EU and International
TAX COLLECTION NEWS

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Activities and News

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ACTIVITIES AND NEWS

EU

Report from the European Commission to the European Parliament and the Council on the operation of the arrangements established by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

18 December 2017, COM(2017) 778

1. INTRODUCTION

a. Everyone is expected to pay his/her share of taxes. If taxes remain unpaid, tax authorities take recovery actions to collect the taxes. The competence of the tax authorities is however limited to their national territory. They cannot take recovery actions in other countries, although tax debtors may have moved to another country or may dispose of assets in other countries. Therefore, the EU has adopted legislation which allows the EU Member States to provide mutual assistance to each other, for the recovery of their taxes and for EU claims as defined in Article 2 of the Directive.

The following example illustrates the functioning of this recovery assistance: a person does not pay his tax debts in Member State A. He moves to Member State B, and he also owns property in Member State C. In that case, the tax authorities of Member State A can ask the tax authorities of Member States B and C to help to recover the taxes due to Member State A.

In this way, mutual recovery assistance contributes to ensuring equity and non-discrimination in the field of taxation: it helps to ensure that everyone is paying his/her taxes and it helps to prevent tax fraud and budgetary losses for the Member States and for the EU.

b. On 16 March 2010, the Council adopted Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.[1] It provides for different forms of recovery assistance:
   - exchange of information which is foreseeably relevant for the recovery of tax claims (exchange of information at request; exchange of information without prior request about refunds of taxes; presence in administrative offices and participation in administrative enquiries in other Member States);
   - assistance for the notification of documents relating to tax claims or to their recovery;
   - requests for recovery of tax claims;
   - requests for precautionary measures in order to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State.

   This Directive organises recovery assistance for claims relating to all taxes levied by or on behalf of the Member States or their territorial or administrative subdivisions, or on behalf of the Union.

c. The Member States had to transpose this Directive by 31 December 2011, and these new provisions had to apply from 1 January 2012 (Article 28 of this Directive).

[1] OJ L 84, 31.3.2010, p. 1.

d. Article 27(3) of this Directive provides that the Commission shall report every 5 years to the European Parliament and the Council on the operation of the arrangements established by this Directive. The present report is the first report under this new Directive.[2]

e. This report is accompanied by a synopsis report describing the stakeholder consultations done by the Commission in the preparation of this report. The consultation of the Member States' tax authorities has been done via the activities of the Recovery Expert group, responsible for the monitoring of the implementation of the EU framework on recovery assistance, and via a questionnaire to the tax authorities dealing with recovery assistance. The Commission also launched a public consultation on this matter. Reports of these consultations are published on the Commission's website.

A Commission staff working document, attached to this report, contains a more detailed evaluation of the use of this Directive.

2. GLOBAL OVERVIEW OF THE USE OF MUTUAL ASSISTANCE IN 2011[3]-2015

a. The use of all traditional types of recovery assistance (requests for information, requests for notification, requests for precautionary and/or recovery measures) has continued to increase in the period 2011-2016:

Table 1: total numbers of requests received by all Member States in 2011-2016:

	Requests for information	Requests for notification	Requests for precautionary measures[4]	Requests for recovery
2011	3218	1284		9566
2012	6081	1323		7661
2013	8250	2066	102	10391
2014	9988	2195	80	14123
2015	10733	2168	123	14769
2016	13630	2205	76	16403

The total number of annual communications (new requests and follow-up of existing requests) between applicant and requested authorities in all EU Member States is also increasing.

Table 2: total annual communications with regard to recovery assistance requests in 2012-2016:

2012	2013	2014	2015	2016
125.163	98.493 [5]	138.628	139.402	166.457

b. However, Member States do not yet make use of the possibility for tax recovery officials of one Member State to go to another Member State and to be present during administrative enquiries – or even to participate in these enquiries by interviewing individuals and examining records – and to assist officials of the requested Member State during court proceedings in that State.[6] On this point, the results are in line with the experiences relating to the lack of use of corresponding provisions in the other EU legislation concerning administrative cooperation between tax authorities.[7]

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2 Previous reports on mutual tax recovery assistance dealt with the recovery assistance on the basis of the former legislation: the first arrangements for mutual recovery assistance were set out in Council Directive 76/308/EEC of 15 March 1976. That Directive and the acts amending it were codified by Council Directive 2008/55/EC of 26 May 2008.
These previous reports were presented on 04.09.2009 (report COM(2009)451 on the use of mutual recovery assistance in 2005-2008) and on 15.02.2012 (report COM(2012)58 on the use of mutual recovery assistance in 2009-2010).

3 Directive 2010/24/EU had to be implemented by 1 January 2012. The Commission however considers it useful to compare also with the situation in 2011, when the former Directive 2008/55/EC still applied.

4 No statistics are available with regard to the number of requests for precautionary measures before 2013.

5 There is no clear explanation for the temporary dip in 2013. However, several Member States were late in implementing Directive 2010/24 and this may also have affected the communication of new requests and the follow-up of old requests.

6 In the years 2015-2016, one case of officials going to another Member State was reported.

7 Regulation 904/2010 on administrative cooperation in the field of VAT; Regulation 389/2012 on administrative cooperation in the field of excise duties; Directive 2011/16 on administrative cooperation for other taxes.

c. A large majority of Member States is of the opinion that the cooperation under the present Directive has improved the collection and recovery of their tax related claims. The statistical information available confirms that the amounts recovered on the basis of the EU legislation have increased again, after an initial regression in 2012. The decrease in 2012 can be explained – at least to some extent – by the late implementation of Directive 2010/24/EU in many Member States and the workload generated by the need for the competent authorities to get acquainted with the new legislation, the new procedures, the new request forms and the uniform instruments. The amounts recovered in 2013-2014 are in line with the amounts recovered in 2009-2010. The results have continued to increase in 2015 (and are better than the previous best result that was achieved in 2011).

Table 3: overview of recovered amounts (2011-2016):

	Recovered at the request of other MS (before deduction of the own costs)	Recovered via requests to other MS
	in €	*in €*
2011	54.031.822	62.475.879
2012	30.641.451	32.076.738
2013	35.580.763	41.115.223
2014	42.839.876	46.395.481
2015	81.402.061	65.711.419
2016	76.500.163	67.019.250

d. Of course, the increase of assistance requests and of the recovered amounts does not as such give a proper indication about the functioning of the EU recovery assistance framework.

It results from the consultations of the Member States' tax authorities that recovery assistance is working well in simple situations (e.g. border workers), where recovery assistance provides a solution for the lack of cross-border competence of the tax authorities. However, in other situations – in particular where the non-collection is due to the fraudulent intention of the debtor – the recovery assistance is considered to be more difficult, as is the recovery in the applicant Member State itself.

This view of the Member States is confirmed by the statistics. Even though these statistics only permit to give a rough indication of the recovery rate,[8] they make it clear that the amounts actually recovered are much lower than the amounts for which recovery assistance is requested.[9]

3. IMPACT OF DIRECTIVE 2010/24/EU ON THE FUNCTIONING OF THE MUTUAL ASSISTANCE: A POSITIVE APPRECIATION

a. The importance of well-functioning recovery assistance was emphasized by respondents to the public consultation. The existence and the use of clear and efficient assistance procedures were considered to benefit all parties in such proceedings.

b. With regard to the financial and administrative burden, it should be noted that the nature of the Directive – providing the legal base and technical tools allowing Member States to assist each other in the recovery of claims, without setting the national recovery rules – makes it difficult to quantify the burden linked to the recovery assistance. This burden is largely influenced by the costs and the workload involved in national recovery processes. Moreover, each recovery case is different and depends on the particular circumstances of the claim. The evaluation therefore only gathered (some) evidence on the costs and burdens within the limitations of the Directive's application and reflecting individual experiences of the recovery officials. That information is duly analysed in the attached Commission staff working document. However, any extrapolation allowing an EU-level statement on the regulatory costs related to the Directive is not possible.

8 The statistics currently collected do not permit to draw precise conclusions with regard to the recovery rate (see Commission staff working document, point 4.2.3.).

9 See Commission staff working document, point 6.1.1.2.

In this regard, it should also be noted that reliable quantitative information concerning the administrative burden is not available. The Commission services do not have access to individual files (in accordance with Article 23 of the Directive) and national tax authorities are reluctant to provide more detailed quantitative statistical information than what is imposed by Article 27(1) of the Directive.

c. One of the major goals of Council Directive 2010/24/EU was "to make assistance more efficient and effective and to facilitate it in practice".[10] The Member States almost unanimously confirm that this goal has been achieved. All Member States but one have confirmed that Directive 2010/24/EU has made it easier for them to provide and to receive mutual recovery assistance, compared to the situation under the previous legal framework. All respondents in the public consultation also agreed that the current EU framework has made it easier for Member States to help each other recover taxes.

d. Most respondents in the Member States' consultation and in the public consultation also considered that the existence of the EU recovery assistance rules increases tax compliance, although it is not possible to have a precise estimation of this effect.

e. The use of the electronic request forms and the uniform instruments (Uniform instrument permitting enforcement in the requested Member State (UIPE) and Uniform notification form (UNF)) have improved the efficiency and effectiveness of recovery assistance.

   The electronic request forms, permitting an automatic translation, have set a common standard for the communication between tax authorities. Some tax authorities have made comments, e.g. about the length of the recovery request form, but these forms have been developed in cooperation with the Member States and it was their wish to include the many possible options and situations.

   Almost all Member States confirm that the use of the uniform instrument permitting enforcement in the requested Member State (UIPE) facilitates the preparation of requests for assistance. The processing of assistance requests from other Member States is also easier.[11] The main advantages of the UIPE are the lack of translation costs, the avoidance of recognition issues and the electronic transmission. Most Member States also have a positive opinion about the use of the uniform notification form (UNF) which accompanies the documents for which notification assistance is requested.

   Although the increased number of requests leads to a higher workload, it was also considered that this effect has been alleviated by the use of the uniform instruments.

   Positive opinions about the usefulness of these uniform instruments (UIPE and UNF) were also expressed by respondents (representing the tax payer or debtor perspective) in the public consultation.[12] It was considered that these documents provide a good amount of details with regard to the claims and the responsible offices.

f. The extension of the material scope has caused a heavier workload for the tax authorities involved. Although the total amounts of these other taxes and duties remains relatively low (compared to the amounts of the main categories of taxes: VAT and income taxes), they may relate to a considerable number of requests. Nevertheless, a majority of Member States confirmed that it is useful to have the scope of the Directive extended, as this also contributes to ensuring tax compliance.

4. MAIN CONCERNS AND PROSPECT FOR FURTHER IMPROVEMENT

4.1. A need for sufficient resources to achieve more solidarity between tax administrations

a. In their replies to the evaluation questionnaire, 18 Member States observed that the number of requests for recovery from other Member States is very burdensome for them, and 17 Member States

10 Preamble of Council Directive 2010/24/EU, point 4.

11 This conclusion was also confirmed in an analysis made by the Belgian Court of audit in October 2014 (see point 6.2.2.1.f. of the Commission staff working document).

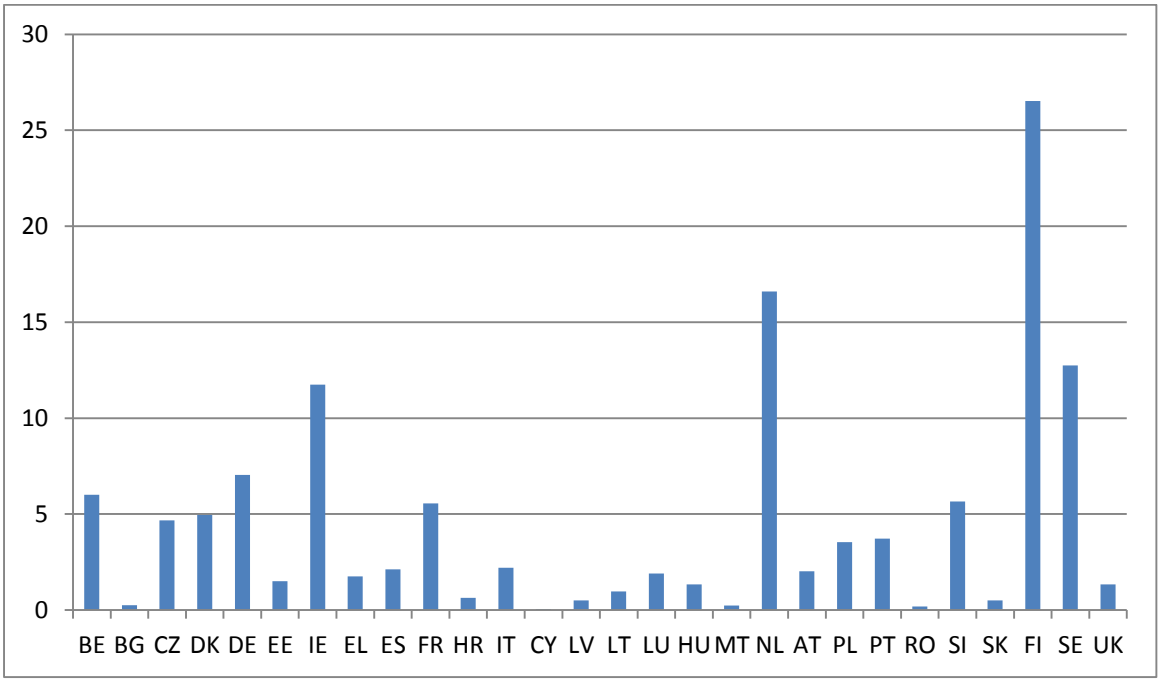
12 It should however be noted that the number of respondents having a personal experience with these uniform instruments was very low.

reported concerns about a lack of resources on the national level. They explain that they do not dispose of the human resources that are necessary to ensure a timely follow-up of all requests.

b. 10 Member States also expressed a feeling that cross-border recovery assistance is not a priority for some tax administrations.

It can be assumed that the results of the mutual recovery assistance are at least to some extent influenced by an insufficient level of efforts of requested Member States to provide recovery assistance (and incidentally by weaknesses of their internal tax recovery system; see point 4.2.).

Table 4: Percentage of average yearly recovered amounts, compared to the average yearly amounts for which recovery assistance requests are received, both in the period 2013-2016, as reported by the requested Member State:



c. The success of mutual recovery assistance largely depends on sufficient resources and efforts to cooperate. Member States should devote sufficient resources to the internal collection as well as to the recovery assistance requests coming from other Member States.

Such investment in each Member State is a prerequisite for the proper functioning of the internal market, without discriminatory protective measures. It also helps preventing fraud and budgetary losses.

Eventually investing in mutual recovery assistance can be seen as an important part of compliance strategy for tax administrations, as it addresses the dishonest taxpayers' feeling of impunity.

It is of course also the responsibility of the applicant Member States to increase tax compliance and to maximise the internal tax collection and recovery possibilities, but if needed, the applicant Member States should be able to count on the solidarity from the requested Member States.

4.2. Reinforcing internal tax collection and recovery: a prerequisite for a more successful recovery assistance

a. When executing a request for recovery or a request for precautionary measures, the requested authority will use the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to the same or similar claims (Art. 13(1) and 17 of Directive 2010/24). This means that the success of mutual recovery assistance is largely influenced by the efficiency of each national tax recovery system.

As confirmed by several respondents to the public consultation and the consultation of the tax authorities, Member States should increase their efforts to provide recovery assistance to other Member States, and they should reduce unjustified internal constraints and requirements which restrict their capacity to execute recovery assistance requests.

In this regard, it appears indeed that national tax recovery measures are not always sufficient nor efficient. In their replies to the questionnaire, several tax authorities indicate that their work is complicated by complex national rules or burdensome internal procedures and requirements, seriously hindering the possibilities of tax authorities to take precautionary or recovery measures.

It also appears that the exchange of information within Member States and the access to databases containing information relevant for tax recovery purposes need to be improved and facilitated.

Moreover, the rule of the use of national tax recovery procedures is often applied in such a way that steps preceding the actual recovery (notification of the claim; new payment period) are repeated in the requested Member State, though they have already been dealt with in the applicant Member State, causing an extra delay in the recovery process and an extra chance for the fraudulent taxpayers to hide and move their assets before the recovery starts.

Sound management of tax recovery therefore implies that Member States facilitate the execution of assistance requests in their territory, by adapting and reinforcing their internal legislation and improving tax recovery practices. At the same time, Member States should take account of the need to respect the rights of the tax debtors, as requested by the respondents to the public consultation.

b. The above conclusion is in line with the conclusions presented by the Commission in its Communication of 7 April 2016 on an action plan on VAT, where the Commission held that tax administrations have to become more efficient.[13]

Strategic discussions with Member States' heads of the tax recovery authorities shall be provided to support tax recovery initiatives and reforms in the Member States.

It should however be taken into account that each Member State has its own particularities with regard to the organisation of its tax authorities and its tax recovery processes. Therefore, the bottlenecks in the recovery processes and organisation are not necessarily the same in all Member States, so that best practice examples of one Member State cannot always simply be transposed to any other Member State.

As a priority, the Commission will invite the Member States with the lowest recovery assistance rates (i.e. recovery rate below or around 2%: Cyprus, Romania, Malta, Bulgaria, Latvia, Slovakia, Croatia, Lithuania, Hungary, United Kingdom, Estonia, Greece, Luxemburg, Austria, Spain and Italy)[14] to have an analysis of the main problems in these countries, with the participation of national tax recovery experts (from the administration and possibly other experts) of these Member States. The Commission will provide its support to assess possible measures to improve their recovery performance.

4.3. Improving the functioning of the EU framework for recovery assistance

a. It is generally acknowledged that the EU framework is the most advanced one in the field of tax recovery assistance. It contains practical enforcement tools such as the uniform notification form (UNF) and the uniform instrument permitting enforcement in the requested Member State (UIPE); it has a wide material scope and well elaborated rules for the handling of assistance requests). However, several suggestions for further improving the legal framework were made by Member States and by respondents to the public consultation.[15]

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13 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT, COM(2016)148 final, point 3.2.

14 See the Commission staff working document (point 6.1.1.2., table 5c).

15 An overview of these suggestions can be found in the Commission staff working document (point 6.3.2.).

Particular attention was paid to the scope; the exchange of information and the access to relevant databases; the precautionary measures; the conditions governing recovery assistance (conditions concerning old claims, use of thresholds).

b. However, Member States' views with regard to possible simplification and other amendments of the current legislation appear to be very different and opposed.

Several simplification suggestions have already been analysed and to some extent discussed with the Member States, within the Recovery Expert Group and the Recovery Committee, e.g.:

- an extension of the scope would permit to avoid some doubts with regard to the limitations of the current scope and would permit the application of uniform rules and arrangements for more claims (e.g. social security claims; other public claims) but is likely to raise serious problems (rules concerning assistance for the recovery of social security claims are laid down in different legal instruments, adopted on a different legal basis; extension of the scope to other claims can only be done with unanimity);
- some rules of the current Directive may be considered to be rather complex (e.g. rules of Article 18(2) of the Directive, about the condition relating to the age of the claims; rules of Article 19(2) of the Directive, about the suspension, interruption or prolongation of periods of limitation). However, it seems to be difficult to reach a unanimous view on how to amend these provisions;
- a suggestion to facilitate the exchange of information with regard to car related data, by permitting the use of the EUCARIS (European CAR and driving license Information System) network – which permits an automated handling of requests – was rejected by an important number of Member States;
- the Recovery Committee recently agreed to adopt some simplifications in the Commission implementing Regulation 1189/2011, namely with regard to the reference to the exchange rate (Article 18(2) of this Regulation) in order to permit an automated calculation of the exchange rate in the future electronic request forms; and with regard to the use of a specific form to explain the reasons and conditions for requests for precautionary measures, in order to facilitate the execution of such requests in the requested Member State.

c. Conflicting views with regard to specific amendment suggestions were also expressed by the respondents to the public consultation. Although there was a general consensus that the EU should take a strict approach towards non-cooperative Member States or other countries, and that there is a need to strengthen precautionary measures and to ensure timely responses to assistance requests, several respondents also underlined the need to respect the rights of defence of the tax debtor and the need to limit the administrative burden for the requested Member State. On the basis of the above considerations, respondents in the public consultation expressed mixed opinions with regard to the questions whether recovery assistance should be provided for contested claims or for claims below the current threshold.

b. In view of the previous sections, priority should be given to improving the execution of recovery assistance requests at national level, within the current legal framework for recovery assistance. It seems that more can be done at national level to take full advantage of the possibilities offered by the existing EU legislation.

c. The problem of missing debtors and assets is not only an intra-EU problem. Since it is clear that tax fraudsters easily escape from tax recovery actions within the EU if they can move freely and dislocate their assets to third countries, the Commission has recently negotiated a first international agreement between the EU and Norway, relating to administrative cooperation in the field of VAT. Mutual recovery assistance for VAT claims is included in this agreement. The rules governing this recovery assistance correspond to the provisions of the EU Directive – although the scope of this agreement is limited to VAT claims – and the EU electronic forms would be used in the relations with Norway. The electronic recovery forms are indeed developed in such a way that they can be used in relations with third countries. This common framework will facilitate the work of the competent authorities.

4.4. Better communication and more guidance needed

a. The Commission services have already taken several actions to raise the awareness about the EU legislation concerning mutual tax recovery assistance, and to explain the complex rules of this legislation:
   - national tax authorities can raise their questions in the Recovery Expert Group or via their national contact points, and they are invited to participate in Fiscalis 2020[16] workshops or project groups;
   - the legislation is explained to the public via a specific webpage, with "frequently asked questions and answers", on the website of the Commission;[17]
   - a newsletter on national, EU and international developments in the field of tax collection and recovery, including recovery assistance, is also published on the website of the Commission.[18]

b. However, the responses to the consultation of the tax authorities as well as the public consultation make it clear that tax authorities, taxpayers and tax practitioners wish to have more guidance on the interpretation and application of the EU rules in this field.

   The extension of the scope to all taxes and the fact that other (decentralised) offices should also be aware of the recovery assistance possibilities (for sending requests) or of their obligations if they have to take recovery or precautionary measures (for incoming requests) would require providing more information and/or training to national authorities.

   Such further guidance may also be useful for other tax practitioners dealing with tax recovery assistance cases (e.g. judges in the Member States, having to authorise specific precautionary or recovery measures, or dealing with contestations of such measures) and more information could also be shared with the public.[19]

c. Member States have an important role in this communication. The Commission will continue to support the Member States in this effort. A first step will be the publication of the explanatory notes on the interpretation of the EU recovery assistance legislation.[20]

5. CONCLUSIONS

a. The EU legislation and framework for tax recovery assistance has facilitated tax recovery assistance between the EU Member States.

b. In order to guarantee the efficiency and effectiveness of mutual recovery assistance, Member States should strengthen their internal tax recovery systems and deploy sufficient resources to deal with recovery assistance requests.

   In this regard, it should be examined if and how detailed and precise quantitative information can be collected about the administrative burden and costs, and about the correspondence between the workload of incoming requests for assistance and the administrative resources deployed in the requested State.

c. Improving different (legal and technical) aspects of the functioning of the system may still be considered with the Member States and other stakeholders, including taxpayers.

d. More communication to explain and promote this legislation would contribute to increase tax compliance and respect of taxpayers' rights.

e. Recovery of taxes is and remains difficult in case of organised tax fraud by natural or legal persons: natural persons committing fraud or setting up fraudulent tax structures go missing and dislocate their assets; legal persons organise their insolvency and also move their assets. As a consequence of the international development of exchange of information, recovery assistance between the EU and third countries will become a more prominent issue.

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16 Fiscalis 2020 is an EU cooperation programme enabling national tax administrations to create and exchange information and expertise. See: http://ec.europa.eu/taxation_customs/fiscalis-programme/fiscalis-2020-programme_en

17 http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery_en

18 http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery_en

19 It resulted from the open public consultation that most respondents are not aware of the communication actions already undertaken by the Commission services.

20 On 22 February 2017, the Recovery Expert Group agreed to make these explanatory notes publicly available in the near future.

EU

European Commission

Commission staff working document for the evaluation of the use of mutual tax recovery assistance on the basis of Directive 2010/24/EU by the EU Member States

accompanying the report from the Commission to the European Parliament and the Council on the operation of the arrangements established by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (COM(2017) 778)

18 December 2017, SWD(2017) 461

1. EXECUTIVE SUMMARY

This staff working document on the evaluation of the use of the EU framework for tax recovery assistance accompanies the Commission's report to the European Parliament and the Council, presented in accordance with Article 27 of Directive 2010/24. It examines to which extent the overall objective of this Directive, to better safeguard the financial interests of the Member States and of the EU, has been met (points 2 and 3).

The evaluation questions relate to the effectiveness, the efficiency, the relevance, the coherence and the EU added-value of this EU framework (point 4.1.).

The evaluation is based on the comments and responses provided by the Member States' tax authorities, the responses provided in a public consultation, the yearly statistics on the use of this EU framework, questions raised in the Recovery Expert Group meetings and in Fiscalis 2020 activities and on some external reports (point 4.2.). The nature of the Directive - providing the legal base and technical tools allowing Member States to assist each other in the recovery of claims, without setting the national recovery rules – makes it difficult to quantify the burden linked to the recovery assistance. This burden is largely influenced by the costs and the workload involved in national recovery processes. Moreover, each recovery case is different and depends on the particular circumstances of the claim. The evaluation therefore only gathered (some) evidence on the costs and burdens within the limitations of the Directive's application and reflecting individual experiences of the recovery officials. That information is duly analysed in the present report. However, any extrapolation allowing an EU-level statement on the regulatory costs related to the Directive is not possible.

