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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Agreement establishing an association between the European Union and its Member States, of the one part, and the Principality of Andorra and the Republic of San Marino, each as a separate Party, of the other part

COUNCIL DECISION (EU) 2026/...

of ...

**on the signing, on behalf of the Union, and provisional application
of the Agreement establishing an association
between the European Union and its Member States, of the one part,
and the Principality of Andorra and the Republic of San Marino,
each as a separate Party, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(5) and 218(7) and Article 218(8), second subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 16 December 2014, the Council authorised the Commission to negotiate, on behalf of the Union, an Association Agreement with the Principality of Andorra ('Andorra'), the Principality of Monaco ('Monaco') and the Republic of San Marino ('San Marino'). Negotiations have been conducted on the basis of the negotiating directives of 16 December 2014.
- (2) On 17 September 2023, Monaco and the Commission agreed to suspend the negotiations following the observation of both sides that it was impossible to reconcile, on one hand, the negotiating directives of the Commission and, on the other hand, the limits set by Monaco, aimed in particular at maintaining unchanged the living, working and housing conditions of its nationals in the country.
- (3) Taking account of the close historical, geographical, cultural, political and economic links between the Union, Andorra and San Marino, as well as their desire to deepen, diversify and sustain their relations by establishing a comprehensive and coherent legal framework, the negotiations with Andorra and San Marino were successfully concluded on 12 December 2023.

- (4) The Agreement establishing an association between the European Union and its Member States, of the one part, and the Principality of Andorra and the Republic of San Marino, each as a separate Party, of the other part, (the ‘Association Agreement’) provides for the participation of Andorra and San Marino in the Union’s internal market, and related horizontal and flanking policies, while also replacing the current customs unions between the Union and each of those countries. The Association Agreement also includes a framework for possible cooperation outside the four freedoms in fields of cooperation such as research and technological development, education, training and youth, social policy, environment, consumer protection, culture, and regional policy.
- (5) To ensure the effective functioning of the Union’s internal market, the Association Agreement foresees dynamic regulatory alignment. The Association Agreement also includes provisions establishing a dispute settlement mechanism with the Court of Justice of the European Union being competent in disputes concerning the interpretation or application of the Association Agreement.
- (6) The situation of Andorra and San Marino as small-sized countries is taken into account, in accordance with Declaration No 3 on Article 8 of the Treaty on European Union annexed to the Treaty on European Union (‘TEU’) and the Treaty on the Functioning of the European Union (‘TFEU’). This is reflected in a number of adaptations to the provisions of Union legal acts listed in the annexes to the Association Agreement, as well as in several transitional periods for the implementation and application of parts of the Union’s *acquis*.

- (7) The Framework Protocol 3 on financial services attached to the Association Agreement ('Framework Protocol 3') allows for a staggered access to the Union's internal market for financial services, whereby Andorra and San Marino may decide not to seek access to the entire Union's internal market for financial services. Such a possibility should not last longer than 15 years after the entry into force of the Association Agreement.

- (8) In light of the specificities of Andorra and San Marino and the related specific rules and provisions introduced to cater for orderly and sound market integration, it is necessary to subject market access in the area of financial services to specific safeguards in addition to the safeguards that govern relations between the Member States in the internal market, in particular regarding the requirements on local provision of services in Andorra and San Marino and emergency powers of the European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹, the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council², European Securities and Markets Authority (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council³, or the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) established by Regulation (EU) 2024/1620 of the European Parliament and of the Council⁴ (the ‘European Supervisory Authorities’).

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>).

² Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, ELI: <http://data.europa.eu/eli/reg/2010/1094/oj>).

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: <http://data.europa.eu/eli/reg/2010/1095/oj>).

⁴ Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 (OJ L, 2024/1620, 19.6.2024, ELI: <http://data.europa.eu/eli/reg/2024/1620/oj>).

