

COUNCIL DIRECTIVE 2001/44/EC

of 15 June 2001

amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 93 and 94 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) The existing arrangements for mutual assistance for recovery set out in Directive 76/308/EEC ⁽⁴⁾ should be modified to meet the threat to the financial interests of the Community and the Member States and to the internal market posed by the development of fraud.
- (2) In the context of the internal market, Community and national financial interests, which are increasingly threatened by fraud, must be protected so as to safeguard better the competitiveness and fiscal neutrality of the internal market.
- (3) In order to safeguard better the financial interests of the Member States and the neutrality of the internal market, claims relating to certain taxes on income and capital and taxes on insurance premiums should be added to the scope of the mutual assistance provided for by Directive 76/308/EEC.
- (4) In order to permit more efficient and effective recovery of claims in respect of which a request for recovery has been made, the instrument permitting enforcement of the claim should, in principle, be treated as an instrument of the Member State in which the requested authority is situated.
- (5) The use of mutual assistance for recovery cannot, save in exceptional circumstances, be based on financial benefits or an interest in the results obtained, but Member States should be able to agree the reimbursement arrangements when recovery poses a specific problem.
- (6) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down

the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾.

- (7) Directive 76/308/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/308/EEC is hereby amended as follows:

1. The title shall be replaced by the following:

‘Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures.’

2. Article 2 shall be replaced by the following:

Article 2

This Directive shall apply to all claims relating to:

- (a) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guidance and Guarantee Fund (EAGGF), including sums to be collected in connection with these actions;
- (b) levies and other duties provided for under the common organisation of the market for the sugar sector;
- (c) import duties;
- (d) export duties;
- (e) value added tax;
- (f) excise duties on:
 - manufactured tobacco,
 - alcohol and alcoholic beverages,
 - mineral oils;
- (g) taxes on income and capital;
- (h) taxes on insurance premiums;
- (i) interest, administrative penalties and fines, and costs incidental to the claims referred to in points (a) to (h), with the exclusion of any sanction of a criminal nature as determined by the laws in force in the Member State in which the requested authority is situated.’

⁽¹⁾ OJ C 269, 28.8.1998, p. 16 and OJ C 179, 24.6.1999, p. 6.

⁽²⁾ OJ C 150, 28.5.1999, p. 621 and opinion delivered on 16.5.2001 (not yet published in the Official Journal).

⁽³⁾ OJ C 101, 12.4.1999, p. 26.

⁽⁴⁾ OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 1994 Act of Accession.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

3. In Article 3, the following indents shall be added:

— “import duties” means customs duties and charges having equivalent effect on imports, and import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable to certain goods resulting from the processing of agricultural products,

— “export duties” means customs duties and charges having equivalent effect on exports, and export charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable to certain goods resulting from the processing of agricultural products,

— “taxes on income and capital” means those enumerated in Article 1(3) of Directive 77/799/EEC (*), read in conjunction with Article 1(4) of that Directive,

— “taxes on insurance premiums” means:

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|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| in Austria: | (i) Versicherungssteuer
(ii) Feuerschutzsteuer |
| in Belgium: | (i) Taxe annuelle sur les contrats d'assurance
(ii) Jaarlijkse taks op de verzekeringscontracten |
| in Germany: | (i) Versicherungssteuer
(ii) Feuerschutzsteuer |
| in Denmark: | (i) Afgift af lystfartøjsforsikringer
(ii) Afgift af ansvarsforsikringer for motorkøretøjer m.v.
(iii) Stempelafgift af forsikringspræmier |
| in Spain: | Impuesto sobre la prima de seguros |
| in Greece: | (i) Φόρος κύκλου εργασιών (Φ.Κ.Ε)
(ii) Τέλη Χαρτοσήμου |
| in France: | Taxe sur les conventions d'assurances |
| in Finland: | (i) Eräistä vakuutusmaksuista suoritettava vero/skatt på vissa försäkringspremier
(ii) Palosuojelumaksu/brandskyddsavgift |
| in Italy: | Imposte sulle assicurazioni private ed i contratti vitalizi di cui alla legge 29.10.1967 No 1216 |
| in Ireland: | levy on insurance premiums |
| in Luxembourg: | (i) Impôt sur les assurances
(ii) Impôt dans l'intérêt du service d'incendie |

