



Council of the
European Union

006516/EU XXVI. GP
Eingelangt am 20/12/17

Brussels, 20 December 2017
(OR. en)

15905/17

FISC 366
ECOFIN 1135

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 December 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2017) 778 final
Subject:	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

Delegations will find attached document COM(2017) 778 final.

Encl.: COM(2017) 778 final



Brussels, 18.12.2017
COM(2017) 778 final

**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**

{SWD(2017) 461 final}

1. INTRODUCTION

- a. Everyone is expected to pay his/her share of taxes. If taxes remain unpaid, tax authorities take recovery actions to collect the taxes. The competence of the tax authorities is however limited to their national territory. They cannot take recovery actions in other countries, although tax debtors may have moved to another country or may dispose of assets in other countries. Therefore, the EU has adopted legislation which allows the EU Member States to provide mutual assistance to each other, for the recovery of their taxes and for EU claims as defined in Article 2 of the Directive.

The following example illustrates the functioning of this recovery assistance: a person does not pay his tax debts in Member State A. He moves to Member State B, and he also owns property in Member State C. In that case, the tax authorities of Member State A can ask the tax authorities of Member States B and C to help to recover the taxes due to Member State A.

In this way, mutual recovery assistance contributes to ensuring equity and non-discrimination in the field of taxation: it helps to ensure that everyone is paying his/her taxes and it helps to prevent tax fraud and budgetary losses for the Member States and for the EU.

- b. 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.¹ It provides for different forms of recovery assistance:
 - exchange of information which is foreseeably relevant for the recovery of tax claims (exchange of information at request; exchange of information without prior request about refunds of taxes; presence in administrative offices and participation in administrative enquiries in other Member States);
 - assistance for the notification of documents relating to tax claims or to their recovery;
 - requests for recovery of tax claims;
 - requests for precautionary measures in order to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State.

This Directive 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.

- c. The Member States had to transpose this Directive by 31 December 2011, and these new provisions had to apply from 1 January 2012 (Article 28 of this Directive).

¹ [OJ L 84, 31.3.2010, p. 1.](#)

- d. Article 27(3) of this Directive 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.²
- e. This report is accompanied by a synopsis report describing the stakeholder consultations done by the Commission in the preparation of this report. The consultation of the Member States' tax authorities has been done via the activities of the Recovery Expert group, responsible for the monitoring of the implementation of the EU framework on recovery assistance, and via a questionnaire to the tax authorities dealing with recovery assistance. The Commission also launched a public consultation on this matter. Reports of these consultations are published on the Commission's website.

A Commission staff working document, attached to this report, contains a more detailed evaluation of the use of this Directive.

2. GLOBAL OVERVIEW OF THE USE OF MUTUAL ASSISTANCE IN 2011³-2015

- a. 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:

Table 1: total numbers of requests received by all Member States in 2011-2016:

	Requests for information	Requests for notification	Requests for precautionary measures ⁴	Requests for recovery
2011	3218	1284		9566
2012	6081	1323		7661
2013	8250	2066	102	10391
2014	9988	2195	80	14123
2015	10733	2168	123	14769
2016	13630	2205	76	16403

² Previous reports on mutual tax recovery assistance dealt with the recovery assistance on the basis of the former legislation: the first arrangements for mutual recovery assistance were set out in Council Directive 76/308/EEC of 15 March 1976. That Directive and the acts amending it were codified by Council Directive 2008/55/EC of 26 May 2008.

These previous reports were presented on 04.09.2009 (report COM(2009)451 on the use of mutual recovery assistance in 2005-2008) and on 15.02.2012 (report COM(2012)58 on the use of mutual recovery assistance in 2009-2010).

³ Directive 2010/24/EU had to be implemented by 1 January 2012. The Commission however considers it useful to compare also with the situation in 2011, when the former Directive 2008/55/EC still applied.

⁴ No statistics are available with regard to the number of requests for precautionary measures before 2013.

The total number of annual communications (new requests and follow-up of existing requests) between applicant and requested authorities in all EU Member States is also increasing.

Table 2: total annual communications with regard to recovery assistance requests in 2012-2016:

2012	2013	2014	2015	2016
125.163	98.493 ⁵	138.628	139.402	166.457

- b. 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.⁶ On this point, the results are in line with the experiences relating to the lack of use of corresponding provisions in the other EU legislation concerning administrative cooperation between tax authorities.⁷
- c. 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. The statistical information available confirms that the amounts recovered on the basis of the EU legislation have increased again, after an initial regression in 2012. The decrease in 2012 can be explained – at least to some extent – by the late implementation of Directive 2010/24/EU in many Member States and the workload generated by the need for the competent authorities to get acquainted with the new legislation, the new procedures, the new request forms and the uniform instruments. The amounts recovered in 2013-2014 are in line with the amounts recovered in 2009-2010. The results have continued to increase in 2015 (and are better than the previous best result that was achieved in 2011).

