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This newsletter is produced by the services of the European Commission, in cooperation with the EU Member States.

It is available on the CIRCABC website managed by the European Commission.

It can be found under the category "Tax Collection" (with free access).

[EUROPA > European Commission > CIRCABC > Taxation & Customs Union > Tax Collection \(public group\)](#)

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http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/tax_recovery/index_en.htm

Reference recommendation: *EU & Int. Tax Coll. News*

LEGISLATION

EU

Commission Implementing Regulation (EU) 2017/1966

of 27 October 2017

amending Commission Implementing Regulation (EU) No 1189/2011 as regards the communication of assistance requests and the follow-up to those requests

This Regulation was published in OJ L 279/38 of 28.10.2017. It enters into force on 17.11.2017.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, and other measures¹, and in particular Article 26 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 1189/2011² lays down detailed rules concerning the communication of tax recovery assistance requests, the follow-up of those requests, the use of standard request forms and uniform instruments between the authorities in Member States and the transfer of recovered amounts in relation to certain mutual assistance provisions of Directive 2010/24/EU.

- (2) In order to ensure that the applicant Member State is fully informed about the follow-up of a request for notification, it is appropriate to specify that the requested authority should inform the applicant authority about the manner of notification.
- (3) In order to facilitate the handling of requests for precautionary measures, a standard form for the communication of specific reasons and circumstances for such requests should be developed.
- (4) In order to ensure legal certainty, it is appropriate to specify which claims can be mentioned in the uniform instrument permitting enforcement in the requested Member State.
- (5) In order to facilitate the handling of requests for recovery, the rules concerning the exchange rate and the transfer of recovered amounts should be adapted and it should be clarified how an increase in the amount of a claim should be communicated.
- (6) The structure and lay-out of the standard form accompanying the request for notification and of the uniform instrument permitting enforcement in the requested Member State should be also adapted so as to align them to the requirements of an electronic communication system and for future use in international agreements.

The measures provided for in this Regulation are in accordance with the opinion of the Recovery Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1189/2011 is amended as follows:

- (1) in Article 12, paragraph 2 is replaced by the following:
- '2. The requested authority shall inform the applicant authority of the date and the manner of notification as soon as this has been effected, by certifying the notification in the request form returned to the applicant authority.'
- (2) Article 15 is replaced by the following:

Article 15

- '1. Requests for recovery or for precautionary measures shall include a declaration that the conditions laid down in Directive 2010/24/EU for initiating the mutual assistance procedure have been fulfilled.
2. In case of a request for precautionary measures, this declaration may be supplemented by a declaration specifying the reasons and circumstances of the

¹ OJ L 84, 31.3.2010, p. 1.

² Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 302 19.11.2011, p. 16).

request, established in accordance with the model set out in Annex III.;

(3) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. A single uniform instrument permitting enforcement in the requested Member State may be issued in respect of several claims and several persons, corresponding to the initial instrument or instruments permitting enforcement in the applicant Member State.;

(b) the following paragraphs 3a and 3b are inserted:

'3a. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, one or more of which have already been collected or recovered, the uniform instrument permitting enforcement in the requested Member State shall only refer to those claims for which recovery assistance is requested.

3b. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, the applicant authority may list those claims in different uniform instruments permitting enforcement in the requested Member State, in line with the tax type related division of competences of the respective recovery offices in the requested Member State.;

(4) in Article 18, paragraph 2 is replaced by the following:

'2. The exchange rate to be used for the purposes of the recovery assistance shall be the exchange rate published by the European Central Bank on the date before the date the request is sent. Where there is no such rate available on that date, the exchange rate used shall be the latest exchange rate published by the European Central Bank before the date the request is sent.;

(5) in Article 22, paragraph 5 is replaced by the following:

'5. Where the adjustment referred to in paragraph 2 entails an increase in the amount of the claim, the applicant authority may address to the requested authority an amended request for recovery or for precautionary measures.

That amended request shall, as far as possible, be dealt with by the requested authority at the same time as the initial request from the applicant authority. Where, in view of the state of progress of the existing procedure, consolidation of the amended request with the initial request is not possible, the requested

authority shall comply with the amended request only if it concerns an amount not less than that referred to in Article 18(3) of Directive 2010/24/EU.;

(6) in Article 23(1), the first and second subparagraphs are replaced by the following:

'1. The amounts that have to be remitted to the applicant authority, in accordance with Article 13(5) of Directive 2010/24/EU, shall be transferred to the applicant authority in Euro unless the Member States have agreed to transfer recovered amounts in another currency.

The transfer of the recovered amounts shall take place within two months of the date on which recovery was effected unless otherwise agreed between the Member States.;

(7) Annex I is replaced by the text set out in Annex I to this Regulation.

(8) Annex II is replaced by the text set out in Annex II to this Regulation.

(9) Annex III of this Regulation, is added as Annex III.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

**Uniform notification form providing information about notified document(s)
(to be transmitted to the addressee of the notification)⁽¹⁾⁽²⁾**

This document, established in accordance with *Article 10 of Commission Regulation (EU) No 1189/2011 of 18 November 2011* accompanies document(s) hereby notified by the competent authority of the following State: [name of requested State].

This notification concerns documents of the competent authorities of the following State: [name of applicant State], which asked for notification assistance, in accordance with *Article 8 of Council Directive 2010/24/EU of 16 March 2010*.

A. ADDRESSEE OF THE NOTIFICATION

- Name:
- Address (known or assumed):
- Other data relevant to the identification of the addressee:

B. PURPOSE OF THE NOTIFICATION

This notification is intended:

- to inform the addressee, about the document(s) to which this document is attached.*
- to interrupt the period of limitation with regard to the claim(s) mentioned in the notified document(s).*
- to confirm the addressee, about his/her obligation to pay the amounts mentioned under point D.*

Please note that in case of non-payment, the authorities may take enforcement and/or precautionary measures to ensure the recovery of the claim(s). This may cause extra costs charged to the addressee.

You are the addressee of this notification, as you are considered to be:

- the principal debtor*
- a co-debtor*
- a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures, under the laws in force in the applicant State*
- a person other than the (co-)debtor, holding assets belonging to, or having debts towards, the (co-)debtor or to any other person liable*
- a third party which may become affected by enforcement measures concerning other persons*

(The following information will appear if the addressee of the notification is a person other than the (co-)debtor, holding assets belonging to, or having debts towards, the (co-)debtor or to any other person liable, or a third party which may become affected by enforcement measures concerning other persons:

The notified documents concern claims relating to taxes and duties, for which the following person(s) is (are) liable as

- the principal debtor: [name and address (known or assumed)]*
- a co-debtor: [name and address (known or assumed)]*
- a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures, under the laws in force in the applicant State: [name and address (known or assumed)].*

¹ The elements put in *Italic* are optional.

² Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

The applicant authority of the applicant State (name of the applicant State) invited the competent authorities of the requested State (name of the requested State) to make this notification before [date]. Please note that this date is not specifically related to any period of limitation.

