



2023/2474

9.11.2023

DECISION No 3/2023 OF THE TRADE SPECIALISED COMMITTEE ON ADMINISTRATIVE COOPERATION IN VAT AND RECOVERY OF TAXES AND DUTIES ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

of 19 October 2023

laying down implementing rules for provisions relating to recovery assistance of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for recovery of claims [2023/2474]

THE TRADE SPECIALISED COMMITTEE,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, ⁽¹⁾ and in particular its Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for recovery of claims ('the Protocol'), in particular Article PVAT.39(2)(j) thereof,

Whereas:

1. It is necessary to adopt practical arrangements for the implementation of Article PVAT.39(2)(j) of the Protocol.
2. Detailed rules should be adopted with regard to the practical arrangements and the time periods for communication between the requested and the applicant authorities, in order to ensure a fast communication between them.
3. In order to ensure legal certainty, it is appropriate to state expressly the legal effect of the notifications made by the requested State at the request of the applicant State.
4. In order to ensure legal certainty, it is appropriate to provide specific rules with regard to the use of the uniform instrument permitting enforcement in the requested State.
5. It is appropriate to adopt specific rules on the transfer and the reimbursement of recovered amounts.

HAS ADOPTED THIS DECISION:

Article 1

Communication

1. A request sent by electronic means for the application of Title III of the Protocol shall be sent by the CCN network, between the CCN mailboxes that are set up for the type of tax or duty to which the request relates, unless the central liaison offices of the applicant and requested States agree that one of the mailboxes can be used for requests concerning different types of taxes or duties.

However, if a request for notification of documents relates to more than one type of tax or duty, the applicant authority shall send that request to a mailbox set up for at least one of the types of claims mentioned in the documents to be notified.

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 the claims under the law in force in the applicant State;

⁽¹⁾ OJ L 149, 30.04.2021, p. 10.

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

3. A request for notification may relate to any person who, in accordance with the law in force in the applicant State, is required to be informed of any document which concerns that person.

Article 2

Implementing rules relating to the standard form

With regard to the information mentioned in the standard form referred to in Article PVAT.23(1) of the Protocol, 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 3

Implementing rules relating to the uniform instrument or the revised uniform instrument permitting enforcement in the requested State

1. The uniform instrument or the revised uniform instrument permitting enforcement in the requested State accompanying the request for recovery or for precautionary measures shall be completed by or under the responsibility of the applicant authority, on the basis of the initial instrument permitting enforcement in the applicant State.

2. The administrative penalties, fines, fees and surcharges and the interest and costs referred to in point (b) of Article PVAT.2(1) of the Protocol which, in accordance with the rules in force in the applicant State, may be due from the date of the initial instrument permitting enforcement until the day before the date on which the recovery request is sent, may be added in the uniform instrument or the revised uniform instrument permitting enforcement in the requested State.

3. A single uniform instrument or revised uniform instrument permitting enforcement in the requested State may be issued in respect of several claims and several persons, corresponding to the initial instrument or instruments permitting enforcement in the applicant State.

4. In so far as initial instruments permitting enforcement for several claims in the applicant State have already been replaced by a global instrument permitting enforcement for all those claims in that State, the uniform instrument or revised uniform instrument permitting enforcement in the requested State may be based on the initial instruments permitting enforcement in the applicant State or on that global instrument regrouping those initial instruments in the applicant State.

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

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

7. If a request cannot be transmitted by CCN network and is transmitted by post, the uniform instrument or revised uniform instrument permitting enforcement in the requested State shall be signed by a duly authorised official of the applicant authority.

8. The addressee of a request for recovery or precautionary measures may not rely on the notification or communication of the uniform instrument permitting enforcement in the requested State to claim a prolongation or a re-opening of the time period to contest the claim or the initial instrument permitting enforcement if that has been validly notified.

Article 4

Conversion of the sums to be recovered

1. The applicant authority shall express the amount of the claim to be recovered in the currency of the applicant State and in the currency of the requested State.

2. For requests sent to the United Kingdom, the exchange rate to be used for the purposes of the recovery assistance shall be the exchange rate published by the European Central Bank on the day before the date on which the request is sent. Where there is no such rate available on that date, the exchange rate used shall be the latest exchange rate published by the European Central Bank before the date the request is sent.

For requests sent to a Member State, the exchange rate to be used for the purposes of the recovery assistance shall be the exchange rate published by the Bank of England on the day before the date on which the request is sent. Where there is no such rate available on that date, the exchange rate used shall be the latest exchange rate published by the Bank of England before the date the request is sent.

3. In order to convert the amount of the claim resulting from the adjustment referred to in Article PVAT.30(2) of this Protocol into the currency of the State of the requested authority, the applicant authority shall use the exchange rate used in its initial request.

Article 5

Time limits for replies

1. The requested authority shall acknowledge receipt of each request for assistance as soon as possible and in any event within fourteen calendar days of such receipt.

Upon receipt of the request the requested authority shall, where appropriate, ask the applicant authority to provide any additional information necessary, or to complete the uniform notification form or the uniform instrument or revised uniform instrument permitting enforcement in the requested State, if required. The applicant authority shall provide all additional necessary information to which it normally has access.

2. Where the requested authority refuses to handle a request for assistance under Articles PVAT.20(4) or PVAT.33(5) of the Protocol, it shall notify the applicant authority of the reasons for its refusal 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

Execution of the requests

1. When executing a request for information under Article PVAT.20 of the Protocol, the requested authority shall transmit each item of requested information to the applicant authority as and when it is obtained.

