



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.2.2006
COM(2006) 43 final

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

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

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1. INTRODUCTION

For the national tax authorities, whose enforcement powers are confined to the territory of their own Member State, increased mobility of persons, goods, services and capital throughout the territory of the EU can cause claims recovery problems, in particular in cases of tax evasion.

In these circumstances, mutual assistance by the national authorities on tax claims recovery, as governed by Council Directive 76/308/EEC of 15 March 1976¹ and Commission Directive 2002/94/EC of 9 December 2002,² has proved a useful and even essential instrument. Detecting fraud is one thing: taxes and levies due also have to be recovered and the fact that debtors may have settled in another Member State or moved their assets there should not constitute an insuperable obstacle to the recovery of the tax claims.

This report summarises the results of mutual assistance for recovery provided in 2003 and 2004 under this new legislation.

2. BACKGROUND

Pursuant to Article 25, second subparagraph, of Directive 76/308/EEC, as amended by Article 1(13) of Council Directive 2001/44/EC of 15 June 2001,³ the Commission is required to produce a regular report on the use of the provisions on mutual assistance for recovery of claims relating to certain levies, duties, taxes and other measures that Member States adopted by transposing Directive 76/308/EEC and on the results obtained thanks to this mutual assistance. To enable the Commission to write these reports, each Member State is required to inform it each year of the number of requests for information, notification and recovery sent and received, the amount of the claims and the amounts recovered. Since Member States had to transpose Directive 2001/44/EC by 30 June 2002 and transpose by 30 April 2003 Commission Directive 2002/94/EC of 9 December 2002 - the directive laying down detailed rules for implementing certain provisions of Directive 76/308/EEC, as amended by Directive 2001/44/EC - this report is the first of its kind based on information communicated by Member States relating to the requests for information, notification and recovery sent and received in 2003 and 2004.

3. INTRODUCTORY REMARKS ON TRANSPOSAL AND APPLICATION OF THE DIRECTIVES

3.1. Failure to comply with the deadline for transposal

As mentioned above, the basic Directive 76/308/EEC was amended by Council Directive 2001/44/EC of 15 June 2001, which had to be transposed into national law by 30 June 2002. The detailed arrangements set out in Commission Directive 2002/94/EC of 9 December 2002 had to be transposed into national law by 30 April 2003.

¹ OJ L 73, 19.3.1976, p. 18.

² OJ L 337, 13.12.2002, p. 41.

³ OJ L 175, 28.6.2001, p. 17.

Several Member States failed to comply with the deadlines set by the abovementioned Directives. In one case, the Commission had to refer the matter to the Court of Justice, initiating legal action against the Italy for failure to notify the national measures transposing Directive 2002/94/EC (see press release IP/04/1506 of 20/12/2004).

3.2. Application of the directives in relations with the new Member States

In joined cases C-361/02 and C-362/02 (Tsapalos and Diamantakis), the Court had to decide whether Directive 76/308/EEC had to be interpreted as applying to customs claims arising in one Member State (Italy) under an instrument issued by that State before the Directive entered into force in the other Member State (Greece) where the requested authority was situated.

In a judgment of 1 July 2004, the Court of Justice gave a preliminary ruling that Directive 76/308/EEC (amended) had indeed to be interpreted as applying to customs claims arising in one Member State under an instrument issued by this State before the entry into force of the aforementioned Directive in the other Member State where the requested authority was situated. The Court regards the provisions of the directive as rules of procedure, the application of which is not limited to debts incurred after the entry into force of this directive in the Member State where the requested authority is situated. This is a key decision in particular in the light of the accession of new Member States.

4. ANALYSIS OF THE USE OF MUTUAL ASSISTANCE MEASURES IN 2003-2004

4.1. Introductory remarks

4.1.1. Late communication of statistics

Several Member States supplied their statistics late despite the requirement laid down in Article 29 of Directive 2002/94/EC that each Member State should forward this information to the Commission by 15 March of each year.

4.1.2. Divergence in the statistics

The statistics of the various Member States contain certain inconsistencies. When the statistics for 2003 were first submitted, the Commission noted significant differences between the figures supplied by each Member State: the number of recovery requests received by all the Member States in 2003 amounted to only 70% of recovery requests declared as sent. At the meeting of the Committee on Recovery of Claims⁴ in October 2004, Member States were again invited to analyse their statistics. In the rectified figures that the Commission received, the divergence between Member States' data is significantly lower. The total number of recovery requests received by all Member States in 2003, resulting from this fresh calculation, came to 99% of the number of the requests declared as sent. However, for 2004, the difference went up again: recovery requests declared as having been received amounted to 91% of the number of requests declared as sent.

