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Proposal for a

## **COUNCIL DECISION**

**on the signing, on behalf of the European Union, 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**

Council Regulation (EU) No. 904/2010<sup>1</sup> and Council Directive 2010/24/EU<sup>2</sup> provide for the legal framework for Member States to cooperate in order to prevent and fight against fraud, and recover claims in the field of VAT.

However, experience in the Member States has shown that fraudsters often exploit weaknesses in the control of transactions involving companies located in third countries.

Therefore, cooperation with third countries is essential to fight VAT fraud. In particular, Norway is a Member of the European Economic Area with a VAT system similar to that applied in the EU, which enjoys a good tradition of cooperation in the field of VAT with the EU Member States.

In 2009, Norway played a key role when informing Member States about VAT missing traders' fraud in the field of carbon credits. Between 2009 and 2012, the Norwegian tax authorities communicated to Member State authorities information on fraudulent transactions for a total amount of EUR 2.703 million. Norwegian officials also participated in multilateral controls with some Member States in the energy sector and were invited as observers in the VAT observatory (Eurofisc Working Field 4<sup>3</sup>). Norway also informed several Member States about the transactions of missing traders that exploited the Norwegian Alternative Payment Platforms.

This evidences the advantages for Member States to cooperate with Norway. However, with the current legal framework, administrative cooperation with Norway is occasional and only possible on the basis of bilateral agreements between Norway and individual Member States, the Nordic convention or rare invitations to Norway to participate in the VAT observatory meetings as an observer.

The bilateral Agreement between the EU and Norway will provide for a solid legal framework for a sound cooperation between Norway and all the Member States. This cooperation will follow the same structure of the cooperation currently in force between EU Member States and will benefit from the same instruments such as electronic platforms and e-forms.

#### **• Consistency with existing policy provisions in the policy area**

In the VAT Action plan COM (2016) 148 final of 7 April 2016, the Commission announced that better cooperation with non-EU countries in VAT should make it possible to extend the EU system of administrative cooperation to non-EU countries, particularly to ensure effective taxation of e-commerce.

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<sup>1</sup> 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)

<sup>2</sup> 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)

<sup>3</sup> Eurofisc is a network for the multilateral and swift exchange of targeted information between EU Member States. It is split in subject areas which are called working fields. It is regulated in Chapter X of Council Regulation (EU) No 904/2010

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

The present proposal for a Council Decision is submitted pursuant to Article 113 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218 (5) and the second paragraph of Article 218 (8).

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 "AETR" or "ERTA" case, an agreement falls within the EU's exclusive competence when either the subject matter of the agreement falls within the scope of internal common rules, or within an area already largely covered by such rules, or rules have been adopted in areas falling outside common policies and, in particular, in areas where there are harmonising measures.

The subject matter of the envisaged agreement, i.e. administrative cooperation, combating fraud and recovery of claims in the field of VAT, falls within the scope of internal common rules, in particular of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT and Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. Therefore, the Union has exclusive competence to conclude an agreement with Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT.

Thus, by its Decision of 9 December 2014, Article 1, the Council authorised the Commission to open negotiations with Norway on behalf of the Union.

The content of the Agreement reflects the negotiating directives of the Council set out in the addendum to the Council Decision of 9 December 2014 authorising the Commission to open negotiations on behalf of the Union for an Agreement between the European Union and Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT.

The cooperation instruments included in the Agreement are the same as those under the EU framework, with the exception of access to databases. The latter has been excluded from the text of the Agreement because it was considered as not proportional to the objectives. In fact, the VAT Information Exchange System (VIES)<sup>4</sup> allows Member States to access information regarding intra-EU transactions, which are not relevant in the context of cooperation with Norway.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

### **• Stakeholder consultations**

The Agreement covers administrative cooperation in the field of VAT between the tax administrations of the EU Member States and Norway. The text was negotiated with the Norwegian authorities along the period 2015 and 2016.

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<sup>4</sup> The VIES is the VAT Information Exchange System. The information available through the VIES and the use of the system are regulated in Chapter V of Council Regulation (EU) No 904/2010.

During the whole process, the Council Working Party on Tax Questions (CWPT) was informed of the state of the negotiations and consulted on the results thereof.

#### **4. OTHER ELEMENTS**

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

##### **Title I – General Provisions**

The objective is to establish the framework for administrative cooperation for the fight against VAT fraud and assistance for recovery of VAT claims (Articles 1).

The definitions (Article 3) are in line with the relevant EU legislation. Therefore, the Agreement encompasses the definition of "requesting authority" for administrative cooperation and combating fraud under Title II (in line with the definition of Council Regulation EU No. 904/2010) while "applicant authority" will apply to the assistance for recovery under Title III (in line with the definition of Council Directive 2010/24/EU). The same definitions are also reflected in the e-forms currently used by the Member States under the EU framework for administrative assistance. Therefore, using the same definitions will allow to use the same e-forms for cooperation with Norway without substantial amendments in their layout.

Also the organisation (Article 4) repeats the structure set up by Council Regulation EU No. 904/2010 and Council Directive 2010/24/EU. On this point, it can be noted that this Agreement does not provide for the possibility to designate "liaison offices" responsible for specific types of taxes, as foreseen under Article 4(3) of Directive 2010/24/EU, since this Agreement only applies to VAT.

The Parties shall ensure that the communication systems necessary for the exchange of information are operational. Therefore a service level agreement should be concluded (Article 5) in order to set the technical quality and quantity for the functioning of the communication and information exchange system. The service level agreement will not refer to the VIES, which is not included in the Agreement amongst the cooperation instruments with Norway.

The Parties must ensure confidentiality and protection of personal data as laid down in the relevant EU legislation (Directive 95/46/EC). Article 6 foresees the conditions for: the disclosure of data only to national authorities concerned with the application of the VAT legislation and for the use of those data; the use for other purposes only if allowed by the law of the states and after authorisation of the state providing the information; the use of the data exchanged; the transmission of the information to a third state and to a third country; the transmission of the information received from a third country.

##### **Title II – Administrative cooperation and combating fraud**

Title II provides for the same cooperation instruments (exchange of information and administrative enquiries, spontaneous exchange of information, feedback, automatic exchange of information, administrative notification, presence in administrative offices and participation in administrative enquiries, simultaneous controls and Eurofisc) as laid down in Council Regulation (EU) No. 904/2010 with the exception of the access to databases through the VIES system. Also the time limits to provide for the information are the same as in the European legal framework.

