OPINION OF ADVOCATE GENERAL ALBER

delivered on 13 January 2000 *

A — Introduction

1. In the present reference for a preliminary ruling, the Nederlandse Raad van State (Netherlands Council of State) has referred to the Court of Justice questions on the interpretation of the Directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. It particularly concerns the circumstances in which a Member State's authorities must or may forw5ard information spontaneously, that is to say without prior request.

2. This question arises in a dispute between the appellant, W. N., who, for reasons of confidentiality, is referred to by the national court only by his initials, and the Staatssecretaris van Financiën (State Secretary for Finance, hereinafter 'the respondent'). The appellant is married but separated from his wife. His wife has left the Netherlands and taken up residence in Spain. The respondent decided to inform the competent authorities in Spain that the appellant was paying maintenance to his wife through a Swiss bank.

B — Legal basis

I — *Community law*

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation [1] (hereinafter 'the Directive')

3. It should be mentioned, by way of a preliminary observation, that the wording

* Original language: German.

1 — OJ 1977 L 336, p. 15.

of the different language versions of the Directive are at variance, giving rise to problems of interpretation. Some of the relevant passages are therefore set out below in several languages.

'*Article 1*

General provisions

(1) In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital.

(2) ...

(3) ...

(4) ...

(5) ...

Article 2

Exchange on request

...

Article 3

Automatic exchange of information

...

Article 4

Spontaneous exchange of information

(1) The competent authority of a Member State shall without prior request forward

the information referred to in Article 1(1), of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

(a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;

(b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;

(c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;

(d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

(e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

(2) ...

(3) The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1(1) of which they have knowledge.'

4. It should first be mentioned that the German and English texts of Article 4(1) concerning forwarding of information employ the wording '*soll... Auskünfte... erteilen*' and '*shall... forward the information*', whilst the French and Dutch versions use 'inform' ('*communique*' and '*deelt... mede*').

5. The situation referred to under Article 4(1)(a) — the supposed loss of tax — is

worded differently in the Dutch, German, French and English versions:

(the competent authority of the one Member State has...)

'redenen om te vermoeden dat in een andere Lid-Staat een *abnormale vrijstelling of vermindering* van belasting bestaat';

'Gründe für die Vermutung einer *Steuerverkürzung* in dem anderen Mitgliedstaat';

'des raisons de présumer qu'il existe *une réduction ou une exonération anormales* d'impôts dans l'autre État membre';

'grounds for supposing that there may be a *loss of tax* in the other Member State'. [2]

6. Since the parties consider the aim and purpose of the Directive several times in their arguments, which are set out below, and these will also be examined in this Opinion, the essential considerations which led to the Directive being adopted and to which the parties refer will be mentioned at this juncture.

7. The Directive concerning mutual assistance in the field of direct taxation was adopted to combat tax evasion and tax avoidance. According to the first recital of the Directive, practices of tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of conditions of competition; they therefore affect the operation of the common market. For these reasons, as pointed out by the second recital, even before the Directive was issued, the Council adopted a resolution on the measures to be taken by the Community in order to combat international tax evasion and avoidance. [3] As is stated in the third recital, national measures, like collaboration between administrations on the basis of bilateral agreements, are insufficient. It therefore appears — according to the fourth recital — that collaboration between tax administrations within the Community should be strengthened in accordance with common principles and rules. The fifth recital states that the Member States should, on request, exchange information

2 — Emphasis added in each case.

3 — OJ 1975 C 35, p. 1.

concerning particular cases and — under the sixth recital — exchange, even without any request, any information which appears relevant for the correct assessment of taxes, 'in particular where... such transactions [artificial transfers of profits] are carried out between enterprises in two Member States through a third country in order to obtain tax advantages...'.

...

b) a tax reduction, remission, refund or exemption is granted in the Netherlands which may affect the levying of tax in the State where the competent authority is located.'

II — *National law*

8. The Netherlands transposed the Directive by the *Wet op de internationale bijstandsverlening bij de heffing van beslastingen* (Law of 24 April 1986 on international administrative assistance in the field of taxation; hereinafter 'the WIB').

