

**OECD/G20 Base Erosion and Profit Shifting  
Project**



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Norway (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



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## Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the multilateral instrument on 7 June 2017, paving the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete the work on standard setting to address BEPS issues. In addition to BEPS Members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.



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*Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Agreement
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>FTA</b>	Forum on Tax Administration
<b>MAP</b>	Mutual Agreement Procedure
<b>OECD</b>	Organisation for Economic Co-operation and Development



## Executive summary

Norway has an extensive tax treaty network with almost 90 tax treaties. It has an established MAP programme and has significant experience with resolving MAP cases. It has a modest MAP inventory, with a modest number of new cases submitted each year and 75 cases pending on 31 December 2016. Of these cases, 55% concern allocation/attribution cases. Overall Norway meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Norway is working to address most of them.

All but one of Norway's tax treaties include a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- more than 20% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for both Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- almost 20% of its tax treaties do not include the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Norway needs to amend and update a portion of its tax treaties. In this respect, Norway signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified by the Multilateral Instrument, Norway reported that it strives updating all of them through bilateral negotiations, but has not yet a plan in place for that purpose.

Norway meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such rollbacks are granted in practice.

Norway also meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. However, it has not yet in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, but intends to introduce such process. In addition, Norway has not yet published guidance on the availability of MAP and how it applies this procedure in practice, but also intends to publish comprehensive MAP guidance in the near future.

Concerning the average time needed to close MAP cases, the MAP statistics for Norway for the year 2016 are as follows:

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/ allocation cases	40	6	12	34	36.30
Other cases	36	18	13	41	23.93
<b>Total</b>	<b>76</b>	<b>24</b>	<b>25</b>	<b>75</b>	<b>29.87</b>

\* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for closing pre-2016 MAP cases, Norway used as a start date, the date of receipt of the MAP request by Norway's competent authority from the taxpayer once sufficient documentation is provided or the date of receipt of the notification letter from the other competent authority that received the MAP request from the taxpayer; and as an end date, the latest of the following dates: the date when the taxpayer accepts the outcome of the MAP process or the date when the mutual agreement was reached. If no agreement was reached, the end date will be the date when the taxpayer is notified of the outcome of the MAP case.

The number of cases Norway closed is approximately the same as the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 remained similar as its inventory as per 1 January 2016. Norway's competent authority did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was around 30 months. This particularly concerns the resolution of attribution/allocation cases, as the average time to close these cases is thereby considerably longer (36.30 months) than the average time to close other cases (23.93 months). This indicates that additional resources specifically dedicated to handling attribution/allocation cases may be necessary to accelerate the resolution of these cases. As more resources have recently been assigned to the competent authority function, Norway should closely monitor whether this will lead to the resolution of attribution/allocation cases in a more timely, effective and efficient manner.

Furthermore, Norway meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Its competent authority operates fully independently from the audit function of the tax authorities. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Norway also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. Although Norway does not monitor the implementation of MAP agreements, no issues have surfaced regarding the implementation throughout the peer review process.

## *Introduction*

### **Available mechanisms in Norway to resolve tax treaty-related disputes**

Norway has entered into 89 tax treaties on income (and/or capital), 87 of which are in force.<sup>1</sup> These 89 treaties apply to 93 jurisdictions.<sup>2</sup> All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. Three of such treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure (“**MAP**”).<sup>3</sup>

Norway’s competent authority function is performed by three different bodies, depending on the type of MAP cases each of these teams handle:

- i. the “competent authority department – transfer pricing” within the Norwegian Tax Administration is responsible for attribution/allocation cases by delegation from the Ministry of Finance.
- ii. one person within the Ministry of Finance is acting as the competent authority for cases regarding taxpayers covered by the Norwegian petroleum tax.
- iii. staff within the Ministry of Finance or the Directorate of Taxes by delegation from the Ministry of Finance is responsible for other cases.

Norway’s competent authority consists of more than 15 people, who deal partly with MAP cases along with other tasks.

The organisation of this competent authority function is not publically available.

### **Recent developments in Norway**

Norway is currently conducting tax treaty negotiations with Belgium, Egypt, France, Germany, Israel, Italy, Kuwait, Latvia, Liechtenstein, Malaysia, New Zealand, Singapore, Slovak Republic, Switzerland, Thailand and the United States. In addition, Norway also recently entered into a treaty with Zambia and a new treaty with Belgium. However, the treaties with Zambia<sup>4</sup> and Belgium<sup>5</sup> have not yet entered into force.

Norway signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), inter alia with a view to make the necessary modifications to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Norway reported that it strives updating all of them through bilateral negotiations, but has not yet a plan in place for that purpose. With the signing of the Multilateral Instrument, Norway also submitted its list of notifications and reservations to that instrument.<sup>6</sup> In relation to the Action 14 Minimum standard, Norway did not make any reservations on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

## Basis for the peer review process

The peer review process entails an evaluation of Norway’s implementation of the Action 14 Minimum Standard, through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers.

The questionnaires for the peer review process were sent to Norway and the peers on 7 July 2017. The period for evaluating Norway’s implementation of the Action 14 Minimum Standard ranges from one January 2016 to 31 July 2017 (“**Review Period**”). This report may also depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Norway’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Norway is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaties with the former Yugoslavia and the former Netherlands Antilles Islands for those jurisdictions to which these treaties are still being or to be applied by Norway.<sup>7</sup> As it concerns tax treaties that are applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. The same applies to the multilateral tax treaty between Denmark, Finland, Faroe Islands, Iceland, Norway and Sweden (“**Nordic convention**”). Finally, Norway has also entered into multiple treaties with Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man and Jersey. Three treaties apply to each of these jurisdictions and respectively cover (i) the avoidance of double taxation on individuals, (ii) the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic and (iii) the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises. Each of these sets of three treaties are counted as one treaty for the purpose of this peer review report. Reference is made to Annex A for the overview of Norway’s tax treaties regarding the mutual agreement procedure.

In total 12 peers provided input: Australia, Belgium, Denmark, Germany, the Netherlands, Portugal, Russia, Spain, Sweden, Switzerland, Turkey and the United States. These peers represent 85% of post-2015 MAP cases in Norway’s inventory on 31 December 2016.

Broadly, all peers reported having a good experience with Norway, some of them emphasising the availability of Norway’s competent authority and the fact that contact has been made easily.

Norway provided general answers in its questionnaire, which was submitted on time. Norway was very responsive in the course of the drafting of the peer review report by responding in a timely and comprehensive manner to requests for additional information, and provided further clarity where necessary. In addition, Norway provided the following information:

- MAP profile<sup>8</sup>
- MAP statistics<sup>9</sup> according to the MAP Statistics Reporting Framework (see below).

Finally, Norway is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Norway also provided detailed peer input for a number of assessed jurisdictions.

## Overview of MAP caseload in Norway

The analysis of Norway’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 (“**Statistics Reporting Period**”). According to the statistics provided by Norway, on 31 December 2016 its MAP inventory was 75 cases, 34 of which concern attribution/allocation cases and 41 other cases. During the Statistics Reporting Period 24 cases started and 25 cases were closed.

## General outline of the peer review report

This report includes an evaluation of Norway’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing Disputes
- B. Availability and Access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>10</sup> Apart from analysing Norway’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the assessed jurisdiction. Furthermore, the report depicts the changes adopted and plans shared by Norway to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that the Norway continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

## Notes

1. The tax treaties Norway has entered into are available at: <https://www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/>. The treaties that are signed but have not yet entered into force are with Belgium (2014) and Zambia (2015). The newly negotiated treaty with Belgium will replace the current existing treaty of 1988, once it enters into force. Reference is made to Annex A for the overview of Norway’s tax treaties.

2. Norway continues to apply the 1983 treaty with former Yugoslavia to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba). Furthermore, Norway has entered into a multilateral tax treaty with the Nordic countries, which are: Denmark, Finland, Faroe Islands, Iceland and Sweden (“**Nordic convention**”). For purposes of this peer review report, this treaty is considered one tax treaty applicable to multiple jurisdictions. Finally, Norway has also entered into multiple treaties with Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man and Jersey. Three treaties apply to each of these jurisdictions and respectively cover (i) the avoidance of double taxation on individuals, (ii) the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic and (iii) the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises. Each of these sets of three treaties are counted as one treaty for the purpose of this peer review report.
3. This concerns the treaties entered into with the Netherlands, Switzerland and the United Kingdom.
4. Norway reported that the treaty with Zambia entered into force on 8 August 2017, which is after the end of the Review Period (see below).
5. The treaty with Belgium was ratified in Norway but still needs to be ratified by Belgium.
6. Available at: [www.oecd.org/tax/treaties/beps-mli-position-norway.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-norway.pdf).
7. Norway continues to apply the 1983 treaty with former Yugoslavia to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
8. Available at: <https://www.oecd.org/tax/dispute/Norway-Dispute-Resolution-Profile.pdf>.
9. The MAP statistics of Norway are included in Annex B and C of this report.
10. The terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective can be found in the Peer Review Documents (OECD, 2016): [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).

