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REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

APPLICATION OF COUNCIL REGULATION (EEC) No 218/92 OF 27 JANUARY 1992 ON ADMINISTRATIVE COOPERATION IN THE FIELD OF INDIRECT TAXATION (VAT)

Summary

The transitional value added tax (VAT) regime applicable from 1 January 1993 has led to changes in the arrangements for tax controls relating to intra-Community transactions. The checking of these transactions, which was formerly based mainly on customs documentation, is necessary to guarantee the revenue of Member States and to ensure equity of treatment for all economic operators, since fraud is often a factor in creating distortions of competition.

Council Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT) therefore provides for the establishment of a common system to enable the competent authorities in the Member States to exchange information on intra-Community transactions. The purpose of the system is to enable certain data for VAT control to be stored and transmitted electronically.

In 1991, the Commission launched a fact-finding study with a view to the development of the VAT information exchange system (VIES). The Standing Committee on Administrative Cooperation (SCAC) set up under the Regulation, assisted by a technical sub-committee, decided, after completion of the feasibility study, that the basic architecture of the system should be organized around national gateways.

This solution, which was unanimously approved, meets the Member States' concern to keep close control over the network. Data is stored where it is generated, and may be accessed by means of uniform methods. This system has major advantages in terms of ease of data-base management, low implementation costs, and data protection. The technical options followed have enabled the various VIES functions laid down in the Regulation to operate satisfactorily to date.

The authorities and economic operators may thus obtain confirmation of the validity of a given person's VAT identification number. It was agreed that the maximum response time should be 10 seconds; the network average in 1993 was 4.53 seconds. By 31 December 1993, there had been about two million requests for verification, with immediate response. The authorities may also obtain the name and address of the person to whom a given VAT number was issued.

The VIES also enables the Member States to exchange or consult information based on the recapitulative statements of intra-Community suppliers identified on their territory. Net total values of intra-Community supplies to all VAT-registered persons is pre-programmed to be communicated quarterly, and no special instructions are required. As agreed, the first such communication took place on 1 July 1993. Arrangements had been based on the assumption that the operation would take 24 hours, but in fact the largest national file was transferred in just over three hours. The other technical options and possibilities introduced, such as transfers on demand, direct access to information or error messages, are fully operational. Follow-up requests for further information have been sent via the VIES network by six Member States.

This technical success owes much to efficient cooperation between the technical teams of the Member States, the Commission and the firms responsible for the project. It is also attributable to the quality of advance preparation in the Member States for setting up data bases of VAT-registered operators, and the turnover information supplied.

The initial assessment of the new arrangements for administrative cooperation is that the technical infrastructure chosen is suitable for the achievement of the objectives laid down in Regulation (EEC) No 218/92. In terms of its impact on tax controls, the operation of the transitional regime itself is too recent, and the number of checks carried out too small, for any conclusions to be drawn. Nevertheless, it would seem that the Member States, while preserving their own competence in the control of taxable operations, are aware of the usefulness of receiving and processing data from their partners for tax control purposes.

Systematic comparisons have been made between the turnover data transmitted by VIES and the VAT returns from taxable persons. Moreover, the use of the arrangements in the mutual assistance Directive (77/799/EEC) and the mutual assistance with recovery Directive (76/308/EEC) should develop, in particular with a view to the control of the special regimes.

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Report on the Operation of Regulation 218/92

INTRODUCTION

Council Regulation (EEC) No 218/92 deals with administrative cooperation in the field of indirect taxation (VAT). It supplements the arrangements of Directive 77/799/EEC, which also deals with mutual assistance between the authorities in the Member States in the field of direct and indirect taxation. Alongside the transitional VAT regime introduced on 1 January 1993, the Regulation provides for a common system for the exchange of information on intra-Community transactions between the competent authorities of the Member States. Article 14 requires the Commission to report every two years on "the conditions of the application of this Regulation on the basis, in particular, of the continuous monitoring procedures provided for in Article 11." This report accordingly examines and assesses the arrangements that have been made to set up a common system for the exchange of information on intra-Community transactions between the competent authorities of the Member States. It also reviews for the first time the use for control purposes of the data transmitted. Before considering the procedures introduced and the measures taken for the application of the Regulation, which has proved highly satisfactory, it would be helpful to recall briefly the basic principles of operation of the transitional VAT regime for taxable persons and their consequences in terms of control for the administrative authorities.

PRELIMINARY CHAPTER: THE TRANSITIONAL VAT REGIME AND ITS IMPLICATIONS FOR CONTROL

In December 1991 and January 1992 two important legal instruments were adopted by the Council (Ministers of Economy and Finance), to enable the transitional VAT regime to come into operation from 1 January 1993. They are Council Directive 91/680/EEC, amending, with a view to the abolition of the Community's internal borders, the sixth Directive of 1977 setting out the principles of Community law relating to VAT, and Council Regulation No 218/92 on administrative cooperation in the field of indirect taxation (VAT). Furthermore, Directive 92/111/EEC supplemented the transitional VAT regime by providing specific provisions for certain triangular operations involving three taxable persons identified in three different Member States.