in the Netherlands: Assurantiebelasting

in Portugal: Imposto de selo sobre os prémios de seguros

in Sweden: none

in the United Kingdom: insurance premium tax (IPT).

This Directive shall also apply to claims relating to identical or analogous taxes which supplement or replace the taxes on insurance premiums referred to in the sixth indent. The competent authorities of the Member States shall communicate to each other and to the Commission the dates of entry into force of such taxes.

(*) 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 (OJ L 336, 27.12.1977, p. 15). Directive as last amended by the 1994 Act of Accession.'

4. In Article 4(2), the words ‘the name and address’ shall be replaced by: ‘the name, address and any other relevant information relating to the identification to which the applicant authority normally has access’.

5. In Article 5(2) the words ‘the name and address’ shall be replaced by: ‘the name, address and any other relevant information relating to the identification to which the applicant authority normally has access’.

6. Articles 7, 8, 9 and 10 shall be replaced by the following:

Article 7

1. The request for recovery of a claim which the applicant authority addresses to the requested authority must be accompanied by an official or certified copy of the instrument permitting its enforcement, issued in the Member State in which the applicant authority is situated and, if appropriate, by the original or a certified copy of other documents necessary for recovery.

2. The applicant authority may not make a request for recovery unless:

(a) the claim and/or the instrument permitting its enforcement are not contested in the Member State in which it is situated, except in cases where the second subparagraph of Article 12(2) is applied,

(b) it has, in the Member State in which it is situated, applied appropriate recovery procedures available to it on the basis of the instrument referred to in paragraph 1, and the measures taken will not result in the payment in full of the claim.

3. The request for recovery shall indicate:

(a) the name, address and any other relevant information relating to the identification of the person concerned and/or to the third party holding his or her assets;

- (b) the name, address and any other relevant information relating to the identification of the applicant authority;
- (c) a reference to the instrument permitting its enforcement issued in the Member State in which the applicant authority is situated;
- (d) the nature and the amount of the claim, including the principal, the interest, and any other penalties, fines and costs due indicated in the currencies of the Member States in which both authorities are situated;
- (e) the date of notification of the instrument to the addressee by the applicant authority and/or by the requested authority;
- (f) the date from which and the period during which enforcement is possible under the laws in force in the Member State in which the applicant authority is situated;
- (g) any other relevant information.

4. The request for recovery shall also contain a declaration by the applicant authority confirming that the conditions set out in paragraph 2 have been fulfilled.

5. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority it shall forward it to the requested authority.

Article 8

1. The instrument permitting enforcement of the claim shall be directly recognised and automatically treated as an instrument permitting enforcement of a claim of the Member State in which the requested authority is situated.

2. Notwithstanding the first paragraph, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the Member State in which the requested authority is situated, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that Member State.

Within three months of the date of receipt of the request for recovery, Member States shall endeavour to complete such acceptance, recognition, supplementing or replacement, except in cases where the third subparagraph is applied. They may not be refused if the instrument permitting enforcement is properly drawn up. The requested authority shall inform the applicant authority of the grounds for exceeding the period of three months.

If any of these formalities should give rise to contestation in connection with the claim and/or the instrument permitting enforcement issued by the applicant authority, Article 12 shall apply.

Article 9

1. Claims shall be recovered in the currency of the Member State in which the requested authority is situated. The entire amount of the claim that is recovered

by the requested authority shall be remitted by the requested authority to the applicant authority.

