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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on an agreement between the European Union and the Kingdom of Norway in the field of administrative cooperation in direct tax matters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

• Reasons for and objectives of the Recommendation

In 2024, the Kingdom of Norway (Norway) expressed an interest in entering into negotiations with the Union to conclude an Agreement to enhance administrative cooperation in direct tax matters with the Member States. The Agreement would provide the legal basis for a partial extension to Norway of Council Directive 2011/16/EU of 15 February 2011[1] (Directive on Administrative Cooperation in the field of taxation - DAC), including its subsequent amendments.

The DAC establishes a comprehensive framework of administrative cooperation between Member States' tax authorities in the field of direct taxation. It provides for three types of exchanges of information (automatic, on request and spontaneous) as well as for advanced tools to facilitate cooperation between Member States' tax authorities (simultaneous controls, joint audits, presence in administrative office and enquiries) with a view to combating tax fraud, evasion, and avoidance.

Norway is a member of the Organisation for Economic Cooperation and Development (OECD) and the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and a signatory to several international instruments on administrative cooperation in the field of direct taxation as well as to the statement on a Two–Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy[2]. The current framework of administrative cooperation for direct tax purposes in place between EU Member States and Norway relies on two main pillars, namely bilateral tax agreements concluded between Norway and individual Member States and multilateral cooperation instruments agreed in the context of the OECD. The Agreement with the Union would establish a deeper and more integrated framework of cooperation for direct tax purposes between the parties, along the lines of what is already in place between EU Member States.

More specifically, the objective is to provide for reciprocal automatic exchange of tax information between the Member States and Norway in three main areas of the DAC: (i) on potentially tax-harmful cross-border arrangements, in accordance with Council Directive 2018/822 of 25 May 2018[3] (DAC6); (ii) on the categories of income and assets listed in article 8[4] of the DAC, as amended by Council Directive 2021/514 of 22 March 2021[5] (DAC7) and Council Directive 2023/2226 of 17 October 2023[6] (DAC8); and (iii) on tax rulings and advance pricing arrangements, in accordance to Council Directive 2015/2376 of 8 December 2015[7] (DAC3).

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1 OJ L 64, 11.3.2011, p.1-12

2 https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf

3 OJ L 139, 5.6.2018, p.1-13

4 Income from employment; director's fees; life insurance products not covered by other Union legal instruments on exchange of information and other similar measures; pensions; ownership of and income from immovable property; royalties, non-custodial dividend income other than income from dividends exempt from corporate income tax pursuant to Articles 4, 5 or 6 of Council Directive 2011/96/EU.

5 OJ L 104, 25.3.2021, p.1-26

6 OJ L, 2023/2226, 24.10.2023

7 OJ L 332, 18.12.2015, p.1-10

Other forms of administrative cooperation covered by DAC, besides automatic exchange of information, could also be included if deemed useful to offer better opportunities to tackle tax evasion and avoidance and ensure the level playing field.

To ensure that the Agreement remains fully aligned with corresponding provisions of the Directive, the Agreement should include a review mechanism requiring the parties to amend it to reflect any future amendments of the Directive concerning areas covered by the Agreement.

As Norway is already the signatory of several international instruments on administrative cooperation, some provisions of the DAC are not considered immediately relevant to enhance cooperation in direct tax matters between the Union and Norway and have therefore not been covered in this proposal. In this respect, an extension of Council Directive 2014/107/EU of 9 December 2014[8] (DAC2) is not deemed necessary since Member States and Norway already exchange equivalent information under the Multilateral Competent Authority Agreement on the Automatic exchange of financial account information ("CRS MCAA")[9]. Likewise, the extension of DAC7 and DAC8 is not contemplated since it would trigger duplicative reporting requirements for stakeholders. As a matter of facts, EU Member States and Norway can already exchange relevant information respectively under the OECD Model Rules on Digital Platform Operators and the Crypto-Asset Reporting Framework ("CARF")[10].

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

This Recommendation is fully in line with the Commission's objective to increase tax transparency and information exchange not only within the Union but also with third countries, with a view to fight against tax fraud, evasion and avoidance. This commitment is explicitly reflected in the Communication on an "Action plan for fair and simple taxation supporting the recovery strategy" of 15 July 2020[11], which encouraged an effective cooperation with third countries and closer dialogue with international partners to ensure effectiveness of Union tax policy.

The Commission has demonstrated a consistent approach in this regard, as evidenced by the conclusion between 2015 and 2016 of agreements between the European Union and five non-UE countries[12] in the field of automatic exchange of financial account information to improve international tax compliance. These agreements are currently being renegotiated for the sake of alignment with the evolutions of the DAC and corresponding international standards.

This Recommendation is also fully consistent with the action taken by the EU to build a solid framework for tax cooperation with Norway in the area of Value-Added Tax (VAT). The EU concluded an agreement with Norway in 2018, which was further updated in 2024[13]. In that

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8 OJ L 359, 16.12.2014, p.1-29

9 OECD (2017), Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition, OECD Publishing, Paris

10 OECD (2023), International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard, OECD Publishing, Paris

11 Communication on an action plan for fair and simple taxation supporting the recovery strategy, 15.7.2020.

12 Agreements with the Principality of Liechtenstein, OJ L339 of 24 December 2015, p. 1-35; the Republic of San Marino, OJ L140 of 27 May 2016, p. 1-2; the Principality of Andorra OJ L268 of 1 October 2016, p. 38-76; the Swiss Confederation OJ L333 of 19 December 2015, p. 10-49; and the Principality of Monaco OJ L280 of 18 October 2016, p. 1-2

13 Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax OJ L195, 1.8.2018, p.1-22, amended by Council Decision (EU) 2024/2888 of 5 November 2024 OJ L, 2024/2888, 19.11.2024.

context, Member States and Norway have developped a practice of relevant tax cooperation mechanisms, which will provide a strong basis for a framework of cooperation in direct tax matters.