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## *Part A*

### Preventing disputes

#### [A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

#### *Current situation of Norway's tax treaties*

2. Out of Norway's 89 tax treaties, 84 treaties<sup>1</sup> contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining five treaties can be categorised as follows:

- one treaty does not contain any provision related to the mutual agreement procedure.
- one treaty contains a provision based on Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) but the wording “may” is used instead of “shall” endeavour to resolve such cases.
- three treaties contain a provision based on Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) but the word “interpretation” is missing. For one of these treaties the word “doubts” is also missing.

3. Norway reported that whether or not the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), it will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties. Norway reported that it already entered into such an agreement with a jurisdiction with which the treaty did not contain the full equivalent to Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2015).

## *Anticipated modifications*

### *Multilateral Instrument*

4. Norway recently signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This shall apply, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary of the fact that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the five tax treaties identified above, Norway did not list any of them as a covered tax agreement under the Multilateral Instrument. At this stage therefore, the Multilateral Instrument will, upon entry into force, not modify any of the 5 tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

### *Bilateral modifications*

6. Norway further reported that when the tax treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. In this respect, Norway reported that it is currently in negotiation with three jurisdictions inter alia with a view to include the required provision. In addition, Norway reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

### *Peer input*

7. All peers that provided input reported that their tax treaty with Norway meets the requirements under element A.1, including one peer for which the treaty with Norway actually does not contain the equivalent to Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2015).

8. For the other four treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant peers did not provide input.

## Conclusion

	Areas for improvement	Recommendations
[A.1]	Five out of 89 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the five treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.  In addition, Norway should maintain its stated intention to include the required provision in all future treaties.

### [A.2] Provide roll-back of bilateral APAs in appropriate cases

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

9. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>2</sup> The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

#### *Norway’s APA programme*

10. Norway is authorised to enter into bilateral APAs and has implemented a bilateral APA programme since 2011. Since the entry into force of the bilateral APA programme, Norway reported that it has entered into nine bilateral APAs, with five different treaty partners. As a matter of practice, Norway reported that some of the bilateral APAs it concluded were initiated after a MAP case was resolved for previous years.

11. There is no specific timeline to submit a request for a bilateral APA in Norway. In practice, a taxpayer can submit a request for a bilateral APA that would apply for the year when the request is actually submitted.

12. Apart from what is provided in Norway’s MAP profile, there is no publically available information on Norway’s bilateral APA programme. Norway, however, publishes a yearly report regarding transfer pricing issues, including bilateral APA statistics.<sup>3</sup>

#### *Roll-back of bilateral APAs*

13. Norway is entitled to provide roll-back of bilateral APAs. Norway reported that the roll-back request should, however, cover tax years that are not yet barred by Norway’s statute of limitation and that the facts and circumstances of these tax years should be similar to those of the future years to be covered by the bilateral APA. Norway indicated

that its statute of limitation would enable the roll-back to cover the five years preceding the one during which the bilateral APA request is made.

### *Practical application of roll-back of bilateral APAs*

14. Norway reported having granted a roll-back in two cases since the introduction of its bilateral APA programme in 2011 and that no request for roll-back has ever been denied by Norway's competent authority.

15. Peers generally indicated not having received any request for a roll-back of a bilateral APA involving Norway. Two peers specified being aware that roll-back is available in Norway for bilateral APAs.

### *Anticipated modifications*

16. Norway indicated that it intends publishing specific guidelines on its bilateral APA programme that would also address the possibility to request roll-backs of bilateral APAs.

### *Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	Norway should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.

## Notes

1. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. The report (in Norwegian) is available at: [www.skatteetaten.no/no/Bedrift-og-organisasjon/rapportering-og-bransjer/Internprising/arsrapporter/](http://www.skatteetaten.no/no/Bedrift-og-organisasjon/rapportering-og-bransjer/Internprising/arsrapporter/) (latest report published for 2015).

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## *Part B*

### **Availability and access to MAP**

#### **[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

17. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties contain a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

#### ***Current situation of Norway's tax treaties***

##### *Inclusion of Article 25(1), first sentence of the OECD Model Tax Convention*

18. Out of Norway's 89 tax treaties, 64 treaties<sup>1</sup> contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Norway's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

19. Among the remaining 25 treaties<sup>2</sup>, one treaty does not contain any provision based on Article 25 of the OECD Model Tax Convention (OECD, 2015a). The remaining

24 treaties<sup>3</sup> that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as changed by the Action 14 final report (OECD, 2015b) or as it read prior to that report, can be categorised as follows:

Provision	Number of treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request (see below)	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer needs to appeal to the taxation authority instead of presenting its MAP request.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	22

The treaty mentioned in the first row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. For this reason, this treaty is also considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

20. The treaty mentioned in the second row of the table above requires from taxpayers to appeal to the taxation authority instead of presenting its MAP request. For this reason, this treaty is also considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). In practice, Norway reported that it did not interpret this tax treaty in a stricter way than if it contained the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

21. The remaining 22 treaties<sup>4</sup> mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 21 of those 22 treaties are considered to be in line with this part of element B.1, either:

- The relevant tax treaty does not contain a non-discrimination provision (seven treaties); or
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (14 treaties)<sup>5</sup>.

22. The remaining treaty contains a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not. This treaty is therefore considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as the limitation of the scope of the MAP provision is not clarified by the absence of or a limited scope of the non-discrimination provision.

*Inclusion of Article 25(1), second sentence of the OECD Model Tax Convention*

23. Out of Norway's 89 tax treaties, 66 treaties<sup>6</sup> contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

24. The remaining 23 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
No MAP provision	1
Filing period longer than three years for a MAP request (five years)	4 <sup>7</sup>
Filing period shorter than three years for a MAP request (two years)	4
No filing period for a MAP request	14

*Anticipated modifications**Multilateral Instrument**Article 25(1), first sentence of the OECD Model Tax Convention*

25. Norway reported it has recently signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary of the fact that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Such modification will for a specific treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its covered tax treaties.

26. With the signing of the Multilateral Instrument, Norway opted to introduce in all of its tax treaties, pursuant to Article 16(4)(a)(i) of the instrument, a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Norway's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which it is a resident, Norway opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Norway made, pursuant to Article 16(6)(a) of the Multilateral Instrument, for 28 of its 89 tax treaties the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14.

27. Based on the choices made by the treaty partners, one is not a signatory to the Multilateral Instrument. 17 of the 28 treaty partners listed their treaty with Norway as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. The remaining ten treaty partners reserved the right, as is allowed pursuant to Article 16(5) (a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. At this stage therefore, 17 treaties will, upon entry into force, be modified via the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the final report on Action 14.

28. In view of the above and in relation to the four treaties identified in paragraphs 19 to 23 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14, none are part of the 17 treaties that will be modified via the Multilateral Instrument.

#### Article 25(1), second sentence of the OECD Model Tax Convention

29. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. This, however, only if both contracting parties to the applicable treaty has listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

30. In regard of the five tax treaties (including the treaty that does not contain any MAP provision) identified in paragraph 25 above that contain a filing period for MAP requests of less than three years, Norway listed none of them as a covered tax agreement under the Multilateral Instrument. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify none of the five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### *Bilateral modifications*

31. Norway further reported that when the tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this respect, Norway reported that it is currently in negotiation with one jurisdiction inter alia with a view to include the required provision. In addition, Norway reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

#### *Peer input*

32. All peers that provided input reported that their tax treaty with Norway meets the requirements under element B.1.

33. For the seven treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide input.

### Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Seven out of 89 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 or as amended by that report. Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty does not contain any provision based on Article 25(1) of the OECD Model Tax Convention (OECD, 2015a).</li> <li>• One tax treaty does not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> <li>• Two tax treaties do not contain the equivalent to Article 25(1), first sentence.</li> <li>• Three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the final report of Action 14 (OECD, 2015b) (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b) (OECD, 2015b), thereby including the full sentence of such provision.</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Norway should request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Norway should maintain its stated intention to request the inclusion the required provision in all future treaties.</p>

### [B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

34. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- i. of either treaty partner; or in the absence of such provision
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases,

jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

### ***Domestic bilateral consultation or notification process in place***

35. As discussed under element B.1, out of Norway's 89 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 17 of these 89 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

36. Norway did not introduce a documented notification procedure whereby its competent authority notifies or consults the other competent authority concerned when it considers the objection raised in a MAP request not to be justified. However, in practice, Norway reported that its competent authority informs the other competent authority via regular mail or email and the notification includes information on the taxpayer, the issue raised and the reason why the request is considered as not justified as well as all relevant data necessary for the reporting of MAP statistics pursuant to the MAP Statistics Reporting Framework.

