

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1966**of 27 October 2017****amending Implementing Regulation (EU) No 1189/2011 as regards the communication of assistance requests and the follow-up to those requests**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, and other measures ⁽¹⁾, and in particular Article 26 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 1189/2011 ⁽²⁾ lays down detailed rules concerning the communication of tax recovery assistance requests, the follow-up of those requests, the use of standard request forms and uniform instruments between the authorities in Member States and the transfer of recovered amounts in relation to certain mutual assistance provisions of Directive 2010/24/EU.
- (2) In order to ensure that the applicant Member State is fully informed about the follow-up of a request for notification, it is appropriate to specify that the requested authority should inform the applicant authority about the manner of notification.
- (3) In order to facilitate the handling of requests for precautionary measures, a standard form for the communication of specific reasons and circumstances for such requests should be developed.
- (4) In order to ensure legal certainty, it is appropriate to specify which claims can be mentioned in the uniform instrument permitting enforcement in the requested Member State.
- (5) In order to facilitate the handling of requests for recovery, the rules concerning the exchange rate and the transfer of recovered amounts should be adapted and it should be clarified how an increase in the amount of a claim should be communicated.
- (6) The structure and lay-out of the standard form accompanying the request for notification and of the uniform instrument permitting enforcement in the requested Member State should be also adapted so as to align them to the requirements of an electronic communication system and for future use in international agreements.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Recovery Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1189/2011 is amended as follows:

- (1) in Article 12, paragraph 2 is replaced by the following:

‘2. The requested authority shall inform the applicant authority of the date and the manner of notification as soon as this has been effected, by certifying the notification in the request form returned to the applicant authority.’;

- (2) Article 15 is replaced by the following:

‘Article 15

1. Requests for recovery or for precautionary measures shall include a declaration that the conditions laid down in Directive 2010/24/EU for initiating the mutual assistance procedure have been fulfilled.

⁽¹⁾ OJ L 84, 31.3.2010, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 302, 19.11.2011, p. 16).

2. In case of a request for precautionary measures, this declaration may be supplemented by a declaration specifying the reasons and circumstances of the request, established in accordance with the model set out in Annex III.;

(3) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. A single uniform instrument permitting enforcement in the requested Member State may be issued in respect of several claims and several persons, corresponding to the initial instrument or instruments permitting enforcement in the applicant Member State.’;

(b) the following paragraphs 3a and 3b are inserted:

‘3a. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, one or more of which have already been collected or recovered, the uniform instrument permitting enforcement in the requested Member State shall only refer to those claims for which recovery assistance is requested.

3b. Where the initial instrument referred to in paragraph 2 or the global instrument referred to in paragraph 3 contains several claims, the applicant authority may list those claims in different uniform instruments permitting enforcement in the requested Member State, in line with the tax type related division of competences of the respective recovery offices in the requested Member State.’;

(4) in Article 18, paragraph 2 is replaced by the following:

‘2. The exchange rate to be used for the purposes of the recovery assistance shall be the exchange rate published by the European Central Bank on the date before the date the request is sent. Where there is no such rate available on that date, the exchange rate used shall be the latest exchange rate published by the European Central Bank before the date the request is sent.’;

(5) in Article 22, paragraph 5 is replaced by the following:

‘5. Where the adjustment referred to in paragraph 2 entails an increase in the amount of the claim, the applicant authority may address to the requested authority an amended request for recovery or for precautionary measures.

That amended request shall, as far as possible, be dealt with by the requested authority at the same time as the initial request from the applicant authority. Where, in view of the state of progress of the existing procedure, consolidation of the amended request with the initial request is not possible, the requested authority shall comply with the amended request only if it concerns an amount not less than that referred to in Article 18(3) of Directive 2010/24/EU.’;

(6) in Article 23(1), the first and second subparagraphs are replaced by the following:

‘The amounts that have to be remitted to the applicant authority, in accordance with Article 13(5) of Directive 2010/24/EU, shall be transferred to the applicant authority in Euro unless the Member States have agreed to transfer recovered amounts in another currency.

The transfer of the recovered amounts shall take place within two months of the date on which recovery was effected unless otherwise agreed between the Member States.’;

(7) Annex I is replaced by the text set out in Annex I to this Regulation.

(8) Annex II is replaced by the text set out in Annex II to this Regulation.

(9) Annex III to this Regulation is added as Annex III.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

'ANNEX I

**Uniform notification form providing information about notified document(s)
(to be transmitted to the addressee of the notification) ⁽¹⁾ ⁽²⁾**

This document, established in accordance with Article 10 of Commission Implementing Regulation (EU) No 1189/2011 accompanies document(s) hereby notified by the competent authority of the following State: [name of requested State].

