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Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the Union, of the Amending Protocol to the Agreement
between the European Union and the Principality of Andorra on the automatic
exchange of financial account information to improve international tax compliance**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present proposal concerns the conclusion of the Amending Protocol to the Agreement between the European Union and the Principality of Andorra (Andorra) on the automatic exchange of financial account information to improve international tax compliance¹ (the Agreement).

The Agreement provides the legal basis for the reciprocal automatic exchange of financial account information between the EU Member States and Andorra, in accordance with the Common Reporting Standard (CRS) developed by the Organisation for Economic Co-operation and Development (OECD). The same standard is implemented within the European Union under Council Directive 2014/107/EU² (DAC 2 – the first amendment to Directive 2011/16/EU³ on administrative cooperation in the field of taxation – DAC)⁴.

Important changes to the CRS were approved at international level on 26 August 2022⁵ and will apply from 1 January 2026. Council Directive (EU) 2023/2226⁶ (DAC8) already implemented these changes within the European Union and will also apply from 1 January 2026.

The changes extend the scope of the CRS to ensure the coverage of electronic money products and central bank digital currencies. They also further improve the due diligence procedures and reporting outcomes, with a view to increasing the usability of CRS information for tax administrations and limiting burdens on financial institutions, where possible.

To ensure that the automatic exchange of financial account information between EU Member States and Andorra is aligned with, and continues to take place in accordance with, the updated CRS from 1 January 2026, it was necessary to negotiate and agree corresponding amendments to the Agreement.

In May 2018, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation “GDPR”)⁷ started to apply.

To ensure that the Agreement reflects these updates, it was necessary to remove the references to the repealed Directive 95/46/EC and replace these references with references to Regulation (EU) 2016/679. Simultaneously, the references to the Andorran national data protection legislation were also updated. Furthermore, these amendments reflect the continued application of the EU Adequacy Decision concerning Andorra⁸.

A Council decision authorising the opening of negotiations for the amendment of the Agreement concerning the automatic exchange of financial account information to improve

¹ OJ L 157, 26.06.2003, p. 38. OJ L268 of 01.10.2016, p.38 to.76.

² OJ L 359 of 16.12.2014, p. 1 to 29.

³ OJ L 64 of 11.3.2011, p. 1 to 12.

⁴ OJ L 359, 16.12.2014, p.1-29.

⁵ https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html, pages 62 to 102.

⁶ Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L, 24.10.2023)

⁷ OJ L119 of 4.5.2016, p. 1 to 88.

⁸ Decision 2010/625/EU of 19 October 2010 pursuant to Directive 95/46/EC on the adequate protection of personal data in Andorra.

international tax compliance between the European Union and Andorra was adopted on 21 May 2024⁹.

Several rounds of negotiations were held, and a provisional agreement was reached in April 2025. Subsequently, the draft text of the Amending Protocol was initialled by the Chief negotiators on 18 June 2025.

The Council has consistently been informed about the progress in the negotiations in the Working Party on Tax Questions and in the High Level Working Party. In particular, the text of the draft Amending Protocol was shared and discussed with the Member States ahead of its initialling. The initialled text was also shared with the European Parliament.

The Commission considers that the objectives set out by the Council in its negotiating directive have been attained and that the negotiated text is acceptable to the Union.

The signing, on behalf of the Union, of the Amending Protocol to the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance took place on xxxx.

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

The amendment of the Agreement was negotiated in line with the comprehensive negotiating directive adopted by the Council on 21 May 2024.

The negotiated Amending Protocol ensures that the existing agreement between the European Union and Andorra remains aligned with Union legislation in the same field, notably the DAC as amended by DAC8.

DAC8 includes, among other amendments, the latest changes to the OECD CRS. In the light of the close relationship in this field between the European Union and Andorra, it is important to strengthen along the same lines the administrative cooperation with their tax authorities in the field of automatic exchange of financial account information. The timely update of the Agreement ensures the smooth and effective continuation of this administrative cooperation beyond 1 January 2026.

