

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 3) ORDER 2008**  
**2008 No. 2564**

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

This Order designates the Treasury so that the Treasury may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to mutual assistance between member States for the recovery of claims relating to levies, duties, taxes and financing of the Common Agricultural Policy, and interest, costs and penalties related to such claims.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Background**

- 4.1 Section 2(2) confers a power which may be exercised by a designated Minister or government department.
- 4.2 A designated Minister or government department can then make provision by order, rules, regulations, or scheme for the purpose of enabling a Community right to be exercised or implementing a Community obligation (or to deal with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.
- 4.3 The designation in this Order relates to Directive 2008/55/EC of the European Parliament and of the Council of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (commonly referred to as ‘MARD’)<sup>1</sup> which codifies and repeals previous legislation (most notably Directive 76/308/EEC - ‘the 1976 Directive’).
- 4.4 MARD establishes a regime whereby one Member State may request that another assist it in the recovery of claims relating to taxes, duties and levies, as well as payments under the Common Agricultural Policy and the cost of collecting or enforcing them, by means of its own tax enforcement powers.
- 4.5 The 1976 Directive was implemented in the UK by section 134 of Schedule 39 to the Finance Act 2002 (‘the 2002 Act’),<sup>2</sup> together with the regulations made thereunder - the Recovery of Duties and Taxes Etc Due in Other

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<sup>1</sup> OJ L 150, 10/06/2008 p. 28. A copy of Directive 2008/55/EC can be accessed via the following link:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:150:0028:01:EN:HTML>

<sup>2</sup> 2002 c.23

Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (SI 2004/674).

- 4.6 MARD took effect on 30 June 2008, and it is therefore necessary to make amendments to the 2002 Act, reflecting that MARD has now replaced the 1976 Directive.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

7.1 The Treasury proposes to make legislation in the near future under section 2(2) to amend the 2002 Act, to update the reference in that Act to the 1976 Directive reflecting that MARD has now replaced that Directive.

7.2 The new designation of the Treasury in respect of mutual assistance between Member States for the recovery of claims relating to levies, duties, taxes and financing of the Common Agricultural Policy, and interest, costs and penalties in relation to those debts reflects the need to cover a variety of recoverable sums specified by MARD.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it is an enabling instrument and in itself has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

## **9. Contact**

Les Saunders at Cabinet Office European Secretariat, Tel: 020 7276 0190 or email [Les.Saunders@cabinet-office.x.gsi.gov.uk](mailto:Les.Saunders@cabinet-office.x.gsi.gov.uk), can answer any queries regarding the instrument.

Cabinet Office  
European and Global Issues Secretariat  
16<sup>th</sup> October 2008