

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF AUDITORS

SPECIAL REPORT No 8/2007

**concerning administrative cooperation in the field of value added tax,
together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)*

(2008/C 20/01)

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GLOSSARY

Administrative cooperation — Exchange of information between Member States whereby tax authorities assist each other and cooperate with the Commission pursuant to Council Regulation (EC) No 1798/2003 of 7 October 2003 ⁽¹⁾ in order to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods. Exchanges of information between Member States cover, as a rule, any information that may help effect a correct assessment of VAT, including any information relating to specific cases. They take place both on request and without prior request. The regulation is based on Article 93 EC which stipulates that the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market.

Carousel fraud — see **Missing trader**

Common system of Value Added Tax (VAT) — The principle of the common system of VAT entails the application of a general tax on consumption exactly proportional to the price of the goods and services pursuant to the rules laid down in the Council Directive 2006/112/EC of 28 November 2006 ⁽²⁾. For example, the standard VAT rate set by Member States must be at least 15 % and the reduced rate at least 5 %. At each stage of the commercial chain, the seller charges VAT on sales but owes the administration this amount of tax minus the VAT paid on purchases made in the course of business. This process continues until the final consumer, who bears VAT on the whole value of what is purchased. The VAT collected from the consumer is paid to the revenue authorities by the seller of the goods. If a trader makes intra-Community supplies of goods, he has the right to obtain refund of the input VAT on dispatch to a trader in another Member State. The VAT due on the transaction is then payable by the trader in the Member State of destination at the rate in force in this Member State.

Fiscalis — A multiannual Community action programme to improve the operation of the taxation systems in the internal market through communication and information-exchange systems, multilateral controls, staff exchanges, seminars and other training activities. The Fiscalis Decision ⁽³⁾ does not only cover value added tax, but also excise duties on alcohol and tobacco products and mineral oils, taxes on income and capital and taxes on insurance premiums. The financial framework for the programme for the period from 2003 to 2007 was set at 67,3 million euro.

Recapitulative statement — A statement to be submitted by every taxable person identified for VAT purposes who makes intra-Community supplies. The recapitulative statement shall be drawn up for each calendar quarter and record the total value of goods supplied to each acquirer in other Member States, listed by VAT identification number.

Missing trader — A missing trader is a trader registered for VAT purposes who, potentially with a fraudulent intent, acquires or purports to acquire goods or services without paying VAT and supplies these goods or services with VAT, but does not remit the VAT collected to the national tax authority. The customers of the missing trader can be either *bona fide* traders or be also involved in the fraud. The customers may claim refund of the VAT they paid to the missing trader from the tax authority. If the same goods repeatedly circulate between Member States, it is called a carousel fraud. Such fraud schemes can be very sophisticated involving missing traders in several Member States and causing damage to the financial interests of all Member States concerned.

Taxable person — Any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

SCAC — The Standing Committee on Administrative Cooperation is a regulatory committee pursuant to Article 44 of Council Regulation (EC) No 1798/2003 assisting the Commission in matters as laid down in that regulation. It is composed of the representatives of the Member States and chaired by the representative of the Commission. In adopting opinions, the Committee takes its decisions by the majority laid down in Article 205(2) EC (qualified majority). The Committee usually meets twice a year.

VAT — see **common system of value added tax**

⁽¹⁾ OJ L 264, 15.10.2003, p. 1.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ Decision No 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community Programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003 to 2007) (OJ L 341, 17.12.2002, p. 1).

VAT own resources — In 2006, VAT-based own resources amounted to 17,2 billion euro and made up 15,8 % of Community revenue. VAT own resources are computed on a harmonised VAT assessment base (i.e. on a VAT base corrected for all specific derogations or options used by Member States). Therefore, the Member States' payments of VAT own resources to the EU budget are not affected by the different VAT rates or derogations in force. The starting point for the calculation of the own resources accruing from VAT is the total net VAT revenue collected by each Member State during a given year. If less VAT is collected because of evasion or fraud, this would normally also lower VAT own resources paid to the Community budget, unless the assessment bases to be taken into account are capped at 50 % of GNI, as is the case for some Member States.

VAT identification number — An individual number given to each taxable person intending to make supplies of goods or services, or to make acquisitions of goods for business purposes. Each number has a prefix of two letters by which the Member State of issue is identified.

VIES — The VAT Information Exchange System (VIES) is an electronic network for transmitting information relating to the validity of VAT identification numbers of companies registered in the Member States. Furthermore, information relating to (tax exempt) intra-Community supplies is also made available to Member States' administrations through VIES. The information relating to VAT-registration data is captured by the national administrations and fed into national databases for remote consultation. This applies also to the intra-Community supplies declared on 'recapitulative statements'. The system was set up to compensate for the elimination of customs formalities and checks.

SUMMARY

I. Large scale value added tax evasion and fraud distort the functioning of the single market and affect the financial interests of the Member States and the financing of the Community budget.

II. In 2004, new Community legislation came into force to speed up and strengthen cross-border cooperation between Member State authorities, mainly through clearer procedures, more comprehensive exchange of information and increased direct contacts between local tax offices.

III. The audit of the Court aimed to assess whether information exchanges between Member States take place in a timely and effective manner and are supported by sound procedures and adequate administrative structures.

IV. The audit showed that information exchanges between Member States can help Member States to assess taxation correctly and to prevent and detect fraud.

V. However, the Court found that:

- (a) insufficient use is made of the new possibilities to enhance and speed up cooperation and not all Member States have set up adequate administrative structures and/or operational procedures for ensuring efficient cooperation;
- (b) half of the information exchange upon request does not take place within the timescales required by the legislation and notifications of late replies or interim replies are rarely given;
- (c) late replies occur in all Member States but their frequency varies considerably between Member States. There are sometimes significant differences between the number of requests which a Member State claims to have received and the number of requests other Member States claim to have sent it;
- (d) the framework for exchanges of information without prior request is not well defined and the information which is provided spontaneously is not always systematically exploited;
- (e) the late availability and lack of reliability of data in the current Value Added Information Exchange System (VIES) increase the risk of evasion and fraud not being detected.

VI. There is a need for more intensive and rapid cooperation, more direct contacts between local tax offices and better monitoring to ensure that Member States provide efficient assistance to each other.

VII. The weaknesses of VIES should be urgently addressed, for example by radically shortening the timescale for collecting and capturing data and by granting broader direct access to data to enable multilateral consultations.

INTRODUCTION

Audit background

1. Value added tax (VAT) evasion and fraud distort fair competition in the single market and reduce Member States' tax revenue. As the Council has emphasised ⁽¹⁾, such fraud must be tackled effectively and decisively in the interest of honest entrepreneurs and Member State budgets. In order to complement national efforts in this regard, the Council agreed on 28 November 2006 on the urgent need to establish at Community level an anti-fraud strategy to combat tax fraud.

2. VAT evasion and fraud also impact on the financing of the budget of the European Union, as they result in an increased need to call from Member States own resources based on gross national income (GNI). The GNI resource is intended to cover the balance of total expenditure not covered of other resources. It follows that losses caused by VAT fraud affect the overall balance of the own resources system as laid down by the Community legislator ⁽²⁾. As the criteria for calculating VAT and GNI resources differ, those losses might also affect the incidence of the financial burden on the Member States ⁽³⁾, thus undermining the principle of equity.

3. Though investigations into the magnitude of VAT evasion and fraud have not been carried out in all Member States, several estimates have been published. The International VAT Association ⁽⁴⁾ quotes estimates of VAT losses ranging from 60 billion to 100 billion euro per annum across the European Union. In the United Kingdom alone, HM Revenue and Customs (HMRC) estimate that in the tax year 2005-2006 VAT revenue losses amounted to 18,2 billion euro ⁽⁵⁾. In Germany, the Ministry of Finance published ⁽⁶⁾ the results of a study which estimated, for 2005, VAT losses of 17 billion euro.

4. Most of the VAT evasion is linked to undeclared economic activities (shadow economy). There is, however, also a significant part of VAT evasion that occurs as a side-effect of the VAT arrangements put in place when the single market was introduced

in 1993. For intra-Community trade, goods supplied are exempted from VAT. The VAT due is then payable in the Member State where the goods arrive. These arrangements can give rise to VAT evasion either in the supplier country or in the country of destination. Three main types of evasion take place:

- (a) declaration of intra-Community deliveries whilst retaining goods for sale in the domestic market without VAT;
- (b) failure to pay VAT due on arrival in the Member State of destination;
- (c) missing trader fraud ⁽⁷⁾.

Fraud schemes are often sophisticated extending over several Member States and involving numerous companies. For example, Eurojust reported in March 2007 ⁽⁸⁾ a case of international VAT carousel fraud estimated at 2,1 billion euro and involving 18 Member States. In the UK alone, according to HMRC ⁽⁵⁾, losses of between 3 billion and 4,5 billion euro in the tax year 2005-2006 could be attributable to so-called Missing Trader Intra-Community VAT fraud.

5. Whilst goods move freely across internal borders, the action of national tax authorities still remains largely constrained by those same borders. If a trader makes intra-Community supplies, he has the right to obtain a refund of the input VAT. The VAT due is then payable by the trader in the Member State of destination. Cooperation between Member States' authorities is therefore necessary in order to exchange the information needed to assess VAT correctly. The common system for the exchange of information between the Member States is governed by Council Regulation (EC) 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax ⁽⁹⁾ (hereafter called the regulation), which entered into force on 1 January 2004, repealing the former Regulation (EEC) No 218/92 ⁽¹⁰⁾. The regulation lays down the conditions under which tax authorities in the Member States are to cooperate with one another and with the Commission. The regulation does not preclude more comprehensive mutual assistance on the basis of other legal acts, including bilateral or multilateral agreements. Where Member States conclude additional bilateral arrangements on administrative cooperation, they are required to inform the Commission and the other Member States thereof without delay.