As regards exchange of information on request, Article 7 paragraph 4 refers to the cases where the supply is taxable in the State of the requesting authority but the taxable person is established in the State of the requested authority. In those cases, the only way the requesting authority has to assess VAT is to ask for assistance to the requested authority.

Therefore, the article foresees a minimal set of data that the requested authority must send to the requesting authority. The categories covered by this provision and listed in Annex 1 to the Agreement are imports of negligible value, services connected with immovable property, telecommunication services, radio and television broadcasting services and electronically supplied services.

As regards the automatic exchange of information (Article 11), the Parties in the Joint Committee (Article 41) will establish the categories of information to be exchanged.

The participation of Norway in Eurofisc (Article 15) will not allow the Eurofisc liaison officials designated by the competent authority of a state the access to the databases of the other state. Furthermore, the Eurofisc Liaison Official of Norway shall not have the role of chair or coordinator in the working fields nor have any right of vote.

Under Article 17, a tax administration can refuse to carry out administrative enquiries when the request involves a disproportionate administrative burden for the requested authority and when the requesting authority has not exhausted the domestic sources of information. Furthermore, bank secrecy shall not be used as a ground for refusing administrative assistance.

The Joint Committee will adopt the forms for the exchange of information. The e-forms currently used by the Member States under Council Regulation (EU) No.904/2010 and Council Directive 2010/24/EU may be also used for the purposes of this Agreement, subject to some minor linguistic amendment. In fact, the current version of the e-forms only refers to "Member States" and "intra-Community" transactions.

### **Title III - Recovery**

Title III provides for instruments for recovery assistance similar to those under Directive 2010/24/EU: exchange of information (including presence in administrative offices and participation in administrative enquiries in the requested state), assistance for the notification of documents, and recovery and precautionary measures.

The conditions and modalities governing these types of recovery assistance are also in line with the conditions and modalities set by Directive 2010/24/EU.

The scope of this Agreement is however limited to VAT claims and to administrative penalties, fines, fees and surcharges, interest and costs relating to such claims (in accordance with Article 2(1)(b) of the Agreement). Contrary to Directive 2010/24/EU, its scope does not cover other taxes and duties. Such limitation of the scope is in line with the negotiating mandate given by the Council.

Nevertheless, in view of facilitating recovery assistance for other taxes and reducing the administrative burden, Article 40(4) provides that the electronic communication network and the standard forms adopted for the implementation of this Agreement (corresponding to the standard forms currently used for recovery assistance between the EU Member States) may also be used for recovery assistance regarding other claims, if such recovery assistance is possible under another bilateral or multilateral legally binding instruments on administrative cooperation between the states. This possibility – no obligation – to use the communication network and the standard forms for other taxes may be useful in practice, as the non-payment of taxes is usually not limited to VAT debts. Therefore, the Agreement allows to use one request form for recovery assistance relating to VAT claims (on the basis of this Agreement) and relating to other taxes (on the basis of other agreements). It will be for each Member State, in consultation with Norway, to decide if and how they want to make use of the faculty offered by Article 40(4).

Article 23 of this Agreement covers exchange of information without prior request. On the basis of this provision, a states may inform the state of establishment or residence of a pending refund of "taxes or duties" to a person established or resident in another state. This provision is similar to Article 6 of Directive 2010/24/EU, which relates to exchange of information without prior request about upcoming refunds of "taxes or duties, other than VAT".

The uniform instruments (uniform notification form and uniform instrument permitting enforcement in the requested State) introduced by Directive 2010/24/EU (Articles 8 and 12) have been introduced in this Agreement (Articles 25 and 29). These standard forms, already in use between all EU Member States, will also be applied for notification and recovery purposes in the relations with Norway. The automatic translation of these forms will be extended to the Norwegian language.

In order to allow for a quick and smooth implementation of the recovery assistance with Norway, Article 40(5) of the Agreement provides that, as long and in so far as no detailed rules are adopted by the Joint Committee for the implementation of Title III, the competent authorities shall make use of the rules, including the standard forms already adopted for the implementation of Council Directive 2010/24/EU.

#### **Title IV – Implementation and Application**

Article 41 sets up a joint Committee composed of representatives of the Parties. The Joint Committee shall ensure the proper functioning and implementation of the Agreement. It shall operate by unanimity and adopt its rules of procedure.

For the purpose of this Agreement Norway will use the e-forms and the CCN/CSI<sup>5</sup> network that are Union Components of the European Information System referred to in point A of the Annex of the Regulation (EU) No 1286/2013 (Fiscalis 2020)<sup>6</sup>. Depending on the technical solution adopted to connect Norway to the CCN/CSI network the Joint Committee will decide the financial contribution that Norway shall pay to the General Budget of the European Union.

The Commission will represent the European Union in the Joint Committee and Member States may participate. However, the adoption of decisions by the Joint Committee requires the prior adoption of the European Union position in accordance with the rules set forth in Article 113 TFEU (by unanimity). The Commission will subsequently follow and defend such decisions in the Joint Committee.

#### **Title V - Final Provisions**

This Agreement will be part of the EU acquis and will prevail over other bilateral or multilateral legally binding instruments on administrative cooperation in the same field. This means that the provisions of this Agreement will apply in cases of incompatibilities.

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<sup>5</sup> The Common Communication Network and Common System Interface (CCN/CSI)

<sup>6</sup> Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25)

Proposal for a

## **COUNCIL DECISION**

**on the signing, on behalf of the European Union, 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 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) and the second paragraph of Article 218 (8) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 9 December 2014, the Council authorised the Commission to open negotiations for an Agreement between the European Union and Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT.
- (2) The text of the Agreement, which is the result of the negotiations, duly reflects the negotiating directives issued by the Council.
- (3) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>7</sup>.
- (4) The Agreement should be signed,

HAS ADOPTED THIS DECISION:

### *Article 1*

The signing 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 is hereby authorised on behalf of the Union.

The text of the Agreement is attached to this Decision.

### *Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

### *Article 3*

The Commission, assisted by representatives of the Member States, shall represent the Union in the Joint Committee set up under Article 41 of the Agreement.

