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COMMISSION STAFF WORKING DOCUMENT

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

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

{COM(2020) 813 final}

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Background

1. The Commission Report COM(2017)778 on tax recovery assistance presented the following conclusions:
   - The EU legislation and framework for tax recovery assistance has facilitated tax recovery assistance between the EU Member States.
   - In order to guarantee the efficiency and effectiveness of mutual recovery assistance, Member States should strengthen their internal tax recovery systems and deploy sufficient resources to deal with recovery assistance requests.
     In this regard, it should be examined if and how detailed and precise quantitative information can be collected about the administrative burden and costs and about the correspondence between the workload of incoming requests for assistance and the administrative resources deployed in the requested State.
   - Improving different (legal and technical) aspects of the functioning of the system may still be considered with the Member States and other stakeholders, including taxpayers.
   - More communication to explain and promote this legislation would contribute to increase tax compliance and respect of taxpayers' rights.
   - Recovery of taxes is and remains difficult in case of organised tax fraud by natural or legal persons:
     - natural persons committing fraud or setting up fraudulent tax structures go missing and dislocate their assets;
     - legal persons organise their insolvency and also move their assets.
   - As a consequence of the international development of exchange of information, recovery assistance between the EU and third countries will become a more prominent issue.

2. The above report led to the adoption of the following action points:
   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, in order to avoid or limit additional workload for the national tax authorities;
   2) Examining problems at the level of individual Member States that hamper the smooth functioning of mutual recovery assistance;
   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.

3. The follow-up on the above action points is described in the Commission report COM(2020) 813 to the European Parliament and the Council. This Commission staff working document, accompanying the Commission report to the European Parliament and the Council, presents a more detailed analysis of action points 1, 2 and 4.

1. First action point: improving the (automated) collection of statistical data

1.1. Increasing volume of the assistance requests

4. The yearly statistical data that each Member State has to report[1] relate to:
   - the number of requests for information, notification, recovery or precautionary measures sent to each requested Member State and received from each applicant Member State over the year;
   - the amount of the claims for which recovery assistance is requested and the amounts recovered.

5. The use of all traditional types of recovery assistance (requests for information, requests for notification, requests for precautionary and/or recovery measures) continued to increase in the period 2017-2019:[2]

Table 1: total numbers of requests received by all Member States in 2017-2019:

	Requests for information	Requests for notification	Requests for precautionary measures	Requests for recovery	TOTAL number of requests
2017	14 104	1 919	97	16 583	32 703
2018	17 054	1 945	94	19 326	38 419
2019	20 271	2 141	154	21 308	43 874

The above data indicates that during the three-year period, almost 115 000 requests were received. On average, the total number of requests grew 15 % every year.

6. If 2013 is taken as the baseline – 2013 being the first year when Directive 2010/24 was fully implemented in all Member States – then the increase is even more impressive, especially for the requests for information and the requests for recovery:

Table 2a: evolution of the total numbers of requests received by all Member States in 2017-2019, in % compared to 2013 (2013 = 100 %):

	Requests for information	Requests for notification	Requests for precautionary measures	Requests for recovery
2017	171 %	93 %	95 %	160 %
2018	207 %	94 %	92 %	186 %
2019	246 %	104 %	151 %	205 %

[1] In accordance with Article 27(1) of Directive 2010/24.

[2] Statistics about recovery assistance in previous years were presented in Commission report COM (2017)778 of 18 December 2017.

Table 2b: evolution of the total number of requests in the period 2013-2019:

