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From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	COM(2024) 11 final
Subject:	ANNEX to the Recommendation for a COUNCIL DECISION to authorise the Commission to open negotiations for the amendment of the five agreements on the automatic exchange of financial account information to improve international tax compliance between the European Union and, respectively, the Swiss Confederation, the Principality of Liechtenstein, the Principality of Andorra, the Principality of Monaco and the Republic of San Marino

Delegations will find attached document COM(2024) 11 final.

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Recommendation for a COUNCIL DECISION

to authorise the Commission to open negotiations for the amendment of the five agreements on the automatic exchange of financial account information to improve international tax compliance between the European Union and, respectively, the Swiss Confederation, the Principality of Liechtenstein, the Principality of Andorra, the Principality of Monaco and the Republic of San Marino

ANNEX

1. THE FIVE AGREEMENTS SUBJECT TO NEGOTIATION IN VIEW OF THEIR AMENDMENT

The European Union signed and concluded between 2015 and 2016 the following five international agreements, in the form of Protocols replacing the title and the entire content of pre-existing agreements on taxation of savings income with the same non-EU countries:

– "Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance", as resulting from a Protocol signed between the EU and the Swiss Confederation ("Switzerland") on 27 May 2015[1];

– "Agreement between the European Union and the Principality of Liechtenstein on the automatic exchange of financial account information to improve international tax compliance", as resulting from a Protocol signed between the EU and the Principality of Liechtenstein ("Liechtenstein") on 28 October 2015[2];

– "Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance", as resulting from a Protocol signed between the EU and the Principality of Andorra ("Andorra") on 12 February 2016[3];

– "Agreement between the European Union and the Principality of Monaco on the automatic exchange of financial account information to improve international tax compliance in accordance with the Standard for Automatic Exchange of Financial Account Information in Tax Matters developed by the Organisation for Economic Cooperation and Development (OECD)", as resulting from a Protocol signed between the EU and the Principality of Monaco ("Monaco") on 12 July 2016[4];

– "Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance", as resulting from a Protocol signed between the EU and the Republic of San Marino ("San Marino") on 8 December 2015[5].

The five agreements, which have all entered into force and are currently applicable, provide the legal basis for the reciprocal automatic exchange of financial account information between each of the 27 EU Member States and each of these non-EU countries, in accordance with the Common Reporting Standard ("CRS") developed by the Organisation for Economic Cooperation and Development (OECD). The same standard is implemented within the EU for exchanges between its Member States under Council Directive 2014/107/EU of 9 December 2014[6] (DAC 2 – the first amendment to Directive 2011/16/EU[7] on administrative cooperation in the field of taxation – DAC).

1 OJ L333 of 19 December 2015, pages 10 to 49.
2 OJ L339 of 24 December 2015, pages 1 to 35.
3 OJ L268 of 1 October 2016, pages 38 to 76.
4 OJ L225 of 19 August 2016, pages 1 to 40; OJ L280 of 18 October 2016, pages 1 to 2.
5 OJ L346 of 31 December 2015, pages 1 to 41; OJ L140 of 27 May 2016, pages 1 to 2.
6 OJ L359 of 16 December 2014, pages 1 to 29.
7 OJ L 64 of 11 March 2011, pages 1 to 12.

2. JUSTIFICATION AND OBJECTIVE OF THE AMENDMENT

Important changes to the CRS were approved at international level on 26 August 2022, with implementation planned from 1 January 2026. The implementation of these changes within the EU has been included in the seventh amendment to DAC (DAC8)[8].

To ensure that the automatic exchange of financial account information between EU Member States and the five non-EU countries under the five respective EU agreements is aligned with, and continue to take place in accordance with, the updated CRS from the date of 1 January 2026, it is necessary to negotiate and agree corresponding amendments to the above mentioned five EU agreements.

In May 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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")[9] entered into application. Where appropriate, an updating of the legal references (which currently, when included, still refer to the previous Directive 95/46/EC) and data protection provisions in line with the requirements of the GDPR may therefore be needed. Similarly, there may be a need to reflect recent data protection developments in the five countries.

3. SCOPE OF THE AMENDMENT SUBJECT TO NEGOTIATION

The changes to the CRS which were approved at international level on 26 August 2022[10] 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. The CRS now also contains provisions to ensure an efficient interaction between the CRS and the separate internationally agreed Crypto-Asset Reporting Framework ("CARF")[11], notably 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.

