



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 September 2009**

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**NOTE**

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from:	Presidency
to:	Working Party on Tax Questions – Direct and Indirect Taxation
Subject:	Proposal for a Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

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Delegations will find attached a compromise text from the Presidency on the above proposal, which has been drawn up on the basis of an earlier compromise (8668/09 FISC 44). The compromise text reflects discussions held in the Working Party.

The recitals were not addressed by the Presidency at this stage. However, for the sake of consistency and easier reference they were included in the text unchanged.

Proposal for a

**COUNCIL DIRECTIVE**

**concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 93 and 94 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Whereas:

- (1) Community and national financial interests must be protected so as to safeguard the competitiveness and fiscal neutrality of the internal market.
- (2) Arrangements for mutual assistance for recovery were first set out in Council Directive 1976/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures. That Directive and the acts amending it were codified by Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures<sup>4</sup>.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ L 150, 10.6.2008, p. 28.

Those arrangements, however, while providing a first step towards improved recovery procedures within the Community by approximating applicable national rules, have proved insufficient to meet the requirements of the internal market as it has evolved over the last 30 years. As evidenced by the case law of the Court of Justice of the European Communities, an efficient cooperation and recovery system in the field of taxation proves to be one of the cornerstones of the internal market, in that it allows and encourages Member States to remove discriminatory protective measures in trans-frontier transactions, which they have adopted for fear of tax evasion and tax losses.

- (3) In order to cope with the increase in assistance requests and to deliver better results, it is necessary to make this recovery assistance more efficient and effective and to facilitate it in practice. Therefore, the rules under which the competent authorities of the Member States are to afford assistance as well as the rights and obligations of all the parties concerned should be clearly defined.
- (4) This Directive should not affect the Member States' competence to determine the recovery measures available under their internal legislation. However, it is necessary to ensure that neither disparities between national laws nor lack of coordination between competent authorities jeopardise the seamless operation of the mutual assistance system provided for in this Directive.
- (5) To better safeguard the financial interests of the Member States and the neutrality of the internal market, it is necessary to extend the scope of mutual assistance for recovery to claims relating to taxes and duties other than those already covered by Directive 2008/55/EC. The distortion of the normal competition conditions can indeed be caused by the non-payment of any kind of tax or duty. Moreover, such extension is in line with the evolution of other international recovery assistance instruments.

Rules concerning assistance for recovery should also apply to the recovery of compulsory social security contributions and to claims resulting from the various measures which form part of the system of total or partial financing of the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. They should also apply to the recovery of interest, administrative penalties and fines, with the exclusion of any penalty of a criminal nature, and costs incidental to claims falling within the scope of this Directive.

- (6) Mutual assistance should consist of the following: the requested authority should on the one hand supply the applicant authority with the information which the latter needs in order to recover claims arising in its Member State and notify the debtor of all instruments relating to such claims emanating from the applicant Member State, and on the other hand, it should recover, at the request of the applicant authority, the claims arising in the applicant Member State, or take precautionary measures to guarantee the recovery of these claims.
- (7) The adoption of a uniform instrument to be used for enforcement measures and a uniform instrument permitting precautionary 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 from another Member State, which constitute a major cause of the inefficiency of the current arrangements for assistance.
- (8) Exchanges of information for recovery purposes should no longer be made solely at the request of the applicant authority. Spontaneous exchange of information on specific tax refunds should take place and it should be possible for tax officials to be present in administrative offices and to participate actively in administrative enquiries in another Member State, or to have simultaneous controls. Provision should also be made for more direct information exchange between services with a view to making assistance faster and more efficient.

- (9) Given the increasing mobility within the internal market, and the restrictions imposed by the Treaty or other legislation on the guarantees that can be requested from taxpayers not established within the national territory, the possibilities for requesting recovery or precautionary measures in another Member State should be extended. As the age of a claim is a critical factor, it should be possible for Member States to make a request for mutual assistance where it can be expected that the recovery can be achieved in a faster and more efficient way in the requested Member State, even though the domestic means of recovery have not yet been fully exhausted.
- (10) A general obligation to communicate requests and documents in a digital form and via an electronic network, and with precise rules on the translation of requests and documents, should allow Member States to handle requests faster and more easily.
- (11) During the recovery procedure in the requested Member State, the claim, the notification made by the authorities of the applicant Member State or the instrument authorising its enforcement may be contested by the person concerned. It should be laid down in such cases that the person concerned must bring the action before the competent body of the applicant Member State and that the requested authority must suspend, unless the applicant authority requests otherwise, any enforcement proceedings which it has begun until a decision is taken by the aforementioned competent body.
- (12) To encourage Member States to devote sufficient resources to the recovery of other Member States' claims, the requested Member State should be able to recover the costs related to recovery from the debtor. The possibility of charging fixed costs should contribute to increase the efficiency of the recovery actions taken by the requested authority.

- (13) When executing a request for assistance, the requested authority should in principle make use of the powers provided under its national laws applying to claims concerning the same or, in the absence of the same, a similar tax or duty. In the absence of a similar tax or duty, the requested authority should make use of the powers provided under the laws of its Member State which apply to claims concerning the tax levied on personal income. This use of national legislation should also apply with regard to the privileges accorded to claims arising in the requested Member State.
- (14) With regard to questions on limitation, it is necessary to simplify the existing rules, by providing that the suspension or interruption of periods of limitation is in general determined according to the laws in force in the requested Member State, except where suspension or interruption of the period of limitation is not possible under the laws in force in that State.
- (15) It should be laid down that documents and information communicated in the course of mutual assistance may be used for other purposes, in so far as this is allowed under the legislation of the Member State receiving these documents and information.
- (16) In order to avoid complexity and to facilitate the work of the officials dealing with recovery assistance, the mutual recovery assistance between Member States with regard to claims falling within the scope of this Directive should be based only on this Directive and not on other bilateral or multilateral agreements.
- (17) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>5</sup>.

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<sup>5</sup> OJ L 184, 17.7.1999, p. 23.

- (18) Since the objectives of the action to be taken, namely the provision of a uniform system of recovery assistance within the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity, effectiveness and efficiency required, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (19) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### *Subject matter*

This Directive lays down the rules under which the competent administrative authorities ~~(hereinafter “competent authorities”)~~ in the Member States are to provide assistance for the recovery in each Member State of any claims referred to in Article 2 which arise in another Member State.

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*Presidency Note: The text within brackets has been deleted in line with the Presidency’s proposal to indicate the competent authorities of each Member State in Art. 2a and refer to them in Art. 3(1), i.e. applying the same structure as in Council Regulation (EC) No 1798/2003.*

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*Article 2*

*Scope*

1. This Directive shall apply to claims relating to the following:
  - (a) all taxes and duties of any kind levied by or on behalf of a Member State **or the Member States' territorial or administrative subdivisions, including the local authorities**, or on behalf of the Community.
  - ~~(b) all taxes and duties levied by or on behalf of the Member States' territorial or administrative subdivisions, including the local authorities;~~
  - (eb)** 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;
  - ~~(ec)~~ levies and other duties provided for under the common organisation of the market for the sugar sector.
  
2. This Directive shall **also** apply to ~~all claims relating to:~~
  - (a) **administrative** penalties, fines, **fees** and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraphs 1 ~~and 2~~, imposed by the administrative authorities that are competent to levy the taxes or duties concerned, or confirmed by administrative or judicial bodies at the request of the afore-mentioned administrative authorities, ~~with the exclusion of criminal sanctions imposed on the basis of a public prosecution;~~



- (b) interest and costs relating to the claims for which mutual assistance can be requested in accordance with paragraph 1.