Very briefly, transactions involving taxable persons are carried out as follows. The new concepts of intra-Community supply and intra-Community acquisition have replaced the concepts of export and import for trade within the Community. Intra-Community supplies are exempt providing the seller can prove:

- that the goods have left the Member State of departure,
- that the customer has a VAT identification number in another Member State.

Intra-Community acquisitions are taxable in the Member State of destination, and the tax is declared by the purchaser in the periodic VAT return; such acquisitions generally give entitlement to deduction, and consequently do not usually result in actual payment of the tax.

These arrangements have consequences for control and are accompanied by certain obligations and procedures for economic operators and the authorities. The checking of VAT on intra-Community trade, previously based mainly on customs documents, is necessary to ensure fair treatment for operators. With the discontinuing of compulsory procedures for declaring the dispatching and receipt of imports and exports, operators are only subject to general procedures relating to VAT. Operators engaging in intra-Community trade must:

- be identified in the Member State or States where they carry out taxable intra-Community transactions;
- draw up invoices for intra-Community supplies of goods, indicating their own VAT number and that of the customer;
- fill in the two boxes in the periodic VAT return relating to the value of intra-Community supplies and acquisitions;
- return a recapitulative statement giving the their intra-Community customers' VAT identification numbers, and the net value of supplies of goods to each one, over the period covered by the statement (usually one quarter).

It is planned to simplify these obligations for certain traders, in particular small businesses.

For the authorities, the control of VAT on intra-Community trade is facilitated by the exchange and comparison of information obtained from the recapitulative statements and returns mentioned above. Although the Member States retain full tax sovereignty over the verification of conditions for taxation or exemption for intra-Community transactions, it nevertheless proved necessary to provide for an appropriate electronic system for the exchange of information concerning value added tax.

Regulation (EEC) No 218/92 thus defines procedures for such exchange, and for requests for further information. It also stipulates that the authorities and operators should be able to obtain confirmation of the validity of a given person's VAT identification number.

1. THE NEW ADMINISTRATIVE STRUCTURES

1.1 At Community level: the Standing Committee on administrative cooperation (SCAC) and its subcommittees

Article 10(1) of Regulation (EEC) No 218/92 reads: "The Commission shall be assisted by a Standing Committee on Administrative Cooperation in the field of Indirect Taxation, hereinafter referred to as 'the Committee'. It shall consist of representatives of the Member States and have a representative of the Commission as chairman."

The introduction of the VIES was a priority, and its practical and technical aspects were initially more important than the Committee's duties relating to administrative cooperation and mutual assistance in the field of indirect taxation, which were more fully defined at a later stage. In accordance with the Regulation, the initial task of the Standing Committee on Administrative Cooperation (abbreviated to SCAC) was to take all the necessary decisions on the legal, organisational, financial and commercial aspects of the VIES project. It was responsible for drawing up the specifications of the VIES and considering all the changes, especially the operational changes, that might be required.

When the SCAC was instituted, it was agreed that it would be assisted by a technical subcommittee to be set up under its authority to deal with the technical details of the introduction of the VIES. The terms of reference of this subcommittee were that it should report to the SCAC on all matters where the solution to technical problems involved time-lags or special difficulties that could compromise the outlook for general introduction of the VIES. Another very important aspect of the subcommittee's functions is to identify and solve potential problems.

The SCAC was also designated the appropriate forum for dealing with matters of administrative cooperation, including assessment and monitoring of the operation of the arrangements provided for in Article 11 of the Regulation. Its competence in matters of mutual assistance (Directive 77/799/EEC) has also been recognized and confirmed by a decision of the Deputy Directors-General for indirect taxation at their first meeting on 30 June and 1 July 1992. It can therefore meet as the Committee referred to in Article 9 of that Directive when questions of mutual assistance and anti-fraud policy involving more than one Member State must be considered, both for VAT and for excise duties. The extension of the terms of reference of the SCAC avoids duplication in the work of the bodies provided for in Regulation (EEC) No. 218/92 and Directive 77/799/EEC. It also contributes to maintaining coherence and complementarity between the different procedures for exchange of information and administrative cooperation provided for by the Directive and the Regulation.

The close link between VAT control and VAT anti-fraud activity concerning more than one Member State has led the Member States and the Commission to recognise the need for closer cooperation at

Community level on the anti-fraud front in particular. To this end, the Committee has drawn up a working programme for mutual assistance and administrative cooperation so as to determine the specific needs of control and investigation departments. In particular, this should make it possible to define the most appropriate remote telematic communications network. The SCAC is assisted in this work by an anti-fraud subcommittee.

1.2 At national level: Central Liaison Offices

Regulation (EEC) No 218/92 also provides that each Member State is to designate a central office to take primary responsibility for contacts with the other Member States in the field of administrative cooperation.

