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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

{SWD(2020) 340 final}

Introduction

1. Tax fairness is a key element of the recently adopted *Commission Action Plan for a fair and simple taxation supporting the recovery strategy*.[1] Everyone is expected to pay their fair share of taxes. If taxes remain unpaid, tax authorities need to take recovery actions to collect the taxes. The competence of the tax authorities is however limited to their national territory. They cannot undertake recovery actions in other countries, although tax debtors may have moved to another country or may have assets in other countries. Therefore, the EU has adopted legislation which allows the EU Member States to provide mutual assistance to each other for the recovery of their taxes and for other EU claims defined in Article 2 of the Directive.

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

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

2. This report presents the **follow-up to Commission Report COM(2017)778**[2] of 18 December 2017 to the European Parliament and the Council on the operation of the arrangements established by Council Directive 2010/24/EU[3] of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. Article 27(3) of this Directive provides that the Commission shall report every 5 years to the European Parliament and the Council on the operation of the arrangements established by this Directive. The present report is the second report under this new Directive. It covers the period 2017-2019.

3. In line with the conclusions of the previous report, the following **actions have been determined**:
   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. Special attention should also be paid 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;

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1 Action 14 of this Action plan, https://ec.europa.eu/taxation_customs/sites/taxation/files/2020_tax_package_tax_action_plan_en.pdf.

2 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.

3 Directive 2010/24/EU 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 March 2010.

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.

4. With regard to the first three action points, further analysis has been carried out by Fiscalis Project Group 110, in which 13 Member States[4] participated. Input was also collected from the other Member States, in particular with regard to the problematic issues encountered at national level.

5. This report presents the follow-up actions and contains a number of recommendations for further improvements.

1. First action point: improving and automating the collection of statistical data

6. The **recovered amounts** reported by the applicant Member States and the requested Member States show some differences in the period 2017-2019.

Table 1: overview of recovered amounts (2017-2019):

	Recovered at the request of other Member States, before deduction of the own costs (reported by the requested Member States)	Recovered via requests to other Member States (reported by the applicant Member States
	in €	*in €*
2017	103 536 690	159 544 517
2018	86 099 511	127 517 949
2019	93 304 732	106 391 930

The above data indicates that during the three-year period, between EUR 283 million and EUR 393 million were recovered.

The amounts in the left and right columns of the above table do not have to match exactly. The amounts in the left column refer to the amounts recovered before deduction of the costs incurred by the requested Member State (which would normally lead to a higher amount in the left column), and some debts may be paid directly to the applicant Member State (which leads to a higher amount in the right column). However, the discrepancies between the columns is significant, especially in 2017, although the differences between the reported amounts does decrease from year to year. Irrespective of this improvement, this raises questions about the accuracy of these statistics.

Discrepancies can also be found in the numbers of assistance requests reported by the Member States (see section 1.1. of the Commission staff working document accompanying this report for more information about the numbers of assistance requests).

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

7. The move to an **automated collection of statistical** data will help to **improve the reliability** of the statistical data reported by the Member States. It will also reduce the administrative burden for the Member Sates.

8. Moreover, an automated collection of statistics will enable the Member States to collect **more relevant information** about their actual performance in tax recovery assistance.

   The Recovery Expert Group has already discussed the possibility for Member States to extend the collection of statistical data – in an automated way – to the following elements:
   - the type of replies to requests for recovery, providing an indication of the usefulness of the request and its chances to obtain recovery;
   - the number of situations where requests are revised by the applicant Member State, following corrections, disputes, (partial) payments, etc.;
   - the timeliness of acknowledgments of the receipt of assistance requests and the timeliness of the first replies to assistance requests;
   - the number of requests for recovery relating to VAT refunds to be made by the requested State (where the action requested from that State is limited to the seizure of the VAT refund amount concerned).

   The Commission expects that this additional information will help to improve the evaluation of the work and better demonstrate the efforts made by the requested and applicant Member States.

