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►B ►M1 **COMMISSION DIRECTIVE**

of 4 November 1977

laying down detailed rules for implementing certain provisions of 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

(77/794/EEC) ◄

(OJ L 333, 24.12.1977, p. 11)

Amended by:

		Official Journal		
		No	page	date
►M1	Commission Directive 85/479/EEC of 14 October 1985	L 285	65	25.10.1985
►M2	Commission Directive 86/489/EEC of 24 September 1986	L 283	23	4.10.1986

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 76/308/EEC of 15 March 1976 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 [1], and in particular Article 22 (1) thereof,

Whereas the abovementioned Directive introduced a system of mutual assistance between the competent authorities of Member States for the purpose of supplying the applicant authority with all the information which it needs, for notifying the addressee concerned of instruments and decisions which are applicable, for the taking of precautionary measures, and for the recovery by the requested authority of claims on behalf of the applicant authority;

Whereas the detailed rules of operation of such mutual assistance must be laid down in each of these fields in order to render it fully effective;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on Recovery,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive lays the detailed rules for implementing Articles 4 (2) and (4), 5 (2) and (3), 7 (1), (3) and (5), 9 and 12 (1) of Directive 76/308/EEC, hereinafter called ‘the basic Directive’.

2. This Directive also lays down the detailed 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.

TITLE I

Request for information

Article 2

1. The request for information referred to in Article 4 of the basic Directive shall be made out in writing in accordance with the model in Annex I. The said request shall bear the official stamp of the applicant authority and shall be signed by an official thereof duly authorized to make such a request.

2. The applicant authority shall, where appropriate, indicate in its request for information the name of any other requested authority to which a similar request for information has been addressed.

[1] OJ No L 73, 19. 3. 1976, p. 18.

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Article 3

The request for information may relate to

(a) the debtor; or

(b) any person liable for settlement of the claim under the law in force in the Member State where the applicant authority is situated.

Where the applicant authority knows that a third party holds assets belonging to one of the persons mentioned in the foregoing paragraph, the request may also relate to that third party.

Article 4

The requested authority shall acknowledge receipt of the request for information in writing (if possible by telex) as soon as possible and in any event within seven days of such receipt.

Article 5

1. The requested authority shall transmit each item of requested information to the applicant authority as and when it is obtained.

2. Where all or part of the requested information cannot be obtained within a reasonable time, having regard to the particular case, the requested authority shall so inform the applicant authority, indicating the reasons therefor.

In any event, at the end of six months from the date of acknowledgement of receipt of the request, the requested authority shall inform the applicant authority of the outcome of the investigations which it has conducted in order to obtain the information requested.

In the light of the information received from the requested authority, the applicant authority may request the latter to continue its investigations. This request shall be made in writing (if possible by telex) within two months from the receipt of the notification of the outcome of the investigations carried out by the requested authority, and shall be treated by the requested authority in accordance with the provisions applying to the initial request.

Article 6

When the requested authority decides not to comply with the request for information addressed to it, it shall notify the applicant authority in writing of the reasons for the refusal to comply with the request, specifying the particular provisions of Article 4 of the basic Directive which it invokes. This notification shall be given by the requested authority as soon as it has taken its decision and in any event within six months from the date of the acknowledgement of the receipt of the request.

Article 7

The applicant authority may at any time withdraw the request for information which it has sent to the requested authority. The decision to withdraw shall be transmitted to the requested authority in writing (if possible by telex).

TITLE II

Request for notification

Article 8

The request for notification referred to in Article 5 of the basic Directive shall be made out in writing in duplicate in accordance with the model in Annex II. The said request shall bear the official stamp of the applicant authority and shall be signed by an official thereof duly authorized to make such a request.

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Two copies of the instrument (or decision), notification of which is requested, shall be attached to the request referred to in the foregoing paragraph.

Article 9

The request for notification may relate to any natural or legal person who, in accordance with the law in force in the Member State where the applicant authority is situated, shall be informed of any instrument or decision which concerns him.

Article 10

1. Immediately upon receipt of the request for notification, the requested authority shall take the necessary measures to effect that notification in accordance with the law in force in the Member State in which it is situated.

