



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE
EUROPEAN PARLIAMENT AND THE COUNCIL**

on a strategy for the better functioning of mutual assistance on recovery

including a

**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

(presented by the Commission)

1. A STRATEGY FOR MUTUAL ASSISTANCE ON RECOVERY

1.1. Background

Most tax claims (or debts) due to national treasuries are collected promptly through spontaneous payment by the debtor. When the claims are not settled promptly, national tax administrations can resort to a range of powers to recover the claim. At the limit, the claim can be recovered through the seizure and sale of the debtor's property by the tax administration ("enforcement").

The original Community arrangements for mutual assistance between Member States were put in place because it was recognized that it was increasingly likely that the debtor, or recoverable assets belonging to the debtor, were within the jurisdiction of another Member State. Arrangements at Community level were necessary to ensure that taxpayers did not successfully evade their obligations in this way. These arrangements, though originally developed to cover agricultural levies and customs duties as sources of Community revenue, were later extended to certain essentially national taxes with the addition of VAT and excise duties to the scope.

The arrangements are founded on Council Directive 76/308/EEC¹, amended twice², and implementing Commission Directive 77/794/EEC³, also amended twice⁴. A proposal⁵ to amend these arrangements was made in 1990 but was never adopted. That has now been withdrawn and replaced by the present proposal.

1.2. Objectives

The present strategy and proposals are part of the Community strategy to build up non-distortionary and Single Market oriented tax systems, as set out in the Commission communication "Taxation in the European Union"⁶.

The necessity of reform of the existing arrangements at this time is driven by two factors. First, the need to protect national and Community financial interests when they are under growing threat from fraud which does not recognize national boundaries. Secondly, to maintain the competitiveness and neutrality (in terms of taxation) of the internal market.

Growing anecdotal evidence suggests that fraudsters are increasingly exploiting weaknesses in tax regimes and incompatibilities both between national tax regimes and between tax and Customs administrations. The internal market itself has encouraged greater mobility for taxable persons and their assets. The projected growth in electronic

¹ Council Directive 76/308/EEC of 15 March 1976, OJ L 73, 19.3.1976, p. 18.

² Council Directive 79/1071/EEC of 6 December 1979, OJ L 331, 27.12.1979, p. 10.
Council Directive 92/108/EEC of 14 December 1992, OJ L 390, 31.12.1992, p. 124.

³ Commission Directive 77/794/EEC of 4 November 1977, OJ L 333, 24.12.1977, p. 11.

⁴ Commission Directive 85/479/EEC of 14 October 1985, OJ L 285, 25.10.1985, p. 65.
Commission Directive 86/489/EEC of 24 September 1986, OJ L 283, 4.10.1986, p. 23.

⁵ COM(90) 525 final.

⁶ COM(96) 546 final.

commerce also poses great challenges to traditional control and collection (particularly in identifying the physical location of taxable persons and their assets).

Recovery of claims is an essential part of tackling this threat of fraud. Efforts to establish and control customs duties and taxes are wasted without effective collection and recovery. A successful prosecution of a fraud is compromised if the defrauded sums are successfully moved beyond the reach of the national administration. Lack of effective recovery arrangements thereby encourages cross-border fraud.

National measures, or even collaboration between administrations on the basis of bilateral agreements, are not sufficient to meet these challenges. The existing mutual assistance arrangements have too many shortcomings to face these challenges (see section 2 below).

The most pressing areas of concern are VAT and direct taxation. Unlike customs and excise duties, for which there is usually a system of guarantees, the arrangements are the only way to recover VAT from another Member State. The need for the arrangements has become particularly acute since the abolition of frontier controls for VAT. Direct taxation is not covered at all by the existing arrangements. Extension of the arrangements to direct taxation is essential to the future protection of national financial interests.

The shortcomings of the existing arrangements on recovery also jeopardize the successful recovery of customs duties, which accrue to the Community; and excise duties, which accrue to the Member States. Although systems of guarantees exist to ensure that these revenues are collected, the recovery arrangements offer an important back-up, especially in fraud cases. This back-up is jeopardized by the ineffective existing arrangements.

Ineffective arrangements for recovery also jeopardize European competitiveness. The SLIM⁷ II report on the administrative burden on VAT taxable persons⁸ identified the need for a rapid improvement to the arrangements. Such an improvement would permit a radical reform of the very burdensome obligations imposed on non-established taxable persons, in particular the requirement for fiscal representatives.

