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TAX COLLECTION NEWS

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Contents

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ACTIVITIES and NEWS

EU

Recovery Expert Group celebrates 10 years of Directive 2010/24

At its meeting of 26-27 February 2020, the EU Recovery Expert Group celebrated the tenth anniversary of this Directive.

The current EU Directive on mutual assistance for the recovery of taxes and duties – Directive 2010/24 - was adopted on 16 March 2010.

Group picture taken at the celebration of the 10th anniversary of Directive 2010/24

EU

Fiscalis Project Group 110 on improving tax recovery assistance within the EU

The work of this project group was concluded on 13 October 2020, with the adoption of three reports. They are published in this newsletter.

Picture of the project group at its meeting in Krakau, 8 January 2020

The second meeting of Fiscalis Project Group 110 took place in Krakau (Poland) on 8 and 9 January. The seven following meetings were organised as videoconferences, due to the spread of the Corona virus.

Senior recovery experts from 13 EU Member States (Bulgaria, Germany, Estonia, Greece, Spain, Lithuania, Hungary, Austria, Poland, Romenia, Slovenia, Slovakia and Finland) and the European Commission participated in the activities of this project group.

REPORTS

Reports of Fiscalis project group FPG 110

for the follow-up of the Commission Report on the use of mutual tax recovery assistance under Directive 2010/24 (doc. COM(2017)778)

13 October 2019

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INTRODUCTION TO THE FPG 110 REPORTS

1. On 18 December 2017, the European Commission presented its report COM(2017)778[1] 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.

It was concluded that the following actions were needed:

1) Improving the collection of statistical data on the use of tax recovery assistance, in view of a more detailed evaluation of the efficiency and effectiveness of mutual recovery assistance, taking account of the need to avoid or limit additional workload for the national tax authorities and paying attention to the link between the workload of incoming requests for assistance and the administrative resources deployed in the requested Member State;
2) Examining problems at the level of individual Member States that hamper the smooth functioning of mutual recovery assistance, in view of recommendations or other actions to address these issues;
3) Examining needs and ways to improve the functioning of the recovery assistance system at EU level;
4) Developing the knowledge and awareness of the mutual recovery assistance legislation, both by national tax authorities and taxpayers;
5) Examining possibilities and ways to promote and facilitate recovery assistance with third countries, taking account of the EU's competence and priorities.

2. A Fiscalis project group – FPG 110 – was set up to carry out a further analysis with regard to the first three action points. Delegates from 13 Member States[2] and Commission representatives participated in the activities – or attended the meetings – of this project group. Input was also collected from the other Member States, in particular with regard to the problematic issues encountered at national level (relating to the second action point and the second report). The reports also build upon the issues and experiences discussed at the Fiscalis CLO-Recovery workshop in Vienna on 25-27 October 2019.

3. The FPG 110 activities resulted in the attached reports:

1) a report on the improvement of the statistical evaluation tools;
2) a report on the improvement of the recovery and the execution of recovery assistance requests at national level;
3) a report on EU-bottlenecks: plea for a more efficiency-oriented approach.

[1] 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.

[2] Member States represented in Fiscalis Project Group 110 : Bulgaria, Germany, Estonia, Greece, Spain, Lithuania, Hungary, Austria, Poland, Romania, Slovenia, Slovakia, Finland.

Fiscalis project group FPG 110

Follow-up of the Commission Report on the use of mutual tax recovery assistance under Directive 2010/24 (document COM(2017)778)

FIRST REPORT:

IMPROVEMENT OF THE STATISTICAL EVALUATION TOOLS

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1. SCOPE OF THIS REPORT

1. On 18 December 2017, the Commission presented a report 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 (report COM(2017)778).

The report indicated that Member States should devote sufficient resources to the internal collection as well as to the recovery assistance requests coming from other Member States. The success of mutual recovery assistance indeed largely depends on sufficient resources and efforts to cooperate. One of the conclusions of the Report was that: *"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"*.[3]

As a follow-up to the above report, it was decided to set up a Fiscalis project group (FPG 110) to examine suggestions and recommendations for improvement. In line with the above conclusion of the report, a particular objective of this project group was to reflect on improving the statistical tools and methods to evaluate the efficiency and effectiveness of the mutual recovery assistance, and the administrative burden and costs related to it.

2. This first report of Fiscalis project group FPG 110 presents the outcome of its discussions and reflections, dealing with improving the (automated) collection of statistical information relating to tax recovery assistance within the EU.

3. The report also takes account of the input provided by the national delegates in the Recovery Expert Group meeting on 26-27 February 2020, where the draft suggestions of FPG 110 were presented to all Member States.

At this meeting, all delegations supported the FPG 110 draft suggestions, except Luxembourg. The Luxembourg delegate pleaded for more precise statistical reporting obligations with regard to the results of the recovery actions taken by the requested authority (see section 5 of this report).

[3] Report COM(2017)778 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, point 5.b.

2. COLLECTION OF STATISTICAL DATA: CURRENT STATUS

4. The current legal obligations with regard to the collection of statistics and the reporting to the European Parliament are laid down in Article 27 of Council Directive 2010/24. It provides that:

"1. Each Member State shall inform the Commission annually by 31 March of the following:

a) the number of requests for information, notification and recovery or for precautionary measures which it sends to each requested Member State and which it receives from each applicant Member State each year;

b) the amount of the claims for which recovery assistance is requested and the amounts recovered.

2. Member States may also provide any other information that may be useful for evaluating the provision of mutual assistance under this Directive.

3. The Commission shall report every 5 years to the European Parliament and the Council on the operation of the arrangements established by this Directive."

5. In the staff working document accompanying the Commission evaluation report of 18 December 2017, the Commission services presented an "approximative indication" of the requested Member States' results over the period 2013-2016, although it was also acknowledged:

(1°) that it was not possible to establish a precise recovery ratio, and

(2°) that the willingness of the requested Member State to undertake recovery actions does not guarantee that recovery is effectively possible – and effectively possible in that specific Member State – since the need for recovery assistance often appears in difficult cases where the recovery chances are limited.[4]

6. The "approximative indication" in the above staff working document resulted in a calculation of low recovery assistance rates for all Member States, and in particular for the following countries: Cyprus, Romania, Malta, Bulgaria, Latvia, Slovakia, Croatia, Lithuania, Hungary, United Kingdom, Estonia, Greece, Luxemburg, Austria, Spain and Italy.

Several Member States (Bulgaria, Germany, Estonia, Spain, Cyprus, Lithuania, Luxembourg, Hungary, Austria, Poland, Portugal, Slovenia, Slovakia, Sweden, Finland) have provided written comments to the Commission report.

7. The evaluation with regard to the recovery assistance provided in the period 2012-2016 and the further explanations given by several Member States have demonstrated that the statistical information now collected does not permit to have a sufficiently clear and full image of the results of the use of the tax recovery assistance framework, nor of the efforts made by the requested authorities. The current statistical information does not permit to take account of specific circumstances influencing recovery actions.

Therefore, FPG 110 suggests to extend the collection of statistical data. In order to avoid an extra administrative workload, the additional statistical data should be collected in an automated way. The automated reporting of statistical data should also apply, as much as possible, to the statistics currently collected.

It should be taken into account that the automatisation process will need some time, since it requires the development of new IT-infrastructure.

3. FACILITATING (AUTOMATING) THE COLLECTION OF THE CURRENTLY COLLECTED STATISTICS

8. The collection and processing of the currently collected statistical information is burdensome for the Member States and the Commission services.

9. The current reporting obligations of Article 27 of Directive 2010/24 must be respected, but this note presents ideas on how to reduce the administrative burden relating to the current collection and reporting of these statistics on recovery assistance.

3.1. Number of requests – already possible under the central application (eFCA)

10. Statistical information is now collected with regard to the:

- number of requests for information sent to – and received from – each other Member State each year;

- number of requests for notification sent to – and received from – each other Member State each year;

- number of requests for recovery or precautionary measures sent to – and received from – each other Member State each year.

11. The development of the central platform for the e-forms (eFCA) now permits to technically gather this information (via the business reference) for the requests that are sent the first time with the use of these new versions of the e-forms.

[4] Commission Staff Working Document SWD(2017)461 of 18 December 2017 accompanying the report COM(2017)778 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, point 6.1.1.2.

3.2. Amounts for which recovery is requested – to be developed

12. Member States have to provide statistics with regard to the amounts for which requests for recovery measures are sent to – and received from – each other Member State each year.

13. In the future, this information could be extracted from the requests for recovery, the first time that such a request is sent out by the applicant Member State. There would be no need to collect such data manually at the side of the requested Member State, as the automated collection of these statistics should allow to avoid errors.)

The total amounts should not be collected per claim. The information about the total amounts of all claims in each request for recovery should be linked to the identification of the applicant Member State and the identification of the requested Member State in that request.

It should be possible to link the information about the total amounts of each claim to the nature of the claim concerned. In this way, the information on the total amounts of the recovery requests could be made available for each of the 13 types of tax claims mentioned in Article 2 of Directive 2010/24. (Note: the current limitation to 5 main categories in the manually collected statistics should not be maintained.)

14. The above suggestion to automatically collect the statistical data concerning these amounts requires an IT-development.

3.3. Amounts effectively recovered – to be developed

15. Member States have to provide statistics with regard to the amounts recovered by the requested Member State for each other Member State and transmitted each year, and the amounts that each applicant Member State receives from each other Member State each year.

16. This information could be extracted from the requests for recovery, at the end of the year, if there is a reporting of amounts mentioned.

There is no possibility to collect this information automatically at the side of the applicant Member State, but the automated collection of these statistics at the side of the requested Member States would be sufficient.

