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## REPORT

on the change of legal basis of the proposal for a European Parliament and Council Directive amending 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 and certain excise duties  
(C5-0019/2001 - 1998/0206(COD))

Committee on Budgetary Control

Rapporteur: Salvador Garriga Polledo



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## PROCEDURAL PAGE

On 12 February 1999, Parliament delivered a favourable opinion at first reading on the proposal for a European Parliament and Council Directive amending 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 and certain excise duties (A4-0009/1999).

On 7 May 1999, the Commission, pursuant to Article 250(2) of the EC Treaty, submitted an amended proposal (COM(1999) 183).

By letter of 17 January 2001 the Council consulted Parliament on the change of legal basis of the proposal for a Council Directive amending 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 and certain excise duties (1998/0206(COD)).

By letter of 8 February 2001, the chairman of the Committee on Budgetary Control requested the opinion of the Committee on Legal Affairs and the Internal Market.

At the sitting of 12 February 2001 the President of Parliament announced that she had referred this consultation to the Committee on Budgetary Control as the committee responsible and the Committee on Economic and Monetary Affairs and the Committee on Agriculture and Rural Development for their opinions (C5-0019/2001).

The Committee on Budgetary Control had appointed Salvador Garriga Polledo rapporteur at its meeting of 13 October 1999.

It considered the question of the change of legal basis and the draft report at its meetings of 7 February, 22 March and 25 April 2000.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Diemut R. Theato, chairman; Herbert Bösch, vice-chairman; Salvador Garriga Polledo, rapporteur; Paulo Casaca, (for Anne Ferreira), Rijk van Dam, Christopher Heaton-Harris, John Joseph McCartin (for Brigitte Langenhagen), Heide Rühle (for Bart Staes) and Kyösti Tapio Virrankoski (for Antonio Di Pietro).

The opinion of the Committee on Legal Affairs and the Internal Market is attached; the Committee on Economic and Monetary Affairs and the Committee on Agriculture and Rural Development decided not to deliver an opinion.

The report was tabled on 26 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

**Resolution of the European Parliament on the change of legal basis of the proposal for a European Parliament and Council Directive amending 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 and certain excise duties (C5-0019/2001 – 1998/0206(COD))**

*The European Parliament,*

- having regard to the proposal from the Commission to the Council (COM(1998) 364 – C4-0392/1998-1998/0206 (COD))<sup>1</sup>,
  - having regard to the European Parliament's opinion at first reading<sup>2</sup>,
  - having regard to the amended proposal from the Commission to the Council (COM(1999) 183 – C4-0237/1999<sup>3</sup>),
  - having been consulted by the Council on the change of legal basis (C5-0019/2001),
  - having regard to Rule 70 of its Rules of Procedure
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0139/2001),
1. Confirms its opinion at first reading;
  2. Disputes the appropriateness of the new legal basis proposed by the Council,
  3. Insists that Article 95 of the EC Treaty is the appropriate legal basis;
  4. Calls on the Council therefore to forward its common position to Parliament;
  5. Instructs its President to forward this resolution to the Council and Commission.

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<sup>1</sup> OJ C 269, 28.8.1998, p. 16.

<sup>2</sup> OJ C 150, 28.5.1999, p. 621.

<sup>3</sup> OJ C 179, 24.6.1999, p. 6.

## EXPLANATORY STATEMENT

### Reminder

In January 1999 Mr Bardong (former Member of the European Parliament) was appointed rapporteur on the proposal for a directive amending the same Directive 76/308/EEC. The reference was then COD 98/0206 and the legal basis for the Directive was Article 95 of the EC Treaty, which provides for the codecision procedure.

At that stage, Parliament gave a favourable opinion at first reading on the proposal on 12 February 1999 and suggested a number of amendments, many of which were accepted by the Commission. An amended proposal, pursuant to Article 250(2) of the EC Treaty, was submitted by the Commission on 7 May 1999.

By letter of 17 January 2001 (i.e. 18 months later) the Council of the European Union informed the President of the European Parliament that it had decided to change the legal basis for the proposal for a Directive to Articles 93 and 94 of the EC Treaty (which only provide for a single consultation of the European Parliament). At its meeting of 11 January 2001 the Committee of Permanent Representatives had asked for Parliament to be consulted on the change of legal basis. The letter of 17 January 2001 therefore asked Parliament to state its position, preferably within a short period of time (by 1 March) so that the Directive could enter into force in the Member States in 2002.

Mr Garriga Polledo was appointed rapporteur of the Committee on Budgetary Control on 13 October 1999.

### Parliament's position

Pursuant to Rule 63 of the Rules of Procedure, the Committee on Budgetary Control asked for the opinion of the Committee on Legal Affairs and the Internal Market. In its conclusions, the Legal Affairs Committee points out that the proposed act does not contain any fiscal provisions. The directive simply covers mutual assistance and procedural matters, and therefore seeks to approximate legislative provisions which, within the meaning of Article 95 of the EC Treaty, 'have as their object the establishment and functioning of the internal market'. Article 95 of the EC Treaty is the only legal basis capable of covering all aspects of the proposal.