9. Article 13(1)(a) of the WIB, which lays down restrictions on the forwarding of information, provides:

Article 7 of the WIB governs the spontaneous exchange of information and Article 7(1)(1) provides:

'Our Minister may not forward information where

'Our Minister[4] may, of his own motion, forward to a competent authority such information as may be useful to the latter for the purposes of assessing tax liability in cases where

a) the forwarding of such information is not required under any obligation

4 — This refers to the Minister for Finance.

imposed by Directive 77/799/EEC... or under any other obligation laid down by international or interregional law.'

C — Facts

10. The appellant, who has been married since 1974, is separated from his wife, who left the Netherlands in 1983 and settled in Spain, where she bought a house. The appellant continued to pay maintenance to her after her departure. Upon inspection of his tax return for 1988 — which established that, as a result of the maintenance payments to his wife, he had obtained considerable tax reductions — the respondent decided, on 2 December 1992, to inform the competent Spanish authorities of the maintenance payments from 1987 to 1991 which were made through the intermediary of a Swiss bank. The appellant lodged an objection to that decision, which was dismissed on 25 May 1993. By written communication of 22 June 1993 the appellant then lodged an appeal against that decision at the referring court.

11. The referring court considers that, on account of the divergent wordings of the Directive, there is a lack of clarity both as regards the meaning of '*abnormaal*'/'*anormales*' and as to whether that provision presupposes an express act on the part of an authority of another Member State. The referring court also points out that a broad interpretation, as advocated by the respondent, raises doubts as to the import of the other situations described in Article 4 of the Directive. The question also arises whether — if the present case does not fall within any of the situations described in Article 4(1) of the Directive — Article 4(3) gives rise to an obligation to forward information spontaneously.

12. By judgment of 19 November 1998, the referring court therefore submitted to the Court of Justice the following questions:

1. Must the words 'a loss of tax' in Article 4(1)(a) of Directive 77/799/EEC be interpreted as meaning that the loss of tax in question must be covered by an express measure on the part of the competent authority of another Member State?

2. How should the word '*abnormaal*' in the Dutch version of that provision be interpreted in that connection?

3. If Article 4(1)(a) is not applicable, can Article 4(3) of the Directive give rise to

an obligation to exchange information spontaneously?

D — Questions 1 and 2

13. On account of their substantive connection, the first two questions should be examined together, since the question arises not only of the interpretation of the terms 'tax reduction' or 'loss of tax' as such, but also of the equation of the terms 'abnormal tax reduction...' in some languages with the words '*Steuerverkürzung*' or 'loss of taxes' in other language versions.

14. By its first two questions, the referring court ultimately seeks to ascertain whether it is necessary, with regard to the obligation to forward information, on the one hand, for the loss of tax to result from an express act on the part of the competent authority of another Member State — by which a formal tax assessment is presumably meant — or whether it is sufficient that — without the forwarded information — a tax reduction could arise or could have arisen. On the other hand, the court wishes to ascertain whether the term 'abnormal' tax reduction means a reduction 'against the rules' — i.e. an unjustified tax abatement — or whether — in accordance with current usage — abnormal should be equated with unusual or excessive. In this connection, the question also arises whether an abnormal tax reduction (in the Dutch and French wording) should be treated as equivalent to the term '*Steuerverkürzung*' (German wording) and 'loss of tax' (English wording).

Submissions of the parties

15. All the parties — the Netherlands Government and the Commission, as well as the French Government — essentially reach the same conclusion, namely that an express act on the part of the competent authority of another Member State is not necessary and that the word 'abnormaal' should be construed as meaning a 'loss of taxes'.

16. In its observations, the Netherlands Government first of all compares the Dutch, French, English and German versions of Article 4(1)(a) of the Directive. It concludes that the different versions do correspond as regards the notion of *supposition* of a loss of taxes. It follows that it is not necessary to establish whether there has actually been a reduction in taxes.

