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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Report from the Commission to the Council and the European Parliament on
the use of the provisions on mutual assistance for the recovery of claims
relating to certain levies, duties, taxes and other measures in 2009-2010

Delegations will find attached Commission document COM(2012) 58 final.

Encl.: COM(2012) 58 final



EUROPEAN COMMISSION

Brussels, 15.2.2012
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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**on the use of the provisions on mutual assistance for the recovery of claims relating to
certain levies, duties, taxes and other measures in 2009-2010**

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1. INTRODUCTION

EC Member States provide mutual assistance to each other for the recovery of claims relating to certain levies, duties, taxes and other measures, in accordance with Directive 2008/55/EC of 26 May 2008¹. Under this directive the Commission is required to produce a regular report on the use of the mutual assistance arrangements. The present report relates to recovery assistance granted in 2009-2010.² It also deals with the current changes and initiatives in this field.

2. ANALYSIS OF THE USE OF MUTUAL ASSISTANCE MEASURES IN 2009-2010

Effective collection and recovery of taxes is a cornerstone of an efficient and fair taxation system. Especially in times where all Member States face budgetary challenges, authorities have to strive for improving tax collection and recovery. In this regard, mutual recovery assistance between the tax authorities of different Member States constitutes an essential tool, helping to protect the financial interests of the Member States and of the European Union as a whole. This is confirmed by the ever increasing use of the EU legislative framework for tax recovery assistance.

2.1. Increasing use of EU mutual assistance requests

Statistics provided by Member States show an increasing number of requests for assistance on the basis of the EU legislation (first column in the graphics below).

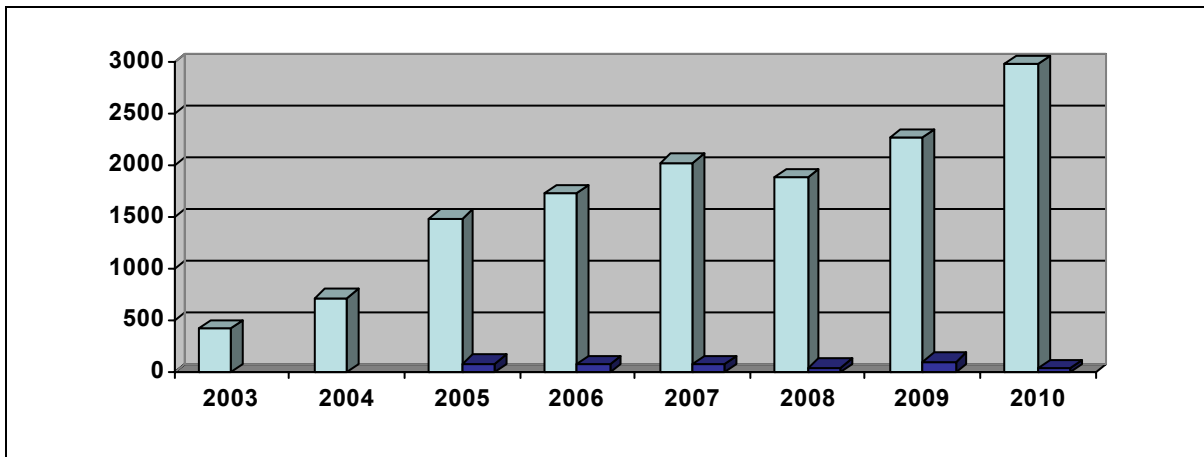
It also appears that the EU legislative framework is much more widely used between EU Member States than any other mutual recovery assistance agreement or arrangement. The use of other mutual assistance arrangements between the Member States (second column in the graphics below) shows a diminishing trend in the period 2005-2010. (Data on the use of other mutual assistance arrangements are only available for the period from 2005 to 2010)³.

¹ OJ L 150, 10.6.2008, p. 28.

