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► M1 COUNCIL DIRECTIVE

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, and in respect of value added tax ◀

(76/308/EEC)

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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 ◀

(76/308/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy⁽¹⁾, as last amended by Regulation (EEC) No 2788/72⁽²⁾, and in particular Article 8 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Economic and Social Committee⁽⁴⁾,

Whereas it is not at present possible to enforce in one Member State a claim for recovery substantiated by a document drawn up by the authorities of another Member State;

Whereas the fact that national provisions relating to recovery are applicable only within national territories is in itself an obstacle to the establishment and functioning of the common market; whereas this situation prevents Community rules from being fully and fairly applied, particularly in the area of the common agricultural policy, and facilitates fraudulent operations;

Whereas it is therefore necessary to adopt common rules on mutual assistance for recovery;

Whereas these rules must apply both to the recovery of claims resulting from the various measures which form part of the system of total or partial financing of the European Agricultural Guidance and Guarantee Fund and to the recovery of agricultural levies and customs duties within the meaning of Article 2 of Decision 70/243/ECSC, EEC, Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources⁽⁵⁾, and of Article 128 of the Act of Accession; whereas they must also apply to the recovery of interest and costs incidental to such claims;

Whereas mutual assistance must consist of the following: the requested authority must on the one hand supply the applicant authority with the information which the latter needs in order to recover claims arising in the Member State in which it is situated and notify the debtor of all instruments relating to such claims emanating from that Member State, and on the other hand it must recover, at the request of the applicant authority, the claims arising in the Member State in which the latter is situated;

Whereas these different forms of assistance must be afforded by the requested authority in compliance with the laws, regulations and administrative provisions governing such matters in the Member State in which it is situated;

(1) OJ No L 94, 28. 4. 1970, p. 13.

(2) OJ No L 295, 30. 12. 1972, p. 1.

(3) OJ No C 19, 12. 4. 1973, p. 38.

(4) OJ No C 69, 28. 8. 1973, p. 3.

(5) OJ No L 94, 28. 4. 1970, p. 19.

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Whereas it is necessary to lay down the conditions in accordance with which requests for assistance must be drawn up by the applicant authority and to give a limitative definition of the particular circumstances in which the requested authority may refuse assistance in any given case;

Whereas when the requested authority is required to act on behalf of the applicant authority to recover a claim, it must be able, if the provisions in force in the Member State in which it is situated so permit and with the agreement of the applicant authority, to allow the debtor time to pay or authorize payment by instalment; whereas any interest charged on such payment facilities must also be remitted to the Member State in which the applicant authority is situated;

Whereas, upon a reasoned request from the applicant authority, the requested authority must also be able, in so far as the provisions in force in the Member State in which it is situated so permit, to take precautionary measures to guarantee the recovery of claims arising in the applicant Member State; whereas such claims must not however be given any preferential treatment in the Member State in which the requested authority is situated;

Whereas it is possible that during the recovery procedure in the Member State in which the requested authority is situated the claim or the instrument authorizing its enforcement issued in the Member State in which the applicant authority is situated may be contested by the person concerned; whereas it should be laid down in such cases that the person concerned must bring the action contesting the claim before the competent body of the Member State in which the applicant authority is situated and that the requested authority must suspend any enforcement proceedings which it has begun until a decision is taken by the aforementioned body;

Whereas it should be laid down that documents and information communicated in the course of mutual assistance for recovery may not be used for other purposes;

Whereas this Directive should not curtail mutual assistance between particular Member States under bilateral or multilateral agreements or arrangements;

Whereas it is necessary to ensure that mutual assistance functions smoothly and to this end to lay down a Community procedure for determining the detailed rules for the application of such assistance within an appropriate period; whereas it is necessary to set up a committee to organize close and effective collaboration between the Member States and the Commission in this area,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down the rules to be incorporated into the laws, regulations and administrative provisions of the Member States to ensure the recovery in each Member State of the claims referred to in Article 2 which arise in another Member State.

