

## I

(Legislative acts)

## DIRECTIVES

COUNCIL DIRECTIVE 2010/24/EU  
of 16 March 2010

concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 113 and 115 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Mutual assistance between the Member States for the recovery of each others' claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses.
- (2) Arrangements for mutual assistance for recovery were first set out in Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties <sup>(3)</sup>. That Directive and the acts amending

it were codified by Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures <sup>(4)</sup>.

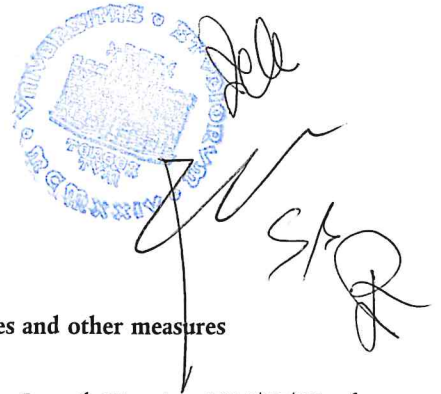
- (3) Those arrangements, however, while providing a first step towards improved recovery procedures within the Union by approximating applicable national rules, have proved insufficient to meet the requirements of the internal market as it has evolved over the last 30 years.
- (4) To better safeguard the financial interests of the Member States and the neutrality of the internal market, it is necessary to extend the scope of mutual assistance for recovery to claims relating to taxes and duties not yet covered by mutual assistance for recovery, whilst in order to cope with the increase in assistance requests and to deliver better results, it is necessary to make assistance more efficient and effective and to facilitate it in practice. In order to fulfil these objectives, important adaptations are necessary, whereby a mere modification of the existing Directive 2008/55/EC would not be sufficient. The latter should therefore be repealed and replaced by a new legal instrument which builds on the achievements of Directive 2008/55/EC but provides for clearer and more precise rules where necessary.
- (5) Clearer rules would promote a wider information exchange between Member States. They would also ensure that all legal and natural persons in the Union are covered, taking into account the ever increasing range of legal arrangements, including not only traditional arrangements such as trusts and foundations, but any new instrument which may be set up by taxpayers

<sup>(1)</sup> Opinion of 10 February 2010 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 16 July 2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 73, 19.3.1976, p. 18.

<sup>(4)</sup> OJ L 150, 10.6.2008, p. 28.



in the Member States. They would furthermore make it possible to take account of all forms that claims of the public authorities relating to taxes, duties, levies, refunds and interventions may take, including all pecuniary claims against the taxpayer concerned or against a third party which substitute the original claim. Clearer rules are primarily necessary to define better the rights and obligations of all the parties concerned.

- (6) This Directive should not affect the Member States' competence to determine the recovery measures available under their internal legislation. However, it is necessary to ensure that neither disparities between national laws nor lack of coordination between competent authorities jeopardise the seamless operation of the mutual assistance system provided for in this Directive.
- (7) Mutual assistance may consist of the following: the requested authority may supply the applicant authority with the information which the latter needs in order to recover claims arising in the applicant Member State and notify to the debtor all documents relating to such claims emanating from the applicant Member State. The requested authority may also recover, at the request of the applicant authority, the claims arising in the applicant Member State, or take precautionary measures to guarantee the recovery of these claims.
- (8) The adoption of a uniform instrument to be used for enforcement measures in the requested Member State, as well as the adoption of a uniform standard form for notification of instruments and decisions relating to the claim, should resolve the problems of recognition and translation of instruments emanating from another Member State, which constitute a major cause of the inefficiency of the current arrangements for assistance.
- (9) A legal basis for exchange of information without prior request on specific tax refunds should be created. For reasons of efficiency, it should also be rendered possible for tax officials of a Member State to attend or to participate in administrative enquiries in another Member State. Provision should also be made for more direct information exchange between services with a view to making assistance faster and more efficient.
- (10) Given the increasing mobility within the internal market, and the restrictions imposed by the Treaty or other legislation on the guarantees that can be requested from taxpayers not established within the national territory, the possibilities for requesting recovery or precautionary measures in another Member State should be extended. As the age of a claim is a critical factor, it should be possible for Member States to make a request for mutual assistance, even though the domestic means of recovery have not yet been fully exhausted, inter alia, where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty.
- (11) A general obligation to communicate requests and documents in a digital form and via an electronic network, and with precise rules on the use of languages for requests and documents, should allow Member States to handle requests faster and more easily.
- (12) During the recovery procedure in the requested Member State, the claim, the notification made by the authorities of the applicant Member State or the instrument authorising its enforcement might be contested by the person concerned. It should be laid down that in such cases the person concerned should bring the action before the competent body of the applicant Member State and that the requested authority should suspend, unless the applicant authority requests otherwise, any enforcement proceedings which it has begun until a decision is taken by the competent body of the applicant Member State.
- (13) To encourage Member States to devote sufficient resources to the recovery of other Member States' claims, the requested Member State should be able to recover the costs related to recovery from the debtor.
- (14) Efficiency would be best achieved if, when executing a request for assistance, the requested authority could make use of the powers provided under its national laws applying to claims concerning the same or similar taxes or duties. In the absence of a similar tax or duty, the most appropriate procedure would be that provided under the laws of the requested Member State which applies to claims concerning the tax levied on personal income. This use of national legislation should not, as a general rule, apply with regard to the preferences accorded to claims arising in the requested Member State. However, it should be made possible to extend preferences to claims of other Member States based on an agreement between the Member States concerned.