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<sup>7</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

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*



EUROPEAN  
COMMISSION

Brussels, 26.10.2017  
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ANNEX 1

**ANNEX**

**to the**

**Proposal for a Council decision**

**on the signing, on behalf of the European Union, 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**



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',

DESIRING to ensure the correct determination, assessment and collection of value added tax (VAT) and recovery of VAT claims, to avoid double or non-taxation and to combat VAT fraud,

AWARE that combating cross-border VAT fraud and evasion calls for close cooperation between the competent authorities responsible for the application of the legislation in that field,

RECOGNISING that cross-border VAT fraud and evasion have specific features and mechanisms that make them different from other kind of tax frauds, therefore calling for specific legal tools for administrative cooperation, in particular for the mutual exchange of information,

AIMING to contribute to the Eurofisc network for the exchange of targeted information for combating cross border VAT fraud, subject to the restrictions pursuant to this Agreement,;

AWARE that all Contracting Parties should apply rules on confidentiality and the protection of personal data in accordance with Directive 95/46/EC<sup>8</sup> 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, including in the context of Eurofisc,

WHEREAS the assessment of the correct application of VAT on telecommunication, broadcasting and electronically supplied services can only be effective through international cooperation,

CONSIDERING that the European Union and Norway are neighbours and dynamic trade partners, and are also Parties to the Agreement on the European Economic Area ('EEA Agreement'), which aims to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area,

RECOGNISING that, while tax matters fall outside the scope of the EEA Agreement, cooperation aimed at more effective application and enforcement of VAT is in the interest of the European Union and Norway,

HAVE AGREED AS FOLLOWS:

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<sup>8</sup> 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).

## **TITLE I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Objective*

The objective of this Agreement is to establish the framework for administrative cooperation between the Member States of the Union and Norway, in order to enable the authorities responsible for the application of VAT legislation to assist each other in ensuring compliance with that legislation and in protecting VAT revenue.

#### *Article 2*

##### *Scope*

1. This Agreement lays down rules and procedures for cooperation:
  - (a) to exchange any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, and combat VAT fraud;
  - (b) for the recovery of:
    - (i) claims relating to VAT;
    - (ii) administrative penalties, fines, fees and surcharges relating to the claims referred to in point (i) imposed by the administrative authorities that are competent to levy the VAT or carry out administrative enquiries with regard to it, or confirmed by administrative or judicial bodies at the request of those administrative authorities;
    - (iii) interests and costs relating to the claims referred to in points (i) and (ii).
2. This Agreement shall not affect the application of the rules on administrative cooperation and combating fraud and assistance for the recovery of claims in the field of VAT between Member States of the Union.
3. This Agreement shall not affect the application of the rules on mutual assistance in criminal matters.

#### *Article 3*

##### *Definitions*

For the purpose of this Agreement, the following definitions shall apply:

- (a) "VAT" means value added tax pursuant to Council Directive 2006/112/EC on the common system of value added tax for the Union and value added tax pursuant to Norwegian Act of 19 June 2009 No 58 relating to value added tax for Norway;

- (b) "state" means a Member State of the Union or Norway;
- (c) "states" means Member States of the Union and Norway;
- (d) "third country" means a country that is neither a Member State of the Union nor Norway;
- (e) "competent authority" means the authority designated pursuant to Article 4 (1);
- (f) "central liaison office" means the office designated pursuant to Article 4 (2) with the principal responsibility for contacts for the application of Title II or Title III;
- (g) "liaison department" means any office other than the central liaison office designated as such pursuant to Article 4(3) to request or grant mutual assistance under Title II or Title III;
- (h) "competent official" means any official designated pursuant to Article 4(4) who can directly exchange information under Title II;
- (i) "requesting authority" means a central liaison office, a liaison department or a competent official who makes a request for assistance under Title II, on behalf of a competent authority;
- (j) "applicant authority" means a central liaison office or a liaison department of a state which makes a request under Title III;
- (k) "requested authority" means the central liaison office, the liaison department or – as far as cooperation under Title II is concerned – the competent official who receives a request from a requesting or an applicant authority;
- (l) "person" means:
  - (i) a natural person
  - (ii) a legal person;
  - (iii) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or
  - (iv) any other legal arrangement of whatever nature and form, which has legal personality or not, subject to VAT or liable for the payment of the claims referred to in Article 2(1)(b);
- (m) "Joint Committee" means the committee responsible for ensuring the proper functioning and implementation of this Agreement pursuant to Article 41;
- (n) "administrative enquiry" means all the controls, checks and other action taken by the states in the performance of their duties with a view to ensuring the proper application of the VAT legislation;
- (o) "spontaneous exchange" means the non-systematic communication, at any moment and without prior request, of information to another state;
- (p) "automatic exchange" means the systematic communication of predefined information to another state, without prior request;

- (q) "simultaneous control" means the coordinated checking of the tax liability of one or more related taxable persons organised by two or more states with common or complementary interests;
- (r) "by electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
- (s) "CCN/CSI network" means the common platform based on the common communication network ('CCN') and common system interface ('CSI'), developed by the Union to ensure all transmissions by electronic means between competent authorities in the area of taxation;
- (t) "telecommunication services, radio and television broadcasting services and electronically supplied services" means the services as defined in Articles 6a, 6b and 7 of Council Implementing Regulation (EU) No 282/2011<sup>9</sup> laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

#### *Article 4*

##### *Organisation*

1. Each state shall designate a competent authority responsible for the application of this Agreement.
2. Each state shall designate:
  - (a) one central liaison office with the principal responsibility for the application of Title II of this Agreement, and
  - (b) one central liaison office with the principal responsibility for the application of Title III of this Agreement,
3. Each competent authority may designate, directly or by delegation:
  - (a) liaison departments to exchange directly information under Title II of this Agreement;
  - (b) liaison departments to request or grant mutual assistance under Title III of this Agreement, in relation to their specific territorial or operational competences.
4. Each competent authority may designate, directly or by delegation, competent officials who can directly exchange information on the basis of Title II of this Agreement.
5. The central liaison offices shall keep the list of liaison departments and competent officials up-to-date and make it available to the other central liaison offices.
6. Where a liaison department or a competent official sends or receives a request for assistance under this Agreement, it shall inform thereof its central liaison office.
7. Where a central liaison office, a liaison department or a competent official receives a request for mutual assistance requiring action outside its competence, it shall forward the request without delay to the competent central liaison office or liaison department,

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<sup>9</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

and shall inform the requesting or applicant authority thereof. In such a case, the period laid down in Article 8 shall start the day after the request for assistance has been forwarded to the competent central liaison office or the competent liaison department.