### ***Practical application***

37. From the MAP Statistics provided by Norway it follows that during the 2016 Statistics Reporting Period it has not considered any objection raised by the taxpayer not justified. However, in 2017, Norway considered that the taxpayers raised a not justified objection in two cases. In both cases, the other competent authority concerned was notified or consulted. One peer confirmed that it was consulted in a case where Norway's competent authority considered the objection raised was not justified. The other peer confirmed that it was notified in a case where Norway's competent authority considered the objection raised was not justified.

### ***Anticipated modifications***

38. As previously discussed under element B.1, Norway has recently signed the Multilateral Instrument following which, upon entry into force, 17 of its 89 treaties will be modified to allow taxpayers to submit a MAP request to the competent authority of either treaty partner. Specifically regarding element B.2, Norway reported that were tax treaties will not be modified via the Multilateral Instrument, it will apply its notification process for those situations in which its competent authority considers the objection raised in a MAP request not to be justified. Furthermore, Norway reported that it is currently preparing a documented routine to be followed by all members of Norway's competent authority involved in MAP cases. Norway specified that this documented routine would include the notification of the competent authority of the relevant treaty partner when Norway considers an objection raised in a MAP request not to be justified and when the taxpayer is not allowed to submit its MAP request to the competent authority of either state.

## Conclusion

	Areas for improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered to be not justified.	Norway should follow its stated intention and introduce a documented notification process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14.

### [B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

39. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

#### *Legal and administrative framework*

40. Out of Norway's 89 tax treaties, 29 treaties<sup>8</sup> contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner. Furthermore, 54 treaties<sup>9</sup> do not contain any provision based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). For the remaining six treaties the following specifications can be made:

- five tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but whereby a corresponding adjustment is optional ("may").
- one tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but whereby the adjustment in both contracting states needs to be agreed through consultations between the competent authorities.

41. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Norway's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Norway indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

42. Apart from the information published in Norway's MAP profile, there is no information publically available with respect to access to MAP in transfer pricing cases.

### *Application of legal and administrative framework in practice*

43. According to Norway, access to MAP is granted in all eligible transfer pricing cases. Since 1 January 2016 it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

44. Peers indicated not being aware of a denial of access to MAP in Norway on the grounds that it was a transfer pricing case since 1 January 2016.

### *Anticipated modifications*

45. Norway reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties. In that regard, Norway recently signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty reserved the right, pursuant to Article 17(3), not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2015a]).

46. Norway has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 60 treaties identified in paragraph 42 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), Norway listed 9 of them as a covered tax agreement under the Multilateral Instrument and included four of them in the list of treaties for which Norway has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Norway did not make a notification on the basis of Article 17(4) for the remaining five treaties. Of the relevant five treaty partners, all are a signatory to the Multilateral Instrument and listed their treaty with Norway under that instrument, and did not, on the basis of Article 17(3), reserve the right not to apply Article 17(2). At this stage therefore, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede the remaining five treaties only to the extent that the provisions included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

## Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Norway has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

### [B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

47. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

#### *Legal and administrative framework*

48. None of Norway's tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also Norway's domestic law and/or administrative processes do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

49. Apart from the information published in Norway's MAP profile, there is no information publically available with respect to access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

#### *Practical application*

50. Norway reported that since 1 January 2016 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the application of a treaty anti-abuse provision has been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

51. Peers indicated not being aware of cases that have been denied access to MAP in Norway since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

### *Anticipated modifications*

52. Norway indicated that it intends to address in its MAP guidance under preparation the availability of the MAP in cases where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

### *Conclusion*

	Areas for improvement	Recommendations
[B.4]	-	As Norway has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

### **[B.5] Provide access to MAP in cases of audit settlements**

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

53. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

### *Legal and administrative framework*

54. From a legal perspective, Norway reported that audit settlements are not available in Norway. However, the outcome of an audit may reflect an understanding between the auditors and the taxpayer, which could be viewed as a certain type of audit settlements. In such cases, Norway indicated that access to MAP is still granted to the taxpayer.

55. Norway reported that the taxpayer may appeal to the Tax Appeal Board after an audit has taken place but this will not impact access to MAP in Norway. Apart from this process, Norway reported that there is no other administrative or statutory dispute settlement or resolution process(es) available whereby issues resolved via such process(es) may be denied access to MAP in Norway.

56. Apart from the information published in Norway's MAP profile, there is no information publically available with respect to access to MAP for cases in which taxpayers have entered into an audit settlement with the tax administration. In this respect, reference is made to element B.10.

***Practical application***

57. According to Norway, since 1 January 2016 it has never denied access to MAP in cases where an audit settlement has been reached.

58. Peers indicated not being aware of a denial of access to MAP in Norway since 1 January 2016.

***Anticipated modifications***

59. Norway did not indicate that it anticipates any modifications in relation to element B.5.

***Conclusion***

	Areas for improvement	Recommendations
[B.5]	-	As Norway has thus far granted access to MAP in eligible cases, even if the outcome of an audit may reflect an understanding between the auditors and the taxpayer, it should continue granting access for these cases.

**[B.6] Provide access to MAP if required information is submitted**

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

60. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction's guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publically available.

***Legal framework on access to MAP and information to be submitted***

61. The information and documentation Norway requires taxpayers to include in a request for MAP assistance are not publically available, which is discussed under element B.8.

***Practical application***

62. Although the list of required information to submit a MAP request is not publically available, Norway has not limited access to MAP in any cases during the Review Period on the grounds that insufficient information was provided.

63. Norway reported that its competent authority strives to send a request for information and documentation within two months after receiving a MAP request. If the MAP case is an "attribution/allocation" MAP case, Norway will set a deadline when issuing this first request for information and documentation. According to Norway, the timeframe granted to the taxpayers is between two to three months and is adapted to the information requested. Norway reported that in exceptional cases the deadline could be extended to six months. If the MAP case is an "other" MAP case, Norway reported that it does not set a deadline but reminds the taxpayer of its request for information and documentation

if it is remained unanswered during approximately two months. Norway reported that, in any case, its competent authority usually accepts an extension of the timeframe that would be requested by the taxpayer and that it would also remind the taxpayer of sending the information needed if the latter is late. Eventually, if Norway's competent authority does not receive the requested information and/or documentation, Norway reported that it will deny access to MAP.

64. Peers indicated not being aware of a limitation of access to MAP by Norway since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

### *Anticipated modifications*

65. Norway indicated currently being in the process of drafting its MAP guidance, and that such guidance would address the list of information and documents to include in a MAP request.

### *Conclusion*

	Areas for improvement	Recommendations
[B.6]	-	As Norway has thus far not limited access to MAP in eligible cases when taxpayers have complied with Norway's information and documentation requirements for MAP requests, it should continue this practice. Recommendations on guidance in relation to information and documentation requirements are discussed in element B.8.

## **[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

66. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties contain the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

### *Current situation of Norway's tax treaties*

67. Out of Norway's 89 tax treaties, 73 treaties<sup>10</sup> contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. One of the remaining 16 treaties does not contain any MAP provision and the remaining 15 treaties do not contain any provision based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

## *Anticipated modifications*

### *Multilateral Instrument*

68. Norway recently signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of such equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

69. In regard of the 16 tax treaties identified above, Norway listed three as a covered tax agreement under the Multilateral Instrument, and for all three treaties it made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant three treaty partners all also made the notification that their treaty with Norway does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify three of the 16 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

### *Bilateral modifications*

70. Norway further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. In this respect, Norway is currently in negotiation with four of its treaty partners. In addition, Norway reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future comprehensive tax treaties.

71. Further to the above, Norway also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Norway's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to only cover a certain type of situations. Accordingly, in Norway's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

### *Peer input*

72. Almost all peers that provided input reported that their treaty with Norway meets the requirements under element B.7.

73. For the 16 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), three peers provided the following input: (i) one peer mentioned that it has signed the Multilateral Instrument that will modify the relevant tax treaty to meet the requirements of the Action 14 Minimum Standard, which is consistent with the above analysis, (ii) another peer specified that it has not contacted Norway nor is it in discussion with Norway to amend their treaty with a view to incorporate the required provision and (iii) a third peer specified that the required provision is contained in its model tax treaty even though it is not contained in its treaty with Norway.

### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	16 out of 89 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 13 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Norway should maintain its stated intention to include the required provision in all future treaties.</p>

### **[B.8] Publish clear and comprehensive MAP guidance**

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

74. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

#### *Norway's MAP guidance*

75. Apart from the information available in Norway's MAP profile the rules, guidelines and procedures are not publically available yet. In particular, the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance<sup>11</sup>, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request is not publically available.

### ***Information and documentation to be included in a MAP request***

76. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.<sup>12</sup> This agreed guidance is shown below. Although not publically available, the items to be included in a request for MAP assistance in Norway are checked in the following list:

- Identity of the taxpayer(s) covered in the MAP request
- The basis for the request
- Facts of the case
- Analysis of the issue(s) requested to be resolved via MAP
- Whether the MAP request was also submitted to the competent authority of the other treaty partner
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- Whether the issue(s) involved were dealt with previously
- A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

77. In addition to the above, Norway's competent authority also requires the following documents and/or information to be provided:

- Actual information and documentation that is of importance for the case
- Circumstances of importance regarding whether the time limit for applying for a MAP has been complied with
- Whether the case has been appealed by means of an administrative appeal or is the subject of legal proceedings in Norway or the other state, as well as the status of any ongoing administrative or legal proceedings
- Whether the wish is for the MAP to be initiated immediately or whether the taxpayer wishes to wait for the outcome of other judicial remedies, such as appeals etc. in Norway and/or abroad
- Any opinions about how the case should ideally be resolved in the MAP
- Whether, as a result of an amendment of the tax assessment abroad, a claim has been brought against the Norwegian tax authority regarding an amendment of a foreign tax credit, income deduction for foreign tax or corresponding adjustment of income.
- A copy of the relevant tax assessment documents in both states, such as tax assessments, tax returns, tax audit reports, notifications, replies, amendment resolutions, complaints, appeal decisions, etc.
- A copy of any communication in administrative or legal proceedings in Norway or the other state, including any decisions, settlements, rulings, etc.

78. In addition to the above, Norway's competent authority also requires *inter alia* the following documents and/or information to be provided for attribution/allocation MAP cases:

- A list of amendments to tax assessments in Norway and/or another state, divided by income year, where the amounts are given in Norwegian kroner with specified exchange rates
- A more detailed specification of the intra-group transactions to which the application relates, as well as information about other intra-group transactions that can be of significance for the assessment of the case
- A copy of the taxpayer's transfer pricing documentation, including the master file and local files for affected entities
- Information about any bilateral or unilateral APAs or any other agreement, advance ruling, etc., that is of significance to the case
- Copy of any valuation reports, valuations, etc., that are of significance to the case
- Copy of intra-group or external agreements etc. that have been entered into that are of significance to the case

### *Anticipated modifications*

79. Norway indicated currently being in the process of drafting its MAP guidance, and that such guidance would *inter alia* address the following items:

- Contact information of the competent authority
- Manner and form in which the taxpayer should submit its MAP request
- The specific information and documentation that should be included in a MAP request
- How the MAP functions in terms of timing and the role of the competent authorities
- Rights and role of taxpayers in the process
- Whether MAP is available in: (i) transfer pricing cases, (ii) cases regarding the application of anti-abuse provisions and (iii) cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP;
- The relationship between MAPs and domestic remedies
- The steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.

## Conclusion

	Areas for improvement	Recommendations
[B.8]	There is no published MAP guidance.	<p>Norway should introduce guidance on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance and publish such guidance without delay.</p> <p>Although not required by the Action 14 Minimum Standard, Norway could also follow its stated intention to include the items identified above as well as information on:</p> <ul style="list-style-type: none"> <li>• the non-possibility of suspension of tax collection during the course of a MAP</li> <li>• the consideration of interest and penalties in the MAP</li> <li>• the timing of the steps of the process for the implementation of MAP agreements.</li> </ul> <p>Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.</p>

### [B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

80. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.<sup>13</sup>

#### *Rules, guidelines and procedures on access to and use of the MAP*

81. As mentioned under element B.8, Norway has not published any MAP guidance.

#### *MAP profile*

82. Norway's MAP profile is published on the website of the OECD. This MAP profile is complete and includes additional information where necessary.

#### *Anticipated modifications*

83. Norway indicated that it anticipates publishing its MAP guidance under preparation in both Norwegian and English on the websites of the Ministry of Finance and the Directorate of Taxes. Norway also specified that an abstract of its MAP guidance will also be published to provide individual taxpayers with simplified information.

### Conclusion

	Areas for improvement	Recommendations
[B.9]	MAP guidance is not publically available.	Norway should make its MAP guidance currently in preparation publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

### [B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

84. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the processes already mentioned above.

#### *MAP and audit settlements in the MAP guidance*

85. As previously mentioned in B.5, Norway reported that audit settlements are not available in Norway from a legal perspective. Norway reported that the outcome of an audit may, however, reflect an understanding between the auditors and the taxpayer. According to Norway, such an agreement does not preclude access to MAP. Apart from the information available in Norway's MAP profile, there is no information publically available in this respect.

86. Peers indicated no issues regarding element B.10 in relation to audit settlements.

#### *MAP and other administrative or statutory dispute settlement/resolution processes in available guidance*

87. Norway reported that there is no other administrative or statutory dispute settlement/resolution process in Norway that impacts access to the MAP.

### ***Notification of treaty partners of existing administrative or statutory dispute settlement/resolution processes***

88. There is no need for notification of treaty partners as Norway reported that there is no administrative or statutory dispute settlement/resolution process that limits access to MAP in Norway.

89. In that regard, peers indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Norway.

### ***Anticipated modifications***

90. Norway indicated currently being in the process of drafting its MAP guidance, but that such guidance would not address the availability of MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.10]	As Norway has not published any MAP guidance, access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not publically available information.	Norway's MAP guidance to be published should clarify that taxpayers have access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer.

## **Notes**

1. This includes the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
2. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro.
3. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro.
4. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro.
5. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro.
6. This includes the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba). In addition, one of these 66 treaties includes a deadline for submissions of MAP requests of three years, whereby the commencement date of this deadline is different from the text of Article 25(1), second sentence. Instead of “from the first notification of the action”, a MAP request should be submitted “within three years of the date of such action or the latest of such actions as the case may be”, which is considered in line with element B.1.

7. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
8. This includes the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
9. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
10. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
11. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
12. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
13. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

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## *Part C*

### **Resolution of MAP cases**

#### **[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

91. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

#### ***Current situation of Norway's tax treaties***

92. Out of Norway's 89 tax treaties, 84 treaties<sup>1</sup> contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

93. The remaining five treaties can be categorised as follows:

- One treaty does not contain a MAP article.
- One treaty does not refer to the fact that the MAP is only entered into after the competent authority assesses whether it is itself able to arrive at a satisfactory solution.
- One treaty requires that the appeal is proved to be justified, which may limit the cases when the MAP may be entered into. However, in practice, Norway reported that it would not interpret this treaty in a stricter way than if it contained the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

- One treaty contains the wording “may” instead of “shall” endeavour to resolve the case.
- One treaty contains a similar wording as Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) but also contains additional wording whereby the resolution of a MAP case is dependent on the notification of such MAP case to the other competent authority involved within a certain term. This additional wording may limit the situations where a MAP case is actually discussed.

94. For these reasons, these remaining 5 treaties do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

### *Anticipated modifications*

#### *Multilateral Instrument*

95. Norway recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of such equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

96. In regard of the five tax treaties identified above, Norway listed one treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner, also made the notification that its treaty with Norway does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify the treaty identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### *Bilateral modifications*

97. Norway further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this respect, Norway reported that it is currently in negotiation with one jurisdiction. In addition, Norway reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

#### *Peer input*

98. All peers that provided input reported that their tax treaty with Norway meets the requirements under element C.1, including one peer for which the treaty with Norway actually does not contain the equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2015a).

99. For the other four treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide input.

### *Conclusion*

	Areas for improvement	Recommendations
[C.1]	Five out of 89 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Norway should maintain its stated intention to include the required provision in all future treaties.</p>

### **[C.2] Seek to resolve MAP cases within a 24-month average timeframe**

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

100. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

### *Reporting of MAP statistics*

101. Statistics regarding all tax treaty related disputes concerning Norway are published on the website of the OECD as of 2006.<sup>2</sup> In addition, Norway publishes a yearly report regarding transfer pricing issues, including MAP statistics concerning attribution/allocation cases (in Norwegian only).<sup>3</sup>

102. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Norway provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Norway and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B

and C respectively<sup>4</sup> and should be considered jointly for an understanding of the MAP caseload of Norway. With respect to post-2015 cases, Norway reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. Norway indicated that it could match its statistics with all its MAP partners.