17. The e-form permits to select "partial recovery" or "full recovery". These fields should not be combined. The requested Member State could use the field "full recovery" if there is a complete recovery without any previous partial recovery. If the field "partial recovery" is selected, the requested Member State should continue to use the same field for further reporting next partial recoveries.

18. The above suggestion to automatically collect the statistical data concerning these amounts requires an IT-development.

3.4. Number of visits of officials to other MS (participation in enquiries)

19. This is not done via the communication network /eFCA. So statistics cannot be collected in an automated way. Anyhow, their number is so limited that an automated collection of these statistics is not required.

3.5. Number of exchanges of information without request

20. This exchange of information is optional and it does not take place through the eFCA. At this stage, these statistics cannot be collected in an automated way. The Member States providing such information are invited to collect these statistics manually, as such statistical data may help to explore the possibilities and wishes for improving this category of information exchange.

4. IMPROVING THE COLLECTION OF STATISTICAL DATA

21. At this moment, it is not possible to collect in an automated way statistical information that permits to determine, for each request for recovery, how much of the claim(s) – has been recovered in the same year or in following years.

The information to be mentioned by the requested Member State does not distinguish between the different claims for which recovery assistance was requested (because in case of partial recovery, there is not necessarily a correspondence between the allocation rules in the requested Member State and the applicant Member State).

22. As reported by Member States, the recovery results also depend on factors that do not depend on the requested authority:

- e.g. insolvency of the debtors, missing debtors, …
- e.g. requests for recovery with regard to claims that are afterwards reduced or annulled, following a contestation.

23. When discussing ways to improve the collection of relevant statistical data, it is important to take account of the following distinction:

- some elements can be collected in an automated way, through the central application for the e-forms;
- other elements cannot be collected in an automated way.

As already mentioned, FPG 110 has focused on the possibilities to extend the automated collection of relevant statistical data, in order to avoid an extra administrative burden,

24. In the view of FPG 110, additional relevant information may be obtained – in an automated way – from the following elements:

- the type of replies to requests for recovery, providing an indication of the usefulness of the request and its recovery chances (see section 4.1.);
- the number of situations where requests are revised by the applicant Member State (on the basis of corrections, disputes, …) (see section 4.2.);
- the timeliness of acknowledgments of the receipt of assistance requests and the timeliness of the first replies to assistance requests (see section 4.3.);
- the number of requests for recovery relating to VAT refunds to be made by the requested Member State (where the action requested from that State is normally limited to the seizure of the VAT refund amount concerned) (see section 4.4.);

It was also considered useful to collect information with regard to the number of persons involved in tax recovery assistance at the level of the national Central Liaison Offices (CLOs) (see section 4.5.). These statistical data cannot be collected in an automated way.

4.1. Type of replies to requests for recovery

25. It may be useful to collect statistical information (per calendar year) relating to the numbers of replies where the requested authority does not provide recovery assistance or where the requested authority could not recover the claims for any reason.

26. It is possible to identify the statistical data mentioned under point 25 per requested Member State and per applicant Member State.

e.g.: it would be possible to see, per year, how many times a requested Member State has answered "the person is not known", and to see how many times an applicant Member State received this answer "the person is not known".

27. It may be useful to link most of the statistical data mentioned under point 25 with the information about the amounts for which recovery assistance is requested, in order to see the differences, based on the total amount of the claim(s) for which recovery is requested:
- total amount up to 10.000 €
- total amount between 10.001 and 30.000 €
- total amount between 30.001 and 150.000 €
- total amount between 150.001 and 1.000.000 €
- total amount above 1.000.000 €

28. The above suggestion to automatically collect these statistical data requires an IT-development.

4.2. Number of situations where requests are revised

29. With regard to requests for recovery, the applicant authority may:

- ask to suspend the recovery action because an action has been launched contesting the claim or the instrument permitting its enforcement;
- amend the request, for specific reasons;
- withdraw the request, for specific reasons.

30. It would be possible and useful to count, per calendar year, how many times the applicant Member State modifies or withdraws its requests for recovery for any of the above reasons.

31. Note: for situations where a request is revised in the same calendar year, it would be preferred that in the statistics mentioned under section 3.2., only the revised request is taken into account. At this stage, however, the automated collection of statistics cannot be developed in such a way that only the amended amount is counted and not the initial amount. Member States may collect manually and communicate statistical information about these revised amounts in case of a request that is revised in the same calendar year. However, Member States are not required to do so. A future development of the automated collection of statistical data may help to improve the statistics on this point.

32. The above suggestion to automatically collect these statistical data requires an IT-development.

4.3. Acknowledgment of receipt + first replies (for RI, RN, RR-RP)

33. The requested Member State has to send an acknowledgment of receipt within 7 days and the requested Member State has to send a first execution report within 6 months. The time limit for acknowledging the receipt should also be respected when the requested MS asks for additional information.

It is important for the applicant Member State to know that the requested Member State has well received a request and that the execution is following. Therefore, FPG 110 considers that the automated collection of statistics relating to the timely acknowledgments of receipt and the further replies is important.

34. FPG 110 suggests to check automatically how many acknowledgments of receipt and first reports are sent timely.

It should however be taken into account that a timely reply is not necessarily an accurate reply.

35. The above suggestion to automatically collect these statistical data requires an IT-development.

4.4. Number of requests for recovery relating to VAT refunds to be made by the requested Member State

36. Requests for recovery may be sent in order to obtain a seizure by the requested Member State of the VAT refundable amount for which a refund request was submitted by a taxable person established in the applicant Member State. Since the execution of these requests will normally be limited to the seizure of the VAT refund amount, irrespective of the total amount of the unpaid tax debts, taking account of these requests for the calculation of the requested Member State's recovery ratio would not be appropriate. It is therefore suggested to identify and separate these recovery requests that only request to seize the VAT refund.

4.5. Statistical data that cannot be collected in an automated way: Number of persons involved

37. In their replies to the evaluation questionnaire for the 2017 evaluation of the use of Directive 2010/24, 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. 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 assistance requests from other Member States.[5]

The Commission evaluation report concluded that *"in this regard, it should be examined if an 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"*.[6]

38. FPG 110 accordingly considered that it would be useful to collect statistical information about the number of persons involved in recovery assistance (at least at CLO level) in each Member State, in order to analyse whether it corresponds to the evolution of the number of assistance requests. Of course, such statistical data could not be collected in an automated way.

39. This suggestion was submitted to the Recovery Expert Group at its meeting on 26-27 February 2020. In line with the suggestion of FPG 110, the Commission proposed that each Member State provides, insofar as possible, an overview of the number of officials at CLO level, dealing with recovery assistance. Ideally, this overview would not only present the current situation, but also cover previous years, and check whether the evolution corresponds with the evolution of the incoming and outgoing requests for assistance.

40. At this meeting of the Recovery Expert Group, two delegations opposed to the above suggestion.

41. FPG 110 remains convinced of the usefulness of an evaluation of the administrative burden and the administrative resources deployed in the area of tax recovery assistance, at least at national level and, if possible, also at EU level. This kind of information could help each Member State to evaluate whether it is devoting enough human resources to mutual recovery assistance.

In this regard, it should be taken into account that, according to Member States' replies to an FPG 110 questionnaire about the execution of assistance requests in recent years, a number of requests remained unanswered or remained without any further communication on the follow-up by the requested authority (see the second FPG 110 report).

It should also be taken into account that the number of incoming and outgoing requests for assistance continues to increase steadily (see the tables below):

[5] Commission Staff Working Document SWD(2017)461 of 18 December 2017 accompanying the report COM(2017)778 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, point 6.1.1.3.b.

[6] Report COM(2017)778 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, point 5.b.

- *Table 1a: statistical information from the Member States about the number of incoming requests for information (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	68	89	654	398	429	496	505	598	627
BG	61	42	61	464	298	300	364	474	653
CZ	22	39	69	102	121	99	166	183	188
DK	25	29	39	54	67	81	81	163	160
DE	289	414	978	1283	1621	1982	1899	2040	2038
IE	109	96	129	154	142	138	224	194	190
EE	14	18	41	71	43	36	53	55	94
EL	34	38	46	76	96	105	156	132	186
ES	294	267	415	491	404	450	600	632	643
FR	651	648	657	987	1190	1276	1567	1552	1307
HR				48	55	54	109	121	262
IT	100	122	141	300	399	389	544	592	823
CY	26	30	22	31	94	67	86	84	82
LV	21	19	26	52	69	97	97	92	123
LT	48	45	58	63	102	111	129	135	187
LU	38	52	74	100	143	167	275	266	285
HU	55	64	96	207	343	390	461	506	723
MT	5	11	16	15	28	17	36	32	30
NL	206	234	411	551	645	625	773	995	1118
AT	28	21	142	125	207	236	261	267	502
PL	250	286	615	891	694	778	830	990	1287
PT	84	103	119	165	192	226	328	254	474
RO	95	72	172	196	534	571	861	1260	2177
SI	11	6	12	39	57	57	84	55	89
SK	26	31	118	131	206	127	133	197	237
FI	10	16	25	94	79	27	311	45	52
SE	43	52	87	95	114	117	186	176	174