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, including sums to be collected in connection with these actions;
- (b) agricultural levies, within the meaning of Article 2 (a) of Decision 70/243/ECSC, EEC, Euratom and Article 128 (a) of the Act of Accession;

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- (c) customs duties, within the meaning of Article 2 (b) of the said Decision and Article 128 (b) of the Act of Accession;

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- (d) value added tax;

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- (**►M1** e ◄) interest and costs incidental to the recovery of the claims referred to above.

Article 3

In this Directive:

- ‘applicant authority’ means the competent authority of a Member State which makes a request for assistance concerning a claim referred to in Article 2;
- ‘requested authority’ means the competent authority of a Member State to which a request for assistance is made.

Article 4

1. At the request of the applicant authority, the requested authority shall provide any information which would be useful to the applicant authority in the recovery of its claim.

In order to obtain this information, the requested authority shall make use of the powers provided under the laws, regulations or administrative provisions applying to the recovery of similar claims arising in the Member State where that authority is situated.

2. The request for information shall indicate the name and address of the person to whom the information to be provided relates and the nature and amount of the claim in respect of which the request is made.
3. The requested authority shall not be obliged to supply information:
 - (a) which it would not be able to obtain for the purpose of recovering similar claims arising in the Member State in which it is situated;
 - (b) which would disclose any commercial, industrial or professional secrets; or
 - (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the State.
4. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

Article 5

1. The requested authority shall, at the request of the applicant authority, and in accordance with the rules of law in force for the notification of similar instruments or decisions in the Member State in which the requested authority is situated, notify to the addressee all instruments and decisions, including those of a judicial nature, which emanate from the Member State in which the applicant authority is situated and which relate to a claim and/or to its recovery.
2. The request for notification shall indicate the name and address of the addressee concerned, the nature and the subject of the instrument or decision to be notified, if necessary the name and address of the debtor and the claim to which the instrument or decision relates, and any other useful information.
3. The requested authority shall promptly inform the applicant authority of the action taken on its request for notification and, more especially, of the date on which the instrument or decision was forwarded to the addressee.

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Article 6

1. At the request of the applicant authority, the requested authority shall, in accordance with the laws, regulations or administrative provisions applying to the recovery of similar claims arising in the Member State in which the requested authority is situated, recover claims which are the subject of an instrument permitting their enforcement.
2. For this purpose 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, except where Article 12 applies.

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;
 - (b) it has, in the Member State in which it is situated, applied the recovery procedure 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.
3. The request for recovery shall indicate the name and address of the person concerned, the nature of the claim, the amount of the principal and the interest and costs due, as well as any other relevant information.
4. The request for recovery shall contain in addition a statement by the applicant authority indicating the date from which enforcement is possible under the laws in force in the Member State in which it is situated and confirming that the conditions set out in paragraph 2 are fulfilled.
5. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority it shall forward it to the requested authority.

Article 8

The instrument permitting enforcement of the claim shall, where appropriate, and in accordance with the provisions in force in the Member State in which the requested authority is situated, be accepted, recognized, supplemented, or replaced by an instrument authorizing enforcement in the territory of that Member State.

Such acceptance, recognition, supplementing or replacement must take place as soon as possible following the date of receipt of the request for recovery. They may not be refused if the instrument permitting enforcement in the Member State in which the applicant authority is situated is properly drawn up.

If any of these formalities should give rise to an examination or contestation in connection with the claim and/or the instrument permitting enforcement issued by the applicant authority, Article 12 shall apply.

Article 9

1. Claims shall be recovered in the currency of the Member State in which the requested authority is situated.

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2. The requested authority may, where the laws, regulations or administrative provisions in force in the Member State in which it is situated so permit, and after consultations with the applicant authority, allow the debtor time to pay or authorize payment by instalment. Any interest charged by the requested authority in respect of such extra time to pay shall be remitted to the Member State in which the applicant authority is situated.

Any other interest charged for late payment under the laws, regulations and administrative provisions in force in the Member State in which the requested authority is situated shall also be remitted to the Member State in which the applicant authority is situated.

Article 10

The claims to be recovered shall not be given preferential treatment in the Member State in which the requested authority is situated.

Article 11

The requested authority shall inform the applicant authority immediately of the action it has taken on the request for recovery.