### *Monitoring of MAP statistics*

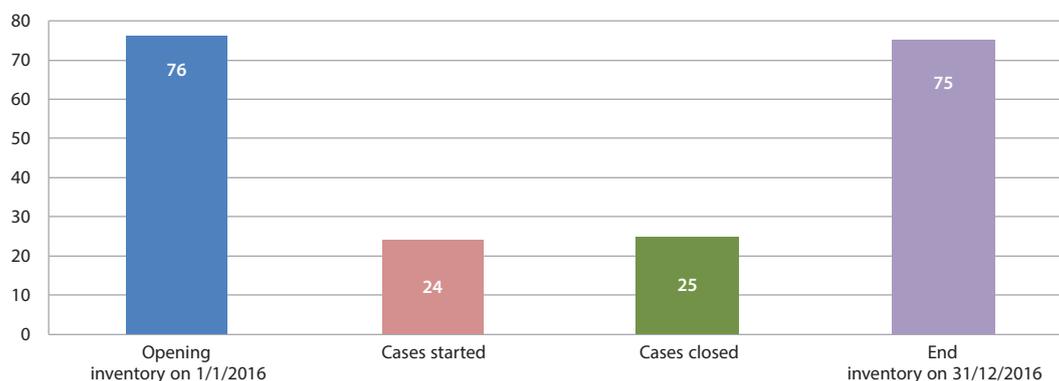
103. Norway recently introduced a tracking system that enables it to deal with the MAP caseload in order to keep track of all MAP cases and to ensure the timely resolution of MAP cases.

### *Analysis of Norway's MAP caseload*

#### *Global overview of the MAP caseload*

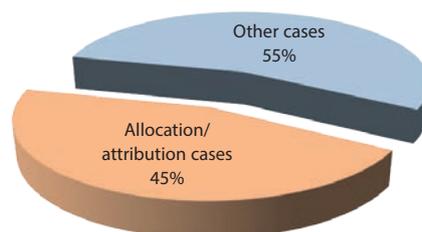
104. The following graph shows the evolution of Norway's MAP caseload over the Statistics Reporting Period.

Figure C.1. Norway's MAP inventory



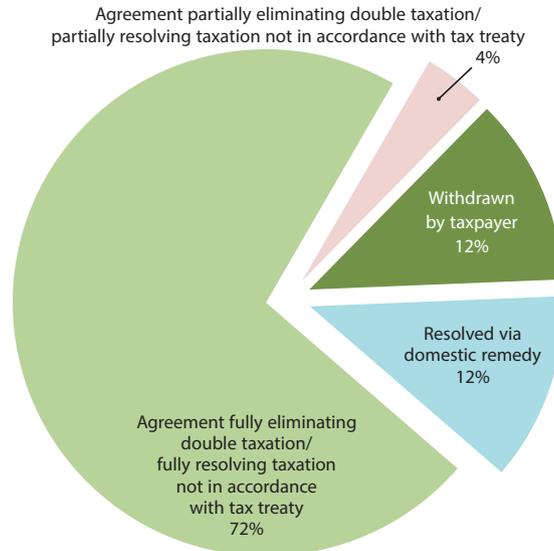
105. At the beginning of the Statistics Reporting Period Norway had 76 pending MAP cases, of which 40 are attribution/allocation cases and 36 other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, Norway had 75 MAP cases in inventory, of which 34 are attribution/allocation cases and 41 other MAP cases. This end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (75 cases)



106. During the Statistics Reporting Period Norway closed 25 MAP cases and the following outcomes were reported:

Figure C.3. Cases closed during the Statistics Reporting Period (25 cases)



107. This chart shows that during the Statistics Reporting Period, 18 out of 25 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

108. At the beginning of the Statistics Reporting Period, Norway's MAP inventory of pre-2016 MAP cases consisted of 76 cases, of which 40 were attribution/allocation cases and 36 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 55 cases, consisting of 28 attribution/allocation cases and 27 other cases. This decrease concerns more than 25 % of the total opening inventory of pre-2016 cases, which can be broken down in a decrease by 30 % of the number of attribution/allocation cases and a decrease by 25 % of the number of other cases.

#### *Post-2015 cases*

109. As mentioned previously, 24 MAP cases started on or after 1 January 2016, 6 of which concerned attribution/allocation cases and 18 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 20 cases, consisting of six attribution/allocation cases and 14 other cases. Norway in total closed four post-2015 cases during the Statistics Reporting Period, all of them being other cases. The total number of closed cases (which only consists of other cases) represents more than 15 % of the total number of post-2015 cases (and more than 20% of other post-2015 cases only) that started during the Statistics Reporting Period.

### *Average timeframe needed to close MAP cases*

#### *Pre-2016 cases*

110. Norway reported that on average it needed 36.30 months to close attribution/allocation cases and 32.71 months to close other cases. This resulted in an average time needed of 34.76 months to close pre-2016 cases.

111. For the purpose of computing the time to close pre-2016 cases, Norway reported that it used:

- as the start date, the date of receipt of the MAP request by Norway’s competent authority from the taxpayer once sufficient documentation is provided or the date of receipt of the notification letter from the other competent authority that received the MAP request from the taxpayer
- as the end date, the latest of the following dates: the date when the taxpayer accepts the outcome of the MAP process or the date when the mutual agreement was reached. If no agreement was reached, the end date will be the date when the taxpayer is notified of the outcome of the MAP case.

112. Norway specified that protective claims were not considered as MAP cases.

#### *Post-2015 cases*

113. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months.

114. Norway closed 17% of post-2015 cases during the Statistics Reporting Period. During these 12 months, Norway closed other cases, for which the average time needed was reported as 4.17 months.

#### *All cases closed during the Statistics Reporting Period*

115. The average time needed to close MAP cases during the Statistics Reporting Period was 29.87 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	12	36.30
Other cases	13	23.93
All cases	<b>25</b>	<b>29.87</b>

#### *Peer input*

116. Peers generally did not indicate experiencing any issues with the timely resolution of MAP cases involving Norway. One peer noted that Norway’s competent authority endeavours to resolve MAP cases in a reasonable timeframe. Two peers, however, reported having experienced some difficulty in receiving timely responses and position papers from Norway’s competent authority. Another peer specified that Norway’s competent authority in charge of attribution/allocation cases does not always provide a position paper before the competent authority meetings. This peer and another one also suggested that more timely communication would enable better collaboration in order to seek the resolution of MAP cases on a timely basis. Norway indicated, in response, that it seeks to resolve them within 24 months as it has recently made efforts to allocate more resources to the MAP function and accelerate the

resolution of MAP cases (see also element C.3). It also indicated that its competent authority will prioritise pre-2016 cases in dealing with MAP cases.

### *Anticipated modifications*

117. As mentioned under element C.6, Norway has committed to provide for mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. Other than this commitment, Norway did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	Norway submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information received by Norway's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	
	Norway's MAP statistics point out that during the Statistics Reporting Period it closed 17% (four out of 24 cases) of its post-2015 cases in 4.17 months on average. In that regard, Norway is recommended to seek to resolve the remaining 83% of the post-2015 cases pending on 31 December 2016 (20 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

### **[C.3] Provide adequate resources to the MAP function**

Jurisdictions should ensure that adequate resources are provided to the MAP function.

118. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

### *Description of Norway's competent authority*

119. Norway's competent authority consists of more than 15 people, who deal partly with MAP cases. Norway's competent authority function is performed by three different bodies, depending on the type of MAP cases each of these teams handle:

- i. the "competent authority department – transfer pricing" within the Norwegian Tax Administration is responsible for attribution/allocation cases by delegation from the Ministry of Finance
- ii. one person within the Ministry of Finance is acting as the competent authority for cases regarding taxpayers covered by the Norwegian petroleum tax
- iii. staff within the Ministry of Finance or the Directorate of Taxes by delegation from the Ministry of Finance is responsible for other cases.

120. Norway reported that the "competent authority department – transfer pricing" is responsible for handling attribution/allocation MAP cases as well as bilateral APA requests, along with other tasks such as participating in OECD working party 6 and the FTA MAP Forum, participating in the transfer pricing board established by the Norwegian tax administration to ensure consistency and quality of transfer pricing audits, training of other staff within the Norwegian tax administration with respect to transfer pricing, and assisting the Norwegian tax administration with respect to valuation issues. Norway reported that this team has increased from 5 employees to almost 10, which results from a continuous effort to hire experienced and skilled staff to perform this function even though there has

been a certain turnover. In particular, Norway indicated that seven people have been hired since August 2015 and that these recruitments concerned not only experienced staff which were previously working in other units within the Norwegian tax administration but also experienced staff previously working for the private sector as well as junior staff.