Although this Directive had to be implemented by 31 December 2011, many Member States were late in transposing the Directive (point 5).

The amounts recovered on the basis of the EU Directive continued to increase (point 6.1.1.1.).

The statistical data that are made available to the Commission do not permit to draw clear conclusions with regard to the recovery ratio. However, an approximative estimation shows that the differences in the Member States' recovery results are considerable (point 6.1.1.2.).

Specific factors are influencing the recovered amounts: the increase of recovery assistance requests; the reported lack of resources and efforts for recovery assistance; and loopholes in the national means for tax recovery (point 6.1.1.3.).

It is generally considered that the Directive has helped Member States to create a deterrent effect towards non-compliance. However, this effect cannot really be measured (point 6.1.2.1.).

The uniform procedural tools (i.e. the electronic request forms, the uniform instrument permitting enforcement in the requested Member State (UIPE) and the uniform notification form (UNF) are appreciated by the Member States as well as by the few respondents to the public consultation. It is

considered that these tools improve the efficiency and effectiveness of recovery assistance for both the applicant and the requested authority. The use of these e-forms and uniform instruments is also generally considered to have a positive effect on reducing the workload and administrative costs for the Member States concerned (points 6.2.1. – 6.2.2.), notwithstanding the increase of assistance requests (requests for information, requests for notification and requests for recovery or precautionary measures) (point 6.2.3.1. – 6.2.3.2.).

So far, Member States did not make use of the possibilities for officials of the applicant Member State to be present during administrative enquiries – or to participate in such enquiries – or to assist during court proceedings in the requested Member State (point 6.2.3.3.).

The Fiscalis 2020[21] activities facilitated the cooperation, as they enabled direct contacts between competent authorities. The discussions in these activities also permitted to develop the electronic forms, to provide training to the national officials and to discuss problems and suggestions for improving tax recovery and tax recovery assistance (point 6.2.3.4.).

Directive 2010/24 helps to achieve the main priorities of Member States: to improve the revenue collection, reducing tax fraud and evasion, and reducing the administrative burden and costs related to recovery assistance. The mechanism of the EU Directive is considered to permit a much more efficient recovery assistance than other agreements. Given the priority of the Directive and its broad material scope, there is only little use of other agreements for recovery assistance between Member States (points 6.3.1.1. – 6.3.1.3.).

The broadening of the scope of this Directive – to all taxes and duties levied by or in the Member States – was appreciated by the Member States, although most requests still relate to the main categories of VAT and income taxes (point 6.3.1.4.). Several suggestions have been made to further extend the scope of the Directive to other claims; to reinforce the possibilities with regard to requests for information, automated and spontaneous exchange of information and access to databases in other Member States; to clarify some notification issues; to further facilitate the use of precautionary measures; to simplify conditions with regard to the obligation to provide assistance; to permit the use of the electronic request forms and the communication network in relations with third countries, etc. (points 6.3.2.1. – 6.3.2.2.).

When providing recovery assistance, Member States have to respect the legal protection of the debtor (point 6.3.3.1.).

The uniform instruments (UIPE and UNF) are considered to provide sufficient information to the debtors in the phase of recovery assistance. In order to ensure that the debtor is properly informed in a language that he understands, the Commission services also put other common forms at the disposal of the Member States (point 6.3.3.2.).

The Commission services provide guidance on the functioning of the EU recovery assistance framework, through information published on the Commission website (point 6.3.3.3.).

Tax recovery assistance is considered to be in the interest of all Member States, despite the unequal use and unequal workload (point 6.4.1.1.).

In general, the competent authorities respect the principle of loyal cooperation between EU Member States (point 6.4.1.2.).

EU tax recovery assistance appears to be indispensable for the proper functioning of the internal market, and Member States are encouraged to make sure that the recovery assistance framework is effectively used (point 6.4.2.1.).

It is considered that the joint EU approach in tax recovery presents many advantages over individual Member States' actions to conclude bilateral or multilateral assistance agreements. The harmonised arrangements, the common request forms and the uniform instruments (UIPE and UNF) considerably facilitate the work for the competent authorities (point 6.4.2.2.).

Finally, it is pointed out that the EU tax recovery assistance is coherent with the global strategy of the EU to develop and improve cooperation between Member States (point 6.4.2.3.).

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[21] Fiscalis 2020 is an EU cooperation programme enabling national tax administrations to create and exchange information and expertise. See for more information: https://ec.europa.eu/taxation_customs/fiscalis-programme/fiscalis-2020-programme_en.

2. INTRODUCTION

On 7 April 2016, the Commission presented a Communication to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT (document COM(2016)148; Towards a single EU VAT Area – Time to decide). In this action plan, the Commission observed that tackling the VAT gap calls for urgent actions on three fronts: enhancing administrative cooperation, collectively improving the performance of European tax administrations and improving voluntary compliance. These actions also imply a need to use and strengthen mutual assistance for the recovery of tax debts, as effective collection of VAT is a cornerstone of the fight against fraud. Therefore, the Commission announced an evaluation of the use of the current provisions on mutual recovery assistance, which relate to VAT but also to all other types of taxes.[22]

This current framework for recovery assistance with regard to VAT, and with regard to all other taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, or on behalf of the Union, is laid down in Council Directive 2010/24/EU of 16 March 2010.

The purpose of this evaluation is to assess whether and to what extent Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, and its implementation by the EU Member States have made the recovery assistance more efficient and effective.

It will also assess to what extent this recovery assistance needs to/can be improved, and make recommendations to take account of the current needs of the Member States and the internal market in a quickly changing economic and political environment.

3. BACKGROUND TO THE INITIATIVE

3.1. Situation prior to Council Directive 2010/24/EU

Arrangements for mutual recovery assistance were first set out in Council Directive 76/308/EEC 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 the agricultural levies and customs duties. The scope of this assistance framework was gradually extended to VAT, excise duties, income taxes and taxes on insurance premiums.[23] All other taxes and duties, levied by or on behalf of a Member State or its territorial or administrative subdivisions were still outside the scope. This was at the detriment of the financial interests of the Member States and the neutrality of the internal market.

The execution of a continuously increasing number of assistance requests under the former Directive entailed a considerable burden for the requested Member States, as the efficiency and effectiveness of the former framework was not optimal.

In the past, there were no electronic request forms with automatic translation of pre-defined text fields. There were also problems with regard to the recognition and translation of instruments emanating from another Member State, which constituted a major cause of the inefficiency of the former arrangements for assistance. This caused delays in both the applicant and the requested Member State.

There was no provision for direct information exchange between services, which could have made assistance fast and efficient, and there was no legal basis for exchange of information without prior request.

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22 Doc. COM(2016)148, p. 7, https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf. See also point 7 of the 20 measures announced by the Commission in order to tackle the VAT gap, http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_cooperation/vat_gap/2016-03_20_measures_en.pdf.

23 The first EU legislation in this field was Directive 76/308, adopted on 15 March 1976. It provided for mutual assistance with regard to agricultural levies and customs duties. VAT claims were added by Directive 79/1071 of 6 December 1979); harmonized excise duties were added by Directive 92/108 of 14 December 1992, and taxes on income and capital and taxes on insurance premiums were added by Directive 2001/44 of 15 June 2001. Council Directive 76/308/EEC and the acts amending it were codified by Council Directive 2008/55/EC of 26 May 2008.

The conditions for requesting recovery assistance were strict: a request for recovery assistance could only be sent if the domestic means of recovery had been fully exhausted, i.e. if the applicant authority had applied appropriate recovery procedures and the measures taken would not result in the payment in full of the claim (Article 7(2)(b) of Directive 2008/55/EC).

Finally, the requested Member State was entitled to recover its costs related to the recovery from the debtor, but these costs could not be deducted from the recovered amounts if a full recovery from the debtor was not possible. This did not encourage Member States to devote sufficient resources to the recovery of other Member States' claims as the costs of the procedure would effectively be borne by the requested Member State if they could not be recovered from the debtor.

3.2. Council Directive 2010/24/EU and its objectives

The overall objective of Council Directive 2010/24/EU was to better safeguard the financial interests of the Member States, including their territorial or regional subdivisions and the neutrality of the internal market. In particular, it provided for an extended scope of the recovery assistance and it introduced a range of measures to facilitate cooperation between the EU Member States: it introduced uniform instruments for notification and for recovery in other Member States; it introduced a legal basis for exchange of information without prior request on specific tax refunds; it made it possible for tax officials of a Member State to attend or to participate in administrative enquiries in another Member State; it made it possible to send a request for recovery assistance, even though the domestic means of recovery were not yet fully exhausted, *inter alia*, where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty; it provided for clearer and more precise rules where necessary, and it allowed the requested Member State to retain the costs linked to the recovery that it had incurred.

4. EVALUATION QUESTIONS AND METHOD

4.1. Evaluation questions

The evaluation is based on the following questions:

- to what extent has the Directive contributed to safeguarding financial interests of the Member States and of the EU? (effectiveness)
- to what extent have the standardisation provisions of the Directive (e.g. adoption of a uniform instrument permitting enforcement in the requested Member State (UIPE); uniform notification form (UNF); obligation to communicate electronically; rules on the use of language, etc.) improved the efficiency and effectiveness of assistance? (uniformity/efficiency/effectiveness)
- to what extent the provisions of the Directive are relevant to the needs of the Member States? (relevance)
- could Member States achieve similar results without acting at the EU level and is the EU approach coherent? (EU added value/coherence)

4.2. Evaluation materials

4.2.1. Questionnaire to the tax authorities

a. In order to gather the information necessary for the preparation of this report, the Commission has asked for the opinion of the tax authorities dealing with recovery assistance. All Member States have replied to an evaluation questionnaire, which was sent to them in 2015. It was prepared by the Commission and submitted for discussion and approval of the Recovery Expert Group who also served as the Commission's contact point for distribution of the questionnaire. One set of replies was received per Member State and all Member States took part in the questionnaire. Overall quality and completeness of replies were satisfactory.

b. The overview of the Member States' answers to the questionnaire has been published on the Commission's website.

4.2.2. Public consultation

a. An open public consultation took place from 30 November 2016 till 8 March 2017. This was prepared by a Commission inter-service steering group.

Though the public consultation was announced at several fora and repeated at several occasions, there were only a limited number of responses to this public consultation. In this regard, it should be noted that:

- the Directive deals with the cooperation between tax authorities. The execution of a request (= the relationship between the tax authority and the tax debtor) is a matter of national law;
- citizens and companies paying their tax debts never have anything to do with the use of this Directive. Recovery assistance is generally only requested in cases where tax debtors deliberately refuse to pay their tax debts.

b. A summary report of the responses to this public consultation has been published on the Commission's website.

4.2.3. Yearly statistics

a. The replies to the above consultations completed the information already available from the yearly statistics, which Member States have to provide in accordance with Article 27 of the Directive. The statistics cover the number of assistance requests and the amounts requested and recovered.

The Recovery Committee adopted a number of detailed guidelines with regard to the calculation of the statistical data. Nevertheless, the statistical data provided by the Member States do not fully match. Differences can be noted, to some extent, in the numbers of the requests sent and received, and, to a large extent, in the requested and recovered amounts reported by the applicant and the requested Member States.

The differences in the reported amounts can be partially explained by several factors: assistance requests may lead to payments directly made to the applicant authority, which are not always or not immediately reported to the requested authority; the recovered amounts may be imputed in a different way in case of requests concerning multiple (types of) claims; transfers of recovered amounts by the requested authority at the end of a year may be received by the applicant authority in the next year; the currency exchange may involve some cost; the effects of payment instalment plans is not taken into account in the statistics; and since 2012, the requested Member State is allowed to retain the amount of its costs which are not recovered from the debtor. However, this last element did not apply before 2012, while the statistics of the amounts before 2012 also showed large discrepancies.

Under these circumstances, the statistics give an estimation but their accuracy is not fully guaranteed.

b. The usefulness of the statistics could be improved if more statistical information would be collected and if the reliability of the statistics could be controlled. However, here the Commission is confronted with several obstacles:
   - the statistical information that Member States have to provide annually is listed in Article 27(1) of Council Directive 2010/24; Member States may provide any other information that may be useful for evaluating the provision of mutual assistance under this Directive (Article 27(2) of the Directive);
   - in practice, Member States are reluctant to provide more statistics. They consider this would entail a considerable administrative burden. At present, the only additional statistical information provided by 27 Member States relates to the nature of the claims for which recovery assistance is requested. Additional statistical information may consist of data related to the recovery of customs duties which are own resources for the EU budget;
   - a complete assessment of the use and the results of this recovery assistance would require information about the amounts effectively paid or recovered (not only in the year of the request itself), about the outcome of contestations of the claims, and about the reasons for non-recovery in specific cases. In principle, the Commission itself does not have access to this additional information.[24]

[24] See Article 23(2) of Directive 2010/24.
It should however be noted that the Commission's responsibility to control EU own resources would justify its ability to check to which extent Member States request mutual assistance for customs duties, in view of assessing

c. The question about the extent of the statistical reporting obligations could be rediscussed with the Member States, taking into account the administrative burden involved.[25] On this point, it should be noted that a precise estimation of the recovery ratio is extremely difficult, not only because the recovery process extends over several years. It should also be taken into account:

- that the amounts mentioned in recovery requests may be amended at a later stage, following a successful contestation of the claim or a remittance of administrative penalties;
- that the amounts effectively recovered do not only depend on the recovery efforts of the requested Member State, but also – and perhaps more – on the willingness and the ability of the debtor to pay the claims;
- that the requested Member State may receive a request while it is not in the possibility (anymore) to take any recovery measure with regard to the debtor concerned. This is illustrated by the following (negative) example: in 2012, DK sent a request for recovery assistance to BE, relating to a claim dating from 2007, concerning a tax due for the year 2001. In 2012, the debtor concerned was not living in BE anymore, and BE could not recover anything anymore. This sole claim of about 2.500.000 EUR represented about 85 % of all amounts for which DK requested BE's assistance in 2012.[26] A recovery ratio that does not take account of such particularities of individual situations does not give a clear image of the efforts and success of the requested Member State in providing recovery assistance;
- that errors in the requests or in the collection of the statistics may affect the results reported.

4.2.4. Other sources

a. Discussions on specific questions were held within the Recovery Expert Group meetings.[27]

b. The evaluation also took account of ideas and comments expressed in several Fiscalis 2020 project groups and workshops.

c. The evaluation also took account of external reports, including the following:

– In October 2014, the Belgian Court of Audit submitted to the Belgian parliament (Chamber of representatives) the results of its audit on international mutual assistance for tax recovery. The Court examined whether the Belgian fiscal administration has sufficient legal means at its disposal and is efficiently organised to optimise the international assistance for tax recovery.[28]
– On 4-6 June 2009, the European Association of Tax Law Professors held its annual congress in Santiago de Compostela, dealing with "mutual assistance and information exchange". Attention was paid to administrative cooperation in general and also to mutual recovery assistance. The congress report also includes academic reports of 13 EU Member States (Austria, Belgium, Finland, Germany, Hungary, Italy, Luxemburg, the Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom). Although this conference took place before the current Directive of 2010 was adopted, the provisions of the former Directive which were analysed in these national reports are still in force today.[29]

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the Member States' responsibility for the non-recovery of customs duties in case debtors are located in another Member State.

25 The Commission's intention is to integrate an automated collection of statistics in the central platform that is now being developed for the communication of the assistance requests. In the future, this development should reduce the administrative burden for the Member States and, at the same time, increase the accuracy of the statistics. However, this integration can only be achieved gradually and it may not be applied to all statistical data.

26 This example is mentioned in the report of the Belgian Court of Audit (p. 39, nr. 4.4.1.) (see point 4.2.4.c.).

27 The Recovery Committee assists in the adoption of the implementing provisions (in accordance with Article 26 of the Directive). The Recovery Expert Group has been set up by the Commission to discuss pertinent questions on the implementation and application of the Council Directive and the implementing provisions.

28 https://www.ccrek.be/EN/Publications/Fiche.html?id=d4a73b41-7692-4144-9ccf-a1767468018b.

29 R. SEER and I. GABERT (ed.), Mutual assistance and information exchange (2009 EATLP Congress, Santiago de Compostela), 2010, ISBN 978-90-816475-2-6.

4.3. Evaluation process and matrix

a. The evaluation process was managed by a Commission inter-service Steering group on the evaluation of Council Directive 2010/24/EU.[30]

b. The evaluation covered all Member States for the entire period from the date from which the provisions of the Directive had to be applied in the Member States (1 January 2012).[31]

c. The following evaluation matrix has been used:

Evaluation question	Judgment criteria	Indicators	Data sources
6.1. To what extent has the Directive contributed to safeguarding financial interests of the Member States and of the EU? (EFFECTIVENESS)	6.1.1. Did the Directive help Member States to recover more taxes?	6.1.1.1. Amounts recovered on the basis of the EU Directive	statistics
		6.1.1.2. Recovery ratio	- statistics - questionnaire Member States - reports Member States
		6.1.1.3. Factors influencing the recovered amounts	- statistics - questionnaire Member States - Fiscalis activities - reports Member States
		6.1.1.4. Other use of information provided under the Directive (unintended impact)	- questionnaire Member States - Commission services
	6.1.2. Did the Directive help Member States to create a deterrent effect towards non-compliance?	6.1.2.1. Member States' view on the 'compliance effect' created by the Directive	- questionnaire Member States - public consultation - external sources (tax reviews and magazines, etc.)
		6.1.2.2. Exchange of best practices to improve tax compliance	- Fiscalis activities
6.2. Did the uniform procedural tools improve the efficiency and effectiveness of recovery assistance? (UNIFORMITY, EFFICIENCY, EFFECTIVENESS)	6.2.1. Is requesting assistance easier than before? (situation of the applicant Member State)	6.2.1.1. Use of the electronic request forms by the applicant authority	- questionnaire Member States - evaluation report Belgian Court of Audit

30 This Commission inter-service Steering group was composed of the following directorate generals: Taxation and customs union (TAXUD), Budget (BUDG), Employment and social affairs (EMPL) and the Secretariat General (SG).

31 Note: Croatia only joined the EU on 1 July 2013.

		6.2.1.2. Effect of the adoption of the UIPE for the applicant Member State	- questionnaire Member States
		6.2.1.3. Effect of the adoption of the UNF for the applicant Member State	- questionnaire Member States
		6.2.1.4. Effect of the extension of the scope on the workload	- questionnaire Member States
	6.2.2. Is providing assistance for recovery of claims easier than before? (situation of the requested Member State)	6.2.2.1. Effect of the adoption of the UIPE for the requested Member State	- questionnaire Member States
		6.2.2.2. Effect of the adoption of the UNF for the requested Member State	- questionnaire Member States
		6.2.2.3. Workload to handle incoming requests for assistance	- questionnaire Member States - reports Member States
		6.2.2.4. Administrative cost for the requested Member States	- questionnaire Member States
	6.2.3. Did mutual assistance between the Member States increase?	6.2.3.1. Evolution of the total numbers of requests for mutual assistance	- statistics
		6.2.3.2. Total number and size of all communications relating to assistance requests	- statistics
		6.2.3.3. Presence and assistance of officials of the applicant Member State in the territory of the requested Member State	- statistics - questionnaire Member States
		6.2.3.4. Impact of the Fiscalis activities	- questionnaire Member States - Fiscalis activities
6.3. To what extent the provisions of the Directive are relevant to the needs of the Member States? (RELEVANCE)	6.3.1. Did the Directive meet the needs for which it was adopted?	6.3.1.1. Main priorities of Member States with regard to mutual recovery assistance	- questionnaire Member States
		6.3.1.2. Problems encountered with the Directive by applicant Member States	- questionnaire Member States - Recovery Expert Group

		6.3.1.3. Problems encountered with the Directive by requested Member States	- questionnaire Member States - Recovery Expert Group
		6.3.1.4. Effects of the broadening of the scope	- questionnaire Member States - reports Member States
	6.3.2. Are there other needs?	6.3.2.1. Need for a further extension of the scope?	- questionnaire Member States - public consultation
		6.3.2.2. Other changes suggested	- questionnaire Member States - public consultation - Recovery Expert Group
	6.3.3. Did the introduction of the Directive have an impact on the legal protection of the tax debtors in the Member state?	6.3.3.1. The legal protection of the tax debtors	- questionnaire Member States - public consultation - other sources
		6.3.3.2. Information about tax claims and assistance requests to the debtors	- questionnaire Member States - public consultation
		6.3.3.3. Guidance on the functioning of the EU recovery assistance framework	- questionnaire Member States - public consultation
6.4. Could Member States achieve similar results without acting at the EU level? (EU ADDED VALUE, COHERENCE)	6.4.1. Is recovery assistance in the interest of all Member States?	6.4.1.1. Effective use of the Directive by all Member States	- statistics - questionnaire Member States
		6.4.1.2. Loyal cooperation between EU Member States	- Member States' requests to the Commission services
	6.4.2. Does the EU provide incentives to improve tax recovery assistance?	6.4.2.1. EU tax recovery assistance: a cornerstone for the proper functioning of the internal market	- external reports - Recovery Expert Group - Fiscalis activities
		6.4.2.2. Advantage of a joint EU approach in recovery assistance	- questionnaire Member States - Recovery Expert Group - Member States reports
		6.4.2.3. Coherence of the EU approach	- other sources

5. TRANSPOSITION OF THE DIRECTIVE

The Member States had to transpose Council Directive 2010/24/EU by 31 December 2011, and these new provisions had to apply from 1 January 2012 (Article 28 of this Directive). In many Member States, the transposition of this Directive was delayed.

Table 1: Overview of transposition of Directive 2010/24/EU in the national legislation of the EU Member States: [32]

	adoption	publication	Entry into force
BE	09.01.2012 – 21.12.2012	26.01.2012 – 28.12.2012	01.01.2012
BG	07.12.2011	16.12.2011	01.01.2012
CZ	20.12.2011	30.12.2011	01.01.2012
DK	07.02.2012	08.12.2012	15.02.2012
DE	07.12.2011	13.12.2011	01.01.2012
EE	23.11.2011	13.12.2011	01.01.2012
IE		16.12.2011	01.01.2012
EM	10.04.2012	11.04.2012	01.01.2012
ES	30.12.2011	31.01.2012	01.01.2012
FR	25.01.2012 – 28.03.2012	27.01.2012 – 29.03.2012	01.01.2012
HR	14.06.2013	18.06.2013	01.07.2013
IT	14.08.2012	30.08.2012	14.09.2012
CY	29.06.2012	29.06.2012	01.01.2012
LV	15.03.2012	28.03.2012	01.04.2012
LT	20.06.2011	05.07.2011	01.01.2012
LU	21.07.2012	26.07.2012	01.01.2012
HU	08.04.2013	18.04.2013	21.04.2013
MT	01.01.2012	08.05.2012	01.01.2012
NL	08.12.2011	21.12.2011	01.01.2012
AT	07.12.2011	07.12.2011	01.01.2012
PL	11.10.2013 – 06.11.2013	06.11.2013 – 07.11.2013	21.11.2013
PT	20.12.2012	20.12.2012	21.12.2012
RO	31.08.2011	02.09.2011	01.01.2012
SI	30.04.2012	24.05.2012	25.05.2012
SK	30.11.2011	30.12.2011	01.01.2012
FI	29.12.2011	30.12.2011	01.01.2012
SE	15.12.2011	23.12.2011	01.01.2012
UK	19.07.2011 – 09.12.2011	xx.07.2011 – xx.12.2011	01.01.2012

[32] In some Member States, different laws were adopted, sometimes at different levels. In these situations, multiple dates of adoption and publication of the national laws are mentioned.