2. The requested authority may, where the laws, regulations or administrative provisions in force in the Member State in which it is situated so permit, and after consultations with the applicant authority, allow the debtor time to pay or authorise payment by instalment. Any interest charged by the requested authority in respect of such extra time to pay shall also be remitted to the Member State in which the applicant authority is situated.

From the date on which the instrument permitting enforcement of recovery of the claim has been directly recognised or accepted, recognised, supplemented or replaced in accordance with Article 8, interest will be charged for late payment under the laws, regulations and administrative provisions in force in the Member State in which the requested authority is situated and shall also be remitted to the Member State in which the applicant authority is situated.

Article 10

Notwithstanding Article 6(2), the claims to be recovered shall not necessarily benefit from the privileges accorded to similar claims arising in the Member State in which the requested authority is situated.'

7. Article 12(2) shall be amended as follows:

- (a) The following shall be added to the first sentence: 'unless the applicant authority requests otherwise in accordance with the second subparagraph';
- (b) the following subparagraph shall be added:

'Notwithstanding the first subparagraph of paragraph 2, the applicant authority may in accordance with the law, regulations and administrative practices in force in the Member State in which it is situated, request the requested authority to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the laws in force in the Member State in which the requested authority is situated.'

8. In Article 14, the first paragraph, shall be replaced by the following:

'The requested authority shall not be obliged:

- (a) to grant the assistance provided for in Articles 6 to 13 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the Member State in which that authority is situated, in so far as the laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action for similar national claims;

- (b) to grant the assistance provided for in Articles 4 to 13, if the initial request under Article 4, 5 or 6 applies to claims more than five years old, dating from the moment the instrument permitting the recovery is established in accordance with the laws, regulations or administrative practices in force in the Member State in which the applicant authority is situated, to the date of the request. However, in cases where the claim or the instrument is contested, the time limit begins from the moment at which the applicant State establishes that the claim or the enforcement order permitting recovery may no longer be contested.'
9. In Article 17, the words 'and relevant documents' shall be replaced by: 'the instrument permitting the enforcement and other relevant documents'.
10. Article 18 shall be replaced by the following:
- 'Article 18*
1. The requested authority shall recover from the person concerned and retain any costs linked to recovery which it incurs, in accordance with the laws and regulations of the Member State in which it is situated that apply to similar claims.
2. Member States shall renounce all claims on each other for the refund of costs resulting from mutual assistance which they grant each other pursuant to this Directive.
3. Where recovery poses a specific problem, concerns a very large amount in costs or relates to the fight against organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.
4. The Member State in which the applicant authority is situated shall remain liable to the Member State in which the requested authority is situated for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument issued by the applicant authority are concerned.'
11. Article 20 shall be replaced by the following:
- 'Article 20*
1. The Commission shall be assisted by a recovery committee (hereinafter referred to as "the Committee"), composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.
- The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its own rules of procedure.'
12. Article 22 shall be replaced by the following:
- 'Article 22*
- The detailed rules for implementing Articles 4(2) and (4), 5(2) and (3) and Articles 7, 8, 9, 11, 12(1) and (2), 14, 18(3) and 25 and for determining the means by which communications between the authorities may be transmitted, the rules on conversion, transfer of sums recovered, and the fixing of a minimum amount for claims which may give rise to a request for assistance, shall be adopted in accordance with the procedure laid down in Article 20(2).'
13. The following paragraph shall be added to Article 25:
- 'Each Member State shall inform the Commission annually of the number of requests for information, notification and recovery sent and received each year, the amount of the claims involved and the amounts recovered. The Commission shall report biennially to the European Parliament and the Council on the use made of these arrangements and on the results achieved.'
- Article 2*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 2002. They shall forthwith inform the Commission thereof.
- When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.
- Article 3*
- This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.
- Article 4*
- This Directive is addressed to the Member States.
- Done at Göteborg, 15 June 2001.
- For the Council*
The President
B. RINGHOLM