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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**on the application of Council Regulation (EU) no 904/2010 concerning administrative  
cooperation and combating fraud in the field of value added tax**

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# **REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

## **on the application of Council Regulation (EU) no 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax**

### **1. INTRODUCTION**

According to Article 59 of Council Regulation No. 904/2010 on administrative cooperation in the field of VAT, the Commission must report by 1 November 2013 and thereafter every 5 years to the European Parliament and the Council on the application of this Regulation. This report is the first since the adoption and entry into force of Council Regulation No 904/2010. The latter is a recast of the former Council Regulation No 1798/2003 and offers Member States further tools for enhanced administrative cooperation to support the fight against VAT fraud.

The Recast Regulation was designed to improve considerably the legal framework governing administrative cooperation and act as an important tool in the fight against VAT fraud. In particular, the Regulation introduced some new arrangements relating to:

- The quality of the information contained in the databases;
- The setting-up of the Eurofisc network providing for multilateral, swift and targeted exchange of information relating to VAT fraud;
- The introduction of a feedback mechanism;
- Automated access to databases of other Member States.

The Commission would stress that the report should be seen as an opportunity to pool Member States' experience with the aim of improving the operation and use of those arrangements. (Article 49, Paragraph 1).

This report assesses the functioning of administrative cooperation within the current legal framework and focuses in particular both on an analysis of the extent to which previous recommendations have been taken into account to enhance administrative cooperation and on the use that is made of the newly-introduced arrangements in order to evaluate whether these changes have been effective. Furthermore, the report touches upon new ideas in the field of VAT administrative cooperation, such as joint audits.

Moreover, this report should not just be seen as an overview of the application of the regulation as such, but more importantly as a basis for a permanent and structured dialogue between the Commission, the European Parliament, the Council and the Member States in order to improve the efficiency of administrative cooperation in the field of VAT with the specific objective of fighting VAT fraud more effectively.

It should also be noted that the present report forms part of a wider package of documents on this subject.

Just recently, on 19 September 2013, the Commission published the study to quantify and analyze the VAT gap. The VAT gap for the 26 Member States was assessed as being close to Euro 193 billion in 2011, which represents around 18% of the theoretical VAT liability or 1.5% of the GDP of these Member States. As pointed out

in that report, the value of the VAT gap should not be directly associated with fraud and evasion as the figure also includes the effects of simple (statistical or reporting) errors (e.g. in National Accounts statistics) as well as financial insolvencies and payment problems. Nevertheless, as other studies have also clearly showed, VAT fraud continues to be a serious problem for Member States. .

Therefore, the present report comes at the right time as it gives an overview of the use that Member States make of the tools of administrative cooperation and fight against VAT fraud offered to them through this Regulation.

In addition to this report, the Commission publishes another report on the collection and monitoring of VAT according to Article 12(3) of Council Regulation 1553/89 (the so-called article 12 report).

The VAT Gap study, together with both Commission reports, gives an overview of the problem that VAT fraud still represents in the EU, while also looking both at the way in which Member States tackle this cross-border problem with the tools offered to them through EU legislation on administrative cooperation in the field of VAT and at the VAT collection and control procedures used in Member States, thus enabling them to assess risks and identify opportunities to improve their domestic VAT control and collection systems.

Finally, the present report cannot be dissociated from the broader context of the coordinated strategy to improve the fight against VAT fraud set out in the previous Commission Communication on this subject<sup>1</sup>, as well as the Commission Communication on the future of VAT – towards a simpler, more robust and efficient VAT system tailored to the single market<sup>2</sup>. In the latter, action N° 14 indicates that the Commission will ensure and monitor the full implementation of the anti-fraud measures and report on their efficiency and the need for further action in 2014. Similarly, Action N° 16 refers to the possibility of setting up EU cross border audit teams to facilitate and improve cross border multilateral controls, while Action N° 19 indicates that the Commission will continue to follow the work of Eurofisc and encourage Member States to further develop this tool in order to try finding new fraud schemes or to prevent them from developing.

## **2. SOURCES OF INFORMATION USED FOR THE EVALUATION OF THE APPLICATION OF REGULATION NO 904/2010.**

Since this report should reflect the practical use of the different instruments of administrative cooperation and fight against VAT fraud made by national tax authorities, an evaluation could only be made on the basis of substantial input from Member States.

Therefore, before drawing up this report, the Commission considered that the information required for a comprehensive assessment of administrative cooperation under the new Regulation would be best collected by means of a **questionnaire** addressed to Member States. The Commission Staff working document accompanying this report provides a detailed overview and analysis of the replies given by the Member States to the questionnaire<sup>3</sup>.