Insofar as data protection is concerned:

– An amendment to the agreement with Switzerland will have to ensure that updated provisions are included on the exchange and use of personal data (including on purpose limitation, data security and data retention), taking into account the EU Adequacy Decision concerning Switzerland[12] and the Opinion released on 8 July 2015 on the agreement by the European Data Protection Supervisor (EDPS)[13]. It will also have to ensure updated references to the applicable Swiss primary and secondary legislation.

– An amendment to the agreement with Liechtenstein will have to ensure that updated provisions are included on the exchange and use of personal data (including on purpose limitation, data security and data retention), while taking into account that Liechtenstein, as a Member of the European Economic Area (EEA), implemented the provisions of the GDPR in its territory pursuant to the EEA Agreement.

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8 Council Directive (EU) 2023/2226 of 17 October 2023, OJ L 2023/2226 of 24 October 2023.

9 OJ L119 of 4 May 2016, pages 1 to 88.

10 https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm, pages 62 to 102.

11 https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm, pages 8 to 61.

12 Decision 2000/518/EC of 26 July 2000 pursuant to Directive 95/46/EC on the adequate protection of personal data provided in Switzerland.

13 https://edps.europa.eu/sites/edp/files/publication/15-07-08_eu_switzerland_en.pdf

– An amendment to the agreement with Andorra will have to ensure that updated provisions are included on the exchange and use of personal data (including on purpose limitation, data security and data retention), taking into account the EU Adequacy Decision concerning Andorra[14] and the abovementioned EDPS opinion on the agreement with Switzerland. It will also have to ensure updated references to the applicable Andorran primary and secondary legislation.

– An amendment to the agreements with Monaco and San Marino will have to ensure that data protection safeguards meet the requirements of Article 46 of the GDPR, as well as to include updated references to the primary and secondary legislation adopted by these two countries (as applicable or as it will be applicable by the date of 1 January 2026 set for the implementation of the amendment incorporating the CRS changes in the two agreements concerned).

4. FORM OF THE AMENDMENT SUBJECT TO NEGOTIATION

Within the EU, the 2022 changes to the CRS were implemented under DAC8 in the form of amendments to Annex I of the DAC, which substantially reproduces the CRS and the related due diligence rules to be applied by the Reporting Financial Institutions.

In the framework of each of the five EU agreements subject to negotiation in view of their amendment, an Annex I fulfils substantially the same function as the Annex I to DAC, while an Annex II contains some complementary rules based on the internationally agreed OECD Commentaries to the CRS.

In order to ensure the possibility to use a simplified procedure for provisional application in case of time constraints, as allowed by Article 8 paragraph 5 of the majority of the five agreements[15], the negotiations should mainly focus on the alignment of Annex I and Annex II of the respective agreements with the changes to the CRS and its Commentaries, as long as such an alignment can alone be sufficient and compatible with the full legal validity and enforceability of the amendment.

Any addition or change to the existing Confidentiality and Personal Data Safeguards provisions in the currently applicable text of the agreements could also be negotiated in a form avoiding unnecessary changes to the main body of the agreements, provided that the solutions agreed and made publicly available are compliant with the provisions of Chapter V of the GDPR including where appropriate its Article 46.

The amendment will therefore touch upon the articles of the main body of the agreements only insofar as such changes appear to be necessary for ensuring legal certainty or are a necessary condition for the approval of the amendment by the Contracting Parties.

5. PROCEDURE

Article 8 of each of the five EU agreements contains identical provisions for bilateral formal consultations between the Contracting Parties (the EU with its Member States, on one side, and the relevant non-EU country on the other side) to take place "when an important change is adopted at OECD level to any of the elements of the Global Standard". Paragraph 4 of said Article 8 states: "Following the consultations, this Agreement may be amended by means of a protocol or a new agreement between the Contracting Parties". Paragraph 5 (not included in the EU agreement with Andorra) allows for the possibility of a consensus between the parties on a form of provisional

[14] Commission Decision 2010/625/EU of 19 October 2010 pursuant to Directive 95/46/EC on the adequate protection of personal data in Andorra

[15] The EU agreement with Andorra does not have this provision.

application of the changes affecting Annex I and/or Annex II of the agreements, when one of the parties has already formally implemented them, as it is the case for the EU Member States in the light of the formal adoption by the Council of DAC8.

As soon as it is authorised by the Council, the Commission shall launch the formal consultations and shall conduct the negotiation in accordance with these negotiating directives, in consultation with the current and upcoming Presidency of the Council and with any special committee that might be designated by the Council to this effect in accordance with Article 218 (4) TFEU.