Central Liaison Offices (or CLOs) were set up by 1993 in most of the Member States. Their role and precise duties were defined during discussions within the SCAC. Their main responsibility and activity is to manage intra-Community administrative cooperation, and they should constitute the normal channel of communication between the Member States. In practical terms, they oversee the flow of exchanged information, compliance with response times and all matters the SCAC would find helpful in carrying out its duties. They often also exercise quality control over the requests they send to the other Member States, and of the responses they give to the requests they receive.

To ensure optimal data exchange, common opening hours or means of communication such as telecopiers or telephone messages have been adopted wherever possible. These arrangements have all been applied, as has the procedure for solving problems provided for in Article 7(2) of the Regulation.

2. THE VIES AND DATA EXCHANGE

One of the basic aims of the Regulation on administrative cooperation was the introduction by the Member States and the Commission of an efficient system for electronic storage and transmission of data concerning intra-Community transactions for the purposes of VAT control. The Regulation also lays down specific arrangements for the exchange of information on value added tax relating to intra-Community transactions. The competent authority in each Member State also has access to an electronic data base containing a register of the names of those who have been issued with a VAT identification number in that Member State. The authority must see that those involved in intra-Community supply of goods or services are authorized to obtain confirmation of the validity of a given trader's VAT identification number.

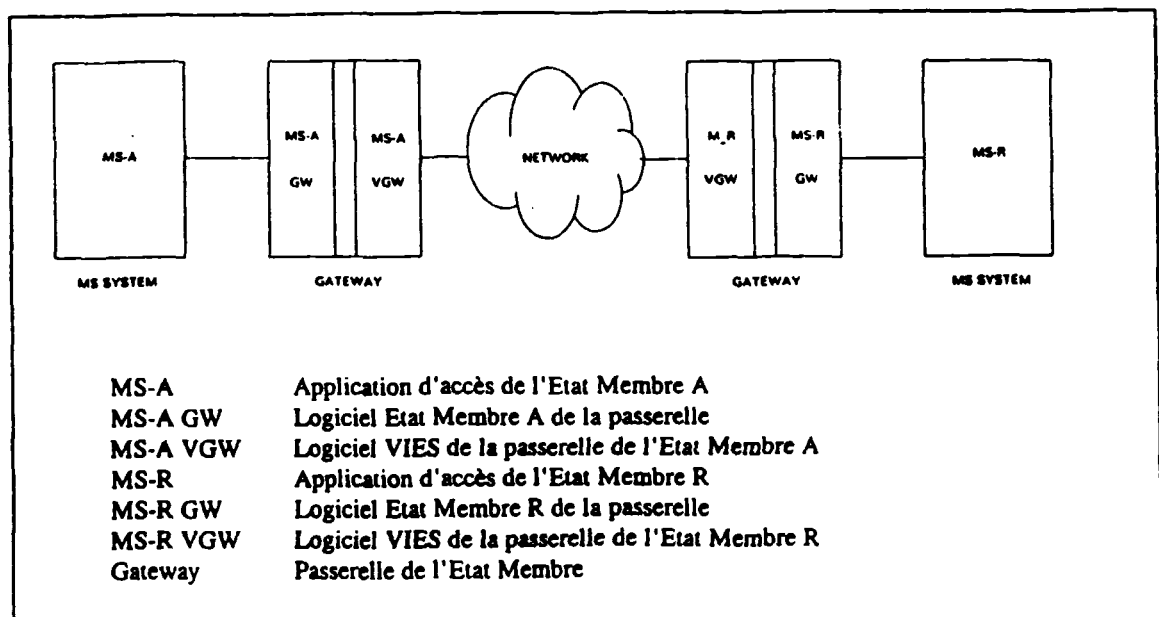
The network was to be, at the least, capable of meeting these minimum requirements. Despite the very short time available, and the complexity of the project, the problems were all solved and the VIES was fully operational by the date set in the legislation.

2.1 Technical aspects of design and operation

It quickly became apparent that the difficulties to be overcome for the establishment of such a network would not just be technical. Information technology within the tax administrations applied to the job of ensuring compliance with tax provisions varies considerably from one Member State to another, both in terms of use and in terms of development. The linguistic problems caused by the use of nine different languages in the twelve member countries had to be solved, and allowance had to be made for the fact that the data exchanged involve twelve different national currencies.

In response to the conclusions reached by the Council on 3 December 1990, the Commission launched a fact-finding study early in 1991 as a first step towards a system for the computerized exchange of information on VAT. Meanwhile arrangements were made for a complete feasibility study of the proposed system. The report produced after the fact-finding study identified the creation of data bases and a telecommunications network to link them together as essential elements of the project. It also listed the numerous questions relating to the needs of users that would have to be answered, independently of the technical solutions that would eventually emerge. These questions included the identification of intra-Community suppliers, the rules for composing and forming VAT numbers, the processing of information from late or amended recapitulative statements, and the period during which data would be kept.

