

Procedure file

Basic information		
CNS - Consultation procedure Directive	2009/0007(CNS)	Procedure completed
Mutual assistance for the recovery of claims relating to taxes, duties and other measures		
Subject		
2.10.01 Customs union, tax and duty-free, Community transit		
2.50.04.02 Electronic money and payments, cross-border credit transfers		
2.70.02 Indirect taxation, VAT, excise duties		
2.80 Cooperation between administrations		
3.10.12 Agrimonetary policy, compensatory amounts		
3.10.13 European Agricultural Guidance and Guarantee Fund, EAGGF and EAGF		
3.45.04 Company taxation		
8.70.04 Protecting financial interests of the EU against fraud		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		21/07/2009
		PPE STOLOJAN Theodor Dumitru	
	Former committee responsible		
	ECON Economic and Monetary Affairs		
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs	The committee decided not to give an opinion.	
CONT Budgetary Control	The committee decided not to give an opinion.		
Former committee for opinion			
CONT Budgetary Control			
JURI Legal Affairs			
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3003	16/03/2010
	Economic and Financial Affairs ECOFIN	2990	19/01/2010
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events			
01/02/2009	Legislative proposal published	COM(2009)0028	Summary
19/02/2009	Committee referral announced in Parliament		
19/10/2009	Committee referral announced in Parliament		
19/01/2010	Debate in Council	2990	

27/01/2010	Vote in committee		Summary
01/02/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0002/2010	
08/02/2010	Debate in Parliament		
10/02/2010	Results of vote in Parliament		
10/02/2010	Decision by Parliament	T7-0014/2010	Summary
16/03/2010	Act adopted by Council after consultation of Parliament		
16/03/2010	End of procedure in Parliament		
31/03/2010	Final act published in Official Journal		

Technical information

Procedure reference	2009/0007(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 113; Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/00239

Documentation gateway

Legislative proposal	COM(2009)0028	02/02/2009	EC	Summary
Committee draft report	PE430.646	12/11/2009	EP	
Amendments tabled in committee	PE430.926	10/12/2009	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0002/2010	01/02/2010	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0014/2010	10/02/2010	EP	Summary
Commission response to text adopted in plenary	SP(2010)1339	17/03/2010	EC	
Follow-up document	COM(2017)0778	18/12/2017	EC	Summary
Follow-up document	COM(2017)0781	18/12/2017	EC	Summary
Follow-up document	SWD(2017)0461	18/12/2017	EC	
Follow-up document	COM(2020)0813	18/12/2020	EC	
Follow-up document	SWD(2020)0340	18/12/2020	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

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

PURPOSE: to reform drastically the functioning of the mutual assistance for the recovery of claims relating to taxes, duties and other measures.

PROPOSED ACT: Council Directive.

BACKGROUND: national provisions on recovery are applicable only within national territories. It is not possible for administrative authorities themselves to recover taxes outside the territory of their own Member State. At the same time, the mobility of persons and capital is increasing, and fraudsters take advantage of the territorial limitation of the authorities' competences to organise insolvencies in countries where they have tax debts.

Arrangements for mutual recovery assistance were first set out in Council Directive 1976/308/EEC (as codified by Council Directive 2008/55/EC) on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures. This instrument, however, has proved insufficient to meet the requirements of the internal market as it has evolved over the last 30 years. It therefore appears now necessary to make provisions for an improved recovery assistance system within the internal market which will guarantee swift, efficient and uniform recovery assistance procedures among Member States.

CONTENT: the Commission proposes a new Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. In particular, the proposal aims to:

- extend the scope of the mutual recovery assistance to other taxes and duties than those already covered, including compulsory social security contributions;
- provide for uniform instruments permitting enforcement or precautionary measures, in order to avoid problems of recognition and translation of instruments emanating from another Member State;
- adopt a standard form for the notification of documents, relating to the claims covered, on the territory of another Member State;
- enable officials of a Member State to be present in administrative offices in another Member State or to participate actively in administrative enquiries on the territory of another Member State;
- develop a system of spontaneous information exchange;
- make conditions for requesting assistance less strict, at least in certain circumstances, in order to improve the recovery chances;
- provide for the adoption of common request forms in order to facilitate the assistance;
- **facilitate assistance in practice and make the legislation easier to apply.**

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

The Committee on Economic and Monetary Affairs adopted the report drawn up by Theodor Dumitru STOLOJAN (PPE, RO) amending, under the consultation procedure, the proposal for a Council directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

The main amendments were as follows:

Organisation: each Member State shall develop appropriate control systems for its central liaison office, or for the liaison offices that it has designated as liaison departments, in the interests of transparency and cost-efficiency, and shall draw up a publicly accessible report, in the context of an annual monitoring exercise, accordingly.

