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

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THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) Directive 2010/24/EU has substantially changed the rules concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures and newly determined the implementing powers of the Commission, in relation to those laid down in Council Directive 2008/55/EC[(2)]. Therefore, it is appropriate to replace the existing implementing rules adopted by the Commission by a new implementing Regulation.

(2) In order to ensure a fast communication between the competent authorities, detailed rules should be adopted with regard to the practical arrangements and the time periods for communication between the requested and the applicant authorities.

(3) In order to ensure legal certainty, it is appropriate to specify that the validity of documents is not affected by the fact that they are transmitted electronically.

(4) In order to confirm that documents transmitted by post are sent by a competent authority, it is appropriate to provide specific rules with regard to this way of communication.

(5) In order to ensure that appropriate data and information are transmitted, models of the standard form accompanying the request for notification and of the instrument permitting enforcement in the requested Member State should be established.

(6) In order to ensure legal certainty, it is appropriate to state expressly the legal effect of the notifications made by the requested Member State at the request of the applicant Member State.

(7) In order to ensure legal certainty, it is also appropriate to specify that the notification or communication of the uniform instrument permitting enforcement in the requested Member State does not have any effect on the consequences of the notification of the initial instrument permitting enforcement, and that the revised instrument permitting

enforcement in the requested Member State does not have any effect on the initial claim or the initial instrument permitting enforcement.

(8) Commission Regulation (EC) No 1179/2008 of 28 November 2008 laying down detailed rules for implementing certain provisions of Council Directive 2008/55/EC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures[(3)] should be repealed.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Recovery Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

This Regulation lays down the detailed rules for implementing Article 5(1), Articles 8, 10, 12(1), Article 13(2), (3), (4) and (5), Articles 15, 16(1) and 21(1) of Directive 2010/24/EU, including the detailed rules on conversion, transfer of sums recovered, as well as the means by which communications between authorities may be transmitted.

Article 2

1 All requests for information, notification, recovery or precautionary measures pursuant to Articles 5(1), 8, 10 and 16(1) of Directive 2010/24/EU (hereinafter 'the requests for assistance') and all accompanying instruments, forms and other documents, as well as any other information communicated with regard to these requests shall be sent by the CCN network, unless this is impracticable for technical reasons.

2 Documents transmitted in electronic form or print outs thereof shall be deemed to have the same legal effect as documents transmitted by post.

3 If a request cannot be transmitted by CCN network, it shall be transmitted by post. In that case the following rules shall apply:

a the request shall be signed by an official of the applicant authority, duly authorised to make such a request;

b the standard form accompanying the notification request, referred to in the second subparagraph of Article 8(1) of Directive 2010/24/EU (hereafter 'the uniform notification form') or the uniform instrument permitting enforcement in the requested Member State referred to in Article 12 of that Directive shall be signed by a duly authorized official of the applicant authority;

c if the request is accompanied by a copy of a document other than the uniform notification form or the uniform instrument permitting enforcement in the requested Member State, the applicant authority shall certify the conformity of this copy with the original, by stating in this copy, in the official language or one of the official languages of the Member State in which it is situated, the words 'certified a true copy', the name of the certifying official and the date of that certification.

For the purposes of point (b) of the first subparagraph, the Member States shall use the uniform notification form established in accordance with the model set out in Annex I

to this Regulation and the uniform instrument permitting enforcement in the requested Member State established in accordance with the model set out in Annex II to this Regulation.

4 Where the uniform notification form or the uniform instrument permitting enforcement in the requested Member State are transmitted by electronic means, their structure and lay-out may be adapted to the requirements of the electronic communication system in order to facilitate the communication between the competent authorities, provided that the set of data and information therein is not substantially altered with regard to the models set out in Annexes I and II.

Article 3

1 The applicant authority may make a request for assistance in respect of either a single claim or several claims where those are recoverable from one and the same person.

2 A request for information, recovery or precautionary measures may relate to any of the following persons:

a the principal debtor or a co-debtor;

b a person other than a (co-)debtor, liable for settlement of the taxes, duties and other measures, or for other claims relating to these taxes, duties and other measures under the law in force in the Member State in which the applicant authority is situated;

c any third party holding assets belonging to or having debts towards one of the persons referred to in points (a) or (b).