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<sup>1</sup> Communication from the Commission, A coordinated strategy to improve the fight against VAT fraud in the EU, COM(2008)807 final, 1.12.2008.

<sup>2</sup> COM (2011) 851, 6.12.2011.

<sup>3</sup> 27 Member States replied to the questionnaire, sent with letter 1763918 of 19.12.2012

Member States were also given the opportunity to elaborate further on certain replies given to the questionnaire and, more generally, to share their views on the functioning of VAT administrative cooperation and on possible further improvements. However, only one Member State showed an interest in pursuing a discussion with the Commission on this issue.

The Commission also gathered information from **discussions** relating to administrative cooperation and the fight against fiscal fraud held during numerous meetings of the Anti-Tax Fraud Strategy expert group (ATFS) and the meetings of the Standing Committee on Administrative Cooperation (SCAC), as well as from the annual reports of the Eurofisc network.

Another interesting source of information was the **annual statistics** sent by the Member States under Article 49 (3) of Regulation (EU) n° 904/2010. Information relating to the statistics for 2011 and 2012 in particular was taken into account to underpin a number of conclusions.

### 3. MAIN FINDINGS

#### 3.1. Exchange of information upon request (Articles 7 to 12)

##### 3.1.1. Problems identified by the previous report

The previous report on the functioning of the administrative cooperation<sup>4</sup> identified a number of problems relating to exchanges of information. These concerned problems existing in the requested Member State, but noticed by the requesting Member State, relating to the identification of the central liaison office (CLO), the lack of timeliness of replies and the absence of a notification about delays in meeting the deadline for replying to requests for exchanges of information.

The key factor to effective information exchange is the existence of an efficient internal management and procedural system in each Member States, in order to ensure proper and timely treatment of such requests for information.

It appears that there are no longer any problems regarding the identification of contact points in the CLO or the description of the responsibility of each liaison office. The condition remains, however, that the relevant information which is available on CIRCABC (Communication and Information Resource Centre for Administrations, Businesses and Citizens –website). must be continuously updated.

As regards the timeliness of replies and the notification procedure, it appears that many Member States are still unable to respond to replies within the deadline, and that requesting Member States are rarely informed of the reasons for the failure to do so. Statistics show that the aggregate number of late replies have reached an unacceptable level (approximately 43%). The seriousness of the problem differs between the Member States, but the overall situation must be improved in particular taking into account the suggestions made by Member States themselves (this topic is further elaborated in chapter 3.1.3).

The Commission considers that it is up to Member States to take action on this matter. In some Member States delayed answers can serious cause problems if there

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<sup>4</sup> REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on the application of Council Regulation (EC) no 1798/2003 concerning administrative cooperation in the field of value added tax, COM (2009) 428 final of 18.8.2009.

is a legal time limit for conducting audits or if the information is required urgently e.g. in fraud cases or when there is a time limit for tax assessment.

**In order to assist Member States to improve the exchanges of information, new e-forms have been drawn up. These new e-forms have now been introduced and the Commission expects that they will help tax administrations to handle requests faster.**

In addition, the recently-introduced possibility for competent authorities of Member States to have an automated access to certain types of information available in the databases of other Member States, should both substantially reduce the number of requests for "standard" information and facilitate and speed-up administrative cooperation, thus releasing time and resources for in-depth enquiries required for more complex requests.

### *3.1.2. Requests for information and for administrative enquiries (Article 7)*

Article 7 of Council Regulation (EU) No 904/2010 provides for the possibility for Member States to send requests for information and requests for administrative enquiries to each other.

In the majority of Member States, almost all requests for information triggered an administrative enquiry. It appears that good use is made of the best practices<sup>5</sup> approved by the SCAC to avoid undue administrative burden in this connection. Only very few requests to conduct an administrative enquiry were refused.

There are some specific and valid reasons why an administrative enquiry based upon Article 7 of the Regulation sometimes may prove to be more difficult to carry out for a Tax Authority compared to a domestic administrative enquiry, e.g. because relevant and clear information in the Article 7 request is missing or the request needs to be translated. These factors can cause considerable delays in responding to such requests.

Nevertheless, the Commission is convinced that the problem of translation at least will be largely solved with the introduction of the new e-forms applicable since July 2013, where most information can be made available in fixed fields.

### *3.1.3. Time limit for providing information (Articles 10 – 12)*

The time limit for providing information is laid down in Articles 10 – 12 of Regulation 904/2010. This time period is either 3 months or 1 month. In order to fight efficiently against VAT fraud and to ensure a proper collection of VAT, it is important for Member States to exchange information as soon as possible.

In the previous report, all Member States declared that they had a monitoring system in place using their intranet or other specific software in order to follow up such requests; it is usually the CLO that monitors the process.

