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## **Synopsis Report**

# **on the Commission's consultation on the functioning of mutual assistance between EU Member States for the recovery of taxes**

### **1. BACKGROUND**

The purpose of the evaluation of the functioning of mutual assistance between EU Member States for recovery of tax claims was:

- to assess whether and to what extent Council Directive 2010/24 of 16 March 2010, concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, and its implementation by the EU Member States have contributed to better safeguard the financial interests of the Member States and the EU, and have made the recovery assistance more efficient and effective;
- to assess to what extent its provisions need to/can be improved to take account of the needs of the Member States and the internal market in a quickly changing economic and political environment;
- to provide useful information as regards the need for further improvement of the administrative or technical framework in this field, or for other supporting actions.

### **2. Assessment of the consultation activities carried out**

#### **a. Consultation activities**

As part of this evaluation, two consultation activities have been carried out:

- a targeted consultation of the EU Member States' tax authorities dealing with tax recovery assistance, conducted in April 2015, and
- an open public consultation running from 30/11/2016 until 08/03/2017 and available in all EU languages except Gaelic.

A Commission Inter-service Steering Group and Recovery Expert Group were consulted on the questionnaire that was sent to the Member States' tax authorities and the former also on the questionnaire for the open public consultation.

No comments from the public were received outside the public consultation.

b. Assessment of the targeted consultation of the Member States' tax authorities

This consultation was done via a questionnaire to the Member States' tax authorities responsible for mutual recovery assistance.

The following issues were examined in the questionnaire addressed to the Member States' tax authorities:

- to what extent has Council Directive 2010/24/EU contributed to safeguarding the financial interests of the Member States and the EU? (effectiveness);
- to what extent have the standardisation provisions of Council Directive 2010/24/EU (e.g. adoption of a uniform instrument for enforcement measures UIPE; uniform standard form for notification UNF; obligation to communicate electronically; rules on the use of languages, etc.) improved the efficiency and effectiveness of assistance? (uniformity/efficiency/effectiveness);
- to what extent the provisions of Council Directive 2010/24/EU are relevant to the needs of the Member States and the EU? (relevance);
- could Member States achieve similar results without acting at the EU level? (EU added value).

The questionnaire contained a lot of statement questions, permitting the respondents to determine the extent to which they agreed with the statements. However, there were also open questions, allowing scope for as much information and comments to be provided as the consultees were willing to provide.

All Member States replied to this questionnaire.

Each Member State was invited to send one (joint) reply to this questionnaire. It could not be checked to which extent local or regional tax recovery offices were consulted by the central authorities that replied to the questionnaire.

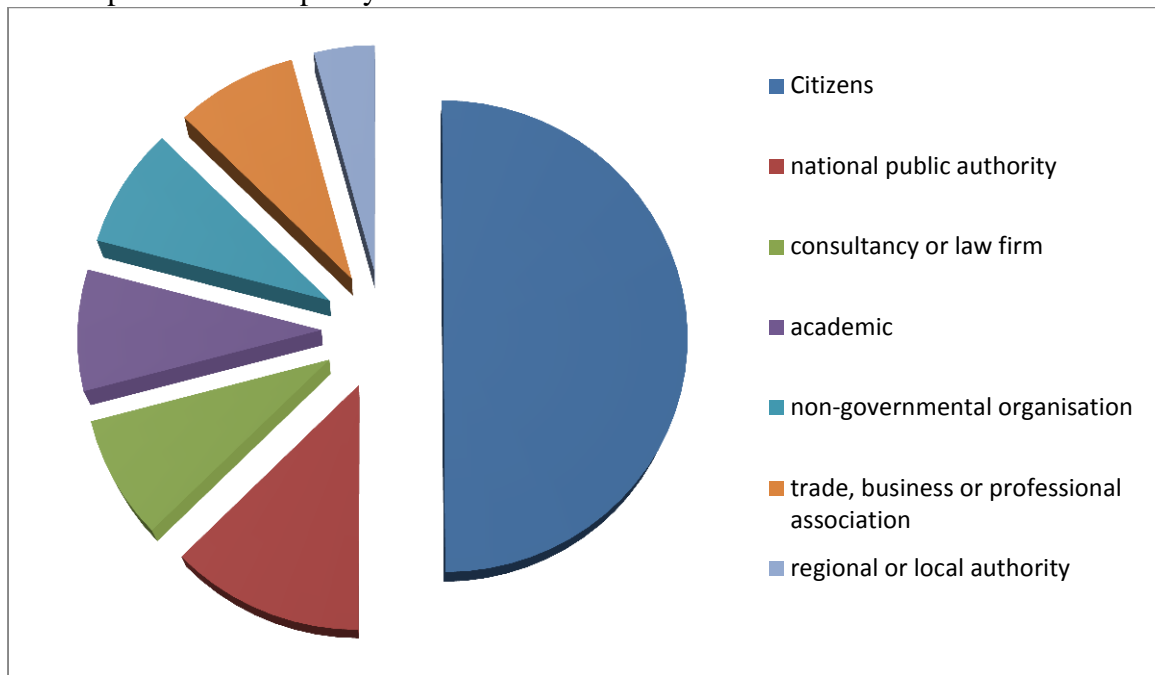
c. Assessment of the open public consultation