Article 4

Information and other particulars communicated by the requested authority to the applicant authority pursuant to Articles 5(1), 8, 10 and 16(1) of Directive 2010/24/EU shall be conveyed in the official language or one of the official languages of the Member State of the requested authority or in another language agreed between the applicant and requested authorities.

Article 5

If the requested authority refuses to handle a request for assistance, it shall notify the applicant authority of the reasons for its refusal, specifying the provisions of Directive 2010/24/EU on which it relies. Such notification shall be given by the requested authority as soon as it has taken its decision and in any event within 1 month of the date of the acknowledgement of the receipt of the request.

Article 6

Each request for information or for recovery or precautionary measures shall indicate whether a similar request has been addressed to any other authority.

CHAPTER II

REQUESTS FOR INFORMATION

Article 7

The requested authority shall acknowledge receipt of the request for information as soon as possible and in any event within seven calendar days of such receipt.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 1189/2011. (See end of Document for details)*

Upon receipt of the request the requested authority shall, where appropriate, ask the applicant authority to provide any additional information necessary. The applicant authority shall provide all additional necessary information to which it normally has access.

Article 8

1 The requested authority shall transmit each item of requested information to the applicant authority as and when it is obtained.

2 Where, with respect to the particularity of a case, all or some of the requested information cannot be obtained within a reasonable time the requested authority shall inform the applicant authority thereof and state the reasons.

In any event, at the end of 6 months from the date of acknowledgement of receipt of the request, the requested authority shall inform the applicant authority of the outcome of the investigations which it has conducted in order to obtain the information requested.

On the basis of the information received from the requested authority, the applicant authority may request the requested authority to continue its investigation. That request shall be made within 2 months of the receipt of the notification of the outcome of the investigations carried out by the requested authority, and shall be treated by the requested authority in accordance with the provisions applying to the initial request.

Article 9

The applicant authority may, at any time, withdraw the request for information which it has sent to the requested authority. The decision to withdraw shall be transmitted to the requested authority.

CHAPTER III

REQUESTS FOR NOTIFICATION

Article 10

1 Any request for notification shall include the original or a certified copy of each document, notification of which is requested.

The uniform notification form accompanying the request pursuant to the second subparagraph of Article 8(1) of Directive 2010/24/EU shall be completed by or under the responsibility of the applicant authority. It shall provide information to the addressee with regard to the documents for which notification assistance has been requested.

2 With regard to the information mentioned in the uniform notification form, the following shall apply:

a the amount of the claim shall be mentioned where already established;

b the indication of the period within which notification is to be effected may be done by an indication of the date before which the applicant authority intends the notification to take place.

Article 11

The request for notification may relate to any person referred to in Article 3(c) of Directive 2010/24/EU who, in accordance with the law in force in the applicant Member State, is required to be informed of any document which concerns that person.

Article 12

1 The requested authority shall acknowledge receipt of the request for notification as soon as possible and in any event within seven calendar days of such receipt.

Upon receipt of the request for notification, the requested authority shall take the necessary measures to effect notification in accordance with the law in force in the Member State in which it is situated.

If necessary, without prejudice to the final date for notification indicated in the request for notification, the requested authority shall ask the applicant authority to provide additional information.

The applicant authority shall provide all additional information to which it normally has access.

[[F1]2 The requested authority shall inform the applicant authority of the date and the manner of notification as soon as this has been effected, by certifying the notification in the request form returned to the applicant authority.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2017/1966 of 27 October 2017 amending Implementing Regulation (EU) No 1189/2011 as regards the communication of assistance requests and the follow-up to those requests.

Article 13

1 A notification made by the requested Member State in accordance with the national laws, regulations and administrative practices in force in that State, shall be deemed to have the same effect in the applicant Member State as if it had been made by the applicant Member State itself in accordance with the national laws, regulations and administrative practices in force in the applicant Member State.

2 A notification of a document relating to more than one type of tax, duty or other measure, shall be deemed valid if it is made by an authority of the requested Member State which is competent for at least one of the taxes, duties or other measures mentioned in the notified document, provided that it is allowed under the national law of the requested Member State.

Article 14

For the purposes of notification, the requested Member State may use the uniform notification form, referred to in Article 10(1) in its official language or in one of its official languages in accordance with its national law.

CHAPTER IV

REQUESTS FOR RECOVERY OR FOR PRECAUTIONARY MEASURES

[[F1]*Article 15*

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