8. Each state shall inform the European Commission within one month from the signature of the Agreement of its competent authority for the purposes of this Agreement and without delay about any change thereof. The European Commission keeps the list of competent authorities updated and makes it available to the Joint Committee.

## *Article 5*

### *Service Level Agreement*

A service level agreement ensuring the technical quality and quantity of the services for the functioning of the communication and information exchange systems shall be concluded according to the procedure established by the Joint Committee.

## *Article 6*

### *Confidentiality and protection of personal data*

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 and, to the extent necessary for the protection of personal data, in accordance with Directive 95/46/EC of the European Parliament and of the Council<sup>10</sup>, and safeguards which may be specified by the state supplying the information as required under its law.
2. Such information may be disclosed to persons or authorities (including courts and administrative or supervisory bodies) concerned with the application of VAT laws and for the purpose of a correct assessment of VAT as well as for the purpose of applying enforcement including recovery or precautionary measures with regard to VAT claims.
3. The information referred to in paragraph 1 may also be used for assessment and enforcement including recovery of other taxes and compulsory social security contributions. If the information exchanged reveals or helps to prove the existence of breaches of the tax law, it may also be used for imposing administrative or criminal sanctions. Only the persons or authorities mentioned above may use the information and then only for purposes spelled out in the preceding sentences. They may disclose it in public court proceedings or in judicial decisions.
4. Notwithstanding paragraphs 1 and 2, the state providing the information, on the basis of a reasoned request, shall permit its use for purposes other than those referred to in Article 2(1) by the state which receives the information, if, under the legislation of the state providing the information, the information may be used for similar purposes. The requested authority shall accept or refuse any such request within one month.

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<sup>10</sup> 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).

5. Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by a state under the assistance provided by this Agreement, may be invoked as evidence in that state on the same basis as similar documents provided by another authority of that state.
6. Information provided by a state to another state may be transmitted by the latter to another state, subject to prior authorisation 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 at which it received the communication from the state wishing to share the information
7. The states may transmit information obtained in accordance with this Agreement to third countries subject to the following conditions:
  - (a) the transmission of information is subject to the national legislation of the transmitting state implementing Article 25 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, especially as regards the adequate level of protection provided in the third country concerned;
  - (b) the competent authority from which the information originates has consented to that communication;
  - (c) the transmission is permitted by assistance arrangements between the state transmitting the information and that particular third country.
8. When a state receives information from a third country, the states may exchange that information, in so far as permitted by the assistance arrangements with that particular third country.
9. Each state shall immediately notify the other states concerned regarding any breach of confidentiality, failure of safeguards of personal data and any sanctions and remedial actions consequently imposed.
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 CCN network.

## **TITLE II**

### **ADMINISTRATIVE COOPERATION AND COMBATING FRAUD**

#### **Chapter 1**

#### **Exchange of information on request**

##### *Article 7*

##### *Exchange of information and administrative enquiries*

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 2(1)(a) relating to a specific case or cases.

2. For the purpose of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.
3. The request referred to in paragraph 1 may contain a reasoned request for an administrative enquiry. If the requested authority takes the view that the administrative enquiry is not necessary, it shall immediately inform the requesting authority of the reasons thereof.
4. Where the requested authority refuses an administrative enquiry into the amounts declared by a taxable person in connection with the supplies of goods and services indicated in Annex 1, which are made by a taxable person established in the state of the requested authority and are taxable in the state of the requesting authority, the requested authority shall at least provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the state of the requesting authority over the previous two years.
5. In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own state.
6. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information it obtains or has in its possession as well as the results of administrative enquiries, in the form of reports, statements and any other documents, or certified true copies or extracts thereof.
7. Original documents shall be provided only where this is not contrary to the provisions in force in the state of the requested authority.

## *Article 8*

### *Time limit for providing information*

1. The requested authority shall provide the information referred to in Article 7 as quickly as possible and no later than three months following the date of receipt of the request. However, where the requested authority is already in possession of that information, the time limit shall be reduced to a maximum period of one month.
2. In certain special categories of cases, time limits which are different from those provided for in paragraph 1 may be agreed between the requested and the requesting authorities.
3. Where the requested authority is unable to respond to the request within the time limits referred to in paragraphs 1 and 2, it shall forthwith inform the requesting authority in writing of the reasons for its failure to do so, and when it considers it would be likely to be able to respond.

## Chapter 2

### Exchange of information without prior request

#### *Article 9*

##### *Types of exchange of information*

Exchange of information without prior request shall either be spontaneous, as provided for in Article 10, or automatic, as provided for in Article 11.

#### *Article 10*

##### *Spontaneous exchange of information*

A competent authority of a state shall, without prior request, forward to the competent authority of another state the information referred to in Article 2(1)(a) which has not been forwarded under the automatic exchange referred to in Article 11 and of which it is aware of in the following cases:

- (a) where taxation is deemed to take place in the state of destination and information from the state of origin is necessary for the effectiveness of the control system of the state of destination;
- (b) where a state has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other state;
- (c) where there is a risk of tax loss in the other state.

#### *Article 11*

##### *Automatic exchange of information*

1. The categories of information subject to automatic exchange shall be determined by the Joint Committee in accordance with Article 41.
2. A state may abstain from taking part in the automatic exchange of one or more categories of information referred to in paragraph 1 where the collection of information for such exchange would require the imposition of new obligations on persons liable for VAT or would impose a disproportionate administrative burden on that state.
3. Each state shall notify the Joint Committee in writing of its decision, taken in accordance with the previous paragraph.



## Chapter 3

### Other forms of cooperation

#### *Article 12*

##### *Administrative notification*

1. The requested authority shall, at the request of the requesting authority and in accordance with the rules governing the notification of similar instruments in the state of the requested authority, notify the addressee of all instruments and decisions which emanate from the requesting authorities and concern the application of VAT legislation in the state of the requesting authority.
2. Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.
3. The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of notification of the decision or instrument to the addressee.