6. ANALYSIS OF THE ANSWERS TO THE EVALUATION QUESTIONS

6.1. To what extent has the Directive contributed to safeguarding financial interests of the Member States and of the EU? (effectiveness)

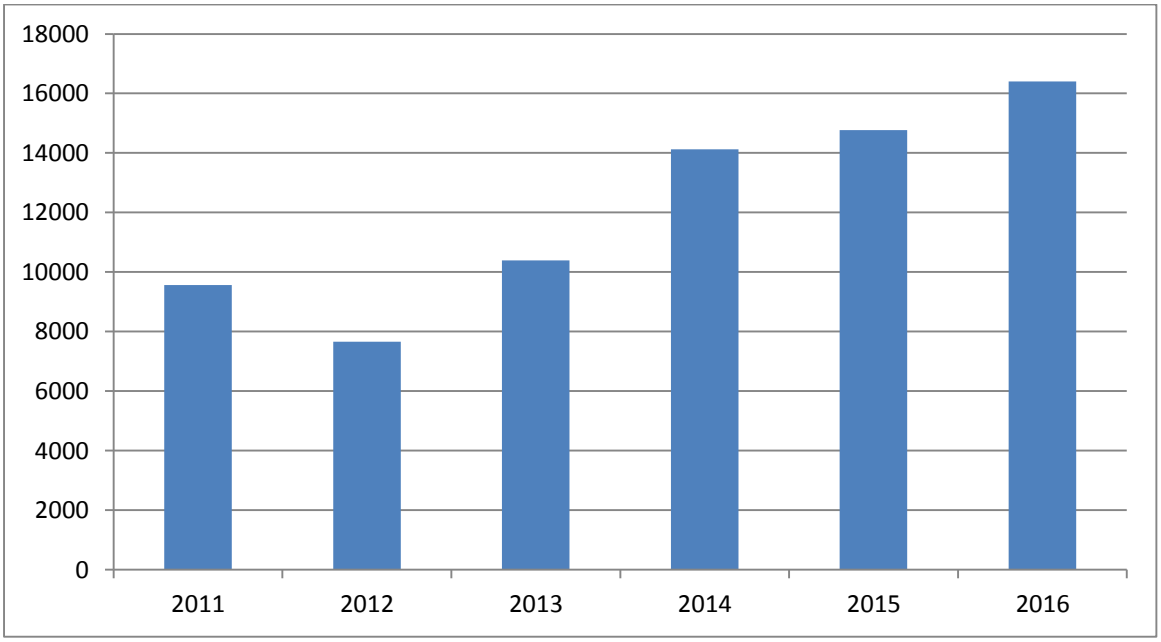
6.1.1. Did the Directive help Member States to recover more taxes?

6.1.1.1. Amounts recovered on the basis of the EU Directive

a. A large majority of Member States (21 of 27[33]) reported that the mutual assistance provided under Directive 2010/24/EU has improved the collection and recovery of their tax claims. Almost all Member States (26 of 27) reported that the cooperation has improved under Directive 2010/24/EU in terms of simplification for national administrations to provide and receive assistance on recovery of claims from another Member State.

One Member State (Lithuania) held that it did not have grounds to consider that the growth of the annual recovered amount was linked to changes of the legal framework. In the view of this Member State, the growth of the recovered amounts was caused by an increased number of requests sent to other Member States (see table 2 below). For 2015, the high increase of amounts recovered for Lithuania was caused by a very successful outcome in 3 cases (in which more than 410.000 € was recovered).

Table 2: evolution of the numbers of received requests for recovery measures between EU Member States, on the basis of Directive 2010/24 (2011-2016):



It can indeed be expected that the increased number of requests influenced the amounts recovered, but this effect could only be achieved if the Member States were able to cope with the increase of requests. Indirectly, the Lithuanian answer seems to confirm the feeling of other Member States that the new framework helped to facilitate recovery assistance.

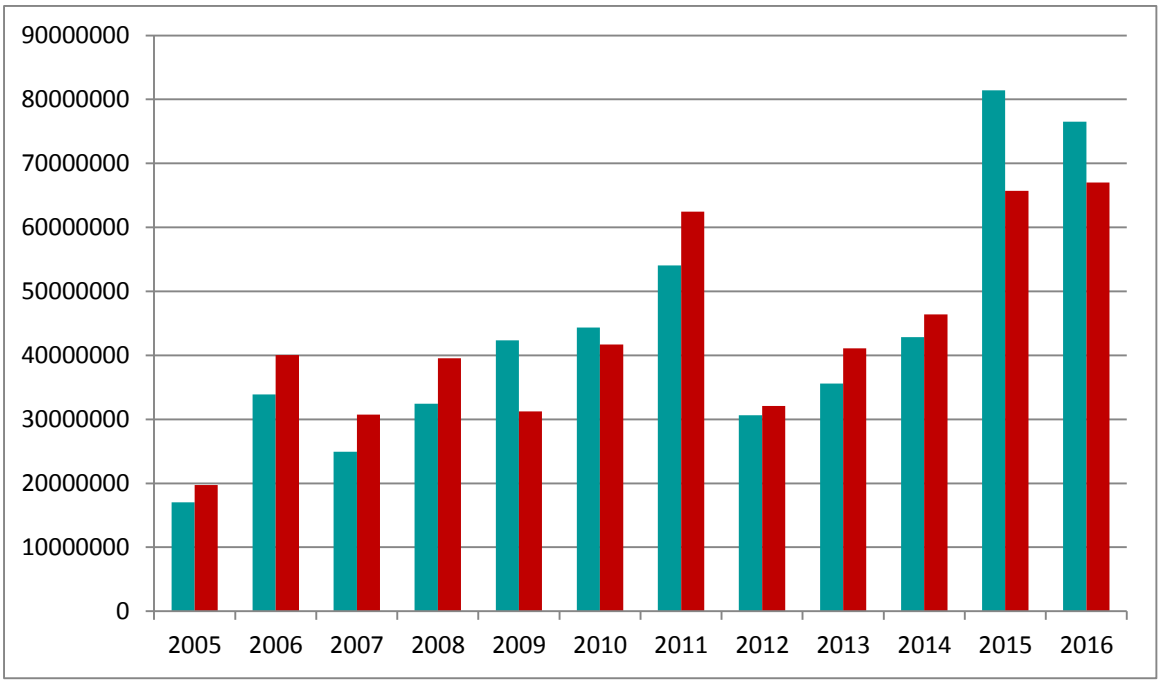
[33] Croatia did not reply to the questions that focused on the impact of Directive 2010/24/EU. Given the recent accession of this Member State, a comparison with the former EU framework could not be made in this Member State.

b. The following table presents an overview of the global evolution of the amounts recovered on the basis of mutual recovery assistance under the EU Directives[34], in the period 2005-2016:

Table 3: total amounts recovered on the basis of the EU tax recovery assistance legislation:

recovered by requested Member States at the request of other Member States (before deduction of the own costs relating to the recovery actions of the requested Member State) (in euro)

recovered by applicant Member States via requests to other Member States (in euro)



	Recovered by requested Member States at the request of other Member States (before deduction of the own costs)	Recovered by applicant Member States via requests to other Member States
	in €	in €
2005	17.027.300	19.746.635
2006	33.879.553	40.017.086
2007	24.953.432	30.736.296
2008	32.413.847	39.534.200
2009	42.345.612	31.212.023
2010	44.320.323	41.702.967
2011	54.031.822	62.475.879
2012	30.641.451	32.076.738
2013	35.580.763	41.115.223
2014	42.839.876	46.395.481
2015	81.402.061	65.711.419
2016	76.500.163	67.019.250

b. Following the exceptionally high amounts of recovered claims in 2011, the decrease of the recovered amounts in 2012 can be explained – at least to some extent – by the late implementation of Directive 2010/24/EU in many Member States (see point 5) and the workload generated by the need for the competent authorities to get acquainted with the new legislation, the new procedures, the new request forms and the uniform instruments. The same reasons also caused a decrease in the recovery

[34] Directive 76/308/EEC; Directive 2008/55/EC; Directive 2010/24/EU.

requests in the same year (see table 2 above). However, in 2013 and 2014 the amounts recovered were again in line with the amounts recovered in 2010, and a further increase followed in 2015 and 2016.

c. In 2015, the amounts recovered on behalf of other Member States were considerably higher than the amounts received by the applicant Member States. This may be (partly[35]) due to the full application of Article 20(1) of Directive 2010/24/EU, which allows the requested Member States to deduct their own costs from the recovered amounts (insofar as these costs cannot be recovered from the debtors themselves) before transferring these amounts to the applicant Member State.

6.1.1.2. Recovery ratio

a. A clear indication of the recovery ratio, showing the relation between the recovered amounts and the amounts for which recovery assistance is requested, is not possible.

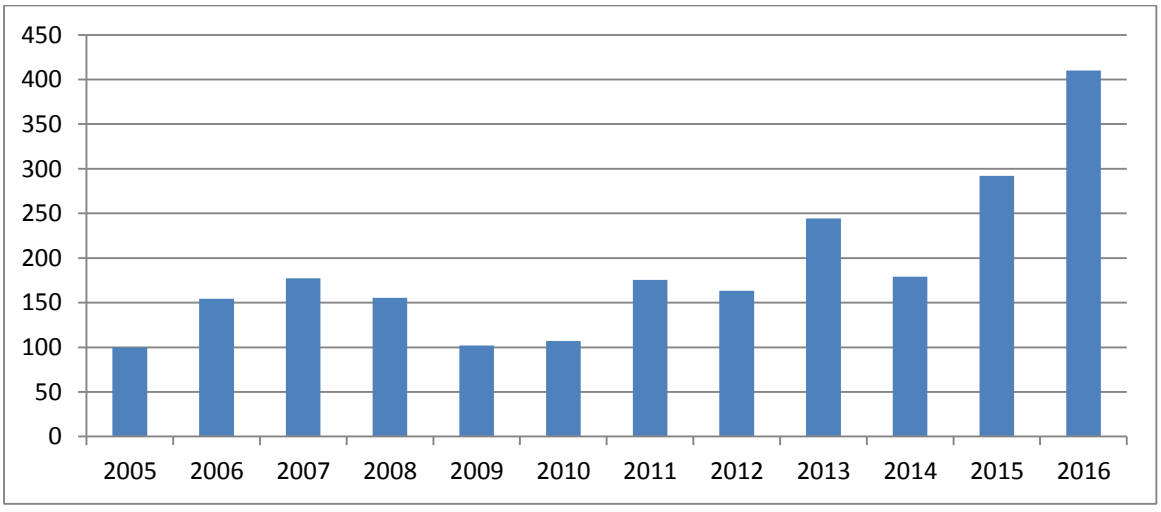
The previous reports to the Council and the European Parliament on the use of the former tax recovery assistance Directives[36] contained an estimation of the global recovery ratio. In the past, Member States indeed provided statistics indicating the link between the recovered amounts and the year in which the request concerned was made. This was important to assess the global recovery ratio, as the recovery measures taken in the execution of a request received in a certain year do not produce all their effects in the same year. The recovery ratio can indeed only be assessed over a longer period of time.

However, collecting these detailed statistics caused a high administrative burden for the Member States. Directive 2010/24/EU limited the categories of statistical information that Member States are obliged to provide, and it was agreed that the Member States should no longer provide the statistical information needed to assess the global recovery ratio.[37]

b. Some other elements shed some light on the real results of the recovery assistance.

First of all, it appears that the evolution of the recovered amounts (2015-2016: x 4 since 2005) is in line with the increase of the amounts for which recovery assistance is requested (2015: x 3 since 2005; 2016: x 4 since 2005; see table 4 below):

Table 4: global evolution of the amounts for which recovery assistance was requested (in %, compared to 2005 = 100 %; based on the sent requests):



35 As already observed, the accuracy of the statistics is not completely guaranteed (see point 4.2.3.).

36 Report COM(2009)451 of 4.9.2009, point 2.3.2.; Report COM(2012)58 of 15.2.2012, points 2.2.3. and 2.2.4.

37 In the past, the statistical reporting obligation was laid down in the Commission Directive laying down the detailed rules for implementing the Council Directive (in Article 29 of the Commission Directive 2002/94/EC of 9 December 2002 laying down detailed rules for implementing certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures. Now the statistical reporting obligation is inserted in the Council Directive itself (Article 27(1)).

c. One Member State (France) expressed the following opinion of its recovery results:

*"If we consider the **number of requests**: about 40 % of them have been followed 2 years later by payments of the debt (complete or partial payment), thanks to the assistance provided by the requested Member State.*

*But if we consider the **amount of the requests**, the results are not so good. The rate of recovery is about 5 % two years later, sometimes 7 to 8 % (it may vary from year to year), because of high amounts concentrated on a small number of claims.*

The process works properly for the small amounts, generally concerning border workers. The mutual recovery assistance also has a dissuasive effect on the taxpayers' behaviour, but we are not able to appreciate it accurately.

On the other hand, the recovery is difficult for the high amounts because of the disappearance or insolvency of the debtor, long disputes in a fraudulent context, older claims. These claims have often been assessed after a tax audit, with heavy penalties."

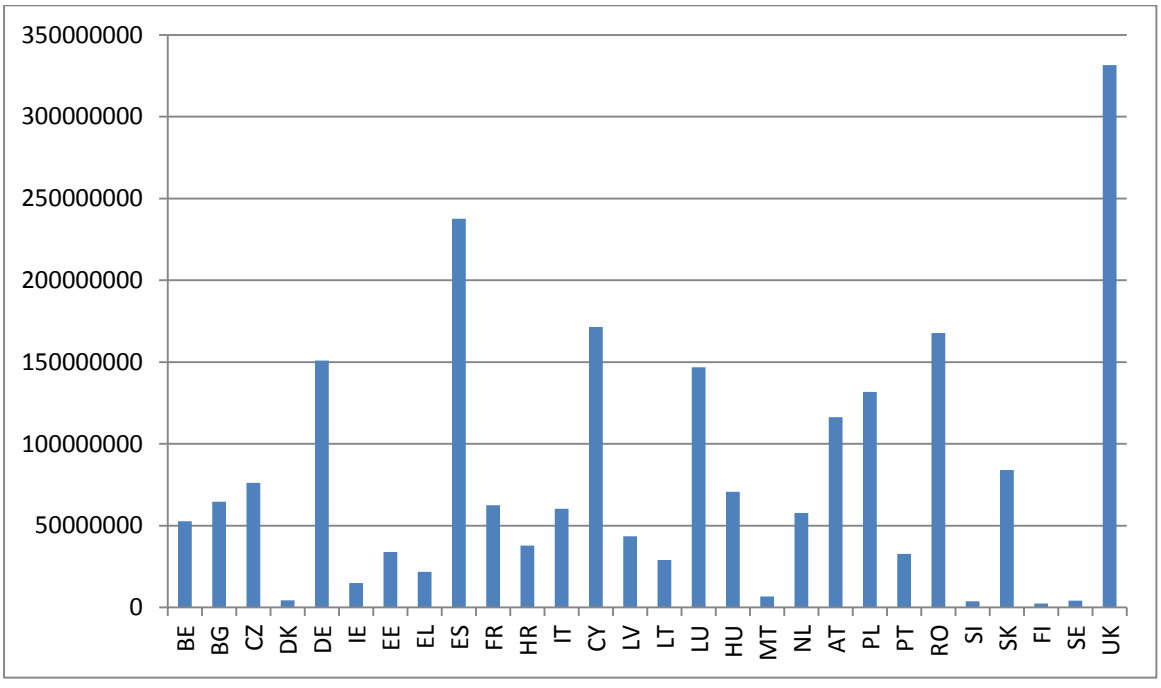
This French observation corresponds to the conclusions of the Belgian Court of Audit, which made a random survey of the recovery requests received and sent by the Belgian tax authorities: in general, mutual recovery assistance allows to recover the complete claim or nothing at all.[38]

d. It was further observed that these difficult cases (fraud, insolvency, etc.) also present major problems for national recovery. Therefore, it is not surprising that these cases also present difficulties for the international recovery assistance.

e. Moreover, it was held that very high amounts of taxes and heavy penalties could in some cases be the result of audits based on presumptions and (over)estimations which may not always correspond to the real tax eluded (in particular in situations of VAT fraud) or the real tax paying ability of the tax debtor concerned.

f. Although it is not possible to establish a precise recovery ratio, an approximative indication of the requested Member States' results and efforts can be induced from the statistics of the average yearly amount for which assistance requests were received in the period 2013-2016 (table 5a); the average yearly amount recovered by the requested Member State within the same period (table 5b); and the comparison between the preceding figures (table 5c):

Table 5a: average yearly amount (in €) for which recovery assistance requests were received in the period 2013-2016, as reported by the requested Member State:



[38] Belgian Court of Audit, October 2014, p. 39, nr. 4.4.1. (See point 4.2.4.c.).

Table 5b: average yearly amount (in €) recovered for other Member States, in the period 2013-2016, as reported by the requested Member State:

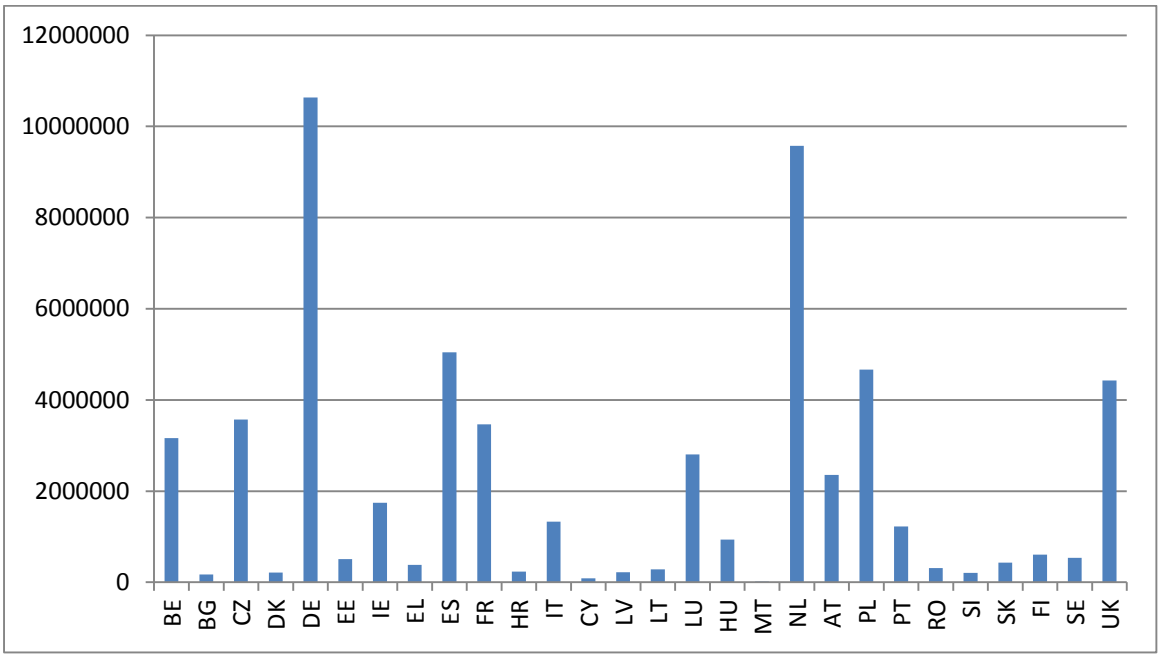


Table 5c: Percentage of average yearly recovered amounts, compared to the average yearly amounts for which recovery assistance requests are received, both in the period 2013-2016, as reported by the requested Member State:

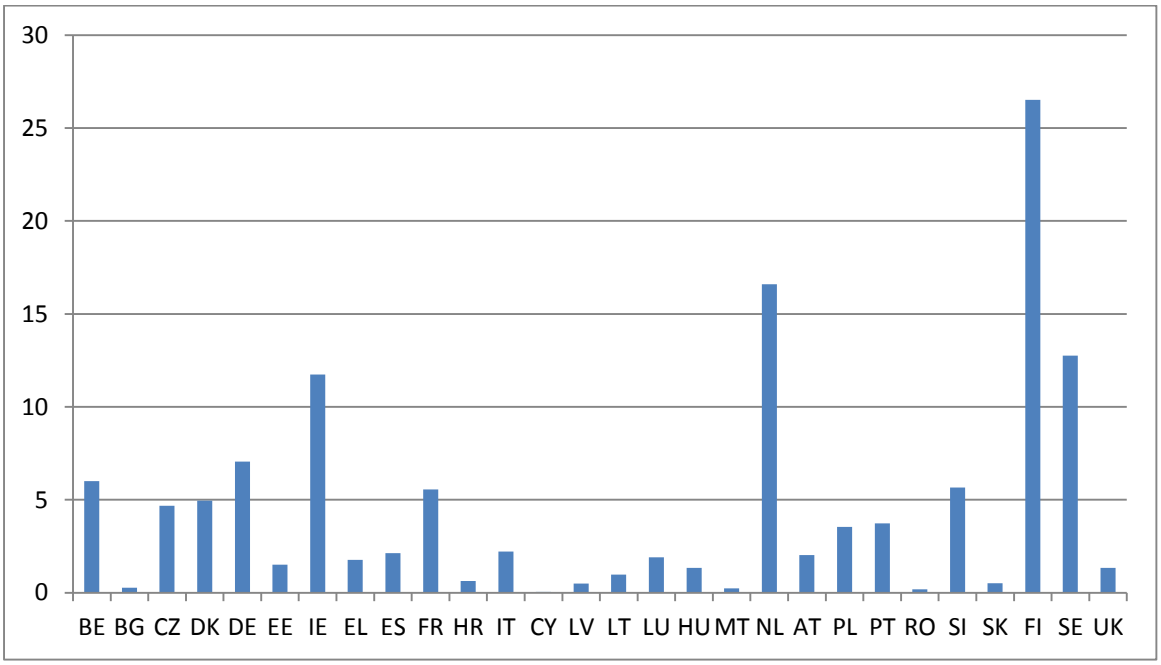


Table 5c clearly indicates that some Member States effectively recover tax claims on behalf of other Member States (Finland: 26,52 %; the Netherlands: 16,60 %; Sweden: 12,75 %; Ireland: 11,74 %), while 16 of the 28 requested Member States hardly obtain any recovery (Cyprus: 0,05 %; Romania: 0,19 %; Malta: 0,24 %; Bulgaria: 0,26 %; Latvia: 0,50 %; Slovak Republic: 0,51 %; Croatia: 0,63 %; Lithuania: 0,97 %; Hungary: 1,33 %; United Kingdom: 1,34 %; Estonia: 1,50 %; Greece: 1,76 %; Luxemburg: 1,91 %; Austria: 2,03 %; Spain: 2,12 %; Italy: 2,21 %).[39]

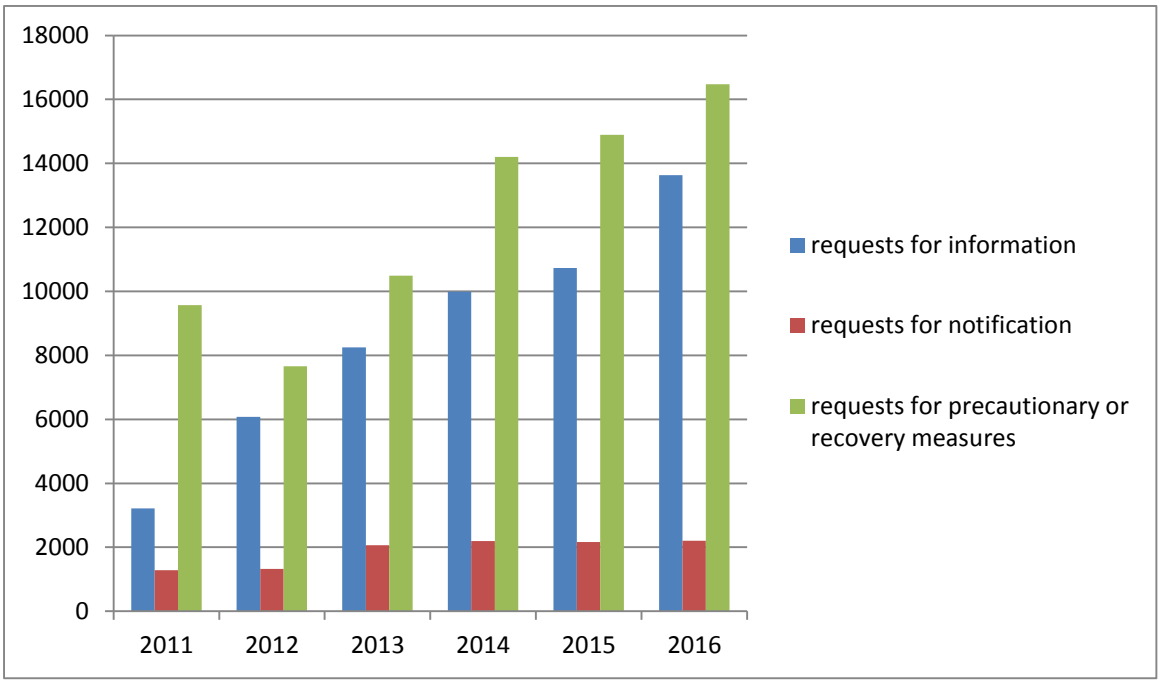
[39] It should be repeated that the above "scores" (see table 5c) are influenced by many factors which make it impossible to make an exact "ranking" of the performance of all requested Members States.

6.1.1.3. Specific factors influencing the recovered amounts

Increase of recovery assistance requests

a. According to Member States' responses, the high and still increasing number of requests for recovery assistance (see table 6) entails an administrative burden.

Table 6: total annual numbers of requests for recovery assistance on the basis of Directive 2010/24/EU:



Lack of resources and efforts for recovery assistance

b. The handling of tax recovery assistance requests thus needs sufficient human resources, just as the handling of internal recovery cases.

In their replies to the evaluation questionnaire, 18 Member States observed that the number of requests for recovery from other Member States is very burdensome for them, and 17 Member States expressed their concerns about a lack of resources on the national level (see further under point 6.2.2.3. for an overview of the workload per Member State). Several delegates in Recovery Expert Group meetings or in Fiscalis events also expressed their concerns about the lack of human resources designated to deal with recovery requests from other Member States.

In this regard, it is significant that one Member State (Malta) complained that the 1500 € threshold for requests for recovery or precautionary measures – which is imposed by the Directive in order to take account of the workload generated by such requests – is too low, although this Member State yearly received only about 22 requests for recovery (average for the reporting period 2013-2015).