C. OFFICE(S) RESPONSIBLE FOR THE NOTIFIED DOCUMENT(S)

Office responsible with regard to the attached document(s):

- Name:

- Address:

- Other contact details:

- Language(s) in which this office can be contacted:

Further information about the notified document(s) and/or the possibility to contest the obligations can be obtained

at the above- mentioned office responsible with regard to the attached document(s), and/or

from the following office:

- Name:

- Address:

- Other contact details:

- Language(s) in which this office can be contacted:

D. DESCRIPTION OF THE NOTIFIED DOCUMENT(S)

Document [number]

- Reference number:

- Date of establishment:

- Nature of the notified document:

Tax assessment

Payment order

Decision following an administrative appeal

Other administrative document:

Judgment or order of:

Other judicial document:

- Name of the claim(s) concerned (in the language of the applicant State):

- Nature of the claim(s) concerned:

a) customs duties

b) value added tax

c) excise duties

d) tax on income or capital

e) tax on insurance premiums

f) inheritance and gift taxes

g) national taxes and duties on immovable property, other than the above-mentioned ones

h) national taxes and duties on the use or ownership of means of transport

i) other taxes and duties levied by or on behalf of the applicant State

j) 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

k) taxes and duties levied by or on behalf of local authorities

l) other tax-based claim

m) 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

- Amount of the claim(s) concerned:

Principal amount:

Administrative penalties and fines:

Interest up to [date]:

Costs up to [date]:

Fees for certificates and similar documents issued in connection with administrative procedures related to the claim mentioned under point [x]:

Total amount for this (these) claim(s):

- The amount mentioned under point [x] should be paid:

before:

within [number] days following the date of this notification

without any further delay

- This payment should be made to:

- Holder of the bank account:

- International Bank Account Number (IBAN):

- Bank Identification Code (BIC):

- Name of the bank:

- Reference to be used for the payment:

- The addressee can reply to the document(s) that is (are) hereby notified.

Last day for replying:

Time period for replying:

- Name and address of the authority to whom a reply can be sent:

- Possibility to contest:

The period to contest the claim or the notified document(s) has already come to its end.

Last day for contesting the claim:

Time period to contest the claim: [number of days] following

the date of this notification.

the establishment of the notified document(s)

another date:

- Name and address of the authority where a contestation has to be submitted:

Please note that disputes concerning the claim, the instrument permitting enforcement or any other document originating from the authorities of the applicant State (name of applicant State), fall within the competence of the competent bodies of the applicant State (name of applicant State), in accordance with Article 14 of Council Directive 2010/24/EU.

Any such dispute is governed by the procedural and language rules applying in the applicant State (name of applicant State).

Please note that the recovery may begin before the end of the period within which the claim may be contested.

- Other information:

ANNEX II

**Uniform instrument permitting enforcement of claims
covered by Council Directive 2010/24/EU ⁽¹⁾(²)**

UNIFORM INSTRUMENT PERMITTING ENFORCEMENT OF CLAIMS COVERED BY COUNCIL DIRECTIVE 2010/24/EU

- *Date of issue:*

- *Reference number:*

REVISED UNIFORM INSTRUMENT PERMITTING ENFORCEMENT OF CLAIMS COVERED BY COUNCIL DIRECTIVE 2010/24/EU

- *Date of issue of the original uniform instrument:*

- *Date of revision:*

- *Reason for the revision:*

judgment or order of [name of the Court] of [date]

administrative decision of [date]

- *Reference number:*

State where this document is issued: [name of applicant State]

Each EU Member State can request recovery assistance from other Member States for unpaid claims referred to in Article 2 of Council Directive 2010/24/EU. This Directive has been adopted by the Council of the European Union on 16 March 2010 and is to be applied in all EU Member States.

Recovery measures taken by the requested State are based on:

a uniform instrument permitting enforcement, in accordance with Article 12 of this Directive.

a revised uniform instrument permitting enforcement, in accordance with Article 15 of this Directive (to take account of the decision of the competent body referred to in Article 14(1) of this Directive).

This document is the uniform instrument permitting enforcement (including precautionary measures). It concerns the claim(s) mentioned below, which remain(s) unpaid in the applicant State (name of applicant State). The initial instrument for the enforcement of this/these claim(s) has been notified in so far as required under the national law of the applicant State (name of applicant State).

Disputes concerning the claim(s) fall exclusively within the competence of the competent bodies of the applicant State (name of applicant State), in accordance with Article 14 of Directive 2010/24/EU. Any such action shall be brought before them in accordance with the procedural and language rules in force in the applicant State (name of applicant State).

DESCRIPTION OF THE CLAIM(S) AND THE PERSON(S) CONCERNED

Identification of the claim(s) [number]

1. Reference:

2. Nature of the claim(s) concerned:

a) customs duties

b) value added tax

¹ The elements put in *Italic* are optional.

² Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements and possibilities of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

- c) excise duties*
- d) tax on income or capital*
- e) tax on insurance premiums*
- f) inheritance and gift taxes*
- g) national taxes and duties on immovable property, other than the above-mentioned ones*
- h) national taxes and duties on the use or ownership of means of transport*
- i) other taxes and duties levied by or on behalf of the (applicant) State*
- j) 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*
- k) taxes and duties levied by or on behalf of local authorities*
- l) other tax-based claim*
- m) 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*
3. Name of the tax/duty concerned:
4. Period or date concerned:
5. Date of establishment of the claim:
6. Date on which enforcement becomes possible:
7. Amount of the claim still due:
- principal amount:*
- administrative penalties and fines:*
- interest till date before the day the request is sent:*
- costs till date before the day the request is sent:*
- fees for certificates and similar documents issued in connection with administrative procedures related to the tax/duty concerned:*
- total amount of this claim:*
8. Date of notification of the initial instrument permitting enforcement in the applicant State: (name of the applicant State):
- Date:*
- No date available*
9. Office responsible for the assessment of the claim:
- Name:
- Address:
- Other contact details:
- Language(s) in which this office can be contacted:
10. Further information concerning the claim or the possibilities for contesting the payment obligation can be obtained from:
- the office indicated above*
- the following office responsible for the Uniform instrument permitting enforcement:*
- Name:
- Address:
- Other contact details:
- Language(s) in which this office can be contacted:

Identification of the person(s) concerned in the national instrument(s) permitting enforcement

a. The following person is mentioned in the national instrument(s) permitting enforcement

natural person *other*

- Name
- Address (*known or assumed*)
- Other data relevant to the identification of the addressee

Legal representative

- Name
- Address (*known or assumed*)
- Other data relevant to the identification of the addressee

Cause of liability:

principal debtor

a co-debtor

a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures under the laws in force in the applicant State

b. the following person(s) is (are) also mentioned in the national instrument(s) permitting enforcement:

natural person *other*

- Name:
- Address (*known or assumed*):
- Other data relevant to the identification of the addressee:

Legal representative

- Name:
- Address (*known or assumed*):
- Other data relevant to the identification of the addressee:

Cause of liability:

principal debtor

a co-debtor

a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures under the laws in force in the applicant State

Other information:

Overall total amount of the claim(s):

- in the currency of the applicant State:
- in the currency of the requested State:
- in EUR:

Annex III

Declaration specifying reasons and circumstances for a request for precautionary measures

Name of the language(s) of this document	
Declaration specifying reasons and circumstances for a request for precautionary measures ⁽¹⁾ ⁽²⁾	
based on:	Article 16 of Directive 2010/24/EU ...

