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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	24 November 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 734 final
Subject:	Proposal for a COUNCIL DECISION on the signing on behalf of the Union, of the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax

Delegations will find attached document COM(2023) 734 final.

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Brussels, 24.11.2023
COM(2023) 734 final

2023/0417 (NLE)

Proposal for a

COUNCIL DECISION

on the signing on behalf of the Union, of the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present proposal concerns the signature of an amendment of the Agreement between the European Union and the Kingdom of Norway ("Norway") on administrative cooperation, fight against fraud and recovery of claims in the area of value added tax[1] ("the Agreement").

The Agreement entered into force in September 2018. The Agreement allows the EU Member States and Norway to cooperate in a similar way Member States do under Council Regulation (EU) No 904/2010[2] and Council Directive 2010/24/EU[3] to fight against VAT fraud, and assist each other to recover claims in the field of VAT.

However, in the meantime several amendments to Council Regulation (EU) 904/2010 were made and new tools for administrative cooperation were introduced, namely by the amending Council Regulation (EU) 2018/1541[4]. The new tools include:

- enhancement of the Eurofisc network through reinforced governance, the so-called follow-up actions (joint processing and analysis of data) and administrative enquiries carried out jointly (joint audits);

- working with other law enforcement EU bodies (Europol, OLAF);

- sharing key information on imports and on vehicles.

The possibility to use other means to exchange information than the standard forms was also introduced.

Article 41(5) of the Agreement lays down the formalities if a Party to the Agreement would like to revise it. Thus, this Party shall lay a proposal before the Joint Committee, which shall make recommendations, in particular for the commencement of negotiations according to the rules for international negotiations of the Parties.

During the second meeting on 25 November 2021 of the EU-Norway Joint Committee, established under Article 41(1) of the Agreement, the Kingdom of Norway officially submitted a request to supplement and amend the Agreement in order to:

• take into account the newly introduced administrative cooperation tools (the use of other means to exchange information than the standard forms, the administrative enquiries carried out jointly and the follow-up actions in the framework of Eurofisc).

• update the reference to the repealed Directive 95/46/EC by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data[5]

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1 Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (OJ L 195, 1.8.2018, p. 3–22)

2 Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT (OJ L 268, 12.10.2010, p. 1)

3 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1)

4 Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ L 259/1, 16.10.2018, p. 1-11)

5 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of

and in particular, introducing a reference to the provisions of the European Economic Area (EEA) agreement[6] equivalent to Regulation (EU) 2016/679.

Norway has so far participated actively in most of the Eurofisc working fields. During the course of 2020 and 2021, Norway alerted the Member States to possible fraud and potential VAT loss amounting to EUR 5 billion in the carbon credit area.

The amendment of the Agreement by including the above-mentioned new tools would allow for better cooperation and enhance the fight against fraud, thus bringing added value for both parties to the Agreement (Norway and Member States).

A Council decision authorising the opening of negotiations with the Kingdom of Norway to amend the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax was adopted on 17 June 2022[7].

The recommendation by the Joint Committee to commence negotiations, in line with Article 41(5) of the Agreement (exchange of letters), was adopted by written procedure in October 2022.

A round of negotiations was held on 18 November 2022 and agreement was reached on 27 June 2023.

The Council has consistently been informed about the progress in the Working Party on Tax Questions and in the High-Level Working Party.

The Commission considers that the objectives set out by the Council in its negotiating directives were attained and that the negotiated text is acceptable to the Union.

- **Consistency with existing policy provisions in the policy area**

The amendment of the Agreement was negotiated in line with the comprehensive negotiating directives adopted by the Council on 17 June 2022.

Enhancing VAT administrative cooperation with third countries is one of the actions announced with the 2020 European Commission Communication for a Fair and Simple Taxation supporting the recovery[8].

Furthermore, it should be noted that the amendment would cover cooperation tools already in force and applied by the Member States based on Regulation (EU) No 904/2010.

Therefore, this initiative is in line with the present Commission policy in the field of VAT and would harmonise Member States' cooperation with Norway with the EU acquis.

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such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p. 1–88)

6 https://www.efta.int/eea/eea-agreement

7 Council Decision (EU) 2022/1311 of 17 June 2022 authorising the opening of negotiations with the Kingdom of Norway to amend the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (OJ L 198, 27.7.2022, p. 14–15)

8 Action 14, COM/2020/312 final

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The present proposal to the Council is submitted pursuant to Article 218(5) of the Treaty on the functioning of the European Union (TFEU).

Article 3(2) TFEU provides that, in addition to the areas of exclusive Union competence listed in Article 3(1) TFEU, the Union shall "also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".