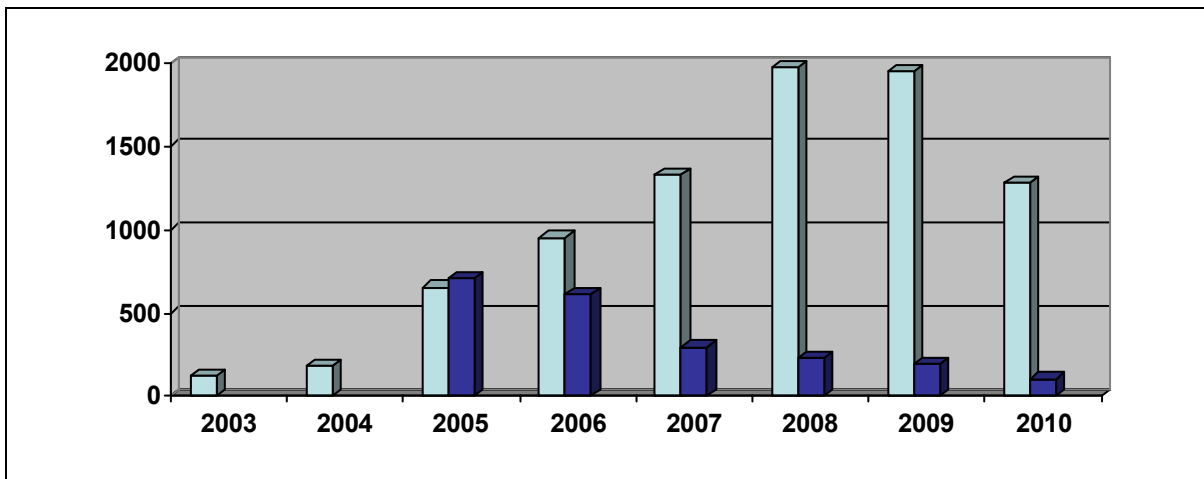
² The first report (document COM(2006)43, published on 8.2.2006) provided an overview of the mutual recovery assistance provided in 2003 and 2004. The second report (document COM(2009)451, published on 4.9.2009) provided an overview of the mutual recovery assistance provided in 2005-2008.

³ Information according to the statistics communicated by requested Member States.

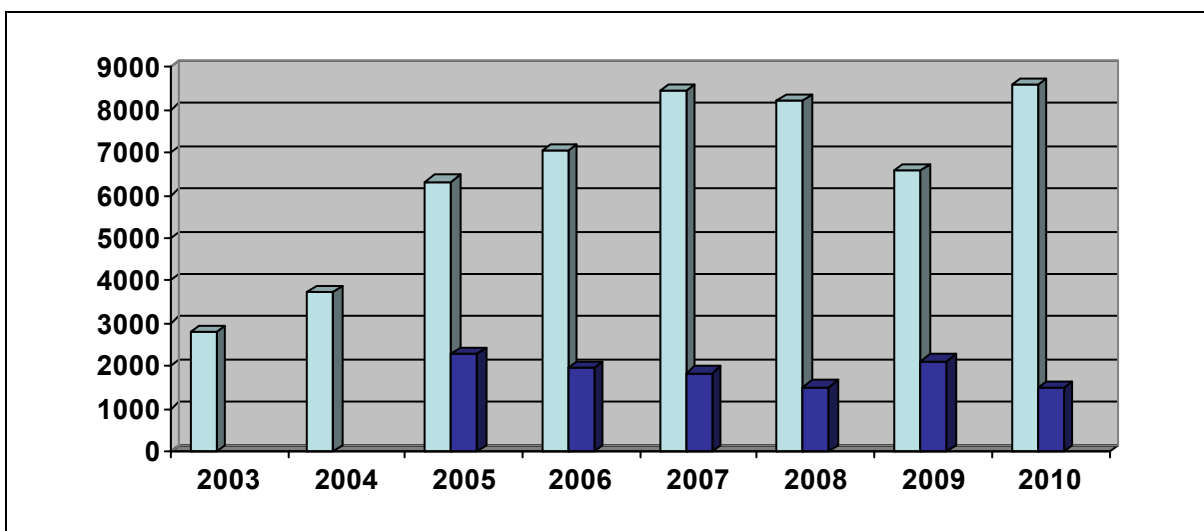
2.1.1. Evolution of the requests for information