#### *Article 13*

##### *Presence in administrative offices and participation in administrative enquiries*

1. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter the requested authority may allow officials authorised by the requesting authority to be present in the offices of the requested authority, or any other place where those authorities carry out their duties, with a view to exchanging the information referred to in Article 2(1)(a). 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.
2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter the requested authority may allow officials authorised by the requesting authority to be present during the administrative enquiries carried out in the territory of the state of the requested authority, with a view to exchanging the information referred to in Article 2(1)(a). 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.
3. The officials of the requesting authority present in another state in accordance with paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

## *Article 14*

### *Simultaneous controls*

1. The states may agree to conduct simultaneous controls whenever they consider such controls to be more effective than controls carried out by only one state.
2. A state shall identify independently the taxable persons which it intends to propose for a simultaneous control. The competent authority of that state shall notify the competent authority of the other state concerned of the cases proposed for a simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.
3. A competent authority that receives the proposal for a simultaneous control shall confirm its agreement or communicate its reasoned refusal to the counterpart authority, in principle within two weeks of receipt of the proposal, but within a month of receipt of the proposal at the latest.
4. Each competent authority concerned shall appoint a representative to be responsible for supervising and coordinating the control operation.

## **Chapter 4**

### **Eurofisc**

## *Article 15*

### *Participation of Norway in Eurofisc*

1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, Norway shall be invited to participate in the network called Eurofisc, provided for in Chapter X of Council Regulation (EU) 904/2010<sup>11</sup> on administrative cooperation and combating fraud in the field of value added tax, under the conditions laid down in this Chapter.
2. The participation of Norway in Eurofisc will not allow the Eurofisc liaison officials designated by the competent authority of a state the access to the databases of the other state.

## *Article 16*

### *Eurofisc Liaison officials*

1. The competent authority of Norway shall designate at least one Eurofisc liaison official responsible for the exchange of information in the Eurofisc working fields where Norway participates.
2. The Eurofisc liaison officials shall be competent officials within the meaning of Article 4(4). They shall remain accountable only to their national administrations.

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<sup>11</sup> Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

3. The Eurofisc liaison officials of Norway shall not be designated as working field coordinators or Eurofisc chair or participate in any vote procedure provided by the Eurofisc Rules of procedure.

## **Chapter 5**

### **General provisions**

#### *Article 17*

##### *Conditions governing the exchange of information*

1. The requested authority shall provide a requesting authority with the information referred in Article 2(1)(a) or with an administrative notification referred to in Article 12 provided that:
  - (a) the number and nature of the requests for information made by the requesting authority do not impose a disproportionate administrative burden on that requested authority;
  - (b) the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.
2. This Agreement shall impose no obligation to have enquiries carried out or to provide information on a particular case if the laws or administrative practices of the state which would have to supply the information do not authorise that state to carry out those enquiries or collect or use that information for own purposes.
3. A requested authority may refuse to provide information where the requesting authority is unable, for legal reasons, to provide similar information. The requested authority shall inform the Joint Committee of the grounds for the refusal.
4. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.
5. Paragraphs 2, 3 and 4 should on no account be interpreted as authorising the requested authority to refuse to supply information on the sole grounds that this information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a legal person.
6. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance.

#### *Article 18*

##### *Feedback*

Where a competent authority provides information pursuant to Article 7 or 10, it may request the competent authority which receives the information to give feedback thereon. If such request is made, the competent authority which receives the information shall, without prejudice to the rules on tax secrecy and data protection

applicable in its state, send feedback as soon as possible, provided that this does not impose a disproportionate administrative burden on it.

#### *Article 19*

##### *Language*

Requests for assistance, including requests for notification and attached documents shall be made in a language agreed between the requested and requesting authority.

#### *Article 20*

##### *Statistical data*

By 30 June each year, the Parties shall communicate by electronic means to the Joint Committee a list of statistical data on the application of this Title.

#### *Article 21*

##### *Standard forms and means of communication*

1. Any information communicated pursuant to Articles 7, 10, 11, 12 and 18 and the statistics pursuant to Article 20 shall be provided using a standard form referred to in Article 41(2)(d).
2. The standard forms shall be transmitted, as far as possible, by electronic means.
3. Where the request has not been lodged completely through the electronic systems the requested authority shall confirm receipt of the request by electronic means without delay and, in any event, no later than five working days after receipt.
4. Where an authority has received a request or information of which it is not the intended recipient, it shall send a message by electronic means to the sender without delay and, in any event, no later than five working days after receipt.

### **TITLE III**

#### **RECOVERY ASSISTANCE**

#### **Chapter 1**

#### **Exchange of information**

#### *Article 22*

##### *Request for information*

1. At the request of the applicant authority, the requested authority shall provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims as referred to in Article 2(1)(b).

For the purpose of providing that information, the requested authority shall arrange for the carrying-out of any administrative enquiries necessary to obtain it.

2. The requested authority shall not be obliged to supply information:
  - (a) which it would not be able to obtain for the purpose of recovering similar claims on its own behalf;
  - (b) which would disclose any commercial, industrial or professional secrets;
  - (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the state of the requested authority.
3. Paragraph 2 shall in no case be construed as permitting a requested authority to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
4. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

### *Article 23*

#### *Exchange of information without prior request*

Where a refund of taxes or duties relates to a person established or resident in another state in whose territory this Agreement applies, the state from which the refund is to be made may inform the state of establishment or residence of the pending refund.

### *Article 24*

#### *Presence in administrative offices and participation in administrative enquiries*

1. By agreement between the applicant authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the applicant authority may, with a view to promoting mutual assistance provided for in this Title:
  - (a) be present in the offices where officials of the requested state carry out their duties;
  - (b) be present during administrative enquiries carried out in the territory of the requested state;
  - (c) assist the competent officials of the requested state during court proceedings in that state.
2. In so far as it is permitted under applicable legislation in the requested state, the agreement referred to in paragraph 1(b) may provide that officials of the applicant authority may interview individuals and examine records.
3. Officials authorised by the applicant authority who make use of the possibility offered by paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

## Chapter 2

### Assistance for the notification of documents

#### *Article 25*

##### *Request for notification of certain documents relating to claims*

1. At the request of the applicant authority, the requested authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the state of the applicant authority and which relate to a claim as referred to in Article 2(1)(b) or to its recovery.

