 30
Article 13(1)	Article 31(1)
Article 13(2)	Article 31(2)
Article 13(3)	Article 31(3)
Article 14	Article 26
Article 15	Article 27
Article 16	Article 28
Article 17	Article 14
Article 18	Article 16
Article 19	-

Article 20	-
Article 21	-
First subparagraph of Article 22(1)	Article 18(1)(a)
Second subparagraph of Article 22(1)	Article 19
Article 22(2)	Article 20
First paragraph 1 of Article 23	First paragraph of Article 22, points (1) and (2).
Second paragraph of Article 23	Second paragraph of Article 22
First paragraph of Article 24, point (1).	First paragraph of Article 22, point (3).
First paragraph of Article 24, point (1).	First paragraph of Article 22, point (4).
Second paragraph of Article 24	Second paragraph of Article 22
Article 25(1)	Article 21(2)
Article 25(2)	Article 21(3)
Article 25(3)	-
Article 26	Article 25
Article 27(1)	Article 18(1)(b)
Article 27(2)	Article 18(1)(b) and first paragraph of Article 22
Article 27(3)	Article 18(1)(b) and first paragraph of Article 22
Article 27(4)	First subparagraph of Article 32(1)
Article 28	Up to 31 December 2014: Article 40 From 1 January 2015: Article 45
Article 29	Up to 31 December 2014: Article 41 From 1 January 2015: Article 46
Article 30	Up to 31 December 2014: Article 42 From 1 January 2015: Article 47
Article 31	Article 18(1)(e) and (2)

Article 32	Up to 31 December 2014: Article 43
	From 1 January 2015: Article 48
Article 33	Up to 31 December 2014: Article 44
	From 1 January 2015: Article 49
Article 34	-
Article 34a	Article 50
Article 35(1)	Article 51(1)
Article 35(2)	Article 51(2)
Article 35(3)	Article 51(4)
Article 35(4)	Article 51(5)
Article 35(5)	Article 51(6)
Article 36	Article 52
Article 37	Article 53(1)
Article 38	Article 54
Article 39	Article 55
Article 40(1)	Article 56(1)
Article 40(2)	Article 56(2)
Article 40(3)	Article 56(3)
Article 40(4)	Article 56(4)
Article 40(5)	Article 56(6)
Article 40(6)	Article 56(7)
Article 41	Article 57
Article 42	Article 58
Article 43	Article 59
Article 44	Article 60
Article 45	Article 61
Article 46	Article 62

Article 47

Article 48

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Article 63

Article 64

Annex I

Annex II

Annex III