⁽¹⁾ Conclusions of the Economic and Financial Affairs Council of 5 June 2007.

⁽²⁾ Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (OJ L 253, 7.10.2000, p. 42).

⁽³⁾ See paragraph 10 of the Court's Opinion No 4/2005 on a proposal for a Council decision on the system of the European Communities' own resources and on a proposal for a Council Regulation on the implementing measures for the correction of budgetary imbalances in accordance with Articles 4 and 5 of the Council decision of (...) on the system of the European Communities' own resources (OJ C 167, 7.7.2005, p. 1).

⁽⁴⁾ International VAT Association, Combating VAT fraud in the EU — the way forward, March 2007.

⁽⁵⁾ HM Revenue & Customs, Measuring Indirect Tax Losses — 2006, December 2006.

⁽⁶⁾ Monatsbericht des BMF — January 2006, p. 45.

⁽⁷⁾ See glossary.

⁽⁸⁾ See Eurojust press release dated 13 March 2007.

⁽⁹⁾ OJ L 264, 15.10.2003, p. 1.

⁽¹⁰⁾ OJ L 24, 1.2.1992, p. 1.

6. When adopting the regulation in October 2003, the Council stated ⁽¹⁾ that there had been until then an under-use of the arrangements for administrative cooperation. The Council called for exchange of information to be made more intensive to combat fraud more effectively.

7. Three types of exchange of information are foreseen under the regulation (see Figure 1):

- (a) Exchange of information through the VIES electronic database. Member States are required to input information on VAT numbers attributed to traders and on intra-Community supplies of goods declared by those traders. Other Member States can then interrogate the database to obtain this information and check it against declarations made by their own traders.
- (b) Exchange of more detailed information on specific request, for example where inquiries made through VIES give rise to suspicions about a transaction and/or as a result of risk analysis.
- (c) Exchange of information without prior request, for example where a Member State has grounds to believe that a breach of VAT legislation has been committed in another Member State.

8. Exchanges of information under the regulation are mainly channelled through Central Liaison Offices (CLO). Each Member State has to designate a single CLO with principal responsibility for contacts with other Member States. In addition, competence to exchange information directly with other Member States may be delegated to other departments or to individual officials.

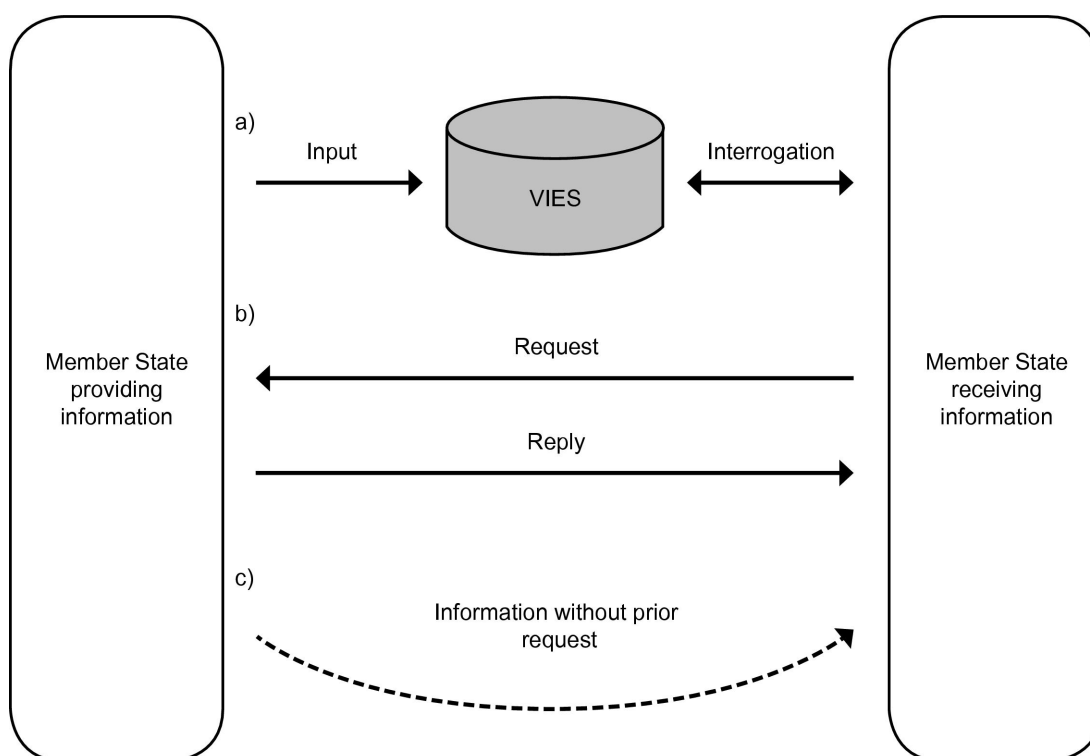
9. Furthermore, the regulation lays down rules for controls conducted simultaneously in two or more Member States and allows for tax officials to be present in other Member States, for example in order to have access to documentation held there or to attend in ongoing enquiries.

10. The regulation also provides a role for the Commission in promoting and evaluating administrative cooperation between Member States. In this it is assisted by a committee made up of representatives of Member States, the Standing Committee on Administrative Cooperation (SCAC).

11. Furthermore, the regulation is, together with Decision No 2235/2002/EC on the Fiscalis programme, the legal basis for Community expenditure ⁽²⁾ to develop and keep operational electronic systems for information exchange between national administrations, multilateral controls, training seminars for tax officials, and the exchange of officials between administrations. The

Figure 1

Types of information exchange



⁽¹⁾ See recitals 12 and 13 of the regulation.

⁽²⁾ See the general budget of the European Union for the financial year 2007, section III, chapter 14 05 — Taxation policy (OJ L 77, 16.3.2007, p. 776/777).

financial framework for Fiscalis for the period from 2003 to 2007 was set at 67,3 million euro.

AUDIT APPROACH AND SCOPE

12. The objective of the Court's audit was to assess whether the information exchanges between Member States are carried out in a timely and effective manner and whether adequate administrative structures and procedures are in place to support administrative cooperation. The audit covered:

- exchange of information on request,
- exchange of information without prior request,
- information through the VIES database,
- tools for enhancing a multilateral control approach, and
- the Commission's promotion and evaluation of administrative cooperation.

13. In 2006, CLOs in seven Member States ⁽¹⁾ were visited. A sample of 420 exchanges of information on request, sent or received in 2005 by these Member States, was examined and the timeliness and quality of the responses was assessed. However, the accuracy of individual tax assessments was not itself subjected to audit.

14. Audit missions were carried out pursuant to Article 248(3) of the Treaty which provides that the Court's audit shall be, if necessary, performed on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. The German Ministry of Finance, however, did not comply with an audit request by the Court stating that, in its opinion, there was no legal basis for such an audit. Observations concerning Germany in this report are therefore based on findings from audit missions to other Member States, information obtained during audit missions at the Commission, and publicly available reports.

15. In 23 cases ⁽²⁾ selected from the sample, the Court invited Member States to provide details on how the information obtained through exchanges was followed up by the local tax offices which had initiated the requests.

⁽¹⁾ Audit missions took place in France, Italy, Luxembourg, the Netherlands, Poland, Slovenia and the UK.

⁽²⁾ Germany — 4 cases; Belgium, France and the UK — 3 cases; Austria, Ireland and the Netherlands — 2 cases; Finland, Hungary, Italy and Poland — 1 case. So far, France and Germany have not provided answers to the request of the Court.

16. At the Commission, the operation of the relevant departments was examined including a review of the management of the Fiscalis programme. The operation of the Standing Committee on Administrative Cooperation (SCAC) was also reviewed.

17. In addition, use has been made of reports and work of National Audit Offices in Member States that have performed similar audits. Issues raised in previous Court reports ⁽³⁾ were also followed up.

OBSERVATIONS

Exchange of information on request between Member States

18. Article 5 of the regulation provides for Member States to exchange information on request. As a rule, any information that may help to effect a correct assessment of VAT may be subject to a request, including any information relating to specific cases. In order to obtain the information sought by the tax administration in another Member State, the requested authority is required to proceed as though acting on its own account.

Intensity of cooperation

19. Since the regulation came into force on 1 January 2004, the number of requests for information has increased by 62 %. It went up from 18 162 requests in 2003 to 29 381 in 2006.

Increase in exchanges of information mainly due to enlargement

20. However, an analysis of the figures provided by Member States to the Commission ⁽⁴⁾ shows that this increase appears to be mainly attributable to enlargement ⁽⁵⁾ with the number of requests sent amongst EU-15 in 2005 and 2006 being below the level reached in 2004 (see Table 1).

⁽³⁾ Special Report No 9/98 concerning the protection of the financial interests of the European Union in the field of VAT on intra-Community trade (OJ C 356, 20.11.1998, p. 1) and Annual Report 2001, paragraphs 1.45 to 1.55 (OJ C 295, 28.11.2002, p. 9).

⁽⁴⁾ Figures for 2006 are still provisional.

⁽⁵⁾ From EU-15 to EU-25 on 1 May 2004.

