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COMMISSION DECISION

of 2 July 1998

establishing certain implementing provisions for European Parliament and Council Decision No 888/98/EC establishing a programme of Community action to improve the functioning of the indirect taxation systems of the internal market (Fiscalis programme)

(notified under document number C(1998) 1819)

(98/467/EC)

(OJ L 206, 23.7.1998, p. 43)

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(98/467/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 888/98/EC of the European Parliament and Council of 30 March 1998 establishing a programme of Community action to improve the functioning of the indirect taxation systems of the internal market (Fiscalis programme) ([1]), and in particular Article 10 thereof,

Whereas certain procedures should be established for the implementation of the exchanges, seminars and multilateral controls referred to in Article 5 of the above decision;

Whereas as many officials as possible should benefit from the programme;

Whereas the planning and execution of these exchanges, seminars and multilateral controls must be organised so as to maximise the benefit and value-for-money for the Community;

Whereas certain financial provisions should be adopted to ensure the sound financial management and control of the expenditure incurred by the exchanges, seminars and multilateral controls, as provided for in Article 8 of the above decision;

Whereas certain procedures should be established to guarantee the continuous evaluation provided for in Article 12 of the above decision;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 11 of Decision No 888/98/EC,

HAS ADOPTED THIS DECISION:

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Article 1

This Decision lays down certain implementing provisions in respect of European Parliament and Council Decision No 888/98/EC establishing a programme of Community action to improve the functioning of the indirect taxation systems of the internal market (Fiscalis Programme). These provisions relate to:

— the organisation of the activities referred to in Article 5 of Decision No 888/98/EC,

— the financial management and control in connection with the activities referred to in Article 4(1) and (2), Article 5 and Article 6(1)(c) of Decision No 888/98/EC,

— the procedures for continuous evaluation and follow-up of the activities referred to in Article 5 of Decision No 888/98/EC.

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Article 2

Each Member State shall ensure that their representative to the Committee referred to in Article 11 of Decision No 888/98/EC ('the Committee') shall be responsible for the coordination of their Member State's fulfilment of the provisions of this decision. Where a Member State is represented by two representatives they shall jointly be so responsible.

([1]) OJ L 126, 28. 4. 1998, p. 1.

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TITLE I

GENERAL PROVISIONS

Article 3

1. The Member States shall ensure that their officials are regularly informed of the opportunities available under the Fiscalis programme.

2. The Member States shall ensure that all their officials chosen to participate in exchanges, seminars and multilateral controls are able to communicate well in the languages used during these activities.

3. As a general rule, the Member States shall ensure that the Community does not bear the expenses related to more than:

— one exchange per official during the programme,

— one multilateral control per official in a given year, and

— two seminars per official in a given year.

Exceptions to this general rule should be notified to the Commission in advance. In the absence of an opinion to the contrary from the Commission within 10 working days of the receipt of the notification, the Community shall bear the expenses related to the activity concerned.

4. The Member States shall choose officials from all appropriate parts of their administrations to participate in exchanges, seminars and multilateral controls.

5. The Member States shall ensure that their officials chosen to participate in exchanges, seminars and multilateral controls are suitably qualified; fully prepared in advance; and attend and participate fully in the activities involved.

6. The Member States shall communicate each year to the Commission the number of officials in their administration they consider eligible to participate in exchanges, seminars and multilateral controls. Eligible officials shall be those defined by Article 2(c) of Decision No 888/98/EC.

Article 4

1. Each Member State shall communicate to the Commission any duties or tasks carried out by their own officials which their legal system does not permit to be entrusted to an official from another Member State in the course of an exchange or a multilateral control. The nature of the specific exclusion shall also be communicated to the Commission. The Commission shall collate this information and make it available to all Member States.

2. Each Member State shall ensure that officials from other Member States shall be entrusted with all appropriate duties and tasks to be carried out during the exchange or multilateral control that permit the fulfilment of the objectives of the exchange or multilateral control. Each Member State shall consider all duties and tasks carried out by their own officials holding a similar position as potentially appropriate for an official from another Member State to carry out, except those specifically excluded and communicated to the Commission in accordance with Article 4(1).