- (9) Access to the Union's internal market in financial services should therefore depend on a comprehensive evaluation of the full and effective implementation of the Union's *acquis* for the financial sector and the robustness of Andorra's and San Marino's regulatory and supervisory frameworks and will require the adoption by the Commission of a positive recommendation that all necessary conditions set out in the Association Agreement have been fulfilled, taking into account the opinions of the relevant European Supervisory Authorities and the Single Resolution Board. The relevant European Supervisory Authorities and the Single Resolution Board should conduct a comprehensive evaluation of the financial sector of Andorra and San Marino under the oversight of the Commission, in line with Framework Protocol 3 and following the procedure set out in this Decision regarding the establishment of the criteria for an assessment of the supervisory infrastructure and the methodology for conducting such an assessment.
- (10) The Association Agreement should, in part, be applied, on a provisional basis in accordance with Article 112 thereof, which provides for the provisional application of the Association Agreement before its entry into force, pending the completion of the procedures necessary for its entry into force.
- (11) The signing of the Association Agreement on behalf of the Union does not affect the allocation of competences between the Union and its Member States. This Decision should not be interpreted as making use of the possibility for the Union to exercise its external competence with regard to areas covered by the Association Agreement falling within shared competence to the extent that such competence has not yet been exercised internally by the Union.

- (12) The provisional application of parts of the Association Agreement does not affect the allocation of competences between the Union and its Member States in accordance with the Treaties.
- (13) It is appropriate to define the specific conditions of the Union's representation in the Association Committee, Joint Committees and other bodies established by the Association Agreement. The Commission, as provided for in Article 17(1) TEU, is to represent the Union and to express the Union's positions in accordance with the Treaties.
- (14) It is appropriate, pursuant to Article 218(7) TFEU, to define the specific conditions for deciding on the positions to be adopted on behalf of the Union in the Joint Committees established by the Association Agreement in order to ensure that the legal acts adopted by the Union in the fields covered by the Association Agreement are incorporated into the Association Agreement as soon as possible after their adoption and transmission to Andorra and San Marino with a view to ensuring, to the extent possible, the simultaneous application of such legal acts in the Union, Andorra and San Marino.
- (15) It is also appropriate to authorise the Commission, pursuant to Article 218(7) TFEU, to approve on the Union's behalf certain modifications to the Association Agreement that are to be adopted by a simplified procedure or by a body set up by the Association Agreement in accordance with the provisions of the Association Agreement. Other decisions to be adopted by a body set up by the Association Agreement, when that body is called upon to adopt acts having legal effects, should be approved, on behalf of the Union, in accordance with Article 218(9) TFEU.

- (16) With a view to enabling the Union to take rapid and effective action to protect its interests in accordance with the Association Agreement, the Commission should, in accordance with the conditions set out in the corresponding provisions of the Association Agreement, adopt compensatory measures for the incorrect application of the Association Agreement, safeguard measures in the event of serious economic, societal or environmental difficulties of a regional nature that are caused by the application of the Association Agreement or rebalancing measures, safeguard measures in the event of a terrorist attack or a natural or man-made disaster that affects the Union or rebalancing measures, tobacco safeguard measures, and rebalancing measures, including the suspension of the application of customs security measures. In this context, the rights of the Council should be preserved by a consultation procedure.
- (17) The Association Agreement should be signed and Joint Declaration by the EU and Andorra on free movement of persons and Joint Statement by the EU and Andorra on air transport attached to this Decision be made,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Agreement establishing an association between the European Union and its Member States, of the one part, and the Principality of Andorra and the Republic of San Marino, each as a separate Party, of the other part, is hereby authorised, subject to the conclusion of that Agreement⁵⁺.

Article 2

1. Joint Declaration by the EU and Andorra on free movement of persons and Joint Statement by the EU and Andorra on air transport attached to this Decision are hereby approved.
2. The Council takes note of the following declarations by Andorra:
 - (i) Declaration of Andorra on the tobacco sector; and
 - (ii) Declaration of Andorra on the particular situation of Andorra and on safeguarding security and public policy.

⁵ The text of the Agreement is published in OJ L, ..., ELI:

⁺ Delegations/OJ: see document ST 11787/2024.

Article 3

1. The Commission shall represent the Union within the Association Committee, the Joint Committees, the Customs Cooperation Subcommittee, the Subcommittees on Food Safety and Veterinary and Phytosanitary Matters, the Subcommittees on Financial Services, and the Statistical Subcommittees, as well as in any other subcommittees and working groups that are established in accordance with Article 76(8) of the Association Agreement.
2. When the Commission represents the Union in bodies established by the Association Agreement, it shall inform the Council in a timely manner about the discussions and the outcome of the meetings and the acts adopted in those meetings. The Commission shall also inform the European Parliament, as appropriate.

Article 4

1. When the Commission submits a proposal to the Council which the Commission considers to fall within an area covered by the Association Agreement, it shall indicate that, after its adoption, the application of the Union legal act resulting from that proposal is to be extended to Andorra and to San Marino.