Table 1

Number of requests for exchange of information (according to requesting Member States)

Year	Requests exchanged amongst EU-15	Requests sent or received by EU-10	Total number of requests
2002	17 059	—	17 059
2003	18 162	—	18 162
2004	21 587	514	22 101
2005	19 649	6 100	25 749
2006	20 533	8 848	29 381

Source: Member State statistics pursuant to Commission Regulation (EC) No 1925/2004, audit calculations.
2006 statistics provisional.

21. In 2006, more than 3,3 million traders across the EU declared that they had made acquisitions from other Member States. This means that even with the conservative assumption that each of the 29 381 exchanges of information on request in 2006 concerned different traders, the probability of being subject to such an exchange of information was below 0,9 %. In reality, the probability was even lower, as a number of companies were subject to several requests.

Timeliness of replies*Half of the requests answered late**Limited direct contact between local offices*

22. An important reason why cooperation has not become more intensive is the limited exploitation of the possibilities of decentralisation offered by the regulation. When adopting the regulation, the Council stated ⁽¹⁾ that, up to then, there had not been enough direct contact between local tax offices, with communication between central liaison offices being the rule and that this centralisation had led to under-use of the arrangements for administrative cooperation. The Council concluded that provisions should be made to bring about more direct contacts between services.

24. Rapid replies to requests for information are critical for effective cooperation. They allow fraudulent companies to be quickly identified and make it more difficult for fraudsters to hide their gains from VAT fraud. Therefore the regulation obliges Member States to exchange information as quickly as possible and no later than three months after the receipt of a request. Where the requested authority is already in possession of that information, the time limit is reduced to one month.

25. Statistics for 2006 provided by Member States show that almost 50 % of requests were not answered within the deadline. This figure was even higher than in 2005 when 42 % of the replies were late.

23. Limited use has been made so far by Member States of this option. Only a few Member States ⁽²⁾ have devolved competence to territorial services. If such decentralisation is implemented only in a minority of Member States, it fails to produce its full effects as there are no counterparts for decentralised cooperation in most of the other Member States.

26. Late replies occur in all Member States but their frequency varies significantly between Member States. In 2006, two Member States ⁽³⁾ replied within the deadline in almost 90 % of cases, whereas eight Member States ⁽⁴⁾ replied late in more than 50 % of cases (see Table 2).

⁽¹⁾ See recital 12 of the regulation.

⁽²⁾ In Finland and France this competence has been systematically and comprehensively delegated to regional tax offices.

⁽³⁾ Lithuania and Slovenia.

⁽⁴⁾ Czech Republic, Denmark, Spain, France, Italy, Luxembourg, the Netherlands and Portugal.

Table 2

Late replies by Member State

	Number of requests received according to requesting Member States		Late replies according to requesting Member States (after 90 day deadline)		% of late replies	
	2005	2006	2005	2006	2005	2006
Belgium	1 471	1 610	537	604	36,5	37,5
Czech Republic	409	639	54	347	13,2	54,3
Denmark	679	832	282	511	41,5	61,4
Germany	6 255	6 929	2 707	3 195	43,3	46,1
Estonia	132	203	16	44	12,1	21,7
Greece	213	318	103	138	48,4	43,4
Spain	2 837	3 225	1 515	2 028	53,4	62,9
France	2 138	2 380	917	1 308	42,9	55,0
Ireland	237	319	96	158	40,5	49,5
Italy	2 802	2 963	1 786	1 924	63,7	64,9
Cyprus	139	285	40	119	28,8	41,8
Latvia	144	403	13	122	9,0	30,3
Lithuania	192	166	13	18	6,8	10,8
Luxembourg	456	576	123	306	27,0	53,1
Hungary	283	537	82	193	29,0	35,9
Malta	12	29	4	12	33,3	41,4
Netherlands	2 143	2 588	1 171	1 597	54,6	61,7
Austria	885	1 092	145	289	16,4	26,5
Poland	588	772	80	308	13,6	39,9
Portugal	506	514	288	404	56,9	78,6
Slovenia	96	118	9	15	9,4	12,7
Slovak Republic	316	509	40	129	12,7	25,3
Finland	179	177	25	44	14,0	24,9
Sweden	395	416	118	109	29,9	26,2
United Kingdom	2 242	1 781	526	643	23,5	36,1
Total	25 749	29 381	10 690	14 565	41,5	49,6

Source: Member State statistics pursuant to Regulation (EC) No 1925/2004, audit calculations.
2006 statistics provisional.

27. As far as the replies given within one month are concerned, the statistics showed a decrease in the number of times for which this deadline has been met from 2 154 cases in 2004 down to 1 885 in 2006. Compared to the total number of requests, this means that the share of early replies fell from 9,7 % in 2004 to 6,4 % in 2006.

28. In addition, in certain Member States visited, a number of requests were found to have remained outstanding for one year or more. In Italy for example, there were, at the time of the Court's audit visit in May 2006, 182 unanswered requests received in the last four months of 2004 alone. In the United Kingdom, in early 2006, 121 requests were still outstanding from 2003 and 2004.

Few interim replies

29. The regulation stipulates explicitly that where the requested authority is unable to respond by the deadline it shall inform the requesting authority in writing forthwith of the

reasons for this and when it would be able to respond. Nevertheless, prior notice of probable delays is only rarely given. Late replies' notifications were sent in 3 out of 57 cases not answered on time which were examined by the Court.

30. Statistics from Member States for 2006 showed that in only 5 % of all cases (737 out of 14 565 late replies) had delays been notified to the requesting authorities. Absence of such notification prevents the requesting Member State from taking alternative action in the knowledge that the request will not be promptly answered.

31. Furthermore, during the audit only very few cases were found where partial information was given that was already in the possession of the requested authority and therefore rapidly

available, followed by a more comprehensive answer once tax control visits had taken place.

Lack of priority given to requests by local tax offices

32. The audit revealed a number of factors which impact negatively on the timeliness of replies. Most of the delays in responding to requests occur at Local Tax Office (LTO) level. Mechanisms are not always in place to ensure that LTOs give as much priority to administrative cooperation as to their other activities ⁽¹⁾. A similar observation was made in a report provided by the National Audit Office of Denmark (NAOD) ⁽²⁾. Danish customs and tax authorities had set target figures for compliance with case processing time limits, but, at the time of the audit, requests from the tax authorities of other countries were not included in these target figures. According to a follow-up report by the NAOD, the minister responsible has taken initiatives to deal with the issue.

33. A number of other causes were found which have a negative impact on the treatment of requests for information. These included: inadequate use of the information request forms (e.g. multiple requests in a single standard form, over use of 'free-text' boxes of these forms and use of non-electronic communications) by the sending Member States, difficulties in understanding what was actually requested (e.g. due to unclear information, language problems or mistakes in using the standard forms), and doubts about the usefulness of certain requests in the Member States receiving them.

Weaknesses in monitoring systems of some Member States

34. Delays can also be caused by the fact that not all Member States have set up adequate systems for monitoring and managing timely response to requests.

35. Positive examples of such management of requests received were found in Luxembourg, Poland, Slovenia and the UK, where CLOs set internal deadlines and monitor them effectively.

36. In Italy, where the software put in place for this purpose by the CLO was not effectively used, cases of input errors and missing data were found which led to mismanagement of requests. In the CLO reminders to liaison departments were programmed for only 10 days before the expiry of deadlines, too late for necessary action to be undertaken.

⁽¹⁾ Article 5(4) of the regulation stipulates that, in order to obtain the information sought by a requesting authority from another Member State, the requested authority shall proceed as though acting on its own account.

⁽²⁾ Report to the Public Accounts Committee on measures to counter VAT carousel fraud, The National Audit Office of Denmark, September 2006.

37. Though both the Dutch and French CLOs set intermediate deadlines for the LTOs to respond to requests received, in neither CLO was there evidence of monitoring of these timetables. Only where reminders were received from the requesting Member State was any action taken towards the LTO which was late in providing answers.

Weaknesses in the organisational set-up of CLOs

38. In some Member States visited with a high number of late replies, the Court found that complicated organisational set-ups also contribute to delays and create problems in monitoring.

39. In Italy, in addition to the CLO, there are three liaison departments at central Member State level, all of them equally competent in the field of VAT cooperation. Other Member States are free to contact each time any one of the three liaison departments and send the requests directly to the department selected. Working procedures of the three liaison departments are not harmonised and there is insufficient coordination amongst them and weak supervision by the CLO. Furthermore, such an organisational set-up is not in line with the regulation which provides ⁽³⁾ that liaison departments have to be given specific territorial competence or specialised operational responsibility.

40. The Dutch CLO comprises two independent operating units, one located in Amsterdam and the other in Almelo, each with its own management structure. The Court found cases where it took nearly three months before replies to requests provided by LTOs were passed on to the requesting Member States. In these cases, LTOs had delivered replies to the CLO in Almelo which were transmitted to the CLO Amsterdam from where they were sent to the requesting Member States.

41. In Germany, according to the information made available to other Member States ⁽⁴⁾, the tasks of the CLO have been split between three units of the Central Federal Tax Office, one based in Bonn, the two others in Saarlouis. No information was made available to other Member States about who was heading the CLO.

42. The coordination problems caused by the complicated organisational structures and the weaknesses of monitoring systems contribute to the significant discrepancies in the statistics produced by different Member States. In several cases there are significant differences between the number of requests which a Member State claims to have received and the number of requests which other Member States claim to have sent it (see Table 3).

⁽³⁾ Article 2(3).

