

COMMISSION REGULATION (EC) No 1925/2004**of 29 October 2004****laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 1798/2003 concerning administrative cooperation in the field of value-added tax**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value-added tax and repealing Regulation (EEC) No 218/92⁽¹⁾ and, in particular Articles 18, 35 and 37 thereof,

Whereas:

- (1) The provisions on VAT administrative cooperation laid down in Regulation (EEC) No 218/92 and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums⁽²⁾ have been merged and strengthened in Regulation (EC) No 1798/2003.
- (2) It is necessary to specify the exact categories of information to be exchanged without prior request, as well as the frequency with which those exchanges are to be made, and the relevant practical arrangements.
- (3) Arrangements should be laid down for the provision of information communicated pursuant to Regulation (EC) No 1798/2003 by electronic means.
- (4) Finally, it is necessary to establish a list of the statistical data needed for the evaluation of Regulation (EC) No 1798/2003.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Administrative Cooperation,

*Article 1***Subject matter**

This Regulation lays down detailed rules for implementing Articles 18, 35 and 37 of Regulation (EC) No 1798/2003.

*Article 2***Definitions**

For the purposes of this Regulation:

1. 'missing trader' shall mean a trader registered as a taxable person for VAT purposes who, potentially with a fraudulent intent, acquires or purports to acquire goods or services without payment of VAT and supplies these goods or services with VAT, but does not remit the VAT due to the appropriate national authority.
2. 'to hijack a VAT registration' shall mean to use another trader's VAT registration number illicitly.

*Article 3***Categories of information to be exchanged without prior request**

The categories of information to be the subject of automatic or structured automatic exchange, in accordance with Article 17 of Regulation (EC) No 1798/2003, shall be the following:

1. information on non-established traders;
2. information on new means of transport;
3. information concerning distance selling not subject to VAT in the Member State of origin;
4. information concerning intra-Community transactions presumed to be irregular;
5. information on (potential) 'missing traders'.

⁽¹⁾ OJ L 264, 15.10.2003, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

⁽²⁾ OJ L 336, 27.12.1977, p. 15. Directive as last amended by Directive 2004/56/EC (OJ L 127, 29.4.2004, p. 70).

*Article 4***Subcategories of information to be exchanged without prior request**

1. In respect of non-established traders the information shall relate to the following:

- (a) the allocation of VAT identification numbers to taxable persons established in another Member State;
- (b) VAT refunds to taxable persons not established in the territory of the country, pursuant to Council Directive 79/1072/EEC ⁽¹⁾.

2. In respect of new means of transport, the information shall relate to the following:

- (a) supplies exempted in accordance with Article 28c(A)(b) of Council Directive 77/388/EEC ⁽²⁾, of new means of transport as defined in Article 28a(2), by persons regarded as taxable persons pursuant to Article 28a(4) who are registered for VAT;
- (b) supplies exempted in accordance with Article 28c(A)(b) of Directive 77/388/EEC, of new vessels and aircraft as defined in Article 28a(2), by taxable persons registered for VAT, other than those mentioned under point (a), to persons not registered for VAT;
- (c) supplies exempted in accordance with Article 28c(A)(b) of Directive 77/388/EEC, of new motorised land vehicles as defined in Article 28a(2), by taxable persons registered for VAT, other than those mentioned under point (a), to persons not registered for VAT.

3. In respect of distance selling not subject to VAT in the Member State of origin, the information shall relate to the following:

- (a) supplies above the threshold provided for in Article 28b(B)(2) of Directive 77/388/EEC;
- (b) supplies below the threshold provided for in Article 28b(B)(2) of Directive 77/388/EEC, where the taxable person opts for taxation in the Member State of destination in accordance with Article 28b(B)(3) of that Directive.

4. In respect of intra-Community transactions presumed to be irregular, the information shall relate to the following:

- (a) supplies in cases where it is certain that the value of intra-Community supplies notified under the VAT Information exchange system (VIES) varies significantly from the value of the corresponding intra-Community acquisitions reported;
- (b) intra-Community supplies of goods not exempted from VAT in accordance with Article 28c(A) of Directive 77/388/EEC to a taxable person established in another Member State.

5. In respect of (potential) 'missing traders', the information shall relate to the following:

- (a) taxable persons for whom a VAT identification number has been cancelled or is no longer valid due to an absence or simulation of economic activity, and who have made intra-Community transactions;
- (b) taxable persons who are (potential) 'missing traders' but whose VAT identification number has not been cancelled;
- (c) taxable persons who carry out intra-Community supplies and their customers in other Member States in cases where the customer is a (potential) 'missing trader' or uses a 'hijacked VAT registration'.

*Article 5***Notification of participation in the exchange of information**

Each Member State shall notify the Commission in writing, within three months from the entry into force of this Regulation, of its decision, taken in accordance with the second paragraph of Article 18 of Regulation (EC) No 1798/2003, as to whether it is going to take part in the exchange of a particular category or subcategory of information referred to in Articles 3 and 4 and, if so, whether it is going to do so in an automatic or structured automatic way. The Commission shall inform the other Member States accordingly.

A Member State which subsequently modifies the categories or subcategories of information which it exchanges or the way in which it takes part in the exchange of information shall notify the Commission accordingly in writing. The Commission shall inform the other Member States accordingly.

⁽¹⁾ OJ L 331, 27.12.1979, p. 11.

⁽²⁾ OJ L 145, 13.6.1977, p. 1.