Table 3: overview of recovered amounts (2011-2016):

	Recovered at the request of other MS (before deduction of the own costs)	Recovered via requests to other MS
	<i>in €</i>	<i>in €</i>
2011	54.031.822	62.475.879
2012	30.641.451	32.076.738
2013	35.580.763	41.115.223
2014	42.839.876	46.395.481

⁵ There is no clear explanation for the temporary dip in 2013. However, several Member States were late in implementing Directive 2010/24 and this may also have affected the communication of new requests and the follow-up of old requests.

⁶ In the years 2015-2016, one case of officials going to another Member State was reported.

⁷ Regulation 904/2010 on administrative cooperation in the field of VAT; Regulation 389/2012 on administrative cooperation in the field of excise duties; Directive 2011/16 on administrative cooperation for other taxes.

2015	81.402.061	65.711.419
2016	76.500.163	67.019.250

- d. Of course, the increase of assistance requests and of the recovered amounts does not as such give a proper indication about the functioning of the EU recovery assistance framework.

It results from the consultations of the Member States' tax authorities that recovery assistance is working well in simple situations (e.g. border workers), where recovery assistance provides a solution for the lack of cross-border competence of the tax authorities. However, in other situations – in particular where the non-collection is due to the fraudulent intention of the debtor – the recovery assistance is considered to be more difficult, as is the recovery in the applicant Member State itself.

This view of the Member States is confirmed by the statistics. Even though these statistics only permit to give a rough indication of the recovery rate,⁸ they make it clear that the amounts actually recovered are much lower than the amounts for which recovery assistance is requested.⁹

3. IMPACT OF DIRECTIVE 2010/24/EU ON THE FUNCTIONING OF THE MUTUAL ASSISTANCE: A POSITIVE APPRECIATION

- a. The importance of well-functioning recovery assistance was emphasized by respondents to the public consultation. The existence and the use of clear and efficient assistance procedures were considered to benefit all parties in such proceedings.
- b. With regard to the financial and administrative burden, it should be noted that the nature of the Directive – providing the legal base and technical tools allowing Member States to assist each other in the recovery of claims, without setting the national recovery rules – makes it difficult to quantify the burden linked to the recovery assistance. This burden is largely influenced by the costs and the workload involved in national recovery processes. Moreover, each recovery case is different and depends on the particular circumstances of the claim. The evaluation therefore only gathered (some) evidence on the costs and burdens within the limitations of the Directive's application and reflecting individual experiences of the recovery officials. That information is duly analysed in the attached Commission staff working document. However, any extrapolation allowing an EU-level statement on the regulatory costs related to the Directive is not possible.

In this regard, it should also be noted that reliable quantitative information concerning the administrative burden is not available. The Commission services do not have access to individual files (in accordance with Article 23 of the Directive) and national tax

⁸ The statistics currently collected do not permit to draw precise conclusions with regard to the recovery rate (see Commission staff working document, point 4.2.3.).

⁹ See Commission staff working document, point 6.1.1.2.

authorities are reluctant to provide more detailed quantitative statistical information than what is imposed by Article 27(1) of the Directive.

- c. One of the major goals of Council Directive 2010/24/EU was "to make assistance more efficient and effective and to facilitate it in practice".¹⁰ The Member States almost unanimously confirm that this goal has been achieved. 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. All respondents in the public consultation also agreed that the current EU framework has made it easier for Member States to help each other recover taxes.
- d. Most respondents in the Member States' consultation and in the public consultation also considered that the existence of the EU recovery assistance rules increases tax compliance, although it is not possible to have a precise estimation of this effect.
- e. 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.

The electronic request forms, permitting an automatic translation, have set a common standard for the communication between tax authorities. Some tax authorities have made comments, e.g. about the length of the recovery request form, but these forms have been developed in cooperation with the Member States and it was their wish to include the many possible options and situations.

Almost all Member States confirm that the use of the uniform instrument permitting enforcement in the requested Member State (UIPE) facilitates the preparation of requests for assistance. The processing of assistance requests from other Member States is also easier.¹¹ The main advantages of the UIPE are the lack of translation costs, the avoidance of recognition issues and the electronic transmission. Most Member States also have a positive opinion about the use of the uniform notification form (UNF) which accompanies the documents for which notification assistance is requested.