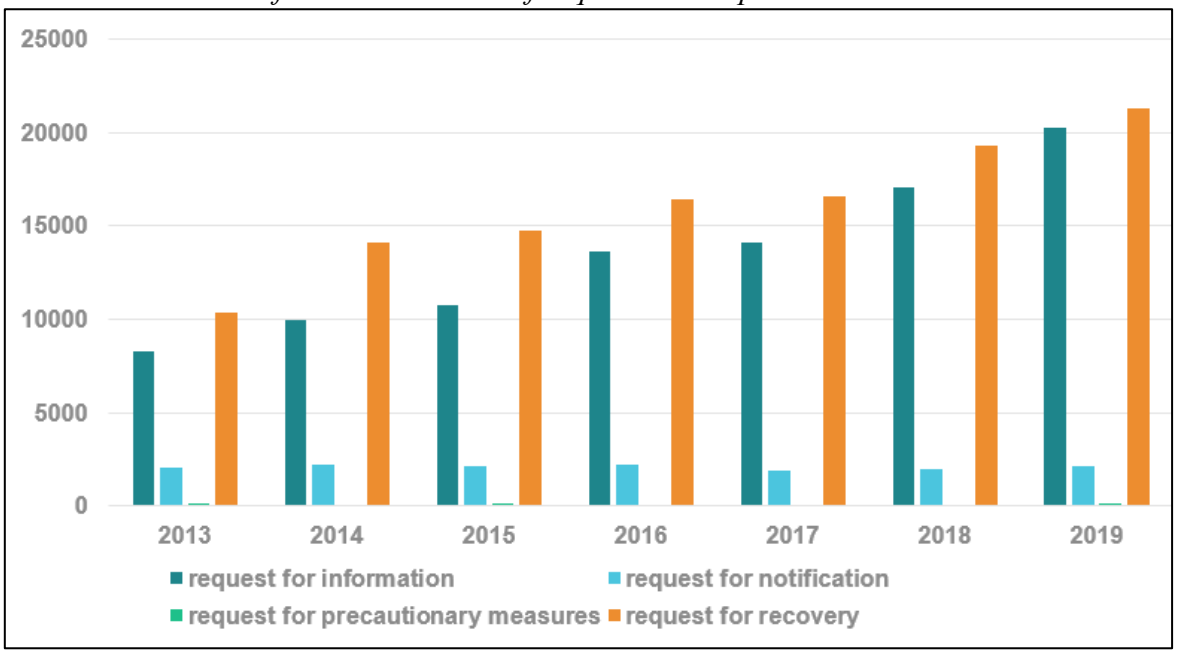
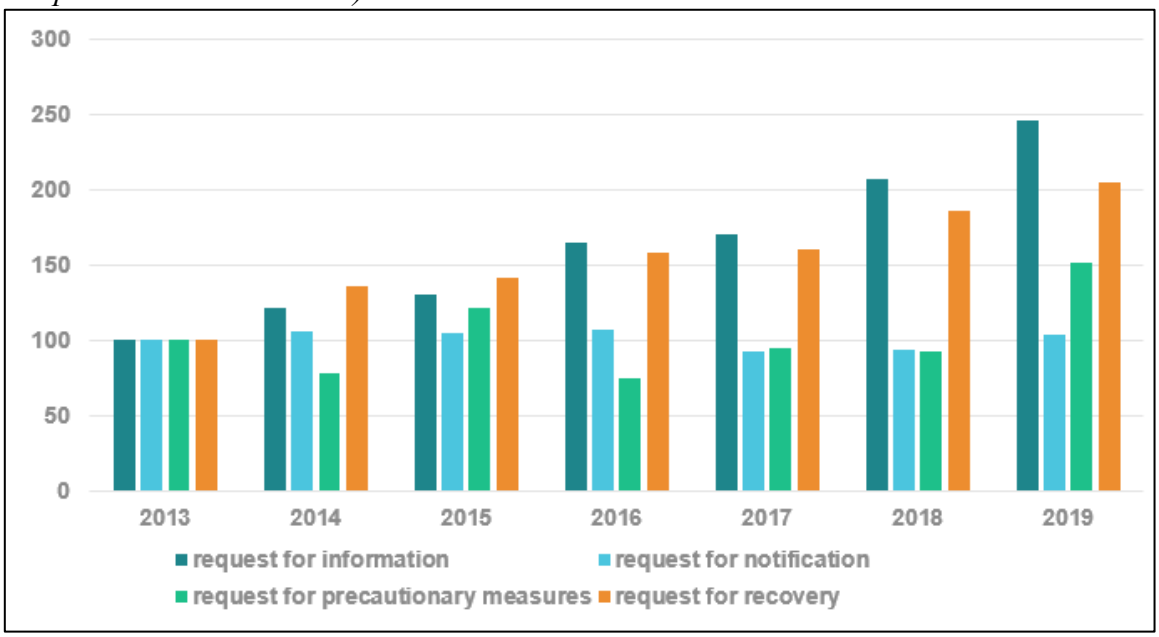


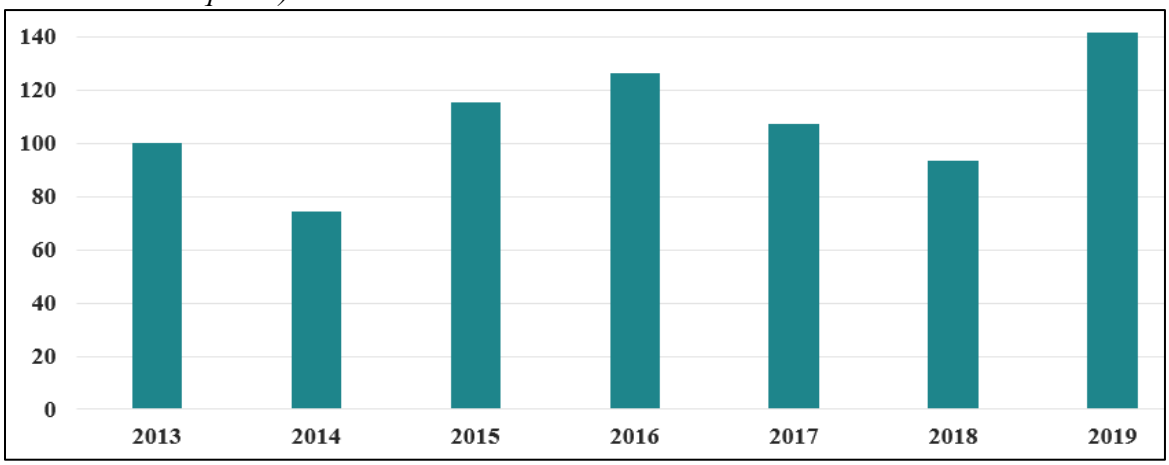
Table 2c: evolution of the total number of requests in the period 2013-2019 (in %, compared to 2013 = 100 %)[3]



7. The amounts for which recovery assistance was requested decreased in 2017 and 2018, but this was followed by a high increase in 2019:

[3] The year 2013 is taken as the baseline. This was the first year of full application of Directive 2010/24 in all Member States.