The very low recovery rates of several Member States (see table 5c; calculated on the basis of their own statistics) seem to indicate that their difficulties to provide recovery assistance are not only due to the problematic character of the debts and debtors, but also – at least partially – to the limitation of the efforts invested in providing tax recovery assistance.

c. The capacities to deal with assistance requests are linked to the willingness to provide recovery assistance. It seems that not all Member States spend sufficient efforts and attention to the assistance requests they receive from other Member States. In their replies to the questionnaire, 10 Member States express the feeling that cross-border recovery assistance is not a priority for tax administrations.

Loopholes in the national means for tax recovery

d. Another major concern is the availability of appropriate recovery and precautionary measures within the Member States. Articles 13 and 17 of Directive 2010/24/EU provide that the requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or a similar tax or duty. In their replies, a few Member States reported that since 2010 they have introduced legal or administrative amendments to the tax collection and recovery process, which are also relevant for mutual recovery assistance. However, it still appears that the existing powers and procedures do not always ensure an effective and efficient tax recovery, or that the rules concerned are not fit for the recovery of other Member States' claims.

   In their replies to the questionnaire, several Member States underlined the need to improve tax recovery within the Member States. Specific concerns related to:

   – legally complex national rules (11 Member States);
   – tax officials having no access to some national databases (8 Member States);
   – national requirements on notification of debtors (7 Member States).

   The following examples illustrate the concern about national tax recovery weaknesses:

   - in some Member States, the use of precautionary measures to guarantee recovery of a contested claim appears either not to be permitted or limited. If the tax authorities of the requested Member State do not dispose of (sufficient) precautionary measures to guarantee the recovery of their own contested claims, this implies that these Member States are simply unable to execute requests from other Member States for precautionary measures – although these are considered to be essential in the fight against fraudulent tax debtors;
   - one Member State observed that if it is requested to provide recovery assistance, the competent recovery agent is obliged to send a notice to the debtor, asking for the payment (irrespective of the notifications already made by the applicant Member State and the payment period already granted by the applicant Member State). Recovery measures can only be started after a (new) payment period which can go from 30 to 150 days;
   - following a request to seize money on a bank account, a Member State answered that it could not execute such a request unless the full details about the debtor's bank account were provided, i.e. not only IBAN (International Bank Account Number) and BIC (Bank Identifier Code) and name of the bank, but also the exact address of the local bank where this bank account was opened. Following a request for clarification by the Commission services, this Member State has indicated that it cannot guarantee that providing the IBAN and BIC code and the name of the bank is sufficient for the execution of a request to seize money on a bank account in that country;
   - one Member State claims that requests for recovery should mention the name of the father of the debtor. Otherwise, the execution of the request is problematic.

6.1.1.4. Other use of information provided under the Directive (unintended impact)

a. Article 23(1) of the Directive states that the information communicated pursuant to this Directive may be used for the purpose of applying enforcement or precautionary measures with regard to claims covered by this Directive, but also:

   - for assessment and enforcement of compulsory social security contributions;
   - for other purposes, in line with Article 23(3) of the Directive (i.e. if, under the legislation of the Member State providing the information, the information may be used for similar purposes).

b. A large majority of Member States reported that they do not use this information for other purposes.

   Some Member States however indicated that this information is or could be useful for other purposes:

   - for risk analysis and to manage VAT refund cases (Latvia), or for income related regulations (the Netherlands);

- for the recovery of non-fiscal debts. In this regard, Belgium observed that the recovery of a wide range of non-fiscal debts is entrusted to the Belgian tax authorities. Sweden observed that the Swedish Enforcement Agency handles both private and public claims regarding the same debtor, so that address information obtained under the tax recovery assistance Directive could also be useful for enforcement of private claims.

6.1.2. Did the Directive help Member States to create a deterrent effect towards non-compliance?

6.1.2.1. Member States' view on the 'compliance effect' created by the Directive

a. Ten Member States consider that the existence of the recovery assistance possibilities offered by Directive 2010/24/EU also had a positive effect on the tax payment and tax compliance behaviour in their country. This opinion was also shared by the respondents to the public consultation. However, the deterrent effect of the recovery assistance Directive towards non-compliance cannot be measured exactly.

b. The adoption of this Directive was commented in many tax reviews and magazines, and law firms organized seminars and sent notes to inform their clients about this new legislation. The Commission also noted that several web sites and public discussions on web forums paid attention to the adoption of Directive 2010/24/EU and raised awareness about the increasing tax recovery assistance between the Member States.

c. It can be presumed that the compliance has also been influenced, at least to some extent, by the information on the growing exchange of information between tax authorities. The worldwide media attention for some bank information leaks, the actions of the EU[40], the OECD and the G-20 to improve the administrative cooperation between tax authorities, and the attention for voluntary disclosure schemes have contributed to tax compliance in general. It can be presumed that this also had a positive effect on the voluntary payment of taxes.

d. However, the response to the public consultation indicated that the awareness could – and should – be further increased by more information actions. The EU is expected to take more actions to explain the legislation on mutual tax recovery assistance[41] (cf. infra, point 6.3.3.3.) and it was also suggested that the tax authorities of the Member States should publish more information about mutual tax recovery assistance on their local websites. More communication about the tools for tax recovery assistance is expected to have an indirect dissuasive effect.

e. Finally, there is also a feeling that the existence of the recovery assistance framework does not deter fraudsters who deliberately evade their tax obligations. These debtors can hide assets outside the EU, where they cannot be retraced or seized, while these persons organise their insolvency in the EU Member States. Fraudsters effectively have time to do so, as tax authorities can only resort to tax recovery measures if taxes are not paid spontaneously. Moreover, they probably also count on weaknesses of the internal tax collection systems, which affect the mutual recovery assistance in a negative way.

6.1.2.2. Exchange of best practices to improve tax compliance

a. At several Fiscalis 2020 workshops, Member States have discussed specific questions on how to improve tax compliance.

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40 Including the amendment of Directive 2011/16/EU which provides an automatic information exchange about different categories of income obtained in other Member States, and the adoption of Directive 2014/107/EU imposing an automatic exchange of financial account information.

41 At the same time, most respondents in the public consultation (16 of 24) acknowledged that they were not aware of the existing information, published on the website of the European Commission.

Examples:

- at the Fiscalis 2020 workshop in Lisbon on 27-28 October 2015, Member States reported and discussed about their experiences with regard to the use of e-services for instalment requests and about the possibilities to share information about disqualification orders, which are considered to have a deterrent effect[42];
- at the Fiscalis 2020 workshop in Brussels on 20-21 May 2017, Member States discussed best practices on the use of behavioural economics technics to increase tax compliance.

b. Member States introducing new measures or practices are encouraged to inform other Member States. This information sharing has become a permanent element of Fiscalis 2020 workshops. Important ideas on how to create a deterrent effect towards non-compliance are given special attention in the newsletter that is published regularly.[43]

6.2. Did the uniform procedural tools improve the efficiency and effectiveness of recovery assistance?

Council Directive 2010/24/EU introduced the use of a uniform instrument permitting enforcement measures in the requested Member State (UIPE) and a uniform notification form (UNF) for notification of instruments and decisions relating to the tax claims falling within the scope of this Directive. These standardised forms are exchanged in an electronic way, with an automatic translation.

The electronic communication also applies to the request forms that are used for sending – and replying to – requests for information, requests for notification, requests for precautionary measures and requests for recovery measures. These forms have also been standardised, allowing an automatic translation.

The purpose was to resolve the problems of recognition and translation of instruments emanating from another Member State.[44]

6.2.1. Is requesting assistance easier than before? (situation of the applicant Member State)

6.2.1.1. Use of the electronic request forms by the applicant authority

a. A few Member States observed that the current e-forms are quite complex and long. This is the consequence of the Member States' choice to develop e-forms for all types of assistance requests, covering as many situations and standard information/replies as possible, in order to limit the translation needs.

b. Each new release of the e-forms is discussed in advance in the Recovery Expert Group, where amendments and improvements are agreed. Moreover, for each new release, a Fiscalis 2020 workshop is organised in order to train the officials that are using the e-forms in practice.

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42 A disqualification of a company director means that he is banned ('disqualified') from being a company director if he is responsible for the company not paying its tax debts.

43 Examples: the new tax clearance system introduced in Ireland was reported in the newsletter 2016-1, p. 4. (Any individual or business who seeks State grants or participates in a public procurement procedure is required to hold a valid tax clearance certificate. From 1 January 2016, a new procedure has been introduced, in order to avoid abuse of such tax clearance certificates.). The new rules on directors disqualification orders, introduced in the NL to fight bankruptcy fraud and the UK rules on accelerated payments imposed to those who have used a tax avoidance scheme, were reported in the newsletter 2017-2.

44 Preamble of Council Directive 2010/24/EU, point 8.

6.2.1.2. Effect of the adoption of the UIPE (Uniform Instrument Permitting Enforcement in the requested Member State) for the applicant Member State

a. Almost all Member States explicitly confirm that the adoption of the UIPE had a positive impact on the work of national tax administrations, acting as applicant authority, as it made the preparation of assistance requests easier. For a large majority of Member States (21 of 28), the UIPE also makes preparation of requests for assistance less costly, although two Member States (United Kingdom and Sweden) disagree on this point (without offering further explanation).

   Almost all Member States also confirm that the UIPE form is complete (meaning that it contains sufficient information to inform the debtor and the requested authority) and that the level of detail in the UIPE form is optimal.

b. For the applicant Member States, the biggest advantages of the UIPE over the old paper-based system experienced are: the absence of translation costs (25 of 28), the electronic exchange (24 of 28), the avoidance of recognition issues (17 of 28), the facilitation of the work for the requested Member State (16 of 28) and the use of pre-set fields (15 of 28). Half of the Member States (14 of 28) also consider that the UIPE is less prone to errors. One Member State (Belgium) drew the attention to some other advantages, which were not listed in the possibilities mentioned in the questionnaire: the automatic addition of sums and conversion of currency; the fact that there are no separate attachments to be communicated, since the UIPE is integrated in the request form and automatically filled out from the request form.

c. Some Member States observed that the lay-out of the request form and the UIPE could be further improved. This is indeed an on-going process since the start of the development of the electronic request forms. The latest version of the electronic request forms has been made available for use by the Member States from 1 June 2016. This new version takes account of recent Member States' suggestions to make the request forms more user-friendly.

d. The opinions of the Member States are divided with regard to the question whether the use of the UIPE saves time. Some Member States (9 of 24 replying Member States) are of the opinion that less time is needed to prepare requests for recovery assistance under the new Directive. The other replying Member States consider that the time needed to prepare such requests is still in line with the time needed before. A number of Member States (6 Member States) did not reply to this question: one Member State could not compare with the previous situation as it only became a Member State after the entry into force of the new system (Croatia); others (Czech Republic, Denmark, Ireland, the Netherlands, Finland) considered that it was difficult to give a precise answer to this question. As observed by some other Member States (Latvia, Luxemburg, Sweden), the time needed indeed largely depends on the specific circumstances of each case: e.g. the number or the details of claims and UIPEs can be very different; there may be co-debtors, etc.

6.2.1.3. Effect of the UNF (uniform notification form) for the applicant Member State

a. The adoption of the UNF is generally considered to have a positive impact on the work of the tax authorities which request notification assistance. Most Member States are of the opinion that it makes the preparation of the request easier (22 of 28) and less costly (19 of 28) for the applicant authority. This UNF can be exchanged electronically (20 of 28) and it facilitates a smooth notification process (19 of 28). At the same time, it guarantees that the debtor is well informed (19 of 28), the UNF can be translated in all official languages without translation costs (18 of 28) and there is no need for the applicant authority to explain the purpose of the requested notification in a separate letter to the debtor.

b. No disadvantages were reported.

c. 9 Member States reported that the average time needed for the preparation of a request for notification has been reduced, following the introduction of the UNF. These are mostly Member States who needed most time to prepare a notification request before the introduction of the UNF.

6.2.1.4. Effect of the extension of the scope on the workload

a. A majority of Member States reported that the broadening of the scope caused an increase of their workload as applicant Member States (16 of 27).

b. With regard to the effect on the complexity of the work for the applicant Member State, the Member States' opinions are divided. While some consider that the work has certainly become more complex for the applicant State (13 of 27), others have the feeling that the work has become less complex for the applicant State (8 of 27) and some Member States do not see any real difference on this point (6 of 27).

   It is unclear why so many Member States expressed an opposite view with regard to the question about the complexity resulting from the enlarged scope:

   - these different views may be caused by differences in national factors (differences in national organisations, in the number of tax levying authorities within a Member State, and in the number of different procedures for the collection and recovery of different taxes and duties);
   - they may also relate to the need to use the correct mailboxes for sending assistance requests. In line with the decision of the Recovery Committee, the Commission has set up several mailboxes for the communication of assistance requests, depending on the categories of taxes for which assistance is requested. The purpose of these arrangements was to make sure that a request is directly sent to the mailbox which is managed by the requested authority which is competent to deal with that type of tax.

6.2.2. Is providing assistance easier than before? (situation of the requested Member State)

6.2.2.1. Effect of the UIPE (Uniform Instrument Permitting Enforcement in the requested Member State) for the requested Member State

a. The Member States' reports largely confirm that the adoption of the UIPE had a positive impact on the work and the costs of the requested authorities. Almost all Member States (27 of 28) confirm that the UIPE makes processing of assistance requests from other Member States easier. In general, it is felt that the UIPE makes processing of assistance requests from other Member States less costly, that the UIPE form is easy to read and complete, and that its level of detail is optimal.

b. For the requested Member States, the biggest advantages of the UIPE over the old paper-based system are: the absence of translation costs (25 of 28); the avoidance of recognition issues (24 of 28); the electronic exchange (23 of 28); the facilitation of the work of the requested Member State (21 of 28), the use of pre-set fields (16 of 28) and the fact that the UIPE is less prone to errors (12 of 28).

   Other advantages for the requested Member State, not listed in the evaluation questionnaire, were also reported:

   - automatic addition of sums and conversion of currency (Belgium);
   - no separate attachments to be communicated, since the UIPE is integrated in the request form and automatically filled out from the request form (Belgium);
   - with the UIPE, the execution of a request for assistance can start quickly (Sweden).

c. From their position as requested Member States, some Member States have made suggestions to further improve the lay-out of the UIPE, in particular in its printed form. Some suggestions have been taken into account in the 2016 revision of the e-forms. Other suggestions should be taken into account in a further stage of development of the e-forms.

   In any case, it is at the request of the Member States that the request form for recovery measures and the UIPE were developed in such a way that they can comprise many claims relating to all possible types of taxes and duties. This inevitably leads to a certain complexity.

d. It appears that a number of debtors still ask for the initial instrument permitting enforcement in the applicant Member State, as they hold that the UIPE does not contain sufficient details for making an appeal against the claim.

   It should however be reminded that the UIPE is the legal basis for the recovery measures to be taken by the requested Member State. In principle, such a request for recovery assistance can only be sent after the enforcement measures of the applicant Member State. In this preceding stage, the applicant Member State should already have notified its initial instrument permitting enforcement, in accordance with its national law.[45] Insofar as the applicant Member State cannot notify itself to debtors in other Member States, it can request assistance for the notification of any relevant documents. The availability of notification assistance, implying the use of a uniform notification form (and possibly of an accompanying note to the addressee; see point 6.3.3.2.c.), serves this purpose.

   As the UIPE is not the first document informing the debtors about the claim, it could not be accepted that the persons concerned just ignore the initial notification.

   Furthermore, both the UNF and the UIPE contain fields allowing a clear indication of the authorities responsible and the authorities in the applicant Member State where further information about the claim and the contestation possibilities can be obtained if needed. It is up to the applicant Member States to make sure that these contact details are effectively made available to the addressees.

e. Eventually, it seems that the introduction of the UIPE did not have a significant impact on the average time that national administrations need to start the execution of a request for assistance. Six Member States reported a reduction of this time.

f. With regard to the overall time needed for the execution of a request for recovery assistance, the 2014 report of the Belgian Court of Audit made a quantitive evaluation of the impact of the new arrangements. It appears from this report that, before the introduction of the UIPE, incoming requests for recovery assistance were executed by the Belgian tax authorities within 441 days (on average); while incoming requests received since the implementation of the UIPE were executed within 85 days (on average).[46]

6.2.2.2. Effect of the adoption of the UNF (Uniform Notification Form) for the requested Member State

a. A majority of Member States reported that the UNF makes processing of requests for notification coming from other Member States easier (21 of 28). The adoption of the UNF makes it now less costly to execute a notification process (18 of 28). The electronic communication is considered to be a big advantage (24 of 28), as well as the absence of translation costs (21 of 28). Moreover, it saves time to process the request (19 of 28), and the current system is less prone to errors (15 of 28).

b. No inconveniences were reported.

6.2.2.3. Workload to handle incoming requests for assistance

a. It has already been mentioned that a majority of Member States experience problems with the workload related to the execution of assistance requests, in particular requests for recovery measures (see point 6.1.1.3.). The administrative burden experienced by the requested Member States was different from Member State to Member State. This workload of course depends on the number of tax officials available for handling assistance requests (at the level of the Central Liaison Office and at local level), on the number of requests received by each Member State and on the complexity of the cases for which assistance is requested.

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45 In this regard, the use of the Direct Notification Form (DNF; see point 6.3.3.2.d.) to accompany documents notified directly to debtors in another Member States clearly has an added value, as this DNF can be translated automatically in the official language of the Member State of destination (or in another official EU language that can be understood by the addressee).

46 Belgian Court of Audit, report on international mutual assistance for the recovery of taxes, October 2014, point 4.4.4.

b. In 15 Member States (Austria, Belgium, Germany, Greece, France, Hungary, Italy, Lithuania, Luxemburg, the Netherlands, Poland, Romania, Spain, Sweden and United Kingdom), 5 or more[47] FTE (full time equivalent) were dealing at CLO (Central Liaison Office) level with tax recovery assistance for other Member States. In the other Member States, the numbers varied between 0,5 FTE and 3, 5 FTE (0,5 FTE in Estonia and Malta; 1,5 FTE in Denmark, Ireland, Latvia and Slovenia; 2,5 FTE in Portugal and Slovak Republic; 3,5 FTE in Bulgaria, Czech Republic, Cyprus and Finland).

c. With regard to the incoming requests for information, the opinions on the administrative burden related to these requests are divided: 11 of 27 consider this is burdensome or somewhat burdensome, while the same number (11 of 27) consider that it is not (very) burdensome.

Table 7: statistical information from the Member States about the number of incoming requests for information (2010 – 2016):

Member State considering this number burdensome

Member State considering this number somewhat burdensome

	2010	2011	2012	2013	2014	2015	2016
BE	68	89	654	398	429	496	505
BG	61	42	61	464	298	300	364
CZ	22	39	69	102	121	99	166
DK	25	29	39	54	67	81	81
DE	289	414	978	1283	1621	1982	1899
EE	14	18	41	71	43	36	53
IE	109	96	129	154	142	138	224
EL	34	38	46	76	96	105	156
ES	294	267	415	491	404	450	600
FR	651	648	657	987	1190	1276	1567
HR				48	55	54	109
IT	100	122	141	300	399	389	544
CY	26	30	22	31	94	67	86
LV	21	19	26	52	69	97	97
LT	48	45	58	63	102	111	129
LU	38	52	74	100	143	167	275
HU	55	64	96	207	343	390	461
MT	5	11	16	15	28	17	36
NL	206	234	411	551	645	625	773
AT	28	21	142	125	207	236	261
PL	250	286	615	891	694	778	830
PT	84	103	119	165	192	226	328
RO	95	72	172	196	534	571	861
SI	11	6	12	39	57	57	84
SK	26	31	118	131	206	127	133
FI	10	16	25	94	79	27	311
SE	43	52	87	95	114	117	186
UK	362	374	858	1067	1616	1714	2511

[47] Note: Member States were not required to indicate a precise number if it was more than 5. However, some of these Member States provided an exact number (BE: 6 officials; ES: 8 officials; PL: 11 officials; RO: 8 officials).

d. With regard to the incoming requests for notification, a minority of Member States stated that the number of incoming requests made it burdensome or somewhat burdensome for their administration to comply.

The statistics on the incoming notification requests show that the feelings on this point do not always coincide with the actual number of requests received (see table 8 below). Cyprus reported that the number of incoming requests for notification is burdensome for its administration, although the number of such incoming requests is relatively low. Malta and Sweden reported that these incoming requests make it somewhat burdensome for their administration to comply, although they also receive a relatively low number of such requests.

Table 8: statistical information from the Member States about the number of incoming requests for notification (2010 – 2016):

Member State considering this number burdensome

Member State considering this number somewhat burdensome

	2010	2011	2012	2013	2014	2015	2016
BE	123	97	68	88	140	136	94
BG	4	10	5	22	38	26	67
CZ	39	29	13	47	36	34	36
DK	14	18	20	17	17	17	10
DE	99	148	167	162	208	282	249
EE	2	2	3	11	9	4	11
IE	13	9	16	19	39	47	46
EL	14	9	12	19	15	26	15
ES	76	75	106	116	113	101	120
FR	107	60	72	77	79	71	60
HR				5	11	11	12
IT	85	71	48	66	102	116	100
CY	5	5	3	4	11	9	12
LV	14	21	11	15	39	44	51
LT	52	19	5	39	55	45	43
LU	32	34	18	51	82	80	70
HU	39	71	44	66	83	129	113
MT	1	0	2	8	5	2	2
NL	65	129	54	65	53	62	71
AT	16	39	17	80	38	53	57
PL	142	196	302	595	365	301	280
PT	11	16	16	12	15	22	18
RO	84	51	52	53	81	54	71
SI	8	5	18	9	7	4	12
SK	20	28	10	28	30	35	19
FI	10	0	4	11	3	5	12
SE	23	21	16	21	20	13	36
UK	186	121	221	360	501	439	518

e. With regard to the number of incoming requests for precautionary measures, a majority of Member States (15 of 27; 4 Member States did not express an opinion on this question) considers that the number of incoming requests did not make it burdensome for their administration to comply.

This opinion is not surprising, as the number of precautionary measures still remains low for almost all Member States. Only one Member State (France) received a considerable number of precautionary measures (see table 9 below).[48]

Four other Member States also stated that the number of incoming requests for precautionary measures made it burdensome (Bulgaria, Malta) or somewhat burdensome (Italy, Lithuania) for their administration to comply, although they received a very low number of such requests in the period 2013-2015:

Table 9: statistical information from the Member States about the number of incoming requests for precautionary measures (2013 – 2016):

Member State considering this number burdensome

Member State considering this number somewhat burdensome

	2013	2014	2015	2016
BE	17	7	0	1
BG	1	2	6	2
CZ	0	0	0	0
DK	0	0	1	0
DE	11	9	8	10
EE	0	2	0	1
IE	0	0	0	0
EL	0	1	0	0
ES	8	5	5	15
FR	41	3	66	1
HR	1	1	2	6
IT	2	6	4	4
CY	0	0	2	4
LV	0	0	0	6
LT	0	1	1	0
LU	0	0	0	0
HU	0	3	1	3
MT	2	2	0	2
NL	4	3	2	3
AT	2	10	3	8
PL	5	11	6	5
PT	4	5	4	4
RO	4	2	5	1
SI	0	0	0	0
SK	0	5	4	0
FI	0	0	0	0
SE	0	2	3	0
UK	0	0	0	0

[48] At the same time, FR also sent out most requests for precautionary (see point 6.44.1.1., table 21).

f. With regard to the incoming requests for recovery measures: 18 of 27 Member States reported that the number of incoming requests for recovery made it (at least somewhat) burdensome for their administration to comply.

Table 10: statistical information from the Member States about the number of incoming requests for recovery (2010 – 2016):

Member State considering this number burdensome

Member State considering this number somewhat burdensome

	2010	2011	2012	2013	2014	2015	2016
BE	369	437	340	594	679	714	807
BG	51	56	63	118	159	191	263
CZ	122	128	137	157	170	238	404
DK	70	72	59	60	125	122	102
DE	732	948	1038	1225	1670	1840	1791
EE	197	29	292	350	385	542	330
IE	237	251	175	138	211	240	223
EL	90	91	61	93	82	87	69
ES	624	605	460	452	469	556	681
FR	885	1056	693	1029	1232	1248	1478
HR				22	80	114	129
IT	316	320	198	456	484	703	596
CY	53	42	31	50	67	71	97
LV	72	66	77	63	85	102	107
LT	137	143	160	216	203	202	291
LU	189	235	201	261	448	305	521
HU	139	193	160	320	323	472	436
MT	12	12	9	21	17	27	39
NL	708	815	669	851	1081	1164	1087
AT	51	55	420	607	428	770	834
PL	2050	2725	1125	1445	2978	2525	2509
PT	115	120	109	94	180	192	221
RO	210	167	154	223	341	264	768
SI	25	24	17	44	87	99	160
SK	94	95	90	105	207	318	242
FI	293	20	58	74	101	68	87
SE	44	62	58	56	76	76	116
UK	702	799	807	1267	1755	1519	2015

In this regard, it should be noted that the execution of assistance requests, in particular requests for recovery, cannot be completed immediately. These requests generally require follow-up actions and communications during a longer period, and their complexity may be very different, depending on the specific circumstances of each case.

g. A majority of Member States reported that the broadening of the scope caused an increase of their workload as requested Member States (17 of 27).

