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2018/0422 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established in accordance with Article 41(1) 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. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee established under Article 41 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 (hereinafter referred as "the Agreement"), pursuant to Article 5 and Article 41(2)(d), (e), (f), (g) and (h), Article 41(3) of the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. 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 Agreement aims 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. The date of entry into force of the Agreement is September 1, 2018.

2.2. The Joint Committee

The Joint Committee is composed of representatives of the European Union and the Kingdom of Norway (hereafter referred as "the Parties") and shall ensure the proper functioning and implementation of the Agreement. It shall make recommendations for promoting the aims of the Agreement and adopt decisions by unanimity. The Joint Committee shall be chaired alternately by each of the Parties. The European Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty of the European Union (TEU) and its position shall be subject to prior Council Decision, following a proposal from the Commission. Representatives of the Member States of the European Union may also participate in the meetings as observers.

2.3. The envisaged acts of the Joint Committee

During its first meeting, the Joint Committee should:

- adopt the Rules of procedure of the Joint Committee pursuant to Article 41(3) - Decision of the Joint Committee 1;
- adopt the standard forms, being the means for the transmission of communication and implementing the practical arrangements for the organisation of the contacts between the central liaison offices pursuant to Article 41 (2) (d), (e), (g) and (h) - Decision of the Joint Committee 2;
- adopt the procedure for the conclusion of the Service Level Agreement pursuant to Article 41(2)(j) of the Agreement - Decision of the Joint Committee 3;
- adopt the Service Level Agreement pursuant to Article 5 of the Agreement - Decisions of the Joint Committee 4 and 5;
- set 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 pursuant to Article 41(2)(f) of the Agreement - Decision of the Joint Committee 6.

The purpose of the envisaged acts is to provide for the proper implementation of the Agreement.

3. POSITION TO BE TAKEN ON THE UNION`S BEHALF

The first Joint Committee decision will be on the rules of procedures. It lays down rules on composition and chairmanship, observers and experts, convening of meetings, agenda, secretarial support, drafting and adoption of minutes, procedure for the adoption of decisions and recommendations and expenses.

In particular, the Agreement falls under the exclusive competence of the Union. Therefore, the Union will be represented by the Commission. However, Member States may decide to participate as observers.

The second Joint Committee decision is on the adoption of the standard forms, establishing the means for the transmission of communication and implementing the practical arrangements for the organisation of the contacts between the central liaison offices. The Union legal framework already provides for a sound implementing system in the framework of Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of VAT and Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. The Joint Committee decision should provide that for the cooperation with Norway the tools implemented for the above-mentioned Union legislation will apply.

The third Joint Committee decision will establish the **procedure for the conclusion of the Service Level Agreement**, as well as for any future amendments. The fourth decision will be on **the conclusion of the Service Level Agreement** as such.

Finally, the fifth Joint Committee decision will be on the **financial contribution** to be paid by Norway to the General Budget of the Union in respect of the costs generated by its participation in the European information systems. The amounts to be paid by Norway have been calculated as a lump sum covering the participation/connection of Norway to the CCN/CSI system in the configuration proposed, as well as the expenditure related to the development, maintenance and up-grade of IT solutions.

- At this stage, there is no need for Joint Committee decisions pursuant to:
- Article 41 (2) (a), (b) and (c), on automatic exchange of information; the Parties will decide whether or not there will be such a need after the entry into force of the Agreement and after assessing the efficiency of the other means of cooperation foreseen by the Agreement;
- Article 41(2) (i) on implementing rules regarding the conversion of the sums to be recovered and the transfer of sums covered because according to Article 40(5) of the Agreement "as long and as 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, whereby the term Member State" will be interpreted as including Norway";
- Article 41 (2) (k) on amending legal references to legal acts of the Union or of Norway included in the Agreement because this need did not arise so far.

4. LEGAL BASIS

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) the Council, on proposal from the Commission, shall adopt a decision establishing the position to be adopted on the Union's behalf in the Joint Committee.

The subject matter of international agreements (including on administrative cooperation between the Union and Norway in the field of VAT) falls under the exclusive competence of the Union pursuant to Article 3(2) TFEU¹. In the Joint Committee, the Union is to be represented by the Commission in accordance with Article 17(1) TEU.

Furthermore, administrative cooperation in the field of VAT is a field for which unanimity is required for the adoption of a Union act pursuant to Article 113 of the TFEU. Therefore, the Union position represented by the Commission for the adoption of the Joint Committee recommendations and decisions, shall be previously adopted by the Council acting unanimously.

The Joint Committee will also have to agree on practical arrangements, such as drafting the provisional agenda and agreeing on the minutes of the meetings. Such tasks are necessary for the normal administration of the Joint Committee and they are not Joint Committee decisions or recommendations pursuant to Article 41 of the Agreement. However, from the Union side, all the above-mentioned tasks will be subject to prior consultation of the European Commission with the Council Working Party on Tax Questions.

The Joint Committee decisions pursuant to Article 5 and 41 of the Agreement constitute acts having legal effects and will be binding on the Parties under international law and in accordance with Article 46 of the Agreement.

¹ Case 22/70 *Commission v Council* [1971] ECR 263, concerning a European Road Transport Agreement (ERTA), in French Accord européen de transport par route (AETR).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113, in conjunction with Article 218(9),

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 Agreement') was concluded by the Union by Council Decision (EU) 2018/1089¹ and entered into force on 1 September 2018.
- (2) The Joint Committee set up by that Agreement is to make recommendations and adopt decisions, in order to ensure the proper functioning and implementation of the Agreement.
- (3) The Joint Committee, during its first meeting on [date], is to adopt its rules of procedure, the Service Level Agreement and other decisions concerning the proper implementation and functioning of the Agreement
- (4) It is appropriate to establish the position to be adopted on the Union`s behalf in the Joint Committee, as the Service Level Agreement and other decisions will be binding on the Union.
- (5) The bilateral Agreement between the Union and Norway provides for a solid legal framework to cooperate for fighting fraud and recovery of claims in the value added tax (VAT) area. This cooperation will benefit from the same tools currently used by the Member States for administrative cooperation and recovery of claims, such as the electronic platforms and e-forms.
- (6) In the Joint Committee, the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on European Union,

¹ Council Decision (EU) 2018/1089 of 22 June 2018 on the conclusion, on behalf of the 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 (OJ L 195, 01.08.2018, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Commission, on the Union`s behalf in the first meeting of the Joint Committee established by 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, shall be based on the attached draft decisions to be adopted in accordance with Article 5, Article 41(2)(d), (e), (f), (g) and (h), and Article 41(3) of the Agreement.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*