The amendments to the Agreement also take account of the Union policies in the field of the fight against money laundering and terrorist financing, because the Customer Due Diligence activities to be performed by Financial Institutions, in view of collecting the financial account information to be exchanged under the Agreement, will be substantially aligned with those that the same Financial Institutions have to apply as obliged entities under the European Union legal framework in the fight against money laundering and terrorist financing.

The Amending Protocol also takes account of the Union policies in the field of respect of fundamental rights, notably on protection of personal data in the case of the outflow of this data to non-EU and non-EEA countries.

As far as the parts concerning the CRS are concerned, the Agreement itself includes, in Article 8, a provision requiring the Contracting Parties to consult each other on each occasion when an important change is adopted at OECD level to any of the elements of the CRS. The Article also provides that following these consultations, the Agreement may be amended by means of a protocol between the Contracting Parties. As important changes to the CRS were approved within the OECD on 26 August 2022, and in accordance with the Union's exclusive

⁹ Council Decision (EU) 2024/1489 of 21 May 2024 authorising the opening of negotiations for the amendment of the Agreements concerning the automatic exchange of financial account information to improve international tax compliance between the European Union and the Swiss Confederation, the Principality of Liechtenstein, the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, respectively

competence stemming from the existing Agreement, the Amending Protocol implements all changes that are necessary to reflect the corresponding changes to the CRS. The implementation of those changes within the Union has been provided for by means of Council Directive (EU) 2023/2226.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Given that the main objective and components of the Agreement are to improve administrative cooperation in the area of direct taxation, the substantive legal basis is Article 115 of the Treaty on the Functioning of the European Union (TFEU).

Given that Article 115 TFEU is the substantive legal basis, the Council is to adopt the decision concluding the agreement after consulting the European Parliament. Therefore, the procedural legal basis of the decision concluding the agreement is Article 218(6), second subparagraph, point (b), TFEU. As Article 115 TFEU requires unanimity for a Union act, the procedural legal basis for the conclusion of this agreement should include the second subparagraph of Article 218(8) TFEU.

Therefore, the procedural legal basis for the proposed decision on concluding the agreement is Article 218(6), second subparagraph, point (b), TFEU and the second subparagraph of Article 218(8) TFEU.

• Union competence

Under the case law of the Court of Justice, the Union has exclusive competence where an agreement may affect common rules or alter their scope¹⁰. This jurisprudence has been enshrined in Article 3(2) TFEU. Article 3(2) TFEU provides that, in addition to the areas of exclusive Union competence listed in Article 3(1) TFEU, the Union shall “also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope”.

• Proportionality

The amending protocol respects the principle of proportionality and does not go beyond what is necessary to meet the objective of updating the Agreement, namely, to incorporate the changes to the Common Reporting Standard that shall take effect from 1 January 2026. These amendments will enable the Member States to continue the automatic exchange of financial account information with Andorra in an uninterrupted manner, and in a manner that aligns with the new requirements of the CRS, as already incorporated in the DAC8.

• Choice of the instrument

Article 218(6) TFEU provides that the Commission or the High Representative of the Union for Foreign Affairs and Security Policy shall submit proposals to the Council, which shall adopt a decision on the conclusion of an international agreement. Given the subject matter of the envisaged agreement, it is appropriate for the Commission to submit a proposal to that effect.

¹⁰ Opinion 3/15 of the Court, ECLI:EU:C:2017:114, paragraph 118 and the case law quoted therein

3. RESULTS OF IMPACT ASSESSMENTS

- **Impact assessment**

According to tool 7 of the Better Regulation¹¹, an impact assessment is not needed, inter alia, when the Commission has little or no choice in the matter.

This condition is satisfied in the present case as the amendments to the existing Agreements with respect to the automatic exchange of financial account information fully align with the changes to the CRS that were agreed at the OECD level and already incorporated into EU law by means of the DAC8. As regards the updates on data protection, these are merely aimed at updating references to the EU and Andorran data protection legislation.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget.