- *Table 2a: statistical information from the Member States about the number of incoming requests for notification (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	123	97	68	88	140	136	94	67	71
BG	4	10	5	22	38	26	67	46	66
CZ	39	29	13	47	36	34	36	31	29
DK	14	18	20	17	17	17	10	24	41
DE	99	148	167	162	208	282	249	189	205
IE	13	9	16	19	39	47	46	39	31
EE	2	2	3	11	9	4	11	8	19
EL	14	9	12	19	15	26	15	18	12
ES	76	75	106	116	113	101	120	124	90
FR	107	60	72	77	79	71	60	84	139
HR				5	11	11	12	15	9
IT	85	71	48	66	102	116	100	95	73
CY	5	5	3	4	11	9	12	10	22
LV	14	21	11	15	39	44	51	40	30
LT	52	19	5	39	55	45	43	30	26
LU	32	34	18	51	82	80	70	63	60
HU	39	71	44	66	83	129	113	72	69
MT	1	0	2	8	5	2	2	4	58
NL	65	129	54	65	53	62	71	66	58
AT	16	39	17	80	38	53	57	25	42
PL	142	196	302	595	365	301	280	248	171
PT	11	16	16	12	15	22	18	13	37
RO	84	51	52	53	81	54	71	103	70
SI	8	5	18	9	7	4	12	9	7
SK	20	28	10	28	30	35	19	40	30
FI	10	0	4	11	3	5	12	7	8
SE	23	21	16	21	20	13	36	24	29

- *Table 1b: statistical information from the Member States about the number of outgoing requests for information (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	792	990	1273	2243	2257	2267	3349	3722	3946
BG	0	1	14	3	9	28	8	41	24
CZ	40	17	65	24	37	58	44	40	74
DK	20	81	191	188	25	444	92	1	264
DE	155	214	612	813	1152	1739	2155	2681	4926
IE	16	20	20	23	74	49	73	53	59
EE	24	26	18	189	137	51	78	68	28
EL	21	22	77	98	228	281	229	300	300
ES	46	59	38	103	209	200	177	153	167
FR	198	184	162	210	251	428	471	486	562
HR				0	18	43	25	17	21
IT	26	9	6	8	171	254	124	105	108
CY	8	24	8	18	22	12	4	18	7
LV	9	10	48	43	20	3	463	146	355
LT	4	4	28	62	80	75	91	121	109
LU	9	5	1	9	54	218	475	354	377
HU	10	22	252	302	488	86	119	76	49
MT	0	1	1	0	1	4	1	1	0
NL	84	265	1875	1891	866	898	853	1197	1261
AT	92	155	245	680	762	741	874	968	1029
PL	288	284	269	290	1139	1456	1963	2276	1735
PT	117	188	139	135	221	154	185	162	104
RO	32	31	105	113	550	192	220	240	376
SI	2	7	9	20	31	21	16	41	55
SK	5	14	10	52	11	5	19	39	53
FI	12	16	0	46	23	30	13	36	16
SE	127	81	319	517	564	353	310	183	239

- *Table 2b: statistical information from the Member States about the number of outgoing requests for notification (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	67	120	9	9	21	47	48	10	3
BG	0	0	0	3	3	3	4	56	3
CZ	1	0	1	6	0	4	2	2	3
DK	0	0	0	0	0	0	0	0	0
DE	452	533	447	914	763	585	584	541	379
IE	0	0	0	0	0	0	0	0	0
EE	2	0	2	17	7	4	5	3	1
EL	0	2	3	15	9	5	40	3	26
ES	5	5	14	43	56	49	49	49	73
FR	472	264	273	385	629	646	369	332	245
HR				0	104	136	53	40	15
IT	32	10	3	52	41	24	18	52	127
CY	1	0	0	3	3	1	2	11	5
LV	0	0	0	20	12	4	3	0	1
LT	9	7	7	2	4	12	28	15	7
LU	21	14	0	0	3	4	50	50	57
HU	32	12	45	65	71	83	95	64	68
MT	0	0	0	0	0	0	1	0	0
NL	3	1	1	6	4	7	8	4	12
AT	39	32	18	17	29	18	18	17	23
PL	28	104	126	106	122	236	274	301	334
PT	145	93	271	250	215	158	198	259	552
RO	68	127	162	151	115	176	206	50	95
SI	0	7	0	1	4	3	2	1	0
SK	7	6	0	4	10	1	2	4	2
FI	0	0	21	0	0	1	0	0	0
SE	3	6	16	30	12	36	27	55	34

- *Table 3a: statistical information from the Member States about the number of incoming requests for precautionary measures (2013 – 2018)*:

	2013	2014	2015	2016	2017	2018
BE	17	7	0	1	5	10
BG	1	2	6	2	3	3
CZ	0	0	0	0	0	1
DK	0	0	1	0	1	0
DE	11	9	8	10	16	13
IE	0	0	0	0	0	0
EE	0	2	0	1	6	9
EL	0	1	0	0	0	1
ES	8	5	5	15	9	8
FR	41	3	66	1	1	6
HR	1	1	2	6	3	7
IT	2	6	4	4	4	2
CY	0	0	2	4	3	0
LV	0	0	0	6	3	3
LT	0	1	1	0	0	0
LU	0	0	0	0	2	0
HU	0	3	1	3	4	1
MT	2	2	0	2	4	0
NL	4	3	2	3	8	4
AT	2	10	3	8	7	5
PL	5	11	6	5	10	8
PT	4	5	4	4	2	1
RO	4	2	5	1	3	6
SI	0	0	0	0	0	0
SK	0	5	4	0	3	6
FI	0	0	0	0	0	0
SE	0	2	3	0	0	0

- *Table 3b: statistical information from the Member States about the number of outgoing requests for precautionary measures (2013 – 2018)*:

	2013	2014	2015	2016	2017	2018
BE	7	3	8	2	5	0
BG	1	0	3	0	1	3
CZ	0	0	0	0	0	0
DK	0	0	0	0	0	0
DE	25	28	10	17	15	11
IE	0	0	0	0	0	0
EE	0	0	0	1	0	1
EL	0	0	2	3	7	1
ES	7	4	8	4	9	10
FR	35	15	30	4	26	27
HR	0	0	0	13	9	12
IT	0	4	0	0	0	0
CY	0	0	0	0	0	0
LV	0	0	0	0	0	11
LT	0	1	0	4	16	1
LU	0	0	0	0	0	0
HU	1	4	3	4	2	2
MT	0	0	0	0	0	0
NL	8	7	0	0	2	2
AT	4	1	2	4	3	2
PL	0	2	7	8	19	11
PT	0	0	3	3	0	0
RO	1	26	17	11	6	13
SI	7	4	2	8	6	4
SK	0	9	0	0	0	0
FI	0	0	0	1	1	4
SE	4	2	2	6	3	3

- *Table 4a: statistical information from the Member States about the number of incoming requests for recovery (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	369	437	340	594	679	714	807	974	1037
BG	51	56	63	118	159	191	263	248	346
CZ	122	128	137	157	170	238	404	373	331
DK	70	72	59	60	125	122	102	302	229
DE	732	948	1038	1225	1670	1840	1791	1679	1829
IE	237	251	175	138	211	240	223	288	235
EE	197	29	292	350	385	542	330	270	281
EL	90	91	61	93	82	87	69	111	121
ES	624	605	460	452	469	556	681	722	809
FR	885	1056	693	1029	1232	1248	1478	1405	1849
HR				22	80	114	129	193	324
IT	316	320	198	456	484	703	596	616	746
CY	53	42	31	50	67	71	97	100	79
LV	72	66	77	63	85	102	107	100	125
LT	137	143	160	216	203	202	291	229	349
LU	189	235	201	261	448	305	521	629	702
HU	139	193	160	320	323	472	436	475	576
MT	12	12	9	21	17	27	39	44	101
NL	708	815	669	851	1081	1164	1087	1020	1078
AT	51	55	420	607	428	770	834	1089	1378
PL	2050	2725	1125	1445	2978	2525	2509	2780	2926
PT	115	120	109	94	180	192	221	236	270
RO	210	167	154	223	341	264	768	1048	1094
SI	25	24	17	44	87	99	160	198	250
SK	94	95	90	105	207	318	242	305	338
FI	293	20	58	74	101	68	87	77	87
SE	44	62	58	56	76	76	116	110	114

- *Table 4b: statistical information from the Member States about the number of outgoing requests for recovery (2010 – 2018)*:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
BE	1060	1468	1045	1551	1908	1505	1773	1680	1849
BG	1	0	2	1	43	35	23	105	249
CZ	70	76	84	113	112	290	220	381	451
DK	297	351	481	267	38	67	8	2	0
DE	3421	4588	2737	3809	5113	5494	4901	5950	6412
IE	46	68	52	61	55	48	57	15	21
EE	45	9	64	81	99	54	39	66	62
EL	21	30	67	101	132	127	174	134	148
ES	97	126	166	128	733	641	525	567	644
FR	894	895	935	1271	1408	1198	1721	2311	2490
HR				0	32	26	26	16	39
IT	34	28	13	21	43	96	199	134	207
CY	5	0	1	34	7	22	0	3	13
LV	10	1	74	114	214	324	745	422	456
LT	23	33	84	80	48	61	70	45	110
LU	91	172	5	189	525	457	431	563	570
HU	95	82	147	145	306	546	307	280	294
MT	0	0	0	0	0	0	0	0	0
NL	132	155	161	152	182	216	274	306	188
AT	139	152	443	692	721	906	772	801	957
PL	47	87	50	65	347	531	511	502	616
PT	56	69	119	154	124	245	323	412	1110
RO	56	54	101	123	169	176	194	219	253
SI	19	24	23	76	240	245	344	365	773
SK	86	80	63	100	63	161	652	429	342
FI	56	180	450	434	457	644	362	348	311
SE	385	277	199	310	581	377	352	326	240

With regard to the administrative burden related to the mutual recovery assistance, the following statistics about the number of communication messages exchanged between the Member States also confirm the considerable workload in this field:

Legal basis for the communication	Number of communication messages exchanged between Member States in 2019
Tax recovery assistance (Dir. 2010/24)	292 237
Administrative cooperation VAT (Reg. 904/2010)	139 548
Administrative cooperation income taxes (Dir. 2011/16)	75 420

42. FPG 110 thus maintains its proposal to invite Member States to collect this statistical information, on a voluntary and optional basis.