Article 5

1. The Community may only bear travel and subsistence expenses incurred by officials in the course of exchanges, seminars and multilateral controls that take place other than in the Member State of the official. Travel and subsistence expenses incurred by officials in the course of exchanges, seminars and multilateral controls that take place in their own Member State shall be borne by the Member State concerned.

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2. As a general rule, exchanges and seminars shall be completed within the same calendar year as that in which the Community bears the related expenses. Journeys by officials to or from other Member States related to multilateral controls shall be completed within a period of time not exceeding eight months. The last journey, within that eight-month period, shall be completed a the latest during the first calendar year following the year in which the multilateral control was selected in accordance with Article 5(3) of

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Decision No 888/98/EC for financial support from the Community. Exceptions to this general rule should be notified to the Commission in advance. In the absence of an opinion to the contrary from the Commission within 10 working days of the receipt of the notification, the Community shall bear the expenses related to the activity concerned.

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TITLE II

EXCHANGES

Article 6

Member States shall ensure that their choice of Member States to be visited by their officials ('host Member States') is geographically balanced. As a general rule, each Member State shall send at least three officials to each other Member State within the duration of the programme and shall ensure that the average of the duration of all the exchanges on which they send their officials in a given year shall not be less than two weeks. Exceptions to this general rule should be notified to the Commission before the end of August each year. In the absence of an opinion to the contrary from the Commission within 10 working days of the receipt of the notification, the Community shall bear the expenses related to the activity concerned.

Article 7

1. Each year, the Member States shall choose: the officials to participate in exchanges ('exchange officials'); the objective and particular work activity of each proposed exchange; and potential host Member States. The number of exchanges so selected shall be determined in the light of total amount of travel and subsistence expenses established in accordance with Article 10(1) and (2). The exchanges chosen shall be those where the combination of exchange official, objective and work activity, and host Member State, are most likely to meet the general objectives of the programme, as set down in Article 3 of Decision No 888/98/EC.

2. The Member State of origin shall ensure that each exchange official completes an exchange proposal form, in accordance with the model established by the Commission, indicating the objectives of the exchange and the professional experience of the candidate. The Member State of origin shall ensure that the objectives and particular work activity of the exchange have been discussed and agreed with the superior manager of the exchange official.

3. For each selected candidate, the Member State of origin shall send the completed exchange proposal form to any appropriate host Member States that have been identified.

4. Within ►M1 four weeks ◄ of receipt of the exchange proposal form, the host Member State shall, as a general rule, confirm to the origin Member State that the exchange will take place on the basis of the exchange proposal form. The name and contact details of an official who will organise the exchange ('host official') shall also be communicated to the Member State of origin. If the host Member State is unable to confirm the exchange within the ►M1 four weeks ◄ , the Commission shall be notified by the host Member State.

5. Both Member States shall ensure that the exchange official and the host official reach agreement in advance of the exchange on the objectives and particular work activity of the exchange; the duties to be entrusted to the exchange official by the host administration; any linguistic or specific professional requirements; the date of the exchange and any other relevant details.

6. The host Member State shall take any other necessary steps to ensure that in its planning and execution of the exchange, the exchange official plays an effective part in the activities of the host administration.

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7. The host Member State shall take any necessary steps to ensure that during the exchange, the civil liability of the exchange official in the performance of his duties shall be treated in the same way as that of officials of the host Member State. The Member State of origin and the host Member State shall take any steps they consider necessary to ensure that the exchange official is bound by the same rules of professional secrecy as officials of the host Member State during the exchange.

TITLE III

SEMINARS

Article 8

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1. No more than 15 seminars may be organised in any given year. Proposals for seminars may be made by the Member States or the Commission in accordance with the model established by the Commission. The seminars chosen shall be those which are most likely to meet the general objectives of the Programme, as set down in Article 3 of Decision No 888/98/EC.

Seminars may be organised jointly with bodies other than indirect taxation administrations, provided that expenses relating to the organisation of such a joint seminar are shared pro-rata and that the joint seminar is likely to meet the general objectives of the Programme, as set down in Article 3 of Decision No 888/98/EC.

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2. Seminars may last between two and three working days, as appropriate.