Table 3: global evolution of the amounts for which recovery assistance was requested in the period 2013-2019 (in %, compared to 2013 = 100 %; based on the average of the sent and received requests):



8. The amounts recovered in 2017-2019 are anyhow considerably higher than the amounts recovered in previous years.

Table 4a: global evolution of the amounts recovered in the period 2013-2019 (based on the average of the amounts reported by the applicant and requested authorities)

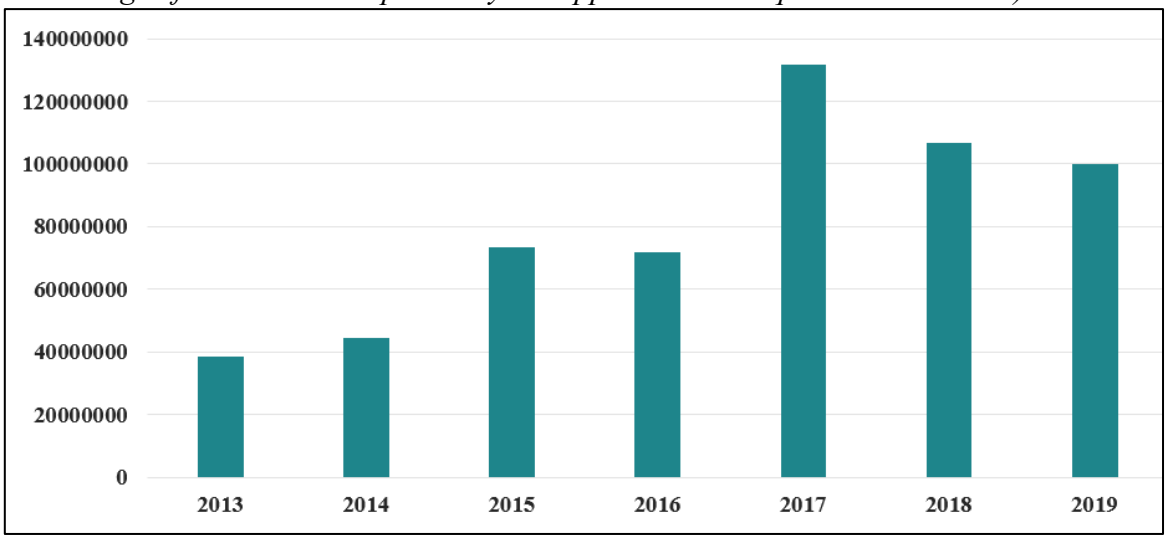
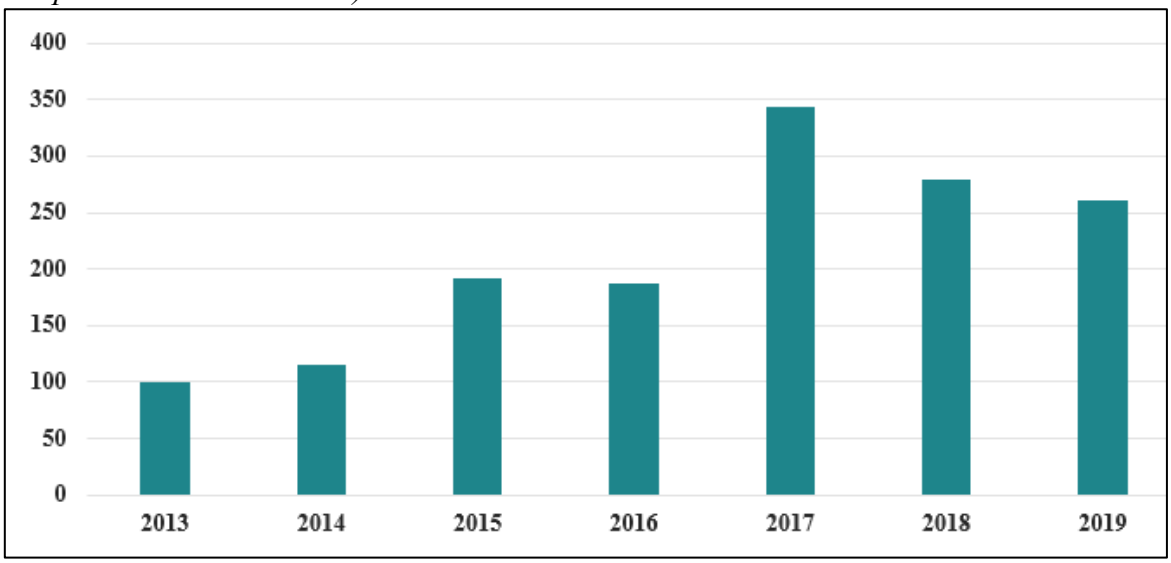


Table 4b: global evolution of the amounts recovered in the period 2013-2019 (based on the average of the amounts reported by the applicant and requested authorities) (in %, compared to 2013 = 100 %)



1.2. Move to an automated collection of statistical data

9. The transition to the central application for the electronic request forms (eFCA) will make it possible to automatically collect the statistical data that Member States have to report.

   It is expected that the move to an automated collection of statistical data will not only reduce the administrative burden for the Member States but also help to improve the quality of these statistics. In the past, the correspondence between the statistics reported by applicant and requested Member States was not always guaranteed and the differences seemed to exceed the divergences that can be explained by other causes (e.g. differences in the number of requests that are caused by requests sent at the end of a calendar year and opened in the following year; differences in the amounts reported that are due to currency exchange or other bank costs).