Fiscalis project group FPG 110 for the follow-up of the Commission Report on the use of mutual tax recovery assistance under Directive 2010/24 (document COM(2017)778)

SECOND REPORT:

IMPROVEMENT OF THE RECOVERY AND THE EXECUTION OF RECOVERY ASSISTANCE REQUESTS AT NATIONAL LEVEL

TABLE OF CONTENTS

1. THE SCOPE OF THIS REPORT

1. Cross-border tax recovery assistance has developed a lot since the adoption of Directive 2010/24 of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84/1 of 31.3.2010). The number of tax recovery assistance requests has increased considerably in recent years. This is linked to the increasing mobility of both taxpayers and their assets, and it is also related to some of the main changes introduced by Directive 2010/24, such as the uniform instrument permitting enforcement (UIPE) in the requested Member State and the electronic request forms.

In its report COM(2017)778 of 18 December 2017 to the European Parliament and the Council, the Commission reported that the Member States' view on recovery assistance between the EU Member States was generally positive. However, it also appeared that the possibilities and efforts of requested Member States to provide recovery assistance were not always sufficient.

Following the above Commission report, Fiscalis Project group 110 (FPG 110) has analysed specific tax recovery assistance problems at the level of the Member States. This report thus focuses on laying out the main problems of Member States with regard to the implementation of Directive 2010/24. It also contains recommendations for improvement.

In order to prepare this report, FPG 110 has invited all Member States to present an overview of specific problematic cases, experienced in their position of applicant and/or requested Member State. This report also builds upon issues and experiences discussed at the Fiscalis CLO-Recovery workshop in Vienna on 25-27 October 2019.

It should be noted that this overview is not exhaustive. Several Member States have indicated that the cases reported are examplary, taking account of their seriousness and/or repeated character.

It has appeared that not all problematic cases have been reported. This was also confirmed during the discussions in FPG 110.

2. The problematic issues can be divided into different categories:

- **1) situations of non-replies**, representing a clear lack of cooperation, which include cases where the requested authorities do not acknowledge the receipt of the assistance request, or where they do not provide further replies to the request.

  These situations lead to confusion and frustration of the applicant authorities and they affect the mutual trust which should be fundamental in the tax recovery assistance.

- **2)** other **situations of lack of cooperation, due to insufficient or unclear information and communication problems**: situations where the applicant authorities do not provide clear information about their request (e.g. not motivating a request to recover an old claim; not explaining the elements of information on which the request is based) or where the requested authorities do not provide clear information about the actions undertaken in the requested Member State and/or the problems that prevent or hinder the execution of the assistance request.

  These situations affect the effectiveness and the efficiency of the tax recovery assistance. Unclear requests and replies cause an unnecessary additional administrative burden for the

authorities concerned, as they have to request – and wait – for clarification. The uncertainty thus created also hinders the applicant Member State's decisions to take further actions (e.g. actions launching insolvency proceedings or actions to interrupt or suspend the period of limitation).

Good cooperation first of all requires a good, precise and rapid communication from both sides, showing a willingness to cooperate.

- **3) incorrect implementation of the Recovery Directive**: situations where Directive 2010/24 is not correctly implemented in the legislation and/or practice of the requested Member State.

  These situations seriously hinder the proper functioning of the unified recovery assistance system. They create unnecessary confusion that easily leads to further misinterpretation and mutual misunderstandings.

- **4) insufficient national legislation or practice**: situations where the recovery legislation or practice in the requested Member State is not optimal and/or not fit to provide recovery assistance to other Member States.

  If the national legislation and/or practice are not sufficiently developed and adapted to the needs of international recovery assistance, the EU recovery assistance cannot work properly. Such situations may be directly or indirectly discriminative and have negative consequences for the tax collection and the functioning of the internal market.

3. The report presents a general description of national problems – and recommendations – with regard to the Member States' execution of requests for tax recovery assistance (section 2).

Specific issues reported per Member State are not included in this report.

It is clear that the country-related issues here reported – and, hence, the relevance of the recommendations concerned – do not all have the same importance.

> *Example*: for instance, if a Member State accidentally did not reply to an assistance request in a single case, the recommendation addressed to that Member State – to ensure a timely follow-up to the assistance requests – corresponds to the recommendation addressed to another Member State that did not reply to assistance requests in multiple cases. It is clear, however, that the repeated negligence of some Member States – reflected by their non-replies to dozens of requests – is much worse than an accidental non-reply of other Member States.

> *Example*: in a specific case where recovery assistance had been requested, the applicant authority later informed the requested authority that a partial payment had been obtained. As a consequence of that payment, the amount that remained unpaid was lower than 1500 EUR. The requested authority refused to continue the execution of the assistance request, as it erroneously overlooked the fact that this threshold applies to the amount at the time the initial request is received. The impact of such a regrettable error cannot be compared to the impact of other situations where the national recovery legislation or practice is not adapted to the needs of international recovery assistance.

2. GENERAL DESCRIPTION OF THE ISSUES AT NATIONAL LEVEL

2.1. Situations of non-replies

4. As explicitly mentioned in recital 11 of its preamble, one of the important aims of Directive 2010/24 is to allow Member States to handle requests faster and more easily, in order to increase the efficiency and effectiveness of mutual recovery assistance. The use of standard request forms in a digital format, that can be sent via an electronic network, facilitates a rapid and smooth communication between the applicant and requested authorities.

5. Accordingly, a requested Member State is expected to rapidly acknowledge the receipt of an assistance request and to report regularly about the execution of that request. These obligations of the requested Member State to react promptly and to act quickly for the execution of the assistance request are explicitly confirmed in several provisions of Council Directive 2010/24 and Commission implementing Regulation 1189/2011:

– „The requested authority shall forthwith inform the applicant authority of any action taken on its request for notification and, more especially, of the date of notification of the document to the addressee." (Art. 8(3) of Directive 2010/24).

– „The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery." (Art. 13(2) of Directive 2010/24); and this provision applies mutatis mutandis to the requests for precautionary measures (Art. 17 of Directive 2010/24).

– "The requested authority shall acknowledge receipt of the request for information/ notification/recovery or precautionary measures as soon as possible and in any event within seven

calendar days of such receipt" (respectively Art. 7, Art. 12(1) and Art. 19(1) of Commission implementing Regulation 1189/2011).

- "The requested authority shall transmit each item of requested information to the applicant authority as and when it is obtained. Where, with respect to the particularity of a case, all or some of the requested information cannot be obtained within a reasonable time the requested authority shall inform the applicant authority thereof and state the reasons. In any event, at the end of 6 months from the date of acknowledgement of receipt of the request, the requested authority shall inform the applicant authority of the outcome of the investigations which it has conducted in order to obtain the information requested." (Art. 8 of Commission implementing Regulation 1189/2011).
- "The requested authority shall inform the applicant authority of the date and the manner of notification as soon as this has been effected" (Art. 12(2) of Commission implementing Regulation 1189/2011).
- "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. (…) 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." (Art. 20 of Commission implementing Regulation 1189/2011).

6. In practice, it appears that the above obligations are not always respected. Several requests remained unanswered: there was no acknowledgment of receipt and/or no further information about the follow-up given in the requested Member State. The latter seems to imply that the requests concerned were simply never executed. These situations are unacceptable.

7. The situation is particularly problematic in two Member States, where numerous requests for assistance did not get the appropriate follow-up. Moreover, the cases reported indicate that this is not a temporary problem.

8. Recommendations:

- **The requested Member States concerned should ensure that the receipt of assistance requests is acknowledged timely, and that they inform the applicant Member States about the execution of these requests. This execution and the communication of the replies should take place within a reasonable time.**
- **Situations of non-respect of these rules should be reported to the appropriate level within the Member States and to the Commission, in view of obtaining that these situations are remedied as soon as possible.**

2.2. Issues raising from insufficient or unclear information and communication problems

9. When requesting recovery assistance, the applicant authority should make sure that all relevant information is correctly mentioned in the request form, insofar as that information is available (e.g. correct spelling of the name and other identification data of the debtor; correct indication of the capacity of persons mentioned in the request form (debtor, co-debtor, etc.); date of notification, etc.).

The analysis of the cases reported to FPG 110 confirms this need to give sufficient information in the request for assistance, as this may facilitate the execution of the request in the requested Member State.

> *Example*: when sending a request to recover a claim from a third party, the applicant authority should communicate the information on the basis of which it assumes that this third party has (still) a debt towards the debtor. That information should be as detailed as possible.
>
> *Example*: a requested Member State had closed some requests for reovery assistance, as it appeared that (further) recovery was not possible in that State. Several months later, the applicant Member State again sent requests for recovery, relating to the same claims. The renewal of such requests may affect the mutual trust between the Member States concerned if the applicant authority does not clearly explain the reasons for the renewed requests.

10. Lots of issues on the application of Directive 2010/24 are due to unclear replies from the requested Member State about the follow-up of the assistance request, unclear descriptions of the reasons why the requested Member State considers the case closed and lack of communication.

11. Directive 2010/24 provides that: „*The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance"* (Articles 5(4), with regard to requests for information, and 18 (4), with regard to requests for recovery or precautionary measures). The requested authority should indeed give clear, precise and exhaustive information to the applicant Member State, explaining why the requested Member State cannot or has problems satisfying the applicant Member State's

request. It is important for the applicant Member State to know how to deal with the next potential requests and think about additional solutions in the recovery of its tax claims.