This declaration is linked to the request for precautionary measures	
with the following reference:	Ref.....
sent by the following applicant State:	
to the following requested State:	

The following information on specific reasons and circumstances for this request is provided:

1. General information	
	1.1. <i>The claim(s) is (are) the subject of an instrument permitting enforcement in the applicant State which is contested.</i>
	1.2. <i>The claim(s) is (are) the subject of an instrument permitting enforcement in the applicant State which is not contested.</i>
	1.3. <i>The claim(s) is (are) not yet subject of an instrument permitting enforcement in the applicant State.</i>
	1.4. <i>The claim(s) is (are) not contested.</i>
	1.5. <i>The claim(s) may no longer be contested by and administrative appeal/by an appeal to the courts.</i>
	1.6. <i>The claim(s) is (are) contested but the laws, regulations and administrative practices in force in the State of the applicant authority allow to take precautionary measures.</i>

2. Justifying documents and/or reasons	
	2.1. <i>This request is accompanied by a uniform instrument permitting recovery in the requested State. Note: this uniform instrument permitting enforcement in the requested State also allows the requested State to take precautionary measures (for requests based on Directive 2010/24/EU: see the second subparagraph of Article 12(1) of that Directive).</i>
	2.2. <i>This request is based on an <u>administrative</u> decision (attached) permitting precautionary measures in the applicant State, which contains the following evaluation:</i>
	2.2.1. <i>Administrative evaluation of the need to take precautionary measures assessed by:</i>
	name of the authority:
	address of the authority:
	date of this decision: DD/MM/YYYY
	details contact person:
	2.2.2. <i>Circumstances</i>
	<i>The instrument permitting enforcement is contested.</i>
	<i>The claim(s) is (are) not yet the subject of an instrument permitting enforcement.</i>
	<i>The contesting of the claim(s) by the debtor was already rejected in first instance, but this decision is not final.</i>
	2.2.3. <i>This authority has allowed precautionary measures in the applicant State in accordance with its national law, on the following date:</i> DD/MM/YYYY

¹ The elements put in *Italic* are optional. It is suggested to remove subsections that are not selected.

² Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements and possibilities of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

	2.2.4. The precautionary measures are considered to be justified for the following reasons, demonstrating the urgency and the risk that collection and recovery could be thwarted or seriously hindered:	
		high (estimated) amount of the (expected) debt / significant debiting
		suspicion of fraud
		person(s) concerned making themselves insolvent
		restructuring of assets
		alienation of property
		attempt to hide/conceal/dissipate assets
		careless business management
		frequent change of residence
		relocation of property abroad
		debtor not respecting earlier payment agreements
		other elements / reasons: ...
	Short explanation (recommended): ...	
	2.3. This request is based on a <u>judicial</u> confirmation (attached) that precautionary measures are justified:	
	2.3.1. Judicial evaluation of the need to take precautionary measures assessed by:	
	name of the Court:	
	address of the Court:	
	date of the decision:	DD/MM/YYYY
	(Details contact person:)	
	2.3.2. The Court decided:	
		at the unilateral request of the tax authorities
		following the contesting of the claim by the debtor, by another person liable or by another person subject to the precautionary measures
	2.3.3. This Court has allowed precautionary measures in the applicant State in accordance with its national law, on the following date:	DD/MM/YYYY
	2.4. This request for precautionary measures is based on the reasons mentioned in the attached document(s).	
	2.5. Precautionary measures are justified for the following reasons, demonstrating the urgency and the risk that collection and recovery could be thwarted or seriously hindered:	
		high (estimated) amount of the (expected) debt / significant levels of debt
		suspicion of fraud
		person(s) concerned making themselves insolvent
		restructuring of assets
		alienation of property
		attempt to hide/conceal/dissipate assets
		careless business management
		frequent change of residence
		relocation of property abroad
		debtor not respecting earlier payment agreements
		other elements / reasons:...
	Short explanation (recommended):...	
3. Other information		
	3.1. The authorities of the requested State are requested not to inform the debtor or other person concerned before the start of the precautionary measures.	
	3.2. Other information:...	

OPINIONS AND ARTICLES

The 2017 amendments of Commission Implementing Regulation 1189/2011: what's new?

Caroline EDERY, H  l  ne MICHARD, and Luk VANDENBERGHE

Practical arrangements for the implementation of the EU Council Directive on tax recovery assistance (Directive 2010/24/EU) are laid down in Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011.¹

This implementing Regulation of 2011 has been amended by Commission implementing Regulation 2017/1966 of 27 October 2017.²

This overview provides some guidance with regard to these amendments.

1. In Article 12 of Regulation 1189/2011, paragraph 2 is replaced by the following:

'2. The requested authority shall inform the applicant authority of the date and the manner of notification as soon as this has been effected, by certifying the notification in the request form returned to the applicant authority.'

Explanation

It may occur that debtors argue that they did not receive a document. If a Member State requests notification assistance, it may thus be useful to have information about the way the document concerned was notified by the requested Member State.

The electronic request form already allows to provide this information, but all administrations should effectively report this information.

2. Article 15 of Regulation 1189/2011 is amended as follows:

- **the current text of Article 15 becomes paragraph 1, and**

¹ Commission implementing Regulation (EU) 1189/2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, OJ L 302/16 of 19.11.2011.

² OJ L 279/38 of 28.10.2017.

- **the following paragraph is inserted:**

'2. In case of a request for precautionary measures, this declaration may be supplemented by a declaration specifying the reasons and circumstances of the request, established in accordance with the model set out in Annex III.'

Explanation

This amendment follows from the Commission's VAT action plan of 2016,³ in which the Commission announced its intention to facilitate the cross-border use of precautionary measures safeguarding the recovery of VAT claims. The use of precautionary measures is indeed important to guarantee the collection of taxes, particularly in the fight against fraudsters arranging their own insolvency.

A new standard form has been developed in order to help the applicant authority to provide a clear indication of the circumstances and reasons justifying its request for precautionary measures. This facilitates the use of these measures in the requested Member State, in particular in view of authorisation procedures in the requested Member States or disputes with the debtor.

Directive 2010/24 does not impose the use of a form for substantiating and justifying a request for precautionary measures. For that reason, the use of this form is not made obligatory. However, Member States are encouraged to effectively use this form, in their own interest.

3. Article 16 of Regulation 1189/2011 is amended as follows:

- a) **paragraph 2 is replaced by the following:**

'2. A single uniform instrument permitting enforcement in the requested Member State may be issued in respect of several claims and several persons, corresponding to the initial instrument or instruments permitting enforcement in the applicant Member State.'