17. With regard to the divergences between the language versions of the Directive over

the term 'abnormal tax reduction', the Netherlands Government, like the other parties, makes reference to the consistent case-law of the Court of Justice, whereby the different language versions of a Community text must be given a uniform interpretation and, in the case of divergence between the versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part. [5]

18. Referring to Article 1(1) and the sixth recital of the Directive, the Netherlands Government asserts that the provision at issue must be given a broad interpretation and that it does not require any proof that the forwarded information is 'useful' for the purposes of the tax assessment. A similar conclusion follows from the purpose of the Directive, as set out in the first, third and fourth recitals. If the obligation to forward information is given a more strict interpretation, the mutual assistance which is necessary in order to combat tax evasion and tax avoidance would become practically impossible. That would mean that the authorities of the Member State supplying the information would be required not only to have an extensive knowledge of the taxation systems of all the other Member States, but also to conduct an 'examination of the specific situation of the person' to whom the information relates.

5 — Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28 with a reference to Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14.

19. The Netherlands Government therefore reaches the conclusion that Article 4(1)(a) of the Directive does not require the authorities of the Member State providing the information to establish in advance that a reduction in taxes is covered by an express measure on the part of the competent authority. The authorities forwarding the information merely have to carry out a 'marginal control' in order to ascertain whether a loss of tax 'exists' in another Member State.

20. In the view of the French Government, it is apparent from the general scheme of the Directive that it requires only a supposition of a tax reduction, but not an express act on the part of the competent authorities prior to the exchange of information. The wording of Article 4(1)(a) is quite clear in this respect. Under that provision, it is sufficient for the competent authority to have grounds to suppose a loss of tax. This is also clear from the sixth recital.

21. An exchange of information would — the French Government continues — be redundant where the other Member State had expressly permitted an exemption from taxes by law. If then an express measure were required, this would run counter to the spirit and purpose of Article 4(1)(a). It would at least considerably restrict the measure of discretion enjoyed by the authorities.

22. As far as the interpretation of the term '*abnormaal*' is concerned, the French Government also points out that it is apparent from the general scheme of the Directive that nowhere does the notion arise that it is necessary to quantify the supposed tax fraud or tax avoidance. Similarly, even where the idea of an increase in tax or a saving in tax is associated with situations of tax exemption or tax reduction — as in Article 4(1)(b)-(d) — no specific amount is mentioned.

23. However, this does not mean that there are no obligations for the competent authorities under Article 4(1)(a). On the contrary, they have to 'indicate the evidence' which gives rise to the supposition that there is fraud or tax avoidance in another Member State. The exchange of information is thus linked to an actual situation in which such evidence exists.

24. The Commission first examines the meaning of the word '*abnormaal*'. This relates to situations which deviate from a certain norm or — in the legal sense — from applicable rules, and are thus unjustified. Because of the divergence between the different language versions, the Commission, like the other parties, then refers to the case-law of the Court. [6] In order to determine the objective of the Directive, which is necessary in this connection, it refers to the first and fifth recitals, which reveal its objective to be combating tax evasion and tax avoidance and — indirectly — the promotion of the principle of fair taxation. This means that each person must pay the taxes which are fair in view of his situation. This in turn gives rise to the general rule, under Article 1(1) of the Directive, that the Member States must exchange any information that may enable them to effect a correct assessment of taxes.

25. The Commission also refers to the significance of the system of mutual assistance under Directive 77/799 which follows from the case-law. Thus, the Court has rejected discriminatory national tax measures which were regarded as necessary in order to obtain precise information, referring to the possibilities of mutual assistance under the Directive. [7]

26. Article 4(4)(a) is therefore to be interpreted as meaning that the authorities forwarding the information must suppose that the fact that the competent authorities of the other Member State do not have certain information at their disposal could result in the person liable to tax obtaining a tax advantage which is not consistent with the applicable rules and is therefore unjus-

6 — See footnote 5.

7 — Case C-1/93 *Halliburton Services* [1994] ECR I-1137 and Case C-250/95 *Futura* [1997] ECR I-2471, paragraphs 41 and 43.

tified. Under the seventh recital,[8] this supposition is to be regarded as being well-founded in particular where certain financial transactions between two Member States — as in the present case — are conducted through a third country which furthermore differs from the others in that it has strict banking secrecy.

27. The Commission lastly considers the argument mentioned in the order for reference that a broad interpretation of Article 4(1)(a) raises doubts as to the significance of the other situations described in Article 4(1). In the opinion of the Commission, Articles 4(1)(b), (c) and (d) are so specific that they continue to retain their significance.

