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:

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) Φὸρος 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'interêt 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;