**3. For the purposes of this Directive, “taxes and duties” mean all levies designed to meet general public charges. In particular, they do not mean**

**[(a) levies for which mutual assistance is provided in accordance with Article 84 of Regulation (EC) No 883/2004<sup>6</sup>;**

**(b) fees for certificates and similar documents issued by public authorities in areas not related to taxes or duties;**

**(c) dues of a contractual nature, such as consideration for public utility services;**

**(d) criminal sanctions imposed on the basis of a public prosecution.**

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*Presidency Note: Paragraph 1 has been simplified by merging points (a) and (b). For the sake of clarity, in paragraph 2 (a) the word “administrative” has been added. Furthermore, the word “fees” has been added to the enumeration. These could be e.g. fees levied by a Member State’s tax agency for issuing a certificate or a similar document related to the administration of taxes and duties. Fees levied in other areas of public administration should not be covered. The general definition of taxes and duties has been moved from Art. 2 a to a new paragraph 3, and supplemented with a list of items which are not covered (i.e. a definition to some extent in negative terms). This proposal is based on the discussion at the WPTQ meeting on 14 July 2009, where a majority of delegations were in favour of a definition in positive terms, although some delegations argued for some elements of a definition in negative terms. In addition, a few minor linguistic adjustments have been made.*

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<sup>6</sup> OJ L 166, 30.4.2004, p. 1.

*Article 2a*  
*Definitions*

For the purposes of this Directive

**a) "competent authority" means:**

**- in Belgium:**

**[etc.]**

~~a) "taxes and duties" mean all levies designed to meet general public charges, and dues that constitute consideration for public utility services. They do not mean levies for which mutual assistance is provided in accordance with Article 84 of Regulation 883/2004/EC.~~

**b) "central liaison office" means the office which has been designated under Article 3(3) with principal responsibility for contacts with other Member States in the field of mutual assistance in recovery;**

**c) "liaison office" means any office other than the central liaison office which is responsible for contacts with other Member States with regard to one or more specific types or categories of the taxes and duties referred to in Article 2;**

**d) "liaison department" means any office, other than the central liaison office or liaison offices, with a specific territorial or operational competence which has been designated by the competent authority pursuant to Article 3(4) to request or grant assistance on the basis of this Directive;**

~~b~~e) “the applicant authority” means a central liaison office, a liaison office or a liaison department of a Member State which makes a request for assistance concerning a claim referred to in Article 2;

~~e~~f) “the requested authority” means a central liaison office, a liaison office or a liaison department of a Member State to which a request for assistance is made;

~~d~~) “the applicant Member State” means the Member State in which the applicant authority is situated;

~~e~~) “the requested Member State” means the Member State in which the requested authority is situated.

**g) "person" means:**

**(i) a natural person;**

**(ii) a legal person; or**

**(iii) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;**

**h) "by electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;**

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*Presidency Note: Following the example set in Regulation (EC) No 1798/2003, a number of definitions have been added to the list in this Article. On the other hand, defining “applicant” and “requested” Member State would seem to be superfluous. The definitions of these have therefore been deleted.*

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*Article 3*  
*Organisation*

1. ~~Each Member State shall designate a single central liaison office ("the central liaison office") which shall have principal responsibility for contacts with other Member States and the Commission in the field of mutual assistance covered by this Directive.~~
2. ~~Each Member State may designate liaison offices which shall be responsible for contacts with other Member States concerning mutual assistance with regard to one or more specific types or categories of the taxes and duties referred to in Article 2.~~
3. ~~Each Member State may designate offices other than the central liaison office or liaison offices as liaison departments.~~

~~Liaison departments shall request or grant mutual assistance under this Directive in relation to a specific territorial competence or a specialised operational responsibility.~~

4. ~~Each Member State shall inform the other Member States and the Commission of its central liaison office and any liaison offices or liaison departments which it has designated.~~
5. ~~Where a liaison office or a liaison department sends or receives a request for assistance or a reply to such a request, or where it sends officials to or receives officials from another Member State in accordance with Article 6, it shall inform the central liaison office of its Member State under the arrangements laid down by the latter.~~

- 1. The competent authorities referred to in point 1 of Article 2a are the authorities in whose name this Directive is to be applied, whether directly or by delegation.**
  
- 2. Each Member State shall designate one or more liaison offices which shall be responsible for contacts with other Member States concerning mutual assistance with regard to all or one or more specific types or categories of the taxes and duties referred to in article 2.**
  
- 3. If a Member State designates several liaison offices, it 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 liaison office or, if there are more than one liaison office, the central liaison office may also be designated as responsible for contacts with the Commission.**
  
- 4. Each Member State may designate offices, other than the central liaison office or liaison offices, as liaison departments. Liaison departments shall request or grant mutual assistance under this Directive in relation to its specific territorial or operational competences.**
  
- 5. Each Member State shall inform the other Member States and the Commission of its central liaison office and any liaison offices or liaison departments which it has designated.**

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*Presidency Note: In this Article, a new paragraph 1 has been introduced, corresponding to Article 3(1) in Regulation (EC) No 1798/2003. The following paragraphs have been phrased virtually as proposed by the Fiscalis Project Group FPG 54.*

*In the Presidency's view, the FPG 54 proposal brings out more clearly than the original proposal that a Member State has a choice: it can designate more than one liaison office, in which case a central liaison office has to be (Presidency's proposal, as different from that of FPG 54) designated. It can also choose to designate just one liaison office. The Presidency finds it useful to clarify, though, that this freedom of choice with regard to a Member State's domestic arrangements comes with an obligation to respect, also, the freedom of choice of the other Member States: a Member State which prefers a centralised system can demand that all contacts go through a single contact point (the central liaison office) in its own Member State, but will have to accept that contacts are made by, and/or have to be made with, several offices/departments in a Member State with a decentralised system (a "vivre et laisser vivre" principle).*

*Furthermore, Art. 3(3) provides that the responsibility for contacts with the Commission can be delegated to the single liaison office or the central liaison office. If this is not done, the responsibility will rest upon the directly competent authority in accordance with Art. 2a (a).*

*The assignment of responsibility for contacts with the Commission to the liaison office or the central liaison office is proposed to be optional.*

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**CHAPTER II**  
**EXCHANGE OF INFORMATION**

*Article 4*  
*Request for information*

1. At the request of the applicant authority, the requested authority shall provide any information which might be relevant to the applicant authority in the recovery of its claims as referred to in Article 2.

For the purpose of providing that information, the requested authority shall arrange for the carrying-out of any administrative enquiries necessary to obtain it.