Explanation

A request for recovery assistance may relate to multiple claims. These claims may be the object of many initial instruments permitting enforcement in the applicant Member State.

It is clarified that one uniform instrument permitting enforcement in the requested Member State (UIPE) can group the claims which are the subject of separate initial instruments.

Indeed, it does not make sense to oblige the applicant Member State to create a separate uniform instrument

³ VAT Action plan COM(2016)148.

permitting enforcement in the requested Member State for each separate initial instrument permitting enforcement in the applicant Member State, as this would entail an unnecessary administrative burden.

b) the following paragraph 3a is inserted:

'3a. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, one or more of which have already been collected or recovered, the uniform instrument permitting enforcement in the requested Member State shall only refer to those claims for which recovery assistance is requested.'

Explanation

The UIPE should reflect the content of the initial instrument permitting enforcement in the applicant Member State. However, this does not mean that the request for recovery – and the accompanying UIPE – should mention the claims that have been paid or recovered between the moment of adoption of the initial instrument permitting enforcement in the applicant MS and the moment of the request for recovery assistance. This clarification confirms that the UIPE should only mention the claims for which recovery assistance is requested.

The purpose is to avoid errors and confusion in the requested Member State, for the requested authorities and the debtor concerned.

c) the following paragraph 3b is inserted:

'3b. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, the applicant authority may list those claims in different uniform instruments permitting enforcement in the requested Member State, in line with the tax type related division of competences of the respective recovery offices in the requested Member State.'

Explanation

The execution of a request for recovery depends on the internal organisation of the competent authorities in the requested Member State. This new paragraph confirms that the applicant Member State may send several recovery requests, each with a UIPE that is limited to the taxes concerned by the related request (even though the initial instrument permitting enforcement in the applicant Member State mentioned more or all these taxes in one document permitting enforcement in the applicant Member State).

Here again, the purpose is to avoid errors and confusion in the requested Member State, for the requested authorities and the debtor concerned.

4. In Article 18 of Regulation 1189/2011, paragraph 2 is replaced by the following:

'2. The exchange rate to be used for the purposes of the recovery assistance shall be the exchange rate published by the European Central Bank on the date before the date the request is sent. Where there is no such rate available on that date, the exchange rate used shall be the latest exchange rate published by the European Central Bank before the date the request is sent.'

Explanation

Under the former provision, the exchange rate used was the last exchange rate published in the Official Journal before the date the request is sent. The new rule refers to the exchange rate published by the European Central Bank.

In practice, this does not imply a real change, since the publication in the Official Journal is based on the data of the European Central Bank. The present amendment is meant to reduce the administrative burden for the applicant Member State. Instead of searching the right issue of the Official Journal, the tax authorities will just have to consult the website of the European Central Bank.

By using this reference, future technical developments of the electronic request forms will permit an automated integration of the currency exchange rate.

5. In Article 22 of Regulation 1189/2011, paragraph 5 is replaced by the following:

'5. Where the adjustment referred to in paragraph 2 entails an increase in the amount of the claim, the applicant authority may address to the requested authority an amended request for recovery or for precautionary measures.

That amended request shall, as far as possible, be dealt with by the requested authority at the same time as the initial request from the applicant authority. Where, in view of the state of progress of the existing procedure, consolidation of the amended request with the initial request is not possible, the requested authority shall comply with the amended request only if it concerns an amount not less than that referred to in Article 18(3) of Directive 2010/24/EU.'

Explanation

The word "additional" is replaced by the word "amended" in order to avoid confusion and to ensure conformity with the wording used in Art. 15 of Council Directive 2010/24/EU.

6. Article 23 of Regulation 1189/2011 is amended as follows:

a) In paragraph 1, the first subparagraph is replaced by the following:

'1. The amounts that have to be remitted to the applicant authority, in accordance with Article 13(5) of Directive 2010/24/EU, shall be transferred to the applicant authority in Euro unless the Member States have agreed to transfer recovered amounts in another currency.'

Explanation

In the past, the transfer had to be done "in the currency of the requested Member State". In some cases, the application of this former provision raised practical problems. The new rule takes account of the growing number of Member States using the Euro. At the same time, flexibility is ensured, e.g. in situations of recovery assistance between 2 non-Euro Member States.

(b) In paragraph 1, the second subparagraph is replaced by the following:

'The transfer of the recovered amounts shall take place within two months of the date on which recovery was effected unless otherwise agreed between the Member States.'

Explanation

If instalment plans are agreed, it may be burdensome for the requested Member State to transfer the small partial payments resulting from the instalment plan. Therefore, Member States wish to derogate from the general rule of transfer of recovered amounts within 2 months, on the basis of bilateral agreements between the applicant Member State and the requested Member State.

7. Annex I to Regulation (EU) No 1189/2011 is replaced by the text set out in Annex I to this Regulation.

Explanation

This amendment does not constitute a fundamental change. It is only intended to align this model to the updates in the electronic version of the assistance request forms (the order of some parts has been switched; new elements are added; some elements are removed in the printed version if they are not filled out).

At the same time, it is ensured that this model is adapted for a possible future use on the basis of recovery assistance agreements with third countries.

8. Annex II to Regulation (EU) No 1189/2011 is replaced by the text set out in Annex II to this Regulation.

Explanation

Same comments as under point (7).

9. Annex III, the text of which is set out in Annex III to this Regulation, is added.

Explanation

See point (2).

ACTIVITIES AND NEWS

EU Explanatory notes on tax recovery assistance

INTRODUCTION

On 16 March 2010, the Council of the EU adopted Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84/1 of 31.3.2010). On 18 November 2011, the Commission adopted implementing Regulation 1189/2011 laying down detailed rules in relation to certain provisions of this Council Directive.

The EU Recovery Expert Group, which monitors the implementation of the above EU legislation, adopted these Explanatory Notes. These Explanatory Notes do not constitute an instrument providing an authoritative interpretation of the text of this legislation, although they may facilitate the understanding of the provisions concerned.

OVERVIEW OF EXPLANATORY NOTES RELATING TO THE EU LEGISLATION CONCERNING MUTUAL TAX RECOVERY ASSISTANCE

VERSION 16 June 2017

General comment

Temporal effects of the EU-Directives on mutual recovery assistance

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Art. 6 - Similar requests to other authorities

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Art. 14 - Language regime for the notification by the requested authority

Art. 16(1) - Responsibility with regard to the UIPE

Art. 16(2) and (3) - Global UIPE

Art. 18(2) - Exchange rate to be used

Art. 20 - Closing and reopening of the procedure for recovery or for precautionary measures

¹ UIPE = uniform instrument permitting enforcement in the requested Member State.

DIRECTIVE-0 (general comments)**1. Temporal effects of the EU-Directives on mutual recovery assistance**

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

The Court of Justice decided that the directive is to be interpreted as applying to claims which arose in one Member State under an instrument issued by that State before that directive entered into force in the other Member State, where the requested authority is situated (Court of Justice, 1 July 2004, joined cases C-361/02 and C-362/02, Tsapalos and Diamantakis, ECR, 2004, I-6405).

