European Commission

Explanatory Meeting with Albania and North Macedonia
04.06.2019

Mutual assistance for the recovery of taxes

DG Taxation and Customs Union
Indirect taxation and tax administration
Unit C4 – Sector C

European Commission

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Legislation

- **History:**
  - Council Directive 76/308/EEC → several amendments
  - Council Directive 2008/55/EC (codification directive)

- **Present legislation (since 01.01.2012)**
  - Council Directive 2010/24/EU of 16 March 2010
    (OJ L 84, 31.3.2010, p. 1)
  - Commission implementing Regulation (EU) No 1189/2011 of 18.11.2011
    (OJ L 302, 19.11.2011, p. 16)
    - amended by Commission implementing Regulation (EU) 2017/1966 of 27.10.2017
  - Agreement between the EU and Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT (OJ L 195, 01.08.2018, p. 1)

Scope (Art. 2)

- All taxes and duties of any kind levied:
  - by or on behalf of a Member State
  - by or on behalf of its territorial or administrative subdivisions
  - by or behalf of local authorities
  - on behalf of the EU
  - agricultural levies (EU agricultural funds)

- Including administrative penalties, intrest and costs

- But not:
  - compulsory social security contributions (recovery assistance under other EU legislation)
  - dues of a contractual nature (consideration for public utilities)

Forms of assistance

- **Requests for information** (Art. 5)
  - To obtain info on the debtor or a third party, or on assets
- **Requests for notification** (Art. 8)
  - Notification of decisions or other documents relating to a claim and/or its recovery
- **Requests for recovery or precautionary measures** (Art. 11 and 16)
  - To recover the money/ to guarantee the payment
- **Exchange of info without prior request** (Art. 6)
- **Presence in administrative offices and participation in administrative enquiries in another Member State** (Art. 7)

Conditions

- **Minimum treshold ?**
  - Not anymore for information and notification requests
  - Requests for recovery or precautionary measures: no obligation to grant assistance under 1500 €

- **Maximum age ?**
  - For all requests: no obligation to grant assistance if claim is > 5 years (from the due date of the claim to the date of the initial request for assistance).

- **Recovery assistance: specific conditions:**
  - Not if claim is contested (unless possible in both States)
  - Appropriate recovery measures must be taken in the applicant State first, unless:
    - If obvious that there are no assets for recovery in applicant State;
    - If obvious that procedures in applicant State will not result in full payment and the person concerned has assets in the other Member State;
    - If disproportionate difficulty to recover in the applicant Member State.

Which legislation is applied?

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- **EU-legislation: rules about mutual assistance between MS**

- **Requested authority applies national provisions applying to the recovery of similar claims**

  (if no similar claim: then law concerning personal income tax is to be applied)
  - Exception: Art. 13(1): not necessarily the same privileges.
  - Exception: Art. 19: special rules for the suspension/interruption of periods of limitation

- **No recognition or replacement of other Member States' instruments permitting enforcement** (use of UIPE; cf. infra)

UNF (Art. 8)

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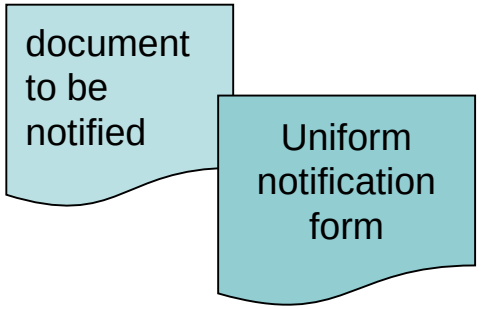
- Accompanies each request for notification
  - Notification in accordance with national law of requested MS (= cf. current situation)
  - But notified documents are accompanied by the UNF.



- UNF contains a description of the notified document
- no translation of attached document required
- model form, integrated in the request form, and automatically translated

▶ facilitates the work of the requested MS

▶ = guarantee for the tax debtor
(cf. ECJ, 14.1.2010, C-233/08, Kyrian)
(cf. ECJ 28.4.2018, C-34/17, Donnellan)

UIPE (Art. 12)