⁽⁴⁾ Document 'Kontaktpunkte für die gegenseitige Amtshilfe im Bereich der Umsatzsteuer, Stand: 1 Februar 2007'.

Table 3

Discrepancies by Member State (2005)

	Number of requests received		Discrepancy	%
	According to receiving Member State	According to requesting Member States		
Belgium	1 552	1 471	81	5,5
Czech Republic	371	409	– 38	– 9,3
Denmark	642	679	– 37	– 5,4
Germany	8 295	6 255	2 040	32,6
Estonia	139	132	7	5,3
Greece	238	213	25	11,7
Spain	2 652	2 837	– 185	– 6,5
France	2 296	2 138	158	7,4
Ireland	259	237	22	9,3
Italy	1 284	2 802	– 1 518	– 54,2
Cyprus	114	139	– 25	– 18
Latvia	153	144	9	6,3
Lithuania	180	192	– 12	– 6,3
Luxembourg	468	456	12	2,6
Hungary	320	283	37	13,1
Malta	13	12	1	8,3
Netherlands	2 089	2 143	– 54	– 2,5
Austria	942	885	57	6,4
Poland	557	588	– 31	– 5,3
Portugal	481	506	– 25	– 4,9
Slovenia	89	96	– 7	– 7,3
Slovak Republic	306	316	– 10	– 3,2
Finland	173	179	– 6	– 3,4
Sweden	438	395	43	10,9
United Kingdom	2 241	2 242	– 1	0
Total	26 292	25 749	—	—
SUM OF ABSOLUTE AMOUNTS OF DISCREPANCIES			4 441	17,2

Source: Member State statistics pursuant to Regulation (EC) No 1925/2004, audit calculations.

Quality of reply

43. Examination of the sampled requests and answers showed that though the information provided was sometimes inadequately presented, in most cases it was comprehensive and detailed, answering the questions posed. In response to the Court's questions on the follow-up of a selection of exchanges

(see paragraph 15), Member States affirmed that the answers received had enabled correct assessment of VAT in the cases concerned.

Evaluation shows cooperation can lead to results

44. Currently there is no legal requirement to assess the results of administrative cooperation but a few Member States have conducted such exercises. These evaluations demonstrate the benefits of administrative cooperation.

45. In France, though the financial impact of the cooperation has not been evaluated, an analysis by the competent authorities showed that 34 % of replies received in 2005 confirmed or revealed the existence of fraud in France or another Member State.

46. An evaluation by the CLO in Slovenia of 89 requests for administrative cooperation received by their authorities in 2005 showed that in the case of 21 requests, administrative enquiries resulted in the collection of additional VAT of approximately 1,5 million euro.

47. An analysis made by the Polish CLO in 2006 showed that 713 exchanges of information on request led to the detection of 64 fraud cases.

48. However, it was noted that there are some concerns with regard to the quality of information exchanged on suspected Missing Trader Fraud. Germany reported to the SCAC in 2005 problems in obtaining sufficiently detailed information from other Member States to use in legal action before German courts. The matter has been repeatedly discussed by the SCAC since and a supplementary questionnaire has been developed to tackle cases where more detailed information is needed for legal action in Member States. So far, however, Member States have not reached agreement about the circumstances in which this questionnaire should be used or the requirements for its use.

49. Furthermore, there is no mechanism whereby the user of replies to requests for information give feedback on the usefulness of the information supplied. Any possible shortcomings in the reply are not reported back and cannot be taken into account when dealing with further requests.

Exchange of information without prior request

50. Article 17 of the regulation provides for Member States to exchange information without prior request. It specifies that each Member State should forward information to any other Member State concerned in three situations. Firstly, where the effectiveness of the control system in the other Member State necessarily depends on the information provided by the Member State of origin; secondly, where there is a suspicion of a breach of VAT legislation in the other Member State; and thirdly, in cases which present a risk of tax loss (due to fraud or avoidance) in the other Member State. This represents a very broad obligation.

51. Article 18, however, limits the obligation provided for in Article 17, stating that the Member States may determine by choice whether they will exchange certain categories of information without prior request.

Potential of sending information without prior request not sufficiently exploited

52. In total, five categories with 13 subcategories of cases have been defined ⁽¹⁾, where information can be forwarded by automatic exchange ⁽²⁾ or structured automatic exchange ⁽³⁾. These categories include, for example, information about VAT identification numbers allocated to taxable persons established in another Member State or about taxable persons who are (potential) missing traders but whose VAT identification number has not been cancelled.

53. The exchanges of information show great differences in the use of these categories by Member States. Germany, for example, communicated to the Commission that it would participate in all categories, whilst France announced its participation only in a single subcategory. The statistics reported by Member States on these automatic exchanges of information without request are of poor quality. Discrepancies mainly due to differing understandings of what constitutes a reportable event make it impossible to draw any meaningful conclusions from the data provided.

54. In addition to the exchanges of information in predefined categories, Article 19 of the regulation stipulates that Member States may forward to each other spontaneously any information that may help them to effect a correct assessment of VAT. An example for such cooperation is the European Carousel Network (Eurocanet) which was launched at Belgian initiative and receives Commission support through the European Anti-Fraud Office OLAF. The network aims to speed up information exchanges on a limited number of targeted companies which are suspected of being involved in missing trader fraud. For this type of information exchange, in which not all Member States participate, the Commission has no access to collect statistical data.

⁽¹⁾ See Articles 3 and 4 of Commission Regulation (EC) No 1925/2004 (OJ L 331, 5.11.2004, p. 13).

⁽²⁾ Systematic communication of predefined information at pre-established regular intervals.

⁽³⁾ Systematic communication of predefined information, as and when that information becomes available.

55. During the audit it was found that information forwarded without prior request was not always adequately used. The Luxembourg CLO, for example, reported that they had repeatedly received requests for data that they had already provided spontaneously to other Member States.

56. Extra information is also often given as part of a reply to a request for information, when information is provided which was not explicitly requested but is considered to be useful, for example information about other traders involved in business with a specific company. An audit by the Lithuanian National Audit Office ⁽¹⁾ found that such additional information provided by other Member States in replies to requests for information was not forwarded to the appropriate authorities.

VAT Information Exchange System (VIES)

57. VIES is a common computer network for a largely automated exchange of data between tax administrations. It also enables traders to obtain confirmation that their trading partners in other Member States are registered.

58. The VIES network provides information on the VAT registration numbers issued by the Member States, including date of issue, trader's name, trader's address and, where applicable, date of cessation of validity of a VAT number. It is possible to check the history of a given VAT number, i.e. all modifications made to its attributes.

59. Furthermore, Member States communicate through VIES details of all intra-community supplies by their traders to other Member States. This is done on the basis of recapitulative statements which are to be drawn up for each calendar quarter by each intra-Community supplier and record the total value of goods supplied to each purchaser in other Member States. The tax administrations can cross-check this information on intra-Community supplies with declarations made by their national traders to identify breaches of VAT legislation.

Timely provision of data

60. Economic operators have to provide recapitulative statements of all their intra-Community supplies of goods to customers holding a VAT identification number. The statements cover calendar quarters. According to the regulation, this information is to be entered into VIES as soon as possible and, at the latest, within three months of the end of the calendar quarter to which they relate. This means that even when traders submit their statements on time, information on intra-community supplies made in January may only be available in VIES in June, i.e. almost six months later.

Effectiveness of VIES hampered by time taken for data collection and transmission

61. Several Member States already collect information on intra-Community supplies on a monthly basis, and the reduction of timescales for the transmission of information has been discussed repeatedly by the SCAC. However, an agreement amongst Member States on a general application of shorter transmission periods has not been reached.

Access to and accuracy of data

62. Each Member State has only access in VIES to transactions involving its own traders. Because of this, whenever Member States, in order to identify possible fraud networks, need information about trade operations between other Member States, they have to send a request for information to the Member States concerned. This takes time to be answered and commits human resources in both Member States.

63. Article 22 of the regulation requires Member States to ensure that their databases are kept up to date, and are complete and accurate. As discussions in the SCAC show, there is currently no common approach amongst Member States with regard to the question of how to ensure quality and reliability of data in VIES. Although required by Article 22 of the regulation, no criteria have as yet been defined to determine which changes are not pertinent, essential or useful and therefore need not to be made.

64. Work carried out by National Audit Offices also highlights the problem of reliability of data. As an example, discrepancies in reporting were identified during an audit conducted in parallel by the Supreme Audit Offices of the Czech Republic and of the Slovak Republic ⁽²⁾. Differences between the values of supplies of goods reported by taxable persons from other Member States and the values of acquisitions of goods reported by taxable persons from the Czech Republic or the Slovak Republic were caused, amongst other things, by differing methods of reporting of data on intra-Community supplies and acquisitions in the individual Member States. This involved, for example, the declaration of intra-Community supplies in the supplier's recapitulative statement for a different quarter than for intra-Community acquisitions in the acquirer's VAT return.

⁽¹⁾ Public audit report on the cooperation in the field of exchange of information on Value added tax, 30 June 2006, No VA-8000-4-13, p. 18.

⁽²⁾ See the 'Report on the Results of Parallel Audit of Value Added Tax Administration in the Czech Republic and in the Slovak Republic in 2005'.

65. A report ⁽¹⁾ by the Polish Supreme Chamber of Control drew attention to the fact that the availability of recapitulative statements on intra-Community acquisitions significantly improves the possibility for checks and facilitates the detection of attempted fraud. Although some Member States already collect such data from their traders, only the input in VIES of recapitulative statements on supplies is currently mandatory.