This notification concerns documents of the competent authorities of the following State: [name of applicant State], which asked for notification assistance, in accordance with Article 8 of Council Directive 2010/24/EU.

A. ADDRESSEE OF THE NOTIFICATION

- Name:
- Address (known or assumed):
- Other data relevant to the identification of the addressee:

B. PURPOSE OF THE NOTIFICATION

This notification is intended:

- to inform the addressee, about the document(s) to which this document is attached.
- to interrupt the period of limitation with regard to the claim(s) mentioned in the notified document(s).
- to confirm the addressee, about his/her obligation to pay the amounts mentioned under point D.

Please note that in case of non-payment, the authorities may take enforcement and/or precautionary measures to ensure the recovery of the claim(s). This may cause extra costs charged to the addressee.

You are the addressee of this notification, as you are considered to be:

- the principal debtor*
- a co-debtor*
- a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures, under the laws in force in the applicant State*
- a person other than the (co-)debtor, holding assets belonging to, or having debts towards, the (co-)debtor or to any other person liable*
- a third party which may become affected by enforcement measures concerning other persons*

(The following information will appear if the addressee of the notification is a person other than the (co-)debtor, holding assets belonging to, or having debts towards, the (co-)debtor or to any other person liable, or a third party which may become affected by enforcement measures concerning other persons:

The notified documents concern claims relating to taxes and duties, for which the following person(s) is (are) liable as

- the principal debtor: [name and address (known or assumed)]*
- a co-debtor: [name and address (known or assumed)]*
- a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures, under the laws in force in the applicant State: [name and address (known or assumed)].*

The applicant authority of the applicant State (name of the applicant State) invited the competent authorities of the requested State (name of the requested State) to make this notification before [date]. Please note that this date is not specifically related to any period of limitation.

⁽¹⁾ The elements put in *italic* are optional.

⁽²⁾ Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

C. OFFICE(S) RESPONSIBLE FOR THE NOTIFIED DOCUMENT(S)

Office responsible with regard to the attached document(s):

- Name:
- Address:
- Other contact details:
- Language(s) in which this office can be contacted:

Further information about the notified document(s) and/or the possibility to contest the obligations can be obtained

at the abovementioned office responsible with regard to the attached document(s), and/or

from the following office:

- Name:
- Address:
- Other contact details:
- Language(s) in which this office can be contacted:

D. DESCRIPTION OF THE NOTIFIED DOCUMENT(S)

Document [number]

- Reference number:
- Date of establishment:
- Nature of the notified document:
 - Tax assessment
 - Payment order
 - Decision following an administrative appeal
 - Other administrative document:
 - Judgment or order of:
 - Other judicial document:
- Name of the claim(s) concerned (in the language of the applicant State):

— Nature of the claim(s) concerned:

- a) customs duties
- b) value added tax
- c) excise duties
- d) tax on income or capital
- e) tax on insurance premiums
- f) inheritance and gift taxes
- g) national taxes and duties on immovable property, other than the abovementioned ones
- h) national taxes and duties on the use or ownership of means of transport
- i) other taxes and duties levied by or on behalf of the applicant State
- j) taxes and duties levied by or on behalf of territorial or administrative subdivisions of the applicant State, excluding taxes and duties levied by local authorities
- k) taxes and duties levied by or on behalf of local authorities
- l) other tax-based claim
- m) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions, and levies and other duties provided for under the common organisation of the market for the sugar sector

- Amount of the claim(s) concerned:
 - Principal amount:
 - Administrative penalties and fines:
 - Interest up to [date]:
 - Costs up to [date]:
 - Fees for certificates and similar documents issued in connection with administrative procedures related to the claim mentioned under point [x]:
 - Total amount for this (these) claim(s):
 - The amount mentioned under point [x] should be paid:
 - before:
 - within [number] days following the date of this notification
 - without any further delay
 - This payment should be made to:
 - Holder of the bank account:
 - International Bank Account Number (IBAN):
 - Bank Identification Code (BIC):
 - Name of the bank:
 - Reference to be used for the payment:
 - The addressee can reply to the document(s) that is (are) hereby notified.
 - Last day for replying:
 - Time period for replying:
 - Name and address of the authority to whom a reply can be sent:
 - Possibility to contest:
 - The period to contest the claim or the notified document(s) has already come to its end.
 - Last day for contesting the claim:
 - Time period to contest the claim: [number of days] following
 - the date of this notification.
 - the establishment of the notified document(s)
 - another date:
 - Name and address of the authority where a contestation has to be submitted:
- Please note that disputes concerning the claim, the instrument permitting enforcement or any other document originating from the authorities of the applicant State (name of applicant State), fall within the competence of the competent bodies of the applicant State (name of applicant State), in accordance with Article 14 of Directive 2010/24/EU.
- Any such dispute is governed by the procedural and language rules applying in the applicant State (name of applicant State).
- Please note that the recovery may begin before the end of the period within which the claim may be contested.
- Other information:
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ANNEX II