Article 12

1. If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in the Member State in which the applicant authority is situated are contested by an interested party, the action shall be brought by the latter before the competent body of the Member State in which the applicant authority is situated, in accordance with the laws in force there. This action must be notified by the applicant authority to the requested authority. The party concerned may also notify the requested authority of the action.

2. As soon as the requested authority has received the notification referred to in paragraph 1 either from the applicant authority or from the interested party, it shall suspend the enforcement procedure pending the decision of the body competent in the matter. Should the requested authority deem it necessary, and without prejudice to Article 13, that authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in the Member State in which it is situated allow such action for similar claims.

3. Where it is the enforcement measures taken in the Member State in which the requested authority is situated that are being contested the action shall be brought before the competent body of that Member State in accordance with its laws and regulations.

4. Where the competent body before which the action has been brought in accordance with paragraph 1 is a judicial or administrative tribunal, the decision of that tribunal, in so far as it is favourable to the applicant authority and permits recovery of the claim in the Member State in which the applicant authority is situated shall constitute the 'instrument permitting enforcement' within the meaning of Articles 6, 7 and 8 and the recovery of the claim shall proceed on the basis of that decision.

Article 13

On a reasoned request by the applicant authority, the requested authority shall take precautionary measures to ensure recovery of a claim in so far as the laws or regulations in force in the Member State in which it is situated so permit.

In order to give effect to the provisions of the first paragraph, Articles 6, 7 (1), (3) and (5), 8, 11, 12 and 14 shall apply *mutatis mutandis*.

▼B*Article 14*

The requested authority shall not be obliged:

- (a) to grant the assistance provided for in Articles 6 to 13 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the Member State in which that authority is situated;
- (b) to undertake recovery of a claim if the applicant authority has not exhausted the means of recovery in the territory of the Member State in which it is situated.

The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance. Such reasoned refusal shall also be communicated to the Commission.

Article 15

1. Questions concerning periods of limitation shall be governed solely by the laws in force in the Member State in which the applicant authority is situated.

2. Steps taken in the recovery of claims by the requested authority in pursuance of a request for assistance, which, if they had been carried out by the applicant authority, would have had the effect of suspending or interrupting the period of limitation according to the laws in force in the Member State in which the applicant authority is situated, shall be deemed to have been taken in the latter State, in so far as that effect is concerned.

Article 16

Documents and information sent to the requested authority pursuant to this Directive may only be communicated by the latter to:

- (a) the person mentioned in the request for assistance;
- (b) those persons and authorities responsible for the recovery of the claims, and solely for that purpose;
- (c) the judicial authorities dealing with matters concerning the recovery of the claims.

Article 17

Requests for assistance and relevant documents shall be accompanied by a translation in the official language, or one of the official languages of the Member State in which the requested authority is situated, without prejudice to the latter authority's right to waive the translation.

Article 18

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.

However, 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 costs 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.

Article 19

Member States shall provide each other with a list of authorities authorized to make or receive requests for assistance.

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Article 20

1. A Committee on Recovery (hereinafter called 'the committee') is hereby set up and shall consist of representatives of the Member States with a Commission representative as chairman.
2. The committee shall adopt its own rules of procedure.

Article 21

The committee may examine any matter concerning the application of this Directive raised by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 22

1. The detailed rules for implementing Articles 4 (2) and (4), 5 (2) and (3), 7 (1), (3) and (5), 9, 11 and 12 (1) and 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 paragraph 2 and 3.
2. The Commission representative shall submit to the committee a draft of the measures to be adopted. The committee shall deliver its opinion on the draft within a time limit set by the chairman, having regard to the urgency of the matter. Opinions shall be adopted by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.
3. (a) The commission shall adopt the proposed measures where they are in accordance with the opinion of the committee.
 - (b) Where the proposed measures are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay propose to the Council the measures to be adopted. The Council shall act by a qualified majority.
 - (c) If within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

The provisions of this Directive shall not prevent a greater measure of mutual assistance being afforded either now or in the future by particular Member States under any agreements or arrangements, including those for the notification of legal or extralegal acts.

Article 24

Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1978.

Article 25

Each Member State shall inform the Commission of the measures which it has adopted to implement this Directive. The Commission shall forward this information to the other Member States.

Article 26

This Directive is addressed to the Member States.