*Article 6***Frequency of the transmission of the information**

In cases where the automatic exchange system is being used, the information shall be provided in accordance with the following timetable:

- (a) at the latest within three months of the end of the calendar year in which that information has become available, with regard to the categories referred to in Article 3(1) and (3);
- (b) at the latest within three months of the end of the calendar quarter during which that information has become available, with regard to the categories referred to in Article 3(2).

Information concerning the categories referred to in Article 3(4) and (5) shall be provided as soon as it becomes available.

*Article 7***Transmission of communications**

1. All information communicated in writing pursuant to Article 37 of Regulation (EC) No 1798/2003 shall, as far as possible, be transmitted only by electronic means via the CCN/CSI network, with the exception of the following:

- (a) the request for notification referred to in Article 14 of Regulation (EC) No 1798/2003 and the instrument or decision of which notification is requested;
- (b) original documents provided pursuant to Article 7 of Regulation (EC) No 1798/2003.

2. The competent authorities of the Member States may agree to waive the communication on paper of the information specified in points (a) and (b) of paragraph 1.

*Article 8***Evaluation**

The arrangements for administrative cooperation shall be evaluated in accordance with Article 35(1) of Regulation (EC) No 1798/2003, at three-yearly intervals with effect from the entry into force of this Regulation.

*Article 9***Statistical data**

The list of statistical data referred to in Article 35(3) of Regulation (EC) No 1798/2003 is set out in the Annex.

Each Member State shall, before 30 April each year and as far as possible by electronic means, communicate to the Commission those statistical data, using the model set out in this Annex.

*Article 10***Communication of national measures**

Member States shall communicate to the Commission the text of any laws, regulations or administrative provisions which they apply in the field covered by this Regulation.

The Commission shall communicate those measures to the other Member States.

*Article 11***Entry into force**

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

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

Done at Brussels, 29 October 2004.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

ANNEX

Model for the communication from the Member States to the Commission referred to in Article 35(3) of Regulation (EC) No 1798/2003

Member State:

Calendar year:

Part A: statistics per Member State:

	Requests for information (Article 5)		Late replies from other Member States (Article 8(1))	Early replies from other Member States (Article 8(2))	Article 10 notifications	Requests for notification (Articles 14 to 16)	
	Number received (Box No 1)	Number sent (Box No 2)				Number of requests received (Box No 6)	Number of requests sent (Box No 7)
Belgium							
Czech Republic							
Denmark							
Germany							
Estonia							
Greece							
Spain							
France							
Ireland							
Italy							
Cyprus							
Latvia							
Lithuania							
Luxembourg							
Hungary							
Malta							
The Netherlands							
Austria							
Poland							
Portugal							
Slovenia							
Slovak Republic							
Finland							
Sweden							
United Kingdom							

Part B: Other global statistics:

Statistics on traders	
Number of traders identified for VAT that have declared intra-Community acquisitions (Box No 8)	
Number of traders identified for VAT that have reported intra-Community supplies in the quarterly statements (Box No 9)	
Statistics on controls and enquiries	
Number of simultaneous controls organised (Articles 12 and 13) (Box No 10)	
Number of simultaneous controls in which the Member State has participated (Articles 12 and 13) (Box No 11)	
Number of administrative enquiries requested (Article 5(3)) (Box No 12)	
Number of administrative enquiries carried out following a request from another Member State (Article 5(3)) (Box No 13)	
Statistics on information without request	
Number of information exchanges sent without request (Articles 17 to 21) (Box No 14)	
Statistics on VIES	
Percentage of cases where customers' VAT identification numbers did not correspond to construction rules (incorrect lines/total of all lines) at the date when data were captured (Box No 15)	
Number of VAT numbers in the O_MCTL messages received (Box No 16)	

EXPLANATORY NOTES:

Part A. Statistics to be broken down by Member State

- Box Nos 1 and 2: What should be reported here is the number of requests sent or received during the calendar year from each Member State. A request shall be considered to be sent or received only when all accompanying attachments are also sent or received. All requests should be reported, even if they are not sent from the Central Liaison Office itself.
- Box No 3: What should be counted here is the number of times the three months deadline has passed during the reporting year, even if the request was sent during the preceding year or even if the reply is still not sent by the end of the reporting year. In case such a reply is still not sent after another year, it should not be counted a second time when submitting the figures for the following reporting period.
- Box No 4: What should be counted here is the number of times a reply is received from a particular Member State, when the request was made less than one month before. Replies to requests sent during the previous year should be counted but not replies received the following year to requests made during the reporting period.
- Box No 5: What should be reported here is the number of Article 10 notifications received during the reporting year.
- Box Nos 6 and 7: What should be reported here is the number of requests sent or received during the calendar year from each Member State. A request shall be considered to be sent or received only when all accompanying attachments are also sent or received.

Part B. Statistics to be reported globally, without any breakdown per Member State

- Box Nos 8 and 9: What should be reported here is the total number of national traders who declared having made such transactions at least once in the reporting period.
- Box Nos 10 and 11: The figures reported here should include those controls that are financed out of the Fiscalis 2003-2007 programme but also all other controls (including purely bilateral controls). Simultaneous controls shall be reported within the year during which the notification provided for in Article 13 is done.
- Box Nos 12 and 13: Those controls shall be reported within the year during which the request provided for in Article 5(3) is done.
- Box No 14: What should be reported here is the number of information exchanges sent during the calendar year without any request. This includes spontaneous, automatic and structured automatic information.