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► **M4 COUNCIL DIRECTIVE**  
of 15 March 1976

on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures

(76/308/EEC) ◀

(OJ L 73, 19.3.1976, p. 18)

Amended by:

	Official Journal		
	No	page	date
► <b>M1</b> Council Directive 79/1071/EEC of 6 December 1979	L 331	10	27.12.1979
► <b>M2</b> Council Directive 92/12/EEC of 25 February 1992	L 76	1	23.3.1992
► <b>M3</b> amended by Council Directive 92/108/EEC of 14 December 1992	L 390	124	31.12.1992
► <b>M4</b> Council Directive 2001/44/EC of 15 June 2001	L 175	17	28.6.2001

Amended by:

► <b>A1</b> Act of Accession of Greece	L 291	17	19.11.1979
► <b>A2</b> Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b>A3</b> Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <b>A4</b> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

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**►M4 COUNCIL DIRECTIVE**  
**of 15 March 1976**

**on mutual assistance for the recovery of claims relating to certain  
levies, duties, taxes and other measures**

(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 <sup>(1)</sup>, as last amended by Regulation (EEC) No 2788/72 <sup>(2)</sup>, and in particular Article 8 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(3)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(4)</sup>,

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 <sup>(5)</sup>, 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;

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 circum-

<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 13.

<sup>(2)</sup> OJ No L 295, 30. 12. 1972, p. 1.

<sup>(3)</sup> OJ No C 19, 12. 4. 1973, p. 38.

<sup>(4)</sup> OJ No C 69, 28. 8. 1973, p. 3.

<sup>(5)</sup> OJ No L 94, 28. 4. 1970, p. 19.

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stances 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.

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*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;

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- (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.

**▼B***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;

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- ‘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 <sup>(1)</sup>, 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 verzekeringcontracten
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) Φόρος κύκλου εργασιών (Φ.Κ.Ε) (ii) Τέλη Χαρτοσήμου
in France:	Taxe sur les conventions d'assurances

<sup>(1)</sup> 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.

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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)

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in Malta:	<i>Taxxa fuq Dokumenti u Trasferimenti</i>
in Slovenia:	(i) <i>davek od prometa zavarovalnih poslov</i> (ii) <i>požarna taksa.</i>

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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.

▼ B*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 ► M4 the name, address and any other relevant information relating to the identification to which the applicant authority normally has access ◀ 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.

▼B*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 ►M4 the name, address and any other relevant information relating to the identification to which the applicant authority normally has access ◀ of the addressee concerned, the nature and the subject of the instrument or decision to be notified, if necessary ►M4 the name, address and any other relevant information relating to the identification to which the applicant authority normally has access ◀ 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.

*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.

▼M4*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;
  - (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

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- the currencies of the Member States in which both authorities are situated;
- (e) the date of notification of the instrument to the addressee by the applicant authority and/or by the requested authority;
  - (f) the date from which and the period during which enforcement is possible under the laws in force in the Member State in which the applicant authority is situated;
  - (g) any other relevant information.
4. The request for recovery shall also contain a declaration by the applicant authority confirming that the conditions set out in paragraph 2 have been 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*

1. 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.
2. Notwithstanding the first paragraph, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the Member State in which the requested authority is situated, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that Member State.

Within three months of the date of receipt of the request for recovery, Member States shall endeavour to complete such acceptance, recognition, supplementing or replacement, except in cases where the third subparagraph is applied. They may not be refused if the instrument permitting enforcement is properly drawn up. The requested authority shall inform the applicant authority of the grounds for exceeding the period of three months.

If any of these formalities should give rise to 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. The entire amount of the claim that is recovered by the requested authority shall be remitted by the requested authority to the applicant authority.
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 authorise payment by instalment. Any interest charged by the requested authority in respect of such extra time to pay shall also be remitted to the Member State in which the applicant authority is situated.

From the date on which the instrument permitting enforcement of recovery of the claim has been directly recognised or accepted, recognised, supplemented or replaced in accordance with Article 8, interest will be charged for late payment under the laws, regulations and administrative provisions in force in the Member State in which the requested authority is situated and shall also be remitted to the Member State in which the applicant authority is situated.

*Article 10*

Notwithstanding Article 6(2), the claims to be recovered shall not necessarily benefit from the privileges accorded to similar claims

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arising in the Member State in which the requested authority is situated.

**▼B***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 ►M4, unless the applicant authority requests otherwise in accordance with the second subparagraph ◄. 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.

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Notwithstanding the first subparagraph of paragraph 2, the applicant authority may in accordance with the law, regulations and administrative practices in force in the Member State in which it is situated, request the requested authority to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action. If the result of contestation is subsequently favourable to 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 in force in the Member State in which the requested authority is situated.

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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*▼M4

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, in so far as the laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action for similar national claims;
- (b) to grant the assistance provided for in Articles 4 to 13, if the initial request under Article 4, 5 or 6 applies to claims more than five years old, dating from the moment the instrument permitting the recovery is established in accordance with the laws, regulations or administrative practices 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 or the instrument is contested, the time limit begins from the moment at which the applicant State establishes that the claim or the enforcement order permitting recovery may no longer be contested.

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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 ►M4 the instrument permitting the enforcement and other 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.

▼M4*Article 18*

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

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2. Member States shall renounce all claims on each other for the refund of costs resulting from mutual assistance which they grant each other pursuant to this Directive.
3. Where recovery poses a specific problem, concerns a very large amount in costs or relates to the fight against organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.
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.

**▼B***Article 19*

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

**▼M4***Article 20*

1. The Commission shall be assisted by a recovery committee (hereinafter referred to as 'the Committee'), composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.  
  
The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its own rules of procedure.

**▼B***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.

**▼M4***Article 22*

The detailed rules for implementing Articles 4(2) and (4), 5(2) and (3) and Articles 7, 8, 9, 11, 12(1) and (2), 14, 18(3) 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 Article 20(2).

**▼B***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.

**▼B***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.

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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 and the amounts recovered. The Commission shall report biennially to the European Parliament and the Council on the use made of these arrangements and on the results achieved.

**▼B***Article 26*

This Directive is addressed to the Member States.