Although the increased number of requests leads to a higher workload, it was also considered that this effect has been alleviated by the use of the uniform instruments.

Positive opinions about the usefulness of these uniform instruments (UIPE and UNF) were also expressed by respondents (representing the tax payer or debtor perspective) in the public consultation.¹² It was considered that these documents provide a good amount of details with regard to the claims and the responsible offices.

- f. The extension of the material scope has caused a heavier workload for the tax authorities involved. Although the total amounts of these other taxes and duties remains relatively low (compared to the amounts of the main categories of taxes: VAT and income taxes), they may relate to a considerable number of requests. Nevertheless, a majority of Member States confirmed that it is useful to have the scope of the Directive extended, as this also contributes to ensuring tax compliance.

¹⁰ Preamble of Council Directive 2010/24/EU, point 4.

¹¹ This conclusion was also confirmed in an analysis made by the Belgian Court of audit in October 2014 (see point 6.2.2.1.f. of the Commission staff working document).

¹² It should however be noted that the number of respondents having a personal experience with these uniform instruments was very low.

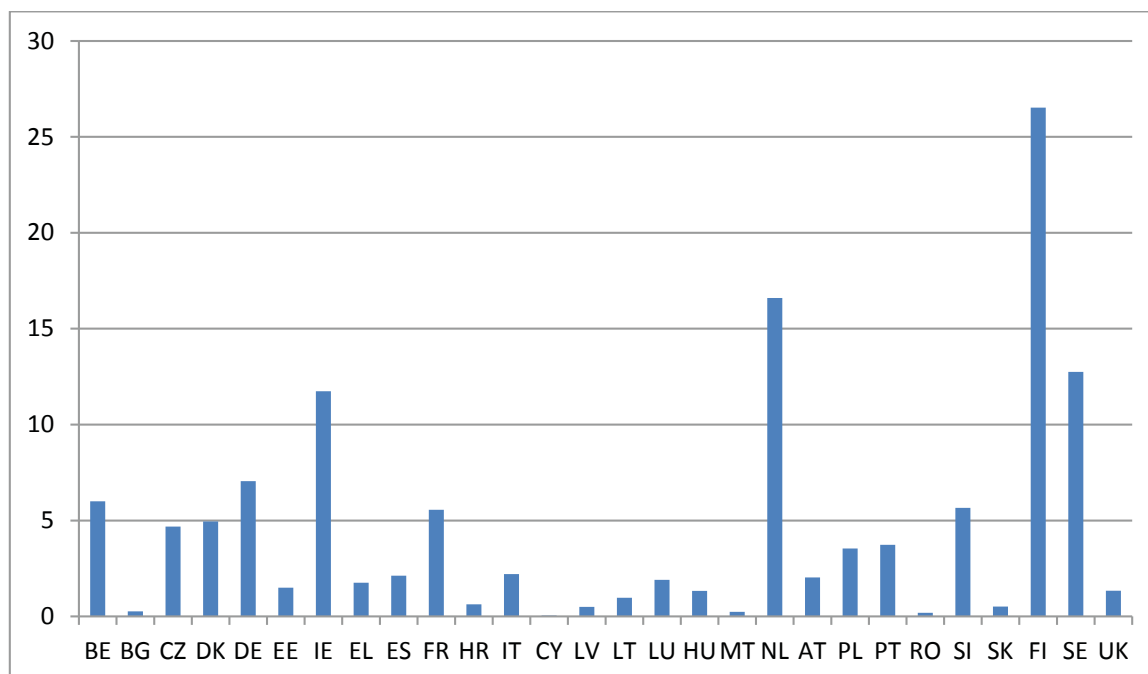
4. MAIN CONCERNS AND PROSPECT FOR FURTHER IMPROVEMENT

4.1. A need for sufficient resources to achieve more solidarity between tax administrations

- a. In their replies to the evaluation questionnaire, 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.
- b. 10 Member States also expressed a feeling that cross-border recovery assistance is not a priority for some tax administrations.

It can be assumed that the results of the mutual recovery assistance are at least to some extent influenced by an insufficient level of efforts of requested Member States to provide recovery assistance (and incidentally by weaknesses of their internal tax recovery system; see point 4.2.).

Table 4: Percentage of average yearly recovered amounts, compared to the average yearly amounts for which recovery assistance requests are received, both in the period 2013-2016, as reported by the requested Member State:



- c. 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.