2. 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.
- 2a. In no case shall paragraph 2 be construed as permitting a requested authority of a Member State to decline to supply information concerning a person ~~resident for tax purposes in the applicant Member State~~ solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
3. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

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*Presidency Note: In paragraph 2 a, the reference to residence has been deleted in order to bring the provision in line with internationally agreed standards for exchange of information.*

*One delegation has suggested to specify requirements regarding the contents of a request for information. The Presidency agrees that those requirements have to be specified. However, this could be done in the implementing Regulation.*

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## *Article 5*

### *Exchange of information without prior request*

~~The central liaison offices shall without prior request exchange information concerning any refunds of taxes, other than value added tax, by the national tax authorities, if such a refund relates to persons established in another Member State and concerns an amount exceeding EUR 10 000.~~

- 1. Where a refund in excess of EUR 10 000 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 shall, in so far as similar arrangements are in place at national level in that Member State, inform the Member State of establishment or residence of the upcoming refund.**
  
- 2. Any transmission of the refund to the person concerned shall be effected not earlier than 10 working days from the day on which information pursuant to paragraph 1 was conveyed.**



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*Presidency Note: Discussions at the WPTQ have revealed several uncertainties as to the meaning of and intentions behind the proposal. A number of delegations have stated that their Member States are unable, for legal or technical reasons, to provide the information concerned and would prefer to delete the Article.*

*In the Presidency's opinion, the provision could be kept in, even though the scope for its practical use may be fairly limited, at least in the short or medium term. It reflects a Community dimension of what most Member States probably see as a natural thing domestically.*

*However, this Article has to be amended and expanded in order to provide more clarity. It should be stated clearly which Member State is to be informed. Furthermore, the term resident/residence should be inserted in order to clarify that the provision is applicable to individuals as well as businesses. Also, a time frame should be set in order to give the Member State of establishment or residence a fair chance to act on the information received;*

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#### *Article 6*

##### *Presence in administrative offices and participation in administrative enquiries*

1. **By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, 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, in so far as the requested authority considers this to be useful for the aim of obtaining a judicial authorisation to take specific precautionary measures.**

~~1. By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the applicant authority may, with a view to receiving information referred to in Article 4, be present in the offices where the administrative authorities of the requested Member State carry out their duties.~~

~~Where the information concerned is contained in documentation to which the competent authorities of the requested Member State have access, the officials of the applicant Member State shall be given copies of that documentation.~~

~~2. By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the applicant authority may, with a view to receiving information referred to in Article 4, be present during administrative enquiries carried out in the territory of the requested Member State.~~

**2. In so far as this is permitted under the legislation in force in the requested Member State,** the agreement referred to in point (b) of the previous subparagraph may provide that, ~~where officials of the applicant Member State are present during administrative enquiries pursuant to the first subparagraph, they may~~ **interview individuals and examine records** ~~exercise the powers of inspection conferred on officials of the requested Member State, on condition that they exercise those powers in accordance with the laws, regulations or administrative provisions of the requested Member State.~~

~~In the case of such an agreement, any refusal of the person under investigation to respect the inspection measures of the officials of the applicant Member State shall be treated by the requested Member State as a refusal committed against its own officials.~~

3. Officials authorised by the applicant authority who make use of the possibilities offered by paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

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*Presidency Note: Art. 6.1 has been re-structured in order to avoid duplications.*

*While undoubtedly useful in the case of tax enquiries, the provision in the second subparagraph of Art. 6(1) would seem to be of little relevance in recovery cases. It has therefore been deleted.*

*Based on a suggestion by the Fiscalis Project Group FPG 54, a possibility to assist officials of the requested Member State during court proceedings in that Member State has been included and placed in Art. 6(1). The nature of such presence should be passive. The official from the applicant Member State is present only to assist the officials of the requested Member State.*

*Even though Art. 6 was discussed in some detail at the WPTQ meeting on 14 July 2009, as regards Member States' positions on "active" presence by officials of the applicant Member State, the outcome of the discussion is not entirely clear. The Presidency concludes that, although most delegations appear to see little practical use for such presence, and although a couple of delegations have subsequently provided written comments where it is suggested to delete the second and third subparagraphs of Art. 6(2), they may go along with a possibility for active presence, as long as it's optional.*

*Very few comments were received on the idea to clarify, in the second subparagraph of Article 6(2), that Member States are under no obligation to amend their legislation in order to allow for active presence at the meeting on 14 July 2009). However, no delegation was opposed to it, and with regard to the proposed Directive on administrative cooperation, written comments have been received to the effect that such a provision would indeed be useful.*

*A few delegations saw a need to specify what the powers are that can, subject to an agreement between the authorities concerned, be exercised by the officials of the applicant Member State. At a previous meeting the Commission clarified that this provision should be seen mainly as a legal basis for asking questions directly to the debtor. In the Presidency's view, this could usefully be set out explicitly, e.g. phrased in a way similar to the language in the OECD Model Tax Information Exchange Agreement. No requirement for consent by the debtor is proposed here, but such requirement could of course be laid down in Member States' national legislation. Furthermore, it is proposed here to delete the third subparagraph of Art. 6(2). In practice, this means that if the debtor is unwilling to co-operate with the official from the applicant Member State, the official(s) of the requested member State will immediately take over.*

*In addition, the second subparagraph of Art. 6(2) has been rephrased in order to avoid unnecessary duplications in the text.*

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## CHAPTER III

### ASSISTANCE FOR THE NOTIFICATION OF DOCUMENTS

#### *Article 7*

##### *Request for notification of certain documents relating to claims*

1. At the request of the applicant authority, the requested authority shall notify to the addressee all instruments and decisions, including those of a judicial nature, which emanate from the applicant Member State and which relate to a claim as referred to in Article 2 or to its recovery.
2. The requested authority shall forthwith inform the applicant authority of any action taken on its request for notification and, more especially, of the date of notification of the instrument or decision to the addressee.

#### *Article 8*

##### *Means of notification*

1. The requested authority shall ensure that notification in the requested Member State is ~~made in one of the following ways:~~
  - (a) ~~by way of notification,~~ effected in accordance with the national laws, regulations and administrative practices in force in the requested Member State;
  - (b) ~~by sending, by registered mail or electronically, a standard form to which the instrument or decision emanating from the applicant Member State is attached; for this standard form, the model set out in Annex I shall be used.~~

~~The standard form referred to in point (b) shall be translated into the official language, or one of the official languages, of the requested Member State. However, the translation of the instrument or decision attached thereto into an official language of the requested Member State shall not be required.~~

2. Paragraph 1 shall be without prejudice to any other form of notification made by a competent authority of the applicant Member State in accordance with the rules in force in that Member State.

A competent authority established in the applicant Member State may notify any document directly by registered mail or electronically to a person within the territory of another Member State.

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*Presidency Note: One delegation has suggested adding a new paragraph to Art. 7, specifying that the national means of notification are to be preferred, provided that this simplifies the process of notification. The purpose of this is to limit the administrative burden on Member States which would otherwise be requested to grant assistance for notification. In the Presidency's view, a provision to that effect could be placed in the implementing Regulation. Furthermore, it has been suggested to define the terms "instruments" and "decisions". However, the same terms are used in the present Directive and do not seem to have caused any difficulties.*

*It is proposed to delete Art. 8(1)(b) which, in the Presidency's view, is superfluous. The requested authority can choose in what way to notify. It's unlikely that the requested authority would choose any of the alternatives set out in Art. 8(1)(b) unless this is in accordance with the laws, regulations and administrative practices in force in the requested Member State, in which case they are already covered by Art. 8(1)(a). On the other hand, if the intention is to introduce new methods of notification/service of documents at national level, and thus to some extent harmonize national legislation in this area, is the proposed provision in Art. 8(1)(b) sufficiently clear and stringent or is there a need to clarify what requirements have to be met – either in the Directive itself or in the implementing Regulation?*

*All the references to Annexes have been deleted. As there may be a need for frequent adaptations of the standard forms to technical and other changes, the Presidency takes the view that it's preferable to annex them to the implementing Regulation, rather than to the Directive itself. A provision on translation of the standard form referred to in Art. 8(1)(b) should be added to Art. 21(1) (see Presidency Note on that Article).*

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## CHAPTER IV

### RECOVERY OR PRECAUTIONARY MEASURES

#### *Article 9*

#### *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 10*

*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 13(4) is applied.
2. Before the applicant authority makes a request for recovery, appropriate recovery procedures available in its Member State must be applied, except in the following situations:
  - (a) where it is expected that those procedures will not result in the payment in full of the claim;
  - (b) where the applicant authority has specific information leading it to believe that recovery can be achieved only in the requested Member State ~~or that it can be achieved faster and more efficiently in that State; in such a case, the request shall be duly motivated;~~
  - (c) where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty;**



(ed) [where the claim arises as a result of the application of Article 205 of Council Directive 2006/112/EC and the taxable person who has been held to be jointly and severally liable for the VAT debt has established his business in the requested Member State and has no establishment in the applicant Member State.]