3. The travel and subsistence expenses of two representatives from each Member State (but not including the host Member State) and no more than five outside experts may be borne by the Community for each seminar. The Commission and the host Member State may agree to permit more representatives from any or all of the Member States to attend the seminar, without their expenses being borne by the Community. In addition the travel and subsistence expenses for one day for one official from no more than five Member States other than the host Member State may also be borne by the Community for a preparatory meeting for each seminar. The Commission and the host Member State shall agree jointly on the need for such a meeting.

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4. The Community shall bear other expenses relating to the organisation of seminars not covered by the travel and subsistence expenses of officials and agreed between the Commission and the host Member State in accordance with paragraph 5. The Member States' administrations shall pay the supplier(s) using funds provided for that purpose for services contracted relating to the organisation of seminars following the appropriate guidelines established by the Commission.

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5. The venue for each seminar and the supply of any equipment or facilities required shall be agreed between the Commission and the host Member State, taking into account: accessibility from other Member States; availability of appropriate facilities and value-for-money; and the rates in force for reimbursement of subsistence expenses for the host Member State.

6. Each seminar shall be jointly planned and executed by the Commission and the host Member State to ensure the greatest possible active participation and involvement of the participants.

TITLE IV

MULTILATERAL CONTROLS

Article 9

1. As a general rule, the Community may only bear the travel and subsistence expenses entailed by a maximum of two return journeys to another Member State, per official, per multilateral control and a total of 10 days subsistence per official per multilateral control. Exceptions to this general rule should be notified to the Commission in advance. In the absence of an opinion to the contrary from the Commission within 10 working days of

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the receipt of the notification, the Community shall bear the expenses related to the activity concerned. The Community may only bear the travel and subsistence expenses in this way of two officials per Member State, per multilateral control.

2. The number of multilateral controls chosen, for which the travel and subsistence expenses shall be borne by the Community, shall be determined in the light of total amount of travel and subsistence expenses established in accordance with Article 10(1) and (2). The multilateral controls chosen shall be those which are most likely to meet the general objectives of the programme, as set down in Article 3 of Decision No 888/98/EC.

Each proposal for a multilateral control shall be evaluated on the basis of the following information supplied by the proposing Member State to the Commission and all other Member States:

— the industrial sector and approximate size of the taxable person or persons to be controlled,

— the justification for a multilateral control,

— the justification for the Community to bear some of the expenses, in relation to the general objectives of the programme, as set down in Article 3 of Decision No 888/98/EC,

— and any other relevant information.

In addition, the proposing Member State shall simultaneously inform all other Member States where the taxable person or persons involved have or may possibly have fiscal obligations, of the identity of the taxable person or persons to be controlled.

3. For each multilateral control for which it has been agreed that the Community will bear some of the expenses, the Member State which proposed the control shall be responsible for the planning and execution of the multilateral control, in consultation with the other participating Member States. In accordance with paragraph one, the multilateral controls may not, as a general rule, entail more than two journeys to another Member State for the officials involved.

TITLE V

FINANCIAL MANAGEMENT AND CONTROL

Article 10

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1. The total amount incurred by each Member State that may be borne by the Community in a given year shall be determined by the Commission, taking into account:

— the annual budgetary appropriations authorised for the Fiscalis Programme,

— the appropriations required for Fiscalis activities other than exchanges, seminars and multilateral controls,

— the appropriations required to reimburse the cost of participation of officials and outside experts at seminars,

— the number of officials in each Member State eligible to participate in the activities of the Programme (in accordance with Article 3(6)),

— the number of Member States,

— any adjustments made in accordance with paragraph 2; and in the light of the reports referred to in paragraph 10,

— and the number of taxable persons in each Member State making intra-Community supplies.

2. The total amount of expenses for activities referred to in Article 1, second indent that may be borne by the Community for each Member State may be adjusted throughout the year. Such adjustments shall be justified in the light of the reports of actual and forecast expenditure referred to in paragraph 9 of this Article.

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3. If the total amount of expenses incurred in a given year by the officials of a Member State in the course of exchanges, seminars and multilateral controls exceeds the total amount for that Member State determined according to paragraphs 1 and 2, the additional amount of expenses shall be borne by the Member State concerned, in accordance with Article 8(3)a of Decision No 888/98/EC.