28. With regard to the question whether the loss of tax must result from an express act on the part of the competent authority, the Commission submits that the supposition which must exist does not depend on the manner in which the loss of tax arises. It would run counter to the operation of the system of mutual assistance if an express measure were required. In practice, tax advantages could arise precisely because the competent authorities cannot effect a correct assessment of tax because they lack the necessary information. In such circumstances, the authority could only assess whether it could levy taxes if it received the necessary information on the basis of the system of mutual assistance.

29. Otherwise, an excessive burden would also be imposed on the competent authorities, since an extensive study of the situation in the receiving State would be required before any information was forwarded. Spontaneous exchange of information would thus no longer be possible.

30. In conclusion, the Commission argues that the supposition required in Article 4(1)(a) could be regarded as existing where the absence of certain information in the Member State could result in a person liable to tax enjoying an unjustified tax advantage. This is the case in particular where tax evasion is possible. In this connection, it is not necessary for the loss of tax to be covered by an express measure on the part of the competent authorities.

Opinion

31. It should be mentioned, by way of a preliminary observation, that in the circumstances referred to in Article 4(1) of the Directive, there is an obligation to forward information, which is clear from Article 4(1) and from the spirit and purpose of the Directive. The German word '*soll*' [English: shall] leaves no scope for discretion.

8 — This reference is probably intended to be to the sixth recital.

Definition of the term '*abnormaal*'

32. Since the different language versions are at variance, the question arises how Article 4(1)(a) is to be interpreted. The Court has consistently held that the different language versions of a Community text must be given a uniform interpretation; 'in the case of divergence between the versions the provision in question must therefore be interpreted by reference to the purpose and general scheme of the rules of which it forms part'. [9]

33. Under Article 1(1), the purpose of the Directive is to enable a correct assessment of taxes on income and on capital to be effected, regulating as it does the forwarding of all information which may be relevant to such an assessment. The recitals of the Directive also provide indications as to its purpose. Particular mention should be made of the first, second and third recitals in this regard. According to those recitals, the Directives seeks to combat international tax evasion and avoidance, which constitute violations of the principle of fair taxation.

34. If some of the language versions of Article 4(1) state that a spontaneous exchange of information is to be effected where the competent authority has grounds for supposing that there may be an abnormal exemption from tax within the framework of a directive which was adopted to prevent tax evasion and to enable the correct assessment of taxes, that term can only mean a loss of tax in accordance with the normal linguistic usage of the other versions.

35. As the Commission rightly contends, this follows from the interpretation of the term '*abnormaal*'. Abnormal things are those which are not in keeping with a norm — including a legal norm. An abnormal exemption from tax, as is mentioned in certain language versions of the Directive, would not therefore be an excessive tax exemption — as might at first be assumed — but one which is not consistent with tax legislation or is not provided for by that legislation. This is fully consistent with the term '*Steuerverkürzung*' in the German version of the Directive.

36. In this regard, one must also concur with the French Government, which points out that the terms 'reduction in tax' and 'saving in tax' in the other circumstances referred to in Article 4(1) likewise do not indicate any amounts.

37. The term '*abnormaal*' should thus be understood in the sense of a loss of tax.

9 — Judgments in *Rockfon* (cited in footnote 5) and *Bouchereau* (cited in footnote 5).

Requirement of an express measure by the competent authority

38. An express measure on the part of the competent authority presumably means assessment to a particular amount of tax, or a reduction in tax actually being granted. It is clear from the wording of the contested provision alone that there is no such requirement. Under the Directive, the information must be forwarded if the competent authority has 'grounds for supposing that there may be a loss of tax'. It is not therefore sufficient merely to suppose that the taxes were not (or could not be) assessed correctly in another Member State. The actual situation in the other Member State does not need to be examined. This means that the authority is not required to examine whether the tax reduction or remission is covered by an express measure on the part of the authorities of the other Member State. In that case, the loss of taxes would no longer be supposed, since the authorities would not only know that it existed, but even how it arose.

39. It must therefore be concluded that Article 4(1)(a) must be interpreted as meaning that there must be 'grounds for supposing that there may be a loss of tax', but there need not be any express measure on the part of the competent authorities of the other Member State.