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*Presidency Note: Some delegations have found the provision in Art. 10(2)(b) too lenient and fear that it may be abused to switch the burden of applying recovery measures unduly to other Member States. One suggestion from delegations is to delete the second part of Art. 10(2)(b), another to tighten the requirement to motivate the application. A third way forward could be to align the second part of Art. 10(2)(b) with Art. 19 of the joint Council of Europe/OECD Convention, as proposed here. Hence, the second sentence of Art. 10(2)(b) has been deleted and text based on the Convention introduced as a new Art. 10(2)(c).*

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#### *Article 11*

*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, ~~for which the standard form set out in Annex H shall be used.~~

This uniform instrument for enforcement in the requested Member State shall constitute the **sole** basis for the recovery and precautionary measures, **within the meaning of the second subparagraph of Article 13(4)**, taken in the requested Member State. **For the purpose of this Directive, it replaces the initial instrument permitting enforcement.** It shall not be subject to any act of recognition, supplementing or replacement in that Member State.

~~2. The initial instrument permitting enforcement, drawn up for permitting enforcement measures in the applicant Member State and relating to the claim for which recovery assistance is requested, shall be attached to the uniform instrument permitting enforcement in the requested Member State. This initial instrument shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.~~

~~The validity of the recovery and precautionary measures taken in the requested Member State on the basis of the uniform instrument for enforcement in that State, shall not be affected by the fact that the attached initial instrument permitting enforcement in the applicant Member State is not translated in an official language of the requested Member State.~~

~~32.~~ The request for recovery of a claim may be accompanied by other documents relating to the claim, issued in the applicant Member State.

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*Presidency Note: Firstly, the reference in the first subparagraph of Art. 11(1) to an Annex has been deleted, as it is proposed here to annex the standard forms to the implementing Regulation, not to the Directive itself. Furthermore, this Article has been redrafted in order to clarify the meaning of precautionary measures as referred to in the second subparagraph of Art. 11(1), and the role and nature of the uniform instrument permitting enforcement. One delegation has suggested a new, third subparagraph, stipulating that the requested authority can, where necessary, ask the applicant authority to complete the uniform instrument permitting enforcement. In the Presidency's view, if such a provision is at all needed, it should rather be placed in the implementing regulation.*

*In line with the approach to the uniform instrument proposed here, the references in 11(2) to the initial instrument have been deleted.*

*It has also been suggested to add a provision on translation to Art. 11(2). The Presidency's proposal is to deal with all translation issues in Art. 21.*

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*Article 12*

*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, unless this Directive provides otherwise. **The requested authority shall make use of the powers provided under the laws, regulations or administrative provisions of its Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided by 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 provided under the laws, regulations or administrative provisions of its Member State which apply to claims concerning the tax levied on personal income[, except where otherwise provided by this Directive].**

**The requested Member State shall not be obliged to grant other Member States' claims privileges accorded to similar claims arising in that Member State, unless otherwise agreed between the Member States concerned or provided in the law of the requested Member State. A Member State which grants privileges to another Member State's claims may not refuse to grant the same privileges to the 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 immediately of any action it has taken on the request for recovery.
3. The entire amount of the claim that is recovered by the requested authority shall be remitted to the applicant Member State.
4. From the date on which the recovery request is received, the requested authority shall charge interest for late payment insofar as this is allowed by and under the laws, regulations and administrative provisions in force in the requested Member State.

That interest shall also be remitted to the applicant Member State.

5. The requested authority may, where the laws, regulations or administrative provisions in force in its Member State so permit, and after having informed the applicant authority, allow the debtor time to pay or authorise payment by instalment.

Any interest charged by the requested authority in respect of such extra time to pay shall also be remitted to the applicant Member State.

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*Presidency Note: The remaining provisions in Art. 22, i.e. 22(1), have been moved to this Article, since the two Articles are closely interrelated. Art. 22 shall therefore be deleted. The Presidency tends to believe that the last part of the second subparagraph of Art. 12(1) is superfluous. It has therefore been put within square brackets.*

*In Art. 12(1), a new subparagraph dealing with privileges has been added. It takes into account the fact that a number of delegations have opposed against an obligation to grant privileges as a general rule. At the same time, it opens up for agreements between Member States concerned to grant privileges, e.g. based on reciprocity. Such agreements between Member States where tax claims have a strong position in bankruptcy could be a useful means of enhancing recovery of taxes from insolvent debtors. It also opens up for any Member State to grant such privileges unilaterally.*

*However, in order to comply with basic principles of Community legislation, Member States have to be treated alike. This means, e.g., that if a Member State A and a Member State B conclude an agreement on privileges based on reciprocity, they may not refuse to conclude agreements to the same effect with other Member States.*

*Delegations have provided written comments with suggestions for several additions. These relate to (1) regulating the priority order between national and foreign claims based on their respective age, (2) regulating the priority order between the principal (here understood to be the applicant Member State's claim, including interest etc.) and costs incurred by the requested Member State, (3) the transmission of amounts recovered (not immediately but every 3 months), (4) the applicant Member State's right to accept or not to accept payment by instalments, and (5) a clarification of the procedure to be followed if the applicant Member State and the requested member State have different interest rates.*

*The Presidency proposes to amend Art. 19 in order to clarify that the requested Member State is entitled to have its costs covered before any amount is transmitted to the applicant Member State.*

*The Presidency agrees that immediate transmission of minor amounts should be avoided, if further amounts are expected to become available in a near future. In that situation, a 3-month rule would seem to be appropriate. However, these things should preferably be dealt with in the implementing Regulation (where there is already a provision on transmission of amounts).*

*As for payment by instalments, the Presidency prefers to retain the April compromise text (i.e. only information to the applicant authority). The requested authority would seem to be best positioned to assess whether payment by instalments should be accepted or not. Furthermore, if there are domestic as well as foreign claims, any possibility for the applicant authority to interfere with the procedure could give rise to complications.*

*Finally, regarding interest rates, the Presidency tends to believe that the proposed rules (which are identical to the present ones) are sufficiently clear.*

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### *Article 13*

#### *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.

Should the requested authority deem it necessary, and without prejudice to Article 15, that authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in its Member State allow such action.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in its 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 Member State of the requested authority.

