



# ***Mutual assistance for the recovery of taxes***

DG Taxation and Customs Union  
Indirect taxation and tax administration  
Administrative cooperation and fight against fiscal fraud

May 2006



## ***I. GENERAL OVERVIEW***

- **A. What is the legal basis ?**
- **B. Which claims are concerned ?**
- **C. What are the means of recovery assistance ?**



## ***A. Legal basis ?***

- **Original directives:**

- Council Directive 76/308/EEC
- Commission Directive 77/794/EEC

- **Legislation at present:**

- Council Directive 76/308/EEC
  - amended several times
  - Latest major change: Directive 2001/44/EC
- Commission Directive 2002/94/EC



## ***B. Which claims are concerned ?***

- Agricultural levies and refunds
- Import and export duties
- VAT (scope extended by Dir. 79/1071/EEC)
- Harmonised Excise Duties (scope extended by Dir. 92/108/EEC)
- Taxes on income and capital, and taxes on insurance premiums (scope extended by Dir. 2001/44/EC).
- Further extensions ? (cf. OECD Model convention)



## ***C. Possible means of recovery assistance***

- **Requests for information**
  - To obtain info on the debtor or a third party, or on assets
- **Requests for notification**
  - Notification of decisions or other documents relating to a claim and/or its recovery
- **Requests for recovery or precautionary measures**
  - To recover the money/ to guarantee the payment