With regard to the effect on the complexity of the work for the requested State, the Member States' opinions are divided. While most Member States consider that the work has certainly become more complex (15 of 27), others consider that the work has become less complex (9 of 27) and some Member States do not notice a significant change (3 of 27).

h. Several Member States – in their capacity of requested Member State – also observe that (more) attention should be paid by the competent authorities when they fill out the request form. It seems that requests do not always provide sufficiently detailed information, which leads to additional work for the requested authority.

6.2.2.4. Administrative cost for the requested Member States

a. The administrative cost for the requested Member States is linked to the number of incoming requests, but also to the work that they generate. It seems logic to assume that requests for notification only involve a limited action and thus a rather limited cost, just as requests for information, while requests for precautionary or recovery measures may entail higher costs.

For most Member States, the reported opinion on the administrative cost is in line with the number of requests actually received.

Some Member States however declare that the number of incoming requests makes it (somewhat) burdensome for their administration to comply, while the number of requests received by these Member States is (relatively) low (see tables 7 - 10 above).

b. In order to encourage Member States to devote sufficient resources to the recovery of other Member States' claims, Article 20(1) of Council Directive 2010/24/EU introduced the principle that the requested Member State is allowed to retain the costs related to recovery, which are recovered from the debtor.[49]

The annual statistics about the recovered amounts show a difference between the amounts recovered by the requested Member States at the request of other Member States, before deduction of the own costs (left column in the table 11 below) and the amounts received by the applicant Member States (right column in the table 11 below). This difference can be explained to some extent by other factors: the statistics recorded by the requested Member State do not take into account the amounts which are directly paid by the debtor or a third party to the applicant Member State; and there may be a certain delay in the transfer of recovered amounts). However, the considerable difference in the statistics for 2015 and 2016 seems to imply that requested Member States effectively use their right to retain their own recovery costs before transferring recovered amounts (insofar as they cannot recover the full amount of outstanding tax claims and their own recovery costs).[50]

Table 11: overview of recovered amounts (2011-2016):

	Recovered by requested Member States at the request of other Member States (before deduction of the own costs)	Recovered by applicant Member States via requests to other Member States
	in €	in €
2011	54.031.822	62.475.879
2012	30.641.451	32.076.738
2013	35.580.763	41.115.223
2014	42.839.876	46.395.481
2015	81.402.061	65.711.419
2016	76.500.163	67.019.250

49 Preamble of the Directive, point 13.

50 It should however be reminded that the accuracy and reliability of these statistics is not complete (see point 4.2.3.a.).

6.2.3. Did mutual assistance between the Member States increase?

6.2.3.1. Evolution of the total numbers of requests for mutual assistance

a. The total numbers of the different types of requests for assistance received by EU Member States from other Member States, on the basis of EU Directives 2008/55/EC and 2010/24/EU, in the period 2011-2016, were as follows:

Table 12: total numbers of requests received by all Member States in 2011-2016:

	Requests for information	Requests for notification	Requests for precautionary measures	Requests for recovery
2011	3218	1284		9566
2012	6081	1323		7661
2013	8250	2066	102	10391
2014	9988	2195	80	14123
2015	10733	2168	123	14769
2016	13630	2205	76	16403

Table 12a: evolution of the numbers of requests for information

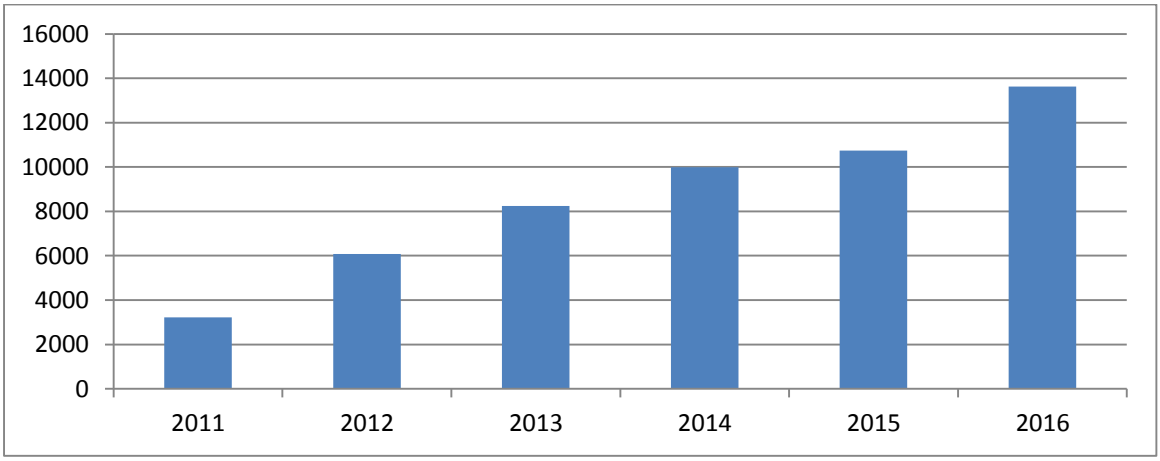


Table 12b: evolution of the numbers of requests for notification

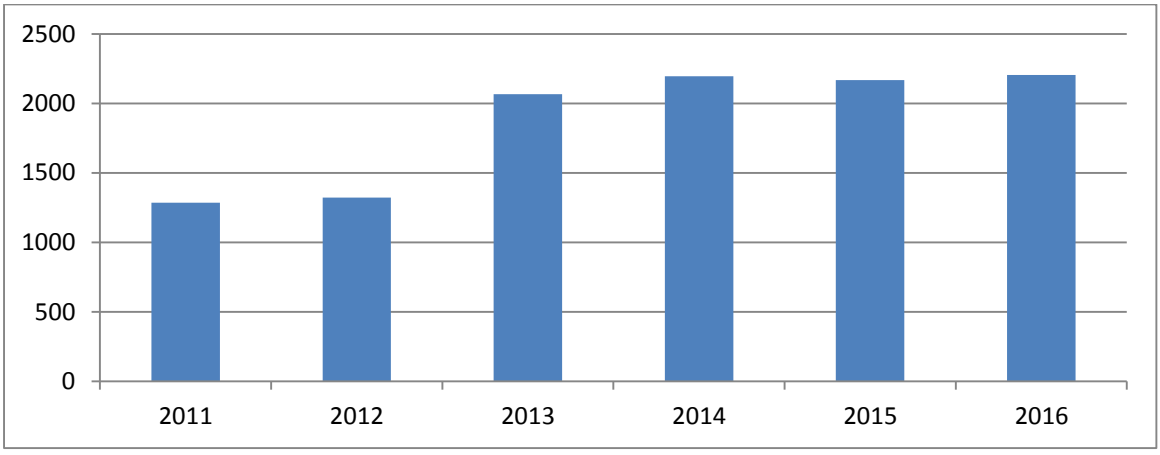


Table 12c: evolution of the numbers of requests for precautionary measures (information available from 2013)

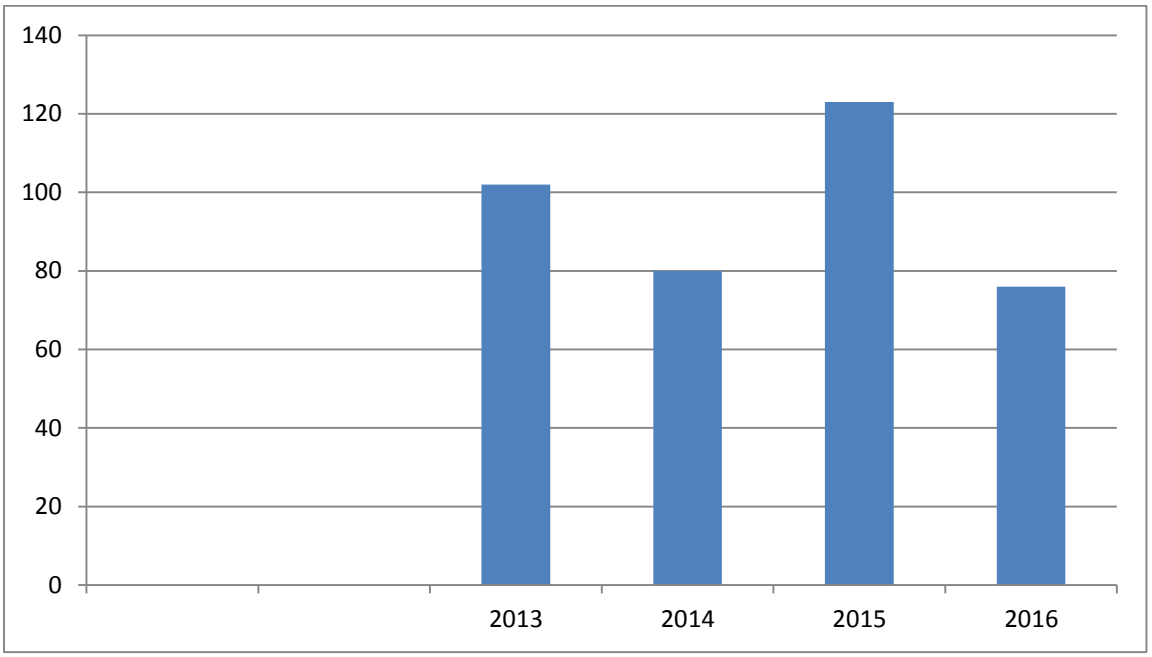
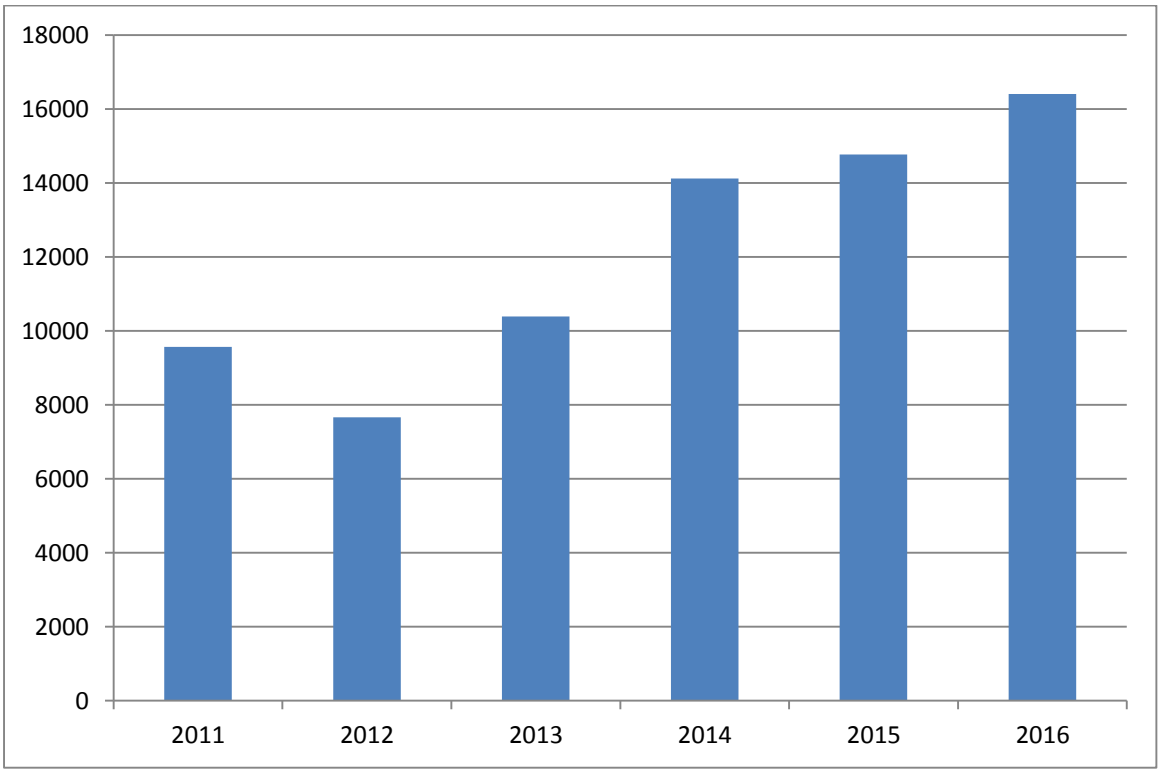


Table 12d: evolution of the numbers of requests for recovery



b. The decrease of recovery requests in 2012 can be explained – at least to some extent – by the late implementation of Directive 2010/24/EU in many Member States (see point 5) and the extra time that the competent authorities needed to get acquainted with the new legislation, the new procedures, the new request forms and the uniform instruments.

6.2.3.2. Total number and size of all communications relating to assistance requests

The table below shows a continuous increase of the communications relating to recovery assistance requests since 2013. The majority of these communications relates to income tax claims.

Table 13: total number and total size of all messages (requests and follow-up messages) sent by all Member States (2013-2016, and average):

Recovery e-mails	Year	Message number	Total size (in MB)
Customs duties	2012	18781	3.886,24
	2013	14590	2.033,43
	2014	17007	2.380,85
	2015	15819	2.405,09
	2016	15441	2.240,99
	Average	16328	2.589,32
Value added tax	2012	26668	4.227,83
	2013	21322	2.710,87
	2014	33837	3.577,28
	2015	38058	4.495,52
	2016	46172	5.145,13
	Average	33211	4.031,33
Excise duties	2012	4476	400,69
	2013	4095	774,86
	2014	4663	668,60
	2015	3992	492,00
	2016	6237	696,06
	Average	4693	606,44
Tax on income or capital	2012	70043	7.527,34
	2013	51196	4.994,15
	2014	68877	6.196,94
	2015	68807	6.310,61
	2016	81522	7.423,41
	Average	68089	6.490,49
Tax on insurance premiums	2012	268	31,76
	2013	279	57,29
	2014	465	68,88
	2015	263	263,28
	2016	316	319,47
	Average	318	148,14
Inheritance and gift taxes	2012	605	68,77
	2013	568	79,90
	2014	1331	131,46
	2015	973	364,22
	2016	1305	469,57
	Average	956	222,78

National taxes and duties on immovable property, other than the above-mentioned ones	2012	1704	193,80
	2013	1805	156,73
	2014	3528	278,46
	2015	2779	560,15
	2016	3047	619,51
	Average	2573	361,73
National taxes and duties on the use or ownership of means of transport	2012	801	82,63
	2013	1253	95,01
	2014	2122	135,89
	2015	2744	362,97
	2016	4471	482,88
	Average	2278	231,88
Other taxes and duties levied by or on behalf of the (applicant) State	2012	495	63,34
	2013	813	122,40
	2014	1339	185,32
	2015	980	331,82
	2016	1284	529,84
	Average	982	246,54
Taxes and duties levied by or on behalf of territorial or administrative subdivisions of the (applicant) State, excluding taxes and duties levied by local authorities	2012	422	28,60
	2013	1031	119,93
	2014	2636	240,20
	2015	2794	678,92
	2016	3861	733,45
	Average	2149	360,22
Taxes and duties levied by or on behalf of local authorities	2012	215	17,56
	2013	834	112,50
	2014	1383	105,12
	2015	934	302,53
	2016	1392	419,66
	Average	952	191,47
Other tax-based claim	2012	435	10,79
	2013	495	60,12
	2014	1097	190,32
	2015	893	363,75
	2016	988	301,07
	Average	782	185,21
Refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions, and levies and other duties provided for under the common organisation of the market for the sugar sector	2012	250	26,59
	2013	212	33,07
	2014	343	54,70
	2015	366	55,93
	2016	421	182,19
	Average	318	70,50

6.2.3.3. Presence and assistance of officials of the applicant Member State in the territory of the requested State

a. Article 7 of Directive 2010/24/EU introduced a possibility for tax recovery officials of one Member State to go to another Member State and to be present during administrative enquiries – or even to participate in these enquiries by interviewing individuals and examining records – and to assist officials of the requested Member State during court proceedings in that State.[51]

   According to the Directive's preamble (point 9), this presence or assistance on the territory of another Member State has been rendered possible 'for reasons of efficiency'. It was considered to be a step forward in recovery assistance, as it could lead to a more active role of the applicant Member State in the assistance process.

b. However, it appears that none of these new possibilities has been used yet,[52] for different reasons.

   - Most Member States reported that they did not yet have a case justifying the application of this measure (18 of 28). A few Member States also invoke other reasons: a lack of budgetary resources (6 of 28) or human resources (3 of 28), the costs of the visit (1 of 28), the fact that officials are not yet aware of this possibility (1 of 28).
   - Some Member States (Finland, Czech Republic) pointed out that the implementation of this provision could be complicated, as this presence of national officials on the territory of another Member State requires an agreement between the applicant authority and the requested authority, in accordance with the arrangements laid down by the requested authority.
   - Two Member States (Finland and Sweden) observe that the use of this measure is not necessary, as the requested Member State's recovery procedure is entrusted, and that it could even be sensitive for the applicant Member State to appear on the spot in order to secure the quality of the recovery in the requested State.

6.2.3.4. Impact of the Fiscalis 2020 activities

a. The Fiscalis 2020 activities (project groups and workshops) enlarged and improved the network of the competent national authorities, facilitating subsequent direct contacts that permitted them to solve more easily particular problems or questions concerning specific requests for recovery assistance.

b. The discussions in the Fiscalis 2020 activities resulted in a number of suggestions for improving mutual recovery assistance in practice, e.g.:

   - taxable persons may request refunds of VAT credits in other Member States, in accordance with Directive 2008/9/EU. These refund requests must be introduced in the Member State of establishment, which allows this Member State to check whether the request relates to a taxable person who has outstanding tax debts. A Fiscalis 2020 workshop has allowed to raise the awareness about this seizure and offsetting possibility, and to discuss practical arrangements for the communication between the Member States;

   - on 11 and 12 September 2014, the Commission organised a Fiscalis 2020 workshop to discuss (1°) the exchange of information between tax enforcement authorities, social security authorities and other public authorities, and (2°) the access to information with regard to the registration of cars, boats and airplanes. It appeared that in most Member States, there was insufficient communication between these authorities, and a lack of access to/exchange of information between them. This also has negative repercussions on the mutual recovery assistance. Following this workshop, the exchange of information with regard to vehicles is currently being discussed within the Recovery Expert Group;

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51 Similar provisions have been laid down in the recent EU legislation concerning administrative cooperation for the assessment and control of VAT (Article 28(2) of regulation 904/2010), excise duties (Article 12(2), 2nd subparagraph, of regulation 389/2012) and other taxes (Article 11(2) of directive 2011/16). There as well, these provisions appear to be used rarely or not at all.

52 Apart from one presence of officials in the tax offices of another Member State in the period 2015-2016.

- the Fiscalis 2020 workshop discussions on 27-28 October 2015 in Lisbon, which dealt with the use of precautionary measures, finally led to a consensus to complement the electronic request form with information to facilitate precautionary measures in the requested Member State;
- at the Fiscalis 2020 workshop in Tallinn on 24-25 May 2016, Member States discussed best practices to retrace missing debtors.

c. As the exchange of information on the development of national recovery facilities and instruments is beneficial for all Member States, the Fiscalis 2020 workshops organised since October 2015 explicitly provide an opportunity for all Member States to report (in writing and orally) about new developments in their national tax collection and recovery legislation and practice.

d. The Fiscalis 2020 activities were also very useful to develop the electronic version of the request forms, and to provide training to the national officials who have to use these forms.

e. Despite the general positive evaluation of the Fiscalis 2020 activities, some concerns exist with regard the unequal level of participation of Member States.

Some participants in Fiscalis 2020 workshops assist in a passive way, limiting their contribution to the obligatory elements (a written reply to the questionnaires sent in advance and a (short) presentation of actual developments in their country). The same could be experienced in some Fiscalis 2020 project groups. Some participants also appeared to have serious problems to express themselves in the working language of these meetings. Member States should therefore pay sufficient attention to the selection of their participants in the workshops and their candidates for the project groups.

f. The participation in the Fiscalis 2020 workshops is normally limited to one or two persons per Member State. Although participants are invited to report to their national administrations about the information exchanged and the outcome of the discussions in the Fiscalis 2020 activities, there is not always a clear evidence that this information is effectively disseminated and used within the national administrations. Therefore, the Commission services ensure that reports of these workshops (including all presentations, national contributions to questionnaires, and an overview of the conclusions) are put at the disposal of all tax authorities via the dedicated websites.

g. Several Member States have expressed the wish to have more guidance on the interpretation and application of the EU rules in this field. It appears that not all tax officials are fully aware of the possibilities and requirements for requesting this assistance. Questions raised in the Recovery Expert Group and questions submitted to the Commission also confirm that the rules and possibilities for recovery assistance are not always clearly understood.

Several actions have already been taken to better inform the national tax authorities (e.g. Fiscalis 2020 seminars and workshops, explanatory notes for the national tax authorities, a newsletter on national and international developments in the field of tax collection and recovery and recovery assistance).

However, the participation in Fiscalis 2020 events is somehow limited and specific training programs for national authorities could still be useful.

6.3. To what extent the provisions are relevant to the needs of the Member States?

6.3.1. Did the Directive meet the needs for which it was adopted?

6.3.1.1. Main priorities of Member States with regard to mutual recovery assistance

a. The main priorities of Member States with regard to mutual recovery assistance are: improving the revenue collection, reducing tax fraud and evasion, and reducing the administrative burden and cost related to recovery assistance. Tax recovery assistance helps directly to achieve these goals, but also indirectly: the existence of recovery assistance has a preventive effect and stimulates tax compliance.

b. The main difficulties reported by national administrations with regard to mutual tax recovery assistance fall into different categories:

- some are related to the cooperation between the tax authorities of different Member States. Many Member States report they face a lack of staff. The exchange between the countries involved is time-consuming and it may take a long time before replies to assistance requests are received. It is even stated that "some countries" are not really helpful (see point 6.1.1.3.);
- other problems relate to the person of the debtor and the specific recovery possibilities. The assets found may be insufficient to recover the whole claim, or it may be difficult to find the debtor and his/her assets;
- the assistance also seems to be negatively affected by differences in national legislations and administrative practices (different competences of tax authorities; different conditions for enforcement or precautionary measures; differences in available or accessible information, different limitation period arrangements, etc.).

c. The Directive provides for the same types of recovery assistance as other bilateral or multilateral agreements for recovery assistance: requests for information, requests for notification, requests for recovery and precautionary measures. The main differences between the Directive and these other legal instruments relate to the broad scope of the Directive (which is much broader than all other agreements), the use of the uniform instruments and the detailed arrangements for the execution of requests and the communication between the authorities concerned.

   Several authors have observed that the mechanism of the EU Directive permits a much more efficient regime for assistance in tax recovery than other agreements.[53]

d. Article 27(1) of Council Directive 2010/24/EU provides that the Directive is without prejudice to the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements, including for the notification of legal or extra-legal acts.

   In practice, the very wide scope (Article 2), the rather broad conditions for assistance requests (Articles 5, 8, 11 and 16) and the priority rule (Article 27(1)) of the Directive have resulted in a situation where other bilateral or multilateral agreements are rarely used.[54] In fact, most Member States (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Slovenia and Slovak Republic) (almost) never use any other legal instrument for tax recovery assistance with other Member States.

e. Some Member States (Belgium, Germany, Greece, France, Italy, Luxemburg, the Netherlands, Poland) however reported that they sometimes use other legal instruments (normally bilateral conventions with specific other Member States; exceptionally the Council of Europe-OECD convention or the Benelux convention) for older claims or for claims below the threshold of 1500 €, as:

   - the Directive does not oblige Member States to grant assistance if the initial request for assistance is made in respect of claims which are more than 5 – or sometimes 10 years – old, dating from the due date of the claim in the applicant Member State to the date of the initial request for assistance (Article 18(2));
   - the Directive does not oblige Member States to take recovery or precautionary measures at the request of other Member States if the total amount of the claims is less than 1500 € (Article 18(3)).

   This tendency of some Member States to request assistance for older and lower claims on the basis of other legal instruments also raises some concerns:

   - an efficiency concern: the use of other legal instruments implies the application of other conditions and requirements and thus inevitably increases the complexity for the officials concerned;
   - a legal concern: as Article 18 of the Directive does not forbid the requested Member State to provide recovery assistance for older or lower claims, Member States providing recovery assistance for such claims on the basis of a different legal instrument take the risk that tax debtors

53 A. BAL, "Extraterritorial enforcement of tax claims", *Bulletin for International Taxation*, 2011, (598), 602; F. CARRA RICHTER, "Exchange of information for the Assistance in the Collection of Taxes under Article 27 of the OECD Model", in GÜNTHER and TÜCHLER, *Exchange of Information for Tax Purposes*, (131), 138; I. DE TROYER, "Recovery assistance in the EU: Evaluation of Directive 2010/24/EU: Time for an Update?", *EC Tax Review* 2014/5, (284), 292.

54 It seems that the Nordic Convention is still regularly applied between Denmark, Sweden and Finland.

argue that this recovery assistance is invalid because it is violating the priority of the EU Directive.

f. One Member State (the Netherlands) observed that the exchange of information without prior request (Article 6 of the Directive) is now limited to refunds of taxes or duties, other than VAT. This Member State exchanges other information without prior request on the basis of a bilateral tax agreement.