**If the claim for which assistance in recovery is requested relates to a tax base on which tax has already been levied in the requested Member State, and the issue of double taxation has been brought before the authorities of one or both of the Member States concerned, the requested Member State shall not be obliged to apply any recovery measures until the issue has been resolved.**

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*Presidency Note: With regard to Art. 17, a few delegations have suggested to regulate double taxation situations. The Presidency understands the need for regulation to relate, more specifically, to situations where the claim relates to a tax base on which tax has already been levied (paid) in the requested Member State. In this situation, the requested Member State should not be obliged to apply any recovery measures pending a decision on the double taxation issue. On the other hand, the debtor should only be entitled to this kind of protection if he or she has formally brought the issue before the authorities. In the Presidency's view, the appropriate place to do regulate this is in Art. 13(4). The Presidency proposes, therefore, a new subparagraph to deal with this situation.*

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#### *Article 14*

##### *Amendment 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 13(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 can 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 11 and 13 shall apply in relation to the revised instrument.

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*Presidency Note: The only comment received on the April compromise text is a suggestion to delete the words “or withdrawal” in 14(1) last line. The Presidency agrees that if the request is withdrawn, there is hardly any need to specify the reasons thereof. In most cases the reason would seem to be that the debtor has paid directly to the applicant authority. If the debtor e.g. raises a claim for compensation, arguing that the request for assistance was unfounded because the amount had already been paid before the request was made, there may be a need for communication between the Member States concerned. However, this doesn’t seem to justify a general requirement on the applicant authority to give the reasons for withdrawal.*

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*Article 15*

*Request for precautionary measures*

1. At the request of the applicant authority, the requested authority shall take precautionary measures to ensure recovery of a claim **which is not yet the subject of an instrument permitting enforcement in the applicant Member State**, in so far as **such measures are** allowed under the national law of **the applicant and** the requested Member States.
  
- ~~2. If the request relates to a claim which is contested or is not yet the subject of an instrument permitting enforcement in the applicant Member State, the applicant authority may make a request for precautionary measures only if such measures are possible under the laws, regulations and administrative practices in force in its Member State.~~
  
- ~~3. Any request for precautionary measures shall be accompanied by a uniform instrument permitting precautionary measures in the Member State of the requested authority, for which the standard form set out in Annex III shall be used.~~

~~This uniform instrument for precautionary measures in the requested Member State shall constitute the basis for the 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 ~~initial instrument permitting precautionary measures~~, drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, shall be attached to the **request for uniform instrument permitting precautionary measures** in the requested Member State. This initial instrument shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.

~~The validity of the precautionary measures taken in the requested Member State on the basis of the uniform instrument for precautionary measures in that State, shall not be affected by the fact that the attached initial instrument permitting precautionary measures in the applicant Member State is not translated in an official language of the requested Member State.~~

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

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*Presidency Note: Art. 15(1) has been amended to reflect that this Article now deals only with situations where the claim is not yet subject of an instrument permitting enforcement. Given these amendments, Art. 15(2) should be deleted.*

*In (new) Art. 15(2), all the references to a uniform instrument have been deleted, based on discussions in FPG 54, just as has the reference to an Annex.*

*Written comments have been provided, suggesting, inter alia, to stipulate that the applicant Member State may only ask for the precautionary measures that are allowed under its own rules. In the Presidency's view, it is hard to foresee what consequences such a provision might lead to. There is a risk that it would create excessive scope for complaints from debtors, invoking minor differences between the systems for precautionary measures of the Member States concerned. It should therefore be avoided.*

*It has also been suggested to introduce a requirement that a request for precautionary measures always needs to be motivated. In the Presidency's view, as the claim is already subject of an instrument permitting precautionary measures in the applicant Member State, there is no need to stipulate that the request needs to be motivated.*

*Finally, it has been suggested to add a provision on translation to (new) Art. 15(3). The Presidency's proposal is to deal with all translation issues in Art. 21.*

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#### *Article 16*

##### *Rules governing the request for precautionary measures*

In order to give effect to Article 15, Articles 9(2), 12(1) and (2), 13, 14 and 17 shall apply *mutatis mutandis*.

#### *Article 17*

##### *Limits to the requested authority's obligations*

1. The requested authority shall not be obliged to grant the assistance provided for in Articles 9 to 15 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 4 and 6 to 15, if the initial request for assistance under Article 4, 6, 7, 9 or 15 is made in respect of claims which are more than five 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 five-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 five-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

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

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

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*Presidency Note: In connection with Article 17 some delegations felt that double taxation issues (more specifically, the situation where a double taxation file has been opened involving the Member States concerned) ought to be regulated. The Presidency proposes to deal with this in Art. 13(4). It has also been suggested to define more exactly “postponement of the payment or instalment plan”. In the Presidency’s view, however, it’s already clear from the context that this refers to arrangements which are part of the enforcement procedure.*

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*Article 18*

*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 **a corresponding effect is provided for** ~~suspension, interruption or prolongation of the period of limitation is possible~~ under the laws in force in the applicant **that** 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.

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*The Presidency proposes just a minor adjustment in the first subparagraph of Art. 18(2), in order to clarify that a corresponding effect (e.g. interruption), not just either of suspension or interruption, or prolongation, has to be provided for in the legislation of the applicant Member State.*

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*Article 19*

*Costs*

1. Notwithstanding Article 12, paragraphs 3, 4 and 5, the requested authority has the right to recover from the person concerned and retain any recovery-related costs it may incur. Those costs shall be charged **and offset against the amount recovered from the person concerned** 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.

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*Presidency Note: At the WPTQ meeting on 25 May 2009, one delegation wished to reinsert Art. 19(2) of the original proposal. A few delegations wished to regulate the priority order between the applicant Member State's claim and the costs incurred by the requested Member State (see Presidency Note on Art. 12). The Presidency proposes to clarify, in the first subparagraph of Art. 19(1), that the order in which costs are to be offset against the recovered amount should, as suggested by one delegation, be determined by the national legislation of the requested Member State.*

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## **CHAPTER V**

### **GENERAL RULES GOVERNING ALL TYPES OF ASSISTANCE REQUESTS**

#### *Article 20*

##### *Standard forms and means of communication*

1. Requests under Article 4(1) for information, requests under Article 7(1) for notification, requests under Article 9(1) for recovery or requests under Article 15(1) for precautionary measures shall, as far as possible, be sent by electronic means, using a standard form. As far as possible, these forms shall also be used for any further communication with regard to the request.

The uniform instrument permitting enforcement or precautionary measures in the requested Member State, and the initial instrument permitting enforcement or precautionary measures in the applicant Member State, and the other documents referred to in Articles 11 and 15, shall also, as far as possible, be sent by electronic means.



Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means as far as possible.

Standard forms and communication by electronic means **may** ~~shall~~ also be used for the ~~spontaneous~~ exchange of information pursuant to Article 5.

2. Paragraph 1 shall not apply to the information and documentation obtained through the presence in administrative offices in another Member State or through the participation in administrative enquiries in another Member State, in accordance with Article 6.
3. If communication is not made by electronic means or with use of standard forms, this will not affect the validity of the information obtained or of the measures taken in the execution of a request for assistance.