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.

2. When executing a request for notification under Article PVAT.23 of the Protocol, the requested authority shall take the necessary measures to effect notification in accordance with the law in force in the State in which it is situated. 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.

A notification made by the requested 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 State as if it had been made by the applicant State itself in accordance with the national laws, regulations and administrative practices in force in the applicant State.

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 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 State.

The uniform notification form accompanying the request pursuant to the second subparagraph of Article PVAT.23(1) of the Protocol 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. For the purposes of notification, the requested State may use this uniform notification form in its official language or in one of its official languages in accordance with its national law.

3. When executing a request for recovery or precautionary measures under Article PVAT.25 or 31 of the Protocol, the requested State may use the uniform instrument permitting enforcement in that State in its official language or in one of its official languages in accordance with its national law, in order to enforce the claims for which recovery assistance is requested.

Where, with respect to the particularity of a case, all or part of the claim cannot be recovered or precautionary measures cannot be taken within a reasonable time, the requested authority shall inform the applicant authority thereof and state the reasons.

On the basis of the information received from the requested authority, the applicant authority may request the latter to re-open the procedure for recovery or for precautionary measures. That request shall be made within 2 months of the receipt of the notification of the outcome of that procedure, and shall be treated by the requested authority in accordance with the provisions applying to the initial request.

No later than at the end of each six-month period following the date of acknowledgement of the receipt of the request for recovery or precautionary measures, the requested authority shall inform the applicant authority of the state of progress or the outcome of the procedure for recovery or for precautionary measures.

A claim shall be deemed recovered in proportion to the recovery of the amount expressed in the national currency of the requested authority, on the basis of the exchange rate referred to in Article 4(2) above.

Article 7

Follow-up on contestations

1. Any action contesting the claim or the instrument permitting its enforcement which is taken in the State of the applicant authority shall be notified to the requested authority by the applicant authority immediately after the applicant authority has been informed of such action.

2. If the laws, regulations and administrative practices in force in the requested State do not permit precautionary measures or the recovery requested under the second and third subparagraphs of Article PVAT.29(4) of the Protocol, the requested authority shall notify the applicant authority thereof as soon as possible and in any event within 1 month of the receipt of the notification referred to in paragraph 1.

3. The requested authority shall notify any action taken in the requested State for reimbursement of sums recovered or for compensation in relation to recovery of contested claims to the applicant authority immediately after the requested authority has been informed of such action.

4. The requested authority shall as far as possible involve the applicant authority in the procedures for settling the amount to be reimbursed and the compensation due. Upon receipt of a reasoned request from the requested authority, the applicant authority shall transfer the sums reimbursed and the compensation paid within two months of the receipt of that request.

Article 8

Adjustments of the amounts for which assistance is requested

1. If the request for recovery or for precautionary measures becomes devoid of purpose as a result of payment of the claim or of its cancellation or for any other reason, the applicant authority shall immediately inform the requested authority so that the latter may stop any action which it has undertaken.

2. Where the amount of the claim which is the subject of the request for recovery or for precautionary measures is adjusted by a decision of the competent body referred to in Article PVAT.29(1) of the Protocol, the applicant authority shall inform the requested authority of that decision and, if recovery is requested, communicate a revised uniform instrument permitting enforcement in the requested State. This revised uniform instrument permitting enforcement in the requested State shall be made by or under the responsibility of the applicant authority, on the basis of the decision adjusting the amount of the claim.

3. If the adjustment referred to in paragraph 2 entails a reduction in the amount of the claim, the requested authority shall continue its action to take recovery or precautionary measures, but that action shall be limited to the amount still outstanding.

If, at the time when the requested authority is informed of the reduction in the amount of the claim, an amount exceeding the amount still outstanding has already been recovered by it but the transfer procedure referred to in Article 9 of this decision has not yet been initiated, the requested authority shall repay the amount overpaid to the person entitled thereto.

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

That amended request shall, as far as possible, be dealt with by the requested authority at the same time as the initial request from the applicant authority. Where, in view of the state of progress of the existing procedure, consolidation of the amended request with the initial request is not possible, the requested authority shall comply with the amended request only if it concerns an amount not less than that referred to in Article PVAT.33(4) of the Protocol.

5. In order to convert the amount of the claim resulting from the adjustment referred to in paragraph 2 into the currency of the requested State, the applicant authority shall use the exchange rate used in its initial request.

Article 9

Transfer of recovered amounts

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

2. However, if recovery measures applied by the requested authority are contested for a reason not falling within the responsibility of the applicant State, the requested authority may wait to transfer any sums recovered in relation to the applicant State's claim, until the dispute is settled, if the following conditions are simultaneously fulfilled:

- a) the requested authority finds it likely that the outcome of this contestation will be favourable to the party concerned; and
- b) the applicant authority has not declared that it will reimburse the sums already transferred if the outcome of that contestation is favourable to the party concerned.

3. If the applicant authority has made a declaration to reimburse in accordance with point (b) of the paragraph 2, it shall return the recovered amounts already transferred by the requested authority within one month of the receipt of the request for reimbursement. Any other compensation due shall, in that case, be borne solely by the requested authority.

Done at London, 19 October 2023.

For the Trade Specialised Committee

The Co-chairs

Mariana HRISTCHEVA

Rachel NIXON
