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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) 736 final ANNEX
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion 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) 736 final ANNEX.

Encl.: COM(2023) 736 final ANNEX

EUROPEAN
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ANNEX

ANNEX

to the

Proposal for a Council Decision

on the conclusion 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

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 EUROPEAN UNION, hereinafter referred to as 'the Union',

and

THE KINGDOM OF NORWAY, hereinafter referred to as 'Norway',

hereinafter referred to as 'the Parties',

RECOGNISING that 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 already shown very positive outcome,

WHEREAS 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]

RECOGNISING that the Member States and Norway would benefit from an extension of the cooperation tools that would allow a more effective cooperation, in particular as regards administrative enquiries carried out jointly and the Eurofisc follow-up actions,

WHEREAS in order to ensure the effective and efficient monitoring of VAT on cross-border transactions, the possibility for administrative enquiries carried out jointly, enabling officials from two or more states to form a single team and actively take part in an administrative enquiry carried out jointly will help to ensure proper enforcement of VAT and avoid duplication of work and administrative burden of both tax authorities and businesses,

[1] https://eur-lex.europa.eu/resource.html?uri=cellar:ff32b4af-c53e-11ec-b6f4-01aa75ed71a1.0002.02/DOC_1&format=PDF

[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)

WHEREAS in order to combat the most serious cross-border frauds, it is necessary to reinforce the work of the Eurofisc liaison officials to access, exchange, process and analyse all necessary information swiftly and coordinate any follow-up actions,

WHEREAS the legal references to Directive 95/46/EC[3] of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data should be updated by necessary references to Regulation (EU) 2016/679[4] of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,

NOTING that Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data has been incorporated with adaptations in Annex XI to the EEA Agreement, is subject to the institutional framework of the EEA agreement[5] and Norway has adjusted its legislation to comply with those provisions at least in the areas covered by the wide scope of the EEA agreement,

NOTING that Regulation (EC) No 2018/1725[6] of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purpose of this Agreement

AGREED AS FOLLOWS:

ARTICLE 1

The following amendments to the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT should be introduced:

[3] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31–50)

[4] 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, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance (OJ L 119, 4.5.2016, p. 1–88)

[5] https://www.efta.int/eea/eea-agreement

[6] 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 (Text with EEA relevance (OJ L 295, 21.11.2018, p. 39–98)

(1) The 5th recital to the preamble is replaced by the following:

AWARE that the states should apply rules on confidentiality pursuant to national law and the protection of personal data pursuant to point 5e of Annex XI to the EEA Agreement,

(2) Article 6 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. Any information obtained by a state under this Agreement shall be treated as confidential and protected in the same manner as information obtained under its domestic law for the protection of personal data, in accordance with point 5e of Annex XI to the EEA Agreement.

(b) Paragraph 2 is replaced by the following:

2. Such information may be disclosed to persons or authorities (including courts and administrative or supervisory bodies) of the states concerned with the application of VAT laws and for the purpose of a correct assessment of VAT or the collection or administrative control of tax for the purpose of establishing the assessment of VAT as well as for the purpose of applying enforcement including recovery or precautionary measures with regard to VAT claims.

(c) Paragraph 6 is replaced by the following:

6. Information provided by a state to another state may be transmitted by the latter to another state, subject to prior consent by the competent authority from which the information originated. The state of origin of the information may oppose such a sharing of information within ten working days of the date on which it received the communication from the state wishing to share the information.