   In this regard, the collection of statistics on the use of recovery assistance between EU Member States and Norway in 2019 – on the basis of the EU-Norway agreement on administrative cooperation and recovery assistance in the field of VAT, concluded in 2018 – clearly illustrates the possible extent of differences in the statistics that are counted manually. Although the number of recovery assistance requests under this agreement in the first year of its use was still low, the statistics initially reported by the countries concerned showed considerable discrepancies. In 8 of the 16 reports on requests sent by Norway to EU Member States, the statistics initially reported by the Member States differed from the statistics reported by Norway; in 2 of the 7 reports on requests sent by EU Member States to Norway, the statistics initially reported by the Member States differed from the statistics reported by Norway.

10. The automation process should also allow to avoid the late communication of statistics by some Member States.[4]

Table 5: Timing of the reporting of statistical data with regard to recovery assistance in the period 2017-2019:

Member State	2017	2018	2019
Belgium	30.03.2018	01.04.2019	30.03.2020
Bulgaria	13.03.2018	26.03.2019	19.03.2020
Czechia	05.03.2018	04.03.2019	26.02.2020
Denmark	23.03.2018	05.04.2019	31.03.2020
Germany	26.03.2018	20.03.2019	26.03.2020
Ireland	14.03.2018	12.04.2019	17.02.2020
Estonia	01.03.2018	27.05.2019	18.03.2020
Greece	30.03.2018	29.03.2019	06.05.2020
Spain	22.03.2018	28.03.2019	01.04.2020
France	13.04.2018	24.04.2019	26.05.2020
Croatia	19.03.2018	28.03.2019	18.03.2020
Italy	04.04.2018	27.03.2019	08.04.2020
Cyprus	30.03.2018	29.03.2019	31.03.2020
Latvia	29.03.2018	28.03.2019	01.04.2020
Lithuania	29.03.2018	26.03.2019	30.03.2020
Luxemburg	24.04.2018	02.05.2019	27.04.2020
Hungary	29.03.2018	26.03.2019	23.03.2020
Malta	14.03.2018	06.03.2019	30.03.2020
Netherlands	29.03.2018	30.06.2019	24.02.2020
Austria	13.03.2018	26.03.2019	18.03.2020
Poland	07.03.2018	12.02.2019	12.02.2020
Portugal	28.03.2018	28.03.2019	30.03.2020
Romania	30.03.2018	28.03.2019	01.04.2020
Slovenia	22.03.2018	01.04.2019	20.03.2020
Slovakia	12.04.2018	15.05.2019	11.03.2020
Finland	26.03.2018	09.04.2019	31.03.2020
Sweden	21.02.2018	26.03.2019	30.03.2020
United Kingdom	*09.03.2018*	*15.03.2019*	*17.04.2020*

11. Member States may also provide any other information that may be useful for evaluating the provision of mutual assistance under the Recovery Directive.[5] Almost all Member States (26 out of 27) provide statistics about the nature of the claims for which recovery assistance is requested. The development of the central application will also make it possible to automatically collect this information.

[4] The statistics must be communicated by 31 March of the following year (Art. 27(1) of Directive 2010/24).

[5] In accordance with Article 27(2) of Directive 2010/24.

1.3. Collection of more statistical data

12. In the past, Member States in the Recovery Expert Group already agreed to provide statistics on the use of exchange of information without prior request[6] and on the number of visits of tax recovery officials to other Member States.[7]

    An automated collection of these statistics is not possible in the current system. In the Commission's view, there is no urgent need for automation here:
    - at present, the possibilities for exchange of information without prior request – which Article 6 now limits to information about upcoming refunds of taxes or duties, other than VAT – are only used by a few Member States;
    - the use of the possibilities for official visits to other Member States is very limited.[8]

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

13. Following the adoption of Commission report COM2017(778), all Member States have been invited to report about specific problems experienced in their relations with other Member States. The problems reported can be categorized as follows:
    - situations of no-reply and other situations where the cooperation was considered problematic, due to insufficient or unclear information and communication problems (section 2.1.);
    - incorrect implementation of Directive 2010/24 on tax recovery assistance and other situations where the national legislation or administrative practice are insufficient to provide effective recovery assistance (section 2.2.).

6 Article 6 of Directive 2010/24.

7 Article 7 of Directive 2010/24: presence in the offices where the administrative authorities of the requested Member State carry out their duties; presence during administrative enquiries carried out in the territory of the requested Member State; assistance to the competent officials of the requested Member State during court proceedings in that Member State.

8 In the period 2012-2019, the possibilities of Art. 7 of Directive 2010/24 were only used two times.

2.1. Cases of no-reply, unclear replies and late replies

2.1.1. General comments

14. Some requests for recovery assistance remained unanswered, despite several reminders. The information provided by the Member States shows that the situation is particularly worrying in two Member States, where a large number of requests remained unanswered in recent years. The situation also needs to be improved in two other Member States.

    Member States also reported several cases where unclear replies were given and where it was experienced that the requested authorities did not provide (sufficient) clarification with regard to the follow-up given to requests for assistance.

15. Late replies were also reported as a problem, in particular with regard to requests for information. In principle, information should be transmitted "as and when it is obtained", "within a reasonable time" and "in any event, at the end of 6 months from the date of acknowledgement of receipt of the request".[9] The maximum time period of 6 months was copied from the former implementing legislation, starting with the implementing legislation adopted in 1977.[10] One could expect that requested authorities no longer need so much time – half a calendar year – to collect and transmit information, given the development of immediately accessible databases and modern communication means. As suggested by a Member State, an agreement to reduce this time period considerably[11] would give an important signal to all Member States that the assistance must be speeded up in order to improve the efficiency of the system.