After the feasibility study, the solution of national gateways, as illustrated below, was adopted for the basic architecture of the system.



This decision, adopted unanimously, took account of the Member States' concern to keep the network under their control and avoided problems of confidentiality, which could have arisen with a more centralized system. The architectural principle adopted for the VIES is that of the *distributed information system*. This means that data is stored where it is produced (in each Member State) and may be obtained by uniform methods of accessing, independently of the points of interrogation and response. This architecture makes it possible:

- (i) to avoid duplication of data, which makes it much easier to manage the data bases;
- (ii) to use the existing computer structures of the Member States, which leads to major savings in the cost of setting up the project and enables the intra-Community VAT data system to be integrated with the national systems;
- (iii) to ensure that officials in the Member States accept the new computerized system, by enabling them to access information in the same way as they access national data;
- (iv) to keep down training and maintenance costs in the Member States;
- (v) to protect data by avoiding their duplication at a central point or in all the Member States;
- (vi) to enable a clear distinction to be drawn between responsibility for national developments and that for developments undertaken centrally by the Commission, in accordance with the principle of subsidiarity.

Once the main technical questions were solved, the hardware was installed and the network was set up during the summer of 1992. The project was operational on the date planned, 1 January 1993, to deal with questions about VAT identification information. On 1 July 1993, in line with the timetable, the first exchanges of turnover data took place.

2.2 Verification of VAT identification numbers

Article 6 of Regulation (EEC) No 218/92 lays down obligations for the Member States both towards one another and towards traders with VAT numbers. Each Member State is to maintain an electronic data base containing the VAT identification numbers of its traders. It must also be able to give an applicant Member State, without delay but on specific request, the name and address of the person to whom a given number was issued, the date of issue and, where appropriate, the date of cessation of validity of the VAT number. The Member States must also see that persons involved in the intra-Community supply of goods or services are able to obtain confirmation of the VAT number of any specified person (the prospective customer).

Thus the first task of the national administrations was to issue individual identification numbers to the taxable persons concerned, pursuant to Article 22(1)(c) and (e) of the sixth VAT Directive (77/388/EEC). With the exception of some isolated problems, which have been solved, this major undertaking was completed on schedule.

It was agreed that the network response time for administrative departments' requests concerning VAT numbers would be no more than ten seconds. If the request relates to a valid number, the applicant authority receives all the relevant data on screen: name, address, date of issue and, where appropriate, date of cessation of validity. The network is available to official departments seven days a week round the clock in eleven Member States. One Member State has restricted access over the weekend, when applications are in any case infrequent, because of budget constraints.

As the Member States wished when the Regulation on administrative cooperation was adopted, the SCAC has given priority to the effective application of arrangements to enable traders to obtain confirmation of the validity of a VAT number. Traders access the system for VAT number verification through the national departments, who reply merely yes or no to the question whether a specific number is valid, and/or relates to a specific name and/or address at a given date. For reasons of data protection and security, the national authorities will not supply the name and address corresponding to a valid number. The methods adopted in the Member States to deal with applications from traders differ considerably. France, Italy and the Netherlands have on-line systems to make it easier for traders to access the information, while others had set up units to communicate with traders by telephone, post or fax.

2.3 Turnover data capture, storage and transmission

In accordance with Article 4 of Regulation (EEC) No 218/92, each Member State must maintain an electronic data base in which to store and process information collected from the recapitulative statements of the intra-Community suppliers on its territory. More specifically, each Member State must be able to obtain from any other Member State, automatically and immediately, access to information in the form of a quarterly list of VAT identification numbers for all the intra-Community purchasers in the Member State, and the net total value of turnover associated with each VAT number. A breakdown of the total net figure into overall amounts declared by each supplier in the Member State where the data were collected is then available on request.

The first job of national departments in applying these arrangements was to draw up forms for collecting data for the quarterly recapitulative statement required under Article 22(6)(b) of the sixth VAT Directive. A number of Member States (Germany, Denmark, Spain, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom) have expressed a desire to apply the provision in the sixth Directive that authorizes certain taxable persons to make recapitulative statements at half-yearly or yearly intervals, instead of quarterly. The relevant decisions were adopted by the Council on 21 December 1992 and 22 November 1993. Four Member States, France, Italy, Portugal and the United Kingdom, have also made provision for monthly statements, as they are allowed to do under the Directive. In addition, France and Italy have adopted a single form for the recapitulative statement and for the declarations required pursuant to Council Regulation (EEC) No 3330/91 of 7 November 1991 (Intrastat).

The Member States and the Commission then approved the technical arrangements for data transmission. The communication of total net values for intra-Community supplies to all operators identified for purposes of VAT (Article 4(2)) is pre-programmed and requires no specific instructions; it can also be effected Member State by Member State. It was decided that the communication of the same figures broken down by supplier (Article 4(3)) would be carried out only on special application for a specific person or group of persons, but not generally. This decision, which the SCAC confirmed, corresponds to the provision in the Regulation for such communication by the authority of a Member State "wherever it considers it necessary for the control of intra-Community acquisitions of goods." The agreed response time for mass data transmission is one day, and for individual applications between thirty seconds and five minutes. Information will remain available for at least five years.