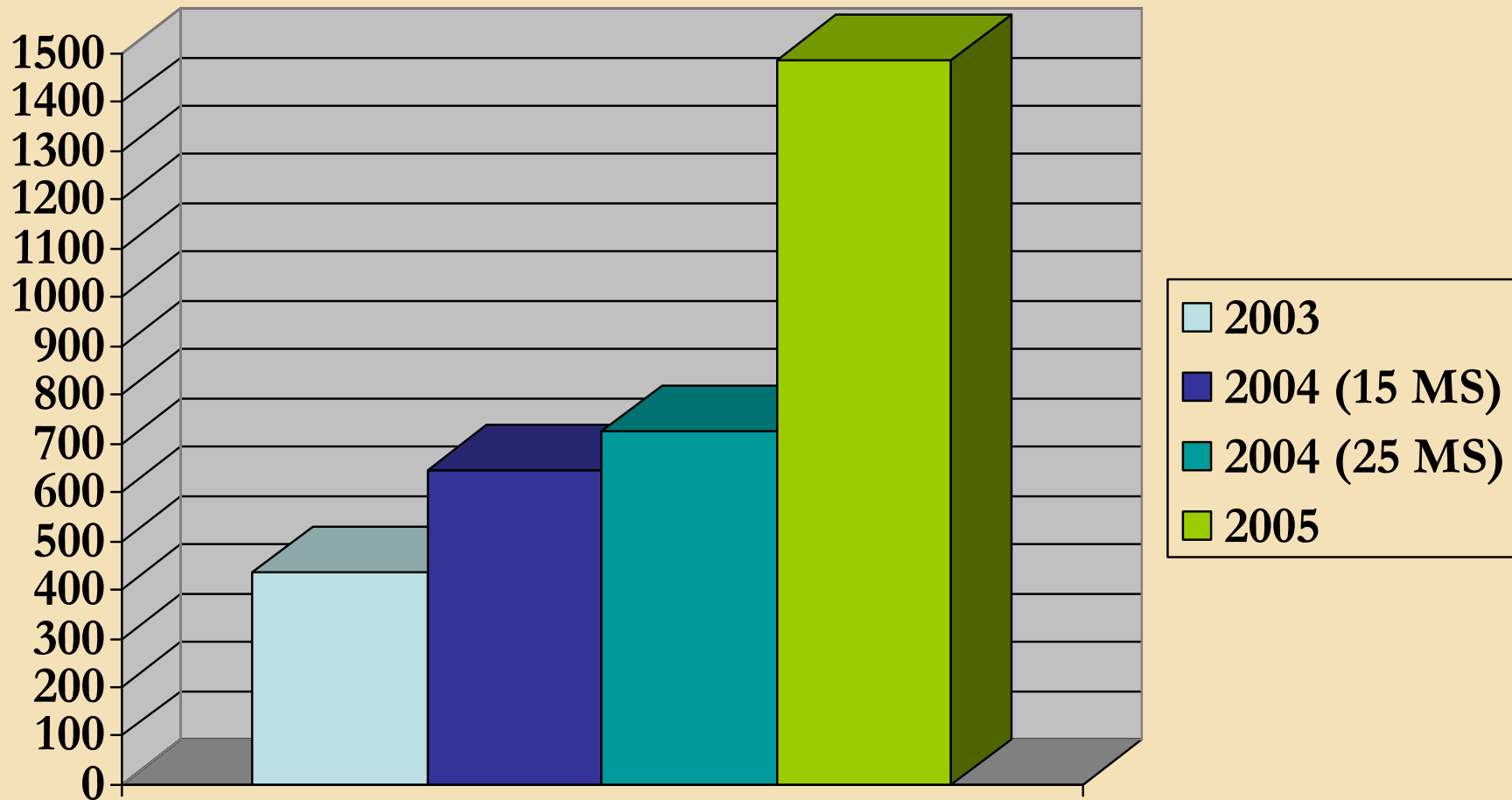


## ***II. USE AND RESULTS OF THE RECOVERY ASSISTANCE (2003-2005)***

- A. Number of information requests
- B. Number of notification requests
- C. Number of recovery requests
- D. Amounts recovered