40. As regards the other sets of circumstances described in Article 4(1), one must concur with the view of the Commission that they are so specific that, even if Article 4(1)(a) is interpreted in the relatively broad way described above, they do not lose their individual meaning. In addition, they set out particularly 'suspicious' situations.

E — Question 3

Submissions of the parties

41. The Netherlands Government considered this question in particular in the oral procedure in order to reply to the Commission's written observations. On the one hand, it argued that, in view of the proposed answer to Questions 1 and 2, it was actually no longer necessary to answer the third question.

42. On the other hand, it stated that the answer to the third question was clear from the wording and scheme of Article 4 of the Directive. Article 4(1) indicates the circumstances in which there is an obligation to exchange information. Regard must always be had in this connection to the objective of the Directive, which is to combat tax evasion and avoidance. In the light of the objective of the Directive, it might also be

necessary to forward information in other circumstances. In its written observations, the Netherlands Government assumed that the forwarding of information is an option and not an obligation.

43. In the oral procedure, it argued further in this connection that Article 4(3) provides that the legislature of the Member States has conferred upon the competent authorities the power to forward information in precisely these circumstances too. Article 4(3) lays down an obligation, it being for the competent authority to assess whether or not an obligation exists in the specific case.

44. Contrary to the Commission, the Netherlands Government takes the view that that obligation has been transposed into Netherlands law. In this connection it cites Article 7(1)(d) of the WIB, under which the Minister (for Finance) may forward information — in addition to the circumstances referred to in the Directive when he must do so — whenever he considers it necessary for the purposes of assessing tax liability.

45. The obligation laid down in the Directive has therefore been transposed into Netherlands law. Since this obligation is based on the Directive, Article 13(1)(a) does not preclude actual exercise of that power by the authorities.

46. The Netherlands Government points out in conclusion that the questions which the Commission has raised concern the interpretation of Netherlands national law, for which the national courts alone have jurisdiction and which are not to be answered by the Court of Justice in the context of a reference for a preliminary ruling.

47. The authorities have been given the relevant powers and, therefore, the obligation under the Directive has been fulfilled, with the result that Article 13(1)(a) is not relevant in this instance. Consequently, the Netherlands Government argues that Article 4(3) requires the Member States, in implementing the Directive, to make provision for information also to be forwarded where necessary in circumstances other than those described in Article 4(1) in order to achieve the aims of the Directive.

48. With regard to the Commission's observation that, if such an interpretation is adopted, it is difficult to see why the referring court asked the third question at all, the Netherlands Government points out that it is for the national court to decide which questions it considers to be necessary to decide a case and therefore refer for a preliminary ruling.

49. In the view of the French Government, it is clear that Article 4(3) lays down no

obligation to exchange information spontaneously. This is apparent from the general scheme of Article 4, which lays down a clear division between Articles 4(1) and (3). Article 4(1) indicates the circumstances where there is an obligation to exchange information, whilst Article 4(3) provides only for the possibility of exchanging information in any other circumstances.

50. The Commission, like the Netherlands Government, points out that, if the first two questions are answered as it proposes, the third question is no longer of importance to the present dispute. For the sake of completeness it nevertheless makes submissions on Question 3. It points out, first of all, that this question — like the first two questions — must be understood in conjunction with Article 13(1)(a) of the WIB. That provision appears to prohibit the forwarding of information where there is no obligation to that effect under the Directive. The question therefore arises whether Article 13 is inconsistent with the correct transposition of Article 4(3) of the Directive in Article 7 of the WIB. It is there — that is to say, in national law rather than in the Directive — that the essential problem which has prompted the national court to refer the question lies.

51. In the view of the Commission, Article 4(3) is to be interpreted as comprising an obligation on the Member States to accord the authorities a measure of discretion as regards the forwarding of information. If the possibility of spontaneous exchange is precluded from the outset, the Directive loses its import — in particular in the light of its objective.

52. Article 13(1)(a) of the WIB does not appear to grant the discretion provided for in the Directive. However, it is uncertain how the wording 'any obligation imposed by' the Directive in Article 13(1)(a) should be understood. It could apply to the obligation on the Member States to implement the Directive in a certain way or the obligation on the competent authorities to forward certain information.