Processing methods were also adopted. For example, data can be corrected after transmission. The correction may be from the administration (auditing, factual error) or from the taxpayer (spontaneous declaration). Two flags have been provided to indicate that the data transmitted relates to process work, or derives from recapitulative statements of a periodicity other than quarterly. Finally, data relating to operations involving three taxpayers identified in three different Member States availing of the provisions of Directive 92/111/EEC are to be found in a separate field, and can thus be distinguished from those corresponding to ordinary transactions.

2.4 Other functions of the VIES

Under Article 5, a Member State may, in specific cases, request further information at any time if the information supplied under Article 4 (turnover figures) is insufficient. The information must be provided as quickly as possible, and at the latest three months after receipt of the application. To help with these requests for further information, a standard form keeping linguistic problems to a minimum has been

devised. It can also be used for certain requests for mutual assistance. The Member States would like to introduce a computerized system for these requests. The software supplied is being used at present only by six Member States (Belgium, Greece, Spain, Ireland, Portugal and the United Kingdom), while the other six are still sending their requests by fax.

The standard forms are transmitted through the message handling system being developed on the VIES network. To date, this application is limited to this type of exchange, but it could be used for other purposes in the future. However, the delegations have agreed, within the SCAC, that it would be preferable to await the results of the initial studies on the unification of computerized networks developed by DG XXI and those of the Commission studies on interpersonal message handling services before deciding on further action.

3. INITIAL ASSESSMENT OF ADMINISTRATIVE COOPERATION IN PRACTICE

A comprehensive assessment of administrative cooperation as it works in practice would certainly be premature and difficult, especially any assessment of its impact on the control of VAT on intra-Community transactions, but the SCAC has, as part of its work, drawn up instruments to measure the various exchanges of information, and the VIES itself spontaneously supplies a certain amount of data. The fact that cooperation networks are actually functioning means that an initial positive assessment may be made of the measures taken to apply Regulation (EEC) No 218/92.

3.1 Deadlines and technical control

As already pointed out, the main time constraints, tight though they were, have been met, and no technical problems have prevented traders from checking the identification numbers of their customers, or administrative departments from monitoring intra-Community transactions.

This first function was available from 1 January 1993; at the end of that year, the number of interrogations (in synchronous mode) was 1 932 849. The average response time for 1993 was 4.53 seconds, less than the target of 10 seconds (see Annex). The number of requests varied widely, in both absolute and relative terms, from one Member State to another.

The problems arising for the management of this function of the VIES were due to administrative organization in the Member States, and were all solved. One Member State had to deal at the beginning of the year with a flood of applications for VAT numbers from traders who could not receive exempt supplies from other Member States until their number had been issued. It was unanimously agreed by the SCAC that exemption could be granted provisionally pending the effective registration of the taxable persons concerned. Another Member State issued a number of unjustified error messages because of its procedure for identifying

traders. As intra-Community traders were required to declare themselves as such, the VAT numbers of those who had not done so were not included in the specific VIES data base even when they were in the national register. The departments concerned in that Member State have undertaken to check up on all error messages, and are engaged in updating the data base of intra-Community traders.

For turnover figures, eleven Member States were ready to start exchanging data as planned on 1 July 1993, and the twelfth joined the network a few days later. All the technical options work satisfactorily: mass exchange of data, automatically or on request, replies to individual questions, corrections, and error messages. The quarterly transfer of the largest data file takes just over three hours, well within the originally agreed time-limit of 24 hours. A system of computerized management for requests for further information (Article 5) is under study to facilitate organization and monitoring, especially of response times, by national departments. It is also planned to set up a second "gateway" in each Member State in the near future so as to be ready for any accidents that might occur and so as to be able to carry out testing and development without risking data which is stored or being exchanged.

3.2 A statistical assessment

As well as the statistics supplied by the VIES technical management centre, the Commission receives monthly figures from the Member States to enable turnover data to be assessed; the Commission collates these figures and sends them back every quarter to all the administrations. The purpose of the information transmitted is to assess whether available data is complete and accurate. The tables, which are updated regularly, include the following information:

- the expected number of traders who must return a recapitulative statement during the quarter;
- the actual number of traders who have returned a recapitulative statement;
- the number of recapitulative statements processed;
- the number of incorrect lines found;
- the number of traders who have declared intra-Community supplies in the appropriate box on the periodic VAT return (Article 22(4)(c) of the sixth VAT Directive).

It is possible, by comparing all these figures and estimates, to calculate, for example, the rate of spontaneous return of recapitulative statements by traders. It is also important for the administrative departments to know how correct the statements returned are; it was agreed that statements with only a few erroneous lines would not be refused outright.