4. The Member States shall ensure that their officials participating in exchanges, seminars and multilateral controls are appropriately insured against any moral, material or bodily harm they may incur in the course of the journey to or from, or stay in, the place where the exchanges, seminars and multilateral controls are carried out. In particular, an official using his own car shall remain liable for any accidents to his car or to third parties in accordance with the laws in force where any such accident occurs. No moral, material or bodily harm incurred by an official in the course of the journey to or from or stay in the place where the exchanges, seminars and multilateral controls are carried out may be the subject of a claim against the Community.

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5. The Member States shall reimburse on behalf of the Community the travel and subsistence expenses incurred by officials in the course of exchanges, seminars or multilateral controls up to the total amount of travel and subsistence expense established in accordance with paragraphs 1 and 2. The Member States shall ensure that only expenses incurred in accordance with the rules set down in the appropriate guidelines established by the Commission are reimbursed.

6. The Commission shall in turn reimburse the Member States the expenses they have reimbursed on behalf of the Community in accordance with paragraph 5. A maximum of 60 % of the total amount that the Community will bear for each Member State will be paid to each Member State at the beginning of the year. Further payments to the Member States may be made subsequently, as necessary and to cover other actions under Article 1, second indent, carried out on behalf of the Community by Member States. These subsequent payments may be withheld until the Commission considers that all the provisions of this Decision, in particular paragraphs 9 and 10 of this Article and of Article 11, have been fulfilled.

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7. All funds paid to the Member States by the Commission shall be made in the currency of the Community budget for the given year. The Member States may reimburse the expenses in any appropriate Community currency, provided that only the official conversion rates established by the Commission are applied. The Member States shall bear any costs incurred in converting currency.

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8. The Member States shall preserve either in the original or in electronic form for five years all necessary supporting documentation or related information.

Inspection shall be carried out, in accordance with the procedures laid down in the Financial Regulation [1], by Commission officials representing the Authorising Officer by means of examination of the files related to the management of the funds received in relation to the activities of the Programme and, if necessary, on the spot.

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9. Each Member State shall send to the Commission before the end of August each year, a report of actual and forecast expenditure on travel and subsistence, in accordance with a Commission model.

10. Each Member State shall send to the Commission before 20 February each year, a report of actual expenditure on travel and subsistence in the preceding year, in accordance with a Commission model.

11. If, in exceptional circumstances, any of the funds paid to a Member State remain unspent they shall, with the prior agreement of the Commission, be considered as part of the payment of the amount of the following year. The first payment of the following year shall be reduced by the corresponding amount. The Commission may, alternatively, recover any unspent funds from the Member States.

[1] OJ L 356, 31.12.1977, p. 1.

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TITLE VI

REPORTS AND EVALUATION

Article 11

1. ►M1 The Member States shall ensure that the evaluation forms in accordance with the model established by the Commission are completed and countersigned and communicated to the Commission within the deadlines indicated: ◄

— evaluation of the exchange by the exchange official (within two weeks of the completion of the exchange). This shall also be sent to the host Member State,

— evaluation of the exchange by the host official (within two weeks of the completion of the exchange). This shall also be sent to the origin Member State,

— evaluation of the exchange by the superior manager of the exchange official (within six months of the completion of the exchange),

— evaluation of the seminar by each participant (before departure from the seminar),

— evaluation of the seminar by each Member State (within six months of the completion of the seminar),

— evaluation of each multilateral control by the Member States involved (within two months of the completion of the control).

2. The Commission and the Member States, as appropriate, shall ensure that the following reports are completed. The Member States shall ensure that these reports are circulated throughout their administration, as appropriate.

— report of the exchange by the exchange official,

— report of the seminar by one participant per Member State,

— report of the seminar drawn up by the Commission and the host Member State. This report shall be sent to all Member States within three months of the completion of the seminar and shall be subsequently discussed by the Committee,

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— report of each multilateral control by the leading Member State. This report shall be sent to the Commission before the end of the eighth month of the second calendar year following the year in which the multilateral control was selected in accordance with Article 5(3) of Decision No 888/98/EC for financial support from the Community. The Commission shall forward the report to all Member States and it shall subsequently be discussed by the Committee.

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Article 12

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1998.

Article 13

This Decision is addressed to the Member States.

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