9. The automated collection of the above statistical data requires some further IT-developments. These would normally be ready in 2021, so that the automated collection of these statistics could be fully applied by the Member States with regard to the requests and replies sent from 2022.

2. Second action point: Improving the legislation and practice at national level

10. There are different situations where the recovery and the execution of recovery assistance requests should be improved at national level:

    1a) **Cases of no-reply**, showing a clear lack of cooperation. These 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 affect the mutual trust which is fundamental in tax recovery assistance.

    1b) Other situations of lack of cooperation, due to **insufficient or unclear information and communication problems**. These include situations where the applicant authorities do not provide clear information about their request (e.g. insufficient or no justification for a request to recover an old claim; lack of explanation of the information on which the request is based, while that information would be useful for the execution of the request) 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. The uncertainty 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).

2a) **Incorrect implementation of the Recovery Directive**: situations where Directive 2010/24 is not correctly implemented in the legislation and/or administrative practice of the requested Member State or situations relating to a wrong interpretation of the Directive (see sections 2.2.1.-2.2.4. of the Commission staff working document accompanying this report).

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

2b) **Insufficient national legislation or practice**: situations where the legal framework or practice in the requested Member State is not fit to provide recovery assistance to other Member States (see section 2.2.5. of the Commission staff working document accompanying this report).

If the national legislation or practice are not sufficiently developed and adapted to the needs of international recovery assistance, the 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.

11. In general, it can be concluded that Member States have to deploy sufficient human resources and IT-infrastructure to handle the incoming requests for recovery assistance, and that the national rules and administrative practice must be developed, in view of providing an active and effective recovery assistance.

12. The Commission intends to monitor closely the issues reported. All Member States concerned have been invited to comment and, where necessary, to present their follow-up actions. The evaluation of these issues by the Commission is ongoing, which may in some cases involve launching infringement procedures in situations of incorrect implementation of the Recovery Directive.

3. Third action point: improving the functioning of recovery assistance at EU level

13. The Commission report COM(2017)778 concluded that improving different legal and technical aspects of the functioning of the EU tax recovery assistance system may be considered (see section 4.3. of that report).

14. Some ideas to improve the EU framework were raised by Member States within the context of the evaluation that took place in 2017.[5] Fiscalis Project Group 110 has undertaken some further analysis of a number of suggestions to improve the efficiency of recovery assistance arrangements. The overview below presents the main elements.

15. A major concern relates to the **exchange of information**. This could be improved, *inter alia*, by:
    - permitting more flexibility with regard to the use of the request form for exchange of information;
    - extending the exchange of information without request and rapid access to information.

16. In the past, recovery assistance was only provided for taxes that existed in both Member States concerned. This **mirror approach** was abandoned in 2010, when Directive 2010/24 extended the scope to claims relating to "all taxes and duties of any kind". The mirror approach – requiring a similarity between the taxes of the applicant Member State and the requested Member State – was, however, maintained for the following elements:
    - when executing a request for **recovery or precautionary measures**, the requested Member State must make use of its own powers and procedures applying to the same or, in the absence of the same, a similar tax or duty (with income taxes as a fall-back option) (Article 13(1) of Directive 2010/24);
    - when sending requests for assistance, Member States have to take account of the requested Member States' internal division of competences for the recovery of the specific categories of taxes for which recovery assistance is requested. Therefore, a **system of 13 mailboxes** was set up, the use of which may be different from one Member State to another, depending on the Member States' internal division of competence for the specific categories of taxes;
    - when **suspension, interruption or prolongation of periods of limitation** are applied, as Article 19(2) of Directive 2010/24 takes into account whether a corresponding effect is provided under the laws in both Member States.

17. **Simplification of the above rules should be considered**, at least on an optional basis. This would facilitate a possible (optional) extension of the scope to other public claims for which no recovery assistance framework exists at this moment. Several Member States have indeed repeatedly pleaded for a further extension of the scope of the recovery assistance to other public claims for which there is currently no other legal basis.