The rate of spontaneous return has already reached an average of 85%, and is steadily rising. The number of errors is tending to decline, as the administrative departments have been working hard at keeping taxpayers informed so as to avoid the most frequent mistakes, such as repeating or omitting country codes in identification numbers. Although the data base cannot be regarded as complete for the first three quarters of 1993, the Member States have unanimously recognized that this situation, understandable in the early stages, was not a handicap for their control programmes. It nevertheless seems essential, for the sake of both official credibility and tax yield, for turnover figures transmitted in future to be as accurate as possible. The Commission will, of course, continue to supervise the development of these parameters of data base quality, to help wherever it can and to encourage Member States to improve their performance. Nevertheless, measures such as reminder letters or penalties for traders who fail to comply with the rules are a matter for the national administrative departments.

Recourse to the VIES functions that enable information to be obtained concerning a specific customer (turnover, whether overall or broken down by supplier) varies considerably from one Member State to another. The number of requests in 1993, in absolute terms, ranges from as low as 69 up to 18 806. The main reason for this wide disparity lies in tax control methods and approaches, which differ from one administration to another; in the Commission's view, in present circumstances, it is not a sign of the quality, or lack of it, of the verifications.

Lastly, a form has been drawn up to monitor requests received and sent under Article 5 of Regulation (EEC) No 218/92. It includes indications of the reasons, and origins by Member State, of rejections of VAT numbers transmitted and of the number of additional controls carried out following the transmission of information by the VIES. The Commission's proposal for assessing the amount of back tax collected by correlation with the transmissions of data has been rejected by the Member States. The form will be used from 1994, and some data relating to 1993 has already been communicated to the Commission by Belgium, Greece, France and Portugal.

3.3 Effective cooperation networks

As well as providing a satisfactory technical infrastructure, the application of Regulation (EEC) No 218/92 has enabled national administrations to cooperate in order to improve control of indirect taxes, and in particular VAT on intra-Community transactions. The directory of Central Liaison Offices is regularly updated and sent to the relevant departments, and an effort has been made to appoint officials who know foreign languages to the posts concerned. Bilateral contacts are encouraged by gatherings organized at Community level, such as committee meetings, Matthaeus Tax Seminars, or seminars for the heads of CLOs. Commission officials have undertaken a number of missions to monitor the technical aspects of setting up the system and to assess the needs and requirements of the Member States for mutual assistance and fraud control. The Commission

has drawn up two papers (XXI/1013/93 and XXI/602/93), one for administrative departments and information networks, and the other more specifically for traders, which summarize the main points of the practical arrangements for VAT in the Member States. The main purpose of the information circulated was to bring to the attention of administrative departments and traders in other Member States the formalities for meeting VAT requirements (registration, tax representative, invoices, returns etc.). Wide dissemination of this information was helpful in replying to most of the questions from traders wishing to do business in a particular Member State.

The pragmatic mode of operation of the SCAC was also helpful. In view of the magnitude of the task, the SCAC concentrated on the operational side of the system and reached decisions approving solutions to problems by consensus. Some of its conclusions come under the procedure laid down in Article 10 of Regulation (EEC) No 218/92, and will be codified during 1994.

4. THE OUTLOOK FOR ADMINISTRATIVE COOPERATION AND MUTUAL ASSISTANCE

The common information exchange system for intra-Community transactions was introduced when tax controls at internal borders were discontinued, with a view to avoiding loss of tax revenue. The transitional VAT regime came into operation too recently for any accurate assessment of its impact on public budgets, and the data exchanged over only three quarters constitutes too small a sample. However, some initial remarks can be made on the use of data for control purposes by national administrations. It would also seem that Member States are fully aware of the need for greater cooperation; there is a general desire for special measures in fraud control and assistance with recovery.

4.1 The use of data for purposes of control

The VIES includes automatic verification at several stages to check the validity of identification numbers given in traders' recapitulative statements. Only information associated with VAT numbers corresponding to agreed rules of construction, and satisfying the checking procedures can be transmitted (electronic check). At this stage, if the case arises, the Member State of the supplier is, in practice, obliged to make enquiries in order to find out from the supplier the source of the anomaly in the identification number of the alleged customer.

Data transmitted is then systematically compared with the national register of identification numbers of VAT-liable persons involved in intra-Community trading. The Member State that has received information including errors relating to identification sends warning messages to the sender Member State. These messages explain why the number was refused:

- (i) the number complies with the rules for constructing VAT numbers, but it has not been allocated;
- (ii) the number was not allocated in the period concerned; or
- (iii) the number ceased to be valid in the course of the period concerned.

Most of the Member States say that they systematically examine these error messages, which are usually sent to local departments. Their responses vary: they may request information from firms, assess the tax risk incurred, usually on the basis of the size of turnover, reconsider the tax exemption granted, or carry out on-the-spot checks.

The number of warnings generated in 1993 was small, however, in relation to the amount of information exchanged; the potential for exploitation of such warnings for purposes of control is thus limited. It may reasonably be concluded that this shows that suppliers checked their customers' identification numbers whenever they thought it necessary.

