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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2022) 166 final
Subject:	Recommendation for a COUNCIL DECISION to authorise the Commission to open negotiations for the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, fight against fraud and recovery of claims in the area of value added tax

Delegations will find attached document COM(2022) 166 final.

Encl.: COM(2022) 166 final



Brussels, 26.4.2022
COM(2022) 166 final

Recommendation for a

COUNCIL DECISION

to authorise the Commission to open negotiations for the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, fight against fraud and recovery of claims in the area of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

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 (“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 904/2010¹ and Council Directive 2010/24/EU² 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) 2018/1541³. 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

¹ 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)

² 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)

³ 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)

protection of natural persons with regard to the processing of personal data and on the free movement of such data⁴.

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).

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

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 recovery⁵.

Furthermore, it should be noted that the negotiation with Norway 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.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The present proposal to the Council is submitted pursuant to Article 218(3) 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.⁶

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.

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), (OJ L 119, 4.5.2016, p. 1–88)

⁵ Action 14, COM/2020/312 final

⁶ Opinion 3/15 of the Court, ECLI:EU:C:2017:114, paragraph 118 and the case law quoted therein.

During the second meeting of the Joint Committee on 25 November 2021, Norway officially asked to open negotiations to amend the Agreement as provided for under Article 41(5) of the Agreement.

- **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 EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Norway submitted a draft Joint Committee Decision during the second meeting of the Joint Committee on 25 November 2021 proposing to reopen negotiations to amend the Agreement, as foreseen under Article 41(5).

As such, this draft Joint Committee decision is not binding on the Commission and will be adopted (by written procedure) only after the Council approves to authorise the Commission to re-open the negotiations for the amendment of the Agreement.

The Council Working Party on Tax Questions (CWPT) was informed on 8 December 2021 about the request of Norway to amend the Agreement.

The CWPT will be informed of the state of the negotiations during the whole process and consulted on the results thereof.

- **Impact assessment**

According to tool 7 of the Better Regulation Toolbox⁷, 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.

Since the level of detail of a Recommendation remains very general giving a wide degree of flexibility, the first condition mentioned in tool 7 of the Better Regulation Toolbox is fulfilled. Furthermore, the recommendation does not commit the Commission to a certain position at this stage. The envisaged Commission Recommendation will only include the Council "authorisation" to enter into negotiations with Norway. As such, there is no impact whatsoever on either tax authorities or EU taxpayers. The negotiations will focus around a few administrative tools that might be added to the already in force EU-Norway agreement on VAT cooperation. The Commission has little or no choice as the recommendation is the mandatory step to open negotiations with a third country.

⁷ https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf

In practice, the outcome of the envisaged Recommendation will not be any new legal act, but only the re-opening of the negotiations.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget.

Recommendation for a

COUNCIL DECISION

to authorise the Commission to open negotiations for the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, fight against fraud and recovery of claims in the area of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4),

Having regard to the recommendation 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 tax⁸ ('the Agreement') has already shown very positive outcome, as demonstrated at the second meeting of the Joint Committee, held in Oslo on 25 November 2021.
- (2) The Member States would benefit from an extension of the cooperation tools that would allow a more effective cooperation with Norway, in particular as regards Eurofisc follow-up actions.
- (3) Negotiations should be opened with a view to amending the Agreement ,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, 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.

Article 2

The negotiating directives are set out in the Annex.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22018A0801%2801%29>

Article 3

The negotiations shall be conducted in consultation with the Council Working Party on Tax Questions.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*