The Court based its conclusion on the fact that the directive governs only the recognition and enforcement of certain categories of claims which arise in another Member State, without setting out rules relating to their accrual or their scope. Therefore, its rules must be regarded as procedural rules which can also be applied to claims arising before its entry into force (point 20 of the judgment), without offending against the principles of legal certainty and the protection of legitimate expectations (Cf. conclusions of advocate general Kokott of 19.02.2004, point 22).

2. Although the judgment of the Court only concerned customs duties, the same conclusions also apply to other claims, falling within the scope of the directive.

3. The procedural character of the rules of the directive further implies that a new Member State can also rely on the directive to request mutual recovery assistance for claims, falling within the scope of the directive, which have arisen in that Member State before its accession to the EU.

DIRECTIVE-Article 2**1. Art. 2(2)(a) of Council Directive 2010/24/EU****Administrative penalties**

"2. The scope of this Directive shall include:

(a) administrative penalties, fines, fees and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraph 1, imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities; (...)"

EXPL. NOTE:

1. Given the broad wording of this provision, it is considered that the Directive can also be used for recovery assistance with regard to administrative penalties imposed because of non-respect of tax and duties rules, even in situations where these taxes and duties themselves are not due (or not due anymore, because they are already paid). This is confirmed by the fact that this sentence also refers to administrative penalties imposed by the administrative authorities that are competent "to (...) carry our administrative enquiries with regard to them" (i.e. not the authorities that are competent to levy the taxes or duties concerned).

e.g. Art. 42(1) of the Union Customs Code (Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013) provides that: *"Each Member State shall provide for penalties for failure to comply with the customs legislation."* (The term "customs legislation" is defined in Art. 5(2) of the same Regulation.) There may be situations where such penalties are imposed, even though there are no customs duties to be paid. The recovery assistance Directive 2010/24/EU covers the administrative penalties applied in such situations.

2. With regard to the distinction between Art. 2(2)(a) and Art. 2(3)(d), the Council Presidency has noted: "It must be clear that penalties imposed by penal bodies and resulting from the action of a public prosecutor are excluded. However, in some Member States certain penalties are confirmed by a Court at the request of the administrative authorities and these should be covered by this Proposal." This view was accepted by all Member States and expressed in the above provisions.

2. Art. 2(2)(b) and 2(3)(b) of Council Directive 2010/24/EU**Fees**

"(2) The scope of this Directive shall include: (...) (b) fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties. (...)"

(3) This Directive shall not apply to: (...) (b) fees not referred to in paragraph 2".

EXPL. NOTE:

The following examples can be given (in line with the discussions in the Council negotiations):

- a fee for the delivery of a passport does not fall within the scope of the Directive.
- a fee for a certificate, delivered by the tax authorities, confirming that your taxable income is below a certain threshold, or confirming that you are considered as a non-resident for tax purposes, falls within the scope of the Directive.

- a special fee, charged because of extra work that the tax authorities have to make to assess the deemed taxable income in case of non-declaration, falls within the scope of the Directive;
- a fee charged by the tax authorities for a special analysis needed to determine the customs tariff classification of imported goods, falls within the scope.

DIRECTIVE-Article 10

1. Art. 10(1) of Council Directive 2010/24/EU

Recovery request – conditions relating to time to pay or payments by instalment

"At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant Member State."

EXPL. NOTE:

The applicant Member State may express its wishes or concerns about the time to pay or payments by instalment. This can be done in the request form.

DIRECTIVE-Article 11

1. Art. 11(2) of Council Directive 2010/24/EU

Conditions for a recovery request – disproportionate difficulty

"Before the applicant authority makes a request for recovery, appropriate recovery procedures available in the applicant Member State shall be applied, except in the following situations:

(a) where it is obvious that there are no assets for recovery in the applicant Member State or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested Member State;

(b) where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty."

EXPL. NOTE:

The term "disproportionate difficulty" in Art. 11(2)(b) is identical to the wording used in Art. 21(2)(g) of the Joint Council of Europe – OECD Convention on mutual administrative assistance in tax matters (as replaced by Article V of the Protocol of 27 May 2010). Hence, it can be understood in the same way. In this regard, reference is made to Explanatory report to the Joint Council of Europe – OECD Convention, point 231: "For instance, in the case of assistance in recovery, some assets might only be seized through lengthy proceedings in the applicant State, while there are other assets in the requested State that can be seized more easily."

DIRECTIVE-Article 12

1. Art. 12(1) of Council Directive 2010/24/EU

UIPE

"Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the requested Member State."

This uniform instrument permitting enforcement in the requested Member State shall reflect the substantial contents of the initial instrument permitting enforcement, and constitute the sole basis for the recovery and precautionary measures taken in the requested Member State. (...)"

EXPL. NOTE:

1. The UIPE does not require a signature. (This is not required by the regulation).

2. The UIPE constitutes the sole basis "for the recovery **and precautionary measures** taken in the requested Member State".

This reference to precautionary measures must be understood within the framework of this provision, which relates to requests for recovery (see the first sentence of Art. 12(1)). In this regard, precautionary measures, which are auxiliary and ancillary to the recovery, can also be taken on the basis of the UIPE, and they do not require another specific document or instrument.

Of course, this does not imply that a request for precautionary measures – as referred to in Art. 16 of Council Directive 2010/24/EU – should always be accompanied by a UIPE.

3. Art. 12(1), 2nd al. of Directive 2010/24/EU - which states that the UIPE shall reflect the substantial contents of the initial instrument permitting enforcement - must be understood in such a way that it only requires that the claims (and the substantial elements of these claims) mentioned in the UIPE should be in line with the description of the same claims in the initial instrument permitting enforcement in the applicant Member State. Indeed, the UIPE cannot be used to create new claims beyond what was put in the initial instrument (apart from additional costs and interest).

If the initial instrument permitting enforcement in the applicant Member State mentions one (or more) claim(s) that is (are) no longer due at the moment of the recovery request, this (these) claim(s) should not be mentioned in the UIPE accompanying the recovery request. Indeed, it makes no sense to put a claim in the UIPE if it has already been recovered. It would even be unacceptable to put this claim in the UIPE: once a claim has been paid (or recovered), the tax authorities cannot create a new enforcement title for this tax.

DIRECTIVE-Article 13**1. Art. 13(1), third subparagraph of Council Directive 2010/24/EU****Preferences (not) accorded to another Member States' claims**

"The requested Member State shall not be obliged to grant other member States' claims preferences accorded to similar claims arising in that Member State, ..."

EXPL. NOTE:

The word "preferences" (FR: "préférences"; DE: "Vorrechte") refers to the "preferential treatment" (= the wording used in Article 10 of Directive 76/308/EEC) which is given – or may be given – to tax claims in the requested Member State.