For the information transmitted in accordance with Article 4(2), (turnover figures for all supposed purchasers), all the Member States compare them, often automatically, or will be in a position to do so over the next few months, with the figures for acquisitions in the periodic VAT returns. This comparison is part of the tax control programme. Three Member States, Italy, France and the Netherlands, have noted divergencies between the two sources of cross-checking, which have enabled them to identify traders presumed to be failing to comply with the rules, for further investigation.

Information under Article 4(3), turnover figures for a specific purchaser, broken down by supplier, are the most useful at the actual control stage. The wide differences in the number of requests of the type mentioned above are mainly due to differences in the application of VAT controls for 1993. Because periods of limitation extend over several years, and/or in order to ensure that they coincide with verification periods for direct and indirect taxation, certain administrations will not start on-the-spot VAT checks until this year. This is because VAT can be checked over a period that varies, according to the Member State, from three to ten years; it is therefore not surprising that the number of controls for 1993 is still low.

4.2 No new fraud, but a need for closer cooperation

The initial results of verifications and the other information from the Member States have not so far led to the discovery of new means of tax avoidance or evasion. The various cases reported in the press or by trade organizations relate to known methods of tax evasion, such as:

- issuing of two invoices (especially for new means of transport, apparently);

- failure to declare sales and/or purchases;
- establishment of ephemeral companies with improper refunding of VAT.

As far as the Commission and national departments are aware, this type of evasion has not expanded either. However, indicators other than tax data, such as external trade figures, should be analysed and monitored. They can show up tax fraud indirectly, when they do not correspond to economic reality; for example, an abnormal increase in dispatch of a specific type of merchandise from one Member State to another might imply that supplies were being improperly exempted, and diverted back to the home market.

Although the introduction of new indirect tax regimes has not basically changed the tax rules or the place of taxation, it has given a boost to administrative cooperation, as the Member States are now more aware of their interdependence. The requirement to return recapitulative statements and processing of these statements by the VIES enables national departments to be aware of the fact that the taxable persons concerned are expected to declare their acquisitions. The few exceptions due to differences in national legal definitions of certain transactions do not compromise the system as a whole. As to supplies, although it is entirely up to the Member State of departure to check on the conditions for their exemption, some departments thought it would be helpful to know how the same operation was dealt with in the Member State of destination. Applications for information of this type had already been exchanged by Member States on the basis of Directive 77/799/EEC. Although the reply (acquisition declared or not) cannot under any circumstances affect the granting of exemption, it is one factor to be incorporated in the analysis of risk for programming controls.

It also appeared that the mutual assistance Directive could provide for more frequent spontaneous or automatic exchange of information. For example, in the absence of a spontaneous declaration by the taxable person, only the authorities in the Member State where the trader is established can be aware when the threshold for distance selling has been exceeded; such information could be systematically brought to the attention of the Member State of destination of the goods, which could then tax the relevant transactions in accordance with the special regime. Many Member States also said they were in favour of introducing time-limits for replying to applications for information under Article 2 of the Directive. This matter is a priority in the work schedule of the SCAC for 1994.

4.3 Special measures that would be desirable to combat fraud: "Fiscal SCENT"

In reply to the questionnaire drawn up by the Commission, the Member States drew attention to the importance of confidential and rapid transmission of information in combating fraud, not only for VAT, but also for excise duties. A pilot project known as "Fiscal SCENT" was set up in 1993. This computer network, based on the existing SCENT network for customs matters, is intended to enable targeted anti-fraud messages to be exchanged between the departments concerned.

The purpose of "Fiscal SCENT" is to control certain operations in intra-Community trade by bringing information on suspected or established cases of fraud to the attention of the administrations concerned as quickly as possible. The transmitted information may concern physical flows of goods; although this type of information is not directly usable for VAT purposes, since taxable transactions are declared after the taxable event has taken place, it can be important for awareness of events which, by their nature, imply the existence of operations (e.g. sales) that should have been or should be recorded in the tax returns of the operators. The information transmitted may also be useful for preparing more narrowly targeted measures such as monitoring of invoices, whose findings can be used, for example, in a subsequent tax control. "Fiscal SCENT" is especially useful for highly taxed products like tobacco or alcohol, which are liable to both VAT and excise duties. The messages exchanged in this particular connection are similar to those exchanged via customs SCENT if the information relates to the routing of the products.

The "Fiscal SCENT" network has already begun to function, and it will be further developed in 1994.