'ANNEX II

Uniform instrument permitting enforcement of claims covered by Directive 2010/24/EU ⁽¹⁾ ⁽²⁾

UNIFORM INSTRUMENT PERMITTING ENFORCEMENT OF CLAIMS COVERED BY DIRECTIVE 2010/24/EU

- *Date of issue:*
- *Reference number:*

REVISED UNIFORM INSTRUMENT PERMITTING ENFORCEMENT OF CLAIMS COVERED BY DIRECTIVE 2010/24/EU

- *Date of issue of the original uniform instrument:*
- *Date of revision:*
- *Reason for the revision:*

- judgment or order of [name of the Court] of [date]*
- administrative decision of [date]*
- *Reference number:*

State where this document is issued: [name of applicant State]

Each EU Member State can request recovery assistance from other Member States for unpaid claims referred to in Article 2 of Directive 2010/24/EU. This Directive has been adopted by the Council of the European Union on 16 March 2010 and is to be applied in all EU Member States.

Recovery measures taken by the requested State are based on:

- a uniform instrument permitting enforcement, in accordance with Article 12 of Directive 2010/24/EU.*
- a revised uniform instrument permitting enforcement, in accordance with Article 15 of Directive 2010/24/EU (to take account of the decision of the competent body referred to in Article 14(1) of that Directive).*

This document is the uniform instrument permitting enforcement (including precautionary measures). It concerns the claim(s) mentioned below, which remain(s) unpaid in the applicant State (name of applicant State). The initial instrument for the enforcement of this/these claim(s) has been notified in so far as required under the national law of the applicant State (name of applicant State).

Disputes concerning the claim(s) fall exclusively within the competence of the competent bodies of the applicant State (name of applicant State), in accordance with Article 14 of Directive 2010/24/EU. Any such action shall be brought before them in accordance with the procedural and language rules in force in the applicant State (name of applicant State).

DESCRIPTION OF THE CLAIM(S) AND THE PERSON(S) CONCERNED**Identification of the claim(s) [number]**

1. Reference:
2. Nature of the claim(s) concerned:
 - a) *customs duties*
 - b) *value added tax*
 - c) *excise duties*
 - d) *tax on income or capital*
 - e) *tax on insurance premiums*
 - f) *inheritance and gift taxes*
 - g) *national taxes and duties on immovable property, other than the abovementioned ones*

⁽¹⁾ The elements put in *italic* are optional.

⁽²⁾ Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements and possibilities of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

- h) national taxes and duties on the use or ownership of means of transport
- i) other taxes and duties levied by or on behalf of the (applicant) State
- j) taxes and duties levied by or on behalf of territorial or administrative subdivisions of the (applicant) State, excluding taxes and duties levied by local authorities
- k) taxes and duties levied by or on behalf of local authorities
- l) other tax-based claim
- m) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions, and levies and other duties provided for under the common organisation of the market for the sugar sector

3. Name of the tax/duty concerned:

4. Period or date concerned:

5. Date of establishment of the claim:

6. Date on which enforcement becomes possible:

7. Amount of the claim still due:

- principal amount:
- administrative penalties and fines:
- interest till date before the day the request is sent:
- costs till date before the day the request is sent:
- fees for certificates and similar documents issued in connection with administrative procedures related to the tax/duty concerned:
- total amount of this claim:

8. Date of notification of the initial instrument permitting enforcement in the applicant State: (name of the applicant State):

- Date:
- No date available

9. Office responsible for the assessment of the claim:

- Name:
- Address:
- Other contact details:
- Language(s) in which this office can be contacted:

10. Further information concerning the claim or the possibilities for contesting the payment obligation can be obtained from:

- the office indicated above
- the following office responsible for the Uniform instrument permitting enforcement:
 - Name:
 - Address:
 - Other contact details:
 - Language(s) in which this office can be contacted:

Identification of the person(s) concerned in the national instrument(s) permitting enforcement

a) The following person is mentioned in the national instrument(s) permitting enforcement

- natural person other
- Name
- Address (known or assumed)
- Other data relevant to the identification of the addressee

Legal representative

— Name

— Address (known or assumed)

— Other data relevant to the identification of the addressee

Cause of liability:

principal debtor

a co-debtor

a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures under the laws in force in the applicant State

b) the following person(s) is (are) also mentioned in the national instrument(s) permitting enforcement:

natural person other

— Name:

— Address (known or assumed):

— Other data relevant to the identification of the addressee:

Legal representative

— Name:

— Address (known or assumed):

— Other data relevant to the identification of the addressee:

Cause of liability:

principal debtor

a co-debtor

a person other than the (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures under the laws in force in the applicant State

Other information

Overall total amount of the claim(s)

— in the currency of the applicant State:

— in the currency of the requested State:

— in EUR:'

ANNEX III

Declaration specifying reasons and circumstances for a request for precautionary measures

Name of the language(s) of this document	
Declaration specifying reasons and circumstances for a request for precautionary measures ⁽¹⁾ ⁽²⁾	
based on:	Article 16 of Directive 2010/24/EU ...