121. Norway indicated that the person within the Ministry of Finance who is acting as the competent authority for cases regarding taxpayers covered by the Norwegian petroleum tax is assisted by another person who is professionally competent in the petroleum tax area and by the “competent authority department – transfer pricing” where appropriate, on a case by case basis.

122. Norway also indicated that five people working with the tax law department of the Ministry of Finance are acting as competent authority to handle other MAP cases, along with other tasks such as treaty negotiations and policy work. In addition, one person working in the legal department of the Directorate of Taxes is acting as competent authority by delegation from the Ministry of Finance, along with other tasks. This person is assisted by three people who are experienced in international taxation.

123. According to Norway, the budget available to arrange meetings, travelling and attending meetings abroad is sufficient.

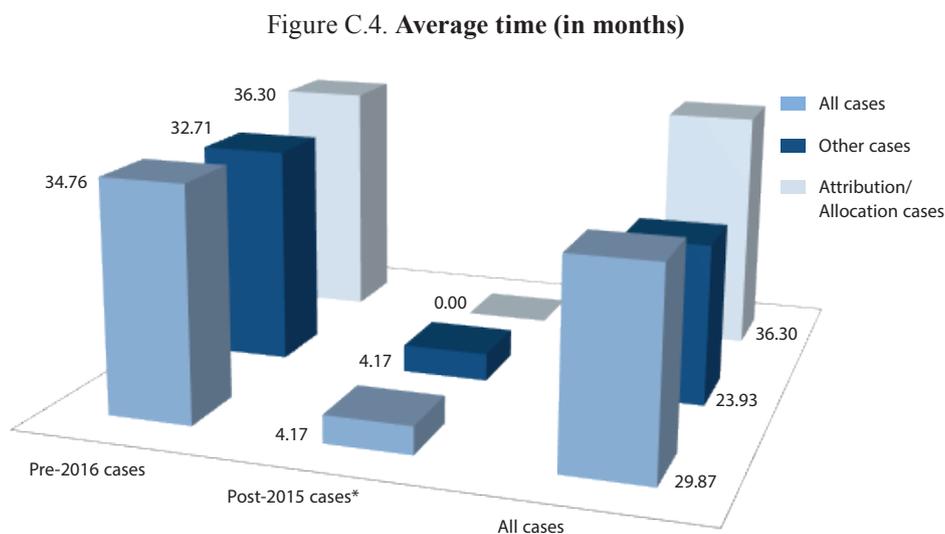
### *Monitoring mechanism*

124. The framework for assessing whether the resources allocated to the MAP function are adequate consists of monitoring the time needed to resolve cases as well as an analysis of the influx of MAP cases (types of cases, number of cases following an adjustment initiated in Norway or abroad, etc.).

### *Practical application*

#### *MAP statistics*

125. As discussed under element C.2 Norway did not close its MAP cases within the pursued 24-month average. A discrepancy can also be noted between the average time taken to close attribution/allocation cases and other cases. This can be illustrated by the following graph:



\* Note that post-2015 cases only concern cases opened and closed during 2016.

126. Based on these figures, it follows that on average it took Norway 29.87 months to close MAP cases. Norway reported having computed the median time for the resolution of MAP cases, which amounted to 32.09 months for all cases, and can be broken down into a median time of 35.39 months for attribution/allocation cases and 14.83 months for other cases. This indicates that additional resources in general and specifically dedicated to allocation/attribution cases may be necessary to accelerate the resolution of these cases.

127. Norway provided the following clarification for why it did not close its MAP cases within the 24-month average time period:

- For attribution/allocation cases, Norway indicated that, prior to January 2015, the MAP cases were handled by the Ministry of Finance and the Directorate of Taxes. Only a few persons who were also involved in other tasks were responsible for these MAP cases. Moreover, Norway reported that in two specific cases, delays were caused by special circumstances occurring in the other state where (i) in one case, specific circumstances in the other competent authority resulted in a delay and the primary adjustment made in the other state was finally withdrawn and (ii) in the other case, delay was due to the awaited acceptance on a federal level by the other competent authority.
- For other cases, Norway reported that the MAP cases were handled by the Ministry of Finance and the Directorate of Taxes, by persons who were also involved in other tasks, which were given priority to the resolution of MAP cases. Moreover, Norway indicated that the time necessary to the processing of these cases in other contracting states also explained the delays that occurred. In particular, Norway specified that two cases took more than 24 months before double taxation was fully eliminated in 2016 while (i) in one case, Norway reported not being aware of the case before receiving a reminder 13 months after the original notification of the case made from the other competent authority and (ii) in the other case, Norway indicated that there was a misunderstanding in Norway about whether the MAP was closed and the case therefore remained open for several years before it was actually discussed.

### *Peer input*

128. Peers generally reported having a good and co-operative working relationship with Norway. In particular, a number of peers indicated being frequently in contact with Norway's competent authority. Peers with an important MAP caseload with Norway reported being in contact with Norway's competent authority via traditional letters, emails, phone calls and face-to-face meetings. One peer also reported maintaining contact with Norway's competent authority during the OECD meetings.

129. Peers generally raised no issue regarding the adequacy of the resources allocated to the competent authority function in Norway. As discussed in element C.2, however, some peers expressed concerns about the timeliness of communication between their competent authority and Norway's competent authority or about the fact that Norway's competent authority in charge of attribution/allocation cases does not always provide a position paper before the competent authority meetings and suggested to increase the frequency of communication in order to accelerate the resolution of MAP cases. One peer further suggested that more resources are attributed to the resolution of MAP cases in Norway.

*Anticipated modifications*

130. Norway did not indicate that it anticipates any modifications in relation to element C.3.

*Conclusion*

	Areas for improvement	Recommendations
[C.3]	As Norway closed MAP cases in 29.87 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, and which might indicate that Norway's competent authority is not adequately resourced.	Norway should closely monitor whether the additional resources recently provided to the MAP function, and especially to the resolution of attribution/allocation MAP cases will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

**[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty**

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

131. Ensuring that staff in charge of MAP can and will resolve cases, absent of any approval/direction by the tax administration personnel directly involved in the adjustment and absent of any policy considerations, contributes to a principled and consistent approach to MAP cases.

*Functioning of staff in charge of MAP*

132. Norway reported that its competent authority resolves MAP cases in accordance with the applicable tax treaty and that it is not dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue. In practice, the competent authority may only ask the tax auditors for the description of the facts and circumstances and for the provision of some documents. Norway specified that the personnel with the tax office is never involved in the decisions made by the competent authority.

133. Norway further specified that even though the competent authority department – transfer pricing is a department of the tax administration, it operates fully independently from the other departments and does not consult the other departments when it handles MAP cases. Norway reported that this practice is clarified in the letter issued by the Ministry of Finance to delegate the competent authority function to this department. Furthermore, Norway indicated that this department may provide advice and training to the tax administration personnel, which is aimed at enhancing the tax auditors' awareness of the international taxation issues. Norway specified, however, that the tax administration personnel is not dependent on the competent authority department – transfer pricing's approval or direction on how to handle a certain tax audit. Moreover, Norway reported that the competent authority department – transfer pricing has the authority – and makes use of such an authority in practice – to overturn the tax authorities' decisions if appropriate.

134. Furthermore, Norway reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations. In particular, staff working with the competent authority department – transfer pricing is not involved in any treaty negotiation or policy works. Norway also indicated that staff in charge of other MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Norway would like to see reflected in future amendments to the treaty.

### *Practical application*

135. Peers indicated not being aware of the fact that Norway’s competent authority would be formally dependent on the approval or the direction of the tax administration personnel or influenced by policy considerations that Norway would like to see reflected in future amendments to the treaty.

### *Anticipated modifications*

136. Norway did not indicate that it anticipates any modifications in relation to element C.4.

### *Conclusion*

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Norway should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent of any policy considerations that Norway would like to see reflected in future amendments to the treaty.

## **[C.5] Use appropriate performance indicators for the MAP function**

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

137. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

### *Performance indicators used by Norway*

138. Norway has two systems in place to evaluate the performance of staff in charge of MAP processes depending on the types of cases the staff is responsible for. In order to do so, Norway may use any performance indicator that it may consider as appropriate such as the achievement of an objective set during a dialogue between each employee and his/her superior. In particular, Norway reported that while the amounts of adjustments maintained and foreign adjustments rejected is monitored, this does not influence the evaluation of the MAP function.