Nevertheless, the latest statistical data received from Member States clearly show that the vast majority of Member States still have problems in meeting the deadline for all requests, and that they are well aware of the shortcomings in their internal administration and procedures. Some Member States have taken or intend taking concrete measures to improve the timeliness of their replies.

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<sup>5</sup> See the SCAC working document No562.

The conclusion that failure to meet the deadlines to respond to requests for information, is due to internal factors (such as lack of resources), was already noted in the previous report on the functioning of administrative cooperation arrangements. The recast Regulation included some new features based on suggestions made at that time to address these deficiencies, such as giving direct access to certain data contained in national databases, but the issue remains nevertheless that the problem must be addressed at management level in Member States. This could be done for example through raising awareness of local officials of the need to prioritise these requests in their planning, by directly contacting the contact points in other Member States to solve problems, or by recognising the efforts taken by local officers in the evaluations of their work, etc.

One of the main features of carousel fraud is the rapidity of transactions and the way in which missing traders disappear after an intra-Community acquisition has been made. As a consequence, a fast and smooth exchange of information is essential to stop such fraud.

The Commission considers that respecting deadlines imposed by the Regulation is a fundamental point that tax administrations must comply with. Certain Member States are clearly lagging behind in this context. The success of administrative cooperation will inevitably depend on this trend being reversed and on increased efforts from Member States to provide accurate and timely replies to requests for information coming from their colleagues in other Member States. In order to assist them with this target, the Commission will examine the issue further with Member States and, if necessary, bilaterally with individual tax administrations.

**The Commission considers that Member States must take urgent action to ensure that their domestic procedures guarantee that requests for information are replied to on time.**

### 3.2. Exchanges of information without prior request (Articles 13-15)

The list of categories covered by the exchange of information without prior request has been reduced in the new Commission implementing regulation N° 79/2012<sup>6</sup>. As a result, Article 2 of this Regulation currently maintains only 2 categories for which information should be exchanged automatically, while nevertheless allowing Member States the possibility of abstaining from participating in such an automatic exchange of information. The fact that the list has been reduced also implies that the remaining categories are considered by all Member States as important information for which the automatic exchange of information is useful/necessary to ensure a proper collection and control of VAT. Therefore, it is self-evident that Member States should only refrain from exchanging certain information in exceptional and duly justified cases.

According to the ‘Article 4 – notifications’ received from Member States- a minority abstain from participating in automatic exchange of information on non-established taxable persons because they either experience technical difficulties in retrieving this information or they consider that it causes them a disproportionate administrative burden to collect it.

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<sup>6</sup> OJ L 29, 1.2.2012, p13

This information is considered useful because it complements data that should be exchanged in the framework of the VAT-Refund Directive. Furthermore, information concerning non-established taxable persons is also relevant for direct tax purposes.

Based on the same 'Article 4 – notifications', ten Member States abstain from participating in automatic exchange of information on new means of transport (in particular cars), because they consider that this information is neither available nor collected or that the collection of such information would lead to the introduction of new obligations for taxpayers or lead to an unacceptable increase in administrative and financial burdens.

Nevertheless, as already mentioned above, the exchange of both types of information is extremely useful and necessary for Member States in order to ensure a correct taxation, and to fight against fraudulent transactions, especially in the field of new means of transport. Such information cannot be obtained domestically, and information from other Member States where the suppliers are established is fundamental. Although Article 14 allows Member States to abstain from this automatic exchange of information in duly justified cases, some Member States have not justified their abstention.

Given that the majority of Member States consider that the information received is useful and of benefit in practice for both risk analysis and control purposes, the Commission is of the opinion that Member States should implement efficient procedures to collect data for the different categories and not abstain from this automatic exchange. This point was already mentioned in the Court of Auditors report of 2008 on the functioning of the administrative cooperation<sup>7</sup>. Member States that are not able to collect the information on new means of transport are recommended to familiarise themselves with the good practices of other Member States that are active in this area, for example with Belgium that has offered other Member States to share their experience on gathering information on such transactions.

**The Commission regrets that some Member States continue to refrain from exchanging such information, especially since the list of data to which this exchange of information applies has been considerably reduced.**

### 3.3. Feedback (as described under Article 16)

Feedback is a new measure that was introduced in 2012 through the Regulation at the specific request of several Member States. They consider that feedback will assist the management in tackling shortcomings in the procedures and in motivating tax auditors to increase the quality of the information exchanged.

However, a majority of Member States have not used the feedback mechanism in 2012, its first year of implementation.

Member States all agree that feedback should not be requested systematically, but on a case-by-case basis only in order to keep the additional work triggered by the feedback tool within acceptable limits.