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*Presidency Note: The second subparagraph of Art 20(1) has been amended to reflect the fact that it is no longer proposed to introduce a uniform instrument permitting precautionary measures. The reference to the initial instrument permitting enforcement has been deleted in line with the amendment proposed to Art. 11. In the fourth subparagraph of Art. 20(1) the word “spontaneous” has been deleted, as that term is no longer used in Art. 5. Furthermore, it is proposed to make use of electronic means for the exchange of information referred to in the fourth subparagraph optional as it may not be feasible in all Member States. The word “shall” has therefore been replaced with “may”.*

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*Article 21*  
*Use of languages*

1. Requests for assistance, ~~and the uniform instrument permitting enforcement or precautionary measures in the requested Member State~~ **referred to in this Directive and the instrument permitting precautionary measures in the applicant Member State** shall be sent in or translated into the official language, or one of the official languages, of the requested Member State.

However, the fact that certain parts of the requests are written in a language other than the official language, or one of the official languages, of the requested Member State, bilaterally agreed between the competent authorities, shall not affect the validity of the requests.

- ~~2. The translation into an official language of the requested Member State of the initial instrument permitting enforcement or precautionary measures in the applicant Member State shall not be required, either when it is communicated to the requested authority, or when it is communicated to the person concerned.~~
- ~~32.~~ The documents for which notification is requested pursuant to Article 7 may be sent to the requested authority in an official language of the applicant Member State. ~~If the notification to the person concerned is made in accordance with Article 8(1)(b), the translation of these documents into an official language of the requested Member State shall not be required.~~
- ~~43.~~ Where a request is accompanied by documents other than those referred to in paragraphs 1, ~~2~~ and ~~32~~, the requested authority may, where necessary, require from the applicant authority a translation of such documents into the official language, or one of the official languages of the requested Member State, or into any other language bilaterally agreed between the competent authorities.

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*Presidency Note: The first subparagraph of Art. 21(1) has been redrafted to reflect, inter alia, that it is no longer proposed to introduce a uniform instrument permitting precautionary measures.*

*Other suggestions are to further relax translation requirements with regard to (1) the uniform instrument and (2) documents which are to be notified, and, on the other hand, that “other documents”, as referred to in Article 11(3) and 15(4), shall always be translated into an official language of the requested Member State or any other language agreed bilaterally.*

*As a consequence of the changes made to Articles 11, no reference should be made to the initial instrument permitting enforcement. The instrument permitting precautionary measures in the applicant Member State, on the other hand, shall always be translated. Therefore, Art. 21(2) shall be deleted.*

*The second sentence of Art. 21(3) shall be deleted as it refers to Art. 8(1)(b), which is proposed to be deleted.*

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## *Article 22*

### *Legislation applying to the execution of a request*

- ~~1. When executing a request for assistance with regard to a claim falling within the scope of this Directive, the requested authority shall make use of the powers provided under the laws, regulations or administrative provisions of its Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided by 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 provided under the laws, regulations or administrative provisions of its Member State which apply to claims concerning the tax levied on personal income, except where otherwise provided by this Directive.~~

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*Presidency Note: The provisions in Art. 22(1) have been transferred to Article 12. (Art. 22(2) had already been deleted in the previous compromise text.)*

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### *Article 23*

#### *Disclosure of information and documents*

1. **Information communicated in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.**

**Such information may be used for the purpose of applying enforcement or precautionary measures with regard to claims covered by this Directive.**

~~Information and documents obtained by the applicant or requested authority pursuant to this Directive may be disclosed to other authorities within the same Member State, in so far as this is allowed under the legislation of that Member State, even if that information could be used for other purposes than recovery of the claims referred to in Article 2.~~

2. **Persons duly accredited by the Security Accreditation Authority of the European Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the CCN/CSI network.**

3. Where the applicant or requested authority considers that information ~~or documents~~ obtained pursuant to this Directive ~~are~~ **is** likely to be useful to a third Member State, it may, **subject to paragraph 4**, transmit that information ~~or documents~~ to the latter State. **In these cases, permission referred to in paragraph 4 can only be granted by the competent authority of the Member State from which the information originates.**
- 34. By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the applicant Member State, if, under the legislation of the requested Member State, the information can be used for similar purposes.**
- 5.** Information **communicated in any form** ~~and documents, or certified true copies or extracts thereof, obtained by the applicant or requested authority~~ pursuant to this Directive, may be invoked or used as evidence by all authorities within the same Member State **of the competent authority receiving the information** on the same basis as similar information ~~and documents~~ obtained within that State.

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*Presidency Note: Discussions at the WPTQ meetings on 25 May and 14 July 2009 led to the conclusion that this Article has to be redrafted fundamentally. Effective secrecy and data protection has to be provided for, a number of delegations argued. A majority of the delegations came out in favour of a solution similar to that in Art. 41 of Regulation 1798/2003. An attempt has been made above to incorporate the relevant parts of that Article into Art. 23 of this Directive.*

*All references to “documents” have been deleted, as the expression “information communicated in any form” should, in the Presidency’s view, be understood to cover information, reports, statements and any other documents.*

*A provision corresponding to the fourth subparagraph of Art. 41(1) of Regulation 1798/2003 has not been included here.*

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## CHAPTER VI

### FINAL PROVISIONS

#### *Article 24*

#### *Application of other agreements on assistance*

~~In cases in which this Directive applies, Member States shall apply no other bilateral or multilateral agreements or arrangements to their assistance requests to other Member States.~~

- 1. This Directive shall not prevent a greater measure of mutual assistance being afforded either now or in the future by particular Member States under any agreements or arrangements, including those for the notification of legal or extra-legal acts.**
  
- 2. Where the Member States conclude such bilateral or multilateral agreements or arrangements on matters covered by this Directive other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the other Member States.**
  
- 3. When providing such greater measure of mutual assistance under any other agreement or arrangement, Member States may make use of the electronic communication network and the standard forms adopted for the implementation of this Directive.**

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*Presidency Note: Following the discussions at the WPTQ meeting on 25 May 2009, it was concluded that this Article has to be changed. Some delegations suggested to reinsert a provision corresponding to Art. 23 of the present Directive. In the Presidency's proposal*

*- Art. 24(1) corresponds to Art. 23 of the present Directive;*

*- Art. 24(2) corresponds to Art. 46(2) of Regulation 1798/2003. A similar provision is to be found in the Art. 9 (3) of Directive 77/799/EEC;*

*- Art. 24(3) is intended to facilitate the work of officials dealing with assistance requests.*

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#### *Article 25*

##### *Committee*

1. The Commission shall be assisted by the Recovery Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at three months.

#### *Article 26*

##### *Implementing provisions*

The Commission shall adopt, in accordance with the procedure referred to in Article 25(2), detailed rules for implementing Articles [3], 4(1), 5, 7, ~~8(1)(b)~~, 9, 11(1), 12(2), 14, 15(1) ~~and (3)~~, 16 and 20(1).

Those rules shall relate to at least the following:

- (a) [the conditions with regard to the designation and organisation of the central liaison office, the other liaison offices and the liaison departments, referred to in Article 3(2), (3) and (4);]
- (b) the means by which communications between authorities may be transmitted;
- (c) the content and format of the standard forms to be used for the purposes of Articles 4(1), 5, 7, ~~8~~, 9(1), **11(1)** and 15(1);
- (d) the rules on conversion of the sums to be recovered and on the transfer of sums recovered;
- (e) the rules on the conversion into other currencies of the amounts, mentioned in this Directive, which are expressed in EUR.