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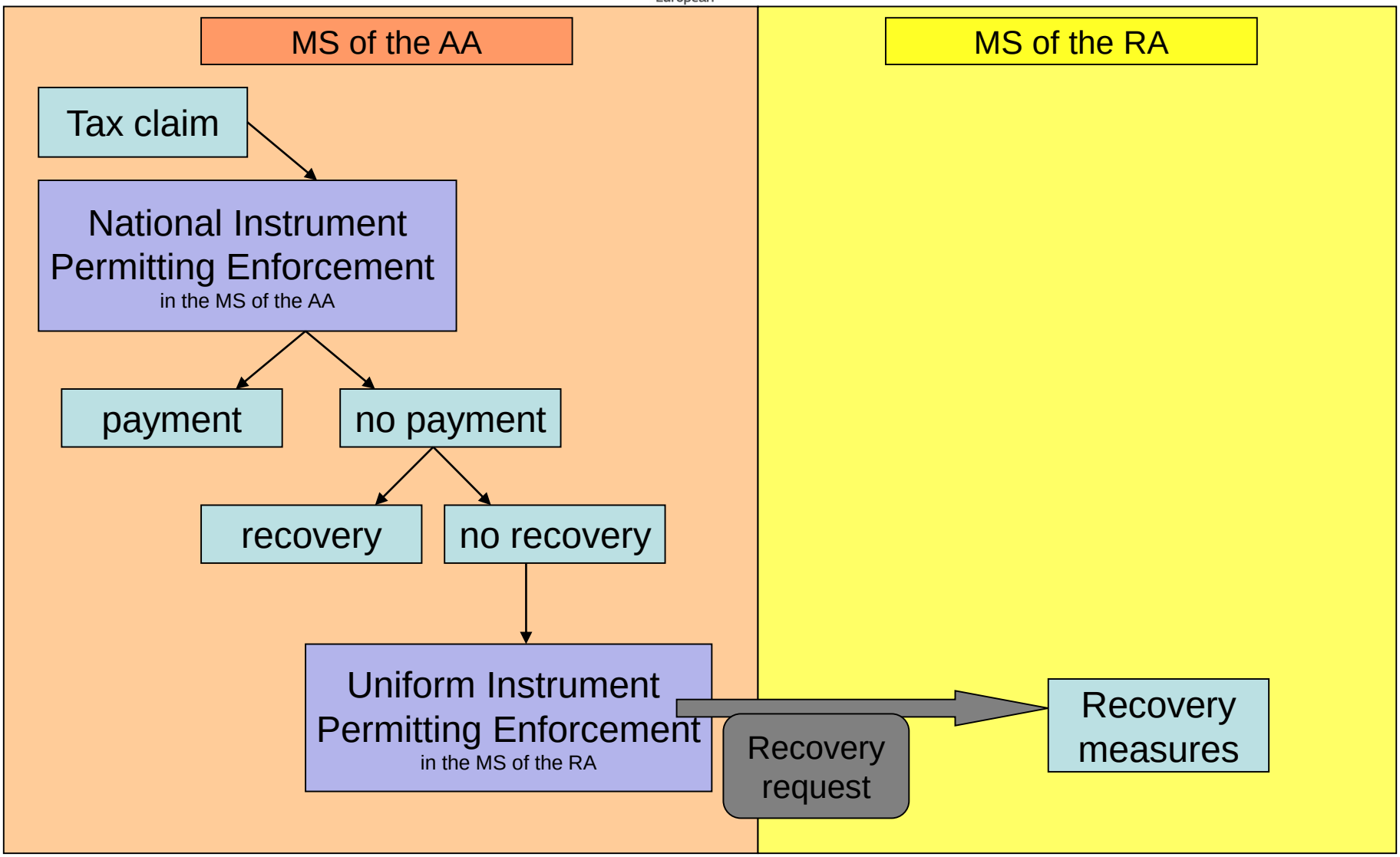