This clear, precise and exhaustive information means that the information should be as accurate as possible, giving extra value and knowledge to the applicant Member State.

> *Example*: a requested authority only replied that the wages received by the debtor could not be subject of recovery measures in accordance with national law. No precise information was given about the exact reason (a general prohibition to seize wages or specific circumstances preventing the requested authority from applying that recovery measure in this particular case, e.g. because of the low amount of the wages or other attachments already applied). Moreover, the requested authority's reply did not indicate whether other recovery measures had been considered or whether alternative solutions could be suggested.

12. It may occur that the requested Member State needs more information for proceeding with a request. In that case, one would expect the requested Member State to explain its questions or instructions for additional information. However, the additional questions or instructions from requested Member States are not always clear for the applicant Member States.

> *Example*: iIn a specific case, the requested authorities asked the applicant authorities to complete the request with additional identification data, mentioned by the requested authority in its own official language, although the debtor was clearly indicated in the assistance request. The requested authorities did not clarify why this completion would be needed/useful.

13. In some cases the requested Member State's response cannot be easily understood by the applicant authorities because of language issues. Competent authorities have been encouraged to use a language that can be understood by both authorities. For that purpose, the request form is developed in such a way that the competent officials of both Member States can indicate their language knowledge. In practice, it is recommended that the competent officials – at least at Central Liaison Office (CLO) level – communicate in English, if they do not speak the same language.

The fact that a particular Member State generally only uses its own official language affects the smooth communication with other Member States. Moreover, it is also experienced that officials in the CLO services sometimes have problems to express themselves in English. (This may, to some extent, explain the above observations about the lack of clear, precise and exhaustive replies to assistance requests). As the CLO has the principal responsibility for contacts with other Member States (in accordance with Article 4(2) of Directive 2010/24), it is essential for officials at CLO level to have a sufficient language knowledge, so that they can easily communicate with their colleagues in other Member States.

14. Recommendations:

- **When requesting recovery assistance, the applicant Member State should provide the requested Member State with as much information relevant to recovery (in particular on the identification of the debtor) as they have and the applicant Member State should be accurate on the information it fills in the forms (e.g accurate date of notification of all the claims to inform when the applicant Member State issued demands for payment in that country).**
- **When a request for recovery cannot be executed for reasons relating to the national law of the requested Member State, the requested authority should not only refer to its national law, but provide a clear and accurate explanation, preferably including the exact reference of the national provision(s) at stake.**
- **When informing about the execution of the request, the requested Member State should provide clear descriptions of the measures taken, of the current status of the case and of any problematic issues encountered. If it is difficult or impossible to execute a request for recovery or when the requested authority needs additional information, it should indicate this in a clear and accurate way.**
- **The communication between Member States should be done in English, unless another language is agreed by the Member States concerned.**

2.3. Incorrect implementation of the Recovery Directive

15. Several situations were reported where Directive 2010/24 is not correctly implemented in the legislation and/or practice of the requested Member State.

16. Requests for information should be executed properly. The requested authority has to arrange for the carrying-out of any administrative enquiries necessary to obtain it (Art. 5(1), second subparagraph of Directive 2010/24). It has appeared that this obligation is not respected in the legislation and/or practice of several Member States.

Example: a striking example was a case where the requested authority rejected a request for information with the comment that *„a query for a domestic account is only permissible under [national] law in the case of domestic tax arrears (...)"*, while Art. 5(2)(a) of Directive 2010/24 confirms *a contrario* that the requested Member State is obliged to supply information which it is able to obtain for the purpose or recovering its own claims.

17. Although the Directive explicitly confirms that Member States must not decline to supply information solely because this information is held by a bank or another financial institution (Art. 5(3) of Directive 2010/24), several Member States rejected requests for information relating to bank accounts with the simple argument that they did not have access to that kind of information.

18. For the purpose of the execution of requests for recovery, the requested authority should make use of the powers and procedures provided under the laws of the requested Member State applying to the same or similar claims of the requested State (Art. 13(1), first subparagraph of Directive 2010/24).

It appears that some requested Member States impose restrictions and conditions that are contrary to the Directive and/or that are not in line with the conditions applying to the recovery of their own claims.

Example: a requested Member State did not correctly tranpose Art. 18(2) of Directive 2010/24 – which authorises the requested Member State to refuse assistance if the claim has reached a certain age – in its national legislation and thus illegally rejects requests that should be accepted under the Directive.

Example: a requested Member State systematically rejected requests to seize the amounts of VAT for which a refund was requested by a taxable person in the applicant Member State, if the applicant Member State did not produce evidence of the consent of the taxable person to have this amount seized. It can hardly be imagined that this requested Member State applies the same condition (i.e. the consent of the debtor) when it applies recovery measures for its own tax claims.

19. Some requested Member States' replies in fact deny the basic principles underlying the mutual recovery assistance system.

Example: a requested Member State required the applicant Member State to submit a request for the assignment of a personal identification number to the debtor in the requested Member State, in order to proceed with the recovery of taxes due by this debtor, who was only resident in the applicant Member State.

Example: a requested Member State refused to execute a request for recovery because the person concerned – who was liable as a co-debtor in accordance with the law of the applicant Member State – would not incur the same liability under the national law of the requested Member State in case of such a tax debt in the requested Member State.

20. Some cases reported about a requested Member State's unwillingness to execute a request for recovery, despite the valid and justified character of the assistance request.

Example: a requested Member State asked an applicant Member State to withdraw a recovery assistance request for claims with a period of limitation shorter than 6 months at the time of the request.

Example: a requested Member State suspended its recovery actions for a long time, on the mere basis that the debtor stated that he had contested the claim in the applicant Member State, even though this was not true. The requested Member State did not communicate this to the applicant Member State, even though the applicant Member State had repeatedly informed the requested Member State about the urgency of the case, since the debtor continued to build up large VAT debts in the applicant Member State.

21. Recommendations:

- **The requested Member States should correctly implement and apply the provisions of Directive 2010/24 in their national law and practice. Some Member States have to amend their national legislation and/or practice, in order to bring it in line with this Directive.**
- **The requested Member State should take an active approach to support the applicant Member State. Inactivity of the requested Member State – in particular if it continues over a long period of time – may lead to additional recovery risks and increase the problem of unpaid taxes.**

2.4. Insufficient national legislation or practice

22. There are several situations where the recovery legislation or practice in the requested Member State is not optimal and/or not fit to provide recovery assistance to other Member States.

Example: a Member State did not execute requests from other Member States to seize the amounts for which the debtor had requested a VAT refund, since the administrative costs – applied *ex officio* under the national law of that requested Member State and thus not adapted to this particular situation where the amounts concerned could be seized very easily by the requested Member State – were so high that they would exceed the amounts seized.

Example: Several requested Member States responded that they did not have access to information about bank accounts held in these countries by tax debtors established in the applicant Member State, even though the information concerned had been provided by these requested Member States, in accordance with Directive 2011/16.

23. Recovery assistance is particularly problematic in situations where the claim is contested. Problems are caused by the disparity of national rules and conditions.

With regard to contested claims, Directive 2010/24 provides that:
- enforcement measures have to be suspended (as far as the contested part of the claim is concerned), but
- the requested authority may take precautionary meaures, at the request of the applicant authority or on its own initiative, in accordance with its own legislation and practice (Art. 14(4), first subparagraph of Directive 2010/24);
- recovery of a disputed claim can only be continued if recovery of a contested claim is possible under the legislation and practice of both the applicant and requested Member State (Art. 14(4), third subparagraph of Directive 2010/24).

24. In some Member States, precautionary and recovery measures are (almost) completely excluded. Other Member States may have the possibility to take recovery measures for their own contested claims, but they cannot do the same for the contested claims of another Member State if recovery of such claims is not possible in the applicant Member State.

25. Moreover, the exact purview of the precautionary measures is different from Member State to Member State. A general or theoretical possibility to take precautionary measures does not necessarily imply that useful assistance can be provided in a specific case.

Example: a Member State could not execute a request for precautionary measures – requesting to freeze bank accounts of a company during a tax investigation – since there was no legal basis for such actions in the requested Member State.

Further, the notion of „precautionary measures" is not necessarily understood in the same way in all Member States.

Example: according to the country information on the CIRCABC database, a Member State does not use precautionary measures. However, this Member State applies some measure that may qualify as a precautionary measure.

26. Problems are also caused by a lack of possibilities in some requested Member States to recover claims from other persons than the principal debtor.

Example: a Member State did not execute a request to recover claims from a third party who was having debts towards the tax debtor, because there was no legal basis in the requested Member State to recover the debt from third parties holding assets of the debtor or having debts towards the debtor.

27. Particular problems result from the internal organisation in a Member State.

Example: A Member State has a separate general enforcement authority, which proceeds with recovery actions on behalf of the tax authorities (and any other creditor in that Member State). This separate enforcement authority has access to information about the assets of the debtor for the purpose of enforcement. The tax authorities do not have a direct access to this asset information and they cannot request such information from the separate enforcement authority if there is no recovery request. (The tax authorities simply send a request for recovery of their own claims to that specific enforcement authority). Under these circumstances, the tax authorities hold that they are not able to reply to other Member States' requests for information about recoverable assets. On this point, they refer to Article 5(2)(a) of Directive 2010/24, which provides that the requested authority shall not be obliged to supply information which it would not be able to obtain for the purpose of recovering similar claims arising in the requested Member State.