Member States need to take more care in establishing their statistics.

⁴ Directive 76/308/EEC, Art. 20.

4.2. Statistics

Statistics provided by Member States show wide use of mutual assistance in 2003 and 2004.

4.2.1. Requests for information

According to the statistics communicated by requested Member States, the overall number of requests for information received by them amounted:

- in 2003: to 435
- in 2004: to 727 (of which 81 received by Member States which joined the EU in 2004)

4.2.2. Notification requests

According to the statistics communicated by requested Member States, the number of notification requests sent to them was:

- in 2003: 123
- in 2004: 182 (of which 38 received by Member States which joined the EU in 2004)

4.2.3. Recovery requests

According to the statistics communicated by requested Member States, the number of recovery requests received by all Member States amounted:

- in 2003: to 2797
- in 2004: to 3735 (of which 326 received by Member States which joined in 2004)

4.2.4. Total sums recovered

According to the statistics communicated by requested Member States, the sums recovered by these Member States for the claims where their assistance was requested, amounted:

- in 2003: to EUR 5 050 090.55
- in 2004: to EUR 13 857 040.55 (including EUR 375 109.07 recovered by Member States which joined in 2004)

4.2.5. Percentage of recovery requests satisfied

According to the statistics communicated by requested Member States, the total amounts recovered by these Member States in relation to the total amount of the claims for which their assistance was required amounted:

- in 2003: to 1.13%
- in 2004: to 1.82%

4.3. Evaluation of the statistics

4.3.1. General observations

The participation of Member States (either as applicant state or requested state) differs considerably from one Member State to another. This is true both of the old Member States and the countries which joined in May 2004.

This difference is not surprising, since mobility of persons varies from one Member State to the next. Substantial mobility of persons between certain countries affects the number of mutual assistance requests between them (e.g. between the UK and Ireland).

The largest number of recovery requests was sent by Germany. According to figures for the amounts for which recovery requests were sent in 2004, Germany requested mutual assistance for 36.14% of the total sums for which requests were made in 2004. Figures supplied by requested states reveal that the German authorities recovered 38.59% of all the amounts recovered by Member States in 2004 at the request of other Member States.

The statistics do not necessarily reflect the overall impact of mutual assistance for recovery that Member States afford each other. They do not include the results of any mutual assistance given on the basis of other non-Community agreements, such as the Nordic Convention of 7 December 1989, used by the Scandinavian countries, the multilateral convention of the OECD and the Council of Europe of 25 January 1988, or bilateral conventions applied by certain Member States pursuant to Article 23 of Directive 76/308/EEC.

The way Member States currently communicate their figures makes it impossible to gauge the impact of mutual assistance for the recovery of each type of tax. In order to make this useful analysis, the Commission plans to propose that Member States indicate in their future statistics the nature of the taxes and levies recovered at the request of another Member State.

4.3.2. Reasons for increase in requests from 2003 to 2004.

The reasons for the ever-increasing number of mutual assistance requests are many and varied.

On the one hand, this development is directly related to the behaviour of the debtors:

- there has generally speaking been an increase in mobility of persons, goods and capital in the internal market, giving rise to tax debts in Member States where the debtors concerned are not - or no longer - established;
- more specifically, national administrations have also seen a rise in fraudulent insolvency where debtors organise their activities and assets in such a way that forced recovery of tax claims becomes more difficult (e.g. by setting up bogus companies).

On the other hand, the scope of mutual assistance has been significantly widened:

- first, by Directive 2001/44/EC. The Directive widened the scope of mutual assistance to all claims relating to income and wealth taxes and taxes on insurance premiums. This obviously had an impact on statistics relating to the number of the requests sent by the various Member States, in particular from 2004 on (as Commission Directive

2002/94/EC of 9 December 2002 laying down detailed rules for implementing certain provisions of Directive 76/308/EEC, as amended by Directive 2001/44/EC, was transposed in the Member States only in 2003). That being so, it is not to be ruled out that the increase in requests and in the amounts recovered on the basis of the Community legislation is (at least partially) offset by a fall in requests and in the results of mutual assistance previously granted on the strength of non-Community agreements or arrangements.

- second, by the extension of the territorial reach following the accession of 10 new Member States in 2004.

In addition, this increase is probably also due to the adoption of Council Directive 2000/65/EC of 17 October 2000⁵ under which Member States could no longer make compulsory the appointment of a tax representative within the Community for claims relating to VAT. This Directive probably increased the importance of mutual assistance for VAT recovery.