(15) With regard to questions on limitation, it is necessary to simplify the existing rules, by providing that the suspension, interruption or prolongation of periods of limitation is in general determined according to the laws in force in the requested Member State, except where suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in that State.

(16) Efficiency requires that information communicated in the course of mutual assistance may be used in the Member State receiving the information for purposes other than those provided for in this Directive, where this is allowed under the domestic legislation of both the Member State providing the information and the Member State receiving the information.

(17) This Directive should not prevent the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements.

(18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.

(19) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(20) Since the objectives of this Directive, namely the provision of a uniform system of recovery assistance within the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity, effectiveness and efficiency required, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(21) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject matter

This Directive lays down the rules under which the Member States are to provide assistance for the recovery in a Member State of any claims referred to in Article 2 which arise in another Member State.

##### Article 2

##### Scope

1. This Directive shall apply to claims relating to the following:

- (a) all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union;
- (b) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions;
- (c) levies and other duties provided for under the common organisation of the market for the sugar sector.

2. The scope of this Directive shall include:

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

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

- (b) fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties;
- (c) interest and costs relating to the claims for which mutual assistance may be requested in accordance with paragraph 1 or point (a) or (b) of this paragraph.

3. This Directive shall not apply to:

- (a) compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law;
- (b) fees not referred to in paragraph 2;
- (c) dues of a contractual nature, such as consideration for public utilities;
- (d) criminal penalties imposed on the basis of a public prosecution or other criminal penalties not covered by paragraph 2(a).

#### Article 3

##### Definitions

For the purposes of this Directive:

- (a) 'applicant authority' means a central liaison office, a liaison office or a liaison department of a Member State which makes a request for assistance concerning a claim referred to in Article 2;
- (b) 'requested authority' means a central liaison office, a liaison office or a liaison department of a Member State to which a request for assistance is made;
- (c) 'person' means:
- (i) a natural person;
  - (ii) a legal person;
  - (iii) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or
  - (iv) any other legal arrangement of whatever nature and form, which has legal personality or not, owning or managing assets which, including income derived

therefrom, are subject to any of the taxes covered by this Directive;

- (d) 'by electronic means' means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

- (e) 'CCN network' means the common platform based on the common communication network (CCN) developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation.

#### Article 4

##### Organisation

1. Each Member State shall inform the Commission by 20 May 2010 of its competent authority or authorities (hereinafter respectively referred to as the 'competent authority') for the purpose of this Directive and shall inform the Commission without delay of any changes thereof.

The Commission shall make the information received available to the other Member States and publish a list of the competent authorities of the Member States in the *Official Journal of the European Union*.

2. The competent authority shall designate a central liaison office which shall have principal responsibility for contacts with other Member States in the field of mutual assistance covered by this Directive.

The central liaison office may also be designated as responsible for contacts with the Commission.

3. The competent authority of each Member State may designate liaison offices which shall be responsible for contacts with other Member States concerning mutual assistance with regard to one or more specific types or categories of taxes and duties referred to in Article 2.

4. The competent authority of each Member State may designate offices, other than the central liaison office or liaison offices, as liaison departments. Liaison departments shall request or grant mutual assistance under this Directive in relation to their specific territorial or operational competences.

5. Where a liaison office or a liaison department receives a request for mutual assistance requiring action outside the competence assigned to it, it shall forward the request without delay to the competent office or department, if known, or to the central liaison office, and inform the applicant authority thereof.

6. The competent authority of each Member State shall inform the Commission of its central liaison office and any liaison offices or liaison departments which it has designated. The Commission shall make the information received available to the Member States.

7. Every communication shall be sent by or on behalf or, on a case by case basis, with the agreement of the central liaison office, which shall ensure effectiveness of communication.

## CHAPTER II

### EXCHANGE OF INFORMATION

#### Article 5

##### Request for information

1. At the request of the applicant authority, the requested authority shall provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims as referred to in Article 2.

For the purpose of providing that information, the requested authority shall arrange for the carrying-out of any administrative enquiries necessary to obtain it.

2. The requested authority shall not be obliged to supply information:

- (a) which it would not be able to obtain for the purpose of recovering similar claims arising in the requested Member State;
- (b) which would disclose any commercial, industrial or professional secrets;
- (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the requested Member State.

3. Paragraph 2 shall in no case be construed as permitting a requested authority of a Member State to decline to supply

information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

4. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

#### Article 6

##### Exchange of information without prior request

Where a refund of taxes or duties, other than value-added tax, relates to a person established or resident in another Member State, the Member State from which the refund is to be made may inform the Member State of establishment or residence of the upcoming refund.

#### Article 7

##### Presence in administrative offices and participation in administrative enquiries

1. By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the requested authority, officials authorised by the applicant authority may, with a view to promoting mutual assistance provided for in this Directive:

- (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;
- (b) be present during administrative enquiries carried out in the territory of the requested Member State;
- (c) assist the competent officials of the requested Member State during court proceedings in that Member State.

2. In so far as it is permitted under the legislation in force in the requested Member State, the agreement referred to in paragraph 1(b) may provide that officials of the applicant Member State may interview individuals and examine records.

3. Officials authorised by the applicant authority who make use of the possibilities offered by paragraphs 1 and 2 shall at all times be able to produce written authority stating their identity and their official capacity.