

Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance
for the recovery of claims relating to taxes, duties and other measures

CHAPTER IV

RECOVERY OR PRECAUTIONARY MEASURES

Article 10

Request for recovery

- 1 At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant Member State.
- 2 As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority, it shall forward it to the requested authority.

Article 11

Conditions governing a request for recovery

- 1 The applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement in the applicant Member State are contested in that Member State, except in cases where the third subparagraph of Article 14(4) applies.
- 2 Before the applicant authority makes a request for recovery, appropriate recovery procedures available in the applicant Member State shall be applied, except in the following situations:
 - a where it is obvious that there are no assets for recovery in the applicant Member State or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested Member State;
 - b where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty.

Article 12

**Instrument permitting enforcement in the requested
Member State and other accompanying documents**

- 1 Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the requested Member State.

This uniform instrument permitting enforcement in the requested Member State shall reflect the substantial contents of the initial instrument permitting enforcement, and constitute the sole basis for the recovery and precautionary measures taken in the requested Member State. It shall not be subject to any act of recognition, supplementing or replacement in that Member State.

The uniform instrument permitting enforcement shall contain at least the following information:

- a information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
 - b name and other data relevant to the identification of the debtor;
 - c name, address and other contact details regarding:
 - (i) the office responsible for the assessment of the claim, and, if different;
 - (ii) the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.
- 2 The request for recovery of a claim may be accompanied by other documents relating to the claim issued in the applicant Member State.

Article 13

Execution of the request for recovery

1 For the purpose of the recovery in the requested Member State, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of the requested Member State, except where otherwise provided for in this Directive. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided for in this Directive.

If the requested authority considers that the same or similar taxes or duties are not levied on its territory, it shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State which apply to claims concerning the tax levied on personal income, except where otherwise provided for in this Directive.

The requested Member State shall not be obliged to grant other Member States' claims preferences accorded to similar claims arising in that Member State, except where otherwise agreed between the Member States concerned or provided in the law of the requested Member State. A Member State which grants preferences to another Member State's claims may not refuse to grant the same preferences to the same or similar claims of other Member States on the same conditions.

The requested Member State shall recover the claim in its own currency.

2 The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery.

3 From the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions in force in the requested Member State.

4 The requested authority may, where the laws, regulations or administrative provisions in force in the requested Member State so permit, allow the debtor time to pay or authorise payment by instalment and it may charge interest in that respect. It shall subsequently inform the applicant authority of any such decision.

5 Without prejudice to Article 20(1), the requested authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in paragraphs 3 and 4 of this Article.

Article 14

Disputes

1 Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and disputes concerning the validity of a notification made by a competent authority of the applicant Member State shall fall within the competence of the competent bodies of the applicant Member State. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there.

2 Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body of that Member State in accordance with its laws and regulations.

3 Where an action as referred to in paragraph 1 has been brought before the competent body of the applicant Member State, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

4 As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, and without prejudice to Article 16, the requested authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in the requested Member State allow such action.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in the applicant Member State, ask the requested authority to recover a contested claim or the contested part of a claim, in so far as the relevant laws, regulations and administrative practices in force in the requested Member State allow such action. Any such request shall be reasoned. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the requested Member State.

If a mutual agreement procedure has been initiated by the competent authorities of the applicant Member State or the requested Member State, and the outcome of the procedure may affect the claim in respect of which assistance has been requested, the recovery measures shall be suspended or stopped until that procedure has been terminated, unless it concerns a case of immediate urgency because of fraud or

insolvency. If the recovery measures are suspended or stopped, the second subparagraph shall apply.

Article 15

Amendment or withdrawal of the request for recovery assistance

1 The applicant authority shall inform the requested authority immediately of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.

2 If the amendment of the request is caused by a decision of the competent body referred to in Article 14(1), the applicant authority shall communicate this decision together with a revised uniform instrument permitting enforcement in the requested Member State. The requested authority shall then proceed with further recovery measures on the basis of the revised instrument.

Recovery or precautionary measures already taken on the basis of the original uniform instrument permitting enforcement in the requested Member State may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the applicant Member State or the original uniform instrument permitting enforcement in the requested Member State.

Articles 12 and 14 shall apply in relation to the revised instrument.

Article 16

Request for precautionary measures

1 At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State, in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State.

The document drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the requested Member State. This document shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.

2 The request for precautionary measures may be accompanied by other documents relating to the claim, issued in the applicant Member State.

Article 17

Rules governing the request for precautionary measures

In order to give effect to Article 16, Articles 10(2), 13(1) and (2), 14, and 15 shall apply *mutatis mutandis*.

Article 18

Limits to the requested authority's obligations

1 The requested authority shall not be obliged to grant the assistance provided for in Articles 10 to 16 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the requested Member State, in so far as the laws, regulations and administrative practices in force in that Member State allow such exception for national claims.

2 The requested authority shall not be obliged to grant the assistance provided for in Articles 5 and 7 to 16, if the initial request for assistance pursuant to Article 5, 7, 8, 10 or 16 is made in respect of claims which are more than 5 years old, dating from the due date of the claim in the applicant Member State to the date of the initial request for assistance.

However, in cases where the claim or the initial instrument permitting enforcement in the applicant Member State is contested, the 5-year period shall be deemed to begin from the moment when it is established in the applicant Member State that the claim or the instrument permitting enforcement may no longer be contested.

Moreover, in cases where a postponement of the payment or instalment plan is granted by the competent authorities of the applicant Member State, the 5-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

However, in those cases the requested authority shall not be obliged to grant the assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the applicant Member State.

3 A Member State shall not be obliged to grant assistance if the total amount of the claims covered by this Directive, for which assistance is requested, is less than EUR 1 500.

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

Article 19

Questions on limitation

1 Questions concerning periods of limitation shall be governed solely by the laws in force in the applicant Member State.

2 In relation to the suspension, interruption or prolongation of periods of limitation, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which have the effect of suspending, interrupting or prolonging the period of limitation according to the laws in force in the requested Member State shall be deemed to have the same effect in the applicant Member State, on condition that the corresponding effect is provided for under the laws in force in the applicant Member State.

If suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in the requested Member State, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which, if they had been carried out by or on behalf of the applicant authority in its Member State, would have had the effect of suspending, interrupting or prolonging the

period of limitation according to the laws in force in the applicant Member State shall be deemed to have been taken in the latter State, in so far as that effect is concerned.

The first and second subparagraphs shall not affect the right of the competent authorities in the applicant Member State to take measures to suspend, interrupt or prolong the period of limitation in accordance with the laws in force in that Member State.

3 The applicant authority and the requested authority shall inform each other of any action which interrupts, suspends or prolongs the limitation period of the claim for which the recovery or precautionary measures were requested, or which may have this effect.

Article 20

Costs

1 In addition to the amounts referred to in Article 13(5), the requested authority shall seek to recover from the person concerned and retain the costs linked to the recovery that it incurred, in accordance with the laws and regulations of the requested Member State.

2 Member States shall renounce all claims on each other for the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive.

However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.

3 Notwithstanding paragraph 2, the applicant Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument permitting enforcement and/or precautionary measures issued by the applicant authority are concerned.