However, the majority of the Member States considers it too early to draw any firm conclusions as regards the effectiveness and quality of the feedback. Some Member

<sup>7</sup> ECA's Special Report 08/2007, OJ C20, 25.1.2008, chapter 51

States witnessed a positive influence on the motivation of staff and an increase in spontaneous information. This was also concluded by the expert group<sup>8</sup> that conducted a brainstorming exercise on the advantages of setting-up a feedback mechanism and who considered that feedback could play a valuable role in motivating audit officials and in encouraging a greater level of spontaneous information exchange.

Member States that use the feedback tool indicate that the information received could have a positive impact on their VAT audits and tax revenue.

In the context of good administrative cooperation and best practices, feedback should be encouraged, as it is the best way to inform the tax officials of the other Member State that the information they forwarded was beneficial and that their extra effort have lead to a positive result or was at least useful for the requesting Member State.

The Commission is also pleased to note that some Member States provide feedback spontaneously, not only when requested, but also when the information obtained from the other Member States has proved useful domestically. This reflects a positive attitude of those Member States on how cross-border cooperation should work.

**As feedback is important to improve the efficiency of information exchanges, Member States must increase their use of this mechanism and ensure that such feedback is given each time it is requested and even provide such feedback in cases where it is not requested but would be useful for other Member States.**

**In order to achieve this, management should improve training of tax auditors so that they become aware of the importance of providing feedback and spontaneous information exchange on the tax collection efforts of other Member States.**

### **3.4. Storage and exchange of information specific to IC transactions (Articles 17-24)**

#### *3.4.1. The VIES database*

The provisions relating to the VIES database were amended in order to increase the amount and quality of information stored and exchanged. A new list of information to be stored and processed has been drawn up. However, some of the information will only need to be made available from 2015 onwards.

The majority of Member States is generally satisfied with the changes, pointing to the reduced number of retroactive corrections and discrepancies, faster updates and more reliable turnover data. Furthermore, the reduction in the timeframes for submitting and transmitting recapitulative statements has accelerated the speed of information exchange, thereby providing tax administration with an important advantage.

In the past, invalidity of VAT-numbers and delays in the correction of data were often quoted as causing problems regarding the quality of the information contained in the database.

The previous Commission report stated that "*frequent updating, which should be done on a daily basis, enhances the quality of the information contained in the database*". The vast majority of the Member States now apply a system of daily updating.

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<sup>8</sup> Fiscalis project group 43 "Exchange of information and need for feedback"



Although the majority of those Member States which assess quality and reliability is generally satisfied with the changes implemented with the recast Regulation, it seems nevertheless that there are still discrepancies and that retroactive corrections continue to be made to VIES data.

The Commission notes that, in general, tax administrations have no relevant or exact data regarding the number of mismatches available. The question remains whether Member States' quality checks are appropriate to improve the reliability of the VIES database.

As regards the retroactive cancelling of VAT identification numbers, the Commission would repeat what it has already pointed out on several occasions i.e. that such practices jeopardise legal certainty for traders and should be avoided. The Regulation clearly states that Member States should keep their databases updated; reliable information is essential for the credibility of the VIES system.

**The Commission recommends, therefore, that all Member States introduce measures to keep the VIES database up-to-date. This will, in combination with the reduction of timeframes, lead to a reliable and updated VIES system, that will make data on intracommunity transactions available as quick as possible.**

#### 3.4.2. *Automated access to databases*

The Regulation now provides for competent authorities to be given automated access to certain information held in other Member States' databases. The purpose of such automated access is to reduce the number of requests to be handled by the requested Member State and to provide quicker access to the required data.

Member States have implemented this differently: some extract the required data from existing databases while others have created a separate database for this purpose, the ratio being more or less equal. One cannot conclude, however, whether a majority of Member States would clearly prefer to use existing databases or not. It also needs to be borne in mind that cost efficiency or other technical limitations may play a role in a particular Member State's decision to use existing databases.

Nevertheless, it is important to note that all Member States will grant the competent authorities of all other Member States automated access to the data listed in Article 21 (2) of Regulation 904/2010 under the conditions laid down in that Article. It is still early to can draw a reliable picture on the use made of this tool as it was implemented only as of 1 January 2013.

**The Commission will monitor the correct application of automated access and provide more details on the usefulness and effectiveness of this tool in a future report.**

#### 3.5. **Presence of officials in administrative offices and participation in administrative enquiries in another Member State (Article 28)**

The previous report identified a number of problems in the use of this instrument.

Statistics submitted annually show that the practical use made of this instrument is limited, although it is still considered to be a useful tool, particularly in border regions. The obstacles, which are mostly issues that need to be addressed at national level (such as developing language skills, human resources, internal procedures), were the same as those already mentioned in the previous report.