139. The Final Report on Action 14 includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist when they are used by Norway:

- Number of MAP cases resolved
- Consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- Time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

### *Practical application*

140. Peers indicated not being aware of the fact that Norway would use performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue for its competent authority functions and staff in charge of MAP processes.

### *Anticipated modifications*

141. Norway did not indicate that it anticipates any modifications in relation to element C.5.

### *Conclusion*

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Norway should continue to use appropriate performance indicators.

## **[C.6] Provide transparency with respect to the position on MAP arbitration**

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

142. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

### *Position on MAP arbitration*

143. Norway reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. Norway was a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project but finally did not opt for arbitration in the Multilateral Instrument itself as Norway's view is that mandatory binding arbitration should be considered in light of a tax treaty as a whole and is therefore best pursued on a bilateral basis in connection with (re)negotiations for a new tax treaty or a protocol to an existing tax treaty. Norway further indicated that it will offer some of its treaty partners to include arbitration as a final stage to MAP on a bilateral basis when negotiating a new tax treaty or discussing a protocol amending an existing tax treaty.

144. Norway’s MAP profile indicates that MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in Norway.

### ***Practical application***

145. Up to date, Norway has incorporated a mandatory and binding arbitration clause based on Article 25(5) of the OECD Model Tax Convention (OECD, 2015a) in three of 89 treaties<sup>6</sup> as a final stage to the MAP.

146. In addition, Norway included in one treaty<sup>7</sup> a most-favoured nation clause concerning the inclusion of an arbitration provision. This concerns entering into negotiations for the inclusion of an arbitration provision, should Norway’s treaty partner include an arbitration provision in a tax treaty with a third state.

### ***Anticipated modifications***

147. Norway did not indicate it anticipates any modifications relating to element C.6.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.6]	-	-

## **Notes**

1. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include fiscal year 2015.
3. The report (in Norwegian) is available at: [www.skatteetaten.no/no/Bedrift-og-organisasjon/rapportering-og-bransjer/Internprising/arsrappporter/](http://www.skatteetaten.no/no/Bedrift-og-organisasjon/rapportering-og-bransjer/Internprising/arsrappporter/) (latest report published for 2015).
4. For post-2015 cases, if the number of MAP cases in Norway’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five for any treaty partner, Norway reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 Norway follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case”.

6. This concerns the treaties entered into with the Netherlands, Switzerland and the United Kingdom.
7. This concerns the treaty entered into with Belgium.

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## *Part D*

### **Implementation of MAP agreements**

#### **[D.1] Implement all MAP agreements**

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

148. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

#### ***Legal framework to implement MAP agreements***

149. Norway reported it will implement all agreements reached in MAP discussions both for upward and downward adjustments of taxpayers' positions, notwithstanding any domestic law statute of limitation and irrespective of whether the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015) is contained in the applicable treaty. Section 12-1 (3) – c) of Norway's Tax Administration Act provides that: "The tax authorities shall alter a tax assessment when ... the alteration follows from an agreement as stated in the Double Taxation Agreement Act".

150. With respect to taxpayer's position on implementing MAP agreements, Norway reported that its competent authority requests the taxpayer concerned to give its approval to the agreement reached as a prerequisite for implementation. This applies both for agreements reached as the result of the MAP, as well as for any agreements reached following the decision of an arbitration panel as a final stage to the MAP. In practice, Norway reported that its competent authority requests that the taxpayers give their consent within one month after being notified of the MAP agreement reached. In attribution/allocation cases, Norway reported that such a timeframe could be extended to two months. Norway indicated that it sends a reminder to the taxpayer if it does not provide its consent within the deadline.

151. Once the taxpayer gave its approval, Norway's competent authority requests the local tax office to implement the MAP agreement. Norway reported that it follows up the implementation of MAP agreements by requesting copies of the assessments made by the local tax offices pursuant to a MAP agreement.

152. Apart from what is included in Norway's MAP profile, information on the implementation is not publically available. Reference is also made to element B.8.

***Practical application***

153. Norway reported that all MAP agreements that were reached on or after 1 January 2016 have been (or will be) implemented.

154. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in Norway. One peer specified that it considers that all MAP agreements reached both before and during the Review Period have been implemented both in a timely manner and correctly.

***Anticipated modifications***

155. Norway indicated that it intends to cover the administrative steps to be taken for implementing MAP agreements in the MAP guidance currently under preparation and that the follow up of implementation of MAP agreements that is currently performed for all cases on a case-by-case basis will be included in the tracking system under preparation.

***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, Norway should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. As suggested by Norway, it could include the follow-up of the implementation of MAP agreements in the tracking system under preparation.

**[D.2] Implement all MAP agreements on a timely basis**

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

156. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

***Theoretical timeframe for implementing mutual agreements***

157. In its domestic legislation and/or administrative framework, Norway does not have in place a timeframe for implementation of mutual agreements reached. Norway reported that it strives to send a reminder to the local tax office regarding the implementation of MAP agreements if it was not implemented within two months after such office was asked to do so. Norway does not have a timeframe in place for implementation of MAP agreements and statistics are not yet available on the average time taken for such implementation.

***Practical application***

158. Norway reported that all MAP agreements that were reached on or after 1 January 2016 have been (or will be) implemented on a timely basis.

159. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in Norway on a timely basis. One peer specified that it considers that all MAP agreements reached both before and during the Review Period have been implemented both in a timely manner and correctly.

### *Anticipated modifications*

160. Norway indicated that the follow up of implementation of MAP agreements that is currently performed for all cases on a case-by-case basis will be included in the tracking system under preparation.

### *Conclusion*

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Norway should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled. As suggested by Norway, it could include the follow-up of the implementation of MAP agreements in the tracking system under preparation to ensure that all MAP agreements continue to be implemented on a timely basis if the conditions for such implementation are fulfilled.

### **[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)**

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

161. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

### *Legal framework and current situation of Norway's tax treaties*

162. As discussed under element D.1, Norway's domestic legislation does not include a statute of limitations for implementing MAP agreements.

163. Out of Norway's 89 tax treaties, 70 treaties<sup>1</sup> contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.

164. Among the remaining 19 treaties, the following categorisation can be made:

- one treaty does not contain a provision based on Article 25 of the OECD Model Tax Convention (OECD, 2015)
- one treaty contains a provision based on Article 25(2), second sentence but also contains a protocol stating that the taxpayer must, in the treaty partner's case, claim the refund resulting from any mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement. This treaty is therefore not considered as including the equivalent of Article 25(2), second sentence, even though it does not impact the implementation of mutual agreements in Norway
- the remaining 17 treaties do not contain a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

165. All of the latter 19 treaties do not contain the alternative provisions in Article seven and nine either, by which the time to issue a primary adjustment is not limited in the tax treaty.

### *Anticipated modifications*

#### *Multilateral Instrument*

166. Norway recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, under the conditions that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

167. In regard of the 19 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Norway listed three as covered tax agreements under the Multilateral Instrument, but only made for two of them, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument. Of the relevant two treaty partners, only one also made such a notification that their treaty with Norway does not contain such provision and the other one made a reservation not to apply Article 16(2), second sentence on the basis of Article 16(5)(c). At this stage therefore, only one of the 19 treaties will, upon entry into force, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

### *Bilateral modifications*

168. Norway further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, Norway reported that it is currently in negotiation with six jurisdictions. In addition, Norway reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

### *Peer input*

169. Almost all peers that provided input reported that their treaty with Norway meets the requirements under element D.3. One peer specified that its treaty with Norway does not formally meet the requirement of element D.3 but that Norway and them were exploring the possibility to align the treaty with the Action 14 Minimum Standard though the signing of the Multilateral Instrument. Norway, however, did not include the treaty with this peer in the list of the tax agreements to be covered by the Multilateral Instrument.

170. For the other 17 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant peers did not provide input.

### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	19 out of 89 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contain the alternative provisions provided for in Article 9(1) or Article 7(2).	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent or its alternative provisions.</p> <p>In addition, Norway should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>

## Note

1. This includes the 1983 treaty entered into with former Yugoslavia that Norway continues to apply to Montenegro and the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) as well as the Nordic convention that Norway applies to Denmark, Finland, Faroe Islands, Iceland and Sweden.