6.3.1.2. Problems encountered with the Directive by applicant States

a. No major problems were reported, but several suggestions have been made for further improvement of the EU legislation (see point 6.3.2.).

b. Member States regularly make suggestions for the further development of the electronic request forms. These electronic request forms are indeed continuously improved. The latest version is applied by the Member States from 1 June 2016, and a new update has been launched in 2017. The next step should be the introduction of the Central Platform for the e-forms (foreseen for 1 January 2019).

6.3.1.3. Problems encountered with the Directive by requested States

a. 13 Member States reported that, as requested States, they do not have major problems with the Directive.

b. Other Member States reported that there are some differences in interpretation, and that the broad scope makes it sometimes difficult to define the competent authority.

6.3.1.4. Effects of the broadening of the scope

a. The statistics communicated by the Member States make it clear that most recovery assistance cases still relate to VAT and income taxes, i.e. claims for which mutual assistance already existed under the former Directive: [55]

Table 14: Nature of the claims for which recovery assistance is requested, on the basis of the amounts of the claims concerned:

	VAT	income/capital taxes	customs	other taxes and claims[56]
2011 (26 MS)	62,48 %	28,68 %	3,44 %	5,40 %
2012 (26 MS)	42 %	20 %	14 %	24 %
2013 (26 MS)	57,83 %	18,37 %	1,67 %	22,13 %
2014 (27 MS)	26,06 %	41,62 %	7,15 %	25,17 %
2015 (27 MS)	49,73 %	36,98 %	3,88 %	9,41 %
2016 (27 MS)	40,16 %	24,64 %	6,16 %	29,04 %

In 2013, 2015 and 2016, the biggest amounts in recovery requests related to VAT; in 2014, direct taxes represented the biggest amount in recovery requests.

55 Statistics based on the data reported by 27 Member States (average of requests received and sent).

56 It should be noted that this category also includes excise duties, which were already included in the scope of the EU legislation before the adoption of Directive 2010/24/EU. In the past, excise duties represented a considerable part of the recovery assistance requests (2008: 9,61 %; 2009: 6,62 %; 2010: 20,46 %) and it can be presumed that they still constitute a considerable part of the present category of "other taxes and claims". (Since the introduction of Directive 2010/24/EU, Member States do no longer provide separate statistics on the category of excise duties.)

c. However, most messages are sent from the mailboxes set up for recovery assistance in the field of direct taxes (see table 15 below). On average, the number of messages sent from direct tax mailboxes in the period 2013-2016 was twice as high as the number of messages sent from VAT mailboxes.

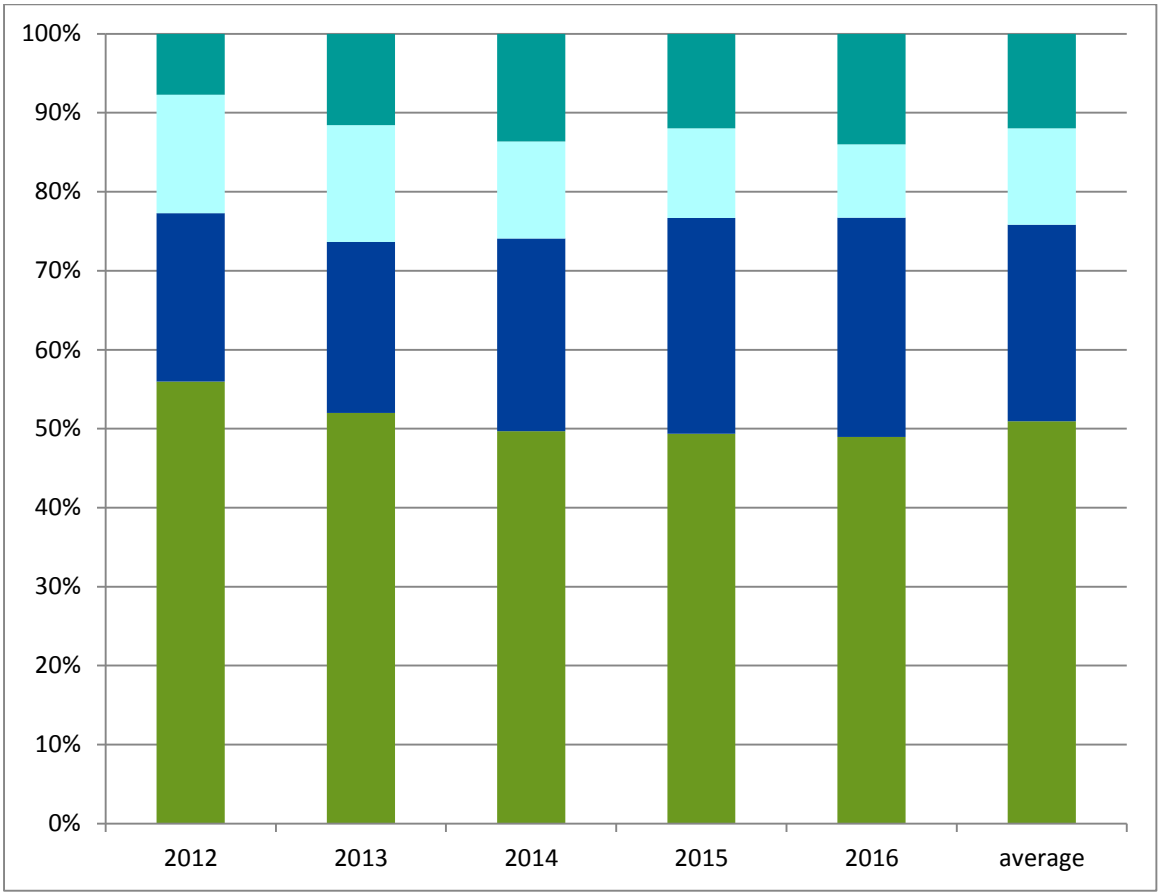
Table 15: total number of all messages (requests and follow-up messages) sent by all Member States (2013-2016):[57]

claims relating to taxes on income and capital

claims relating to VAT

claims relating to customs duties

other claims



d. Of course, the fact that VAT and income/capital taxes represent the biggest tax categories in mutual recovery assistance is not surprising: these taxes are the most important ones, involving the largest amounts.

However, a majority of Member States confirmed that it is useful to have the scope of the Directive extended. These Member States (16 of 27) consider that the broadening of the scope has improved the collection of tax revenue via mutual recovery assistance. A considerable number of Member States (10 of 27) also reported that creating the possibility to request recovery assistance for other taxes and duties than those falling within the pre-existing categories has had a positive effect on the payment and collection of these taxes in their own Member State.

57 See also table 13 under point 6.2.3.2.

6.3.2. Are there other needs?

6.3.2.1. Need for a further extension of the scope?

a. Several Member States have suggested a further extension of the scope of the recovery assistance Directive, in order to include other (public) claims for which there is no recovery assistance framework yet (Belgium, Estonia, France, the Netherlands, Portugal, Romania, Spain,Sweden).

Several Member States also deplored the fact that recovery assistance for social security claims is organised differently.

The current rules concerning assistance for the recovery of social security claims are laid down in different legal instruments, adopted on a different legal basis (Regulations 883/2004 and 987/2009). This social security claims legislation follows the former legislation concerning tax recovery assistance (Directive 2008/55/EC). On 13 December 2016 the Commission has presented a proposal for a Regulation of the European Parliament and of the Council to amend Regulation 883/2004 on the coordination of social security systems and the implementing Regulation 987/2009. If adopted, this new legislation would align the recovery assistance provisions for social security claims to the current rules for tax recovery assistance.

In any case, it is considered to be a disadvantage that the communication network is different, which implies that it is not possible to send joint requests, covering tax and social security claims. The obligation to send two different requests for each type of these claims is an extra administrative burden for the Member States where recovery of taxes and social security claims is done by the same authorities.[58]

The Belgian Court of Audit in its report of October 2014 also recommended a further extension of the scope, e.g. to alimony payments (which in Belgium are recovered by the tax authorities if they are not paid spontaneously), and other claims linked to decisions in criminal matters, and social security claims.[59]

b. In the replies to the evaluation questionnaire, only 3 Member States (Italy, Luxemburg, Spain) consider that the scope is somewhat unclear.

On this point, it can be noted that several questions have also been raised in the Recovery Expert Group, with regard to the possibility to use the Directive for recovery assistance with regard to the following claims: social security claims that are considered as taxes under the national legislation of the Member State concerned, road tolls and user charges, customs penalties, and recovery of illegal state aid consisting in tax exemptions. These questions have been discussed in the Recovery Expert Group and clarifications have been or will be provided in the explanatory notes.

6.3.2.2. Other changes suggested

a. Other improvements or amendments of Directive 2010/24/EU have been suggested by Member States.

- Requests for information, automated and spontaneous exchange of information and access to databases in other Member States (requested by several Member States)

  At this moment, Directive 2010/24/EU mainly provides for exchange of information at request (Article 5). Exchange of information without prior request is limited to refunds of taxes other than VAT. Several Member States have asked to extend this legal basis offered by the Directive, in

[58] The recovery of taxes and of all or part of the social security (or social benefits) claims is currently assigned to the same authorities in the following Member States:
- for all social security claims: DK, EE, HR, MT, NL, RO, SI, SE;
- for some social security claims: BG, AT, FI, UK;
- in IT, both types of claims are recovered by the same recovery agent (but different authorities).

[59] Belgian Court of audit, Recommendation 5.2.1. (p. 47 of the report).

order to allow more spontaneous exchange of information. As Member States increasingly have to deal with tax debtors having assets in one or more other Member States, often in connection with fraudulent constructions to cloud them, several Member States expressed the wish to have more opportunities to exchange information.

It has also been suggested to introduce a specific provision on the handling of bulk information requests and to examine whether direct access can or should be granted to specific databases of other Member States, respecting the data protection rules, if these databases are relevant for tax recovery purposes.

For debts over a specific value, it has been suggested to introduce a requirement that the applicant State must make a request for information to establish the assets and financial status of the taxpayer before a request for recovery is made.

- Notification

It has been suggested to confirm that renewed notifications in the phase of recovery or precautionary measures are not needed if the debtor was already notified before.

It was also suggested to clarify the indication of third parties in the UIPE and the notification of claims to third parties.

- Facilitating the use of precautionary measures

The use of precautionary measures is important, in particular in view of the fight against fraud. At the same time, it is necessary to guarantee the rights of defence of the debtors. The use of precautionary measures should be justified (urgency, proportionality). At present, there is no simple answer to the question whether the justification of such measures can or should be checked by the administrative or judicial authorities of the applicant and/or requested Member State. Several Member States have asked to consider the introduction of a uniform instrument permitting precautionary measures.

In this regard, one Member State also observed that decisions for precautionary measures should be executed, irrespective of whether the requested Member State's legislation would allow the same for its own claims.

It was further suggested to provide for a swift procedure for freezing and preservation of bank accounts.

- Conditions with regard to the obligation to provide assistance

Clarifications and amendments have been requested with regard to the conditions relating to the age of the debt, as the current rules of Article 18(2) of the Directive (copied from the former Directive) are considered to be rather complex (suggestion concerning the calculation of the age period; suggestion to avoid the need for comparing national laws; suggestion to abolish this condition or to provide exceptions).

Amendments have also been suggested with regard to the threshold, which now only exists for requests for recovery and precautionary measures (suggestion to extend the threshold to information or notification requests).

- Other suggestions for specific amendments

  – suggestion for a provision confirming that the debtor should not be informed about a request for information to another Member State;[60]

[60] In the meantime, this question has been the subject of a judgement of the EU Court of Justice, in a case relating to Council Directive 77/799/EEC of 19.12.1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, which is now replaced by Council Directive 2011/16/EU (EUCJ 22.10.2013, C-276/12, Sabou).

- suggestion to amend Art. 23 of the Directive, extending the possibilities to use the information communicated pursuant to the Directive (e.g. by confirming explicitly that this information may also be used for the assessment of tax claims);
- suggestion to clarify the treatment of costs made by the applicant Member State after sending a request for assistance (which are not mentioned in the request for assistance nor in the UIPE of that request);
- suggestion to facilitate the recovery assistance for recovery of VAT refunds, which is now confronted with the problem that a request for assistance must be sent very quickly, in order to timely block the refund of the VAT in the other Member State (as some Member States execute requests for VAT refunds, made in accordance with Directive 2008/9/EC, within a short time period);
- suggestion to improve cooperation between tax authorities in cross-border insolvency procedures (e.g. by providing an obligation to represent tax authorities of other Member States in the insolvency proceedings opened in the own Member State;
- suggestions to improve the communication between the competent authorities, e.g. with regard to a reimbursement agreement if recovery measures imply large amounts of costs or in case of unfounded recovery requests (in line with Article 20(2), second subparagraph of the Directive) or with regard to situations where a payment agreement has been concluded between the applicant Member State and the debtor. Some Member States wish to have more precise rules on the communication and cooperation with regard to these matters.

- Use of the electronic request forms and the communication network in relations with third countries

  The electronic request forms for recovery assistance are developed in such a way that they can not only be used for recovery assistance in accordance with Directive 2010/24/EU, but also for recovery assistance based on other legal instruments (bilateral agreements or multilateral agreements). For recovery assistance between EU Member States, this possibility is rarely used, given the broad scope of the Directive. Member States can only use other legal instruments for their recovery assistance in those situations where these other instruments permit them to have a wider recovery assistance than under the conditions of the Directive.

  However, this flexibility to use the electronic request forms for recovery assistance on the basis of other legal instruments implies that they could also be of use for such assistance with third countries. So far, this use of the electronic request forms is not possible because there is no legal basis for such an extended use of these forms. Several Member States have indicated that they would welcome the possibility to use the electronic request forms in their relations with third countries.[61]

  In this regard, the recently negotiated agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT serves as an example. It provides that the recovery assistance request forms used within the EU will also be used with Norway for recovery assistance with regard to VAT claims. Moreover, the same electronic communication network and the standard forms may also be used for recovery assistance regarding other claims, if such recovery assistance is possible under other bilateral or multilateral legally binding instruments on administrative cooperation between a Member State and Norway (Article 40(4) of this Agreement).

b. The respondents to the public consultation also made a number of suggestions and comments with regard to possible amendments of the existing legislation.[62] On the one hand, these responses emphasized the need to have an effective and efficient system of tax recovery assistance (e.g. with regard to the conditions governing requests for recovery assistance, relating to the recovery of contested claims or the threshold for providing assistance; the need to strengthen the use of precautionary measures in cross-border assistance; and the need to have a strict approach towards countries not providing such assistance). On the other hand, several respondents in the public consultation also observed the need to respect the taxpayers' rights.

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61 The legal basis for the extended use could also determine the financial arrangements concerning the third country's link (interface) to the communication network or concerning possible translation costs.

62 See the summary report of the public consultation for a complete overview.

6.3.3. Did the introduction of Directive 2010/24/EU have an impact on the legal protection of the tax debtors in the Member States?

6.3.3.1. The legal protection of the debtor

a. Information communicated pursuant to this Directive is covered by the obligation of official secrecy and enjoys the protection extended to similar information under the national law of the Member State which received it (Art. 23(1) of the Directive). No problem has ever been reported with regard to the obligation to respect the secrecy of the information exchanged on the basis of the recovery assistance Directive.[63]

b. With regard to the execution of requests for recovery assistance, the requested authorities have to use the powers and procedures provided under their national laws (Art. 9, 13(1) and 17 of the Directive). When applying these national laws, the requested authorities have to respect the tax debtors' rights.

   As the Directive does not regulate the execution of the assistance requests, it does not have any effect on the legal protection of tax debtors or other persons liable for the taxes for which recovery assistance is requested. This view was also confirmed by the Member States' replies to the questionnaire.[64]

6.3.3.2. Information about tax claims and assistance requests to the debtors

a. The EU Court of Justice has stated that, in the framework of the mutual assistance introduced pursuant to the former mutual recovery assistance Directive 76/308/EEC, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the Member State in which the requested authority is situated. The notification should make it possible for the addressee to understand the subject-matter of the claim and the cause of action.[65]

b. The adoption of a uniform standard form for the notification of instruments and decisions relating to the claim (UNF; Article 8(1) of Directive 2010/24/EU[66]), which is to be used by the requested Member State when notifying such documents at the request of another Member State, and the uniform instrument permitting enforcement measures in the requested Member State (UIPE; Art. 12(1) of Directive 2010/24/EU[67]) have resolved the problems of recognition and translation of instruments emanating from another Member State: these documents can be translated automatically into all official languages of the EU Member States. The use of these instruments enables the Member States to ensure that the tax debtors are sufficiently informed about the request and about their rights and obligations, in an official language of the Member State in which the requested authority is situated.

   Some Member States explicitly emphasized these positive effects of the UNF and the UIPE for the debtors or other persons affected (Belgium, Finland, Spain). Their view was shared by the few respondents to the public consultation which reported about their personal experience with these uniform instruments: they confirmed that the UNF and the UIPE are indeed useful.

c. This possibility to translate these documents in all official languages allows the requested authorities to use the version of their official language. However, the debtor concerned may originally come from

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63 See also R. SEER and I. GABERT (ed.) Mutual assistance and information exchange (2009 EATLP Congress, Santiago de Compostela), 2010.

64 Half of the Member States explicitly stated that the introduction of the Directive 2010/24/EU didn't have any particular effect on the legal protection of tax debtors or other persons liable for the taxes. 11 Member States did not express any opinion on this point.

65 EUCJ 14 January 2010, C-233/08, Kyrian.

66 The UNF indeed has to contain the name, address and other contact details regarding the office responsible with regard to the notified document, and the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation (Article 8(1), 2nd subparagraph, (d) of the Directive).

67 The UIPE has to contain the name, address and other contact details regarding the office responsible for the assessment of the claim and the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation (Article 12(1), third subparagraph, (c) of the Directive).

another Member State, so that his native language is still another one. The Recovery Expert Group therefore developed an additional document "note to the addressee", which the requested Member States can use if they want to explain to the addressee that he can ask for another language version of the UNF or the UIPE than the version in the official language of the requested Member State.

Although Member States are not obliged to use this additional document, several Member States reported that they use it on a regular or exceptional basis.

d. Following a Member State suggestion made at the Fiscalis workshop in Brussels in April 2015, the 2016 release of the electronic request forms also allows Member States to make a Direct Notification Form (DNF). This document may be used in case of direct notifications (as foreseen under Article 9(2) of the Directive[68]). This DNF contains the same information as a UNF form, and it can also be translated in all official EU languages. Its function is to accompany the documents which are directly notified by the applicant Member State, so that the debtor can be easily informed in a language that he understands.

e. It appears from the case-law that debtors sometimes only react once recovery measures are launched in the requested Member State, claiming that they were never notified before. Such disputes are not related to the use of Directive 2010/24/EU; they concern the effectiveness of national notification procedures. Such disputes may be brought before the national courts of the Member State which effected the notification (applicant or requested Member State). It is up to these courts to check the factual circumstances and to guarantee the right of the debtor to be properly informed as well as the need to avoid abuse by debtors wrongly invoking such arguments to prevent or contest the enforcement of the claim.

6.3.3.3. Guidance on the functioning of the EU recovery assistance framework

a. Several initiatives have been taken to improve the publicly available information concerning the EU tax recovery assistance framework:

   - the Commission services have published a number of questions and answers on the tax debtors' rights and obligations on the website of the European Commission;[69]
   - on this website, tax practitioners and other persons involved in tax recovery assistance proceedings also find information on national, EU and international developments in the field of tax collection and enforcement, in the newsletter "EU and International Tax Collection News".

b. Respondents to the public consultation clearly expressed the wish that the EU should take more actions to explain the legislation on mutual tax recovery assistance (although most of them at the same time admitted that they were not aware of the information already published on the Commission's website).

   More explanation of this complex legislation would be beneficial. Following a suggestion of the Commission services, the Recovery Expert Group in its meeting of 22 February 2017 already agreed to publish the explanatory notes that it has adopted with regard to the interpretation of the EU legislation on tax recovery assistance. Moreover, the Commission services also consider organising training courses or seminars for practitioners dealing with tax recovery assistance issues.

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68 Article 9(2) of Directive 2010/24 provides that: "The applicant authority shall make a request for notification pursuant to this article only when it is unable to notify in accordance with the rules governing the notification of the document concerned in the applicant Member State, or when such notification would give rise to disproportionate difficulties."

69 https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery_en.

6.4. Could Member States achieve similar results without acting at the EU level?

6.4.1. Is recovery assistance in the interest of all EU Member States?

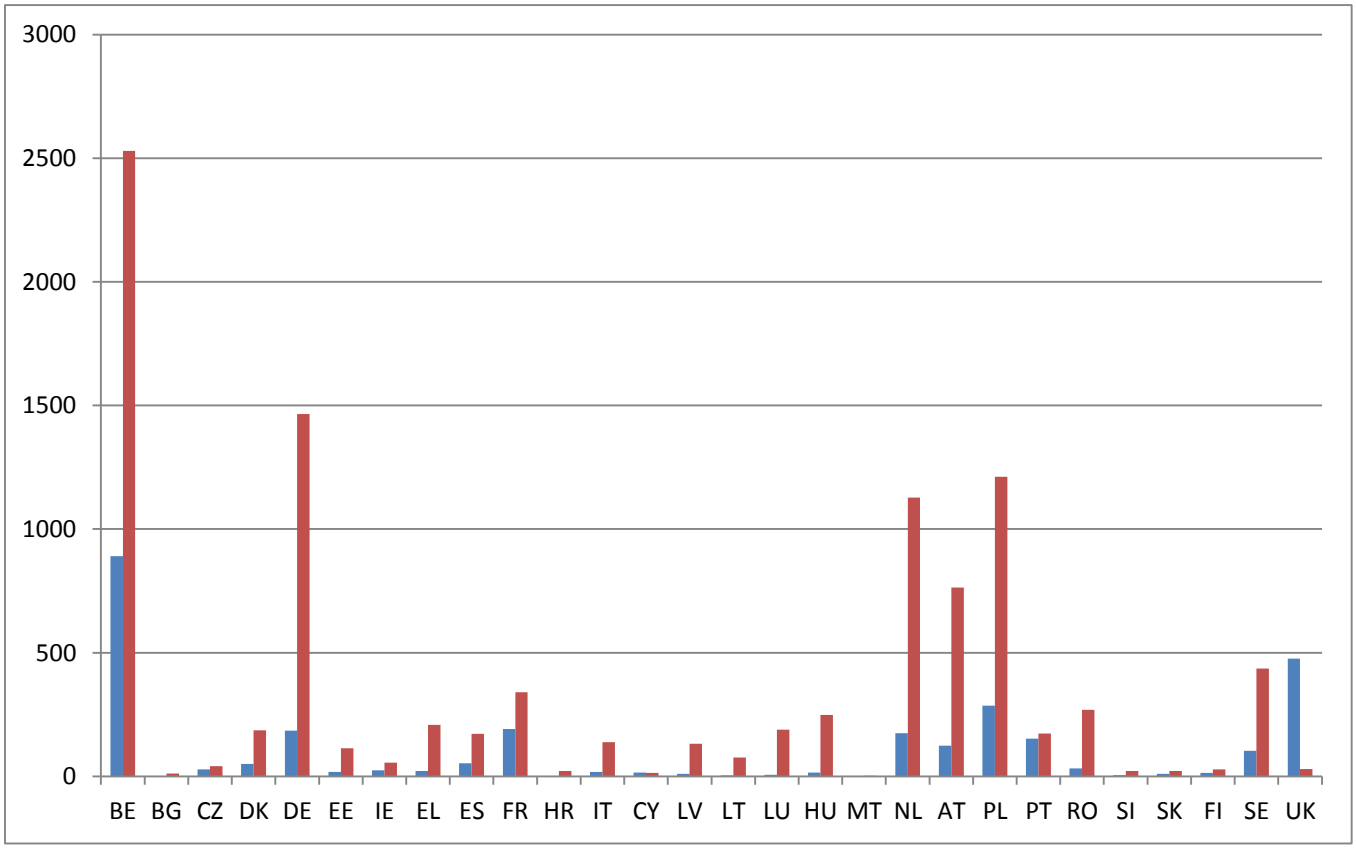
6.4.1.1. Effective use of the Directive by all Member States

a. The extent to which the EU tax recovery assistance framework is used, is very different from one Member State to another. Moreover, some Member States are more requested to provide assistance than others. These differences obviously relate to geographic, economic and socio-demographic situations and developments. However, all Member States send and receive assistance requests that are based on the EU Directive.

The following graphics present a comparison of the use of the EU recovery assistance framework by the individual Member States, in the period 2010-2011 (before the implementation of Directive 2010/24/EU) and in the period 2013-2016 (on the basis of Directive 2010/24/EU).[70] It appears from these statistics that the numbers of requests are geographically spread: some Member States send or receive much more requests than other Member States.

Table 16: average yearly number of requests for information sent by each Member State

= average 2010-2011; = average 2013-2016



[70] The year 2012 was not taken into account here, as this was an atypical year, because of delays and difficulties related to the national implementation of the Directive (see point 5).

