

II

(Preparatory Acts)

COMMISSION

Proposal for a European Parliament and Council Directive amending Council 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

(98/C 269/06)

*COM(1998) 364 final — 98/0206(COD)**(Submitted by the Commission on 26 June 1998)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

Whereas the existing arrangements for mutual assistance on recovery set out in Council Directive 76/308/EEC ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, 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;

Whereas 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 should be added to the scope of the mutual assistance provided for by that Directive;

Whereas any claim in respect of which a request for recovery has been made should be treated as a claim of the Member State in which the requested authority is situated but should not be given preferential treatment over and above that given to similar claims arising in that Member State;

Whereas 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 be treated as an instrument of the Member State in which the requested authority is situated;

Whereas the use of mutual assistance on recovery by the Member States should be encouraged by making the mutual financial benefits inherent in mutual assistance more transparent on a case-by-case basis;

Whereas, therefore, Directive 76/308/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. The title is 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 is replaced by the following:

‘Article 2

1. This Directive shall apply to all claims relating to:

- (a) refunds, interventions and other measures forming part of the system of total or partial

⁽¹⁾ OJ L 73, 19.3.1976, p. 18.

financing of the European Agricultural Guidance and Guarantee Fund, 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) interest and penalties, fines, and costs incidental to the recovery of the claims referred to in (a) to (g).

2. Articles 4, 5 and 6 shall apply only to claims not more than three years old, dating from the moment the claim is initially established in accordance with the laws, regulations or administrative provisions 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 is contested, those Articles shall apply only to such claims which are not more than three years old, dating from the moment the claim may no longer be contested'.

3. The following indents are added to Article 3:

- "import duties" means customs and charges having equivalent effect on imports, agricultural levies and other 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 and charges having equivalent effect on exports, agricultural levies and other 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 Council Directive 77/799/EEC (*), read in conjunction with Article 1(4) of that Directive.

(*) OJ L 336, 27.12.1977, p. 15.'

4. Article 4 is amended as follows:

- (a) in paragraph 2 the words 'the name and address' are replaced by 'the name, address and any other relevant information relating to the identification';
- (b) in paragraph 3, point (b) is deleted.

5. In Article 5(2), the words 'the name and address' are replaced by 'the name, address and any other relevant information relating to the identification'.

6. Article 7 is amended as follows:

- (a) Paragraph 2 is amended as follows:
 - (i) in point (a), the following is added: 'except in cases where the second subparagraph of Article 12(2), is applied';
 - (ii) point (b) is replaced by the following:
 - '(b) it has, in the Member State in which it is situated, applied and terminated appropriate recovery procedures available to it on the basis of the instrument referred to in paragraph 1, and the measures taken have not resulted in the payment in full of the claim'.

(b) Paragraphs 3 and 4 are replaced by the following:

'3. The request for recovery shall indicate:

- (a) the name, address and any other relevant information relating to the identification of the person concerned;
- (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 claim to the addressee by the applicant authority and/or by the requested authority;
- (f) the date from which enforcement is possible under the laws in force in the Member State in which the applicant authority is situated;
- (g) the compensatory percentage in accordance with Article 18(2), second subparagraph;
- (h) any other relevant information.

The request shall indicate the interest due as a fixed amount incurred up to the date of the request and as an additional amount to be determined on recovery. To permit the requested authority to calculate this additional amount, an interest rate and the method of calculation to be used by the requested authority in determining the interest due from the date of the request to the date of recovery from the debtor shall be indicated.

4. The request for recovery shall confirm that the conditions set out in paragraph 2 are fulfilled'.

7. Article 8 is replaced by the following:

'Article 8

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'.

8. Article 9 is amended as follows:

- (a) the following sentence is added to paragraph 1:

'The entire amount of the claim that is recovered by the requested authority shall be remitted by the requested authority to the applicant authority'.

- (b) Paragraph 2 is amended as follows:

- (i) in the first subparagraph, second sentence, the words 'shall be remitted' are replaced by 'shall also be remitted';

- (ii) the second subparagraph is deleted.

9. Article 10 is replaced by the following:

'Article 10

The claims to be recovered shall not be given preferential treatment over and above that given to similar claims arising in the Member State in which the requested authority is situated.'

10. In Article 11, the words 'the action' are replaced by 'any action'.

11. Article 12(2) is amended as follows:

- (a) the following is added to the first sentence: ' ; unless the applicant authority requests otherwise in accordance with the second subparagraph.';

- (b) the following subparagraph is added:

'If the applicant authority judges that the action will be held to be unfounded, it may request the requested authority to recover the claim. If the result of the action is subsequently favourable for 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 and regulations in force in the Member State in which the requested authority is situated'.

12. Article 14 is deleted.

13. In Article 17, the words 'and relevant documents' are replaced by ' ; the instrument permitting the enforcement and other relevant documents'.

14. Article 18 is replaced by the following:

'Article 18

1. The requested authority shall recover from the person concerned and retain any costs directly linked to recovery which it incurs, in accordance with the laws and regulations in the Member State in which it is situated that apply to similar claims.

2. Until 31 December 2004, all costs incurred by the requested authority, other than those referred to in paragraph 1, resulting from mutual assistance which led to recovery of part or all of the claim by the requested authority shall be reimbursed by the applicant authority in accordance with the second subparagraph.

On remittance by the requested authority to the applicant authority of the amount of the claim recovered by the requested authority, the applicant authority shall pay a sum equal to a percentage greater than 0,1 % of the amount of the claim recovered and remitted by the requested authority. The percentage shall be indicated by the applicant authority in the original request for recovery.

3. From 1 January 2005, Member States shall renounce all claims on each other for the reimbursement of costs resulting from mutual assistance which they grant each other pursuant to this Directive.

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'.

15. Article 22(1) is replaced by the following:

'1. The detailed rules for implementing Articles 4(2) and 4, 5(2) and (3), 7, 8, 9, 11, 12(1) and (2), 18(2) 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 paragraphs 2 and 3 of this Article.'

16. The following paragraph is 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, the amounts recovered, the amounts deemed irrecoverable, and the time taken to carry out these actions. The Commission shall report to the European Parliament and the Council on the use made of these arrangements and on the results achieved biennially'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1999 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and a correlation table between this Directive and 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.