16. In this regard, the suggestion to streamline the execution of assistance requests in the requested Member State (by the use of a single legal framework for the execution of requests, irrespective of the type of claims concerned) would facilitate the work of the requested authorities.

17. Good cooperation also requires a clear and precise communication from the applicant authorities. Their initial request should already provide all information that is useful for the requested authorities.

    A striking example in this regard: a Member State complained that the requested authorities of another Member State replied to a recovery request, by asking for precise information about the notification of the claim(s) concerned, „while they never asked for that before". In view of the *Donnellan* judgement[12], it is rather surprising to see that the applicant authorities did not provide such information in their initial request for assistance.

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9 Art. 8(1) and (2) of implementing Regulation 1189/2011.

10 Article 6 of implementing Regulation 1179/2008 ; Article 6 of implementing Directive 2002/94 and Article 5 of implementing Directive 77/794.

11 The Commission would suggest to reduce this time period to one month.

12 EUCJ case C-34/17 Donnellan.

18. Recommendations to applicant and requested Member States:

- Member States should apply a shorter period for the execution of requests for information.
- Member States should ensure and control that requests for assistance are effectively and timely executed.
- When requesting recovery assistance, the applicant Member State should provide the requested Member State with all information relevant to recovery that it possesses (in particular on the identification of the debtor). The applicant Member State should be accurate with respect to the information mentioned in the forms (e.g accurate date of notification of all the claims by the applicant Member State).
- 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 reply with a general reference to its national law, but provide a clear and accurate explanation, possibly 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 precise way.
- Tax authorities request that the communication between Member States is done in English, unless another language is agreed by the Member States concerned.

2.1.2. Need to provide sufficient human resources

19. Given the continuous increase in the volume of assistance requests, it is important that Member States allocate sufficient human resources to deal with these requests. In its report of 2017, the Commission suggested to examine 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.[13]

20. At its meeting on 26-27 February 2020, the Recovery Expert Group discussed a suggestion of Fiscalis Project Group 110 to collect statistics on the number of staff involved in tax recovery assistance at the level of the national Central Liaison Offices (CLOs) in each Member State, as data on the evolution of staff in relation to the evolution of requests, possibly also in comparison with other Member States' administrations, may help to evaluate staff needs. Two delegations were sceptical, arguing that such data had to be fed in manually and thus constituted a burden; that organisational structure varied; and that it could be difficult to quantify possible support from other departments.

21. Recommendation:
    - Member States should allocate sufficient human resources for handling the ever increasing number of assistance requests. In this regard, sharing information about the number of people involved in tax recovery assistance at the level of the national CLOs may be useful for the assessment of the own staff needs.

[13] Point 5.b. of the conclusions of Commission report COM(2017)778.

2.1.3. Need to provide sufficient IT-resources

22. In 2019, a central platform for the electronic request forms was launched, together with a new release of these forms. This new platform – which also applies to other areas of administrative cooperation – has some important advantages, e.g. new versions of these forms no longer need to be deployed at national level in each Member State, and the central platform supports an automated collection of statistical data.

    Following this change, several Member States reported problems about the slowness of the new application, in particular when the forms were used for multiple-claim requests. The analysis by the Commission services led to the conclusion that the behaviour reported was due to elements on the client side (browser used, network connection, workstation). At the Recovery Expert Group meeting on 26-27 February 2020, the Commission invited the Member States that reported persisting problems to provide all required information to the IT-helpdesk, in view of technical meetings with the relevant IT-staff in the administrations affected.

    Following this meeting, no request was received by the Commission's IT-helpdesk, which seems to indicate a lack of communication between the authorities using the IT-infrastructure and the IT-offices in the Member States concerned.

    On the one hand, Member States' tax authorities demand for advanced electronic forms (with an automated translation and a lot of "intelligent" functions built in); on the other hand several tax authorities are facing internal capacity limitations and restrictions with regard to browsers and workstations; operating systems, CPU, memory, etc.).

23. Recommendation:
    - Member States should ensure that the IT-equipment at the disposal of the tax authorities dealing with recover requests is sufficient and appropriate, in order to avoid performance problems when using the electronic forms for tax recovery assistance.

2.2. Incorrect implementation of Directive 2010/24 and other insufficiencies of national rules and practice

24. Several Member States reported problems that raise questions about the correct implementation of the Directive on tax recovery assistance in the requested Member State.

    Other issues reported relate to situations where the recovery legislation or practice in the requested Member State is not optimal or not fit to provide recovery assistance to other Member States. This prevents the requested authorities from treating a claim for which assistance is requested "as if it was a claim of the requested Member State" (as required by Article 13(1) of Directive 2010/24).

25. The Commission has asked the Member States concerned to clarify these situations, as it is not always clear whether the problematic replies were based on a misunderstanding of the EU rules in individual cases or whether they are symptomatic of fundamental and general problems of incorrect or insufficient implementation of the EU provisions.

26. This evaluation is ongoing. At this stage, the following categories of fundamentaal problems have been identified:
    - access to (bank) information (section 2.2.1.);
    - situations where the law or practice of the requested Member State does not permit the same treatment to claims for which recovery assistance is requested as for national claims (section 2.2.2.);
    - incorrect implementation of Directive 2010/24 with regard to old claims (section 2.2.3.);
    - incorrect implementation of Directive 2010/24 with regard to small claims (section 2.2.4.);
    - other insufficiencies of the national recovery rules or practice (section 2.2.5.).