The most important and recurring reasons for this limited use were the lack of a national legal basis to allow participation in national enquiries, specific national conditions hampering the use of the instrument and language problems.

The vast majority of Member State allow officials of other Member States to be present in the tax administration's offices and to participate in the administrative enquiries, when the conditions mentioned in Article 28 are respected.

The budgetary problems posed by limited financial resources will be addressed in the new Fiscalis 2020 programme which includes funding for such visits to other Member States. Furthermore, raising the awareness of officials about the potential use of this instrument is required. Member States should promote the use of this tool domestically, thereby publicising its benefits. They could also benefit from the positive experience of other Member States with the use of this tool.

If any issue arise in organising an Article 28 event, Member States should try to solve this on a bilateral basis.

The use of this tool could still be improved since a significant number of Member States continue not to use it frequently. Nevertheless, by working together within an multilateral control, including the presence at the taxpayer's office, a lot of time (including taxpayer's time too) will be saved as questions can be solved through mutual cooperation.

**The Commission hopes that this tool will be used more frequently in future.**

### **3.6. Simultaneous controls – multilateral controls (Articles 29-30)**

#### *3.6.1. Organisation of the multilateral controls (MLC)*

Member States recognize the added value of this instrument. They are satisfied with the set up of the MLC platform and the MLC guide. The number of MLC's initiated annually remains the same. Reasons mentioned by Member States for the fairly low number of MLC's initiated include claims that it is difficult to insert MLC initiatives in established annual audit planning programmes, that it involves extra workload for local officers lacking experience and that it is difficult to convince management that it is worthwhile investing in audits that may only show a benefit for the other Member States involved.

#### *3.6.2. The communication between the MLC departments and other departments*

The previous report mentioned that there was still room for improving the communication between the MLC coordinators and other departments (e.g. CLO and Anti tax fraud units), possibly by adapting existing MLC procedures in order to allow for a quicker and less bureaucratic reaction in specific fraud-related cases.

In general, Member States have established appropriate communication channels between units/persons dealing with fraud prevention and the MLC coordination units/coordinators. The way such communication is organised depends largely on the administrative organisation of the tax administration within the Member State concerned; this can vary from direct contacts within the same department to contacts between separate departments in a decentralised structure.

Member States understand that an established system of direct communication between the multilateral control coordinating unit and the unit dealing with the control and anti-fraud has an added value, by acting swiftly in cases of fraud.

As regards interaction with Eurofisc, targeted information from the Eurofisc network could be helpful in initiating MLCs. Access to the Eurofisc network is the sole responsibility of the Eurofisc Liaison Official, but information that (s)he considers useful for multilateral controls could be transmitted to the MLC coordinator. Cooperation between Eurofisc and the MLC coordination function could be defined in a protocol.

Recently, a project group<sup>9</sup> put forward some recommendations to enhance the use of this tool, including in the field of excise duties. Some of these recommendations also point to a closer cooperation between customs and tax administrations in those Member States where the two taxes are managed by different domestic departments.

**Belgium has set-up a pilot project to arrange for a quick analysis team at European level in order to react to early warnings and to reconstruct the global fraudulent chain of transactions. This could be a useful source of information for the MLCs. This Belgian pilot project, designed to step up the fight against VAT fraud will be further discussed in the Eurofisc platform.**

Multilateral controls and the presence of officials in the administrative offices of other Member States are tools that should be used more frequently by Member States, especially since the costs related to their use will henceforth (continue to) be financed through the Fiscalis programme. It is difficult to understand why the use of the multilateral control tool is still rather limited and has even decreased in recent years even though this tool can perfectly demonstrate the benefits it generates for all Member States concerned.

**Member States should allocate more resources to the use of this tool and all Member States should ensure that they either launch or actively participate in such multilateral controls. An increase to around 75 MLC's for 2014 should be achievable especially since this would entail only an average of around 3 Multilateral controls per Member State.**

### 3.6.3. *A possible future approach: joint audit*

The OECD describes a joint audit as *two or more countries joining together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries, and in which the countries have a common or complementary interest; where the taxpayer jointly makes presentations and shares information with the countries, and the team includes Competent Authority representatives from each country*<sup>10</sup>.

Only three Member States have had experience with joint audits as defined above. One Member State has carried out joint audits with a third country while The Netherlands and the United Kingdom have begun a pilot project in this area. From this rather limited experience, it can be noted that responsibilities, coordination, powers and restrictions of the joint audit team are set out in (bilateral) agreements on mutual administrative assistance and exchange of information in tax matters.