Verification of VAT numbers by traders

66. Article 27(4) of the regulation provides that suppliers can obtain confirmation of the validity of the VAT identification number of any specified person. All Member States have their own systems to validate VAT numbers. Depending on the Member States, the requests for confirmation can be made by telephone, by fax or electronically on a website.

67. Since 2002, the Commission has made a tool available on its website known as 'VIES VAT number validation', which enables traders to perform an on-line check of the validity of a VAT number. Eleven Member States allow the display of a trader's name and address when checking the number, while a further three Member States display only the name of the trader. The other thirteen confirm only the validity of a VAT number without providing any information on the trader.

68. The information provided is not fully reliable due to different interpretations of basic notions such as the start or end of an activity, and due to the fact that some Member States update their databases with retroactive effect. Where such updates with retroactive effect have taken place, it is difficult for a tax administration to verify whether a given VAT number was shown as being valid at the time when transactions under examination took place.

Improvements in functionality of VIES (VIES II)

69. VIES has been in place since 1992. In 2004, it was decided that the system needed an upgrade to be ready for new needs and to incorporate technological improvements. This would result in VIES II, with the new features being gradually added to the existing VIES system.

70. The feasibility study for VIES II mentioned six areas of development:

- improvement in the collection of VIES data,
- improvement in the overall quality of VIES data,
- inclusion of services in VIES (B2B) ⁽²⁾,
- one-stop-shop mechanism ⁽³⁾,
- exchange of forms,
- enhancement of the current functionality.

This feasibility study was announced during a SCAC meeting in March 2004, based on the scope and objectives proposed by the Commission. It assumed that the change in the place of taxation of services would probably be implemented from January 2007, and that the one-stop shop mechanism would begin in July 2006. Because of these assumptions, the priority was given to these two areas. Since both assumptions proved to be wrong, efforts were made which have so far not resulted in any relevant improvement to the collection and overall quality of VIES data.

Instruments for promoting a multilateral control approach

Presence of tax officials in other Member States

71. Article 11 of the regulation provides a legal basis for designated officials to be present in other Member States, for example in order to have access to documentation held there or to attend enquiries that take place with traders.

72. Limited use has been made of these possibilities (see Table 4). For 2006, only six Member States reported cases where their officials had been present in administrative offices in other Member States (15 cases in total). Only three Member States reported cases where their officials had participated in administrative enquiries in other Member States (3 cases in total).

⁽²⁾ B2B means business-to-business supply of services.

⁽³⁾ A system whereby a trader could fulfil his value added tax (VAT) obligations for his activities across the European Union solely in the Member State in which he is established.

⁽¹⁾ Information on the Findings of Inspections on Collection by Tax Authorities of State Budget Income Proceeding from Value Added Tax in 2004-2005, Supreme Chamber of Control, June 2006.

Table 4

Use of other instruments

	Number of presences in administrative offices in other MS		Number of participations in administrative enquiries in other MS		Number of simultaneous controls organised	
	2005	2006	2005	2006	2005	2006
Belgium	8	3	0	0	3	5
Czech Republic	0	0	0	0	0	0
Denmark	n/c	0	n/c	0	0	0
Germany	0	5	0	1	7	3
Estonia	n/c	0	n/c	0	0	1
Greece	n/c	0	n/c	0	n/c	0
Spain	0	n/c	0	n/c	0	0
France	1	0	1	0	4	4
Ireland	1	1	1	0	3	2
Italy	n/c	n/c	n/c	n/c	0	0
Cyprus	0	0	0	0	0	0
Latvia	0	0	0	0	0	0
Lithuania	0	0	0	0	0	0
Luxembourg	n/c	0	n/c	0	0	0
Hungary	0	0	0	0	0	1
Malta	n/c	0	n/c	0	n/c	0
The Netherlands	1	3	3	1	10	1
Austria	0	1	0	0	0	4
Poland	0	0	0	0	0	0
Portugal	0	0	0	0	0	0
Slovenia	0	0	0	0	0	0
Slovak Republic	0	0	0	0	0	0
Finland	0	0	0	1	1	0
Sweden	1	2	0	0	0	2
United Kingdom	7	0	0	0	0	2
Total	19	15	5	3	28	25

Source: Member State statistics pursuant to Regulation (EC) No 1925/2004.
n/c — Figures not communicated by the Member States.
2006 statistics provisional.

Simultaneous and multilateral controls

73. Article 12 of the regulation allows for two or more Member States to conduct simultaneous controls, in their own territory, on the tax situation of one or more operators who are of common or complementary interest. The regulation provides that a Member State shall identify the taxable person whom it intends to propose for a simultaneous control. The other Member States concerned shall then decide whether they wish to take part in the simultaneous controls.

74. In 2006, a total of 25 ⁽¹⁾ such simultaneous controls were reported.

⁽¹⁾ This figure may include some double-counting, as some controls were jointly initiated.

75. Simultaneous controls can take place in the form of multilateral controls as provided by the decision on the Fiscalis Programme. Under this decision, funding for travel and subsistence expenses is available. The procedure to launch and conduct such controls which typically involve a high need for coordination, has been significantly simplified and clarified ⁽²⁾.

76. In 2005, a total of 12 such multilateral controls were organised by 5 different Member States. Although this was a higher figure than in the years 2001 to 2004 ⁽³⁾, it falls short of the peak reached in 2000 when 16 multilateral controls took place.

⁽²⁾ Multilateral Control Guide — Version 2004.

⁽³⁾ Annual number of MLCs: 2001: 8 organised by 6 MS; 2002: 5 organised by 5 MS; 2003: 3 organised by 2 MS, 2004: 7 organised by 6 MS.

77. According to the Dutch authorities, such controls can lead to the imposition of significant amounts of additional VAT. In one of the three multilateral controls organised by the Netherlands and finalised in 2005, a further VAT amount of 35 million euro was established. The tax administration in Luxembourg reported ⁽¹⁾ a case where a multilateral control conducted over more than three years together with the UK authorities resulted in the successful dismantling of a network behind an 80 million euro fraud with mobile phones.

Promotion and evaluation of administrative cooperation by the Commission

78. The regulation attributes to the Commission the role of supporting and promoting administrative cooperation between Member States and to evaluate it together with them. Furthermore, the Commission is required to pool the Member States' experience with the aim of improving cooperation.

79. In the SCAC, the Commission has made proposals for improving administrative cooperation. Examples are the initiative of the Commission to reduce the timeframes for the production of recapitulative statements of intra-Community supplies or the suggestion to provide more information about traders in VIES. Most of these proposals were not followed.

80. At the request of the SCAC, the Commission has designed a specific form (Trend form) to indicate developments in the operations of Missing Trader Fraud. However, so far no Member State has used the form to provide information. Likewise, the Commission has not been informed of all bilateral agreements between Member States on matters covered by the regulation.

81. In its 2006 communication concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud ⁽²⁾, the Commission stated that it considered that the moment had come to set up a monitoring system, on the basis of quantifiable indicators, in order to ensure that each Member State is able to and actually does provide efficient assistance to other Member States. However, so far the Commission has not made any concrete legislative proposal for the introduction of such a monitoring system.

82. Furthermore, three years after the entry into force of the regulation, the organisational set-up for administrative cooperation in the Member States and its compliance with the regulation had not yet been assessed by the Commission.

83. Pursuant to Article 41(2) of the regulation, access of Commission staff to the information exchanged is limited to what is necessary for maintenance and development of the communication network. Without access to the contents of the operational information exchanged, the Commission cannot gain on its own all the insights necessary to detect the reasons for problems and put forward solutions.

Other constraints on effective cooperation

84. During the course of the audit, a number of other problems were identified which prevent the potential benefits of cooperation from being fully exploited or constrain possible improvements.

No common rules for withdrawing VAT identification numbers

85. The prompt withdrawal of a trader's VAT identification number is an important tool to stop fraudulent activities and to protect honest entrepreneurs.

86. From an analysis of the relevant Community legislation ⁽³⁾, it can be concluded that traders who do not carry out any real economic activity, but only engage in transactions simulating such activity in the context of VAT fraud are not entitled to have a VAT identification number.

87. However, Community legislation does not lay down procedures or conditions under which VAT identification numbers must be cancelled, for example in cases where traders are involved both in legal economic activity and in fraudulent operations. Such cases are subject to diverse national legislation and practice.

Difficulties in cross-border prosecution

88. During its audit missions, the Court was informed that in some of the Member States ⁽⁴⁾, it is very difficult to prosecute persons involved in fraudulent schemes, for example participating in chains set up for carousel fraud, where only other Member States are defrauded.

89. The UK National Audit Office (NAO) reported ⁽⁵⁾ that Danish tax authorities had informed them that they suspected some Danish companies were involved in supply chains with missing traders in the UK. However, there was no tax loss in Denmark and therefore only limited criminal investigations could be undertaken.

⁽³⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

⁽⁴⁾ France and Luxembourg.

⁽⁵⁾ See paragraph 4.32 of the Comptroller and Auditor General's Standard Report dated 7 July 2006 and published alongside the 2005 to 2006 Accounts of HM Revenue & Customs.

⁽¹⁾ Administration de l'enregistrement et des domaines, Rapport d'activité 2006, p. 20.

⁽²⁾ COM(2006) 254 final, dated 31.5.2006.

90. The German Federal Court of Auditors reported ⁽¹⁾ that no mutual agreements with other Member States had been reached in order to prosecute intra-Community VAT fraud. The existence of such agreements were, according to German legislation, the precondition for prosecuting traders involved in this type of fraud.