2.1.2. Evolution of the requests for notification



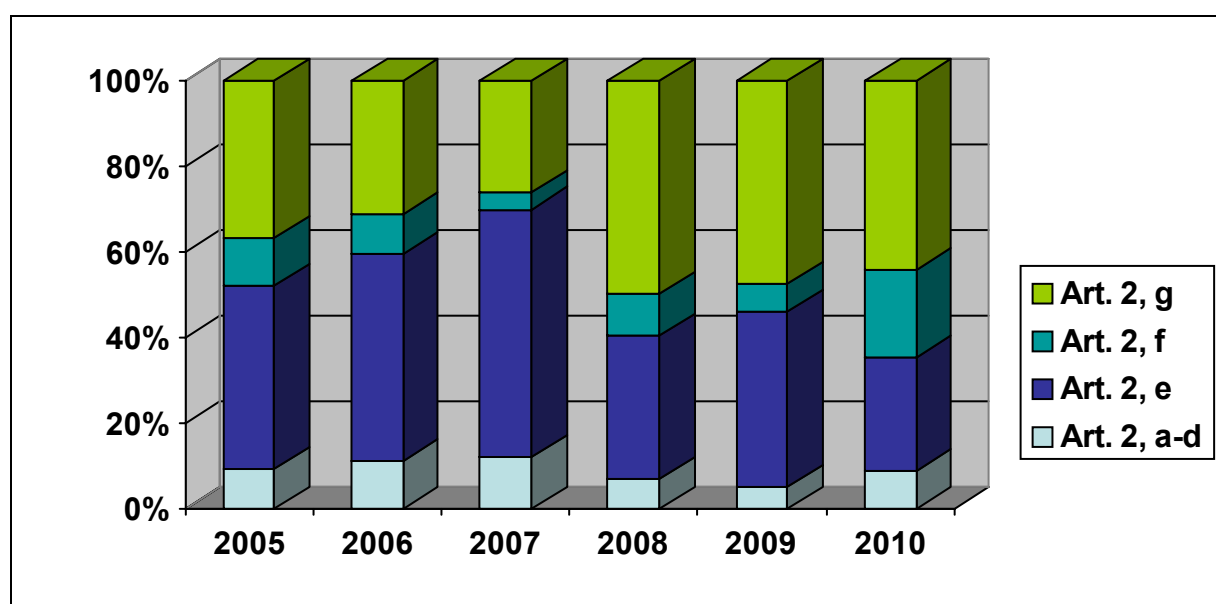
2.1.3. Evolution of the requests for recovery



2.1.4. Nature of the claims for which recovery assistance was requested

The nature of the claims, in percentage of the total amount of all claims, is illustrated by the following graphics⁴:

- ■ requests relating to customs duties (and other amounts referred to in Art. 2(a)-(d) of Directive 2008/55/EC) represent a minor part of all requests (5 % in 2009 and 9 % in 2010);
- ■ requests concerning VAT claims (referred to in Art. 2(e) of Directive 2008/55/EC) no longer represent the biggest part of the requests for recovery measures. Nevertheless, their part remains considerable (41 % in 2009 and 26 % in 2010);
- ■ requests relating to excise duties (referred to in Art. 2(f) of Directive 2008/55/EC) also represent a fluctuating part of all requests (7 % in 2009 and 21 % in 2010);
- ■ requests relating to taxes on income and capital (referred to in Art. 2(g) of Directive 2008/55/EC) represent a major part of the requests (47 % in 2009 and 44 % in 2010).



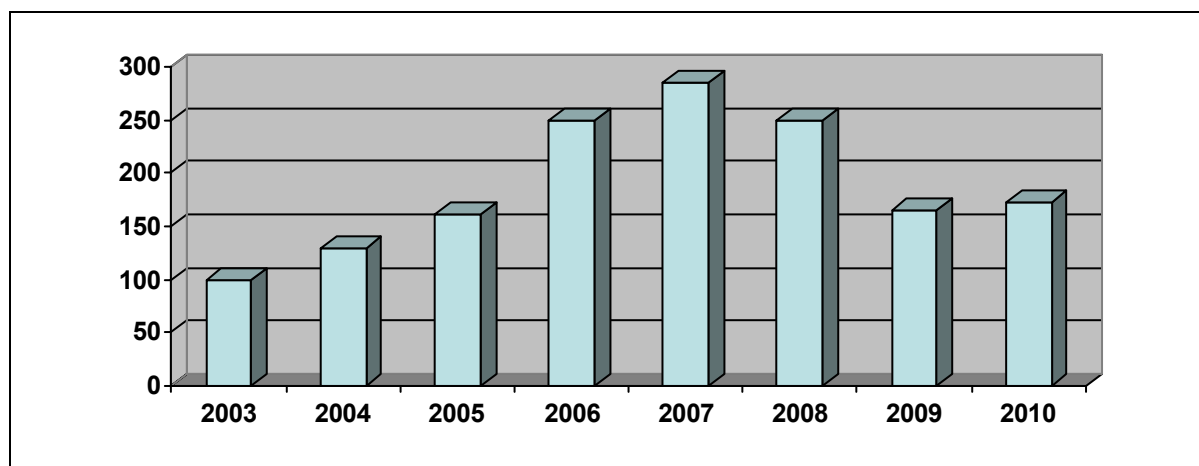
⁴ Statistics based on the average of requests received and sent. For 2005, these statistics are based on data reported by 17 Member States; for 2006 on data reported by 20 Member States; for 2007 on data reported by 24 Member States; for 2008 on data reported by 25 Member States; for 2009 and 2010 on data reported by 26 Member States.