28. The use of common electronic request forms for recovery assistance under Directive 2010/24 has improved the efficiency and effectiveness of recovery assistance between the EU Member States. This is extremely important, given the constant increase of all types of recovery assistance requests.
Several tax authorities however reported problems with the use of the latest version of these e-forms (under the central application (eFCA)). These problems appear to be linked to insufficient capacity of the IT-infrastructure in some tax administrations

and to national limitations with regard to the use of specific browsers.

29. **Recommendations:**

- **Amendments of national laws and practice should be adopted in order to strengthen the possibilities to provide an effective assistance to other Member States.**
- **In particular, the information which is automatically exchanged by a Member State under Directive 2011/16 should be accessible for the recovery authorities of the same Member State, in view of the execution of a possible assistance request from the Member State that received such bank account information.**
- **National law and technological resources of requested Member States should give sufficient possibilities for requested Member States to obtain information about the debtors for the purposes of recovery and recovery assistance.**
- **Member States should ensure that the authorities dealing with recovery assistance requests dispose of sufficient IT-resources and means to handle these requests.**

Fiscalis project group FPG 110
for the follow-up of the Commission Report on the use of mutual tax recovery assistance under Directive 2010/24 (document COM(2017)778)

THIRD REPORT:

EU-BOTTLENECKS - PLEA FOR A MORE EFFICIENCY-ORIENTED APPROACH

CONTENTS

1. INTRODUCTION

1. The analysis of the issues raised in the discussions on its second report has led the Fiscalis Project group 110 (hereinafter FPG 110) to the conclusion that there is also room for improving the recovery assistance arrangements at EU level. This report lists a number of bottlenecks and loopholes affecting the efficiency and effectiveness of recovery assistance at EU level.

2. IMPROVING THE EFFICIENCY OF RECOVERY ASSISTANCE ARRANGEMENTS UNDER DIRECTIVE 2010/24

2.1. Timely and result-oriented exchange of quality information

2. Requests for information must be sent by electronic means, using a standard form, unless this is impracticable for technical reasons.[7] The standard form to be used for requests for information has been adopted in accordance with Article 26 of Directive 2010/24. The possibility not to use this standard form and the usual electronic communication network is limited to situations where that use would be impracticable for technical reasons, which means that another way of communication is not permitted if it is simply more convenient.

2.1.1. Flexibility with regard to the use of the request form for exchange of information

3. For some requests, a flexible approach could be considered, e.g. if an applicant Member State wishes to ask another Member State to check the addresses of several persons. Instead of sending a separate request for each person, the applicant Member State could make a list of names and addresses for verification by the requested Member State.

On this point, however, FPG 110 also noted that:
- flexibility should not lead to requests that involve an unnecessary and disproportionate workload for the requested authorities;
- different work flows should also be reflected in the statistics on recovery assistance, insofar as they also involve a considerable workload;
- Member States have to take account of the information already exchanged/exchangeable during the tax assessment phase, and make that

[7] Article 21(1), first subparagraph of Directive 2010/24/EU.

information fully available to their tax recovery offices. Information should not be requested under Directive 2010/24 if the information concerned was already exchanged in the taxation phase. This implies the need for a good coordination between tax assessment, tax audit and tax recovery authorities and also between tax authorities and other authorities that dispose of relevant (identification) data within each Member State;
- Member States should keep in mind to use the correct legal basis for their information requests, limiting the use of information requests under Directive 2010/24 to information relevant for tax recovery purposes.

4. The current system could also be made more user-friendly for the simultaneous exchange of information (requests) between more than two Member States, e.g. if a Member State wants to contact several other Member States in order to retrieve missing debtors. The problem of missing debtors is indeed an important issue for which a new practical and legal approach should be searched for.

5. Recommendation EU-1: more flexibility with regard to the way of communication should be considered for a more efficient exchange of information for tax recovery purposes. A specific information exchange approach may be considered with regard to missing debtors.

2.1.2. Exchange of information without request and access to information

6. The spontaneous exchange of information is now very limited. The Directive provides for exchange of information without prior request only in cases where a refund of taxes or duties, other than value-added tax, is to be made to a person established or resident in another Member State.[8] In that case, the Member State from which the refund is to be made may inform the Member State of establishment or residence of the upcoming refund.

A more extensive exchange or sharing of information may be considered with respect for taxpayer privacy and data protection. For instance, a spontaneous or even automatic exchange of information about residence moves from one Member State to another Member State is highly relevant information that could be provided by the new State of residence to the former State of residence or the State of nationality. The lack of information on the new address of the debtor is one of the most common obstacles to effective cooperation. On this point, it should be noted that not all FPG 110 participants were convinced of the need to have such a global exchange of information, which would also apply to cases where there is no recovery problem.

Automatic exchange of bank information already takes place within the EU.[9] This exchange of bank account information was announced as an important tool to increase the efficiency and effectiveness of tax collection.[10] Several Member States, however, reported cases where the use of such information for recovery purposes was problematic. Tax recovery authorities in the requested Member State did not always have access to the information automatically exchanged under Directive 2011/16, or the information concerned was not always correct (see second FPG 110 report, point 22).

In the view of FPG 110, it is important not only to improve the accuracy of this bank account information but also to increase the speed of this information exchange. Directive 2011/16 now provides that the communication of this bank account information has to take place annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.[11] In fact, for cross-border recovery assistance, the opening of bank accounts in other Member States could already constitute relevant information, of which the early exchange could make recovery assistance more efficient.

7. In the future, one should also consider the possibility of automating the replies to information requests by interconnecting databases between the Member States. In this regard, reference is made to existing examples, such as EUCARIS[12], BRIS[13], the interconnection of Member States' insolvency registers[14] or the European land register at the European e-justice portal.

8. Recommendation EU-2: more and better exchange of – or access to – information without request should be considered. Spontaneous exchange of information may facilitate the tax enforcement and a cross-border access to – or connection between – databases may reduce the administrative burden for tax recovery authorities.

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8 Article 6 of Directive 2010/24/EU.

9 In accordance with Art. 8(3a) of Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, introduced by Art. 1(2) of Council Directive 2014/107/EU of 9 December 2014.

10 See the first recital of Council Directive 2014/107/EU.

11 Art. 8(6)(b) of Directive 2011/16/EU.

12 EUCARIS: European Car and Driving License Information System. Its legal basis can be found in the EUCARIS Treaty, EU Council Decisions EU Council Decisions 2008/JHA615 and 616 and several bilateral Treaties.

13 BRIS : Business Registers Interconnection System, where the companies registered in the EU Member States can be found. Its legal basis is the Directive 2017/1132/EU.

14 See Regulation (EU) 2015/858 and implementing Regulation (EU) 2019/917.

2.2. Abolition of the obligation to take account of the identity or similarity of the claims

2.2.1. Facilitating the execution of requests for recovery and precautionary measures

9. Directive 2010/24/EU covers claims relating to all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions.[15] At the same time, it has maintained the former[16] rule with regard to the legislation to be applied in the requested Member State for the execution of requests for recovery measures: in principle, the requested authority has to make use of the powers and procedures provided under the laws of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty. If the requested authority, however, considers that the same or similar taxes or duties are not levied on its territory, it has to make use of the powers and procedures provided under the laws of the requested Member State which apply to claims concerning the tax levied on personal income.[17] The same rules apply *mutatis mutandis* to requests for precautionary measures.[18]

The extension of the scope to all taxes and duties inevitably made it more demanding for the requested Member State to verify whether the same or similar taxes exist in the requested Member State, in view of applying the national enforcement laws concerning the same or a similar tax. Under these circumstances, it could be considered to allow Member States to opt for a general use of what is now the exceptional rule, i.e. to allow them to use the powers and procedures relating to their income tax law – or another tax for which the recovery powers and procedures are well developed in the requested State – to all the tax claims for which recovery assistance is requested. This could make the execution of the recovery assistance requests easier, faster and more efficient, as it would permit to recover several different claims within a single recovery process.

The recovery officials in the requested Member State would not need to have a detailed knowledge of all the taxes that they are requested to recover, since any contestation of the claim has to be brought before the competent body or court of the applicant Member State.

10. Such a simplification should not necessarily affect the current principle that the requested Member State is not obliged to grant other Member States' claims preferences accorded to similar claims arising in that Member State.[19]

11. In the view of FPG 110, this suggestion would permit the requested Member States to facilitate the execution of the recovery assistance requests. It would also reduce the administrative burden for the applicant Member State that wants to request assistance for multiple different tax claims: if the recovery is requested from a Member State that has decided to exercise this option, the applicant authority can put all the claims in one and the same request.

12. The above simplification with regard to the execution of recovery and precautionary measures would correspond to the simplification already introduced with regard to the execution of requests for notification: *"A notification of a document relating to more than one type of tax, duty or other measures, shall be deemed valid if it is 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"*.[20]

13. Such a simplification would also facilitate a possible – optional – extension of the scope for Member States who wish to expand this recovery assistance framework to other public claims for which recovery assistance is not yet possible under another EU framework.

14. Recommendation EU-3: a simplification of Art. 13 of Directive 2010/24 should be considered.

2.2.2. Facilitating the communication of requests by reducing the e-mailboxes used

15. Under the current system, Member States dispose of 13 mailboxes, depending on the type of the taxes concerned. This large number of mailboxes, agreed in 2011, at the time of adoption of the current legal framework, was meant to take account of all Member States' wishes and concerns with regard to their internal division of competences for the specific categories of taxes.

Today, it appears that most of these administrative/organisational arrangements are no longer relevant. The awareness about the detailed practical arrangements for the communication

[15] Article 2(1)(a) of Directive 2010/24/EU.
[16] As applied under Directive 76/308/EEC and Directive 2008/55/EC.
[17] Article 13(1), first and second subparagraphs of Directive 2010/24/EU.
[18] Article 17 of Directive 2010/24/EU.
[19] Art. 13(1), third subparagraph of Directive 2010/24/EU.
[20] Art. 13(2) of Regulation (EU) 1189/2011.

between the mailboxes is no longer present in all Member States.