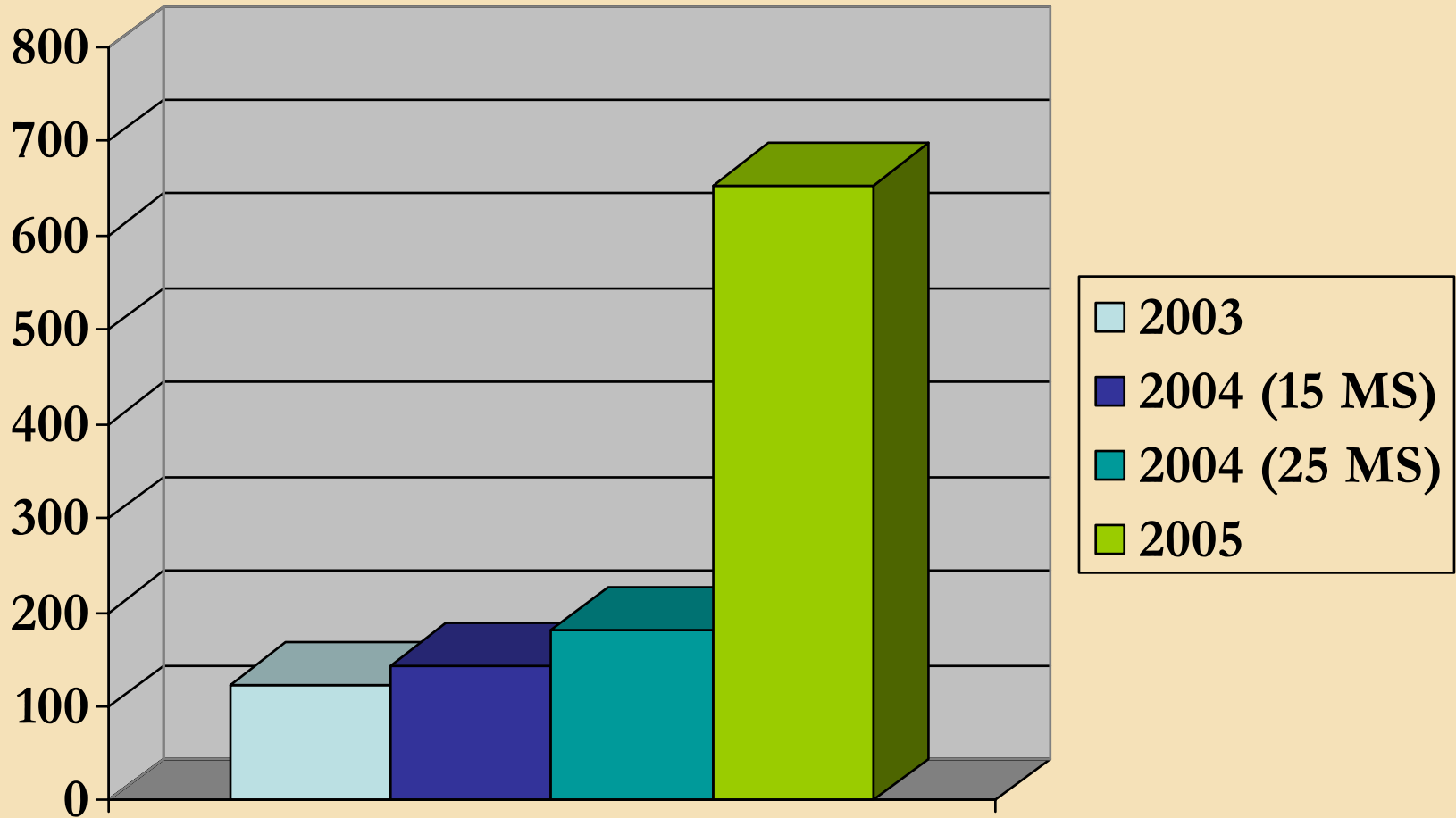


## ***A. Information requests received (according to requested MS)***