2. THE SHORTCOMINGS OF THE PRESENT ARRANGEMENTS

2.1. Sources of the Commission's analysis

The Commission's analysis of the shortcomings of the present arrangements is drawn from an extensive consultation with the Member States. The arrangements have been the subject of discussion at five meetings of the Standing Committee for Administrative Cooperation (SCAC)⁹ from 1994-1996 and one meeting of the Recovery Committee¹⁰ held in 1996. As part of the work of the SCAC, the Commission sent a detailed questionnaire to the Member States. The results of this questionnaire and the Commission's analysis of the arrangements were discussed and endorsed at a meeting of the SCAC in 1996. To supplement this, the Commission also undertook a series of missions to eight Member States in 1996. Finally, a seminar held under the

⁷ Simplifying Legislation for the Internal Market.

⁸ COM(97) 618 final.

⁹ Article 10, Council Regulation (EEC) No 218/92.

¹⁰ Article 20, Council Directive 76/308/EEC.

Matthaeus-Tax programme in 1996 was held to identify improvements to cooperation in recovery.

2.2. Conclusions of the Commission's analysis

Figures for the use of the arrangements and their success have been difficult to obtain, partly because of differences in their measurement. Since 1993, approximately 1 000 requests have been sent every year, with an estimated total value of ECU 50 million. The average rate of recovery of these claims is between 3-5 per cent, equivalent to bad debts. The number of requests has grown considerably since the entry into force of the Single Market VAT and excise regimes from 1 January 1993. The bulk of these requests relate to VAT, which is to be expected given the lack of an alternative means of recovery of these claims and the financial importance of VAT.

The Member States have stated that the present operation of the arrangements is unacceptable, particularly given the importance of VAT revenues. All concede that the number of potential claims to which the arrangements could apply is far higher than present practice. They see effective arrangements as an essential deterrent to fraud and as a guarantee of equity of taxation between compliant and non-compliant taxable persons. Pressure for reform of the arrangements has come from the Member States.

Identifying reasons for the shortcomings in the present arrangements is hampered by the extremely low level of use and of success of the arrangements. It is hard to identify whether any elements of the arrangements are successful. Nevertheless the Commission's analysis, endorsed by the SCAC, established the following five broad categories of problem.

2.2.1. *The difficulty of tracing debtors in the Community*

Finding debtors or their assets within one Member State, particularly if fraud is involved, is one of the hardest challenges facing the Member States. Pursuing them throughout the Community has proved to be even harder. By definition, a claim which is subject to a request for mutual assistance has already proved to be difficult to recover.

2.2.2. *National recovery powers*

The functioning of the arrangements depends on the ability of each national administration to carry out recovery within its jurisdiction. The system breaks down if a Member State is unable to carry out the request to recover because it lacks a particular power. Unsurprisingly, to protect their national revenues, all Member States do have a high common degree of straightforward powers of recovery, such as to seize goods and sell them. Problems have however occurred because of disparities in powers of access to information about the debtor and their assets; in the extent of liability; limitation periods for debts; limits on the nature of information which can be exchanged and the rights of debtors to prevent recovery.

2.2.3. *Lack of legal equity for inter-Member State claims*

Article 6(2) of Directive 76/308/EEC says that "any claim in respect of which a request for recovery has been made shall be treated as a claim of the Member State in which the requested authority is situated". This principle is at the heart of mutual assistance. It is, however, not fully applied by the Member States. This is partly because

inter-Member State claims do not receive the preferential treatment accorded to similar national claims in certain Member States. Examples of this preferential treatment include privileged ranking in the order of creditors in bankruptcy proceedings and the use of State recovery methods unavailable to commercial creditors. Other Member States do not expedite inter-Member State claims as rapidly as domestic ones because of time-consuming legal validation procedures, despite the fact that Article 8 provides that any examination in connection with the claim or the instrument should be brought before the competent body of the applicant Member State in accordance with Article 12.

2.2.4. Slow, complicated and poorly understood mutual assistance arrangements

The Commission's consultations revealed this to be the source of many of the existing problems. The arrangements are little known, their complication discourages use and fulfilment of their obligations is difficult. Effective mutual assistance depends on procedures that are simple and effective to use and to apply.

2.2.5. Administrative priority given to inter-Member State claims

Resources that are devoted to domestic and inter-Member State claims are finite. Whilst the short-term costs of recovering an inter-Member State claim (in terms of precious administrative effort) are all too apparent to national administrations, the longer term benefits of the arrangements are less apparent. The overall results of the arrangements and anecdotal evidence suggests that this has led to a lower priority being given to the recovery of inter-Member State claims than they deserve.