~~2. The Commission may adopt, in accordance with the procedure referred to in Article 25(2), detailed rules setting a minimum amount for claims which may give rise to a request for assistance.~~

~~Rules under the first subparagraph may provide that assistance for claims below this minimum is made optional and subject to certain conditions, in particular with regard to a division of the recovered amounts between the requested and the applicant Member State, in derogation from Article 12(3).~~



- 3- ~~The Commission may, in accordance with the procedure referred to in Article 25(2), amend the standard forms set out in Annexes I, II and III.~~

**Article 26a**

**Other activities of the Committee**

**The Committee may examine any matter concerning the application of this Directive raised by its chairman, either on his own initiative or at the request of the representative of a Member State.**

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*Presidency Note to Art. 26 and 26a: At the WPTQ meeting on 25 May 2009 a number of delegations were reluctant to confer extensive implementation competences upon a committee. In particular, some delegations were reluctant to delegate the establishment of a threshold amount.*

*Like the previous Presidency, the Presidency proposes awaiting the outcome of the work of the FPG 55 dealing with the technical aspects of the designation etc. of offices and departments before deciding whether point (a) of the second subparagraph of Art. 26(1) is to be kept in and, if so, how it is to be phrased.*

*With regard to a minimum amount, the Presidency concludes that Art. 26(2) has to be deleted. Laying down a minimum amount in the Directive itself would seem to run contrary to the aim of the proposal to better safeguard the financial interests of the Member States. In the Presidency's view, a minimum amount may not be required, as the effort of making a request, and the right of the requested Member State to get its administration costs covered before any amount is transmitted to the applicant Member State, will keep Member States from making requests concerning minor claims.*

*Apart from this, the Presidency is only proposing a few minor amendments to Art. 26. The reference to Annexes has been deleted. At the request of one delegation, the provision of Art. 21 of the present Directive has been reinserted, as Art. 26a.*

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*Article 27*

*Reporting*

- 1.** Each Member State shall inform the Commission annually by 31 March at the latest of the following:
  - (a) the number of requests for information, notification and recovery or for precautionary measures which it sends to each requested Member State and which it receives from each applicant Member State each year;
  - (b) the amount of the claims for which recovery assistance is requested and the amounts recovered;
  - ~~(c) any other information that may be useful for evaluating the provision of mutual assistance under this Directive.~~
  
- 2.** **Member States may also provide any other information that may be useful for evaluating the provision of mutual assistance under this Directive.**
  
- 3.** The Commission shall report every five years to the European Parliament and the Council on the operation of the arrangements established by this Directive.

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*Presidency Note: In response to a suggestion by one delegation and in order to align reporting obligations with the existing practice, the mandatory rule in Art. 27(1)(c) has been replaced with an optional rule in Art. 27(2).*

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*Article 28*

*Transposition*

1. Member States shall adopt and publish, by [31 December 2009] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [1 January 2010].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 29*

*Repeal of Directive 2008/55/EC*

Directive 2008/55/EC is repealed with effect from [1 January 2010].

References to the repealed Directive shall be construed as references to this Directive.

*Article 30*  
*Entry into force*

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

*Article 31*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*

~~UNIFORM INSTRUMENT FOR NOTIFICATION OF INSTRUMENTS OR  
DECISIONS~~

~~IN ACCORDANCE WITH ART. 8(1) OF DIRECTIVE (EC) N° .../...~~

~~EC Member State where this document is issued: ...~~

~~Article 7(1) of Directive (EC) N° .../... concerning mutual assistance for the recovery of  
claims relating to taxes, duties and other measures, provides:~~

~~"At the request of the applicant authority, the requested authority shall notify to the  
addressee all instruments and decisions, including those of a judicial nature, which  
emanate from the applicant Member State and which relate to a claim as referred to in  
Article 2 or to its recovery."~~

~~Article 8(1) of the same Directive provides:~~

~~"The requested authority shall ensure that notification in the requested Member State is  
made in one of the following ways: (...) (b) by sending, by registered mail or  
electronically, a standard form to which the instrument or decision emanating from the  
applicant Member State is attached."~~

~~In accordance with the above mentioned provisions, the sending, by registered mail or  
electronically, of the present document constitutes a notification of the instrument(s)  
and/or decision(s) that are attached to the present document.~~

A	AIM OF THIS NOTIFICATION
	<p>This notification is intended:</p> <p><input type="checkbox"/> to inform the addressee about the attached instrument(s) and/or decision(s).</p> <p><input type="checkbox"/> to confirm the addressee about his obligation to pay the amounts mentioned under point B4.</p> <p style="padding-left: 40px;">This payment should be made:</p> <p style="padding-left: 40px;"><input type="checkbox"/> before 20YYMMDD</p> <p style="padding-left: 40px;"><input type="checkbox"/> without any further delay</p> <p>It is brought to the attention of the addressee that in case of non-payment, the authorities of the requested Member State may take enforcement and/or precautionary measures to ensure the recovery of the claim. In that case, fixed administrative costs may be applied, in accordance with Directive (EC) N° .../...</p> <p><input type="checkbox"/> to interrupt the period of limitation with regard to the claim(s) mentioned in the attached instrument(s) and/or decision(s).</p>

B	DESCRIPTION OF THE ATTACHED INSTRUMENT(S) AND/OR DECISION(S)
1	<p>Date of establishment: 20YYMMDD – Reference number: ...</p> <p><input type="checkbox"/> Tax assessment</p> <p><input type="checkbox"/> Decision of tax authorities following an administrative appeal</p> <p><input type="checkbox"/> Other administrative decision or title</p> <p><input type="checkbox"/> Judgment/order of Name of the Court</p> <p><input type="checkbox"/> Other judicial document</p>
2	<p>Name of the tax concerned: ...</p>
3	<p>Nature of the claim concerned</p> <p><input type="checkbox"/> customs duties</p> <p><input type="checkbox"/> value added tax</p> <p><input type="checkbox"/> excise duties</p> <p><input type="checkbox"/> tax on income or capital</p> <p><input type="checkbox"/> tax on insurance premiums</p> <p><input type="checkbox"/> other tax or duty levied by or on behalf of a Member State</p> <p><input type="checkbox"/> tax or duty levied by or on behalf of the Member States' territorial or administrative subdivisions, including the local authorities</p> <p><input type="checkbox"/> compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law</p> <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> levies and other duties provided for under the common organisation of the market for the sugar sector</p>

4	<del>Amount of the claim concerned</del> <input type="checkbox"/> <del>Principal amount:</del> <input type="checkbox"/> <del>Administrative penalties and fines:</del> <input type="checkbox"/> <del>Interest up to 20YYMMDD:</del> <input type="checkbox"/> <del>Costs up to 20YYMMDD:</del> <input type="checkbox"/> <del>Total amount:</del>
C	<del>OFFICE RESPONSIBLE WITH REGARD TO THE ATTACHED INSTRUMENT(S) AND/OR DECISION(S)</del>
1	<del>Name:</del>
2	<del>Street and number</del>
3	<del>Postcode and town:</del>
4	<del>Telephone:</del>
5	<del>E-mail:</del>
D	<del>OFFICE WHERE FURTHER INFORMATION CAN BE OBTAINED CONCERNING THE NOTIFIED INSTRUMENT(S) AND/OR DECISION(S) OR CONCERNING THE POSSIBILITIES TO CONTEST THE PAYMENT OBLIGATION (if different from the office under heading C)</del>
1	<del>Name:</del>
2	<del>Street and number:</del>
3	<del>Postcode and town:</del>
4	<del>Telephone</del>
5	<del>E-mail:</del>