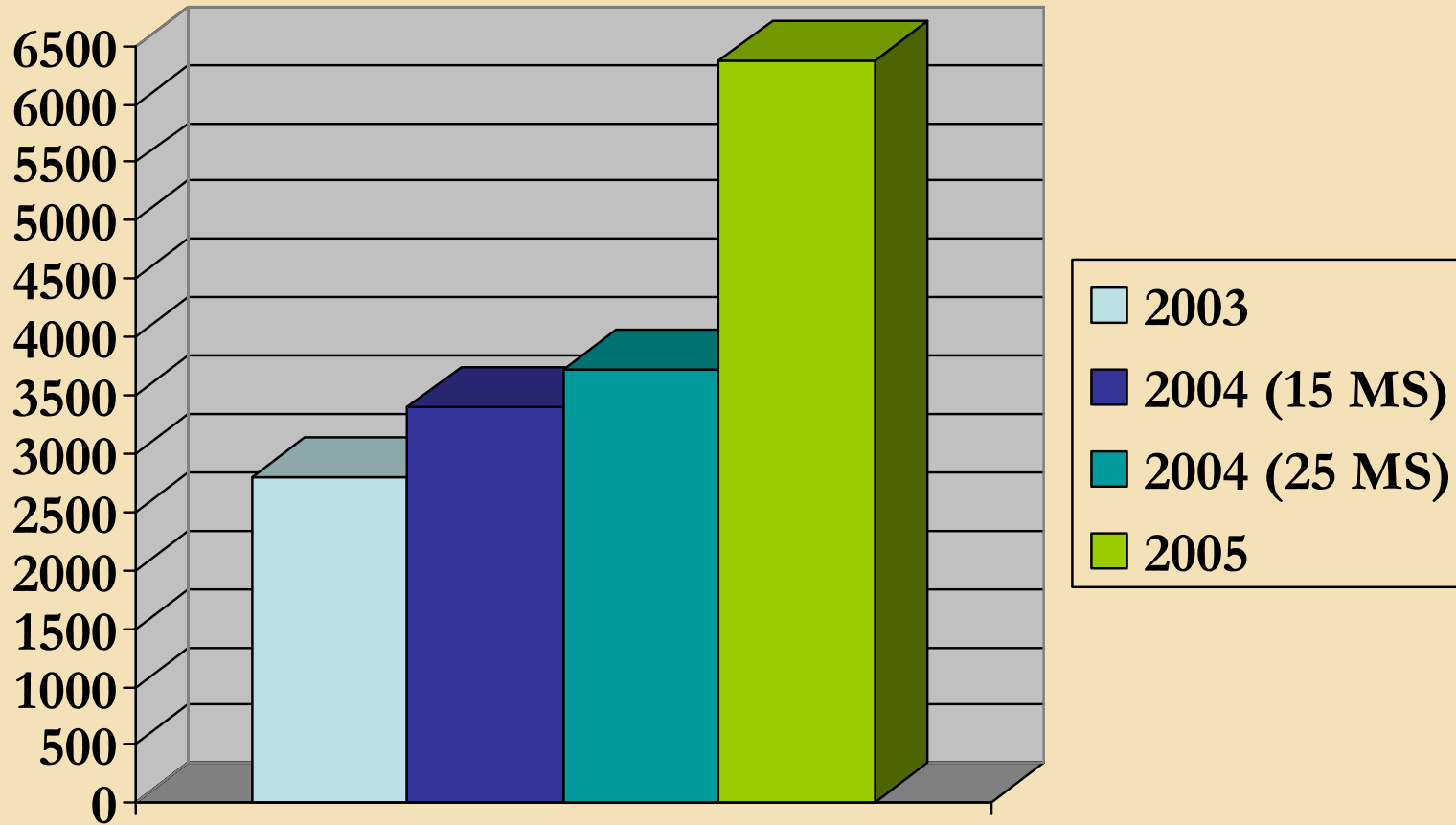
## ***B. Notification requests received (according to requested MS)***