The request for notification shall be accompanied by a standard form containing at least the following information:

- (a) name, address and other data relevant to the identification of the addressee;
  - (b) the purpose of the notification and the period within which notification should be effected;
  - (c) a description of the attached document and the nature and amount of the claim concerned;
  - (d) name, address and other contact details regarding:
    - (i) the office responsible with regard to the attached document, and, if different;
    - (ii) the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation.
2. The applicant authority shall make a request for notification pursuant to this article only when it is unable to notify in accordance with the rules governing the notification of the document concerned in its own state or when such notification would give rise to disproportionate difficulties.
  3. The requested authority shall forthwith inform the applicant authority of any action taken on its request for notification and in particular of the date of notification of the document to the addressee.

#### *Article 26*

##### *Means of notifications*

1. The requested authority shall ensure that notification in the requested state is effected in accordance with the applicable national laws, regulations and administrative practices.
2. Paragraph 1 shall be without prejudice to any other form of notification made by a competent authority of the applicant state in accordance with the rules in force in that state.

A competent authority established in the applicant state may notify any document directly by registered mail or electronically to a person in another state in whose territory this Agreement applies.

## **Chapter 3**

### **Recovery or precautionary measures**

#### *Article 27*

##### *Request for recovery*

1. At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the state of the applicant authority.
2. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority, it shall forward it to the requested authority.

#### *Article 28*

##### *Conditions governing a request for recovery*

1. The applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement are contested in the state of the applicant authority, except in cases where the third subparagraph of Article 31(4) applies.
2. Before the applicant authority makes a request for recovery, appropriate recovery procedures available in the state of the applicant authority shall be applied, except in the following situations:
  - (a) where it is obvious that there are no assets for recovery in that state or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the state of the requested authority;
  - (b) where recourse to such procedures in the state of the applicant authority would give rise to disproportionate difficulty.

#### *Article 29*

##### *Instrument permitting enforcement in the state of the requested authority and other accompanying documents*

1. Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the state of the requested authority.

This uniform instrument permitting enforcement shall reflect the substantial contents of the initial instrument permitting enforcement in the state of the applicant authority, and constitute the sole basis for recovery and precautionary measures in the state of

the requested authority. No act of recognition, supplementing or replacement shall be required in that state.

The uniform instrument permitting enforcement shall contain at least the following information:

- (a) information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
  - (b) name and other data relevant to the identification of the debtor;
  - (c) name, address and other contact details regarding:
    - (i) the office responsible for the assessment of the claim, and, if different;
    - (ii) the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.
2. The request for recovery of a claim may be accompanied by other documents relating to the claim issued by the state of the applicant authority.

### *Article 30*

#### *Execution of the request for recovery*

1. For the purpose of the recovery in the state of the requested authority, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of that state, except where otherwise provided for in this Agreement. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of that state applying to the same claims, except where otherwise provided for in this Agreement.
- The state of the requested authority shall not be obliged to grant to claims whose recovery is requested preferences accorded to similar claims arising in the state of the requested authority, except where otherwise agreed or provided under the law of that state. A state which, in the execution of this Agreement, grants preferences to claims arising in another state may not refuse to grant the same preferences to the same or similar claims of other Member States of the Union on the same conditions.
- The state of the requested authority shall recover the claim in its own currency.
2. The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery.
3. From the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions applicable to its own claims.
4. The requested authority may, where the applicable laws, regulations or administrative provisions so permit, allow the debtor time to pay or authorise payment by instalment and it may charge interest in that respect. It shall inform the applicant authority of any such decision.



5. Without prejudice to Article 37(1), the requested authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in paragraphs 3 and 4 of this Article.

### *Article 31*

#### *Disputes*

1. Disputes concerning the claim, the initial instrument permitting enforcement in the state of the applicant authority or the uniform instrument permitting enforcement in the state of the requested authority and disputes concerning the validity of a notification made by an applicant authority shall fall within the competence of the competent bodies of the state of the applicant authority. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the state of the applicant authority or the uniform instrument permitting enforcement in the state of the requested authority is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the state of the applicant authority in accordance with the laws in force there.
2. Disputes concerning enforcement measures taken in the state of the requested authority or concerning the validity of a notification made by an authority of the requested state shall be brought before the competent body of that state in accordance with its laws and regulations.
3. Where an action as referred to in paragraph 1 has been brought, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.
4. As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, and without prejudice to Article 33, the requested authority may take precautionary measures to guarantee recovery in so far as the applicable laws or regulations allow.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in its state, ask the requested authority to recover a contested claim or the contested part of a claim, in so far as the laws, regulations and administrative practices in force in the state of the requested authority allow. Any such request shall be reasoned. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the state of the requested authority.

If a mutual agreement procedure has been initiated between the states of the applicant and requested authorities, and the outcome of the procedure may affect the claim in respect of which assistance has been requested, the recovery measures shall be suspended or stopped until that procedure has been terminated, unless it concerns a

case of immediate urgency because of fraud or insolvency. If the recovery measures are suspended or stopped, the second subparagraph shall apply.

## *Article 32*

### *Amendment or withdrawal of the request for recovery assistance*

1. The applicant authority shall inform the requested authority immediately of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.
2. If the amendment of the request is caused by a decision of the competent body referred to in Article 31(1), the applicant authority shall communicate this decision together with a revised uniform instrument permitting enforcement in the state of the requested authority. The requested authority shall then proceed with further recovery measures on the basis of the revised instrument.

Recovery or precautionary measures already taken on the basis of the original uniform instrument permitting enforcement in the state of the requested authority may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the state of the applicant authority or the original uniform instrument permitting enforcement in the state of the requested authority.

Articles 29 and 31 shall apply in relation to the revised instrument.

## *Article 33*

### *Request for precautionary measures*

1. At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the state of the applicant authority is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the state of the applicant authority, in so far as precautionary measures are possible in a similar situation under the law and administrative practices of the state of the applicant authority.

The document drawn up for permitting precautionary measures in the state of the applicant authority and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the state of the requested authority. This document shall not be subject to any act of recognition, supplementing or replacement in the state of the requested authority.

2. The request for precautionary measures may be accompanied by other documents relating to the claim.

## *Article 34*

### *Rules governing the request for precautionary measures*

In order to give effect to Article 33, Articles 27(2), 30(1) and (2), 31, and 32 shall apply *mutatis mutandis*.