Member States have given very diverging replies to the question of whether joint audits would be a useful tool compared for example to an MLC in certain

<sup>9</sup> Fiscalis project group 84 "MLC's in the field of excise duties"

<sup>10</sup> Joint Audit Report, OECD, FTA September 2010

circumstances. The majority of Member States are of the opinion that too many legal and organisational questions remain unanswered (for example a lack of legal basis, national procedures not fitting for this, separate jurisdictions, consent of the taxable person) in order say whether joint audits by a single audit team could in certain cases be more efficient than an MLC.

Nevertheless, some Member States have indicated that a joint audit might be effective in cases where quick information exchange is needed, particularly in direct taxation cases where very large companies with subsidiaries could be involved (e.g. transfer pricing).

Those Member States that set up a pilot project must still verify whether a single audit team can speed up common understanding of the issues involved (for example, clarification of uncertainties in international tax questions, better judgement of international tax risks, tackling cross-border risks more efficiently) and prove less costly for both administrations and tax payer, given that there will be only one audit with one result.

Although the vast majority of the Member States has no experience regarding the joint audits, it appears that they are not opposed to the idea in principle (in particular in the area of direct taxation).

**The many legal and organisational questions that still are unanswered could be further discussed in a Fiscalis project group, based on existing experience and on the pilot project currently organised by two Member States. Based on the outcome, the Commission could make a proposal in order to create a legal basis for the use of this tool at EU level.**

### 3.7. Providing information to taxable persons (Articles 31-32)

In order to increase legal certainty for traders, the latter can obtain confirmation of the validity of the VAT identification number (VAT id-nr) in some Member States, provided they provide their own VAT id-nr.

The VAT information exchange system (VIES) was created many years ago by Member States, with the assistance of the Commission, with the aim to provide information to taxable persons. To date, all Member States, except one, use the VIES to confirm the validity of both the VAT id-nr, as well as the name and address of the trader.

As regards the application of these provisions, only one Member State continues not to provide confirmation of the VAT id-nr of domestic traders to requesting EU-taxable persons in the VIES-on-the-web system; instead it requires taxable persons seeking this information to pass via the national CLO in order to obtain confirmation of this data. One other Member State indicated that this was, in consequence, the only reason why it continues to maintain a domestic system.

It can be concluded that as concerns the provision of data to taxable persons in order to validate the VAT id-nr of their clients, all Member States have such a system in place.

**Member States should ensure that the VIES-on-the-web system is systematically updated.**

### 3.8. Eurofisc (Articles 33-37)

The Eurofisc network is a newly introduced quick cooperation mechanism created to deal with large scale or new fraud patterns. The network established four working fields and published its first reports in March 2012 and April 2013. The provisions creating the network entered into force in November 2010.

There are currently four working fields covering different sectors affected by VAT fraud. At present, there is no real perceived need to create extra working fields, unless new frauds in a significant number of cases were to emerge in a specific sector.

Several Member States consider that joint risk analysis at the level of Eurofisc might be used for cross-analysing data in all working fields. They would like to set up a pilot project to conduct joint risk analysis. The result of this analysis would produce targeted information to be communicated to all Member States concerned, and could eventually give rise to new Multilateral Controls. Such joint risk analysis could be set up as a separate working field. Discussions on this issue are still ongoing between Member States in Eurofisc. Unfortunately, recent discussions on this idea at the Anti Tax Fraud Strategy Group have shown that not all Member States are convinced that Eurofisc should pursue the option of joint risk analysis at this stage and consider that its activities should be limited to targeting improvements in current working procedures.

In order to enhance the effectiveness of the network, the Commission considers that risk analysis and feedback are key areas where things could improve:

- The information received should be more targeted. The large volume of information that is sometimes sent is difficult to assess. Therefore, several Member States have suggested that all Member States should have an effective national risk analysis tool in place to enable the volume of data to be filtered better and to ensure that only suspect cases are transmitted.
- The VIES database could also be used for risk analysis purposes. This can be a very fast way to gather information relating to a potential carousel network because the data can be made available before the submission of VAT returns or recapitulative statements. Those Member States that develop a search tool to analyse this kind of information could exchange best practices.
- A prompt and clear feedback mechanism within the network is required. Feedback should be used to improve risk analysis, which would lead to more targeted data. The feedback mechanism currently used within Eurofisc helps Member States to verify the quality of the alerts issued regarding certain companies as the alerted Member State can report back on the results to the Member State emitting the alert.

Furthermore, on the basis of information received from Eurofisc, tax administrations can initiate audits that may result in the invalidation of VAT-identification number.

Higher quality of transmitted information and improved effectiveness of the network can be achieved through enhanced internal functioning which can be agreed at Eurofisc meetings. Quick and accurate feedback is essential to the effectiveness of the network. One Member State has argued that creating a joint risk analysis team in a separate working field would be justified by the fact that it would be an important political signal that the Member States are serious about making progress in the fight against fraud.