53. In this connection, the Commission observes that national law must be interpreted as far as possible in the light of the wording and purpose of directives. [10] Such an interpretation could consist in construing Article 13(1)(a) of the WIB in such a way that the Minister need not forward any information where this does not follow from obligations or powers of the authorities laid down by the national legislature to fulfil the transposition obligations under the Directive.

10 — Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 26 and Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8.

54. In that case, however, there would have been no reason for the national court to address a question to that effect to the Court of Justice. It can thus be concluded that the national court interpreted the obligation in Article 13 as an obligation to forward information.

55. The Commission points out, lastly, that where the authorities are accorded a measure of discretion, that discretion must also be exercised, [11] and, as the Court has held, the authorities cannot confine themselves to applying predetermined general criteria but must subject each particular case to a 'general' examination. [12] The authority is also required to draw the consequences stemming from that assessment, with the result that, under certain circumstances, an obligation to forward information might also exist.

56. In conclusion, the Commission asserts that it can essentially concur with the interpretation put forward by the Netherlands Government. Nevertheless, there is a certain lack of clarity and, consequently, the Court should indicate to the referring court what the scope of Article 4(3) of the Directive is. It is not for the Court of Justice, but the national court, to interpret national law in a compatible manner. The Court of Justice could point out, however, that Article 4(3) includes an obligation on the part of the Member States to allow the authorities a measure of discretion so that they themselves must decide whether or not to forward information.

Conclusion

57. One must concur with the view of the Netherlands Government and of the Commission that it is actually no longer necessary to answer the third question. The consequence of the interpretation of Article 4(1) of the Directive proposed under Questions 1 and 2, based on the information provided by the referring court, is that there is an obligation to forward information under Article 4(1) in the present case. For the sake of completeness, the third question will nevertheless be considered. It should, however, be borne in mind that the Court has jurisdiction only to interpret Community law, whereas it is for the referring court to interpret national — in this case Netherlands — provisions.

58. If consideration is given to the wording and the structure of Article 4 as a whole, it must be concluded that Article 4(3) does not contain any fundamental obligation to

11 — By analogy to Case T-17/95 *Alexopoulou* [1995] ECR I-A-227 and II-683, paragraph 22 et seq.

12 — Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 41.

forward information. This also appears to make sense in the light of the scheme of Article 4, which first indicates, in Article 4(1), certain circumstances where information must be forwarded, and in Article 4(3) accords the competent authorities a measure of discretion in all other circumstances, which means that the authority itself decides whether or not to forward information in a given case.

59. As the Commission and the Netherlands Government rightly argue, that discretion must be genuinely granted to the competent authorities when the national legislature implements the Directive. A provision which permits the forwarding of information only in the circumstances set out in Articles 4(1) and (2) where there is an obligation to forward information would not therefore be consistent with the Directive, since the option of forwarding information, and thus the possibility of the authorities themselves deciding whether to pass on information, would be precluded. The authorities must also exercise this measure of discretion which they enjoy, that is to say, they must examine in the relevant case — on the basis of the spirit and purpose of the Directive and the general obligation under Article 1 — whether or not to forward information.

F — Conclusion

60. In the light of the foregoing, I propose that the Court give the following answers to the questions referred by the national court:

(1) The words 'a loss of tax' in Article 4(1)(a) of Directive 77/799/EEC must be interpreted as meaning that the reduction in or remission of tax in question need not necessarily be covered by an express measure on the part of the competent authority of another Member State, but rather that a supposition that the tax may be lost is sufficient.

(2) The word 'abnormal' in some of the language versions of Article 4(1)(a) of Directive 77/799 is to be interpreted as meaning an unjustified reduction in or exemption from tax.

(3) Article 4(3) of Directive 77/799 provides that the competent authorities are accorded a measure of discretion as to whether to forward information to other authorities in any circumstances other than those referred to in Articles 4(1) and (2). The national legislature is required, in implementing the Directive, to accord the authorities the discretion provided for in Article 4(3). In exercising that discretion, an obligation to pass on information may arise in certain circumstances.