3. A STRATEGY FOR MAKING THE RECOVERY ARRANGEMENTS WORK

Mutual assistance on recovery is a complex issue which affects both the Community, through the operation of the internal market and own resources, the Member States, as the users of the arrangements, and debtors. An integrated strategy is therefore needed if the arrangements are to work. There are three principal elements:

- Modification of the existing Community law on mutual assistance on recovery, both the legal framework set out in Council Directive 76/308/EEC and its implementation set out in the Commission Directive 77/794/EEC (see 3.1 and 3.2)
- Supporting administrative measures to be carried out, for VAT and excises, within the context of the FISCALIS programme¹¹ (see 3.3).
- Community legislation approximating national recovery powers to tackle the problems identified in 2.2.2. (see 3.4).

3.1. Modification of Council Directive 76/308/EEC

The basic principles of the mutual assistance arrangements established in the 1970s remain valid, hence the Commission's decision to amend the existing Directive. At its heart, mutual assistance relies on the principle of reciprocity and on mutual confidence. Further, in the case of recovery, the Directive is founded on the basis that responsibility

¹¹ As proposed by the Commission in COM(97) 175.

for the validity of the underlying claim lies wholly with the applicant Member State. The requested Member State is in effect the agent of the applicant. Finally, the principle of equality of treatment for inter-Member State claims with domestic claims is enshrined in Article 6. The amendments proposed fall into three categories:

3.1.1. Scope of the Directive

The proposal amends Article 2 in four ways. First, to take account of the development of traditional own resources, up-to date definitions of customs duties are included and other traditional resources (sugar levies) added.

Secondly, the scope of this Directive has been widened to cover direct taxes. This brings it into line with the scope of Council Directive 77/799/EEC, concerning mutual assistance in the field of direct taxation. This is essential to reduce distortions in the internal market and to prevent losses of tax revenue now and in the future. The internal market continues to encourage greater mobility for taxable persons and their assets. Exploiting these opportunities of the internal market simply for the purpose of fraud and evasion in the context of direct taxes harms the competitiveness both of all compliant taxable persons and of national treasuries in a very significant way. Cooperation between Member States in recovery of these taxes is the most effective way to fight this form of direct tax evasion. The alternative of tighter regulation, resulting in a greater regulatory burden for taxable persons, would be neither attractive nor effective. The ECOFIN Council of 1 December 1997 in its resolution on a code of conduct for business taxation called on the Member States to cooperate fully in the fight against tax avoidance and tax evasion.

Thirdly, excessively old claims are excluded from the arrangements. The age of a claim is the critical factor in the possibility of recovery. The ability to recover a claim drops significantly if it is more than a year old. Excluding old claims will prevent the credibility of the system being compromised by hopeless claims. Three years dating from the moment the claim is definitively established to the date of the request for assistance should be ample to cover all real possibilities whilst retaining sufficient flexibility for the Member States.

Almost all Member States specifically requested the addition of national fines and penalties, seen as an integral part of a claim, to the scope. Finally, the rules on interest penalties should be changed. At present, penalty interest is levied according to the rules in the requested Member State, largely for simplicity. In principle, given that a claim is owed to the applicant Member State, the rules in that Member State should be applied. The proposal makes this change in a practical way.

3.1.2. Limits on use of the Directive

Fearful of an excessive administrative burden, the Directive currently imposes limits on its use in several places. These fears have proved to be unfounded and unjustifiable, but also irrelevant in practice. They should be scrapped.

Articles 7(2)(b) and 14 require applicant Member States to exhaust all the domestic means of recovery before launching a request. Member States have an extensive armoury of ever more powerful (and complicated) means of recovery. Requiring all these means to be applied in full to all claims would in practice limit recourse to the Directive to virtually nil. In reality this limit has been ignored, partly because, as the Member States

acknowledge, it is impossible to monitor. Abolishing it would not release a flood of requests: Member States will continue to recover the vast majority of national claims through their own familiar systems. Member States should have sufficient confidence that each will take appropriate domestic measures before resorting to mutual assistance.

Articles 4(3)(b) and 14(a) limit the obligation to provide information or carry out a recovery. In theory, these limits are legally unclear. In practice, these provisions are rarely invoked. Any possible situation covered by Article 4(3)(b) should be covered in practice by Article 4(3)(a). Article 14(a), if interpreted loosely could, however, threaten the integrity of the internal market.