Moreover, the majority of assistance requests relate to only two categories: VAT and income taxes:

	VAT	income/ capital taxes	customs	other taxes and claims
2011 (26 MS)	62,48 %	28,68 %	3,44 %	5,40 %
2012 (26 MS)	42,00 %	20,00 %	14,00 %	24,00 %
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)	24,64 %	40,16 %	6,16 %	29,04 %
2017 (27 MS)	52,97 %	33,85 %	6,22 %	6,96 %
2018 (27 MS)	45,65 %	31,90 %	12,50 %	9,95 %

Table 1: Nature of the claims for which recovery assistance is requested, on the basis of the amounts of the claims concerned

16. There was no consensus within the FPG 110 with regard to the questions how much mailboxes should be kept and to which extent this simplification should be optional for the requested Member State.

17. Recommendation EU-4: a rationalisation of the e-mailboxes for communication of assistance requests should be considered.

2.3. Other suggestions for improving the efficiency

18. It has been suggested to replace the detailed arrangements of Directive 2010/24 with regard to suspension, interruption or prolongation of periods of limitation.[21] The current arrangements – which were adopted in 2010 in order to take account of the particular legislation of some Member State(s) at that time – require a precise communication by the requested and applicant Member States. They could be replaced by new rules that are easier to apply, e.g. by a rule according to which the communication of a request for recovery or for precautionary measures in itself entails a suspension, interruption or prolongation of the period of limitation (of a length to be agreed). Such a rule would not affect Member States' competence to determine their own limitation period rules for their own claims, since it would only apply in situations where cross-border recovery assistance is requested.[22]

19. It has also been suggested to reinforce the use of precautionary measures in the context of cross-border recovery assistance. On this point, the ECJ decision in case C-420/19 *Heavyinstall* with regard to the judicial control of requests for precautionary measures is expected to have some impact on the current legislation and practice. The discussion on this point will also have to respect the rights of the defence of tax debtors.

20. Several other suggestions have been made to further improve and/or simplify recovery assistance:
- the adoption of specific rules to organise recovery with regard to particular assets (e.g. savings books; crypto-currencies, e-bank accounts) and possibly with regard to the effects of digitalisation of economic transactions on tax liabilities and tax recovery;
- update, clarification or amendment of rules on the closure of requests;
- clarification or amendment of interest rules;
- clarification or amendment of rules concerning the lodging of tax claims in cross-border insolvency proceedings, in view of the need for administrative cooperation between the Member States in cross-border insolvency cases;
- a clarification of the scope of Directive 2010/24, in relation to Directive 2011/16;
- strict and concerted tax enforcement (and insolvency) approach towards fraudulent practices, e.g. tax debtors establishing themselves in another Member State than the Member States where they create tax debts that remain unpaid.

21. FPG 110 also suggests to launch a process to update of the standard e-forms. The basic structure and content of the current forms have been established before there was any practical experience with Directive 2010/24. Now that a new technical environment for the use of the standard e-forms has been developed (eFCA: e-Forms Central Application), it is time to reconsider and modernize the structure and workflow, the content and the internal guidance of the e-forms, which were not substantially updated since their adoption. This update could take account

[21] Article 19 of Directive 2010/24/EU.

[22] Such a uniform provision could be compared with the uniform determination of the period for which records about MOSS transactions must be kept. (Art. 369(2), second subparagraph, and Art. 369quinquies(2), second subparagraph, of Directive 2006/112/EC provide that: "Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.").

of the above recommendations to facilitate the exchange of information, the use of requests for precautionary measures, and the use of recovery requests with regard to co-debtors and third parties.

22. Recommendation EU-5: an update of several other aspects of the EU legislation on mutual tax recovery assistance should be considered, covering *inter alia* the period of limitation, the use of precautionary measures, the recovery actions with regard to particular assets, the closure of requests, interest rules, the lodging of tax claims in cross-border insolvency proceedings, and the electronic forms.

3. MORE ATTENTION FOR TAX RECOVERY IN THE DESIGN OF THE VAT (COLLECTION) SYSTEM

23. In its latest report on the use of the EU tax recovery assistance framework (Directive 2010/24/EU), the European Commission observed that the EU legislation and framework have facilitated tax recovery assistance between the EU Member States.[23] However, Member States should not always revert to tax recovery assistance requests in cross-border situations. Whenever possible, Member States should only use the Directive for situations where an assistance request is really needed, so as to reduce the administrative burden related to it.

24. FPG 110 particularly draws the attention to the following issues, relating to the harmonized VAT legislation, and suggests to consider possibilities for improving the efficiency of tax recovery in specific cross-border situations without using recovery assistance requests.

3.1. Improving the recovery of the VAT on e-commerce transactions

25. On 16 July 2019, the European Court of Auditors published a Special Report, analysing the use of the VAT and customs arrangements with regard to e-commerce.[24] One of the main conclusions of the report is that enforcement of VAT collection is not effective.

It specifically highlights the following deficiencies under the current MOSS[25] system:
- problems with the transfer of the VAT by the Member State of MOSS-identification to the Member States of consumption (points 108-115 of the report);
- the underuse of the mutual assistance provisions for recovery of taxes (point 116 of the report).

On the above issues, the European Court of Auditors makes the following recommendations to the European Commission:
- the Commission should address the pending and future payment mismatches between Member States, seek explanations for them, and request the pending data; and
- the Commission should encourage and promote the use by Member States of mutual assistance for the recovery of claims relating to taxes, duties and other measures for recovery of VAT of e-commerce transactions, in accordance with Directive 2010/24.

26. In the view of FPG 110, the recommendation to increase the use of the mutual recovery assistance framework is not sufficient, since the use of the existing recovery assistance framework is not in itself sufficient to cope with these situations. On this point, the analysis focuses on situations of recovery of VAT due by taxable persons established within the EU but not in the Member State of consumption.[26]

Under the current VAT rules, taxable persons who have failed to submit a MOSS VAT return, or who failed to make the corresponding VAT payment, normally first receive a reminder sent by the Member State of MOSS identification.[27] This reminder is sent by electronic means, and the Member State of identification also has to inform the Member States of consumption that a reminder has been issued. The same articles also provide that any subsequent reminders and steps taken to assess and collect the VAT shall be the responsibility of the Member State of consumption concerned. When such subsequent reminders have been issued by a Member State of consumption, the corresponding VAT shall be paid to

[23] European Commission report COM(2017)778 of 18 December 2017, Conclusion 5.a.

[24] European Court of Auditors' Special Report 2019-12: "E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved". The full report and the accompanying press release can be found on the website of the European Court of Auditors: https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=50415.

[25] MOSS: Mini One Stop Shop, i.e. the system used for the special VAT scheme for telecommunications, broadcasting or electronic services to non-taxable persons (Article 357 – Art. 369k of VAT Directive 2006/112/EC).

[26] The situation of taxable persons established within the EU but not in the Member State of consumption is governed by Articles 369a - 369k of the VAT Directive 2006/112/EC.
With regard to taxable persons not established within the EU who have opted for an identification in one of the Member States under the non-Union MOSS scheme (Articles 358a - 369 of the VAT Directive 2006/112/EC), the use of the EU recovery assistance framework between EU Member States is probably insufficient. If the taxable person is not established within the EU, Member States will have to check the possibilities for recovery assistance with third countries.

[27] Articles 60a and 63a of Council Implementing Regulation (EU) No 282/2011, inserted by Council Regulation (EU) No 967/2012.

that Member State (but the VAT return itself should still be submitted to the Member State of identification).

27. In practice, FPG 110 believes that the existing division of competences does not facilitate the collection of VAT that is not paid spontaneously. This can be illustrated by the following simple example: a taxable person established in Member State A does not pay the VAT due under the MOSS scheme, relating to services to non-taxable persons established in Member States B, C, D and E. Under the current rules, Member State A will limit itself to one reminder. If the VAT is still not paid, each of the Member States of consumption (B, C, D and E) will be responsible for the further collection of the VAT payable to them. Each of them would have to send a reminder. Since the taxable person is established in Member State A and not in any of the Member States of consumption[28], the only realistic option for the Member States of consumption is to send a request for recovery assistance to Member State A.

28. The preparation of all these requests for recovery assistance – with the creation of different instruments permitting enforcement in the requested Member State – is time-consuming for the Member States of consumption. Moreover, if the VAT due in one of the Member States of consumption does not exceed the threshold of 1500 €, the Member State of MOSS-identification may refuse to grant assistance.[29] It would thus be more efficient to make the Member State of identification responsible for the recovery of this unpaid MOSS-VAT, and to avoid the need for recovery assistance requests.[30]

29. A question can be raised with regard to the interest and penalties that would/could be applied in case of non-payment of the MOSS-VAT. It is now provided that: *"Where no VAT return has been submitted, or where the VAT return has been submitted late or is incomplete or incorrect, or where the payment of VAT is late, any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption. The taxable person shall pay such interests, penalties or any other charges directly to the Member State of consumption".*[31]

30. It may be argued that making the Member State of identification responsible for the recovery of the MOSS-VAT due in the Member States of consumption could complicate the calculation of the interest.

In this regard, FPG 110 would rather suggest to reconsider the content of Article 63b, taking into account the fact that its application is not as easy as it may seem.