2. The requested authority shall inform the applicant authority of the date of notification as soon as this has been done, by returning to it one of the copies of its request with the certificate on the reverse side duly completed.

TITLE III

Request for recovery and/or for the taking of precautionary measures

Article 11

1. The request for recovery and/or for the taking of precautionary measures referred to in Articles 6 and 13 of the basic Directive shall be made out in writing in accordance with the model Annex III. The request, which shall include a declaration that the conditions laid down in the basic Directive for initiating the mutual assistance procedure in the particular case have been fulfilled, shall bear the official stamp of the applicant authority and shall be signed by an official thereof duly authorized to make such a request.

2. The instrument permitting enforcement which shall accompany the request for recovery and/or for the taking of precautionary measures may be issued in respect of several claims where it concerns one and the same person.

For the purposes of Articles 12 to 19, all claims which are covered by the same instrument permitting enforcement shall be deemed to constitute a single claim.

Article 12

1. The request for recovery and/or for the taking of precautionary measures may relate to

(a) the debtor; or

(b) any person liable for settlement of the claim under the law in force in the Member State in which it is situated.

2. Where appropriate, the applicant authority shall inform the requested authority of any assets of the persons referred to in paragraph 1 which to its knowledge are held by a third party.

Article 13

1. The applicant authority shall state the amounts of the claim to be recovered both in the currency of the Member State in which it is situated and also in the currency of the Member State in which the requested authority is situated.

2. The rate of exchange to be used for the purposes of paragraph 1 shall be the latest selling rate recorded on the most representative exchange market or markets of the Member State in which the applicant authority is situated on the date when the request for recovery is signed.

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Article 14

The requested authority shall acknowledge receipt of the request for recovery and/or for the taking of precautionary measures in writing (if possible by telex) as soon as possible and in any event within seven days of its receipt.

Article 15

Where, within a reasonable time having regard to the particular case, all or part of the claim cannot be recovered or precautionary measures cannot be taken, the requested authority shall so inform the applicant authority, indicating the reasons therefor.

In any event, at the end of one year from the date of acknowledgement of the receipt of the request, the requested authority shall inform the applicant authority of the outcome of the procedure which it has undertaken for recovery and/or for the taking of precautionary measures.

In the light of the information received from the requested authority, the applicant authority may request the latter to continue the procedure which it has undertaken for recovery and/or for the taking of precautionary measures. This request shall be made in writing (if possible by telex) within two months from the receipt of the notification of the outcome of the procedure undertaken by the requested authority for recovery and/or for the taking of precautionary measures, and shall be treated by the requested authority in accordance with the provisions applying to the initial request.

Article 16

Any action contesting the claim or the instrument permitting its enforcement which is taken in the Member State in which the applicant authority is situated shall be notified to the requested authority in writing (if possible by telex) by the applicant authority immediately after it has been informed of such action.

Article 17

1. If the request for recovery and/or for the taking of precautionary measures becomes nugatory as a result of payment of the claim or of its cancellation or for any other reason, the applicant authority shall immediately inform the requested authority in writing (if possible by telex) so that the latter may stop any action which it has undertaken.

2. Where the amount of the claim which is the subject of the request for recovery and/or for the taking of precautionary measures is amended for any reason, the applicant authority shall immediately inform the requested authority in writing (if possible by telex).

If the amendment consists of a reduction in the amount of the claim, the requested authority shall continue the action which it has undertaken with a view to recovery and/or to the taking of precautionary measures, but that action shall be limited to the amount still outstanding if, at the time the requested authority is informed of the reduction of the amount of the claim, the original amount has already been recovered by it but the transfer procedure referred to in Article 18 has not yet been initiated, the requested authority shall repay the amount overpaid to the person entitled thereto.

If the amendment consists of an increase in the amount of the claim, the applicant authority shall as soon as possible address to the requested authority an additional request for recovery and/or for the taking of precautionary measures. This additional request shall, as far as possible be dealt with by the requested authority at the same time as the original request of the applicant authority. Where, in view of the state of progress of the existing procedure, the joinder of the additional request and the original request is not possible, the requested authority shall only be required to comply with the additional request if it concerns an amount not less than that referred to in Article 20.