Article 12 provides for the suspension of the arrangements if the underlying claim is contested. The Member States have anecdotal evidence that this safeguard has been abused by fraudulent traders. A "no-hope" appeal provides breathing space to hide assets. The applicant Member State is in the best position to judge whether this is the case. It is proposed to modify Article 12 to permit the applicant authority to insist that the recovery goes ahead. Of course, if the applicant authority judges incorrectly and the appeal is successful, it should bear the financial consequences, including any compensation awarded by the Courts in the requested Member State.

3.1.3. Recognition of legal instrument

Article 7 requires a copy of the legal instrument permitting enforcement of the claim in the applicant Member State to be sent with the request. Article 8 provides, where appropriate, for the acceptance, recognition, supplementing or replacement of this instrument. This provision has seriously hampered the effectiveness of the arrangements. Originally each Member State had to familiarize itself with only eight such instruments, now there are more than fourteen¹². Whilst the need for proper assurance is correct, the current provision has jeopardized the smooth functioning of the system.

To overcome this, the proposal amends Article 7 and Article 8. In Article 8 it is proposed that the instrument permitting enforcement of the claim shall be directly recognized and automatically treated as an instrument of the requested Member State. This brings Article 8 in line with the fundamental principle of equal treatment of claims as set out in Article 6(2). The possibility of acceptance, recognition, supplementing and replacement of the national instrument, in accordance with the provisions in force in the requested Member State, has often led to a complicated and time-consuming national legal procedure being carried out, which is contradictory to Article 6(2).

In addition, in order to permit recovery action to be taken more promptly on receipt of the request, whilst at the same time in full confidence of its validity, it is proposed to modify Article 7(3) to ensure that each request provides all information required to make the instrument legally enforceable on receipt.

¹² Forms for VAT, customs and excise duties in the same Member State, for example, may differ.

3.1.4. Legal equity and administrative treatment.

If the principle of equality of treatment between domestic and inter-Member State claims is not more consistently applied by the Member States, mutual assistance on recovery will remain forever trapped in a vicious circle to the detriment of the Community and Member States' interests. As the overall benefits are currently so few, the overall results and anecdotal evidence suggest that Member States are, unsurprisingly, reluctant to give the necessary high priority to the recovery of other Member States' claims. This has created the perpetual cycle of low benefit/low input that is one of the significant shortcomings of the system. Of course the reverse is also true: better results would encourage more extensive use.

The Commission proposes two solutions to break this cycle. First, the difference in treatment in Article 10 should be replaced with an assurance of effective equal treatment with equivalent national claims.

Secondly, a "kick-start" should be applied to the arrangements to bring the short term costs and benefits more into line. To compensate the requested Member State for the administrative effort of mutual assistance, a sum, equivalent to a percentage (set by the applicant authority) of the successfully recovered amount of the claim should be paid to the requested authority upon successful recovery.

Such a percentage would improve the arrangements in several ways: the requested Member State would have an indication of the difficulty of each case and therefore the priority required. It would also help overcome reluctance to make a sustained recovery effort, which involves greater administrative resources. Most importantly it aligns the short term costs of mutual assistance with short term benefits for the requested Member State. This would break the vicious circle until the longer term mutual benefits (already enshrined in the present arrangements) become clearer again. The percentage therefore only needs to apply for a limited period.

The proposed amendment to Article 18 also clarifies the status quo with regard to costs directly linked to recovery (commercial bailiffs, etc.) that are currently recovered directly from the debtor and retained by the requested authority. The rules applicable to similar claims in the requested Member State should be applied.

3.1.5. Monitoring

The proposal amends Article 25 to ensure greater transparency in the performance of each Member State in both using and fulfilling its obligations under the Directive. The information the Commission has received to date is too patchy and inconsistent to draw conclusions about specific Member States. A firmer base for the collection of this information will be essential to monitoring the arrangements and the performance of each Member State.

3.2. Modification of Commission Directive 77/794/EEC

Once the Commission proposal to modify Council Directive 76/308/EEC is adopted, there will be a consequent need to modify Commission implementing Directive 77/794/EEC accordingly. In line with the procedure laid down in Directive 76/308/EEC these modifications would be adopted by the Commission, following the consultation with the Recovery Committee. Nevertheless, by way of

presenting an integrated strategy for recovery, an outline of these proposals can be given at this stage.

The relatively few modifications to the Commission Directive would fall into two linked categories. First, the Articles concerned with communication would need to be modified to take account of the electronic communication system explained under Section 3.3.1.