91. The Convention on the protection of the European Communities' financial interests ⁽²⁾ stipulates that each Member State is to establish effective, proportionate and dissuasive criminal penalties in their national law to combat fraud and to cooperate effectively with other Member States. Article 1 of the Convention provides that it also applies in cases where fraud results in the illegal diminution of the resources of the EU budget. However, according to an explanatory report ⁽³⁾ on the Convention adopted by the Council, VAT was excluded from its scope ⁽⁴⁾.

Insufficient quantification and analysis of VAT fraud

92. Action to prevent intra-Community VAT fraud cannot be effectively targeted by Member States, or the Commission, until they have reliable estimates of fraud occurring, including information about the economic sectors most concerned. The Commission has not yet developed a successful common approach on how to achieve this.

93. In its resolution of 12 December 2006 on promoting activities in the field of value added tax, the Contact Committee ⁽⁵⁾ mandated a working group to produce recommendations for a single model for estimating VAT losses. Such a common approach would also allow Member States to determine whether the fight against fraud was genuinely successful, or whether tackling VAT fraud just resulted in it being displaced to other economic sectors or other Member States.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

94. Despite new arrangements introduced in 2004, administrative cooperation between Member States in the field of VAT is still not intensive enough to cope with intra-Community VAT evasion and fraud.

95. So far, most Member States have not fully exploited the possibilities provided by the Community legislation to devolve competence and responsibility for direct contacts with tax authorities in other Member States to their local or regional tax offices (see paragraphs 19 to 23).

96. The exchange of information upon request, a major instrument of administrative cooperation between Member States, is affected by a high proportion of late replies and by the absence of interim replies. The frequency of late replies varies, however, considerably between Member States (see paragraphs 24 to 31).

97. Most of the delays in responding to requests occur due to a lack of priority given to requests by local tax offices. Weaknesses in the monitoring systems and/or in the organisational set-up of Central Liaison Offices in some Member States are other reasons which also contribute to delays (see paragraphs 32 to 42).

98. Evaluations show that cooperation leads to results. Where requests are answered in accordance with the rules, they often allow to reveal or confirm the existence of fraud and may result in the collection of additional VAT. However, there are some concerns that the quality of information exchanged on suspected missing traders is not always sufficient to serve as a basis for successful legal action against the fraudsters (see paragraphs 43 to 49).

99. The framework for exchanges of information without prior request is not well defined. Broad obligations to inform other Member States have been set, but in practice exchange is limited to certain categories of information which are at the discretion of Member States. Furthermore, information provided spontaneously is not always systematically exploited (see paragraphs 50 to 56).

100. VIES, the system for information exchange, has serious weaknesses. Delays in collecting and capturing accurate data and problems in correcting wrong data undermine its usefulness. The system contains data on intra-Community supplies only, but not on intra-Community acquisitions. This constrains the possibilities for cross-checks. Though a decision to upgrade the system was taken in 2004, progress in implementing new features is slow (see paragraphs 57 to 70).

101. Tools available for a multilateral control approach are rarely used, although Community funding is provided through the Fiscalis programme (see paragraphs 71 to 77).

102. Most of the proposals made by the Commission through the Standing Committee on Administrative Cooperation to improve exchange of information between Member States were not followed (see paragraphs 78 to 83).

⁽¹⁾ Bundesrechnungshof, Bemerkungen 2002 zur Haushalts- und Wirtschaftsführung des Bundes, Ziffer 74 (Strafverfolgung bei innergemeinschaftlichem Umsatzsteuerbetrug).

⁽²⁾ The Convention was drawn up in 1995 on the basis of Article K.3 of the Treaty on the European Union (OJ C 316, 27.11.1995, p. 49).

⁽³⁾ OJ C 191, 23.6.1997, p. 1.

⁽⁴⁾ The problem was already described in Special Report No 9/98, paragraphs 2.3 to 2.9.

⁽⁵⁾ The Contact Committee consists of the heads of the Supreme Audit Institutions of the European Union.

103. A number of other factors prevent the potential benefits of cooperation from being fully exploited. These include absence of common rules for withdrawing VAT numbers, difficulties in cross-border prosecution and insufficient tools for quantifying and analysing VAT fraud (see paragraphs 84 to 93).

Recommendations

104. For combating intra-Community VAT fraud successfully, higher priority needs to be given by Member States to administrative cooperation, in respect of both the operational information exchanges and their administrative management.

105. Member States should encourage more direct communication between local inspection staff as an effective way to speed up the exchange of information. It would at the same time help to increase the intensity of cooperation and the quality of the information exchanged.

106. More efficient monitoring of exchanges of information between Member States is necessary to ensure that problems are swiftly identified and tackled and that each Member State provides effective assistance to other Member States. Improvements in Member States own monitoring of exchanges of information would also be needed.

107. The procedures for exchanges of information without prior request need to be clarified. Information which is provided spontaneously should be systematically exploited by Member States.

108. To improve VIES, action should be taken to

- (a) radically shorten the timescale for collecting and capturing data;
- (b) ensure that inaccurate data are swiftly corrected;

- (c) improve the functioning of the validation of VAT numbers;
- (d) enhance the possibilities for cross-checks, for example by including data on intra-Community acquisitions; and
- (e) grant broader direct access to data to enable multilateral consultations.

109. The introduction of harmonised rules for withdrawing VAT numbers from traders involved in fraudulent activities should be considered.

110. Having comparable data on intra-Community VAT evasion would contribute to a better targeted cooperation between Member States. A common approach needs to be developed by the Commission together with the Member States to quantifying and analysing VAT evasion.

111. It should be considered how to improve cross-border prosecution of intra-Community VAT fraud in the Member States, for example by changing the Council's current interpretation of the Convention on the protection of the European Communities' financial interests which does not include VAT revenue.

112. With regard to the Commission proposal for an additional horizontal regulation on mutual administrative assistance for the protection of the financial interests of the Community ⁽¹⁾, the Court recalls its recommendation ⁽²⁾ that the Commission should make an effort to propose a simplification and consolidation of Community anti-fraud legislation with a view to avoiding duplications and overlapping or contradictory provisions. Existing weaknesses in cooperation between the Commission and the Member States could be addressed in the framework of such an overhaul.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 8 November 2007.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ COM(2006) 473.

⁽²⁾ See paragraph 36 of Opinion No 8/2005 on a proposal for a Regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities (OJ C 313, 9.12.2005, p. 1).

THE COMMISSION'S REPLIES

SUMMARY

I-VII. The Commission largely agrees with the observations made by the Court of Auditors. The Court's analysis is in line with the assessment made by the Commission in a communication published in May 2006 ⁽¹⁾: the legal framework for administrative cooperation in the field of VAT was reinforced some years ago ⁽²⁾, but the Member States do not yet make sufficient use of the new possibilities offered, and the level of administrative cooperation is not commensurate with the size of intra-Community trade.

The Commission continues its efforts for the improvement of this administrative cooperation between the EU-Member States. Following the publication of the above-mentioned communication in May 2006, a political debate has been launched with all the parties concerned on an anti-fraud strategy at European level. Besides the Standing Committee on Administrative Cooperation ⁽³⁾ — whose discussions and decisions have a more technical nature — a more policy oriented Anti Tax Fraud Strategy-Group has been created.

Decisions on administrative cooperation at the Community level can only be taken by a unanimous vote of all Member States.

With regard to the framework for the exchanges of information without prior request, Article 18 of Council Regulation 1798/2003 — as confirmed in Article 5 of Commission Regulation 1925/2004 — expressly provides that each Member State shall determine whether it will take part in the exchange of a particular (sub)category of information, and how it will do this. This text was the result of a political compromise, necessary to obtain unanimity in the Council (as required for acts based on Article 93 of the Treaty).

OBSERVATIONS

It cannot be excluded that the accession of 10 new Member States in 2004 has led to a geographical shift of transactions and/or of certain VAT fraud from the EU-15 to transactions with the EU-10, and, correspondingly, to a shift in the Member States that sent or received requests for information.

20. The statistics communicated by the Member States show:

— an increase of information exchange requests amongst the EU-15 in the period after 1.1.2004, compared to the period before that date, and

The mere fact that the number of requests sent amongst EU-15 in 2005 is somewhat below the number of 2004, does not allow to draw any specific conclusions, as:

— a rapid development of the exchange of information requests between EU-15 and EU-10.

— the time period analysed is too short to make a comprehensive evaluation of the evolutions,

⁽¹⁾ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud, COM(2006) 254 of 31.5.2006.

⁽²⁾ Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of VAT (OJ L 264, 15.10.2003, p. 1) and 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 VAT (OJ L 331, 5.11.2004, p. 13).

⁽³⁾ This Standing Committee on Administrative Cooperation (SCAC) has been established in accordance with Article 44 of Council Regulation (EC) No 1798/2003 to assist the Commission in implementing the Council Regulation.

— the statistics communicated by the Member States on administrative cooperation in 2004 and 2005 revealed a lack of accuracy. Given the discrepancies in the statistics, more detailed guidelines and instructions have been developed. These were issued on 30.1.2006. At that moment, Member States considered that it was not appropriate anymore to revise the statistics already collected for 2004 and 2005.

In 2006, the number of requests was higher than in 2005, although it was still below the number of 2004.

21. Despite the increase of the information exchanges, the level of administrative cooperation in these years was not commensurate with the size of intra-Community trade ⁽¹⁾. Given the limits of their possibilities (e.g. human resources), Member States attach great interest to controls based on a risk analysis.