It should be interpreted in accordance with the term "priority" which is used in the corresponding provisions in other conventions dealing with tax recovery assistance:

- Art. 15 of the OECD-Council of Europe Convention of 25.01.1988 provides that: *"the tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State..."*.
- Paragraph 5 of Article 27 of the OECD Model Convention provides that: *"... a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be ... accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.*

The Explanatory report to the OECD-Council of Europe Convention and the Commentary to the OECD Model Convention confirm that this preference (priority) is to be understood as giving preference (priority) to the tax claims, over the claims of other creditors of the tax debtor:

- Explanatory report to the OECD-Council of Europe Convention, point 148:

"In order to ensure that they can recover taxes to the fullest possible extent, States generally include in their laws provisions giving their tax claim priority over the claims of other creditors."

- Commentary to Article 27, paragraph 5 of the OECD Model Convention, point 25: *"Paragraph 5 also provides that the rules of both the requested (first sentence) and requesting (second sentence) States giving their own revenue claims priority over the claims of other creditors shall not apply to a revenue claim in respect of which a request has been made under paragraph 3 or 4."*

Article 13(1), third subparagraph, of Directive 2010/24/EU has to be understood in the same way: tax claims for which recovery assistance is requested by other Member States, do not necessarily have priority, in the Member State of the requested authority, over the claims of other creditors of the tax debtor. (This will be different if otherwise agreed between the Member States concerned or provided in the law of the requested Member State (see text of Art. 13(1), third subparagraph)).

DIRECTIVE-Article 14**1. Art. 14(1) of Council Directive 2010/24/EU****Contestation of the UIPE**

"Disputes concerning ... the uniform instrument permitting enforcement in the requested Member State ... shall fall within the competence of the competent bodies of the applicant Member State."

EXPL. NOTE:

Any contestation of the UIPE can only be brought before the authorities of the applicant Member State, and only to the extent provided for in the legislation of that Member State.

The contestation of the UIPE can relate to the consistency between the initial act and the UIPE. If the UIPE corresponds to the initial act, the initial act will have to be contested (and not only the UIPE).

2. Art. 14(1) of Council Directive 2010/24/EU**Notifications made by the applicant Member State**

*"Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and **disputes concerning the validity of a notification made by a competent authority of the applicant Member State shall fall within the competence of the competent bodies of the applicant Member State.** If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there."*

EXPL. NOTE:

The "disputes concerning the validity of a notification made by a competent authority of the applicant Member State" may relate to any notification made by this authority. Such notification could relate to the initial instrument permitting enforcement in the applicant Member State or to any other document relating to the claim. It could also relate to the UIPE.

This does not imply that the applicant Member State should always notify the UIPE.

Example: a German national is born in Germany and speaks only German. He moves to Austria. Germany will probably notify the initial instrument permitting enforcement in Germany. But there is no need for Germany to notify the UIPE in Austria. If Germany sends a request for recovery to Austria, this request will be accompanied by the UIPE. Austria may have to notify the UIPE, but this depends on the internal legislation of this requested MS. Anyhow, the recovery measures taken by the Austrian authorities would have to be based on the UIPE.

DIRECTIVE-Article 16

1. Art. 16(1), 2nd subparagraph of Council Directive 2010/24/EU

Document permitting precautionary measures

"The document drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the requested Member State. This document shall not be subject to any act of recognition, supplementing or replacement in the requested Member State."

EXPL. NOTE:

The precise use of this provision will depend on the specific circumstances of the case.

e.g. A UIPE is added to the request for recovery. The UIPE will be the sole basis for the recovery measures taken in the requested Member State. The UIPE could also be the basis for a request for precautionary measures taken by the requested authority. If such a request is sent there is no need and no obligation to attach the initial IPE (instrument permitting enforcement measures in the applicant Member State).

e.g. There may be situations where a UIPE is not yet available because there is not yet an initial IPE available in the applicant Member State. But the applicant authority asks for precautionary measures in the requested Member State. In such a case it may be useful to send another document if such a document is available in the applicant Member State.

The request form contains a specific box to confirm that the request for precautionary measures is accompanied by an instrument permitting precautionary measures in the applicant Member State (box 3: "information relating to the request").

In this regard, it should be noted that the applicant Member State is only allowed to make a request for precautionary measures in so far as precautionary measures are also possible, in a similar situation,

under the national law and administrative practices of the applicant Member State (art. 16(1) of Dir. 2010/24/EU).

DIRECTIVE-Article 18

1. Art. 18(2), 4th subparagraph of Council Directive 2010/24/EU

"In those cases ..."

"However, in those cases the requested authority shall not be obliged to grant the assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the applicant Member State".

EXPL. NOTE:

This 4th subparagraph has been added during the Council discussions on this Directive. The Presidency suggested to add this 4th subparagraph, and gave the following explanation: *"(Moreover), in those cases where a postponement of the payment or instalment plan is allowed, the Presidency suggests including a limit of 10 years in order to avoid constant prolongation of the payment period."* This suggestion was accepted by the Member States.

The reference to the situations "where a postponement of the payment or instalment plan is allowed" confirms that this subparagraph 4 only refers to the third subparagraph (and is not related to the 2nd subparagraph) of Article 18(2) of this Directive.

2. Art. 18(3) of Council Directive 2010/24/EU

Threshold applicable to requests for recovery or precautionary measures

"A Member State shall not be obliged to grant assistance if the total amount of the claims covered by this Directive, for which assistance is requested, is less than EUR 1500."

EXPL. NOTE:

1. Art. 18(3) of the Directive is put under Chapter IV, relating to "recovery or precautionary measures", and not under Chapter V with "general rules governing all types of assistance requests".

Accordingly, the conclusion is that the threshold mentioned in this provision only applies to requests for recovery or precautionary measures.

2. It is not forbidden to provide such assistance for lower amounts. Member States could also conclude specific arrangements to provide such wider assistance. Any such arrangement should be reported to the Commission, in accordance with Art. 24(2) of Council Directive 2010/24/EU.

DIRECTIVE-Article 20

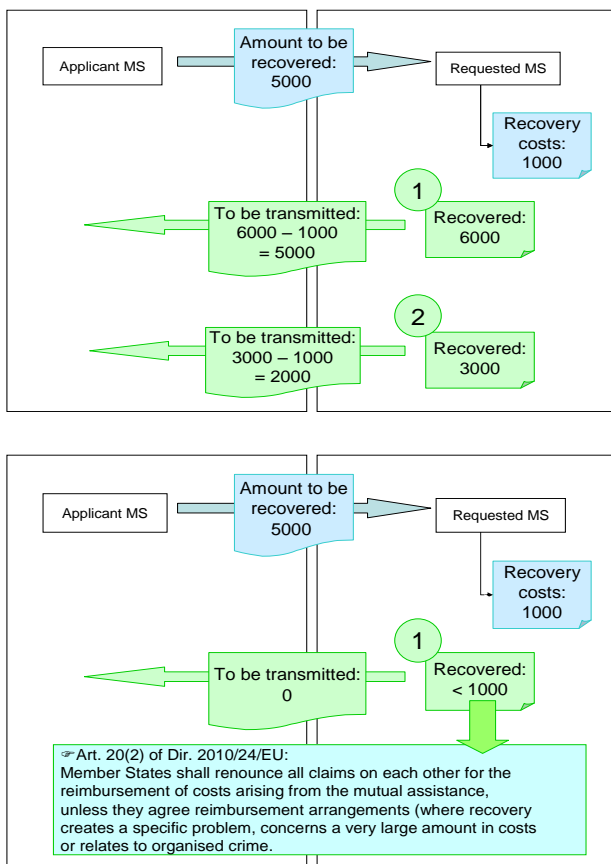
1. Art. 20(1) of Council Directive 2010/24/EU

Amounts to be remitted to the applicant authority – deduction of requested Member State's costs

"In addition to the amount referred to in Art. 13(5), the requested authority shall seek to recover from the person concerned costs linked to recovery that it incurred, in accordance with the laws and regulations of the requested Member State."