Requesting information: in the recovery of claims, time is of the essence. Now that the automatic exchange of information is becoming the norm in relations between Member States, it seems inappropriate to lose precious time through an on-demand exchange procedure, and more sensible to set up an automatic information exchange procedure, as proposed by the European Commission.

Spontaneous exchange of information: according to the proposal, the central liaison offices shall exchange information concerning refunds of taxes, other than value added tax, by the national tax authorities, if those refunds relate to persons established in another Member State and concern amounts exceeding EUR 10 000. Given that the exchange of all this information is to be automatic, it does not seem appropriate to set a lower limit on the amounts to which it relates.

Presence in administrative offices and participation in administrative enquiries: with a view to creating a properly functioning cooperation between the Member States' administrations, Members consider it desirable for both Member States to agree on the arrangements for the presence of an official on secondment and what inspection powers that official should have.

According to a proposed amendment, where an agreement has been concluded between the applicant authority and the requested authority concerning the inspection powers vested in officials by the requested authority, any refusal of the person under investigation to respect the inspection measures of the officials of the applicant authority shall be treated by the requested authority as a refusal committed against its own officials.

Notification conditions: an amendments aims to clarify that the original document issued by the Justice or the fiscal authorities relating to tax claims can be retained by the applicant Member State.

Follow-up of activities carried out in accordance with the directive: the central offices shall issue an annual report on cooperation activities carried out during the previous tax year in accordance with this Directive. That report shall detail at least the number of requests received and

issued, the action taken, the reasons given where the request was refused, the time taken to deal with the request, the amount of the claim and the amounts actually recovered. The report shall be forwarded to the European Parliament and the Commission for their opinions.

The Commission shall work towards good cooperation between the Member States and shall, on an ongoing basis, monitor any complaints of shortcomings in the exchange of information and assistance between the Member States with a view to recovery in accordance with this Directive.

Commission's analysis: the Commission shall conduct a comparative analysis on a wide range of tax recovery instruments provided for in Member States' tax codes, with a view to facilitating the implementation of best practices for tax recovery in Member States.

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

The European Parliament adopted by 626 votes in favour to 22 against with 24 abstentions, a legislative resolution amending, under the consultation procedure, the proposal for a Council directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

The main amendments were as follows:

Organisation: Parliament specifies that each Member State shall develop appropriate control systems for its central liaison office, or for the liaison offices that it has designated as liaison departments, in the interests of transparency and cost-efficiency, and shall draw up a publicly accessible report, in the context of an annual monitoring exercise, accordingly.

Requesting information: MEPs consider it necessary to establish an automatic procedure for the automatic exchange of information instead of a request exchange procedure, as proposed by the Commission. The amended text states that the central liaison offices shall exchange any information with the central liaison offices of the other Member States which might be relevant to the latter in the recovery of the claims.

Spontaneous exchange of information: according to the proposal, the central liaison offices shall exchange information concerning refunds of taxes, other than value added tax, by the national tax authorities, if those refunds relate to persons established in another Member State and concern amounts exceeding EUR 10 000. The Parliament removed the requirement that amounts must exceed EUR 10 000.

Presence in administrative offices and participation in administrative enquiries: where officials of the applicant authority are present during administrative enquiries they may, where so agreed, exercise the powers of inspection conferred on officials of the requested authority, on condition that they exercise those powers in accordance with the laws, regulations or administrative provisions of the requested authority's Member State. The amendment accepted states that where an agreement has been concluded between the applicant authority and the requested authority concerning the inspection powers vested in officials by the requested authority, any refusal of the person under investigation to respect the inspection measures of the officials of the applicant authority shall be treated by the requested authority as a refusal committed against its own officials.