2.2.1. Access to (bank) information

27. At the request of the applicant authority, the requested authority has to provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims (Article 5(1) of Directive 2010/24). A requested authority is, however, not obliged to provide information which it would not be able to obtain for the purpose of recovering similar claims arising in the requested Member State (Art. 5(2)(a) of Directive 2010/24).

    The implementation of this provision appears to be problematic in several Member States, as reported at the Fiscalis workshop in Vienna (FWS 130) in October 2019.

28. In two Member States, the recovery of tax claims is attributed to a separate Enforcement Authority, who has direct access to information about bank accounts or other assets. As the tax authorities of these Member States do not have this access to bank information without referring to their Enforcement Authority, they prefer to receive immediately a request for recovery instead of a request for information (unless the request for information only relates to the address of the person concerned).

    In the view of the Commission, the approach adopted by these Member States is not in line with Article 5 of the Directive. Moreover, it is more burdensome for the applicant authorities to send a request for recovery than a request for information, as the form for a recovery request contains many more mandatory fields[14] to be filled out.

29. A similar problem was reported with regard to another Member State. At the Fiscalis workshop in Vienna (FWS 130) in September 2018, it was explained that the tax authorities of this Member State do not have access to bank accounts and cannot obtain any other asset information from third parties without a Court order, which can only be obtained when executing an actual request for recovery.

[14] The recovery request form also includes a large number of data fields for the uniform instrument permitting enforcement in the requested Member State.

30. Problems concerning access to bank account information were also reported with regard to other Member States. It was reported that tax recovery authorities cannot have/request access to bank account information if they do not receive the exact bank account number or at least the name of the bank.

    It was also observed that many requested authorities cannot provide information regarding the transfers that have been ordered from a bank account.

31. Several reports also mentioned cases relating to different Member States receiving requests for recovery, sent by other Member States on the basis of the bank account information that was previously exchanged under Directive 2011/16, and where the requested recovery authorities replied that they were unable to identify the person concerned or to retrieve the bank account concerned. This indicates that the recovery authorities in the Member States concerned do not have sufficient communication with other tax authorities.

32. The Commission concludes that all Member States should remove national obstacles to give full effect to Article 5 of Directive 2010/24, concerning the exchange of information relating to bank accounts.

    The same should also be done with regard to the access to other information that may be relevant for tax recovery purposes.

33. Recommendations:
    - When replying to an assistance request, the requested Member State should indicate why specific information is not available or why it cannot be provided. This would help the applicant Member State to adapt future requests for information to that particular requested Member State. At the same time, Member States should ensure that their recovery authorities have access to all information that may be relevant for recovery of tax claims of the other Member States.
    - At the meeting of the Recovery Expert Group on 26-27 February 2020, it was agreed to set up a detailed overview of the standard information (databases, etc.) available to the tax authorities of each Member State and of the inquiries, checks and other actions usually carried out when a request for information is received. This would make clear from the start which information can be provided and could help to avoid repeated requests for information that is unavailable. All Member States are invited to provide a complete, clear and detailed report and to keep it updated.

2.2.2. National rules or practice not permitting the same treatment as for national claims

34. Some cases were reported about situations where the recovery rules or practice in the requested Member State was not optimal or not fit to provide recovery assistance to other Member States. Such situations affect the requested Member State's capacity to treat the claims of other Member States as if they were claims of the requested Member State,

even though this "same treatment" is fundamental for the execution of the recovery requests.[15]

Examples:

- In a particular case, the authorities of a Member State replied that they could not execute a request for recovery, since the debtor did not dispose of a Personal Identification Number in that country.
- One requested authority replied in several cases that it was not possible to seize a bank account in that country if the person concerned was not resident in that country. In another case, the requested authority of the same country replied that it was highly unlikely that it would get a court judgment to seize a bank account for foreign tax claims.

35. The countries concerned have been requested to clarify these issues and, if needed, to change their national legislation or administrative practice. The further evaluation is ongoing.

2.2.3. Incorrect implementation of the Directive 2010/24 with regard to "old" claims

36. The Directive provides that "the requested authority shall not be obliged" to grant recovery assistance for older claims (as specified in Article 18(2) of Directive 2010/24). The purpose of this rule is to encourage and allow Member States to focus on more recent claims, which usually imply a better recovery chance.

37. Although the requested authority "shall not be obliged" to execute a request sent after the time period specified in Article 18(2) of the Directive, this provision does not prevent the requested authority from executing this request. There may indeed be good reasons for requesting – and granting – recovery assistance for older claims. It is for the requested authority to decide whether it accepts a request with regard to an old claim, having regard to the circumstances of a specific case, possibly taking account of particular evidence, reasons or expectations communicated by the applicant authority.

38. On this point, it appears that some Member States have incorrectly implemented this provision of the Directive.

    In several Member States, the national law does not confer a discretionary power on their tax authorities to decide on their own whether they refuse requests for such old claims or whether they still grant assistance, possibly taking account of the special justification provided by the applicant authority when submitting its request for assistance after the normal time period.[16]

    Any attempt by Member States to circumvent such incorrect national implementation of the Directive by granting recovery assistance on the basis of another legal instrument (a bilateral or multilateral agreement) would be conflicting with the priority of EU law and

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15 In accordance with Article 13(1) of Directive 2010/24.