## *Article 35*

### *Limits to the requested authority's obligations*

1. The requested authority shall not be obliged to grant the assistance provided for in Articles 27 to 33 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the state of the requested authority, in so far as the laws, regulations and administrative practices in force in that state allow such exception for national claims.
2. The requested authority shall not be obliged to grant the assistance provided for in Articles 22 and 24 to 33 if the initial request for assistance pursuant to Article 22, 24, 25, 27 or 33 is made in respect of claims which are more than 5 years old, dating from the due date of the claim in the state of the applicant authority to the date of the initial request for assistance.

However, in cases where the claim or the initial instrument permitting enforcement in the state of the applicant authority is contested, the 5-year period shall be deemed to begin from the moment when it is established in the state of the applicant authority that the claim or the instrument permitting enforcement may no longer be contested.

Moreover, in cases where a postponement of the payment or instalment plan has been granted by the state of the applicant authority, the 5-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

However, in those cases the requested authority shall not be obliged to grant assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the state of the applicant authority.

3. A state shall not be obliged to grant assistance if the total amount of the claims covered by this Agreement, for which assistance is requested, is less than EURO 1 500.
4. The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance.

## *Article 36*

### *Questions on limitation*

1. Questions concerning periods of limitation shall be governed solely by the laws in force in the state of the applicant authority.
2. In relation to the suspension, interruption or prolongation of periods of limitation, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which have the effect of suspending, interrupting or prolonging the period of limitation according to the laws in force in the state of the requested authority shall have the same effect in the state of the applicant authority, on condition that the corresponding effect is provided for under the law of the latter state.

If suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in the state of the requested authority, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which, if they had been carried out by or on behalf of the applicant authority in its own state, would have had the effect of suspending, interrupting or prolonging the period of limitation according to the laws of that state shall be deemed to have been taken in the latter state, in so far as that effect is concerned.

The first and second subparagraphs shall not affect the right of the state of the applicant authority to take measures which have the effect of suspending, interrupting or prolonging the period of limitation in accordance with the laws in force in that state.

3. The applicant authority and the requested authority shall inform each other of any action which interrupts, suspends or prolongs the limitation period of the claim for which the recovery or precautionary measures were requested, or which may have this effect.

### *Article 37*

#### *Costs*

1. In addition to the amounts referred to in Article 30(5), the requested authority shall seek to recover from the person concerned and retain the costs linked to the recovery that it incurred, in accordance with the laws and regulations of its state.
2. The states shall renounce all claims on each other for the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Agreement.

However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.

3. Notwithstanding paragraph 2, the state of the applicant authority shall be liable to the state of the requested authority for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument permitting enforcement and/or precautionary measures issued by the applicant authority are concerned.

## **Chapter 4**

### **General rules governing all types of recovery assistance requests**

#### *Article 38*

#### *Use of languages*

1. All requests for assistance, standard forms for notification and uniform instruments permitting enforcement in the state of the requested authority shall be sent in, or shall be accompanied by a translation into, the official language, or one of the official languages, of the state of the requested authority. The fact that certain parts thereof are written in a language other than the official language, or one of the official languages, of that state, shall not affect their validity or the validity of the procedure, in so far as that other language is one agreed between the states concerned.

2. The documents for which notification is requested pursuant to Article 25 may be sent to the requested authority in an official language of the state of the applicant authority.
3. Where a request is accompanied by documents other than those referred to in paragraphs 1 and 2, the requested authority may, where necessary, require from the applicant authority a translation of such documents into the official language, or one of the official languages of the state of the requested authority, or into any other language agreed between the states concerned.

#### *Article 39*

##### *Statistical data*

By 30 June each year, the Parties shall communicate by electronic means to the Joint Committee a list of statistical data on the application of this Title

#### *Article 40*

##### *Standard forms and means of communication*

1. Requests pursuant to Article 22(1) for information, requests pursuant to Article 25(1) for notification, requests pursuant to Article 27(1) for recovery or requests pursuant to Article 33(1) for precautionary measures and communication of statistical data pursuant to Article 39 shall be sent by electronic means, using a standard form, unless this is impracticable for technical reasons. As far as possible, these forms shall also be used for any further communication with regard to the request.

The uniform instrument permitting enforcement in the state of the requested authority, the document permitting precautionary measures in the state of the applicant authority and the other documents referred to in Articles 29 and 33 shall also be sent by electronic means, unless this is impracticable for technical reasons.

Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means, unless this is impracticable for technical reasons.

Standard forms and communication by electronic means may also be used for the exchange of information pursuant to Article 23.

2. Paragraph 1 shall not apply to the information and documentation obtained through the presence of officials in administrative offices in another state or through participation in administrative enquiries in another state, in accordance with Article 24.
3. If communication is not made by electronic means or with use of standard forms, this shall not affect the validity of the information obtained or of the measures taken in the execution of a request for assistance.
4. The electronic communication network and the standard forms adopted for the implementation of this Agreement may also be used for recovery assistance regarding other claims than the claims referred to in Article 2(1)(b), if such recovery assistance is possible under other bilateral or multilateral legally binding instruments on administrative cooperation between the states.

5. As long and in so far as no detailed rules are adopted by the Joint Committee for the implementation of this Title, the competent authorities shall make use of the rules, including the standard forms, currently adopted for the implementation of Council Directive 2010/24/EU<sup>12</sup>, whereby the term "Member State" will be interpreted as including Norway.

Notwithstanding the previous subparagraph, the state of the requested authority shall use the EURO currency for the transfer of the recovered amounts to the state of the applicant authority, unless otherwise agreed between the states concerned. States where the official currency is not the EURO shall agree with Norway on the currency for the transfer of the recovered amounts and notify the Joint Committee thereof.