EXPL. NOTE:

Art. 20 of the Directive allows the requested Member State to deduct its own costs from the recovered amounts, and to transfer the balance only.



2. Art. 20(2), 2nd subparagraph of Council Directive 2010/24/EU

Reimbursement of costs

"However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question."

EXPL. NOTE:

The new implementing Commission Regulation and Decision do not provide any implementing arrangements with regard to the handling of such requests for reimbursement of costs. (Art. 20 of the

Council Directive is not in the scope of Art. 26 of the Council Directive about implementing powers conferred to the Commission.) However, the Commission recommends that Member States continue to apply the arrangements which were mentioned in Art. 28 of Regulation 1179/2008²), as a "best practice" tool.

DIRECTIVE-Article 21

1. Art. 21(1), 2nd subparagraph of Council Directive 2010/24/EU

Instrument permitting precautionary measures in the applicant Member State

"(...) the document permitting precautionary measures in the applicant Member State (...) shall also be sent by electronic means, unless this is impracticable for technical reasons."

EXPL. NOTE:

There is no uniform document permitting precautionary measures. But there may be national documents permitting precautionary measures in the applicant Member State. Of course, this depends on the national situation of each Member State. Normally, the instrument permitting enforcement in the applicant Member State already allows to take precautionary measures as well. But a Member State may also adopt specific documents allowing precautionary measures (e.g. a document drawn up by the tax authorities in case of suspicions of fraud, to retain VAT credits; or specific judgements ordering or allowing precautionary measures). If such documents accompany a request for precautionary measures, they should also be sent by electronic means.

² Article 28 of Regulation 1179/2008:

"1. If the requested authority decides to request reimbursement arrangements it shall notify the applicant authority of the reasons for its view that recovery of the claim poses a specific problem, entails very high costs or relates to the fight against organised crime.

The requested authority shall append a detailed estimate of the costs for which it requests reimbursement by the applicant authority.

2. The applicant authority shall acknowledge receipt of the request for reimbursement arrangements as soon as possible and in any event within seven days of receipt.

Within two months of the date of acknowledgement of receipt of the said request, the applicant authority shall inform the requested authority whether and to what extent it agrees with the proposed reimbursement arrangements.

3. If no agreement is reached between the applicant and requested authority with respect to reimbursement arrangements, the requested authority shall continue recovery procedures in the normal way."

REGULATION-Article 2**1. Art. 2(3), 1st subparagraph, (a) of Commission implementing Regulation 1189/2011****Requests transmitted by post**

"If a request cannot be transmitted by CCN network, it shall be transmitted by post. In that case the following rules shall apply:

the request shall be signed by an official of the applicant authority, duly authorised to make such a request;"

EXPL. NOTE:

One signature (on one page of the paper document) is sufficient. (In practice, this shouldn't create any problems. First of all, it is unlikely that requests will be sent by post. It appears from the discussions in the Committee that, if the electronic communication network would be temporarily unavailable (which should be exceptional), Member States prefer to wait with their requests till the electronic system is again functioning.

2. Art. 2(3), 1st subparagraph, (c) of Commission implementing Regulation 1189/2011**Certification of documents transmitted by post**

"If a request cannot be transmitted by CCN network, it shall be transmitted by post. In that case the following rules shall apply:

(...) (c) if the request is accompanied by a copy of a document other than the uniform notification form or the uniform instrument permitting enforcement in the requested Member State, the applicant authority shall certify the conformity of this copy with the original, by stating in this copy, in the official language or one of the official languages of the Member State in which it is situated, the words "certified a true copy", the name of the certifying official and the date of that certification."

EXPL. NOTE:

If such a certification does not appear on documents transmitted by post, the requested Member State can take it for granted that the documents transmitted are to be considered as original documents.

REGULATION-Article 3**1. Art. 3(2), c) of Commission implementing Regulation 1189/2011****Third parties having debts towards the tax debtor**

"A request for information, recovery or precautionary measures may relate to any of the following persons:

(...)

(c) any third party holding assets belonging to or having debts towards one of the persons referred to in points (a) or (b)."

EXPL. NOTE:

1. This provision ensures that the salaries paid by an employer to his employee can be seized (including, salaries paid in the future) in order to recover the debts of the employee.

2. With regard to these third parties, the requested Member State can only take measures in accordance with its national laws, regulations or administrative provisions (art. 13 of Directive 2010/24/EU). This should not be understood as interfering with the applicant Member State's competence to determine the liability with regard to its tax claims.

REGULATION-Article 6**1. Art. 6 of Commission implementing Regulation 1189/2011****Similar requests to other authorities**

"Each request for information or for recovery or precautionary measures shall indicate whether a similar request has been addressed to any other authority."

EXPL. NOTE:

This provision relates to similar requests to any other authority in the requested Member State or in another Member State. The purpose is to enable the requested authorities to communicate between themselves in order to co-ordinate their actions in order to achieve the best outcome possible, and to avoid over-enforcement.

REGULATION-Article 13**1. Art. 13(2) of Commission implementing Regulation 1189/2011****Notification of a document relating to more than one type of claim**

"A notification of a document relating to more than one type of tax, duty or other measure, shall be deemed valid if its made by an authority of the requested Member State which is competent for at least one of the taxes, duties or other measures mentioned in the notified document, provided that it is allowed under the national law of the requested Member State."

EXPL. NOTE:

This provision does not affect the obligation of the requested Member State to act in accordance with its national law (Art. 9(1) of Dir. 2010/24/EU) (cf. the last part of this provision: "provided that it is allowed under the national law of the requested Member State").

REGULATION-Article 14**1. Art. 14 of Commission implementing Regulation 1189/2011****Language regime for the notification by the requested authority**

"For the purposes of notification, the requested Member State may use the uniform notification form, referred to in Art. 10(1) in its official language or in one of its official languages in accordance with its national law."