18. Attention should also be paid to the ways of dealing with the **digitalisation of transactions and assets**, which add to the existing recovery problems, such as:
    - problems with regard to the seizure of e-bank accounts and crypto-currencies;
    - difficulties to recover taxes due by taxable persons established in other countries than the countries where they are operating (in particular in case of e-commerce). In this respect, more attention should be paid to the recovery (assistance) aspects when new tax legislation is developed.

19. The Commission intends to have further discussions with the Member States in order to carry out an in-depth analysis of possibilities and needs to reinforce and facilitate the recovery assistance framework.

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[5] See Staff working document SWD(2017)461 of 18 December 2017 accompanying the Commission report COM(2017)778, No. 6.3.2.

20. Any future developments should, nevertheless, take full account of the need to protect tax debtors' rights. The growing number of preliminary questions to the EU Court of Justice confirms that recovery assistance under Directive 2010/24 – just as recovery assistance under any other agreement – must respect tax debtors' rights, in particular their right of defence.

4. Fourth action point: Developing the knowledge and awareness of the mutual recovery assistance rules

21. One of the conclusions of the Commission evaluation report COM(2017)778 related to the need to develop the knowledge and awareness of the mutual recovery assistance legislation.[6] It appears that problems in mutual recovery assistance often result from a lack of understanding of the rules under Directive 2010/24. Furthermore, raising awareness is necessary not only at the level of national tax authorities but also at the level of the taxpayers.

22. At EU level, some **training events** have already been organised.[7] The Commission is planning to organise more regular and systematic training within the framework of the Fiscalis program, in order to contribute to a common understanding and awareness of the possibilities for recovery assistance within the EU.

    These training activities also have to pay attention to the growing **impact of case law** developments in the field of tax recovery and recovery assistance

23. Furthermore, each Member State is expected to **share information about its national legislation and practice with other Member States**. This information is important for tax authorities of other Member States that wish to check the possibilities for recovery assistance in other countries. Some national information is already available on the common database CIRCABC. The Commission will set up a coordinated action, inviting the Member States to proceed with an update and extension of this national information.

24. Member States will also be invited to **raise the awareness of taxpayers** about the possibilities and consequences of cross-border tax recovery assistance.

5. Fifth action point: Examining possibilities and ways to promote and facilitate recovery assistance with third countries

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6 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.

7 Fiscalis workshops on the use of the electronic forms for recovery under the central application (12-13 April 2018 and 19-20 April 2018) and a training workshop for Norwegian tax recovery authorities, following the adoption of the EU-Norway agreement on administrative cooperation and tax recovery assistance in the field of VAT (25-27 September 2018).

25. In 2018, the European Union signed its first **bilateral agreement** on administrative cooperation, combating tax fraud and recovery of claims in the field of VAT with a third country: the **Kingdom of Norway**.[8]

    The EU-Norway Agreement allows Member States and Norway to use the e-forms also for recovery assistance with regard to other taxes than VAT.[9] Several Member States have expressed their interest in using this possibility. This would be useful, in view of the automated translation of the standard forms[10], which permit to inform the persons concerned in the official language of the requested State.[11] Norway indicated that the evaluation of the extended use of the e-forms will be done by the end of 2020.

26. In its conclusions of 5 December 2019[12], the Council of the European Union acknowledged that the EU–Norway Agreement was an important step in exchanging tax information with third countries. It stressed the importance of such cooperation between European Member States and third countries in the fight against tax fraud and invited the Commission to explore opportunities for **new agreements on mutual assistance arrangements in VAT and recovery with other third countries**.

    Agreements on administrative cooperation with third countries, in particular to fight tax fraud related to e-commerce, are part of the initiatives outlined in the recently adopted Commission Action Plan for a fair and simple taxation supporting the recovery strategy.[13]

27. Provisions on recovery assistance, maintaining the possibility to use the current framework for on-going **recovery assistance with the United Kingdom**, were included in the withdrawal agreement.[14]

    The Council of the European Union also authorised the European Commission to open negotiations for a new partnership with the United Kingdom.[15] The envisaged partnership covers, among other, administrative cooperation and mutual assistance in customs and value added tax (VAT) matters including for the exchange of information to fight customs and VAT fraud, and for mutual assistance for the recovery of claims related to taxes and duties, as mentioned in the negotiating directives[16].