16 In accordance with the general principles of EU law, this provision of the Directive cannot be invoked by tax authorities against a national provision that would not be in line with the Directive. This means that if a Member State's law excludes assistance for requests submitted after the 5 year period, the tax authorities concerned cannot rely on the Directive to obtain/grant this assistance.

would be to the detriment of the legal protection offered to the debtor under EU law.[17] If the requested authority refused to handle a request for an older claim under the EU Directive, while accepting to handle a request with regard to the same claim submitted on the basis of another legal instrument, the requested authority would render ineffective the EU Directive and the legal protection surrounding this Directive (e.g. application of the EU Charter of Fundamental Rights; jurisdictional control by the EU Court of Justice). In this regard, it should be noted that the EU Court of Justice has explicitly stated that any legislative or administrative practice impairing the effectiveness of EU law is not acceptable.[18]

39. Member States are requested to correctly implement Article 18(2) of Directive 2010/24.

2.2.4. Incorrect implementation of the Directive 2010/24 with regard to small claims

40. Article 18(3) of Directive 2010/24 provides that: "A Member State shall not be obliged to grant assistance if the total amount of the claims covered by this Directive, for which assistance is requested, is less than EUR 1 500."

41. The implementing legislation of some Member States explicitly excludes recovery assistance for claims below this threshold. Some other Member States in practice refuse to provide assistance for such small claims under the Directive. As they have no such explicit refusal in their bilateral conventions, however, other Member States sometimes send two requests for recovery to these Member States – one based on the Directive and one based on a double tax treaty – for the same tax claim when the amount concerned is below EUR 1 500. This creates confusion and uncertainty about the validity of the request and the execution of that request.
It is not surprising that applicant Member States try to rely on the Directive, also for amounts below EUR 1 500: the use of the Directive *inter alia* enables them to make use of the standard request forms and the Uniform Instrument Permitting Enforcement in the requested Member State, with an automated translation. This is important in view of the language requirements imposed by the EU Court of Justice.[19]

The wording used in the Directive does not exclude that the requested Member State provides assistance for lower amounts, in particular in cases where there are no real recovery costs in the requested Member State (e.g. if a VAT (or another tax) refundable amount is in the hands of the requested tax authority), or in other justified situations (e.g. if a debtor deliberately paid his tax debts in another country, but deducting EUR 1 500 of the amount due).

Unfortunately, it appears that some Member States have implemented Article18(3) in a way that corresponds to the wording of the former implementing legislation of the Commission, i.e. refusing in an inflexible manner to grant assistance for claims below EUR 1 500. Such restrictive national implementation ignores the fact that the Directive intends to favour tax recovery assistance, in the same way as under the corresponding provision of the OECD Model treaty. If such Member States apply their double taxation

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17 Cf. Commission staff working document SWD(2017)461 of 18 December 2017 accompanying the Commission report COM(2017)778 on the use of the EU framework for tax recovery assistance, point 6.3.1.1.e.

18 See e.g. EUCJ 19 June 1990, case C-213/89, *Factortame*, point 20; EUCJ 6 March 2018, case C-284/16, *Achmea*, points 58-59.

19 See EUCJ 14 January 2010, case C-233/08, Kyrian, and EUCJ 26 April 2018, case C-34/17, Donnellan.

treaties in such a way that they grant assistance for claims below EUR 1 500, despite the treaty provision stating that the requested State does not have to provide assistance if the administrative burden for that State would be disproportionate to the benefit of the other State, then it is unclear and unjustified that these countries systematically refuse to grant assistance under the Directive to other EU Member States for the same amounts. The Commission services would even expect the administrative burden for the requested Member State to be lesser if the EU framework is used, given the possibility to use the electronic communication framework and the specific e-forms and uniform instruments that reduce the translation problems.

Member States should not circumvent the Directive by agreeing and applying a different legal framework for executing requests for recovery or precautionary measures relating to such smaller amounts, which would not offer the legal protection granted to the tax debtor under the Directive.

42. The Member States concerned are requested to amend their national implementation of the Directive 2010/24. This will allow them to avoid the complications described above.

43. A good practice example: under the legislation of a Member State, it is possible to waive the 1 500 EUR threshold if assistance can be granted with only minor efforts by the requested authority (e.g. if the debtor is entitled to a VAT or other tax refund).

2.2.5. Other situations where the national legislation or practice is not fit to grant recovery assistance

44. The use of precautionary measures is important, in order to guarantee the recovery of contested tax claims. However, precautionary measures are not taken or cannot be taken in some Member States. The authorities of another Member State also declared that as a matter of practice, they do not take precautionary measures as part of the normal debt recovery process. This affects the capacity to provide useful assistance to other Member States.

Further, 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 replied to a particular assistance request that there was no legal basis in its national law to freeze bank accounts during tax investigations.

The Commission intends to organise a debate with the Member States on minimum standards for precautionary measures in the Member States, taking account of both the need to step up the efforts in the fight against fraud and the obligation to respect the tax debtors' right of defence. This analysis will have to take account of the future decision of the EU Court of Justice in case C-420/19 (*Heavyinstall*).

45. Other specific rules in national law also hinder an effective and efficient tax recovery assistance.

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: a Member State did not execute a request to recover claims from a third party 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.