First, the current Article 63b is not consistent with Article 13(3) of Directive 2010/24/EU, which provides that: *"from the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions in force in the requested Member State".*

Second, the current Article 63b implies that all Member States of consumption are entitled to impose penalties on a taxable person who fails to pay the VAT of one MOSS return. This leads to a complexity for the taxable person, who is not necessarily familiar with the interest and penalties calculation rules in each Member State of consumption. In addition, the combined application of all these sanctions may lead to questions about the respect for the principle of proportionality that should be respected whenever VAT sanctions are imposed.[32] Possible explanations and justifications that taxable persons may invoke to obtain reductions or remissions of interest and penalties would have to be addressed to each individual Member State of consumption, in accordance with the specific conditions of each Member State concerned.

Such a complexity could be avoided if all these issues were dealt with under the sole legislation of the Member State of identification.

31. Rather than advising Member States to send more requests for recovery assistance, it may thus be considered to change the system, making the Member State of identification responsible for the recovery of MOSS-VAT due by taxable persons established within the Community but not in the Member State of consumption. The adoption of these new rules would of course require a change in the mindset of the EU Member States: instead of waiting for a request for assistance, they could take the initiative – as Member State of MOSS-identification – to recover the VAT for other Member States. The expected increase in the number of taxpayers and the volume of payments due to the introduction of the OSS system in 2021 would be a further justification for a revision of the principles with regard to the responsibility for the recovery of this VAT.

32. Recommendation EU-6: it should be considered to make the Member State of identification responsible for the recovery of (M)OSS-VAT due by taxable persons established within the Community but not in the Member State of consumption.

[28] Since this is a condition for the application of this special scheme (see Title of Section 3 of Chapter 6 of Title XII of the VAT Directive 2006/112/EC.

[29] In accordance with Article 18(3) of Directive 2010/24/EU.

[30] Of course, it would not be appropriate to hold that Member State of identification liable for the VAT claims in situations where its recovery actions would be unsuccessful.

[31] Article 63b of Regulation (EU) No 282/2011.

[32] See e.g. EUCJ 6 Feb. 2014, C-424/12, *Factorie*, para. 50.

3.2. Use of VAT refunds in other Member States for the recovery of taxes in the own Member State

3.2.1. Loopholes in the arrangements of Art. 48 of Regulation (EU) No 904/2010

33. Taxable persons established in one of the EU Member States may ask for a refund of the VAT paid in other EU Member States, in accordance with Directive 2008/9/EC. Where the taxable person concerned still has VAT or other tax debts in his Member State of establishment, that State may wish to have the amount of the VAT refund seized and/or transferred, in order to discharge the tax debt, or to guarantee the future recovery of the tax debt if that debt is still contested.

34. On 2 October 2018, Article 1(14) of Council Regulation (EU) 2018/1541 was adopted to facilitate such seizures and transfers.[33] It provides that the Member State of establishment may request the consent of the taxable person for the transfer of the VAT refund directly to this Member State, in order to discharge the outstanding tax liabilities. Where the tax liabilities in the Member State of establishment are disputed, the transfer of the refund amounts can be used by the Member State of establishment as a retention measure, with the consent of the taxable person, in so far as an effective judicial review is ensured in that Member State. These new rules apply from 1 January 2020 (Article 3 of Regulation 2018/1541).

35. Some taxable persons may indeed give their consent and accept a direct transfer of the VAT refund amount to their Member State of establishment. If they do not contest the tax claim of their tax authorities, they have no reason to object to such a transfer. If they dispute the tax claim, they may still consider to accept such a transfer, as it has certain advantages for them:

– if they do not agree with the transfer, their Member State of establishment could send a request for precautionary measures to the refund State, asking to seize the amount of the refund. Any further contestation of that precautionary measure would then have to be brought before the competent bodies of that other State,[34] while the taxable person concerned may not be familiar with the organisation of the tax authorities or courts in the refund Member State, or may have difficulties to understand or use the official language of that other Member State;
– if they do agree with the transfer, the amount of the refund would be transferred to the tax authorities of his Member State of establishment, which would retain this amount as a precautionary measure. In the latter case, future contacts with regard to this retention or future reimbursement requests could be sent directly to their own tax authorities or their own courts. This would be much easier for the taxable person concerned, who is familiar with the administrative and judicial organisation in his own country and who would be able to contact these authorities in his own language. Moreover, it may also be interesting for the taxable person that the amount of the VAT refund is transferred to his own Member State of establishment, if the interest granted/due in the two Member States concerned is different.

36. However, some taxable persons will not agree to a direct transfer of the VAT refund amounts by the refund Member State to their Member State of establishment. Furthermore, such a consent may even be more unlikely if the VAT refund request is submitted by a third person (e.g. a tax advisor or another company) on behalf of the taxable person concerned. In those cases, the Member State of establishment will still have to send a request for recovery or precautionary measures, with a uniform instrument permitting enforcement – or possibly an instrument permitting precautionary measures – in the requested Member State, in accordance with Article 10 or 16 of Directive 2010/24/EU. These assistance requests must be sent with a specific standard form, in accordance with Article 21(1) of Directive 2010/24 and involves an additional administrative burden (see point 3.2.2.).

37. In the view of FPG 110, the need to have the consent of the taxable person reduces the efficiency of the measure introduced by Article 1(14) of Council Regulation (EU) 2018/1541.

3.2.2. Inefficiency of the recovery assistance framework to deal with VAT refund requests

38. Requests for refund of VAT pursuant to Article 6 of Directive 2008/9 must be forwarded by the Member State of establishment of the taxable person concerned to the Member State of refund within 15 calendar days of their receipt.[35]

If the taxable person concerned has some tax debt in his Member State of establishment and the tax authorities of that State want to obtain the seizure of that VAT refund without the taxable person's consent, they have to send a request for recovery or precautionary measures to the Member State of

[33] Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax. Art. 1(14) of this Regulation adds two subparagraphs in Article 48(1) of Regulation 904/2010 on administrative cooperation in the field of VAT.

[34] Art. 17 and Art. 14(2) of Directive 2010/24.

[35] Art. 48(1), first subparagraph, of Regulation 904/2010.

refund. This recovery request should be sent within a relatively short period – ideally before or at the moment the VAT refund request is forwarded – in order to inform the refund state and to avoid that the VAT amount at stake is refunded before the execution of the recovery assistance request. The preparation of such an assistance request – which includes the preparation of the uniform instrument permitting enforcement in the requested Member State – may cause a delay in the applicant Member State.

Filling out this (long) standard form is very time-consuming for a simple case of obtaining a seizure/transfer of the amount of a VAT refund, and it may even be more cumbersome if it has to be repeated each time a new VAT refund request is submitted by the same debtor. Further, these assistance requests must be sent to the specific contact points responsible for recovery assistance, which are normally different from the VAT refund authorities. Providing this recovery assistance thus requires a lot of coordination in the requested Member State. Moreover, this coordination has to be done rapidly, in particular in those Member States that handle VAT refund requests within a short time period.

39. The execution of a recovery assistance request, even if is limited to the seizure of the VAT refund amount, may require the notification or use of the uniform instrument permitting enforcement in the refund state. This may cause some more delay and specific administrative costs for the requested authorities.

40. The above complexity could be avoided if it were agreed that the applicant Member State ensures the necessary notification and communication to the taxable person. In that case, the usual request for recovery assistance (accompanied by a uniform instrument permitting enforcement in the refund State), sent in accordance with Directive 2010/24, could be replaced by a simple message, emanating from the competent authorities of the applicant Member State, accompanying the VAT refund request when it is forwarded to the Member State of the VAT refund.

41. At the same time, the VAT refund state should ensure that the seizure of the VAT refund amount can be done easily in its territory. Under these circumstances, there is no need for the requested Member State to charge any specific recovery costs. In the absence of specific recovery costs in the Member State of the refund, the competent authorities of that requested State should not refuse the request for seizure of an amount below EUR 1500 (see the second FPG 110 report, point 22).

Of course, the measure should be applied in a proportionate way, with respect for the right of defence of the taxable person concerned.

42. Recommendation EU-7: the seizure and transfer of the VAT amounts for which a refund is requested in accordance with Directive 2008/9 should be facilitated within the context of mutual tax recovery assistance (but the taxable person's right of defence against such recovery or precautionary measures should be guaranteed).

4. NEED FOR GUIDANCE AND TRAINING

43. Problems reported to FPG 110 often result from divergent interpretation and/or application of the common rules of the Directive, or non-respect or non-understanding of these common rules. These issues confirm that tax officials dealing with mutual recovery assistance requests have an obvious need for more guidance and training with regard to the EU legislation and e-forms in this field.

Explanatory notes have already been adopted by the Recovery Expert Group, but they only provide clarification on a limited number of issues. The complexity of international tax recovery assistance and the recent increase of case law – in particular the EUCJ judgments relating to the protection of taxpayer rights – increase the need for more detailed guidance and training of national tax recovery officials.

FPG 110 suggests to organise a yearly training event for officials that are new in the job.

44. Recommendation EU-8: it is suggested to have more guidance and training events for officials dealing with international tax recovery assistance, so that they are better informed about the possibilities for cross-border assistance and the needs with regard to the protection of tax debtor rights.

5. GENERAL CONCLUSION

45. Efficient tax recovery must be a major concern when new tax rules are designed. The few examples above show that the efficiency concern has not sufficiently been taken into account and that there is room for further improvement of the tax recovery assistance framework, whereby the administrative burden related to the use of specific tax recovery assistance requests should be avoided whenever possible.

This further improvement is in the interest of the tax authorities of applicant and requested countries, but also in the interest of the community of the compliant taxpayers and in conformity with the principle of fairness. By strengthening and facilitating the cooperation and the recovery processes, the recovery assistance can become more effective.