Under the Court of Justice consistent case law, an agreement may affect common rules or alter their scope when it covers areas where there are harmonising measures.[9]

The subject matter of the revision of the Agreement, i.e. to cover the new administrative cooperation tools introduced by Council Regulation (EU) 2018/1541, falls within the Union`s exclusive competence. The update of the references to Directive 95/46/EC by Regulation (EU) 2016/679 might be done in the framework of the Joint Committee pursuant to Article 41(2)(k) of the Agreement. However, that update can also be included in the reopening of the negotiations on the text of the Agreement.

In accordance with the Treaties, the Commission makes a proposal for the signature of an agreement of the Union.

• Proportionality

The cooperation instruments to be included in the amendment of the Agreement will respect the principle of proportionality and will not go beyond what is necessary to meet the objective of providing a common framework for administrative cooperation between the European Union and the Kingdom of Norway in the field of VAT. This amendment of the Agreement will enable the Member States' authorities responsible for the application of VAT legislation to cooperate with the Norwegian tax authorities in the same way they cooperate between themselves in the EU and based on the EU acquis.

3. RESULTS OF IMPACT ASSESSMENTS

• Impact assessment

According to tool 7 of the Better Regulation[10], an impact assessment is not needed when the impact cannot be clearly identified ex-ante, the impacts are small, or the Commission has little or no choice in the matter.

The amendment aims to align as much as possible with the EU legislation in the area of VAT administrative cooperation and data protection to the already in force EU-Norway agreement on VAT cooperation. In practice, the outcome of the envisaged proposal will not be any new legal act, but an amendment of the EU-Norway agreement.

• Fundamental rights

The envisaged Agreement will respect the key values of the European Union as established in Article 2 of the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union.

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9 Opinion 3/15 of the Court, ECLI:EU:C:2017:114, paragraph 118 and the case law quoted therein.

10 https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The foreseen amendments will provide Member States with new cooperation tools with Norway, similar to the ones introduced in the Regulation (EU) 904/2010 with Regulation (EU) 2018/1541. In addition, the amendment updates the reference to the repealed Directive 95/46/EC with a reference to the national rules adopted pursuant to point 5e of Annex XI to the EEA Agreement and to the Regulation (EU) 2016/679 on the protection of personal data. Furthermore, it was clarified that the Joint Committee is not consulted for disputes in the field of personal data protection rules referred to under point 5e of Annex XI to the EEA Agreement.

In particular, the amendment covers the following points:

1. Administrative enquiries carried out jointly (so called Joint Audits):

Article 13(2)a would introduce the possibilities of administrative enquiries carried out jointly - as already foreseen for cooperation amongst Member States pursuant to Article 28 (2a) of Regulation (EU) 904/2010. This Article would allow officials authorised by the competent authorities of one State to be present during administrative enquiries carried out by officials of another State and to participate in administrative enquiries carried out jointly.

2. Eurofisc - Follow-up actions (FUA)

Article 15(1)a would allow the follow-up actions – as already possible amongst Member States pursuant to Article 33 (2)(d) of Regulation (EU) 904/2010 – within the framework of Eurofisc with the participation of Norway. Within the framework of Eurofisc, the Member States and Norway would be able to coordinate participating states` administrative enquiries of fraud identified by the Eurofisc liaison officials.

3. Update of the legal reference referring to personal data protection

As the General Data Protection Regulation (EU) 2016/679 has been transposed with adjustment in the EEA Agreement, the proposed amendments of Article 6 replace the reference to Directive 95/46/EC with a reference to Regulation (EU) 2016/679 and point 5e of Annex XI to the EEA Agreement.

Finally, because the proposed Article 6 would include a reference to point 5e of Annex XI to the EEA Agreement, it would be necessary to amend Article 42 of the Agreement in order to make it clear that the Joint Committee is not competent for general data protection disputes.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The cooperation framework under the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax[1] ('the Agreement') has shown very positive outcome.

(2) New tools for cooperation have been introduced in the EU legislation with the amendment of Council Regulation (EU) 904/2010 by Council Regulation (EU) 2018/1541,[2]

(3) On 26 April 2022 the Council authorised the Commission to open negotiations for an amendment of the agreement with Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax.

(4) The text of the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax ('the amendment of the Agreement'), which is the result of the negotiations, duly reflects the negotiating directives issued by the Council.

(5) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EC) No 2018/1725 of the European Parliament and of the Council[3].

(6) The amendment of the Agreement should be signed,

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1 Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (OJ L 195, 1.8.2018, p. 3–22)

2 Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ L 259/1, 16.10.2018, p. 1-11)

3 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98)

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added is hereby authorised, subject to the conclusion of the said amendment of the Agreement.[4]

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

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

Done at Brussels,

For the Council
The President

[4] The text of the amendment of the Agreement will be published together with the decision on its conclusion.