The purpose of this consultation was:

- to gather views from stakeholders other than tax administrations about their experience of the current rules concerning mutual assistance for the recovery of claims across the borders;
- to bring new insights for the on-going evaluation and reporting exercise about the efficiency of the Directive 2010/24;
- to provide information with regard to the need for further improvement of the legal, administrative or technical framework.

All stakeholders – citizens, companies, organisations, institutions, public authorities, academic researchers – were invited to provide their views on this matter.

Despite the fact that the public consultation was announced at several fora, only 24 respondents from 15 Member States replied to this public consultation. Half of the respondents (12) were citizens, replying in their personal capacity. The others responded in their professional capacity.



The summary report of this public consultation and a detailed overview of these comments is available on the website of the European Commission.<sup>1</sup>

The respondents replying in their personal capacity in general only selected predefined responses. They made little or no use of the opportunity to elaborate on their replies.

Only a few respondents – all replying in their professional capacity – declared to have a personal experience with regard to the application of recovery assistance on the basis of Directive 2010/24: two of them represented a national public authority; two others represented a tax consultancy firm and a professional organisation of accountancy bodies, whose members had personal experience as tax agents of tax debtors.

This limited response was not a total surprise. Citizens and companies paying their tax debts are never confronted with the use of this Directive and thus have no or very little experience in this field. Recovery assistance is generally only requested with regard to tax debtors deliberately refusing to pay their taxes. It is less likely that these persons respond to this public consultation. However, the very limited response of tax consultancy firms/lawyers and academic institutions and the complete lack of response from the judicial authorities were not expected.

Given the relatively low number of responses, the facts that most respondents had no or little experience with the use of this Directive and that they only partially completed the questionnaire, the results of this public consultation do not permit very firm conclusions. Nevertheless, the replies that have been received are useful as they clearly indicate important expectations and concerns with regard to international tax recovery assistance.

<sup>1</sup> [https://ec.europa.eu/taxation\\_customs/consultations-get-involved/tax-consultations\\_en](https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations_en).

d. Other information collected

Information for the evaluation was also collected:

- from the yearly statistics which Member States have to provide in accordance with Article 27 of Directive 2010/24, covering the number of assistance requests and the amounts requested and recovered;
- via specific questions raised in the meetings of the Recovery Expert Group (one meeting in 2016; two meetings in 2015, one meeting in 2014).

### 3. Consultation results

a. Consultation of the Member States' tax authorities

A large majority of Member States' tax authorities is of the opinion that tax recovery assistance has improved under Directive 2010/24. All Member States but one have confirmed that this Directive has made it easier for them to provide and to receive mutual recovery assistance, compared to the situation which existed under the previous legal framework. Almost all Member States consider that the use of uniform instruments permitting enforcement in the requested Member States (UIPE) facilitates the preparation of requests for assistance and makes processing of assistance requests from other Member States easier. Most Member States also have a positive opinion about the use of the uniform notification forms (UNF) which accompany the documents for which notification assistance is requested. Both the applicant and requested Member States agreed in (large) majority that the biggest advantages of the UIPE and UNF were, broadly, the avoidance of recognition issues, their electronic handling which made it easier to send/request/process requests, automated translation which was saving cost and time, resistance to errors and better overall communication (smoother notification process and debtors being well informed).

A majority of Member States consider that the extension of the scope of the Directive to all taxes is useful, although most requests for assistance still relate to the main categories of taxes (income taxes and VAT).

Some new possibilities for mutual assistance (the possibility for tax officials of one Member State to go to another Member State and to be present during administrative enquiries and to assist officials of the requested Member State during court proceedings in that State) appear not to be used, for different reasons. (It was not yet necessary to use it; or tax officials are not aware of this possibility).

In general, the Member States agreed that the Directive is meeting the needs of their administrations, and specifically reducing administrative costs and burdens of cooperation, and improving tax collection.