The Commission notes that several Member States would like to enhance administrative cooperation further and to allow Eurofisc liaison officials to make better use of the information available in the network. This would further assist Member States in trying to tackle VAT fraud before it actually takes place. Despite this, still some Member States prefer to maintain risk analysis at a national level.

**The Commission considers that those Member States that are prepared to do so, should pursue the question of making better use of available information.**

The Commission believes that the development of joint risk analysis within Eurofisc could be an important step towards the exchange of more targeted information. The network should therefore explore the benefits of such joint risk analysis.

### **3.9. Relations with the Commission (Article 49)**

Article 49 of the Regulation requires Member States to examine and evaluate how the arrangements for administrative cooperation are working. The previous report noted that the vast majority of Member States do not appear to perform any systematic internal evaluation of their arrangements, but seem rather to base their self-assessment solely on the annual statistics that they must provide to the Commission in this connection. This situation has not changed in the meantime.

During the discussions leading to the adoption of the new Regulation, the Council was of the opinion that there was no need to specify in the recast that Member States should conduct audits on regular intervals of the operation of the administrative cooperation.

Nevertheless, the Commission continues to believe that such domestic analysis would be very useful for Member States themselves in order to evaluate the importance, usefulness and effectiveness of the tools for administrative cooperation for themselves. In particular for the Eurofisc network, which was specifically created to fight fraud more efficiently, Member States have a great interest in evaluating the extent to which this network has contributed to the reduction of revenue lost through VAT fraud. As the Commission can only play a supportive role as regards administrative cooperation in the field of VAT, Member States themselves are best placed to evaluate the effectiveness of the different tools.

**The Commission therefore recommends Member States to adopt such a procedure in order to carry out a real cost benefit analysis of the different tools.**

### **3.10. Relations with third countries (Article 36)**

Member States consider that information coming from third countries might be useful in facilitating tax assessment or fraud detection. However, not all Member States have concluded tax treaties covering VAT matters and thus it is not possible for them to pass information received from third countries to other Member States.

Member States do not have uniform approaches to the exchange of information with third countries. Some Member States have signed/ratified the OECD convention, which was mainly conceived for direct tax purposes. Furthermore some Member States have a number of tax information exchange agreements while others have signed or ratified double taxation conventions.

Based on figures provided by Member States, it can only be concluded that there is little overall experience concerning exchanges of information regarding VAT with third countries.

The Commission is therefore convinced that an approach coordinated at EU level to put in place administrative cooperation arrangements with third countries in the area of VAT, is the way forward. An EU multilateral agreement could be seen as a long-term project. The new arrangements set up to implement the mini one stop shop coming into force in 2015 will provide an additional argument in support of an EU multilateral agreement.

**The Commission intends to submit a proposal to obtain the authorisation of the Council to start negotiations with certain third countries for a bilateral agreement on administrative cooperation at the beginning of 2014.**

#### **4. A SPECIAL TOPIC: THE MINI-ONE-STOP-SHOP (MOSS)**

As from 1 January 2015, an optional mini One Stop Shop (MOSS) will be introduced as a simplification measure for certain traders. This will allow a supplier, rather than registering for VAT in each Member State in which he has a customer, to register, declare and pay the VAT due on supplies of telecommunications, broadcasting and electronic services in other Member States via a single web portal in one single Member State - the Member State of identification.

The MOSS will also have an effect on administrative cooperation amongst Member States in the area of taxpayer audit and control.

The preparatory legal and practical work is almost in place. The Commission has also set up a Fiscalis project group (FPG 86) to look at audit and control issues in the context of the MOSS. The members of this group have drawn up a list of recommendations on how information can be requested from traders using a standard audit file for the MOSS scheme and on how these businesses can best be contacted in case additional information or enquiries are necessary. Since there is no obligation on Member States to accept these guidelines unanimously, the Commission hopes that they will agree to apply these guidelines in the form of a gentleman's agreement, thus easing the burden on business and facilitating the use of the simplification mechanism.

#### **5. GENERAL APPRECIATION OF THE FUNCTIONING OF THE ADMINISTRATIVE COOPERATION**

In general, the overall assessment of the functioning of the administrative cooperation appears to be positive. Many Member States indicate that it is essential to ensure the good quality of SCAC request forms and to respect deadlines for replying to these requests. Furthermore, some Member States continue to refer to national issues (such as the lack of resources) and longstanding problems with the exchange of information (incomplete background data in requests for information; discrepancies in the statistical information; retroactive changes to VIES databases; different rules regarding the deadline for replies).