4.3.3. Divergence between recovery requests and results

Despite the enormous increase in the amounts recovered through mutual assistance (258% up in 2004 compared with the year before), there remains a considerable gap between the amounts for which requests for assistance in recovery are made and the amounts actually recovered.

This comes as no big surprise. Experience generally shows that the chances of recovery decrease with the age of the claim. As assistance for recovery abroad takes second place to national implementation measures, the effectiveness of this “last resort” is by its very nature relative. This is corroborated by the fact that claims which are the subject of requests for assistance are at any rate claims whose recovery is difficult.

When Member States were asked to explain this divergence (see point 5.2.) they also cited other reasons:

- problems regarding the resources available to take action on requests submitted by other Member States’ administrations,
- communication problems between the competent authorities of the various Member States (insufficiently precise and/or current information; poor feedback) and between competent authorities of a Member State and its own local services;
- problems due to late presentation of mutual assistance requests which prevented the requested authorities from making recovery in time.

Nor should we lose sight of the fact that figures for the amounts recovered by the requested authorities in other Member States make it impossible to measure the overall impact of the mutual assistance procedures:

⁵ OJ L 269, 21.10.2000, p. 44.

- the figures do not take account of the amounts debtors pay direct to the applicant authorities, following notification of a debt or initiation of a recovery procedure by the requested authorities;
- they do not mention any reductions in the amounts claimed and agreed to after the sending of mutual assistance requests and claims subsequently contested;
- the figures available concern only those amounts already collected by the requested authorities and fail to take account of possible debt settlement plans agreed or results achieved by recovery procedures that are often slow or still under way.

5. COMMUNITY INITIATIVES TO BOLSTER MUTUAL ASSISTANCE FOR RECOVERY

5.1. Ongoing support by Member States in the application of mutual assistance

Whereas the new Community legislation adopted in 2001 and 2002 was a prerequisite for improving mutual assistance for recovery between Member States, it had to be flanked by measures to strengthen cooperation between the tax authorities. In order to solve possible problems of interpretation or application of the Directives and examine new needs and other issues, the Commission provides ongoing support to the Member States through:

5.1.1. Assistance from the Committee on Recovery of Claims

As provided for in Article 20 of Directive 76/308/EEC, as amended by Directive 2001/44/EC, the Commission is assisted by a Committee on Recovery of Claims, made up of representatives of the Member States and chaired by a Commission representative. It meets regularly to discuss the questions and suggestions submitted by the Commission and the Member States.

5.1.2. Fiscalis 2003-2007

The Fiscalis Programme 2003-2007, adopted by the Council and the European Parliament with the aim of intensifying day-to-day cooperation between tax administrations and tax officials, helped finance seminars on mutual assistance for recovery held in Alicante (Spain) in 2003, in Bruges (Belgium) in 2004 and in Bratislava (Slovakia) in 2005. Officials from various countries discussed the topics and issues involved.

5.2. New initiatives to improve mutual assistance initiatives

In May 2005 the Commission sent Member States a document inviting them to reflect on ways of improving mutual assistance for recovery and express their opinions on the subject. These ideas were taken up at the last Fiscalis seminar and will be re-examined at the next meeting of the Committee on Recovery of Claims.

The Commission will then table specific proposals in 2007 on the need to foster the practical use of the mutual assistance procedures and strengthen and streamline the legislation as much as possible.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Conclusions

Mutual assistance by the national authorities for tax claim recovery is an essential element in the fight against tax fraud.

Statistics on mutual assistance for recovery relating to 2003 and 2004 show a significant increase in this form of international administrative cooperation.

There remains however a huge gap between the amounts for which assistance is requested and amounts actually recovered through mutual assistance.

The Commission will make specific proposals to improve mutual assistance for recovery in 2007. They will be inspired by the need to facilitate the practical use of the mutual assistance procedures and strengthen and streamline the legislation as much as possible.

6.2. Recommendations

- Member States should go on making intensive use of the mechanisms for mutual assistance for recovery.
- They should identify what human resources are needed to handle mutual assistance requests expeditiously as recovery chances decrease according to the length of time the claim concerned has existed.
- Member States should ensure better communication between the applicant authorities and the requested authorities. The applicant authorities should be adequately informed and should follow up action by the requested authorities on mutual assistance requests; the applicant authorities should see that the requested authorities get useful current or updated information on the claims and debtors concerned.
- Member States should ensure that the statistics to be supplied under Article 25 of Directive 76/308/EEC and Article 29 of Directive 2002/94/EC are reliable and provided within the deadline set by the Community legislation.