Table 17: average yearly number of requests for information received by each Member State

= average 2010-2011; = average 2013-2016

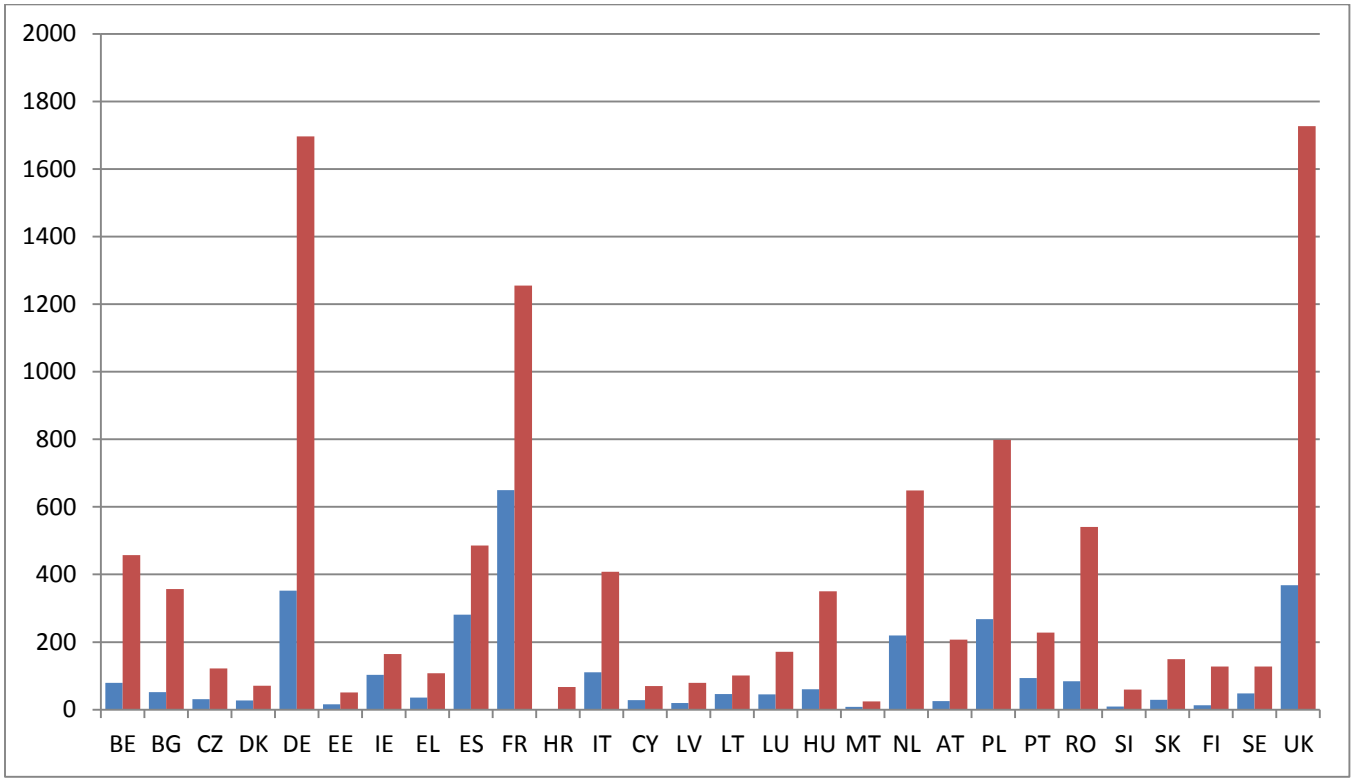


Table 18: average yearly number of requests for notification sent by each Member State

= average 2010-2011; = average 2013-2016

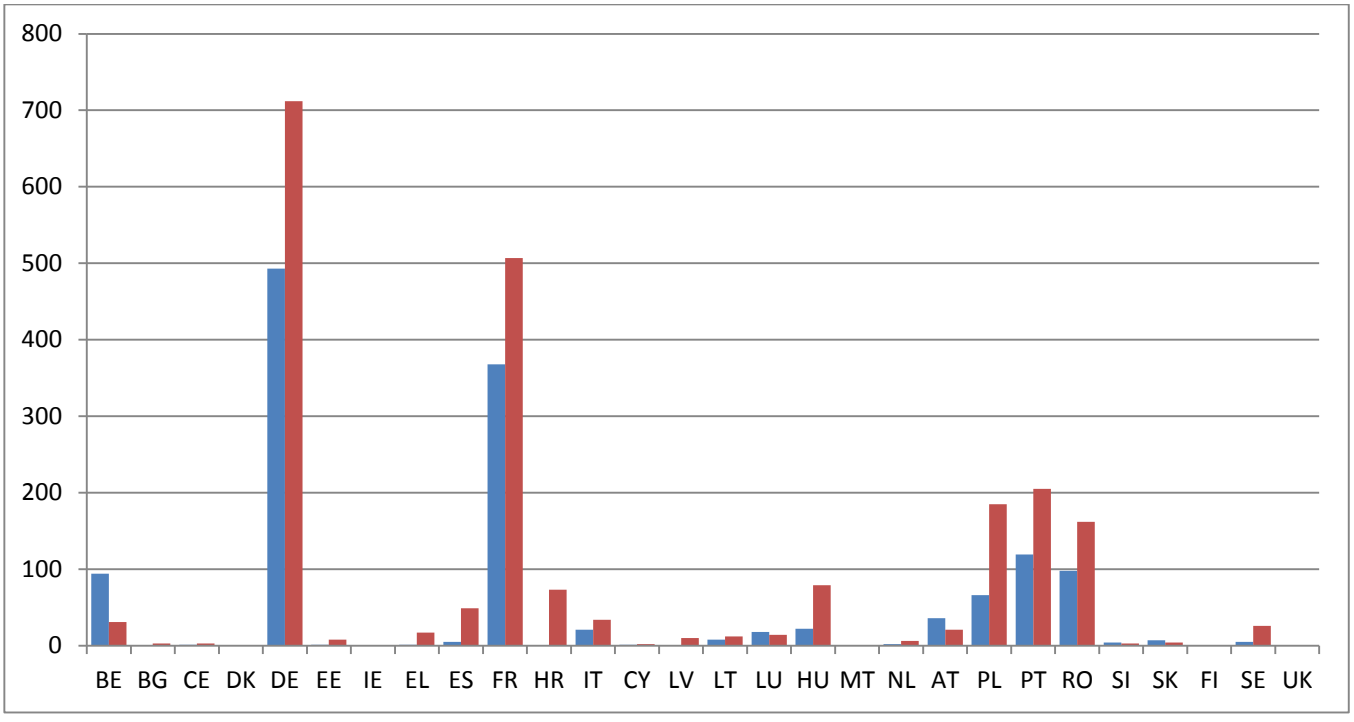


Table 19: average yearly number of requests for notification received by each Member State

= average 2010-2011; = average 2013-2016

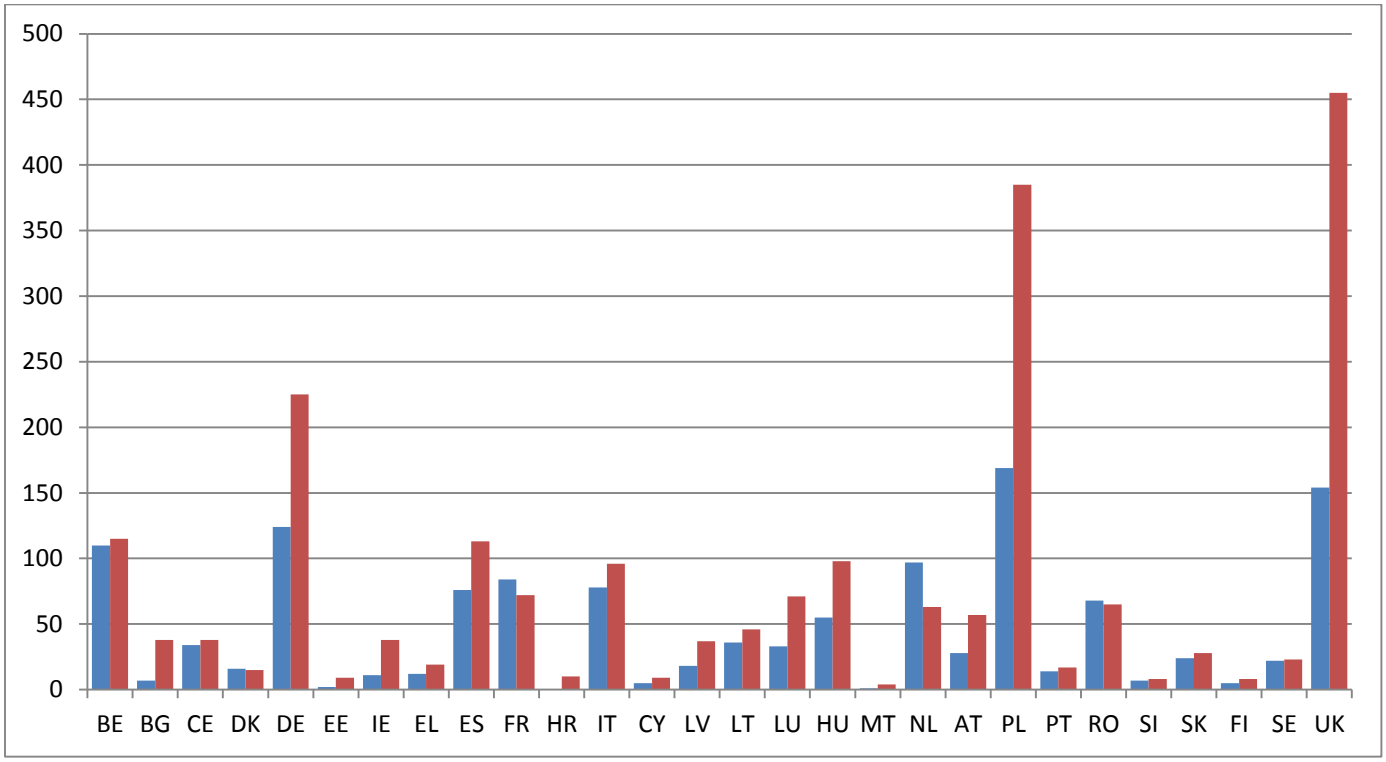


Table 20: average yearly number of requests for precautionary measures sent by each Member State

= average 2013-2016

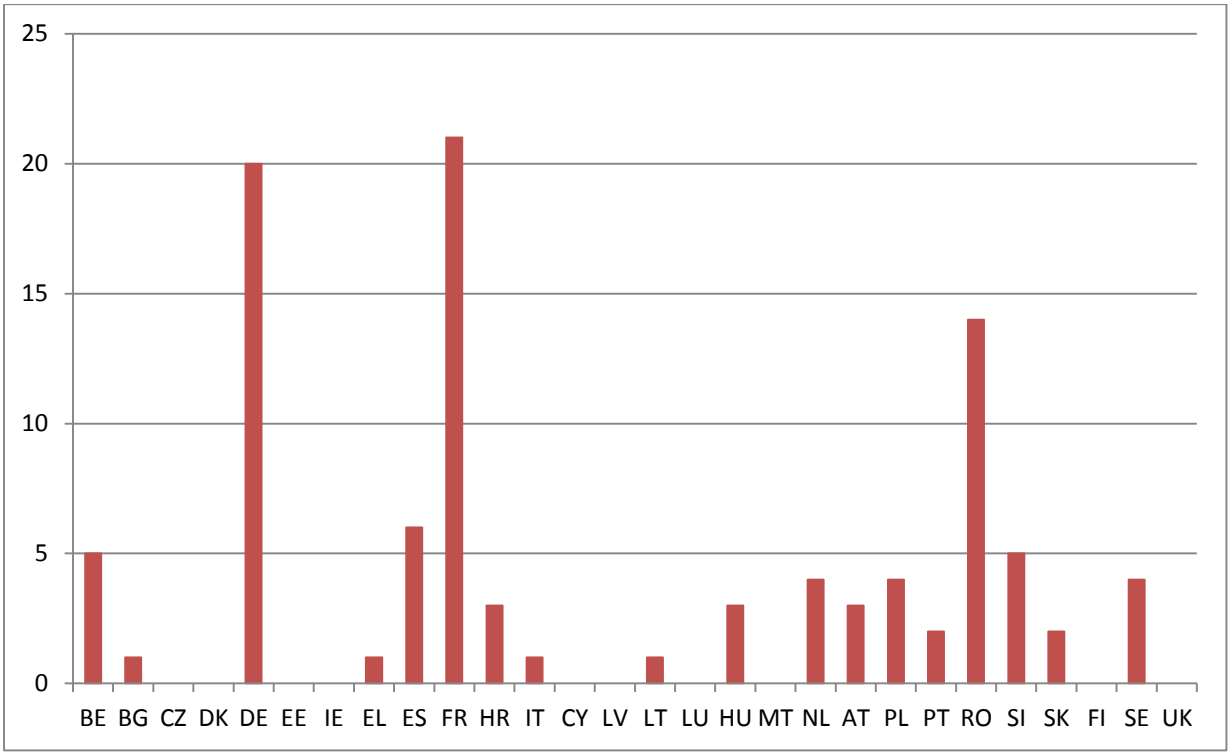


Table 21: average yearly number of requests for precautionary measures received by each Member State

= average 2013-2016

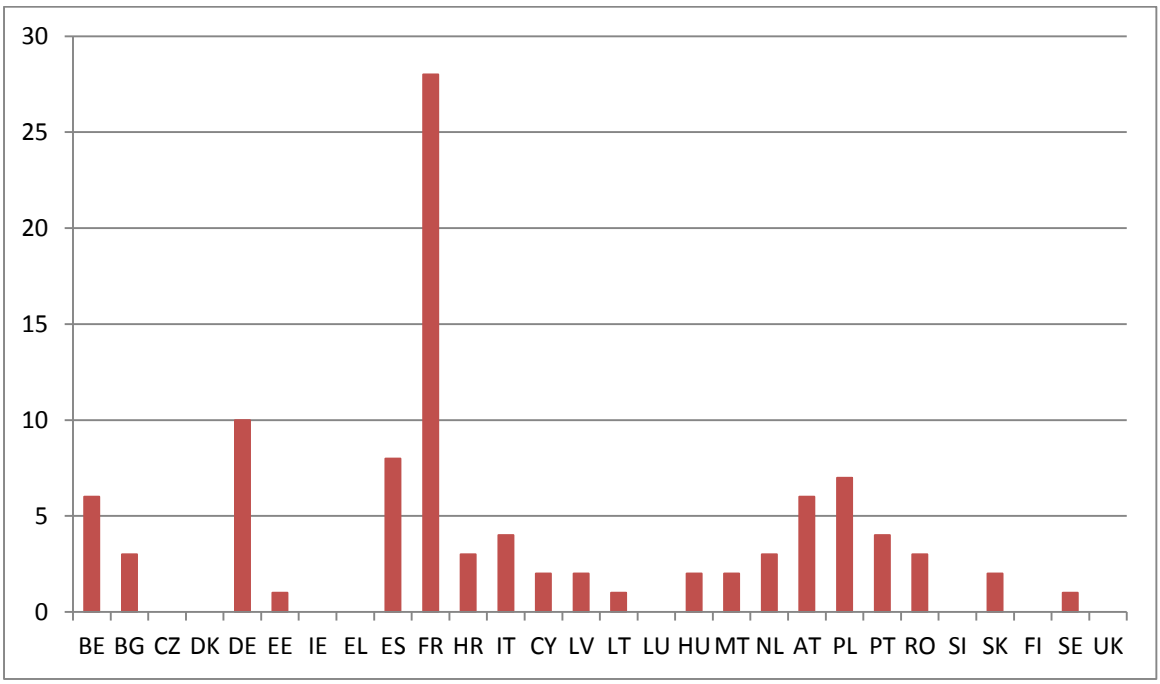


Table 22: average yearly number of requests for recovery sent by each Member State

= average 2010-2011; = average 2013-2016

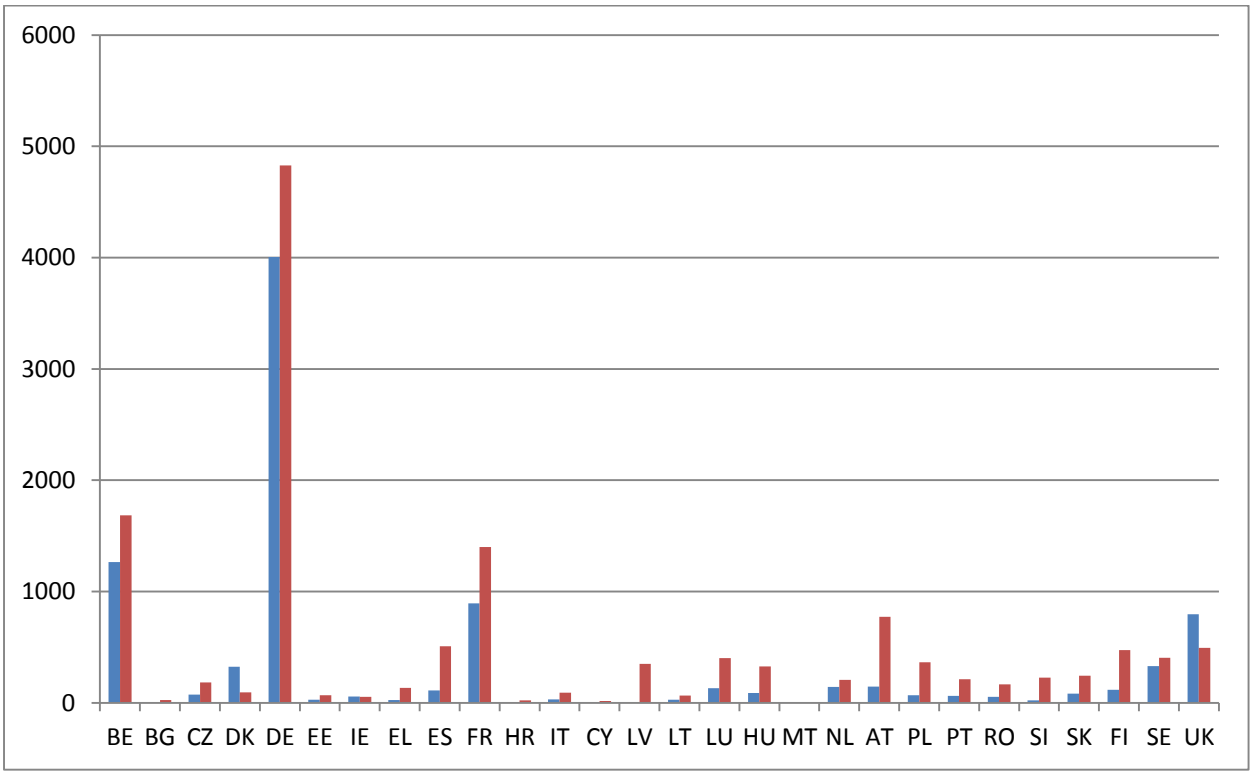
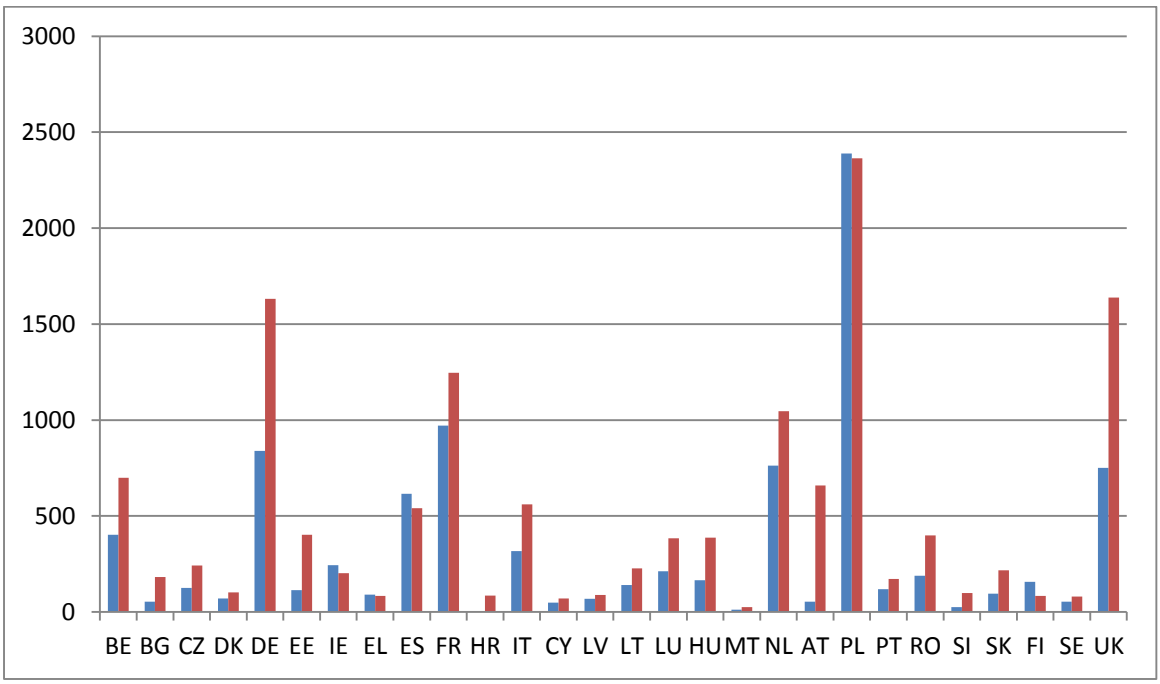


Table 23: average yearly number of requests for recovery received by each Member State

= average 2010-2011; = average 2013-2016



6.4.1.2. Loyal cooperation between EU Member States

a. In their replies to the questionnaire, as well as in Fiscalis 2020 workshops, Member States generally expressed a positive opinion on the assistance provided by other Member States. Nevertheless, several delegates reported that the situation varies from country to country.

   On several occasions, delegates expressed the feeling that the priority and preference which Member States give to the collection and recovery of their own tax claims,[71] had a negative impact on their recovery assistance to other Member States. In their replies to the questionnaire, several Member States considered that the following elements constitute big external obstacles to the effective functioning of the Directive:

   – a lack of resources on the national level (17 Member States) (see point 6.1.1.3.);
   – cross-border recovery assistance is not a priority for tax administrations (10 Member States) (see also point 6.1.1.3.);
   – reciprocity concerns (5 Member States).

b. It seems that Member States (first) try to solve cooperation problems at bilateral level, trying to maintain good relationships in view of future assistance needs. However, problems encountered in one bilateral relationship could also happen in other bilateral relationships. Sharing these experiences and information about bilateral discussions and solutions could thus also be of help to other Member States.

   In recent times, the Commission services are more frequently contacted for advice on specific questions, in particular when the Member States have a divergent view on the interpretation of the EU legislation concerned. In these situations, the Commission services also bring these questions to the attention of other Member States, in the meetings of the Recovery Expert Group.

[71] See Article 13(1), third subparagraph of Council Directive 2010/24/EU: "The requested Member State shall not be obliged to grant other Member States' claims preferences accorded to similar claims arising in that Member State, except where otherwise agreed between the Member States concerned or provided in the law of the requested Member State."

c. Since the entry into force of the recovery assistance framework set up under Directive 2010/24/EU, the Commission was asked 3 times to intervene in situations where Member States complained about a lack of information about the follow-up of assistance requests in other Member States.[72] One of these cases related to a specific case; the two others related to several cases.

In this regard, the Commission understands that the requested authorities do not like to be "accused" by other Member States. (Each of the reported cases related to a requested Member State which receives several hundreds of recovery requests a year, and errors or failures in the follow-up or in the communication between the Member States on these cases may always occur.) However, problems which cannot be openly discussed lead to irritation and frustration on both sides, which in the long run affect the mutual recovery assistance in its entirety. Moreover, such complaints are useful, as the identification and analysis of the reported problems may also reveal possibilities to improve the assistance framework for all Member States.

6.4.2. Does the EU provide incentives to improve tax recovery assistance?

6.4.2.1. EU tax recovery assistance: a cornerstone for the proper functioning of the internal market

a. Traditionally, initiatives for mutual recovery assistance have always been based on considerations relating to the "mutual" interest of the contracting States. Recovery assistance was only provided to another State insofar as the State providing this assistance could also obtain a benefit (recovery assistance or other benefit) from the other State. Recovery assistance between EU Member States however also serves another goal: "it contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses".[73] In this way, providing mutual recovery assistance is thus in the interest of all EU Member States (and of their citizens and companies), despite the unequal use of the assistance framework. This should be an incentive for all Member States to provide sufficient resources for this recovery assistance.

This single market is an important achievement of the EU and fundamental to its stability and prosperity. When levying taxes, Member States are thus expected to respect the freedom of establishment, the free movement of persons, goods and capital, as well as the basic principle of non-discrimination.[74] In several cases before the EU Court of Justice, in particular concerning exit taxes,[75] Member States that were accused of violating these basic principles have tried to justify their national tax systems by underlining that the existence of the tax recovery assistance Directive did not guarantee an effective recovery of the tax at stake. The Court has always been reluctant to accept this argument.[76]

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72 The requested authority has to acknowledge receipt of the request for assistance. This has to be done "as soon as possible and in any event within seven calendar days of such receipt" (Art. 7, para. 1; Art. 12(1); Art. 19(1) of Commission implementing Regulation (EU) No 1189/2011). Art. 20(2) of Commission implementing Regulation (EU) No 1189/2011 provides that, not later than at the end of each six-month period following the date of acknowledgement of the receipt of the request, the requested authority shall inform the applicant authority of the state of progress or the outcome of the procedure for recovery or for precautionary measures.