Requests relating to taxes on insurance premiums (referred to in Art. 2(h) of Directive 2008/55/EC) represent such a small part of all requests that they do not appear in this table.

2.2. Increasing amounts recovered

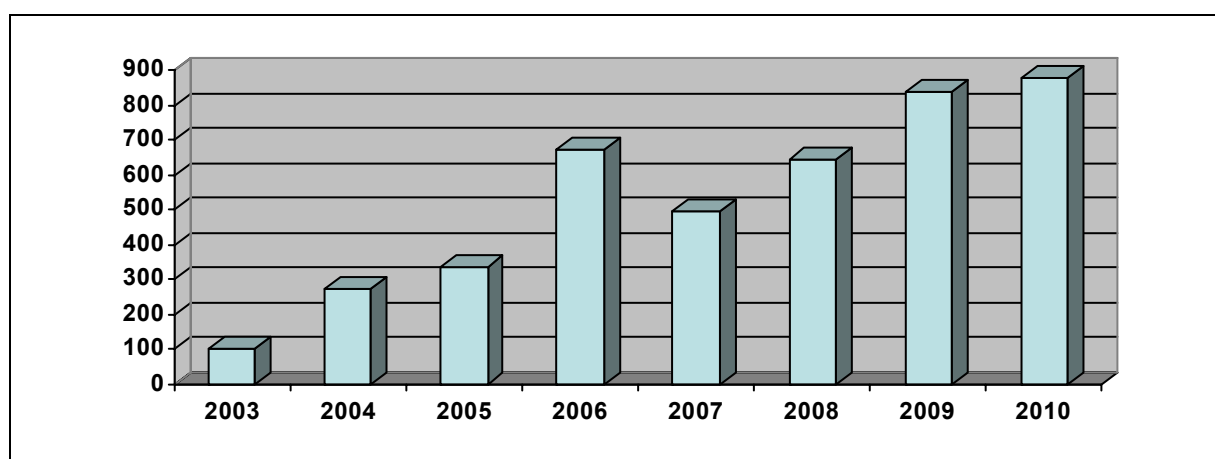
2.2.1. Global evolution of the amounts for which recovery assistance was requested

The amounts for which recovery assistance was requested in 2009 and 2010 dropped considerably, compared to the preceding years (2003 = 100 %). This evolution is in line with the temporary drop of the number of recovery requests in 2009; but in contrast with the increase of the number of recovery requests in 2010.



2.2.2. Global evolution of the amounts recovered

The evolution of the amounts that are effectively recovered shows an increasing tendency. Compared to the amounts recovered in 2003 (100 %), the recovered amounts have risen to almost 840 % in 2009 and almost 880 % in 2010⁵.