Notification conditions: an amendment aims to clarify that the original document issued by the Justice or the fiscal authorities relating to tax claims can be retained by the applicant Member State.

Execution of the request for recovery: Parliament states that the entire amount of the claim that is recovered by the requested authority shall be remitted to the applicant Member State only within 14 days of receipt of the request.

Follow-up of activities: the central liaison offices shall issue an annual report on cooperation activities carried out during the previous tax year in accordance with the Directive. That report shall detail at least the number of requests received and issued, the action taken, the reasons given where the request was refused, the time taken to deal with the request, the amount of the claim and the amounts actually recovered. The report shall be forwarded to the European Parliament and the Commission for their opinions.

Members require the Commission to work towards good cooperation between the Member States and, on an ongoing basis, to monitor any complaints of shortcomings in the exchange of information and assistance between the Member States with a view to recovery in accordance with the Directive.

Commission's analysis: the Commission shall conduct a comparative analysis on a wide range of tax recovery instruments provided for in Member States' tax codes, such as collection orders, recovery claims specified in the real estate property records, liens, enforcement procedure deadlines required by law and applied in practice with a view to facilitating the implementation of best practices for tax recovery in Member States.

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

PURPOSE: to combat tax evasion by strengthening mutual assistance for the recovery of claims relating to taxes, duties and other measures.

LEGISLATIVE ACT: Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

CONTENT: the directive's main objective is to better fulfil the member states' needs with regard to the recovery of taxes, providing an overhaul of directive 76/308 (codified by Directive 2008/55), on the basis of which the member states have engaged in mutual assistance since 1976.

National provisions on tax recovery are limited in scope to national territories, and fraudsters have taken advantage of this to organise insolvencies in member states where they have debts. Member states therefore increasingly request the assistance of other member states to recover taxes, but existing provisions have only allowed a small proportion of debts to be recovered.

The Directive was designed with a view to establishing a more efficient assistance system involving rules that are more easily applied. Its main features are as follows:

Scope: the Directive applies to the following: a) all taxes and duties of any kind; b) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agriculture Guarantee Fund (EAGF) and the European Agricultural Fund for Rural

Development (EAFRD); c) levies and other duties provided for under the common organisation of the market for the sugar sector. The Directive does not apply to compulsory social security contributions payable to the Member States or a subdivision of the Member State, or to social security institutions established under public law.

Organisation: by 20 May 2010 at the latest, each Member State shall inform the Commission of its competent authority or authorities for the purposes of this Directive. 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. 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 requested authority shall inform the applicant authority of the grounds for refusing a request for information.

Request for information: 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. 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.

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.

Presence in administrative offices and participation in administrative enquiries: 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.

Request for notification of certain documents relating to claims: at the request of the applicant authority, the requested authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the applicant Member State and which relate to a claim or to its recovery. The request for notification shall be accompanied by a standard form containing certain minimum information.

Recovery or precautionary measures: the Directive provides for a uniform instrument to be used for enforcement measures, as well as the adoption of a uniform standard form for notification of instruments and decisions relating to the claim; this should resolve the problems of recognition and translation of instruments emanating from another Member State .

Application of other agreements on assistance: the Directive shall be without prejudice to the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements, including for the notification of legal or extra-legal acts.

ENTRY INTO FORCE: 20/04/2010.

TRANSPOSITION: 31/12/2011.

APPLICATION: from 01/01/2012.

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

The Commission presented this report on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation.

Article 27 of the Directive requires a report on its application every five years from 1 January 2013.

As a reminder, while taxation remains still to a great extent a national issue, the economic environment has become more globalised, mobile and digital. Therefore, businesses are able to shift profits across borders, taxpayers can earn income from abroad without being taxed, and tax decisions of one Member State can have effects on other Member States' tax bases. To ensure all citizens and businesses contribute their fair share in the correct state Europe needs a high degree of cooperation between Member States.