5. OTHER ELEMENTS

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

The envisaged amendments cover the following points:

1. *Amendments to ensure that the automatic exchange of financial account information between Member States and Andorra under the existing Agreement is aligned with and continues to take place in accordance with the updated CRS from 1 January 2026*

The foreseen amendments expand the scope of reporting to include new digital financial products, such as Specified Electronic Money Products and Central Bank Digital Currencies. Simultaneously and with the aim of improving the reliability and use of the exchanged information, the amendments introduce more detailed reporting requirements and strengthened due diligence procedures. These amending reporting and exchange of information requirements are provided for within Article 2, Article 3 and Annex I. They will apply from 1 January 2026.

The amendments also contain provisions to ensure an efficient interaction between the CRS and the separate Crypto-Asset Reporting Framework (CARF) developed by the OECD¹². These provisions allow to limit instances of duplicative reporting, while maintaining a maximum amount of operational flexibility of Reporting Financial Institutions that are also subject to obligations under the CARF. These provisions shall only apply as of the date when the Andorra commences to apply the CARF with all Member States.

¹¹ https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf

¹² https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html, pages 8 to 61.

2. *Update to the legal reference on data protection legislation*

All references to Directive 95/46/EC have been replaced with references to the GDPR.

Simultaneously, the legal reference to the national data protection legislation of Andorra has been updated to the Qualified Law 29/2021 on the protection of personal data (Data Protection Act).

- **Text of the Amending Protocol, joint declarations and notifications**

The text of the Amending Protocol is submitted to the Council together with this proposal. The text of joint declarations is submitted together with this proposal.

In accordance with the Treaties, it is for the Commission to proceed, on behalf of the Union, to make the notification provided for in Article 2(1) of the Amending Protocol, in order to express the consent of the Union to be bound by that Amending Protocol.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115, in conjunction with Article 218(6), second subparagraph, point (b) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) The Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance² ('the Agreement') has enhanced mutual assistance in tax matters between the Contracting Parties and improved international tax compliance.
- (2) Important changes to the Common Reporting Standard (CRS) were approved at international level on 26 August 2022³ and have been introduced in Union legislation with the amending of Council Directive 2011/16/EU by Council Directive (EU) 2023/2226⁴.
- (3) Therefore, the Agreement needs to be amended to ensure that the automatic exchange of financial account information between EU Member States and the Principality of Andorra is aligned with, and continues to take place in accordance with, the updated CRS from 1 January 2026.
- (4) The text of the Amending Protocol to the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance ('the Amending Protocol to the Agreement'), which is the result of the negotiations, duly reflects the negotiating directive issued by the Council.
- (5) In accordance with Council Decision (EU) XXXX⁵, the Amending Protocol to the Agreement was signed on XXXX, subject to its conclusion at a later date.

¹ Opinion of XXXX (not yet published in the Official Journal)

² OJ L 157, 26.06.2003, p. 38. OJ L268 of 01.10.2016, p.38 to.76.

³ https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html, pages 62 to 102.

⁴ Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L, 24.10.2023) <http://data.europa.eu/eli/dir/2023/2226/oj>

⁵ Council Decision (EU) xxx on the signing, on behalf of the Union, of the Amending Protocol to the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account

- (6) The Amending Protocol to the Agreement, which is the subject of this decision should be approved.
- (7) The joint declarations attached to this Decision should be approved.
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EC) No 2018/1725 of the European Parliament and of the Council,

HAS ADOPTED THIS DECISION:

Article 1

The Amending Protocol to the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance is hereby approved⁶.

Article 2

The Joint Declaration of the Contracting Parties on the entry into force of the Amending Protocol, the Joint Declaration of the Contracting Parties on the Agreement and the Annexes and the Joint Declaration of the Contracting Parties on Article 5 of the Agreement are hereby approved.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

information and mutual assistance for the recovery of claims to improve international tax compliance (OJ L XXXX).

⁶ The text of the Amending Protocol to the Agreement is published in OJ L, [...].