UNIFORM INSTRUMENT PERMITTING ENFORCEMENT OF CLAIMS COVERED BY DIRECTIVE (EC) N° .../...	
EC Member State where this document is issued: ...	
In accordance with Art. 11 of Directive (EC) N° .../..., this document constitutes the instrument permitting recovery and/or precautionary measures in each EC Member State, whenever so requested by the applicant authority of the Member State where this document has been issued.	
A	DESCRIPTION OF THE CLAIM
1	Name of the tax: ...
2	<p>Nature of the claim</p> <p><input type="checkbox"/> customs duties</p> <p><input type="checkbox"/> value added tax</p> <p><input type="checkbox"/> excise duties</p> <p><input type="checkbox"/> tax on income or capital</p> <p><input type="checkbox"/> tax on insurance premiums</p> <p><input type="checkbox"/> other tax or duty levied by or on behalf of a Member State</p> <p><input type="checkbox"/> tax or duty levied by or on behalf of the Member States' territorial or administrative subdivisions, including the local authorities</p> <p><input type="checkbox"/> compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law</p> <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> levies and other duties provided for under the common organisation of the market for the sugar sector</p>
3	Reference of the claim: ...

4	<del>Period covered by the claim:</del> <input type="checkbox"/> <del>calendar year: ...</del> <input type="checkbox"/> <del>period: 20YYMMDD—20YYMMDD (year—month—date)</del>
5	<del>Date of the assessment of the claim: ...</del> <del>Date of the instrument permitting enforcement: ...</del> <del>Date of notification to the debtor: ...</del> <del>Due date for the payment: ...</del>
6	<del>Amount of the claim</del> <input type="checkbox"/> <del>Principal amount:</del> <input type="checkbox"/> <del>Administrative penalties and fines:</del> <input type="checkbox"/> <del>Interest up to 20YYMMDD:</del> <input type="checkbox"/> <del>Costs up to 20YYMMDD:</del> <input type="checkbox"/> <del>Total amount:</del>
<b>B</b>	<b>IDENTIFICATION OF THE DEBTOR</b>
1	<del>Name: ...</del>
2	<input type="checkbox"/> <del>VAT number: ...</del> <input type="checkbox"/> <del>Tax identification number:</del> <input type="checkbox"/> <del>Other identification number:</del>
3	<del>Street and number:</del>
4	<del>Other details of address:</del>
5	<del>Postcode and town:</del>
6	<del>Country:</del>

<del>C</del>	<del>OFFICE RESPONSIBLE FOR THE ASSESSMENT OF THE CLAIM</del>
<del>1</del>	<del>Name:</del>
<del>2</del>	<del>Street and number</del>
<del>3</del>	<del>Postcode and town:</del>
<del>4</del>	<del>Telephone:</del>
<del>5</del>	<del>E-mail:</del>
<del>D</del>	<del>OFFICE WHERE FURTHER INFORMATION CAN BE OBTAINED CONCERNING THE CLAIM AND/OR THE POSSIBILITIES TO CONTEST THE PAYMENT OBLIGATION (if different from the office under heading C)</del>
<del>1</del>	<del>Name:</del>
<del>2</del>	<del>Street and number:</del>
<del>3</del>	<del>Postcode and town:</del>
<del>4</del>	<del>Telephone</del>
<del>5</del>	<del>E-mail:</del>

UNIFORM INSTRUMENT PERMITTING PRECAUTIONARY MEASURES TO ENSURE THE RECOVERY OF CLAIMS COVERED BY DIRECTIVE (EC) N°.../...	
EC Member State where this document is issued: ...	
In accordance with Art. 15(3) of Directive (EC) N°.../..., this document constitutes the instrument permitting precautionary measures in each EC Member State, whenever so requested by the applicant authority of the Member State where this document has been issued.	
A	DESCRIPTION WITH REGARD TO THE CLAIM OF WHICH THE RECOVERY MUST BE ENSURED
1	Name of the tax: ...
2	<p>Nature of the claim</p> <p><input type="checkbox"/> customs duties</p> <p><input type="checkbox"/> value added tax</p> <p><input type="checkbox"/> excise duties</p> <p><input type="checkbox"/> tax on income or capital</p> <p><input type="checkbox"/> tax on insurance premiums</p> <p><input type="checkbox"/> other tax or duty levied by or on behalf of a Member State</p> <p><input type="checkbox"/> tax or duty levied by or on behalf of the Member States' territorial or administrative subdivisions, including the local authorities</p> <p><input type="checkbox"/> compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law</p> <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> levies and other duties provided for under the common organisation of the market for the sugar sector</p>

	FOR FIXED CLAIMS		FOR NOT YET FIXED CLAIMS
3a	Reference of the claim: ...	3b	Reference of the title permitting precautionary measures: <input type="checkbox"/> judgment/order of Name of the Court released on 20YYMMDD with reference ... <input type="checkbox"/> administrative decision/title of 20YYMMDD with reference ...
4a	Period covered by the claim: <input type="checkbox"/> calendar year: ... <input type="checkbox"/> period: 20YYMMDD— 20YYMMDD	4b	Period covered by the not yet fixed claim: <input type="checkbox"/> calendar year: ... <input type="checkbox"/> period: 20YYMMDD— 20YYMMDD

5a	<p>Date of the assessment of the claim: ...</p> <p>Date of the instrument permitting enforcement: ...</p> <p>Date of notification to the debtor: ...</p> <p>Due date for the payment: ...</p>	5b	<p>Reason(s) justifying the taking of precautionary measures by the requested Member State's authorities:</p> <p><input type="checkbox"/> (risk of) insolvency of the person concerned in the applicant Member State</p> <p><input type="checkbox"/> risk of (presumed) participation of the person concerned in tax fraud or tax evasion</p> <p><input type="checkbox"/> risk of actions of the person concerned to delay the recovery</p> <p><input type="checkbox"/> precautionary measures can be taken only or in a faster and more efficient way in the requested Member State</p>
6	<p>Amount for which precautionary measures are requested</p> <p><input type="checkbox"/> Principal amount:</p> <p><input type="checkbox"/> Administrative penalties and fines:</p> <p><input type="checkbox"/> Interest up to 20YYMMDD:</p> <p><input type="checkbox"/> Costs up to 20YYMMDD:</p> <p><input type="checkbox"/> Total amount:</p>		
B	IDENTIFICATION OF THE (FUTURE) DEBTOR		
1	Name: ...		
2	<p><input type="checkbox"/> VAT number: ...</p> <p><input type="checkbox"/> Tax identification number:</p> <p><input type="checkbox"/> Other identification number:</p>		
3	Street and number:		
4	Other details of address:		
5	Postcode and town:		
6	Country:		

C	<del>OFFICE RESPONSIBLE FOR THE ASSESSMENT OF THE CLAIM</del>
1	Name:
2	Street and number
3	Postcode and town:
4	Telephone:
5	E-mail:
D	<del>OFFICE WHERE FURTHER INFORMATION CAN BE OBTAINED CONCERNING THE CLAIM AND/OR THE POSSIBILITIES TO CONTEST THE CONDITIONS JUSTIFYING THE PRECAUTIONARY MEASURES (if different from the office under heading C)</del>
1	Name:
2	Street and number:
3	Postcode and town:
4	Telephone
5	E-mail:

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