This declaration is linked to the request for precautionary measures

with the following reference:	Ref. ...
sent by the following applicant State:	
to the following requested State:	

The following information on specific reasons and circumstances for this request is provided:

1. General information	
	1.1. <i>The claim(s) is (are) the subject of an instrument permitting enforcement in the applicant State which is contested.</i>
	1.2. <i>The claim(s) is (are) the subject of an instrument permitting enforcement in the applicant State which is not contested.</i>
	1.3. <i>The claim(s) is (are) not yet subject of an instrument permitting enforcement in the applicant State.</i>
	1.4. <i>The claim(s) is (are) not contested.</i>
	1.5. <i>The claim(s) may no longer be contested by and administrative appeal/by an appeal to the courts.</i>
	1.6. <i>The claim(s) is (are) contested but the laws, regulations and administrative practices in force in the State of the applicant authority allow to take precautionary measures.</i>
2. Justifying documents and/or reasons	
	2.1. <i>This request is accompanied by a uniform instrument permitting recovery in the requested State.</i> <i>Note: this uniform instrument permitting enforcement in the requested State also allows the requested State to take precautionary measures (for requests based on Directive 2010/24/EU: see the second subparagraph of Article 12(1) of that Directive).</i>

⁽¹⁾ The elements put in *Italic* are optional. It is suggested to remove subsections that are not selected.

⁽²⁾ Where this form is transmitted by electronic means, its structure and lay-out may be adapted to the requirements and possibilities of the electronic communication system, provided that the set of data and information contained therein is not substantially altered.

2.2. This request is based on an <u>administrative</u> decision (attached) permitting precautionary measures in the applicant State, which contains the following evaluation:	
2.2.1. Administrative evaluation of the need to take precautionary measures assessed by:	
name of the authority:	
address of the authority:	
date of this decision:	DD/MM/YYYY
details contact person:	
2.2.2. Circumstances	
	The instrument permitting enforcement is contested.
	The claim(s) is (are) not yet the subject of an instrument permitting enforcement.
	The contesting of the claim(s) by the debtor was already rejected in first instance, but this decision is not final.
2.2.3. This authority has allowed precautionary measures in the applicant State in accordance with its national law, on the following date:	DD/MM/YYYY
2.2.4. The precautionary measures are considered to be justified for the following reasons, demonstrating the urgency and the risk that collection and recovery could be thwarted or seriously hindered:	
	high (estimated) amount of the (expected) debt/significant debiting
	suspicion of fraud
	Person(s) concerned making themselves insolvent
	restructuring of assets
	alienation of property
	attempt to hide/conceal/dissipate assets
	careless business management
	frequent change of residence
	relocation of property abroad
	debtor not respecting earlier payment agreements
	other elements/reasons: ...
	Short explanation (recommended): ...

2.3. This request is based on a <u>judicial</u> confirmation (attached) that precautionary measures are justified:	
2.3.1. Judicial evaluation of the need to take precautionary measures assessed by:	
name of the Court:	
address of the Court:	
date of the decision:	DD/MM/YYYY
(Details contact person:)	
2.3.2. The Court decided:	
	at the unilateral request of the tax authorities
	following the contesting of the claim by the debtor, by another person liable or by another person subject to the precautionary measures
2.3.3. This Court has allowed precautionary measures in the applicant State in accordance with its national law, on the following date:	DD/MM/YYYY
2.4. This request for precautionary measures is based on the reasons mentioned in the attached document(s).	
2.5. Precautionary measures are justified for the following reasons, demonstrating the urgency and the risk that collection and recovery could be thwarted or seriously hindered:	
	high (estimated) amount of the (expected) debt/significant levels of debt
	Suspicion of fraud
	Person(s) concerned making themselves insolvent
	restructuring of assets
	alienation of property
	attempt to hide/conceal/dissipate assets
	careless business management
	frequent change of residence
	relocation of property abroad
	debtor not respecting earlier payment agreements
	other elements/reasons: ...
	Short explanation (recommended): ...
3. Other information	
3.1. The authorities of the requested State are requested not to inform the debtor or other person concerned before the start of the precautionary measures.	
3.2. Other information: ...	