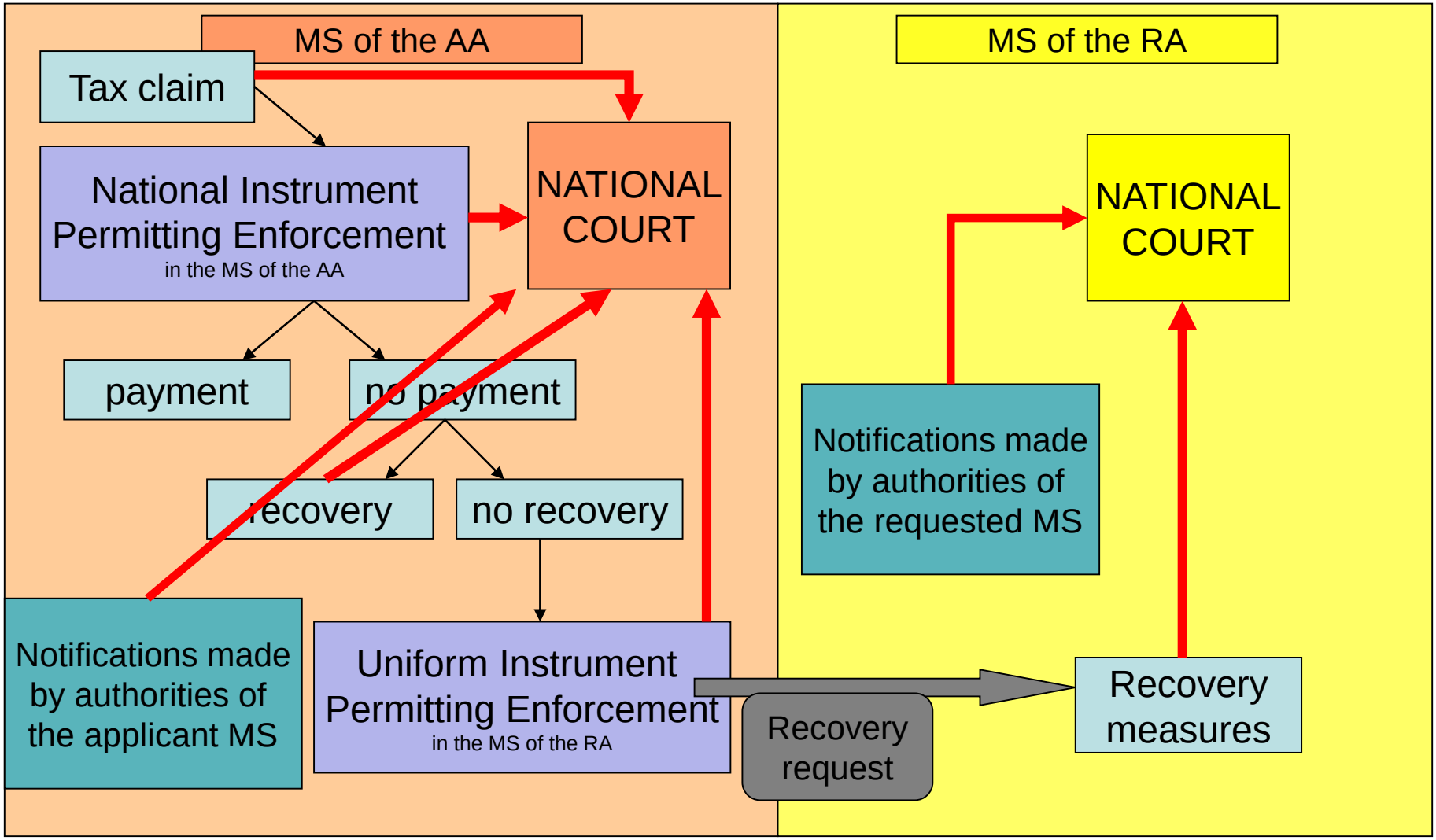
- **UIPE:** Uniform instrument permitting enforcement in the requested MS