Some Member States have made a number of suggestions to improve administrative cooperation in the field of VAT.

A first set of suggestions fall under the responsibility of Member States and will require domestic action (for example, increased management awareness, requests for information to be made only after all possible resources are exhausted in the requesting member State).

Other suggestions would require changes to legislation, for example to make feedback mandatory, imposing penalties for poor performance in meeting deadlines, or raising the thresholds for requests. However, besides the difficulty of adopting such legislative measures, the Commission would also anticipate some practical problems, for example how would penalties be imposed and by whom; how would the penalty be calculated, etc.

Further suggestions would require changes to the transmission of data to the Commission, for example, collecting statistics in order to make a ranking of the deadlines missed (3-6-9 months late). The Commission considers that it should be feasible to reach a common agreement on this point in the SCAC.

Another idea suggested that the Commission should take action in relation to the Member States that systematically fail to fulfil their commitments under Regulation 904/2010 . Here the Commission could suggest action through the provision of technical assistance measures or through constant monitoring under the Article 12(3) of Regulation 1553/89. Dissemination of best practices and Fiscalis CLO seminars were pointed out as good tools to improve administrative cooperation.

**Some of these suggestions have been discussed in the past without success. However, the Commission intends to pursue these suggestions further at the appropriate level in order to improve the functioning of administrative cooperation, provided sufficient support from Member States is guaranteed.**

## 6. CONCLUSION

As mentioned at several occasions and most recently in the coordinated strategy to improve the fight against VAT fraud set out in the recent Commission Communication presenting an Action Plan to strengthen the fight against tax fraud and tax evasion (COM(2012) 722 final of 6.12.2012), Member States can only address tax fraud and tax evasion effectively if they work together. Improving administrative cooperation between Member States' tax administrations is therefore a key objective of the Commission's strategy in this area.

The report highlighted areas where administrative cooperation still can be intensified, by making greater use of the improved possibilities offered by the Regulation 904/2010 :

- overall, there must be a quicker reply to requests for information, since the lateness of the replies is a critical issue;
- some Member States still refrain from participating in automatic exchange of information on non-established taxable persons and new means of transport, although they consider the information to be very useful. This is very problematic and the Commission therefore intends to strengthen the close monitoring of developments in this field;
- feedback, provided spontaneously or on request, is an approach that must be encouraged in the context of good cooperation and best practices, as it is the best way to inform tax officials that their work was (to a certain extent) beneficial;
- Member States must promote participation in administrative enquiries by making use of the existing legal provisions in the Regulation. This is a very useful tool, which was maintained in the revised Regulation and therefore it is regrettable to see that so little use that is made of this tool by Member States;



- multilateral controls have proven their usefulness. However, it appears that Member States have made less use of them in recent times. A renewed engagement from Member States to MLCs is required, and the obstacles to multilateral controls identified in this report must be overcome;
- joint audits are an instrument that should be further developed through a Fiscalis project group based on the experience gained in the pilot project set up by the Netherlands and the United Kingdom. If required, the Commission will take the initiative to provide for a legal basis to use the tool at EU-level;
- within Eurofisc, common risk analysis and an effective feedback mechanism would be an appropriate response to the need to have more targeted information available and to make better use of the information that is already available in the network. It would allow the network to further enhance its role as a quick reaction from tax administrations against cross border VAT frauds;
- an approach coordinated at EU level to establish administrative cooperation with third countries in the area of VAT would be a response to the diverse way the Member States arrange their contacts with third countries at present. In the short term the Commission will submit a proposal to obtain the authorisation of the Council to start negotiations with certain third countries for a bilateral agreement on administrative cooperation in the field of VAT.

The Commission can assist in paving the way towards effective administrative cooperation between Member States in order to tackle VAT fraud. It is willing to support any initiative that would enhance cooperation and to take legal action whenever this proves necessary.

However, Member States must show the political willingness necessary to follow this path. They have to make the necessary efforts at domestic level to improve the practical functioning of the administrative cooperation arrangements in order to reap the full benefits of these tools.

Cross-border cooperation is indeed the sole adequate response to cross-border VAT fraud and Member States need to prioritise where they allocate resources to in the current difficult economic climate. The Commission is convinced that it is only through the full use of these tools together with sufficient resources being made available at domestic level that the losses to national exchequers as a result of VAT fraud can be reduced.

The Commission will report back on the progress made by Member States in the fields identified in this report. In light of the seriousness of the problem of VAT fraud, it will not await the next report to be provided only by end 2018, but has the intention to provide, by the end of 2015, an evaluation of the state of play to the SCAC, focussed on the efforts done by Member States in order to overcome the shortcomings listed in this report and to further enhance cross border cooperation in the field of VAT.