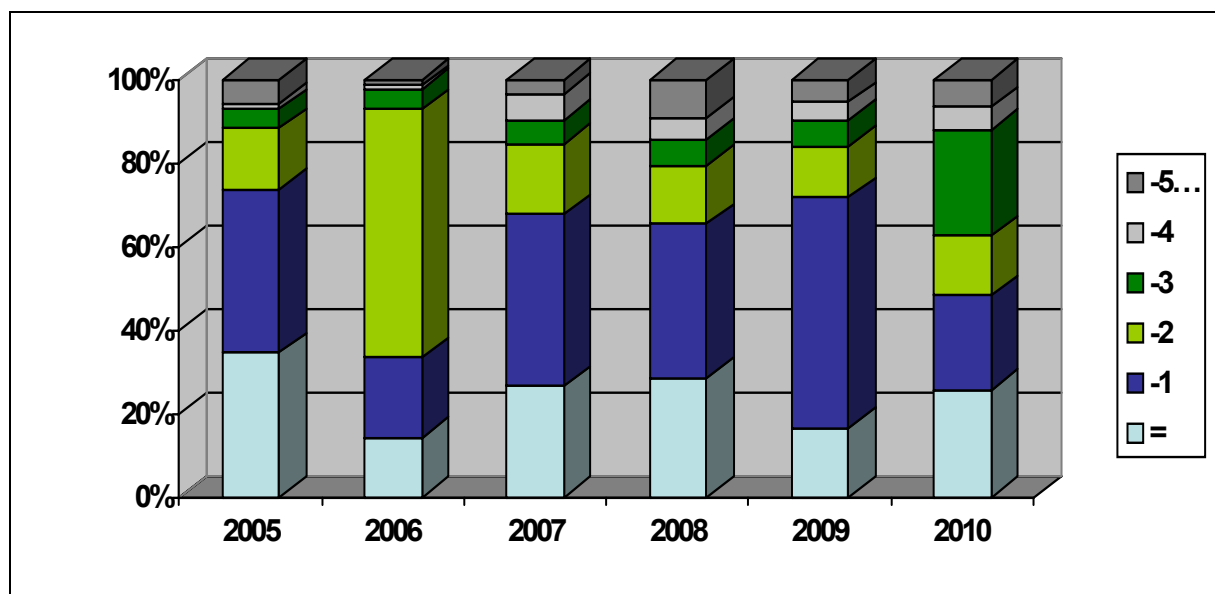


2.2.3. Distribution of the amounts recovered for other Member States, according to the years to which the requests concerned relate

It takes some time before recovery measures are taken and before they produce their effect. For instance, amounts recovered by a requested Member State in 2008 will only partially relate to requests received in 2008; these amounts will also relate to requests received in

⁵ Statistics reported by the requested Member States as recovered at the request of other Member States.

previous years. The following graphics show, with regard to the amounts effectively recovered in the years 2005-2010, to which year the requests concerned relate. It appears from these statistics that about 90 % of the amounts recovered in these years relates to requests made in the same year (indicated by "=" in the graphics below) or in the three previous calendar years (indicated as "-1" to "-3" in the graphics below).



2.2.4. Global recovery ratio

The statistics show that in the period 2009-2010, the recovered amounts have continued to increase considerably, while the amounts for which recovery assistance is requested have decreased. However, this does not allow to conclude that the global recovery ratio has increased a lot, compared to the situation described in the previous report (where it was observed that the global recovery ratio for the recovery requests between EU Member States could then be expected to be around 5 %). It must indeed be taken into account that the recovery measures taken in the execution of a request received in a certain year do not produce all their effects in the same year (see point 2.2.3.). The higher amounts recovered in 2009 and 2010 largely relate to requests sent in the years 2006-2008, where recovery assistance was requested for higher amounts too.

Anyhow, the decrease of the amounts for which recovery assistance was requested in the period 2009-2010 may in the coming years lead to an increase of the recovery rate for these requests. It can be expected that this rate will even end higher than the recovery rate of 6 % which has been obtained so far for the recovery requests received in 2004.⁶ Nevertheless, it remains important to further improve the global recovery ratio.

⁶ It should also be kept in mind that the total sum of the amounts mentioned in the recovery requests does not necessarily correspond to the amounts really due; e.g. the same claim may be the subject of several requests to different Member States; or requests may be withdrawn at a later stage, because the claims are paid voluntarily or contested successfully. At present, the statistics available do not allow to take account of all these situations.

3. STRENGTHENING THE MUTUAL RECOVERY ASSISTANCE

In its previous report (document COM(2009)451 of 4.9.2009), the Commission emphasized that special efforts were needed to increase the efficiency of the recovery assistance and to reinforce:

- the possibilities for providing recovery assistance under the EU legislation, and
- the recovery instruments available to the tax authorities under their domestic legislation.

3.1. New EU legislation

On 16 March 2010, the Council adopted Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.⁷ The Member States have to apply this new directive from 1 January 2012. The implementing Commission provisions, which got the unanimous support of the Recovery Committee at its meeting of 3 and 4 October 2011, will be adopted before the end of 2011.

