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

2009/0007(CNS) - 16/03/2010 - Final act

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.