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8 OJ L 195/1 of 1 August 2018. This agreement entered into force on 1 September 2018.

9 Article 40(4) of the agreement.

10 Notably the uniform notification form and the uniform instrument permitting enforcement.

11 The obligation to inform the person concerned in a particular language was confirmed by the case law of the EU Court of Justice (case C-233/08, *Kyrian*, and case C-34/17, *Donnellan*).

12 Point 15 of the Council conclusions 14682/19 of 5 December 2019 on the report of the European Court of Auditors' Special Report No 12/2019 "*E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved*".

13 Action 14 of this Action plan, https://ec.europa.eu/taxation_customs/sites/taxation/files/2020_tax_package_tax_action_plan_en.pdf

14 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ C 384I , 12.11.2019, p. 1.

15 https://www.consilium.europa.eu/media/42737/st05870-en20.pdf

16 https://www.consilium.europa.eu/media/42736/st05870-ad01re03-en20.pdf

28. Since 2019, **electronic recovery assistance request forms** (in the Java format[17]) are **available for use with third countries**. When these forms were initially developed, they were indeed designed in such a way that they can be used with other third countries.

    A cooperation with third countries may also be envisaged for the revision of the current EU tax recovery assistance request forms.

29. Finally, the EU Recovery Expert Group has suggested to develop an **EU model Memorandum of Understanding** for bilateral agreements with third countries. Based on sharing best practices, this model could be used by Member States for organising their recovery assistance with third countries, in order to simplify the implementation of such agreements.

6. General conclusions and recommendations

30. The **automated collection of statistical data** will help to improve the accuracy of these statistics and to reduce the administrative burden for the Member States.

    Member States are invited to effectively use the automated collection of statistical data and to include the additionally collected data in their annual reports to the Commission.

31. Although the recovered amounts are considerable, the problems reported show that there are concerns/doubts about the willingness or capacity of some Member States to provide recovery assistance. Member States have a legal obligation **to assist other Member States** in the recovery of tax claims so adequate measures need to be taken at national level to fulfil this requirement.

32. An appropriate follow-up should be given to every assistance request and the processing time should be substantially shortened. Member States should devote **sufficient human resources, IT-infrastructure and IT-tools** to tax recovery assistance, so as to fulfil their assistance obligations and to handle the ever-increasing volume of assistance requests. **National rules and administrative practices need to be developed** in such a way that tax recovery authorities can provide such assistance.

    Member States are invited to organise an internal control, in order to ensure that requests for assistance are effectively executed and that the requested authorities provide clear and timely information to the applicant authorities about the execution of assistance requests.

    Tax authorities are invited to report situations of non-respect of the recovery assistance rules to the appropriate level within the Member States and Member States are invited to submit these problems (at an earlier stage) to other Member States and to the Commission, so that persisting problems in the relations with other Member States can be dealt with in a more pro-active and effective way.

[17] With regard to the central application e-forms (eFCA), it was noted that this would require an IT-connection and support provided by the Commission and entail a financial contribution from participating countries, requiring an international agreement (as is the case with Norway).

33. The **EU tax recovery assistance framework faces several challenges**: the tools and instruments to request and grant recovery assistance must be adapted to the increasing need for recovery assistance, the new economic and technological developments and the legal developments, in particular with regard to the respect of tax debtors' rights.

34. The need to **increase the knowledge and awareness** of the EU tax recovery assistance framework is an important issue. Actions to increase this knowledge and awareness have been taken, but further action is needed.

35. Member States are invited to cooperate with the Commission to implement these actions, in a pro-active way and with a positive European spirit.