2. The positions to be adopted on behalf of the Union within the Joint Committees established by Article 76 of the Association Agreement as regards decisions of those Joint Committees simply extending the application of Union legal acts to Andorra and to San Marino, subject to any technical adjustments needed, shall be adopted by the Commission.
3. For decisions of the Joint Committees referred to in paragraph 2 of this Article having legal effects other than the effects referred to in that paragraph, the positions to be adopted on behalf of the Union shall be adopted in accordance with the procedure set out in Article 218(9) TFEU.

Article 5

1. For the establishment of the criteria for an assessment of the supervisory infrastructure and the methodology for conducting such an assessment under Article 10 of Framework Protocol 3, the procedure set out in this Article shall apply.
2. The European Supervisory Authorities shall transmit the draft assessment criteria and draft methodology to the Commission.
3. The Commission shall adopt an opinion on the draft criteria for an assessment of the supervisory infrastructure and the draft methodology for conducting such an assessment. It shall transmit its opinion to the European Supervisory Authorities and to the Council for information.

4. The criteria and methodology as referred to in paragraph 1 shall take utmost account of the opinion adopted by the Commission pursuant to paragraph 3. Where the European Supervisory Authorities substantially deviate from the opinion of the Commission, including any recommendations contained therein, they shall give a fully reasoned explanation therefor.

Article 6

Before adopting a decision in accordance with Article 15 of Framework Protocol 3, the European Supervisory Authority shall inform the Commission, which, in turn, shall inform the Council.

Article 7

1. Any decision of the Union to take the following measures shall be taken by the Commission in accordance with the conditions set out in the corresponding provisions of the Association Agreement:
 - (a) compensatory measures for the incorrect application of the Association Agreement with a view to remedying imbalances in accordance with Article 90(7) of the Association Agreement;

- (b) safeguard measures in the event of serious economic, societal or environmental difficulties of a regional nature that are caused by the application of the Association Agreement and that are likely to persist, or rebalancing measures, in accordance with Article 97 of the Association Agreement;
 - (c) safeguard measures in the event of a terrorist attack or a natural or man-made disaster that affects the Union, or rebalancing measures, in accordance with Article 98 of the Association Agreement;
 - (d) tobacco safeguard measures in accordance with Article 12 of the Andorra Protocol;
 - (e) rebalancing measures, including the suspension of the application of customs security measures, in accordance with Article 24 of the Andorra Protocol.
2. Where it intends to adopt any of the measures referred to in paragraph 1, the Commission shall, in a timely manner, provide the Council with sufficient information to allow for a meaningful exchange of views within the Council. The Commission shall take the utmost account of the views expressed. The Commission shall also inform the European Parliament, as appropriate.

Article 8

1. Subject to the conclusion of the Association Agreement at a later date and pending its entry into force, parts of the Association Agreement shall be applied on a provisional basis, in accordance with Article 112(2) of the Association Agreement, from the first day of the month following the month in which a Contracting Party deposited its instruments of ratification, conclusion or approval with the Secretary-General of the Council of the European Union, unless another Contracting Party notified that such a provisional application cannot take place.
2. The date from which the Association Agreement is to be applied on a provisional basis shall be published in the *Official Journal of the European Union*.
3. If the conditions for the provisional application of parts of the Association Agreement in accordance with paragraph 1 of this Article and Article 112(2) of the Association Agreement are not met, the Association Agreement may be applied fully or partially between the EU Party and Andorra or San Marino from the first day of the second month following the month in which either the EU Party or Andorra or San Marino deposited instruments of ratification, conclusion or approval with the Secretary-General of the Council of the European Union, unless either the EU Party or Andorra or San Marino notified that such a provisional application cannot take place.

Article 9

For the purposes of Article 8 of this Decision, pending its entry into force and in accordance with its Article 112(2) and (3), the Association Agreement shall be applied on a provisional basis with the exception of matters which do not fall within the Union's exclusive competence pursuant to Article 3 TFEU and which, for the purposes of this Decision, are:

- (a) Articles 27 to 32 of Chapter 5 of Part II of the Association Agreement, to the extent that those Articles concern indirect investments and do not affect common rules or alter their scope;
- (b) Article 63 of Chapter 5 of Part V of the Association Agreement, to the extent that that Article does not affect common rules or alters their scope.

Article 10

This Decision shall enter into force on the date of its adoption.

Done at ..., ...

For the Council
The President