At the Committee on Budgetary Control meeting of Thursday, 23 March 2001, the rapporteur outlined this position. The Commission, which was present at the meeting, shared Parliament's point of view at first reading and pointed out that, in its opinion, Article 95 should have been maintained as the legal basis.

Mr Garriga Polledo proposed organising a meeting with the representatives of the Swedish Presidency, the Council and the Commission in order to consider ways of breaking the deadlock.

At the meeting (27 March 2001), the Presidency-in-Office set out its position, which was that only a change of legal basis, i.e. use of Articles 93 and 94 of the EC Treaty, would make

it possible to extend the scope of the directive, which now included a number of significant changes with respect to the initial proposal.

The rapporteur's suggestion that several legal bases might be considered, i.e. 93, 94 and 95, cannot be accepted since this would entail the application of different procedures and would be contrary to consistent decisions of the Court of Justice.

The Commission considers that this directive is aimed at improving the functioning of the internal market by more effective administrative assistance. As the directive does not cover fiscal harmonisation as such, it shares Parliament's opinion that Article 95 should be maintained.

The rapporteur has highlighted the anti-fraud aspect of the directive, which is a major issue for the European Parliament and on which Parliament would be deprived of its power of codecision as a result of the change of legal basis.

The Committee on Budgetary Control therefore calls for Parliament to maintain its first-reading position and, considering that Article 95 of the EC Treaty constitutes the directive's legal basis, calls on the Council to forward its common position.

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OPINION OF THE COMMITTEE ON LEGAL AFFAIRS  
AND THE INTERNAL MARKET

To the Committee on Budgetary Control

Subject: Legal basis of the proposal for a European Parliament and Council directive amending 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 and certain excise duties

Dear Mrs Theato,

By letter of 8 February 2001 you requested the Committee on Legal Affairs and the Internal Market, under Rule 63(2), to consider the issue of the appropriate legal basis for the above proposal. You did so because, while the Commission had based its proposal on Article 95 of the EC Treaty, in a letter of 17 January 2001 the Council took the view that Articles 93 and 94 should be used as the legal basis.

The Committee on Legal Affairs and the Internal Market considered the above question at its meetings of 27 February and 6 March 2001.

**1. Directive 76/308/EEC**

As is evident from its title, the proposal seeks to amend Directive 76/308/EEC. That directive is based on Article 94 (ex 100) and has been amended as to its substance only once, by Directive 79/1071/EEC, which, in turn, is based on Articles 93 and 94 (ex 99 and 100).

Directive 76/308/EEC lays down procedural arrangements for mutual assistance between the authorities of two Member States with respect to:

- requests for relevant information on recovery;
- recovery requests.

These basic arrangements are fleshed out by provisions relating to notification, the currency in which recovery is to be effected, any further action taken, disputes, precautionary measures, periods of limitation, translations, etc.

The directive therefore essentially contains procedural provisions relating to mutual assistance.

**2. The Commission proposal**

The Commission proposal seeks to adjust Directive 76/308/EEC in the light of developments which have occurred over the past twenty-five years. It clarifies a number of provisions and seeks to speed up recovery procedures.

As regards the directive's practical scope, new Article 2(1) reads:



“Article 2

1. 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) 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) **interest** and **penalties, fines, and costs incidental to the recovery** of the claims referred to in (a) to (g).”

### **3. Assessment**

The Commission and Parliament's Legal Service have submitted a number of arguments, which may be summarised as follows:

The proposed act does not contain any fiscal provisions since it does not deal with matters relating to the determination of who is taxable, the setting of taxation rates, or any other issues relating to taxation proper. The proposal simply covers mutual assistance and procedural matters, and therefore seeks to approximate legislative provisions which, within the meaning of Article 95 of the EC Treaty, 'have as their object the establishment and functioning of the internal market'.

Article 95 of the EC Treaty is the only legal basis capable of covering all aspects of the proposal.

#### **4. Conclusion**

The Committee on Legal Affairs and the Internal Market thus decided unanimously<sup>1</sup> that Article 95 of the EC Treaty was the appropriate legal basis.

Yours sincerely,

(sgd) Ana Palacio Vallelersundi

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<sup>1</sup> At its meeting of 6 March 2001, the following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, first vice-chairman; Ward Beysen, third vice-chairman; Luis Berenguer Fuster, Maria Berger, Jean-Maurice Dehousse, Bert Doorn, Francesco Fiori, Evelyne Gebhardt, Malcolm Harbour, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Luís Marinho, Manuel Medina Ortega, Bill Miller, Ria G.H.C. Oomen-Ruijten, Gary Titley, Feleknas Uca, Matti Wuori and Stefano Zappalà.