Such investment in each Member State is a prerequisite for the proper functioning of the internal market, without discriminatory protective measures. It also helps preventing fraud and budgetary losses.

Eventually investing in mutual recovery assistance can be seen as an important part of compliance strategy for tax administrations, as it addresses the dishonest taxpayers' feeling of impunity.

It is of course also the responsibility of the applicant Member States to increase tax compliance and to maximise the internal tax collection and recovery possibilities, but if needed, the applicant Member States should be able to count on the solidarity from the requested Member States.

4.2. Reinforcing internal tax collection and recovery: a prerequisite for a more successful recovery assistance

- a. When executing a request for recovery or a request for precautionary measures, the requested authority will use the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to the same or similar claims (Art. 13(1) and 17 of Directive 2010/24). This means that the success of mutual recovery assistance is largely influenced by the efficiency of each national tax recovery system.

As confirmed by several respondents to the public consultation and the consultation of the tax authorities, Member States should increase their efforts to provide recovery assistance to other Member States, and they should reduce unjustified internal constraints and requirements which restrict their capacity to execute recovery assistance requests.

In this regard, it appears indeed that national tax recovery measures are not always sufficient nor efficient. In their replies to the questionnaire, several tax authorities indicate that their work is complicated by complex national rules or burdensome internal procedures and requirements, seriously hindering the possibilities of tax authorities to take precautionary or recovery measures.

It also appears that the exchange of information within Member States and the access to databases containing information relevant for tax recovery purposes need to be improved and facilitated.

Moreover, the rule of the use of national tax recovery procedures is often applied in such a way that steps preceding the actual recovery (notification of the claim; new payment period) are repeated in the requested Member State, though they have already been dealt with in the applicant Member State, causing an extra delay in the recovery process and an extra chance for the fraudulent taxpayers to hide and move their assets before the recovery starts.

Sound management of tax recovery therefore implies that Member States facilitate the execution of assistance requests in their territory, by adapting and reinforcing their internal legislation and improving tax recovery practices. At the same time, Member States should take account of the need to respect the rights of the tax debtors, as requested by the respondents to the public consultation.

- b. The above conclusion is in line with the conclusions presented by the Commission in its Communication of 7 April 2016 on an action plan on VAT, where the Commission held that tax administrations have to become more efficient.¹³

Strategic discussions with Member States' heads of the tax recovery authorities shall be provided to support tax recovery initiatives and reforms in the Member States.

It should however be taken into account that each Member State has its own particularities with regard to the organisation of its tax authorities and its tax recovery processes. Therefore, the bottlenecks in the recovery processes and organisation are not necessarily the same in all Member States, so that best practice examples of one Member State cannot always simply be transposed to any other Member State.

As a priority, the Commission will invite the Member States with the lowest recovery assistance rates (i.e. recovery rate below or around 2%: Cyprus, Romania, Malta, Bulgaria, Latvia, Slovakia, Croatia, Lithuania, Hungary, United Kingdom, Estonia, Greece, Luxemburg, Austria, Spain and Italy)¹⁴ to have an analysis of the main problems in these countries, with the participation of national tax recovery experts (from the administration and possibly other experts) of these Member States. The Commission will provide its support to assess possible measures to improve their recovery performance.

4.3. Improving the functioning of the EU framework for recovery assistance

- a. It is generally acknowledged that the EU framework is the most advanced one in the field of tax recovery assistance. It contains practical enforcement tools such as the uniform notification form (UNF) and the uniform instrument permitting enforcement in the requested Member State (UIPE); it has a wide material scope and well elaborated rules for the handling of assistance requests). However, several suggestions for further improving the legal framework were made by Member States and by respondents to the public consultation.¹⁵

Particular attention was paid to the scope; the exchange of information and the access to relevant databases; the precautionary measures; the conditions governing recovery assistance (conditions concerning old claims, use of thresholds).

- b. However, Member States' views with regard to possible simplification and other amendments of the current legislation appear to be very different and opposed.

¹³ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT, COM(2016)148 final, point 3.2.

¹⁴ See the Commission staff working document (point 6.1.1.2., table 5c).

¹⁵ An overview of these suggestions can be found in the Commission staff working document (point 6.3.2.).