- **Consistency with other Union policies**

This Recommendation takes account of the Union policies in the field of the fight against money laundering and terrorist financing, which have multiple interlinkages with the DAC. Under DAC6, the design of hallmarks triggering a reporting obligation for cross-border arrangements rely to a certain extent on the Union legal framework preventing money laundering and terrorist financing. This concerns in particular hallmarks related to automatic exchange of information on beneficial ownership[14].

This Recommendation takes also account of the Union policies in the field of respect of fundamental rights, notably on protection of personal data. In this regard, the proposed Agreement will be aligned with the requirements of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016[15] (General Data Protection Regulation).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This Recommendation to the Council is submitted pursuant to Article 218(3) and (4) of the Treaty on the functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

This Recommendation concerns the adoption by Norway of measures equivalent to the system established within EU legislation in the same field, notably under the DAC.

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[16], an agreement may affect common rules or alter their scope when it covers areas where there are harmonising measures. The subject matter of the proposed Agreement, lying in an extension to Norway of existing provisions of the DAC, falls therefore within the Union`s exclusive competence.

- **Proportionality**

This Commission Recommendation is in line with the principle of proportionality and do not go beyond what is necessary to meet the objective of establishing a uniform and integrated framework of administrative cooperation for direct tax purposes between the EU Member States and Norway. This is in line with Article 5(4) of the Treaty on European Union. The proposed Agreement will enable Member States' Competent Authorities to cooperate with the Norwegian tax authorities in the same way they cooperate between themselves in application of the current DAC framework.

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14 Council Directive (EU) 2018/822 of 25 May 2018, annex IV, Part II. D

15 OJ L 119, 4.5.2016, p. 1-88

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

- **Choice of instruments**

A Commission Recommendation for a Council Decision authorising the opening of negotiations is in line with Article 218(3) of the TFEU, which provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

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

- **Stakeholder consultations**

Informal consultations between the Commission services and the relevant authorities of Norway were held during the second semester 2024. Member States were informed about the outcomes of those informal consultations at the High Level Working Party on 26 February 2025 and agreed in principle to launch negotiations.

- **Impact assessment**

In line with tool 7 of the Better Regulation Toolbox[17], an impact assessment is not needed when the impacts foreseen are small, cannot be clearly identified *ex-ante*, or when the Commission has little or no choice available.

This Recommendation does not commit the Commission to a certain position at this stage. It will only include the Council "authorisation" to enter into negotiations with Norway. Since this Recommendation provides for a wide degree of flexibility with regards to the scope of the negotiation, the second condition mentionned in tool 7 of the Better Regulation Toolbox is satisfied.

Moreover, the negotiations will focus on extending to Norway the application of administrative cooperation tools that already exist in the EU and in relation to which Member States have acquired a long-standing practice.

- **Fundamental rights**

Where authorised by the Council to open and conduct the negotiation, the Commission will be vigilant at ensuring that any amended agreement will respect the key values of the EU 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 Union budget, notably because the Commission has, and will continue to have, no role in the exchange of information. Moreover, IT infrastructures for exchanges under the different DAC being already in place, this Agreement should not raise any measurable economic effect for Member States and other Union stakeholders.

[17] Better regulation toolbox 2023

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

(1) The Member States of the Union benefit from a solid and well integrated framework of administrative cooperation for direct tax purposes laid down in Council Directive 2011/16/EU of 15 February 2011 ('the Directive'). This framework aims at ensuring tax compliance within the Union while assisting tax authorities in preventing and tackling tax fraud, evasion and avoidance.

(2) The kingdom of Norway ('Norway') is a key trade partner of the Union and a contracting party of the EEA Agreement. It is in the interest of the Member States to enlarge the framework of cooperation for tax purposes between the Union and Norway, which is currently circumscribed to indirect taxation.

(3) For this purpose, an agreement allowing for an extension to Norway of selected parts of the Directive should be set, with a view to broadening the scope of reciprocal automatic exchange of information between the Member States and Norway. This extension should primarily cover provisions from Council Directive 2011/16/EU as well as Council Directives 2015/2376/EU and 2018/822/EU.

(4) The parties should also be given the possibility to agree to extend the scope of the agreement to other provisions of the Directive in the course of the negotiation process, if it is deemed necessary to offer better opportunities to tackle tax evasion and avoidance an ensure a level playing field.

(5) To this aim, a negotiation should be opened with a view to conclude an Agreement in the field of cooperation for tax purposes in direct tax matters between the Union and the Norway.

(6) To ensure that the Agreement remains fully aligned with corresponding provisions of the Directive, the Agreement should include a review mechanism requiring the parties to amend it to reflect any future amendments of the Directive concerning areas covered by the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement in the field of administrative cooperation in direct tax matters between the European Union and the Kingdom of Norway.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the special committee designated by the Council in accordance with Article 218 (4) TFEU.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President