- **Reasons:**
  - to solve problems of acknowledgment, replacement, translation of instruments of other MS
  - to reduce the workload for the requested MS

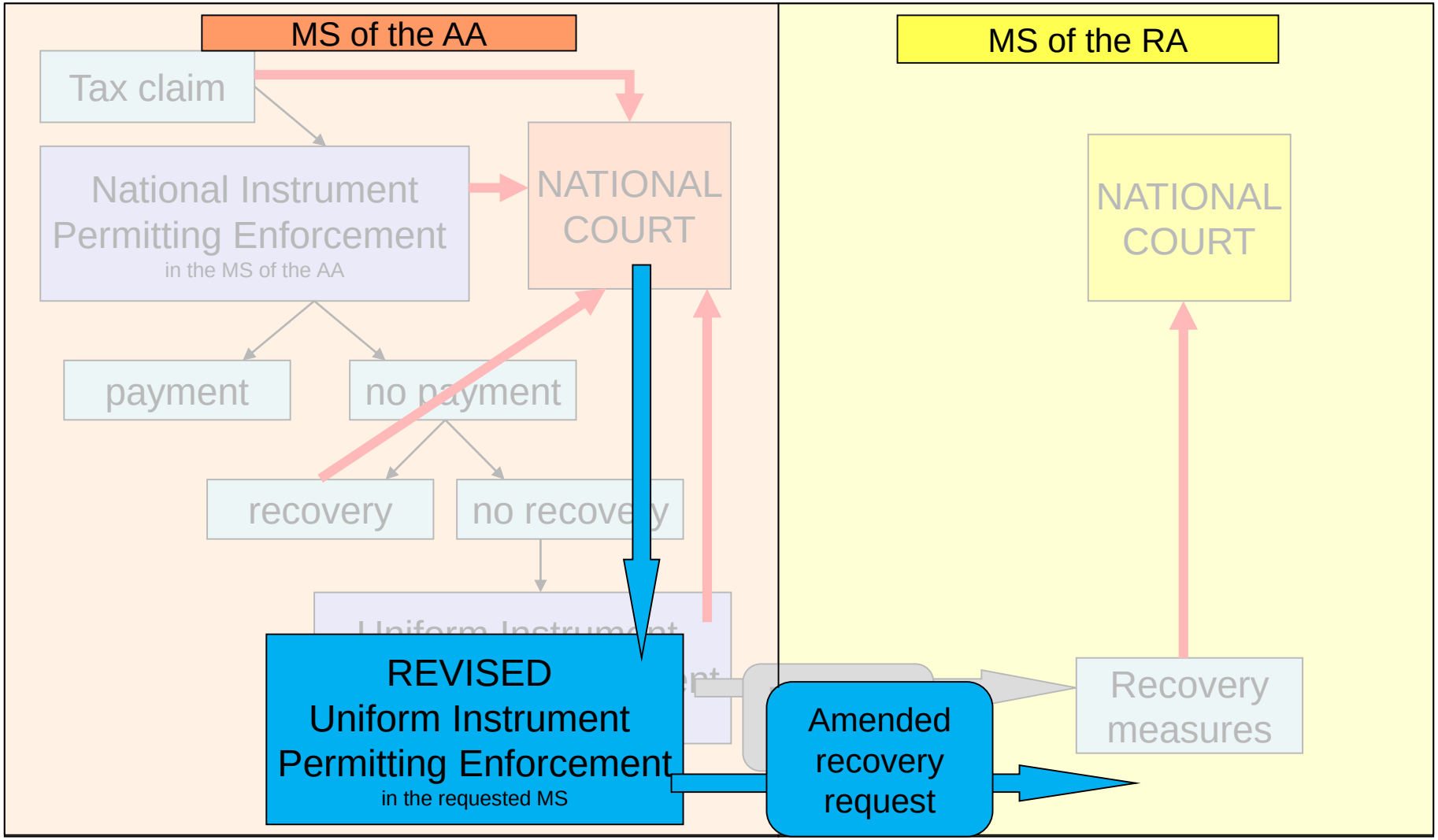
- **Recovery measures in the requested MS are based on the UIPE**
  - Model form
  - UIPE is created automatically when the electronic request form is filled out.
  - UIPE is translated automatically.


MS of the AA
MS of the RA
Tax claim
National Instrument Permitting Enforcement
in the MS of the AA
payment
no payment
recovery
no recovery
Uniform Instrument Permitting Enforcement
in the MS of the RA
Recovery request
Recovery measures

Disputes (Art. 14)



Dispute → revised UIPE (Art. 15 (2))



LISBOA (Art. 15(2) impl. Regulation) = explanation for precautionary measures

- If there is no UIPE, but MS want to request other MS to take precautionary measures

- Specific explanation may be useful or needed to justify the precautionary measures in the requested MS

→ model form has been created (annex III of Commission implementing Regulation 1189/2011, as amended by implementing Regulation 2017/1966)

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Costs (Art. 20)

- Requested MS can deduct its costs from the recovered amounts

- If costs > recovered amounts: no reimbursement by the applicant MS, unless specific arrangement is agreed.

Standard forms – Means of communication (Art. 21)