The application of the Directive and the efforts in enhancing the administrative cooperation within the European Union represent the highest standards of cooperation among tax administrations worldwide. But, some issues remain. There is scope to further improve administrative cooperation to ensure that Member States and the European Union continue to lead the global movement towards a fairer and more transparent tax system

Main findings: from the analysis of the information gathered from the Member States, three key findings emerge in this report:

- DAC provisions have been implemented but not all of them effectively: further efforts are needed in the areas of the exchange of information on request (EOIR); the spontaneous exchange of information (SEOI); ways to cooperate other than exchange of information;
- the application of DAC exchange of information has resulted in a great increase in the amount of data tax administrations have to handle but on average their capacity to do so has not increased at the same rate;
- the assessment of the benefits of DAC is carried out at a very early stage.

Way forward: according to the Commission, an improved, more transparent approach is needed in the EU to ensure that administrative cooperation contributes, and is seen to contribute, to the overall objective of a fair taxation for all.

Member States are encouraged to facilitate the exchange of information through the relevant tools available to them. The Commission will work with Member States experts to identify common ways to estimate the benefits of administrative cooperation reliably and comprehensively. By 1 January 2019, the Commission will prepare a report on automatic exchanges, covering also issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as its practical aspects.

Conclusion: the implementation and functioning of the Directive has implied a significant investment by Member States, on an ongoing basis, which nevertheless have made it one of the most effective tools for administrative cooperation. However, assessing its full impact is still a

difficult task.

More than the amounts or number of exchanges, the Commission assumes that this Directive has had a significant deterrent effect, which is a key tool in the fight against tax evasion. In parallel, voluntary disclosure programmes are, on a sporadic basis, put in place by different Member States. The impact of administrative cooperation in the amounts disclosed is difficult to quantify, while it is reasonable to expect that if it did not exist there would be no incentive for such disclosures. However, as a tool to fight tax avoidance and evasion, this is an unending work. After the necessary IT structure and common tools have been built for the administrative cooperation, the next step should be an intensified use of all the tools, analysis and use of the data received and efforts in improving reciprocally the qualitative content of the data exchanged.

New forms of cooperation and improvements to the current framework will be needed to address the dynamic nature of tax avoidance and evasion. The EU Member States have proven their commitment to administrative cooperation and will undoubtedly follow-up on this field.

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

The Commission presented a report on the operation of the arrangements established by Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

Council Directive 2010/24/EU organises recovery assistance for claims relating to all taxes levied by or on behalf of the Member States or their territorial or administrative subdivisions, or on behalf of the Union. It 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 first report under this new Directive.

Main findings: the report noted that the use of all traditional types of recovery assistance (requests for information, requests for notification, requests for precautionary and/or recovery measures) has continued to increase in the period 2011-2016. However, Member States do not yet make use of the possibility for tax recovery officials of one Member State to go to another Member State and to be present during administrative enquiries or even to participate in these enquiries by interviewing individuals and examining records and to assist officials of the requested Member State during court proceedings in that State.

A large majority of Member States is of the opinion that the cooperation under the present Directive has improved the collection and recovery of their tax related claims.

All Member States but one have confirmed that Directive 2010/24/EU has made it easier for them to provide and to receive mutual recovery assistance, compared to the situation under the previous legal framework. The use of the electronic request forms and the uniform instruments (Uniform instrument permitting enforcement in the requested Member State (UIPE) and Uniform notification form (UNF)) have improved the efficiency and effectiveness of recovery assistance.

Concerns and further improvements: 18 Member States observed that the number of requests for recovery from other Member States is very burdensome for them, and 17 Member States reported concerns about a lack of resources on the national level. They explain that they do not dispose of the human resources that are necessary to ensure a timely follow-up of all requests. 10 Member States also expressed a feeling that cross-border recovery assistance is not a priority for some tax administrations.

The report noted that the success of mutual recovery assistance largely depends on sufficient resources and efforts to cooperate. Member States should devote sufficient resources to the internal collection as well as to the recovery assistance requests coming from other Member States. Reinforcing internal tax collection and recovery has also been noted as a prerequisite for a more successful recovery assistance.

Better overall communication and guidance is needed in the area. Moreover, recovery assistance between the EU and third countries will become a more prominent issue.