46. The Member States are invited to check and improve their national recovery rules, in order to ensure that the national recovery provisions offer sufficient possibilities for the recovery of foreign tax claims or to guarantee their recovery, in order to give full effect to the recovery assistance under Directive 2010/24.

3. Fourth action point: Developing the knowledge and awareness of the mutual recovery assistance legislation

3.1. Training and guidance for national tax authorities in the field of recovery assistance

3.1.1. Training for tax recovery officials

47. Problems reported to Fiscalis Project Group 110 often result from non-respect or non-understanding of the common rules of Directive 2010/24. These issues confirm that tax officials dealing with mutual recovery assistance requests have a need for more guidance and training with regard to the EU rules and e-forms in this field.

48. Therefore, it is planned to organise periodical (e.g. yearly) training events for officials in the field of recovery assistance. These training events could be organised within the framework of the Fiscalis program. They would contribute to a common understanding and awareness of the possibilities for recovery assistance within the EU, and they could also pay attention to recent case law developments. They could also help to increase awareness of the existing tools and guidance (information on CIRCABC, EU and international tax collection newsletter, glossary of tax recovery terms, etc.). The possibility of developing e-learning courses will also be considered.

49. Explanatory notes on Directive 2010/24/EU have already been adopted by the Recovery Expert Group, but they provide clarification on some issues only. A more detailed commentary has been made available recently.

3.1.2. Specialised workshops / working groups

50. A recent increase of EU Court of Justice judgments and new cases relating to the interpretation of Directive 2010/24 can be observed:

Judgments			Date
C-361/02 and C-362/02	*Tsapalos and Diamantakis*	Claims which arose prior to the entry into force of the Directive	1.7.2004
C-233/08	*Kyrian*	Notification	14.1.2010
C-34/17	*Donnellan*	Notification – Competence of court in the requested State to check the validity of the notification by the applicant State	26.4.2018
C-695/17	*Metirato Oy*	Restitution of recovered claims to the insolvency estate	14.3.2019
C-19/19	*Pantochim*	Preferences	11.6.2020
Pending cases			
C-95/19	*Silcompa*	Competence of court in the requested State to determine where duties should be levied	AG 08.10.2020
C-420/19	*Heavyinstall*	Competence of the court in the requested State to review the need for precautionary measures	AG 17.09.2020

In view of these case law developments, there is a clear need for the technical experts to be informed and have an in-depth analysis of the judgments and possible consequences.

These discussions currently take place within the EU Tax Recovery Expert Group. A more detailed preparation in ad-hoc working groups of the Recovery Expert Group or in specialised workshops or working groups under the Fiscalis framework could speed up the discussions in that forum.

51. It is worth stressing that some of the abovementioned judgments (*Kyrian*, *Donnellan*) specifically address the fundamental rights of the tax payers/debtors. Nowadays, the protection of tax payer/debtor rights is a major issue in the area of tax recovery and tax recovery assistance.

This development is also confirmed by the list of such cases currently pending at the EU Court of Justice and the European Court of Human Rights:

Pending cases at the EU Court of Justice		
C-788/19	*Commission v Spain*	Penalty payments in respect of the failure to fulfil the obligation to provide information in respect of overseas assets and rights (Fundamental freedoms under the TFEU and the EEA)
Pending cases at the European Court of Human Rights		
6215/18 (2018)	*Nagy v Hungary*	Attachment of goods relating to (statute-barred) tax debts of the previous owner (Art. 1 of Protocol 1)
38785/18 (2018)	*Radobuljac v Croatia*	Offsetting of a person's tax debt with his enforceable claim (Art. 1 of Protocol 1)
44521/11 (2019)	*Iletişim Hizmetleri Tic. Ve San. A. Ş. v Turkey*	Lack of interest on a reimbursed tax amount (Art. 1 of Protocol 1)

The analysis of these specific cases also requires the participation of technical experts, which can best be organised in ad-hoc working groups of the Recovery Expert Group or in specialised workshops or working groups under the Fiscalis framework.

3.1.3. National information on CIRCABC

52. Each Member State has the possibility to share information about its national legislation and practice by uploading it on the CIRCABC database. This information is important for tax authorities of other Member States that wish to check the possibilities for recovery assistance in other countries. Such information must be easily accessible, useful and up to date.

    At present, these requirements are not always met. The information published is not always put in the right place, or not always clear and precise enough. Therefore, the Commission invites the Member States to check and update their national information on this platform. Coordination by the EU Recovery Expert Group should streamline this process, so as to promote an equal standard in order to increase the accessibility and relevance of that information.

    The EU Recovery Expert Group should also examine how this national information can be further improved and/or extended,[20] and how this information can be further disseminated to all competent authorities in the Member States.

3.2. Raising general awareness about tax recovery assistance

53. In order to inform the public, the website of the European Commission provides some questions and answers (FAQ) with regard to the recovery of taxes in other Member States, explaining *inter alia* the use of the uniform instruments (uniform notification form and uniform instrument permitting enforcement in the requested Member State).[21]

54. The Commission will invite the Recovery Expert Group to reflect on possibilities to improve/extend the above information and to make such information available also at national level, for the benefit of citizens and companies.

[20] In this regard, reference can be made to an example discussed at the meeting of the Recovery Expert Group in February 2020, where it was decided that Member States would provide a list of the standard information available to them (databases, etc.) and the inquiries, checks and other actions usually carried out when receiving a request for information from an applicant Member State.

[21] https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery/tax-recovery_en.