EXPL. NOTE:

1. Member States have to act in accordance with their national law. However, it is important that the addressee understands the document (as illustrated by the Kyrian judgment). For that reason, Member States could provide that the addressee can request to receive this document in one of the other official languages used within the European Union. If they do so, it is recommended:

- that Member States provide that such a request must be made within 7 working days following the date of the notification; and
- that Member States emphasize that such later transmission of other translations does not constitute a new notification and does not affect the date of the notification already made (in the official language of that Member State).

For this purpose, a standard form has been developed (This form is available on the Circa website in a short and a long version).

2. Note: Art. 22(2) of Council Directive 2010/24/EU has to be understood as implying that the documents for which notification is requested may be sent to the requested authority in an official language of the applicant Member State. In the Council's view, the notified documents and the UNF – with translation – will be sufficient to inform the debtor concerned. If this person wants more info, he will be able to contact the competent office in the applicant Member State.

3. Note: Member States may consider to introduce in their national law some kind of refutable presumptions about the languages that the person concerned is presumed to understand ⁽³⁾.

³ Example:

"It is presumed, till proof of the contrary, that the addressee of notifications, made ..., understands the official language or one of the official languages of the applicant Member State:

- *if he has the nationality of the applicant Member State;*
- *if he has been resident or owned a house in the applicant Member State for more than 365 days;*
- *if he has a permanent establishment in the applicant Member State;*
- *if he has had previous contacts with the authorities of the applicant Member State in that official language;*
- *if he has been engaged in business activities in the applicant Member State;*
- *if he has made public announcements or has been advertising in the language of the applicant Member State, irrespective*

4. Note: it should be taken into account that Art. 8(2) of the Directive provides that the applicant authority shall make a notification request only when it is unable to notify itself, or when such notification would give rise to disproportionate difficulties. (with regard to the interpretation of "disproportionate difficulties", see explanatory note 3).

REGULATION-Article 16**1. Art. 16(1) of Commission implementing Regulation 1189/2011****Responsibility with regard to the UIPE**

*"The uniform instrument permitting enforcement in the requested Member State accompanying the request for recovery or for precautionary measures pursuant to Art. 12 of Directive 2010/24/EU shall be **completed by or under the responsibility of the applicant authority**, on the basis of the initial instrument permitting enforcement in the applicant Member State."*

EXPL. NOTE:

The UIPE has to be drawn up "by or under the responsibility of the applicant authority". The applicant authority is the authority, designated by each Member State, responsible for sending the requests. However, who is filling out the instrument is up to each Member State to decide. So, even though the request is sent by the applicant authority, the UIPE can be filled out by the applicant authority and/or by another (local) office in the applicant Member State.

2. Art. 16(2) and (3) of Commission implementing Regulation 1189/2011**Global UIPE**

"A single uniform instrument permitting enforcement in the requested Member State may be issued in respect of several claims and several persons, corresponding to the initial instrument permitting enforcement in the applicant Member State."

"In so far as initial instruments permitting enforcement for several claims in the applicant Member State have already been replaced by a global instrument permitting enforcement for all these claims in that Member State, the uniform instrument permitting enforcement in the requested Member State may be based on the initial instruments permitting enforcement in the applicant Member State or on that global instrument regrouping those initial instruments in the applicant Member State."

EXPL. NOTE:

1. The UIPE should reflect the initial instrument of the applicant Member State (in line with Art. 12(1), 2nd subpara. of the Council Directive). So the UIPE

whether he did this materially in the territory of the applicant Member State or through a website in another State."

may contain several claims concerning different taxes, if the initial instrument contains the same claims.

However, the UIPE should not necessarily contain all the claims mentioned in the initial instrument of the applicant Member State. If some of the claims of the initial instrument have already been paid or recovered, there is of course no need to mention these claims in the UIPE. And if the applicant Member State has to send 2 (or more) recovery requests to different mailboxes, then it should send each recovery request with a UIPE which is limited to the taxes concerned by that request (even though the initial instrument permitting enforcement in the applicant Member State mentioned more or all these taxes in one document).

2. The applicant Member State should send its request to the appropriate mailbox in the requested Member State. It is then up to the requested Member State to see who is competent to recover the claims for which recovery assistance is requested. This will of course depend on the internal organisation of the requested Member State.

e.g. The requested authority competent for VAT will recover the VAT claim for which assistance is requested. It will use the UIPE which contains the VAT claim (irrespective of whether the UIPE also contains other claims falling within the competence of another authority in the requested Member State).

REGULATION-Article 18

1. Article 18(2) of Commission Implementing Regulation (EU) 1189/2011

Exchange rate to be used

*"The exchange rate to be used for the purposes of the recovery assistance shall be the last exchange rate **published in the Official Journal of the European Union before the date the request is sent.**"*

EXPL. NOTE:

Example: A request is sent on Friday 25.05.2012. The exchange rate to be used is the exchange rate published in the Official Journal of Thursday 24.05.2012 (This OJ mentions the exchange rate on 23.05.2012).

REGULATION-Article 20

1. Art. 20 of Commission implementing Regulation 1189/2011

Closing and reopening of the procedure for recovery or for precautionary measures

"1. Where, with respect to the particularity of a case, all or part of the claim cannot be recovered or precautionary measures cannot be taken within a reasonable time, the requested authority shall inform the applicant authority thereof and state the reasons.

On the basis of the information received from the requested authority, the applicant authority may

request the latter to re-open the procedure for recovery or for precautionary measures. That request shall be made within 2 months of the receipt of the notification of the outcome of that procedure, and shall be treated by the requested authority in accordance with the provisions applying to the initial request.

2. No 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."

EXPL. NOTE:

1. The second paragraph of Art. 20 obliges the requested authority to inform the applicant authority:

- of the state of progress, no later than at the end of each six-month period; and
- of the outcome of the procedure for recovery or for precautionary measures, no later than at the end of the six-month period that follows the period for which the last state of progress was communicated (or no later than at the end of the first six-month period following the date of acknowledgement of the receipt of the request, if the outcome is already clear within that first six-month period).

2. The second subparagraph of Art. 20(1) only applies to the situations where (1°) the requested authority has informed the applicant authority about the outcome of that procedure and (2°) where this outcome is negative (i.e. that the recovery did not completely succeed). This interpretation is confirmed by the 2nd sentence of this subparagraph: *"On the basis of the information received from the requested authority, the applicant authority may request the latter to re-open the procedure for recovery or for precautionary measures. THAT request shall be made in writing within two months of the receipt of the notification of the OUTCOME of that procedure, and shall be treated by the requested authority in accordance with the provisions applying to the initial request."*

It is obvious that the applicant authority does not have to request the re-opening of a procedure for recovery or for precautionary measures, when it only receives information on the state of progress of the actions undertaken and still continued by the requested authority.

3. It is possible that an amount is still paid or recovered in the Member State of the requested authority in the 2 months period that starts when the applicant authority receives the notification of the outcome of the procedure in the Member State of the requested authority. Even though no new actions have been taken during this period, measures previously undertaken by the authorities of the requested Member State may indeed have such further results. The fact that an amount was still paid or recovered in that 2 months period, does not in itself imply that this payment or recovery was unlawful.