## **TITLE IV**

### **IMPLEMENTATION AND APPLICATION**

#### *Article 41*

##### *Joint Committee*

1. The Parties hereby establish a Joint Committee, composed of representatives of the Parties. The Joint Committee shall ensure the proper functioning and implementation of this Agreement.
2. The Joint Committee shall make recommendations for promoting the aims of this Agreement and adopt decisions:
  - (a) determining the frequency, the practical arrangements and the exact categories of information subject to automatic exchange referred to in Article 11;
  - (b) reviewing the result of the automatic exchange of information for each category established pursuant to point (a), so as to ensure that this type of exchange takes place only where it is the most efficient means for the exchange of information;
  - (c) establishing new categories of information to be exchanged pursuant to Article 11, should the automatic exchange be the most efficient means of cooperation;
  - (d) for the adoption of the standard form for the communication of information pursuant to Articles 21(1) and 40(1);
  - (e) establishing what shall be transmitted via the CCN/CSI network or other means;
  - (f) on the amount and the modalities of the financial contribution to be made by Norway to the General Budget of the European Union in respect of the cost generated by its participation in the European information systems, taking into account the decisions referred to in points (d) and (e);

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<sup>12</sup> 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)

- (g) adopting implementing rules on the practical arrangements with regard to the organisation of the contacts between the central liaison offices and liaison departments referred to in Article 4(2)(b) and Article 4(3)(b);
  - (h) establishing the practical arrangements between the central liaison offices for the implementation of Article 4(5);
  - (i) adopting implementing rules regarding the conversion of the sums to be recovered and the transfer of sums recovered;
  - (j) adopting the procedure for the conclusion of the Service Level Agreement referred to Article 5;
  - (k) to amend the references to legal acts of the Union and Norway included in this Agreement.
3. The Joint Committee shall operate by unanimity. Decisions of the Joint Committee shall be binding on the Parties. The Joint Committee shall adopt its own rules of procedure.
4. The Joint Committee shall meet at least once every two years. Either Party may request that a meeting be convened. The Joint Committee shall be chaired alternately by each of the Parties. The date and place of each meeting, as well as the agenda, shall be determined by agreement between the Parties.
5. If a Party wishes the Agreement to be revised, it shall lay a proposal before the Joint Committee, which shall make recommendations, notably for the commencement of negotiations according to the rules for international negotiations of the Parties

#### *Article 42*

#### *Dispute settlement*

Any dispute between the Parties relating to the interpretation or application of this 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.

### **TITLE V**

### **FINAL PROVISIONS**

#### *Article 43*

#### *Territorial scope*

This Agreement shall apply to the territory of Norway, as set forth in the Norwegian Act of 19 June 2009 no. 58 relating to Value Added Tax Article 1-2, and to the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, with the exception of any territory referred to in Article 6 of Directive 2006/112/EC.

## *Article 44*

### *Entry into force, duration and termination*

1. This Agreement shall be approved by the Parties in accordance with their own internal legal procedures.
2. This 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.
3. This Agreement shall be valid indefinitely. Either Party may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of the notification.
4. Notifications made in accordance with this Article shall be sent, in the case of the Union, to the General Secretariat of the Council of the Union and, in the case of Norway, to the Ministry of Foreign Affairs.

## *Article 45*

### *Annexes*

The Annexes to this Agreement shall form an integral part thereof.

## *Article 46*

### *Relation to bilateral or multilateral agreements or arrangements between the states*

The provisions of this Agreement shall take precedence over the provisions of any bilateral or multilateral legally binding instrument on administrative cooperation, combating fraud and recovery of claims in the field of VAT that has been concluded between Member State(s) of the Union and Norway, in so far as the provisions of the latter are incompatible with those of this Agreement.

## *Article 47*

### *Authentic text*

This Agreement is drawn up in duplicate in Norwegian, Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovene, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.



## *Article 48*

### *Extension of the Agreement to new Member States of the EU*

Where a country becomes a Member State of the Union, the text of the Agreement in the language of the new acceding Member State as established by the Council of the Union shall be authenticated by an exchange of letters between the Union and Norway.

Signatures

## **ANNEX 1**

List of supplies of goods and services to which Article 7(4) applies:

- (1) imports of negligible value (Article 23 of Council Directive 2009/132/EC<sup>13</sup>);
- (2) services connected with immovable property (Article 47 of Directive 2006/112/EC);
- (3) telecommunication services, radio and television broadcasting services and electronically supplied services [Article 3(t) of this Agreement].

## **COM (2017) 624**

### **Information Note**

#### **1. Proposal**

Proposal for a council decision on the conclusion, on behalf of the European Union, 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

#### **2. Date of Commission document**

26 October 2017

#### **3. Number of Commission document**

COM (2017) 624

#### **4. Number of Council document:**

2017/0273 (NLE)

#### **5. Dealt with in Brussels by**

ECOFIN Council Tax Questions Working Group.

#### **6. Department with primary responsibility**

Department of Finance.

#### **7. Other Departments involved**

Office of the Revenue Commissioners.

#### **8. Background to, Short summary and aim of the proposal**

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<sup>13</sup> Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ L 292, 10.11.2009, p. 5)

Co-operation with third countries is essential to fight VAT fraud. In particular, Norway is a Member of the European Economic Area with a VAT system similar to that applied in the EU, which enjoys a good tradition of cooperation in the field of VAT with the EU Member States. The bilateral Agreement between the EU and Norway will provide for a solid legal framework for a sound cooperation between Norway and all the Member States. The cooperation instruments included in the Agreement are the same as those under the EU framework, with the exception of access to databases. The latter has been excluded from the text of the Agreement because it was not considered proportional to the objectives.

## **9. Legal basis of the proposal**

Article 113 of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 218 (5) and the second paragraph of Article 218 (8).

## **10. Voting Method**

Unanimity.

## **11. Role of the EP**

Consultation

## **12. Category of proposal**

This is a measure designed to extend the EU system of administrative cooperation to non-EU countries, in this case Norway, to ensure effective taxation of e-commerce.

## **13. Implications for Ireland & Ireland's Initial View**

This proposal should have positive tax collection implications for Ireland and all EU Member States by increasing administrative co-operation between the EU and the Kingdom of Norway.

## **14. Impact on the public**

N/A

## **15. Have any consultations with Stakeholders taken place or are there any plans to do so?**

No.

## **16. Are there any subsidiarity issues for Ireland?**

No

## **17. Anticipated negotiating period**

Perhaps 1 month

**18. Proposed implementation date**

1 January 2018.

**19. Consequences for national legislation**

N/A

**20. Method of Transposition into Irish law**

N/A

**21. Anticipated Transposition date**

N/A

**22. Consequences for the EU budget in Euros annually**

As this is regarding measures to facilitate the collection of tax, budget consequences should be positive, although difficult to estimate at this stage.

**23. Contact name, telephone number and e-mail address of official in Department with primary responsibility**

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**Date: 24 November 2017**