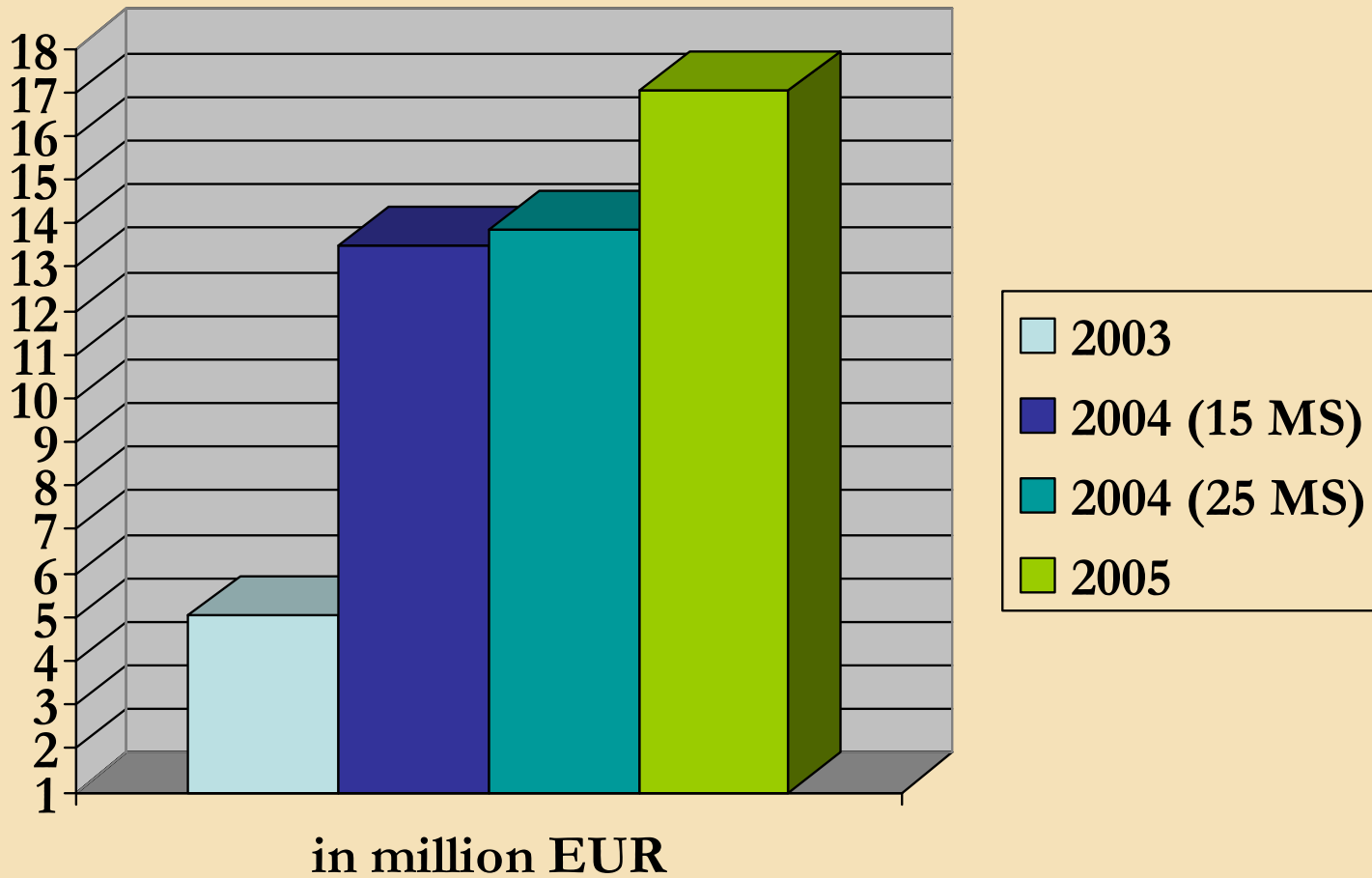


## C. Recovery requests received (according to requested MS)





## ***D. Amounts recovered by the requested MS (according to these MS)***





## ***III. HANDLING OF RECOVERY REQUESTS***

- A. Conditions
- B. Legislation applicable to the actions undertaken by the requested authority
- C. Disputes about the claim or the recovery procedure
- D. Costs of the assistance



## ***A. Conditions***

- Applicant Member State has applied appropriate recovery procedures (Art. 7(2)(b) Dir. 76/308/EEC).
- Claim and/or the instrument permitting its enforcement are not contested (Art. 7(2)(a) Dir. 76/308/EEC).
  - Exception: Art. 12(2) Dir. 76/308/EEC: if legislation of both Member State allows this.
- No obligation to provide assistance for claims of more than 5 years (Art. 14, 1st al., (b) Dir. 76/308/EEC).
- Minimum amount of the claim : 1500 euro (Art. 25(2) Dir. 2002/94/EC).



## ***B. Legislation applicable***

- **Direct recognition of the instrument permitting enforcement**
  - The instrument permitting enforcement is automatically treated as an instrument permitting enforcement in the Member State of the requested authority.
  - However, exceptions still possible (Art. 8(2) Dir. 76/308/EEC)
- **Requested authority applies national provisions applying to the recovery of similar claims (Art. 6)**
  - Exception: Art. 10: not necessarily the same privileges.
  - Exception: Art. 15: special rules for the suspension/interruption of periods of limitation



## ***C. Disputes about the claim or the recovery procedure***

- **If the claim or the instrument permitting enforcement issued in the Member State of the applicant authority is contested** → action to be brought before the competent body of the applicant Member State
  - suspension of the enforcement measures, unless requested otherwise (if allowed by law of both MS)
  - precautionary measures possible
- **If the enforcement measures taken in the requested Member State are contested** → action to be brought before the competent body of the requested Member State



## ***D. Costs of the recovery assistance***

- **Principle: each authority bears its own costs.**
- **Exception: if recovery poses a specific problem, concerns a very large amount in costs or relates to the fight against organised crime:**
  - the authorities may agree specific reimbursement arrangements.



## ***IV. RELATION WITH OTHER ASSISTANCE AGREEMENTS***

- Art. 23 Dir. 76/308/EEC: Member States can agree to afford each other more assistance.
- Note: No application of the Joint Council of Europe/OECD Convention of 1988 in relations between EU Member States, with regard to taxes falling within the scope of the EU Directives (Art. 27 (2) of this Convention).





## ***V. CONCLUSIONS and FUTURE***

- Tendency: increasing use + increasing results.
- Moreover: **mutual recovery assistance is essential to prevent tax fraud!**(deterrence)
- 2007: Commission proposal to improve the existing system.

Some ideas:

- further extension of the scope
- Spontaneous exchange of information on refunds
- Harmonised instrument permitting enforcement
- Improved electronic forms