22-23. The intention of the new legislation was to facilitate decentralisation: more direct contacts between local services can make the administrative cooperation more efficient and faster ⁽²⁾.

A secured electronic communication channel between local offices in different Member States will be available from the end of 2007, in order to support such decentralised communication.

However, the administrative organisation in the Member States is primarily the responsibility of the Member States.

24-31. The statistics that are collected annually and presented in the SCAC meetings, reveal a problem of late replies. The Commission is aware of this problem and addresses it repeatedly in these SCAC meetings, urging the Member States to reduce the delays and to provide interim replies when they are unable to reply within the deadlines.

The Commission has taken several initiatives to improve this situation. These new initiatives relate to:

- automated direct access to data,
- more rapid and more detailed information exchange,
- third Member States' requests.

Discussions with the Member States on these initiatives are ongoing within the Anti Tax Fraud Strategy-Group.

32. The functioning of the administrative organisation within the Member States is primarily a national issue. However, the Commission shares this concern expressed by the Court of Auditors and has repeatedly drawn Member States' attention to it at SCAC meetings. In its Communication of May 2006, the Commission also referred to the Council ad hoc group on tax fraud, which had identified the absence of a Community administrative culture as an obstacle to the fight against fraud ⁽³⁾.

33. Local tax offices should use (correctly) the instruments developed to facilitate the administrative cooperation:

- standard forms have been prepared and agreed upon by the Member States.

In addition, new electronic forms in XML format are being developed and will be used from the beginning of 2008. These forms will be easier to use than the current electronic forms and their structure will not be alterable. The number of mistakes should thus be reduced.

- the CCN/CSI network enables Member States to have a secure and fast communication between the Central Liaison Offices.

Moreover, a secured electronic communication channel will also be available to local offices as from the end of 2007.

38-42. The administrative organisation of the competent authorities within the Member States (and the division of their territorial or operational responsibility) is a national competence; it should be in conformity with the EU legislation and it should not hamper the functioning of the administrative cooperation with other Member States.

The functioning of the national CLO structures will be part of the forthcoming evaluation to be published in 2008.

49. The Commission already suggested the introduction of a feedback mechanism at the SCAC meeting of December 2006. This could enhance the motivation for the exchange of (spontaneous) information. Member States showed goodwill to this idea, which will be further explored in 2008.

51. With regard to the framework for the exchanges of information without prior request, Article 18 of Council Regulation 1798/2003 — as confirmed in Article 5 of Regulation 1925/2004 — expressly provides that each Member State shall determine whether it will take part in the exchange of a particular (sub)category of information, and how it will do this. This text was the result of a political compromise, necessary to obtain unanimity in the Council (as required for acts based on Article 93 of the Treaty).

This particular 'definition' of the (sub)categories of information exchanged without prior request, can be explained by the fact that when this provision was adopted, the availability of these (sub)categories of information was different from Member State to Member State (because of different methods to collect and to store the information concerned). Accordingly, it was foreseen that those Member States which were not yet in a position to exchange certain types of information (e.g. because a specific database was still to be developed), would take up the obligation to exchange that information as soon as it was possible (see Article 5, paragraph 2, of Regulation (EC) No 1925/2004, about the subsequent modifications of (sub)categories of information which Member States exchange, and about the subsequent modification of the way in which the information is exchanged). The aim, expressed in Article 17 of Regulation (EC) No 1798/2003 and Article 3 of Regulation (EC) No 1925/2004, was to come to an exchange of information as complete as possible.

⁽¹⁾ Cf. COM(2006) 254 of 31.5.2006, point 2.1.

⁽²⁾ The regulation provided for the possibility of decentralised cooperation, following the suggestion made in the Commission's proposal for the regulation (OJ C 270 E, 25.9.2001, p. 87), COM(2001) 294 of 18.6.2001).

⁽³⁾ COM(2006) 254 of 31.5.2006, point 3.1.

53. The functioning of the exchange of information without prior request should be improved. More efficient methods of exchanging information, taking account of recent technological developments and the equipment used by traders, should be envisaged. More frequent and more detailed automated exchanges between Member States, or even direct access to national databases, should also be considered ⁽¹⁾.

The discussions on possible ways to improve the use of this tool are currently ongoing within the Anti Tax Fraud Strategy-Group. The discussion on the use of Eurocanet is a typical example of the use Member States make of this tool.

Furthermore, conclusions of the work carried out by several Fiscalis Project Groups (FPGs) and ongoing discussions within these groups reflect Member States' desires to improve the use of this tool and to set up a more structured use of this type of exchange of information, e.g. with regard to second hand cars and importations.

As far as statistics are concerned, the Member States have agreed with detailed guidelines and instructions, providing for the communication of more precise statistics on the categories of information that are exchanged without prior request. These new guidelines should be applied as from 2007 (for the communication of statistical data concerning the requests and replies that are sent and received in 2006).

54. The Eurocanet (European Carousel network) project, in which 22 of 27 Member States participate, has promoted an operational approach enabling the national anti-fraud units to be involved.

The data management and the analysis remain with the Member States only. The Commission has currently no access to the data and therefore cannot provide any analysis. As a consequence, the Commission is only able to offer financial and administrative support to enhance the exchange of data between Member States. However, the Commission would be willing to offer more concrete support, such as e.g. analysis on trends and up-coming schemes at Community level if Member States would ask for it.

60. Information concerning intra-Community supplies of goods should be communicated rapidly to other Member States. The data currently exchanged between the Member States have to respect the three months period set in Article 25 of Regulation 1798/2003. Accordingly, the issue of a quicker exchange of data on intra-Community supplies is one of the major elements in the discussions with Member States which have been launched by the Commission's Communication of May 2006. The issue was afterwards discussed in the Anti Tax Fraud Strategy-Group.

As a result of these discussions, the ECOFIN Council of June 2007 invited the Commission to come forward with legislative proposals with a view of reducing the timeframes for submitting the recapitulative statement as well as for exchanging this information between the Member States.

The Council indicated these proposals need to be accompanied by an impact assessment. The Commission is currently carrying out this assessment, in order to evaluate the impact in terms of costs for businesses of such a change.

62. Discussions are currently ongoing with the Member States on automated access for competent authorities to data contained in the databases of other Member States (part of the activities of the Anti Tax Fraud Strategy-Group).

The access to national databases was already suggested in the Commission's Communication of May 2006, as one of the elements to improve the exchange of information ⁽¹⁾.

The advantage of a multilateral approach is shown by the example of the Eurocanet project, mentioned by the Court in paragraph 54, which offers Member States tax investigation services a better insight or even the full picture of a suspected fraud chain. All Member States participating have access to all data exchanged without limitation.

65. The issue of imposing reporting obligations for recapitulative statements on intra-Community acquisitions has been discussed in several Fiscalis seminars and project groups. In view of the problems of quality of data and frequent misreporting by traders themselves, the benefits of such an obligation are not demonstrated. In addition, imposing a reporting of intra-Community acquisitions would constitute a serious additional administrative burden for traders.

67. Since 2002, the Commission has made a VIES VAT number validation tool available on its website. An open interface is available since 2005, allowing the automatic verification of VAT numbers by computer systems.

The option given by 11 Member States to cross-check VAT ID numbers with names of taxable persons is a useful tool to prevent the abuse of VAT ID numbers.

68. At the Standing Committee on Information Technology (SCIT) meeting of June 2007, an agreement was reached to clarify the understanding of the start date and cessation date of taxable persons' economic activities in VIES.

69-70. The Commission is working on a modernisation of the VIES system. This presents an opportunity for implementing improvements with regard to the administrative cooperation to fight VAT fraud.

⁽¹⁾ COM(2006) 254 of 31.5.2006, point 5.2.

The VIES 2 Feasibility study, announced at the SCAC meeting of March 2004, proposed a planning for this modernisation. This planning was however not approved by the Member States.

A particular problem was raised by the lack of legal base. This was made clear in the work undertaken to include services in VIES (B2B). These activities started under the assumption that the legal base would be approved by 1.1.2007. Lack of this legal base, which has still not been approved, led to only half of the Member States having implemented it. As so far very limited operational progress has resulted from their investment, many Member States are very reluctant to consider repeating this approach.

As for One Stop Shop, since the Feasibility Study was discussed, this legal base has changed and has led to three new subprojects, which are still being discussed in the Council. Thus, only at the SCIT meeting of June 2007, it was considered that the agreement was stable enough in order to start working on it.

As for e-Forms, work is progressing only on the forms which were considered stable enough (three). For the other forms, discussions are needed both in SCAC and in working groups, on the contents of the forms themselves, as well as the usefulness of the work needed to translate them into the XML format.

As for quality of data, work has started on the reduction of timeframes and the improvement of treatment of historical VAT registration records. However, both reduction of timeframes and other quality of data projects need discussion in SCAC before work can start.

With regard to the issue of delays in collecting and capturing the data, discussions with Member States are ongoing, in order to speed up the periods for submitting the VAT recapitulative statements to 1 month and to speed up the transmission of the data to other Member States to also 1 month.

71-72. The possibility to have a presence of tax officials in other Member States is a flexible instrument for administrative cooperation. On several occasions (Fiscalis seminars, meetings of the Anti Tax Fraud Strategy-Group), Member States have been encouraged to make more use of it.

75. The Commission supports the current increased use of this tool through the setting up of the multilateral controls (MLC) platform, a permanent forum for promoting and evaluating MLCs and assuring the exchange of best practices relating to MLCs.