Secondly, the deadlines for responses and action would have to be considerably shortened. Simply shortening deadlines is not a solution if the underlying reasons for the length of the process remain unchanged: it only leads to more, albeit faster, negative responses. Shorter deadlines would be appropriate in the context of the other measures in this strategy, for example, the use of almost instantaneous electronic communication. The original deadlines were also appropriate to administrative practices from twenty years ago but not from today. The current deadlines are also simply not appropriate in the context of sophisticated fraudsters who can move assets quickly around the Community. Finally the deadlines would have to be amended to provoke a dialogue between applicant and requested Member States that is at the heart of cooperation but has been all too lacking to date. Requiring the name, contact details and language skills of the originating and action officers to be exchanged would also promote this dialogue.

3.3. Supporting administrative measures

3.3.1. Communication system

Good communication is at the heart of good mutual assistance. An electronic system offers significant advantages. First, a paper-based system is slower, less reliable and less secure. These complications discourage use of mutual assistance in cases where it is appropriate. An electronic system offers the possibility of automatic translation if pre-translated standardized messages are used.

More importantly, an electronic system offers the possibility of requests to several or all concerning the same claim when the location of the debtor or assets in the Community is unknown. The current arrangements have been shown to discourage the dialogue that is essential for effective mutual assistance. An electronic system would provoke such a dialogue.

To respect the rights of the debtor to transparency, it would be necessary for the instrument itself to be sent via post. However, for all other communications between the authorities involved, paper can be dispensed with.

The development of such a system should be integrated, for VAT and excise duties, with the development of the generic communication system foreseen by the FISCALIS programme¹³. Access to mutual assistance on recovery should become a tool readily available to appropriate national recovery officials.

¹³ Claims not relating to VAT and excise duties (e.g. direct taxes, customs duties) could not pass through this system.

3.3.2. Training

Knowledge of the existence of the arrangements is low amongst national officials. Where the arrangements are known about, their reputation discourages use. A sustained programme of education in the use of the arrangements is needed, to make them a familiar tool for national officials. A Community training initiative in this sphere will be prepared within the context of the FISCALIS programme¹⁴. Also foreseen by the FISCALIS programme, a vocabulary of recovery terminology, as part of a wider vocabulary of indirect taxation terms, will also be prepared.

An important aspect of this initiative will be the preparation of a *vade mecum* of national procedures, outlining the essential elements of the recovery regime in each Member State. Lack of understanding of different national regimes has contributed significantly to the ineffectiveness of the arrangements.

3.3.3. Administration within the Member States

Ultimately, effective mutual assistance will require access to a communication system for all national officials. However an intermediary is still required to monitor the flow of requests and allocate them. For VAT, the Commission will propose to the Member States that the Central Liaison Offices (CLOs), provided under Regulation 218/92/EEC¹⁵ as a central point in administrative cooperation, be designated the competent authority for VAT claims as well. They already have a pool of officials skilled in mutual assistance.

3.4. Approximation of national recovery powers

The most pressing need for approximation of national powers is in the customs area. Proposals for the harmonization of national implementing legislation will be presented shortly by the Commission.

The new common system of VAT may require a greater degree of approximation of national recovery powers than the transitional regime. The Commission would propose the necessary amendments to Community VAT law as part of Phase Four of its work programme on the new system of VAT.

¹⁴ This would also not apply to claims not relating to VAT and excises.

¹⁵ Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT), OJ L 24, 1.2.1992, p. 1.

**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

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 Commission¹⁶,

Having regard to the opinion of the Economic and Social Committee¹⁷,

Acting in accordance with the procedure laid down in Article 189b of the Treaty¹⁸,

Whereas the existing arrangements for mutual assistance on recovery set out in Council Directive 76/308/EEC¹⁹, 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;

¹⁶ OJ

¹⁷ OJ

¹⁸ OJ

¹⁹ OJ L 73, 19.3.1976, p. 18.

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 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 organization 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 duties 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 duties 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 recognized 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.

Upon 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 per cent 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 upon 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, these 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 twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

The proposed Directive, when adopted, will not have any negative consequences on the collection of Community own resources. The compensation, equivalent to a percentage of the successfully recovered amount of the claim, paid by the applicant Member State to the requested Member State (see Article 18), will not change the allocation of receipts between the Member States. Pursuant to Article 9, paragraph 1, the entire amount of the claim that is recovered by the requested authority shall be remitted to the applicant authority and consequently will be taken into account for the establishment of own resources in the Member State in which the applicant authority is situated.

This Directive is designed to reinforce mutual assistance for recovery of claims, and therefore is intended to increase the amount of recovered claims relating to the various taxes and duties which it covers. This will have a positive, but inquantifiable, impact on the Community Budget.

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