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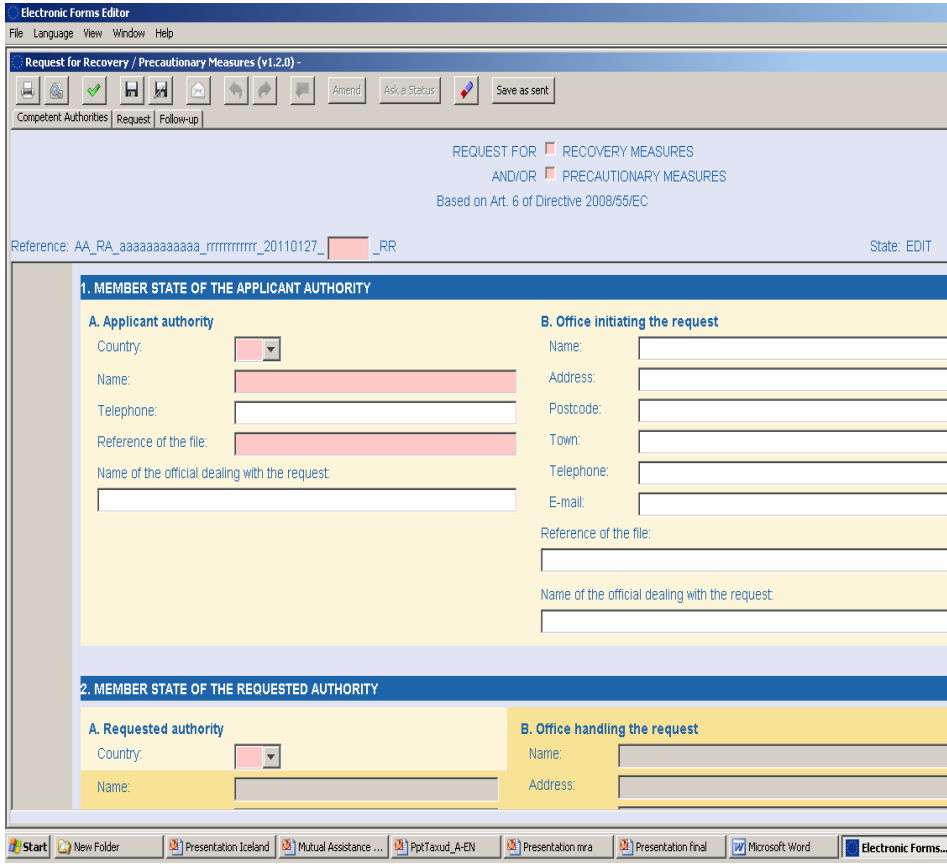

- Use of standard e-forms:
  - For the requests
  - For the uniform instrument permitting enforcement in the requested MS
  - For the uniform notification form

- Electronic communication of requests

Application of other agreements (Art. 24)

- Extension of the scope → Directive covers all taxes and duties

- But Directive allows to use other agreements « providing wider assistance » (not in practice).

  ↓

  MS can use the electronic communication network and the request forms developed by the EU.

Application in relations with new Member States

ECJ, 1.7.2004, C-361/02 & C-362/02, Tsapalos & Diamantakis:

Date of accession

Claim assessed before that date

Recovery assistance is possible,
Also for the old claims*
(for old & new MS)

* But with age limit (cf. supra)

EU-NO agreement

- For administrative cooperation in VAT → also recovery assistance

- Recovery provisions: = copy/paste of Directive 2010/24, but the scope of the agreement is not the same:
  - Claims related to VAT
  - Art. 40(4): The electronic communication network and the standard forms adopted for the implementation of this Agreement may also be used for recovery assistance regarding other claims than the claims referred to in Article 2(1)(b), if such recovery assistance is possible under other bilateral or multilateral legally binding instruments on administrative cooperation between the states.

More info

- Explanatory notes on tax recovery assistance (comments on specific provisions of Directive 2010/24 and implementing Regulation 1189/2011)
  - See EU & Int. Tax Collection News 2017/1, p. 16-24

- EU & Int. Tax Collection News (legislation, case law, activities)
  - http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/tax_recovery/index_en.htm

- E-mail: Taxud-C4-Recovery@ec.europa.eu

Statistics

1. Nature of the claims for which recovery assistance is requested

	VAT	income/capital taxes	customs	other taxes and claims
2011 (26 MS)	62,48 %	28,68 %	3,44 %	5,40 %
2012 (26 MS)	42 %	20 %	14 %	24 %
2013 (26 MS)	57,83 %	18,37 %	1,67 %	22,13 %
2014 (27 MS)	26,06 %	41,62 %	7,15 %	25,17 %
2015 (27 MS)	49,73 %	36,98 %	3,88 %	9,41 %
2016 (27 MS)	40,16 %	24,64 %	6,16 %	29,04 %

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2. Evolution of number of requests

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

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

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

2012	2013	2014	2015	2016
125.163	98.493	138.628	139.402	166.457

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3. Evolution of amounts recovered

	Recovered at the request of other MS (before deduction of the own costs)	Recovered via requests to other MS
	in €	*in €*
2011	54.031.822	62.475.879
2012	30.641.451	32.076.738
2013	35.580.763	41.115.223
2014	42.839.876	46.395.481
2015	81.402.061	65.711.419
2016	76.500.163	67.019.250