The Member States were also asked to estimate the administrative burden linked to the execution of the Directive, be it from the position of an applicant country or as the requested country. Although all Member States provided their estimates and despite the fact that the questionnaire was piloted with the experts sitting in the Recovery Expert Group, the replies varied significantly. In the Commission's view, it would not be

methodologically robust to attempt drawing any detailed conclusions from the data gathered on this point.

The main difficulties of national authorities occur at national level. Many Member States report they face a lack of staff. Member States focus on the recovery of their own taxes, while less attention is paid to the follow-up of assistance requests. The assistance also seems to be negatively affected by inadequate national legislations and practices, which entail constraints and impediments for international recovery assistance.

Member States also reported about difficulties to retrace debtors or debtors' assets. A better access to information within the Member States could help to improve this situation, although it has to be acknowledged that the recovery possibilities are also affected by the fact that tax debtors may move to third countries or dislocate their assets outside the EU.

Although the current EU framework for recovery assistance is appreciated by the Member States, some suggestions have been made to further strengthen the recovery assistance framework (e.g. for a further extension of the scope to other public claims; the adoption of a uniform instrument permitting precautionary measures; the facilitation of spontaneous exchange of information). Suggestions relating to the implementing provisions (Commission Regulation 1189/2011), which are of a technical nature, are already being dealt with by the Commission and the Recovery Committee, and a revision of this implementing legislation is expected to be adopted in 2017. The suggestions for further improving the Council Directive 2010/24 will need to be further analysed.

b. Open public consultation

Respondents in the public consultation emphasized the need to ensure that all taxes are paid and thus confirmed the relevance and the usefulness of the EU tax recovery assistance framework.

These respondents unanimously agreed that the current EU framework makes it easier for the Member States to help each other recover taxes. Almost all respondents also agreed that this EU framework makes recovery assistance less costly. Most respondents also considered that the existence of the EU framework discourages taxable persons from not paying their taxes in their own and in other Member States.

In this regard, it was observed that the EU should take a strict approach towards non-cooperative Member States or other countries. Several respondents also emphasized the need to strengthen precautionary measures and to ensure timely responses to assistance requests.

At the same time, several respondents underlined the need to respect the rights of defence of the tax debtor and the need to limit the administrative burden for the requested Member State. On the basis of the above considerations, respondents in the public consultation expressed mixed opinions with regard to the questions whether recovery assistance should be provided for contested claims or for claims below the current threshold.

Most respondents also confirmed that the EU and the Member States should take more actions to explain the legislation on mutual tax recovery assistance. This was considered

to be in the interest of taxpayers but could also help to have an indirect dissuasive effect. At the same time, most respondents also acknowledged that they were not aware of existing information channels.

It was also requested to ensure a clear and transparent communication about individual recovery assistance requests and about the status of the claims for which assistance is requested.

The two respondents that declared having a personal experience with recovery assistance on the basis of Directive 2010/24 confirmed the tax authorities' views with regard to the usefulness of the uniform notification form (UNF) and the uniform instrument permitting enforcement in the requested Member State (UIPE).

c. Discussions in the Recovery Expert Group

The meetings of the Recovery Expert Group provide an appropriate platform to discuss questions and problems relating to the implementation of Directive 2010/24.

In the period 2014-2016, the questions and discussions in this Expert Group focused, *inter alia*, on the need and the ways to improve information exchange and cooperation between tax recovery authorities and other authorities (social security claims; agricultural claims), information exchange concerning vehicle related data, and the handling of requests for precautionary measures by the adoption of a form listing information explaining and justifying the need for precautionary measures.

## 4. Conclusions

- a. The statistical information provided by the Member States shows an increased use of all types of assistance requests (requests for information, requests for notification, requests for recovery and precautionary measures). The recovered amounts are also increasing (although there was a temporary decrease in 2012, when the new Directive had to be implemented in the Member States).
- b. The consultation of the tax authorities responsible for mutual tax recovery assistance confirmed that the Directive 2010/24 improved and facilitated recovery assistance between the Member States, in particular via the use of the uniform instruments (uniform notification form (UNF) and uniform instrument permitting enforcement in the requested Member State (UIPE)). The use of these uniform instruments was also appreciated by the – very few – respondents in the public consultation that expressed a view on this point.
- c. The responses to both stakeholder consultations confirmed that the success of the tax recovery assistance is or can be affected by:
  - Member States not fulfilling their obligations to provide recovery assistance (due to weaknesses of the internal tax recovery systems or lack of efforts to provide such assistance), or
  - the fact that other countries do not provide the same tax recovery assistance.

- d. Stakeholders have made a number of suggestions for further improving the EU recovery assistance framework.