This new directive is a milestone towards a more efficient recovery assistance. The major improvements relate to:

- the introduction of a uniform instrument permitting enforcement in the requested Member State and a uniform notification form

The adoption of these uniform instruments allows to avoid the current problems and costs of translation and recognition of foreign enforcement titles. A first attempt to reduce these problems was made in 2001, when Council Directive 2001/44/EC was adopted.⁸ At that moment, the idea was already to permit more efficient and effective recovery of claims, by providing that the instrument permitting enforcement of the claim should, in principle, be treated as an instrument of the requested Member State. This approach was in line with the objectives in civil, commercial and criminal matters, following the guidelines set out by the European Council at its meeting in Tampere on 15 and 16 October 1999, which held that enhanced mutual recognition of judicial decisions and judgments would facilitate cooperation between authorities and contribute to legal certainty in the European Union.⁹ At that time, it appeared however that this principle could not yet be fully applied and Directive 2001/44/EC still provided that, where appropriate and in accordance with the provisions in force in the requested Member State, the instrument permitting enforcement may still be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of the requested Member State. Under the new directive, 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

⁷ OJ L 84 of 31.3.2010, p. 1.

⁸ Council Directive 2001/44/EC of 15 June 2001, OJ L 175 of 28.6.2001, p. 17.

⁹ See Council draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ C 12 of 15.1.2001, p. 1) and Council Programme of measures to implement the principle of mutual recognition of decisions in criminal matters (OJ C 12 of 15.1.2001, p. 10).

from another Member State. This will increase the efficiency of the mutual recovery assistance;

- the extension of the scope

The extension of the scope to all taxes and duties levied in the Member States will considerably simplify the work of the tax authorities: the same set of rules can now be applied to all tax recovery requests. This allows them to avoid the difficulties that result from the application of several agreements and arrangements, each with different possibilities, conditions, modalities and communication methods. This extension is also logic, since the competitiveness and the fiscal neutrality of the internal market is not only affected by the non-payment of the taxes now falling within the scope of Directive 2008/55/EC. Distorsions of the internal market conditions, as well as the threat to financial interests of the Community and the Member States may also result from fraud concerning other taxes;

- the reinforcement of possibilities to request recovery assistance

Under the existing rules, the applicant authority may not make a request for recovery unless it has applied appropriate recovery procedures available to it in its own Member State, and the measures taken will not result in the payment in full of the claim (Art. 7(2)(b) of Directive 2008/55/EC). Under the new directive, the possibilities to request recovery assistance have been enlarged. Although the applicant authority is in principle still expected to apply appropriate recovery procedures available in its own Member State before requesting assistance, an explicit exception is provided for situations "where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty" (Art. 11(2)(b) of Directive 2010/24/EU). In this regard, it is important to note that the Council has decided to use an identical wording as in Art. 19 of the Joint Council of Europe – OECD agreement on administrative assistance in tax matters. This allows to conclude that this new provision can be understood in the same way, which implies that recovery assistance can be requested if recovery can be obtained more easily in the requested State.¹⁰ The new directive thus makes it possible to send recovery requests at an early stage. Experience indeed shows that the older the claim, the slimmer the recovery chances. Having the possibility to make requests at an early stage is particularly important in situations of fraudulent debtors trying to dislocate assets and to escape from their payment obligations.

The use of new standard electronic request forms, integrating the new uniform instruments and allowing an automatic translation, will further facilitate the handling of assistance requests.

3.2. Reinforcement of the collection and recovery systems within the Member States

The success of the recovery assistance depends also on the strength of the national recovery actions. Member States are in a continuous quest for more effective collection and recovery

¹⁰ See Explanatory report to the Joint Council of Europe – OECD Agreement on administrative assistance in tax matters, point 204: "(...) For instance, (...) in the case of assistance in recovery, some assets might only be seized through lengthy proceedings in the applicant State, while there are other assets in the requested State that can be seized more easily."

processes. Improving these processes is primarily a matter for the Member States. However, in accordance with the recommendation of the Recovery Committee, the Commission will set up a project group to assist the Member States by developing best practices in this field.

4. CONCLUSIONS AND FURTHER INITIATIVES

The statistics show that the mutual recovery assistance arrangements have been intensively used in the period 2009-2010. The increase of the recovered amounts proves the usefulness of this cooperation between the Member States.

The application of the new EU legislation from 1 January 2012 should further improve the efficiency of the recovery assistance. In addition, Member States have to examine to what extent their national tax collection and recovery legislation, processes and instruments can be improved. To this end, the Commission shall set up Fiscalis project groups to develop best practices recommendations in this field. The Commission shall also assist the Member States in the development of spontaneous and automatic information exchange for recovery purposes. On the basis of the Member States' experiences with the new legislative framework, the Commission shall also examine whether further EU initiatives should be taken to improve the mutual recovery assistance, in particular with regard to precautionary measures and insolvency situations.