(d) Paragraph 6.a is added:

6.a All storage, processing or exchange of information referred to in this Agreement is subject to the national rules adopted pursuant to point 5e of Annex XI to the EEA Agreement as well as the specific requirements for the processing of personal data laid down in this Agreement. However, states may for the purpose of the correct application of this Agreement, restrict the scope of the obligations and rights provided for in the provisions of

the EEA Agreement equivalent to Articles 12 to 15, 17, 21 and 22 of Regulation (EU) 2016/679. Such restrictions shall be limited to what is strictly necessary to safeguard the interests referred to in the provisions of the EEA Agreement equivalent to point (e) of Article 23(1) of Regulation (EU) 2016/679, in particular:

(a) enable the competent authorities of the states to fulfil their tasks properly for the purposes of this Agreement; or

(b) avoid obstructing official or legal enquiries, analyses, investigations or procedures for the purposes of this Agreement and to ensure that the prevention, investigation and detection of tax evasion and tax fraud is not jeopardised.

The processing and storage of information referred to in this Agreement shall be carried out only for the purposes referred to in Article 1 of this Agreement and the information shall not be further processed in a way that is incompatible with those purposes.

The processing of personal data on the basis of this Agreement for any other purposes, such as commercial purposes, shall be prohibited.

(e) Paragraph 7 is replaced by the following:

7. The states may transmit information obtained in accordance with this Agreement to third countries subject to the following conditions:

(a) the transfer of personal data is subject to the provisions of the EEA Agreement equivalent to Regulation (EU) 2016/679;

(b) the competent authority from which the information originates has consented to that communication;

(c) the transmission is permitted by legally binding and enforceable assistance arrangements between the state transmitting the information and that particular third country.

(f) Paragraph 9 is replaced by the following:

9. Each state shall immediately notify the other states concerned regarding any breach of confidentiality, personal data breach and any sanctions and remedial actions consequently imposed.

(g) Paragraph 10 is replaced by the following:

10. 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 electronic systems hosted by the Commission and used by states to implement this Agreement. Any access to personal data shall be treated in accordance with Regulation (EU) 2018/1725.

(3) Article 13 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 2(1)a, be present in the offices of the administrative authorities of the requested State, or any other place where those authorities carry out their duties. Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

(b) Paragraph 2 is replaced by the following:

2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 2(1)a, be present during the administrative enquiries carried out in the territory of the requested State. Such administrative enquiries shall be carried out exclusively by the officials of the requested authority. The officials of the requesting authority shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through the intermediation of the officials of the requested authority and for the sole purpose of carrying out the administrative enquiry.

(c) Paragraph 2.a is added:

2a. By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the

requesting authorities may, with a view to collecting and exchanging the information referred to in Article 2(1)a, take part in the administrative enquiries carried out in the territory of the requested state. Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities and shall be conducted under the direction and according to the legislation of the requested state.

The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested state for its officials, be able to interview taxable persons.

Where it is permitted under the legislation of the requested state the officials of the requesting state shall exercise the same inspection powers as those conferred on officials of the requested state. The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, the participating authorities may draft a common enquiry report.

(d) Paragraph 3 is replaced by the following:

3. The officials of the requesting authority present in another State in accordance with paragraphs 1, 2 and 2a must at all times be able to produce written authority stating their identity and their official capacity.

(4) Article 15 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud and for the coordination of any follow-up actions, Norway shall be invited to participate in the network called Eurofisc, provided for in Chapter X of Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of value added tax, under the conditions laid down in this Chapter.

(b) Paragraph 1a is added:

1a. Within the framework of Eurofisc, the states shall coordinate participating states` administrative enquiries of fraud identified by the Eurofisc liaison officials as referred to in Article 16(1) without the power to require the states to carry out administrative enquiries.

(5) Article 42 is replaced by the following:

Dispute settlement

Any dispute between the Parties relating to the interpretation or application of this Agreement, with the exception of disputes related to the application of point 5e of Annex XI to the EEA Agreement, shall be resolved through consultations within the Joint Committee. The Parties shall present the relevant information required for a thorough examination of the matter to the Joint Committee, with a view to resolving the dispute.

ARTICLE 2

Entry into force

This amendment of the Agreement shall enter into force the first day of the second month following the date on which the Parties have notified each other of the completion of the internal legal procedures referred to in paragraph 1 of the Agreement.