73 Point 1 of the preamble of the Directive.

74 See for instance EUCJ, 11.03.2004, C-9/02, Hughes de Lasteyrie du Saillant, point 51.

75 Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even though that gain has not yet been realised at the time of the exit. (point 10 of the preamble of Council Directive 2016/1164).

76 See for instance case C-371/10, 29.11.2011 National Grid Indus, point 78, relating to the former tax recovery assistance Directive 2008/55/EC: *Next, (…) the existing machinery for mutual assistance between the authorities of the Member States is sufficient to enable the Member State of origin to check the truthfulness of the returns made by companies which have opted for deferred payment of the tax. Since the tax is definitively determined at the time when the company, because of the transfer of its place of effective management, ceases to obtain profits taxable in the Member State of origin, the assistance of the host Member State will concern not the correct ascertainment of the tax but only its recovery. Article 4(1) of Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 2008 L 150, p. 28) provides that*

b. The Court of Justice has always reiterated that it is up to the Member States to make sure that the EU legal framework for tax recovery assistance is effectively used. Accordingly, the Commission has always emphasized that Member States should make full use of the possibilities offered by the mutual assistance Directive.

A clear illustration can be found in the area of exit taxation, where the effective administrative cooperation is key to ensuring the effective protection of the exit State tax base.[77] The case-law in this field resulted in Article 5(2) of Directive 2016/1164[78], which confirms that a taxpayer shall be given the right to defer the payment of an exit tax by paying it in instalment over five years, if a taxpayer transfers assets or its tax residence to another Member State or to a third country that is party to the EEA Agreement, if that third country has concluded an agreement with the Member State of the taxpayer or with the Union on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Council Directive 2010/24/EU.

6.4.2.2. Advantage of a joint EU approach in recovery assistance

a. The EU legislation on tax recovery assistance provides a harmonised set of assistance arrangements. The extension of the material scope to all taxes implies that administrative authorities do not need to have recourse to different sets of legislation, each with their own rules and conditions, depending on the type of claim for which they are requesting recovery assistance. Moreover, all authorities can use the common electronic request forms and uniform instruments (uniform notification form and uniform instrument permitting enforcement in the requested Member State).

The use of common rules and common forms – with an automated translation – considerably facilitates the work of the authorities dealing with international tax recovery assistance. This constitutes a major advantage for the cooperation between the Member States' tax authorities.

The Commission services are currently building a central application aimed at encompassing all electronic forms for all taxation domains. This central application will allow further streamlining and rationalisation of electronic forms, ensuring quick modification at Commission level, tackling new challenges in the field of exchange of information, while reducing drastically the deployment costs at EU and Member States levels. This development will allow to simplify the lay-out of the e-forms and to make them still more user-friendly. All Member States have been consulted on the development of the central platform design for the recovery request forms.[79]

b. Several Member States also expressed the wish to have the possibility to use these EU electronic request forms for their bilateral tax recovery assistance with other third countries (see point 6.3.2.2.).

c. On the basis of a Council mandate, the Commission has negotiated an agreement on administrative cooperation in the field of VAT, including recovery assistance, between the EU and Norway. The intention with regard to the recovery assistance aspects is to agree on a recovery assistance framework that is as closely as possible to the EU acquis.

It is obvious that this joint EU negotiation approach has clear advantages over bilateral negotiations between individual States. The use of common rules, common request forms and a common

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'[a]t 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'. That directive thus enables the Member State of origin to obtain information from the competent authority of the host Member State on whether or not certain assets of a company which has transferred its place of effective management to the latter Member State have been realised, in so far as the information is necessary to enable the Member State of origin to recover a tax debt which arose at the time of that transfer. Moreover, Directive 2008/55, in particular Articles 5 to 9, provides the authorities of the Member State of origin with a framework of cooperation and assistance allowing them actually to recover the tax debt in the host Member State.".

77 See Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 19.12.2006 on Exit taxation and the need for co-ordination of Member States' tax policies (COM(2006) 825 final).

78 Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193/1 of 19.7.2016.

79 A Fiscalis 2020 workshop has been organised on 23-24 June 2016 and a specific Fiscalis 2020 project group (071) has been set up to prepare the work to make the electronic tax recovery assistance forms still more user-friendly.

communication network, in line with the rules of the EU Directive, will ensure that this extended assistance can be easily applied by the competent authorities of the Member States.

d. Finally, some respondents in the public consultation solicited a strict approach towards non-cooperating countries.

6.4.2.3. Coherence of the EU approach

a. Since recovery assistance for taxes is part of a more global cooperation between the EU Member States and it is designed entirely to provide a harmonised set of assistance arrangements for the cross-border cases, it is difficult semantically to treat coherence in separation of the EU added value, without being repetitive. The recovery Directive works precisely because it sits firmly in the web of the arrangements of the administrative cooperation between the tax authorities. It is even difficult to imagine it not being coherent with the EU policies. This can be illustrated by the following recent examples:

   - on 21 December 2016, the Commission has adopted a package of measures to strengthen the EU's capacity to fight the financing of terrorism and organised crime. One of the elements of this package is a Commission proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders (document COM(2016) 819 final). According to the Commission proposal, the rules for disposal of the confiscated property should give priority to the compensation and restitution of property to the victims. At the same time, this Commission proposal emphasizes that when disposing of the confiscated property, Member States should also take into account their obligations to assist in the recovery of tax claims from other Member States in accordance with Directive 2010/24/EU. In the Recovery Expert Group, some Member States have indicated that they have a positive experience with regard to this cooperation;
   - on 13 December 2016 the Commission has presented a proposal for a Regulation of the European Parliament and of the Council to amend Regulation 883/2004 on the coordination of social security systems and the implementing Regulation 987/2009 (document COM(2016) 815 final). If adopted, this new legislation would align the recovery assistance provisions for social security claims to the current rules for tax recovery assistance.

c. Tax recovery assistance benefits from other recent improvements of information exchange between tax authorities. This can be illustrated by the following recent examples:

   - article 8(1) of Directive 2011/16/EU on administrative cooperation in the field of taxation provides that the competent authorities of all Member States have to exchange automatically the following information concerning residents in other Member States, as from 1 January 2014:

     (a) income from employment;

     (b) director's fees;

     (c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;

     (d) pensions;

     (e) ownership of and income from immovable property;

   - moreover, Council Directive 2014/107/EU of 9 December 2014, amending Directive 2011/16/EU, introduced a system of automatic exchange of information about financial accounts in other Member States. This new measure applies from 1 January 2016.

   Article 16(1), first and second subparagraph of Directive 2011/16 explicitly allows that information communication pursuant to that Directive *"(…) may be used for the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2. Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures".* Such information may indeed be useful for tax recovery purposes. The effective and efficient use of course depends on a good communication between the tax authorities receiving this information and the tax authorities dealing with recovery of tax claims.

7. CONCLUSIONS

1. Council Directive 2010/24/EU intended "to make assistance more efficient and effective and to facilitate it in practice".[80] The Member States almost unanimously confirm that this goal has been achieved. All Member States but one confirm that Directive 2010/24/EU has made it easier for them to provide and to receive mutual recovery assistance, compared to the situation which existed under the previous legal framework. The use of common assistance arrangements is a major advantage of the EU recovery assistance framework, as it facilitates the work of the tax authorities concerned.

2. The use of the electronic request forms and the uniform instruments, with an automatic translation, have improved the efficiency and effectiveness of recovery assistance. Almost all Member States confirm that the use of uniform instruments permitting enforcement in the requested Member States (UIPE) facilitates the preparation of requests for assistance and makes processing of assistance requests from other Member States easier. The main advantages of the UIPE are the lack of translation costs, the avoidance of recognition issues and the electronic transmission. Most Member States also have a positive opinion about the use of the uniform notification forms (UNF) which accompany the documents for which notification assistance is requested. The few respondents to the public consultation also appreciated the introduction of these uniform instruments, which provide useful information to the debtors.

3. The extension of the scope of the Directive did not substantially influence the types of taxes for which recovery assistance is requested. Most claims still relate to direct taxes and VAT. However, the extension of the scope is considered to be useful.

4. A large majority of Member States is of the opinion that the cooperation under the present Directive has improved the collection and recovery of their claims. The statistical information, although not entirely reliable, also indicates that the amounts recovered on the basis of the EU legislation have increased again, after an initial regression in 2012. The amounts recovered in 2013-2014 are in line with the amounts recovered in 2009-2010. The amounts further increased in 2015 and 2016. This evolution in the recovered amounts may to some extent be explained by the increasing number of assistance requests and the extension of the scope. However, it also appears that the Directive has really helped the Member States to send and deal with more requests, as it facilitated the work for the applicant and requested authorities.

   The above considerations confirm the relevance and the EU added value of this Directive.

   In situations where the non-collection is due to the fraudulent intention of the debtor, recovery assistance however remains difficult.

5. In line with the increased number of requests for assistance, Member States also express concerns about the administrative burden linked to this assistance. Reliable quantitative information on this point is however not available. In this regard, it should be noted that the Commission services do not have access to individual files (in accordance with Article 23 of the Directive) and that national tax authorities are reluctant to provide more detailed quantitative statistical information than what is imposed by Article 27(1) of the Directive.

6. The deterrent effect of the recovery assistance Directive towards non-compliance cannot be measured exactly. However, a considerable number of Member States and also respondents to the public consultation believe that general compliance has improved. This may also be due to the awareness of a generally improved administrative cooperation at international level. The growing recovery assistance is indeed part of a global evolution towards more international information exchange and administrative cooperation. The recovery assistance Directive is also coherent with other Commission initiatives to strengthen the fight against tax fraud and other crime.

7. All Member States are making use of the tax recovery assistance framework (although the use and the workload are not equal for all Member States) and the total number of assistance requests is continuously increasing.

   However, Member States do not (yet) make use of the possibility for tax recovery officials of one Member State to go to another Member State and to be present during administrative enquiries – or

[80] Preamble of Council Directive 2010/24/EU, point 4.

even to participate in these enquiries by interviewing individuals and examining records – and to assist officials of the requested Member State during court proceedings in that State.

8. Questions or problems with regard to recovery assistance can be usefully discussed in the Recovery Expert Group and in Fiscalis 2020 activities. These platforms also provide possibilities to share information about national experiences and (best) practices with regard to tax enforcement.

9. Member States can ask the Commission services to act as a mediator in case of problems concerning mutual assistance with other Member States, in particular cases or in general. It is indeed important to discuss such issues, in order to maintain the spirit of good cooperation between the Member States.

10. The success of mutual recovery assistance is influenced by the strength or weakness of the internal tax recovery system within the requested Member States. The existence of the EU framework for recovery assistance does not take away the limitations and loopholes of internal tax recovery resources and procedures within the Member States, which may be exploited and abused by fraudsters. On this point, it appears that several Member States have to increase their efforts to provide sufficient legal, human and technical means to improve the effectiveness of their internal tax recovery system. This is needed to help safeguard the single market, in the interest of all Member States.

    In the view of the Commission services, reinforcing the Member States' capacity to take effective and efficient recovery and precautionary measures is a top priority.

    At the same time, Member States should ensure that the rights of the tax payers and tax debtors are well respected.

11. Although the current EU legislation offers a very advanced framework for tax recovery assistance, several suggestions have been made to further develop recovery assistance within the EU. These suggestions will be the subject of further reflections. However, at this stage, the Commission services consider that the focus should first be on improving internal tax recovery within the Member States, in order to take full advantage of the potential of the existing EU framework on tax recovery assistance.

12. The problem of missing debtors and assets is not only an intra-EU problem. Debtors also move to third countries and assets are spread worldwide, hindering the recovery of taxes within the EU.

13. In line with the requests from Member States and from respondents to the public consultation, the Commission services will also analyse if and how more explanation and training can be organised.

EU
European Commission, Directorate General for Taxation and Customs Union

Synopsis report on the Commission's consultation on the functioning of mutual assistance between EU Member States for the recovery of taxes

18 December 2017, taxud.c.4(2017) 6936235

1. BACKGROUND

The purpose of the evaluation of the functioning of mutual assistance between EU Member States for recovery of tax claims was:

- to assess whether and to what extent Council Directive 2010/24 of 16 March 2010, concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, and its implementation by the EU Member States have contributed to better safeguard the financial interests of the Member States and the EU, and have made the recovery assistance more efficient and effective;
- to assess to what extent its provisions need to/can be improved to take account of the needs of the Member States and the internal market in a quickly changing economic and political environment;
- to provide useful information as regards the need for further improvement of the administrative or technical framework in this field, or for other supporting actions.

2. ASSESSMENT OF THE CONSULTATION ACTIVITIES CARRIED OUT

a. Consultation activities

As part of this evaluation, two consultation activities have been carried out:

- a targeted consultation of the EU Member States' tax authorities dealing with tax recovery assistance, conducted in April 2015, and
- an open public consultation running from 30/11/2016 until 08/03/2017 and available in all EU languages except Gaelic.

A Commission Inter-service Steering Group and Recovery Expert Group were consulted on the questionnaire that was sent to the Member States' tax authorities and the former also on the questionnaire for the open public consultation.

No comments from the public were received outside the public consultation.

b. Assessment of the targeted consultation of the Member States' tax authorities

This consultation was done via a questionnaire to the Member States' tax authorities responsible for mutual recovery assistance.

The following issues were examined in the questionnaire addressed to the Member States' tax authorities:

- to what extent has Council Directive 2010/24/EU contributed to safeguarding the financial interests of the Member States and the EU? (effectiveness);

- to what extent have the standardisation provisions of Council Directive 2010/24/EU (e.g. adoption of a uniform instrument for enforcement measures UIPE; uniform standard form for notification UNF; obligation to communicate electronically; rules on the use of languages, etc.) improved the efficiency and effectiveness of assistance? (uniformity/efficiency/effectiveness);
- to what extent the provisions of Council Directive 2010/24/EU are relevant to the needs of the Member States and the EU? (relevance);
- could Member States achieve similar results without acting at the EU level? (EU added value).

The questionnaire contained a lot of statement questions, permitting the respondents to determine the extent to which they agreed with the statements. However, there were also open questions, allowing scope for as much information and comments to be provided as the consultees were willing to provide.

All Member States replied to this questionnaire.

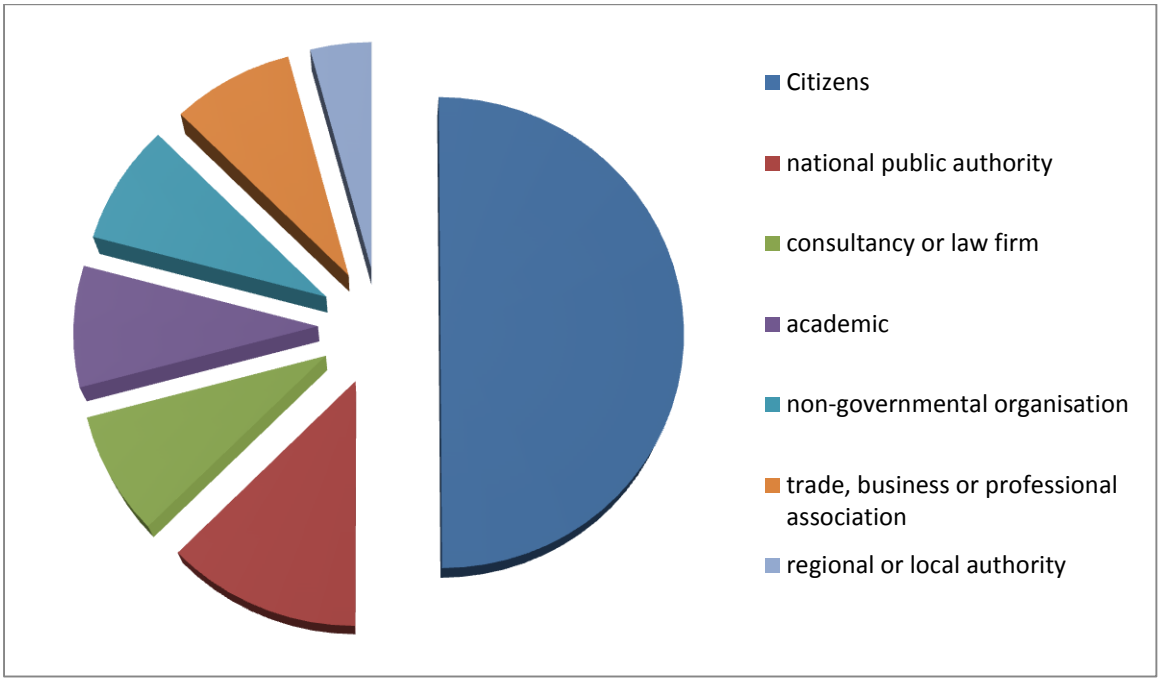
Each Member State was invited to send one (joint) reply to this questionnaire. It could not be checked to which extent local or regional tax recovery offices were consulted by the central authorities that replied to the questionnaire.

c. Assessment of the open public consultation

The purpose of this consultation was:
- to gather views from stakeholders other than tax administrations about their experience of the current rules concerning mutual assistance for the recovery of claims across the borders;
- to bring new insights for the on-going evaluation and reporting exercise about the efficiency of the Directive 2010/24;
- to provide information with regard to the need for further improvement of the legal, administrative or technical framework.

All stakeholders – citizens, companies, organisations, institutions, public authorities, academic researchers – were invited to provide their views on this matter.

Despite the fact that the public consultation was announced at several fora, only 24 respondents from 15 Member States replied to this public consultation. Half of the respondents (12) were citizens, replying in their personal capacity. The others responded in their professional capacity.



The summary report of this public consultation and a detailed overview of these comments is available on the website of the European Commission.[81]

The respondents replying in their personal capacity in general only selected predefined responses. They made little or no use of the opportunity to elaborate on their replies.

Only a few respondents – all replying in their professional capacity – declared to have a personal experience with regard to the application of recovery assistance on the basis of Directive 2010/24: two of them represented a national public authority; two others represented a tax consultancy firm and a professional organisation of accountancy bodies, whose members had personal experience as tax agents of tax debtors.

This limited response was not a total surprise. Citizens and companies paying their tax debts are never confronted with the use of this Directive and thus have no or very little experience in this field. Recovery assistance is generally only requested with regard to tax debtors deliberately refusing to pay their taxes. It is less likely that these persons respond to this public consultation. However, the very limited response of tax consultancy firms/lawyers and academic institutions and the complete lack of response from the judicial authorities were not expected.

Given the relatively low number of responses, the facts that most respondents had no or little experience with the use of this Directive and that they only partially completed the questionnaire, the results of this public consultation do not permit very firm conclusions. Nevertheless, the replies that have been received are useful as they clearly indicate important expectations and concerns with regard to international tax recovery assistance.

d. Other information collected

Information for the evaluation was also collected:
- from the yearly statistics which Member States have to provide in accordance with Article 27 of Directive 2010/24, covering the number of assistance requests and the amounts requested and recovered;
- via specific questions raised in the meetings of the Recovery Expert Group (one meeting in 2016; two meetings in 2015, one meeting in 2014).

3. CONSULTATION RESULTS

a. Consultation of the Member States' tax authorities

A large majority of Member States' tax authorities is of the opinion that tax recovery assistance has improved under Directive 2010/24. All Member States but one have confirmed that this Directive has made it easier for them to provide and to receive mutual recovery assistance, compared to the situation which existed under the previous legal framework. Almost all Member States consider that the use of uniform instruments permitting enforcement in the requested Member States (UIPE) facilitates the preparation of requests for assistance and makes processing of assistance requests from other Member States easier. Most Member States also have a positive opinion about the use of the uniform notification forms (UNF) which accompany the documents for which notification assistance is requested. Both the applicant and requested Member States agreed in (large) majority that the biggest advantages of the UIPE and UNF were, broadly, the avoidance of recognition issues, their electronic handling which made it easier to send/request/process requests, automated translation which was saving cost and time, resistance to errors and better overall communication (smoother notification process and debtors being well informed).

A majority of Member States consider that the extension of the scope of the Directive to all taxes is useful, although most requests for assistance still relate to the main categories of taxes (income taxes and VAT).

[81] https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations_en.

Some new possibilities for mutual assistance (the possibility for tax officials of one Member State to go to another Member State and to be present during administrative enquiries and to assist officials of the requested Member State during court proceedings in that State) appear not to be used, for different reasons. (It was not yet necessary to use it; or tax officials are not aware of this possibility).

In general, the Member States agreed that the Directive is meeting the needs of their administrations, and specifically reducing administrative costs and burdens of cooperation, and improving tax collection.

The Member States were also asked to estimate the administrative burden linked to the execution of the Directive, be it from the position of an applicant country or as the requested country. Although all Member States provided their estimates and despite the fact that the questionnaire was piloted with the experts sitting in the Recovery Expert Group, the replies varied significantly. In the Commission's view, it would not be methodologically robust to attempt drawing any detailed conclusions from the data gathered on this point.

The main difficulties of national authorities occur at national level. Many Member States report they face a lack of staff. Member States focus on the recovery of their own taxes, while less attention is paid to the follow-up of assistance requests. The assistance also seems to be negatively affected by inadequate national legislations and practices, which entail constraints and impediments for international recovery assistance.

Member States also reported about difficulties to retrace debtors or debtors' assets. A better access to information within the Member States could help to improve this situation, although it has to be acknowledged that the recovery possibilities are also affected by the fact that tax debtors may move to third countries or dislocate their assets outside the EU.

Although the current EU framework for recovery assistance is appreciated by the Member States, some suggestions have been made to further strengthen the recovery assistance framework (e.g. for a further extension of the scope to other public claims; the adoption of a uniform instrument permitting precautionary measures; the facilitation of spontaneous exchange of information). Suggestions relating to the implementing provisions (Commission Regulation 1189/2011), which are of a technical nature, are already being dealt with by the Commission and the Recovery Committee, and a revision of this implementing legislation is expected to be adopted in 2017. The suggestions for further improving the Council Directive 2010/24 will need to be further analysed.

b. Open public consultation

Respondents in the public consultation emphasized the need to ensure that all taxes are paid and thus confirmed the relevance and the usefulness of the EU tax recovery assistance framework.

These respondents unanimously agreed that the current EU framework makes it easier for the Member States to help each other recover taxes. Almost all respondents also agreed that this EU framework makes recovery assistance less costly. Most respondents also considered that the existence of the EU framework discourages taxable persons from not paying their taxes in their own and in other Member States.

In this regard, it was observed that he EU should take a strict approach towards non-cooperative Member States or other countries. Several respondents also emphasized the need to strengthen precautionary measures and to ensure timely responses to assistance requests.

At the same time, several respondents underlined the need to respect the rights of defence of the tax debtor and the need to limit the administrative burden for the requested Member State. On the basis of the above considerations, respondents in the public consultation expressed mixed opinions with regard to the questions whether recovery assistance should be provided for contested claims or for claims below the current threshold.

Most respondents also confirmed that the EU and the Member States should take more actions to explain the legislation on mutual tax recovery assistance. This was considered to be in the interest of taxpayers but could also help to have an indirect dissuasive effect. At the same time, most respondents also acknowledged that they were not aware of existing information channels.

It was also requested to ensure a clear and transparent communication about individual recovery assistance requests and about the status of the claims for which assistance is requested.

The two respondents that declared having a personal experience with recovery assistance on the basis of Directive 2010/24 confirmed the tax authorities' views with regard to the usefulness of the uniform notification form (UNF) and the uniform instrument permitting enforcement in the requested Member State (UIPE).

c. Discussions in the Recovery Expert Group

The meetings of the Recovery Expert Group provide an appropriate platform to discuss questions and problems relating to the implementation of Directive 2010/24.

In the period 2014-2016, the questions and discussions in this Expert Group focused, *inter alia*, on the need and the ways to improve information exchange and cooperation between tax recovery authorities and other authorities (social security claims; agricultural claims), information exchange concerning vehicle related data, and the handling of requests for precautionary measures by the adoption of a form listing information explaining and justifying the need for precautionary measures.

4. CONCLUSIONS

a. The statistical information provided by the Member States shows an increased use of all types of assistance requests (requests for information, requests for notification, requests for recovery and precautionary measures). The recovered amounts are also increasing (although there was a temporary decrease in 2012, when the new Directive had to be implemented in the Member States).

b. The consultation of the tax authorities responsible for mutual tax recovery assistance confirmed that the Directive 2010/24 improved and facilitated recovery assistance between the Member States, in particular via the use of the uniform instruments (uniform notification form (UNF) and uniform instrument permitting enforcement in the requested Member State (UIPE)). The use of these uniform instruments was also appreciated by the – very few – respondents in the public consultation that expressed a view on this point.

c. The responses to both stakeholder consultations confirmed that the success of the tax recovery assistance is or can be affected by:

- Member States not fulfilling their obligations to provide recovery assistance (due to weaknesses of the internal tax recovery systems or lack of efforts to provide such assistance), or
- the fact that other countries do not provide the same tax recovery assistance.

d. Stakeholders have made a number of suggestions for further improving the EU recovery assistance framework.