The technical possibilities to cooperate in MLCs are also improved. Since end 2006, the new version of the Common Communication Network (CCN) allows the Member States to forward mails (e.g. CLO requests) securely to their local offices. By end 2007, direct electronic contact between the participants in a MLC through a secured channel will be possible.

76. In 2006, 16 new multilateral controls were launched and in total there were 58 multilateral control meetings and 5 multilateral control selection meetings organised. Since the Fiscalis seminar in June 2006, more Member States have initialised multilateral controls.

79. Taking into account the difficulty to obtain an agreement within the SCAC (whose activities are more of a technical nature), certain issues are now discussed within the policy oriented Anti Tax Fraud Strategy-Group, based on the conclusions adopted by the Council (ECOFIN Council meetings of November 2006 and June 2007).

80. A 'Trend form' was adopted to facilitate the communication of information with regard to new fraud trends. In almost all SCAC meetings, the Commission takes the opportunity to encourage Member States to share information, using this form.

As noted by the Court, these trend forms have not been used until now. Nevertheless, the Eurocanet project follows this idea as its purpose also is to share experiences and best practices. An exchange of information on new trends and tendencies has not yet taken place between the Member States, they however use the Eurocanet Group for discussions on new trends and new up-coming fraudulent schemes.

81. The monitoring system is one of the discussion topics of the present Anti Tax Fraud Strategy-Group with the Member States.

82. The Commission in its Communication of May 2006 ⁽¹⁾ made an assessment of the existing legal framework and the practice concerning administrative cooperation (including the cooperation in the field of VAT). It indicated ways to explore how to improve this cooperation.

Since then, the Council has discussed the functioning of the administrative cooperation as a tool to fight fraud (ECOFIN Council meetings of November 2006 and June 2007), and invited the Commission to carry out further work, in particular in the field of VAT. The Commission has now put many resources into the follow-up of these discussions. The Anti Tax Fraud Strategy-Group was created and this group has already had 6 meetings.

⁽¹⁾ COM(2006) 254 of 31.5.2006.

In the meantime, the Member States have been able to gain more experience with the organisational set-up for the administrative cooperation, and with possible cooperation problems that may be linked to the administrative organisation of the competent authorities within the Member States. This specific issue will be part of the forthcoming evaluation, to be published in 2008.

The administrative organisation within the Member States falls under their competence, and it is difficult to provide general guidelines, as the ideal organisation depends on factors that can differ from Member State to Member State (size of the territory, number of taxable persons, general structure of the authorities, etc.).

83. Access to the content of the information exchanged has been requested several times by the Commission (OLAF) without success.

If the Commission (OLAF) had access to the information exchanged it could improve its role as a service platform for Member States' services. It would generate significant added value to the fight against VAT fraud by providing analysis on trends and newly detected fraudulent schemes (no evaluation of the level of fraud) from an overall Community perspective which would be put at the disposal of all Member States' services. However, Member States refuse until now to give the Commission access although they could profit from operational and intelligence support from the Commission (OLAF) in their early detection policy.

84. The Commission has suggested to make an evaluation of the quality of the information exchanges based on an analysis of a sample of exchanges, in order to identify the different bottlenecks in the information exchange flow. This suggestion was made in the SCAC meeting of December 2006. Several Member States expressed interest in participating in such a project. Accordingly, a Fiscalis Project Group will be launched in the first trimester of 2008.

87. The Commission has attempted to arrange an agreement about the cancellation of VAT numbers on several occasions. Member States have not yet come to an agreement.

88-90. The Commission is convinced about the need for legislation to reinforce cross-border prosecution in situations where tax losses occur in other Member States ⁽¹⁾. Discussions on this issue have started in the Anti Tax Fraud Strategy-Group.

Although it is frequently requested, introducing new measures of criminal law has proven difficult. For instance the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests which has been signed in 1995 has only entered into force in 2002 after ratification by the Member States.

The Commission has transmitted a proposal for a Directive of the European Parliament and the Council on the criminal law protection of the Community's financial interests, COM(2001) 272. This proposal contains provisions relating to the prosecution of offences affecting the financial interests of the European Community.

The Commission has also proposed a regulation on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities, COM(2006) 473. This provides for rules for multidisciplinary anti-fraud measures on the level of administrative mutual assistance and for the necessary interface with judicial follow-up, which is an essential prerequisite for effective prosecution.

91. The Commission considers that VAT is included in the scope of the convention, and regrets the position taken by the Council which is contrary to the financial interests of the Community and the Member States ⁽²⁾.

92. The Commission has launched a study whereby the contractor should provide a solid estimate on the amount of tax fraud in the different EU Member States and this based on 3 different statistical models. A first result on the estimates of VAT fraud should be available by the end of 2007.

CONCLUSIONS AND RECOMMENDATIONS

94-103. The Commission welcomes the conclusions of the Court. These confirm those of the Commission Communication of 31 May 2006: the legal framework for administrative cooperation in the field of VAT has been reinforced but the Member States do not yet make sufficient use of the new possibilities offered, and the level of administrative cooperation is not commensurate with the size of intra-Community trade.

The Commission continues to encourage the Member States to improve their administrative cooperation within the framework of the present legislation. Problems (e.g. late replies, lack of interim replies, limited use of possibilities related to the presence of tax officials in other Member States, simultaneous and multi-lateral controls) are discussed in the SCAC meetings and at Fiscalis seminars.

⁽²⁾ Commission staff working paper, Annex to the Report from the Commission on Implementation of the Convention on the Protection of the European Communities' financial interests and its protocols, Article 10 of the Convention (COM(2004) 709 final) in SEC(2004) 1299, point 5.1.2.

⁽¹⁾ See COM(2006) 254 of 31.5.2006, point 5.1.

In its actions to improve the administrative cooperation, the Commission has to face several obstacles:

- legislation in this field can only be adopted with unanimity, which inevitably leads to difficult negotiations and political compromises,
- the administrative organisation within the Member States falls primarily under the competence of the Member States,
- the resources of the Member States put into administrative cooperation are limited. In some Member States, there is even a trend to reduce them.

104. The Commission agrees with the recommendations of the Court, which are in line with the views expressed by the Commission in its Communication of May 2006.

Considering the importance of VAT fraud, the Commission will continue to promote a political debate on the need for a strategy at EU level in view of improving the fight against tax fraud. This debate began in May 2006 and was taken up by ECOFIN in its conclusions of November 2006 and June 2007. In order to ensure the follow up of these conclusions, the Commission has set up the Anti Tax Fraud Strategy-Group with Member States. This group is of a more political nature compared to SCAC and is examining:

- automated direct access to data in the databases of other Member States, more rapid and more detailed information exchange, and third Member States' requests,
- the need to take comparable measures against fraudsters, in particular in terms of sanctions and criminal proceedings, regardless of whether the fraud leads to losses of revenue in the Member State concerned,
- reducing the time limit for submitting recapitulative statements on intra-Community supplies of goods. On this last point, the Commission is currently in the process of assessing the impact of such a change on businesses. The outcome of this study will determine the scope of the potential legislative proposal.

The Commission is also encouraging Member States to make better use of the existing infrastructure for operational and intelligence support at Community level, namely the European Anti-Fraud Office (OLAF).

105-107. The Commission has already taken several initiatives to support and improve the administrative cooperation between the EU Member States:

- a secured electronic communication channel for information exchanges between local offices in different Member States will be available from the end of 2007, in order to support decentralised communications,
- extensive guidelines for the request forms have been made available to the Member States and new electronic forms in XML format are being developed and will be used from the beginning of 2008,
- Fiscalis project groups are currently discussing how to set up more structured types of exchange of information for specific cases, e.g. with regard to second hand cars and importations,
- the Commission has set up the multilateral controls (MLC) platform, a permanent forum for promoting and evaluating MLCs and assuring the exchange of best practises relating to MLCs,
- the Commission has made detailed instructions and guidelines for the communication of the statistics concerning administrative cooperation, in order to obtain a better overview of the functioning of the administrative cooperation,
- the Commission has suggested the introduction of a feedback mechanism, which could enhance the motivation for the exchange of (spontaneous) information. Member States have agreed to further explore this idea. This will be done in 2008,
- the Commission will publish an evaluation of the administrative cooperation in the field of VAT in 2008. This evaluation will also contain an analysis of the functioning of the national CLO structures in the EU Member States.

108. With regard to VIES, an agreement was reached in June 2007 to clarify the understanding of the start date and cessation date of taxable persons' activities in VIES, so that this information is more accurate and complete. An open interface has been made available, allowing the automatic verification of VAT numbers by computer systems, and the work on the modernisation of VIES is ongoing.

109. The Commission will continue to press for an agreement between Member States about the cancellation of VAT numbers.

110. The Commission has launched a study to obtain a solid estimate on the amount of tax fraud in the EU Member States. A first result on the estimates on VAT fraud should be available by the end of 2007.

111. A comprehensive legal framework needs to be created to ensure efficient cross-border prosecution. Therefore, the Commission has proposed specific measures such as the Directive of the European Parliament and the Council on the criminal law protection of the Community's financial interests, COM(2001) 272, as well as the regulation on mutual administrative assistance for

the protection of the financial interests of the European Community against fraud and any other illegal activities, COM(2006) 473. This last, which incorporates in large measure the European Parliament recommendation of 25 May 2005, does not cover prosecution as such but measures ensuring the interface with the judicial follow-up and the support of recovery.

112. The Commission notes the Court's recommendations on simplification and consolidation of anti-fraud legislation. The Commission will examine the possibility of consolidating anti-fraud legislation under Article 280 EC Treaty.