Several simplification suggestions have already been analysed and to some extent discussed with the Member States, within the Recovery Expert Group and the Recovery Committee, e.g.:

- an extension of the scope would permit to avoid some doubts with regard to the limitations of the current scope and would permit the application of uniform rules and arrangements for more claims (e.g. social security claims; other public claims) but is likely to raise serious problems (rules concerning assistance for the recovery of social security claims are laid down in different legal instruments, adopted on a different legal basis; extension of the scope to other claims can only be done with unanimity);
 - some rules of the current Directive may be considered to be rather complex (e.g. rules of Article 18(2) of the Directive, about the condition relating to the age of the claims; rules of Article 19(2) of the Directive, about the suspension, interruption or prolongation of periods of limitation). However, it seems to be difficult to reach a unanimous view on how to amend these provisions;
 - a suggestion to facilitate the exchange of information with regard to car related data, by permitting the use of the EUCARIS (European CAR and driving license Information System) network – which permits an automated handling of requests – was rejected by an important number of Member States;
 - the Recovery Committee recently agreed to adopt some simplifications in the Commission implementing Regulation 1189/2011, namely with regard to the reference to the exchange rate (Article 18(2) of this Regulation) in order to permit an automated calculation of the exchange rate in the future electronic request forms; and with regard to the use of a specific form to explain the reasons and conditions for requests for precautionary measures, in order to facilitate the execution of such requests in the requested Member State.
- c. Conflicting views with regard to specific amendment suggestions were also expressed by the respondents to the public consultation. Although there was a general consensus that the EU should take a strict approach towards non-cooperative Member States or other countries, and that there is a need to strengthen precautionary measures and to ensure timely responses to assistance requests, several respondents also 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.
- b. In view of the previous sections, priority should be given to improving the execution of recovery assistance requests at national level, within the current legal framework for recovery assistance. It seems that more can be done at national level to take full advantage of the possibilities offered by the existing EU legislation.
- c. The problem of missing debtors and assets is not only an intra-EU problem. Since it is clear that tax fraudsters easily escape from tax recovery actions within the EU if they can move freely and dislocate their assets to third countries, the Commission has recently negotiated a first international agreement between the EU and Norway, relating to administrative cooperation in the field of VAT. Mutual recovery assistance for VAT

claims is included in this agreement. The rules governing this recovery assistance correspond to the provisions of the EU Directive – although the scope of this agreement is limited to VAT claims – and the EU electronic forms would be used in the relations with Norway. The electronic recovery forms are indeed developed in such a way that they can be used in relations with third countries. This common framework will facilitate the work of the competent authorities.

4.4. Better communication and more guidance needed

a. The Commission services have already taken several actions to raise the awareness about the EU legislation concerning mutual tax recovery assistance, and to explain the complex rules of this legislation:

- national tax authorities can raise their questions in the Recovery Expert Group or via their national contact points, and they are invited to participate in Fiscalis 2020¹⁶ workshops or project groups;
- the legislation is explained to the public via a specific webpage, with "frequently asked questions and answers", on the website of the Commission;¹⁷
- a newsletter on national, EU and international developments in the field of tax collection and recovery, including recovery assistance, is also published on the website of the Commission.¹⁸

b. However, the responses to the consultation of the tax authorities as well as the public consultation make it clear that tax authorities, taxpayers and tax practitioners wish to have more guidance on the interpretation and application of the EU rules in this field.

The extension of the scope to all taxes and the fact that other (decentralised) offices should also be aware of the recovery assistance possibilities (for sending requests) or of their obligations if they have to take recovery or precautionary measures (for incoming requests) would require providing more information and/or training to national authorities.

Such further guidance may also be useful for other tax practitioners dealing with tax recovery assistance cases (e.g. judges in the Member States, having to authorise specific precautionary or recovery measures, or dealing with contestations of such measures) and more information could also be shared with the public.¹⁹

c. Member States have an important role in this communication. The Commission will continue to support the Member States in this effort. A first step will be the publication of the explanatory notes on the interpretation of the EU recovery assistance legislation.²⁰

¹⁶ Fiscalis 2020 is an EU cooperation programme enabling national tax administrations to create and exchange information and expertise. See: http://ec.europa.eu/taxation_customs/fiscalis-programme/fiscalis-2020-programme_en

¹⁷ http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery_en

¹⁸ http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/tax-recovery_en

¹⁹ It resulted from the open public consultation that most respondents are not aware of the communication actions already undertaken by the Commission services.

²⁰ On 22 February 2017, the Recovery Expert Group agreed to make these explanatory notes publicly available in the near future.

5. CONCLUSIONS

- a. The EU legislation and framework for tax recovery assistance has facilitated tax recovery assistance between the EU Member States.
- b. 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.
- c. 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.
- d. More communication to explain and promote this legislation would contribute to increase tax compliance and respect of taxpayers' rights.
- e. 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.