4.4. Assistance with recovery

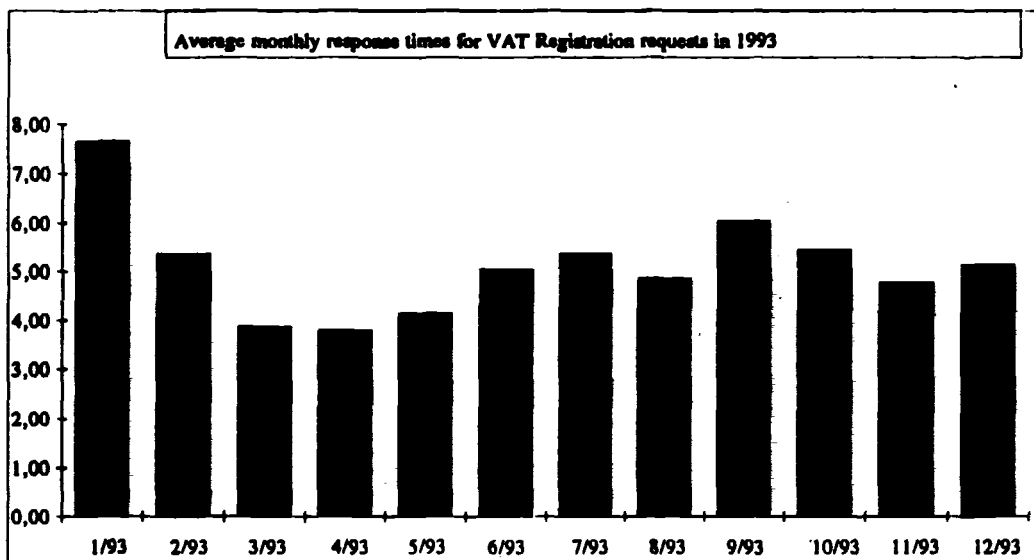
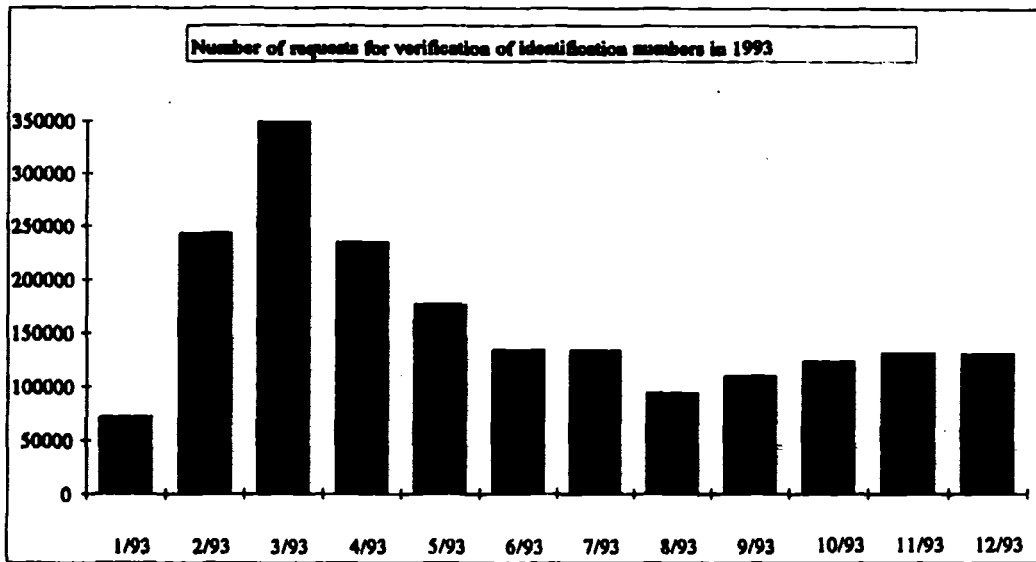
For mutual assistance with recovery, there is already a Community legal instrument, Directive 76/308/EEC, in the field of indirect taxation. It could be used more intensively in future as tax claims arise on taxable persons not established within the country issuing the claim, a situation that is more likely to arise as a result, for example, of the extension of distance selling. The Member States have also shown interest in this matter, which will be studied along with the concept of tax liability.

CONCLUSION

On the technical side, the VIES is operating satisfactorily, and the options followed enable it to respond to the various requirements for information provided for in the Regulation. However, it is too early to take stock of its impact on tax controls, or on their quality. Moreover, the effectiveness of control systems can never be measured in purely statistical terms, or summarized in terms, for example, of tax recovered. Most of the VAT collected is attributable to spontaneous declarations by taxable persons. Tax control plays a basic role in prevention, which is much more difficult to assess statistically. From this point of view, the existence of an information exchange system dealing with virtually all intra-Community transactions certainly contributes to this prevention function as well as playing a part in detecting tax evasion.

The close supervision needed for administrative cooperation arrangements should not lead to questions of tax avoidance or evasion being examined too narrowly. The number of traders who fulfil the requirements for declaration of intra-Community trade should be assessed in the light of economic data (transport statistics, external trade etc.), and not simply on administrative information originating in tax departments. Similarly, clearer knowledge of trade practices in particular trade sectors would make it easier to catch certain tax infringements.

Pooling of experience in the Member States on these matters, and the development of mutual assistance procedures, are the next steps in administrative cooperation.



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