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## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	Five out of 89 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the five treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.  In addition, Norway should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	Norway should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>7 out of 89 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 or as amended by that report. Of those 7 tax treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty does not contain any provision based on Article 25(1) of the OECD Model Tax Convention (OECD, 2015a)</li> <li>• One tax treaty does not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty</li> <li>• 2 tax treaties do not contain the equivalent to Article 25(1), first sentence</li> <li>• 3 tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the final report of Action 14 (OECD, 2015b) (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b) (OECD, 2015b), thereby including the full sentence of such provision</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Norway should request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Norway should maintain its stated intention to request the inclusion the required provision in all future treaties.</p>

	Areas for improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered to be not justified.	Norway should follow its stated intention and introduce a documented notification process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14.
[B.3]	-	As Norway has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Norway has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As Norway has thus far granted access to MAP in eligible cases, even if the outcome of an audit may reflect an understanding between the auditors and the taxpayer, it should continue granting access for these cases.
[B.6]	-	As Norway has thus far not limited access to MAP in eligible cases when taxpayers have complied with Norway's information and documentation requirements for MAP requests, it should continue this practice. Recommendations on guidance in relation to information and documentation requirements are discussed in element B.8.
[B.7]	16 out of 89 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 3 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 13 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent. In addition, Norway should maintain its stated intention to include the required provision in all future treaties.

	Areas for improvement	Recommendations
[B.8]	There is no published MAP guidance.	<p>Norway should introduce guidance on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance and publish such guidance without delay.</p> <p>Although not required by the Action 14 Minimum Standard, Norway could also follow its stated intention to include the items identified above as well as information on:</p> <ul style="list-style-type: none"> <li>• the non-possibility of suspension of tax collection during the course of a MAP</li> <li>• the consideration of interest and penalties in the MAP</li> <li>• the timing of the steps of the process for the implementation of MAP agreements.</li> </ul> <p>Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.</p>
[B.9]	MAP guidance is not publically available.	Norway should make its MAP guidance currently in preparation publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	As Norway has not published any MAP guidance, access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not publically available information.	Norway's MAP guidance to be published should clarify that taxpayers have access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer.
<b>Part C: Resolution of MAP cases</b>		
[C.1]	Five out of 89 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Norway should maintain its stated intention to include the required provision in all future treaties.</p>
[C.2]	<p>Norway submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information received by Norway's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>Norway's MAP statistics point out that during during the Statistics Reporting Period it closed 17% (4 out of 24 cases) of its post-2015 cases in 4.17 months on average. In that regard, Norway is recommended to seek to resolve the remaining 83% of the post-2015 cases pending on 31 December 2016 (20 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	

	Areas for improvement	Recommendations
[C.3]	As Norway closed MAP cases in 29.87 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, and which might indicate that Norway's competent authority is not adequately resourced.	Norway should closely monitor whether the additional resources recently provided to the MAP function, and especially to the resolution of attribution/allocation MAP cases will contribute to the resolution of MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Norway should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent of any policy considerations that Norway would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Norway should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	As it has done thus far, Norway should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. As suggested by Norway, it could include the follow-up of the implementation of MAP agreements in the tracking system under preparation.
[D.2]	-	As it has done thus far, Norway should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled. As suggested by Norway, it could include the follow-up of the implementation of MAP agreements in the tracking system under preparation to ensure that all MAP agreements continue to be implemented on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	19 out of 89 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contain the alternative provisions provided for in Article 9(1) or Article 7(2).	Norway should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.  For the remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Norway should, where no negotiations are pending, request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Norway should put a plan in place on how it envisages updating these treaties to include such equivalent or its alternative provisions.  In addition, Norway should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.



Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Barbados	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Belgium****	N	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Benin	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Bermuda	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Bosnia and Herzogivna	Y	O	ii	ii	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Brazil	Y	O	i	i	i	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
British Virgin Islands	Y	O	Y	Y	i	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Bulgaria	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Canada	Y	O	ii	ii	i	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Caribbean part of the Netherlands	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Cayman Islands	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Chile	Y	O	i	i	Y	Y	Y	Y	Y	N**	Y	Y	Y	Y	Y	Y	Y	N**	N	N/A
China	Y	O	Y	Y	i***	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Côte d'Ivoire	Y	O	i	i	i	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	O	ii	ii	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Curacao	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Cyprus*	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O**	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Denmark	Y	O	ii	ii	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Egypt	O	i	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Estonia	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Faroe Islands	O	ii	5 years	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Finland	O	ii	5 years	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
France	N	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Gambia	O	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Georgia	O**	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Germany	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Greece	O**	Y	N/A	Y	i***	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Greenland	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Guernsey	O	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Hungary	O	i	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Iceland	O	ii	5 years	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
India	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Indonesia	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ireland	O**	Y	N/A	Y	i***	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Isle of Man	O	Y	N/A	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Israel	O	i	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Italy	N	ii	2 years	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Jamaica	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Japan	O**	Y	N/A	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Jersey	O	Y	N/A	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Kazakhstan	O	Y	N/A	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Kenya	O	iii	N/A	i	i	Y	N	Y	Y	Y	N	N	N/A							
Korea	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Latvia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Lithuania	O**	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Luxembourg	O**	i	N/A	i***	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Macedonia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Malawi	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Malaysia	N	i	N/A	i	N	N	N	N	N	N	N	N	N/A							
Malta	O**	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Mexico	O**	Y	N/A	i***	i	N**	N	Y	Y	Y	N**	N	N/A							
Morocco	O	i	N/A	i	i	Y	N	Y	Y	Y	Y	Y	N/A							
Montenegro	O	ii	5 years	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Nepal	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Netherlands	O**	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	i							
New Zealand	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Pakistan	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Philippines	O	ii	2 years	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Poland	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Portugal	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Qatar	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Romania	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A							
Russia	O**	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							
Senegal	O	ii	2 years	i	i	Y	Y	Y	Y	Y	Y	Y	N/A							

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?										
Serbia	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A									
Sierra Leone	Y	N	N	N/A	N/A	N	N	N	N	N	N/A									
Singapore	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Slovak Republic	Y	O	i	N/A	i	Y	N	Y	Y	N	N/A									
Slovenia	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
South Africa	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Spain	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Sri Lanka	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Sint Maarten	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Sweden	Y	O	ii	5 years	i	Y	Y	Y	Y	N	N/A									
Switzerland	Y	O	Y	N/A	i	Y	N	Y	Y	Y	i									
Tanzania	Y	O	i	N/A	i	Y	Y	Y	Y	N	N/A									
Thailand	Y	O	Y	N/A	i	Y	N	Y	Y	N	N/A									
Trinidad and Tobago	Y	O	i	N/A	i	Y	N	Y	Y	N	N/A									
Tunisia	Y	O	i	N/A	i	Y	N	Y	Y	N	N/A									
Turkey	Y	O**	Y	N/A	i	Y	N	Y	Y	N	N/A									
Uganda	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Ukraine	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
United Kingdom	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	i									
United States	Y	O	i	N/A	i	N	Y	N	N	N	N/A									
Venezuela	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N/A									
Viet-Nam	Y	O	Y	N/A	i	Y	Y	N	Y	N	N/A									

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration											
	B.1	B.3	B.4	C.1	C.3	C.5	C.6	A.1	A.7	B.7	C.6											
Zambia	N****	O	O	Y	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Zimbabwe	Y	O	O	Y	Y	N/A	N/A	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

\* Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

\*\* Treaties that will be modified upon entry into force of the Multilateral Instrument.

\*\*\* Treaties will be modified upon entry into force of the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of Article 17 of the Multilateral Instrument.

\*\*\*\* A tax treaty between Belgium and Norway, signed in 1988 is currently in force. This treaty will be replaced by the treaty signed in 2014, once it enters into force. For purposes of the treaty analysis, the newly negotiated treaty is taken into account.

\*\*\*\*\* Norway reported that the treaty entered into with Zambia entered into force on 8 August 2017, which is after the end of the Review Period.

## Annex B

## MAP Statistics: pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		Column 13
		Denied map access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	
Attribution/ Allocation	40	0	0	0	0	1	10	1	0	0	0	28	36.30
Others	36	0	0	3	0	0	6	0	0	0	0	27	32.71
Total	76	0	0	3	0	1	16	1	0	0	0	55	34.76

## Annex C

## MAP statistics: post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										Average time taken (in months) for closing post-2015 cases during the reporting period	
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		No. of post-2015 cases remaining in on MAP inventory on 31 December 2016
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	6	0	0	0	0	0	0	0	0	0	0	6	0.00
Others	0	18	0	0	0	0	2	2	0	0	0	0	14	4.17
Total	0	24	0	0	0	0	2	2	0	0	0	0	20	4.17

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority's inventory pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, Norway (Stage 1)

### INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Norway.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264290389-en>.

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