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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

• Reasons for and objectives of the Recommendation

Between 2015 and 2016 the European Union (EU) signed and concluded five agreements on the automatic exchange of financial account information to improve international tax compliance respectively with the Principality of Liechtenstein (“Liechtenstein”)¹; the Republic of San Marino (“San Marino”)², the Principality of Andorra (“Andorra”)³, the Swiss Confederation (“Switzerland”)⁴ and the Principality of Monaco (“Monaco”)⁵. The agreements with Liechtenstein and San Marino applied from 1 January 2016, while the other three agreements applied from 1 January 2017.

The five agreements 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 Co-operation and Development (OECD). The same standard is implemented within the EU for exchanges of financial account information between its Member States under Council Directive 2014/107/EU of 9 December 2014⁶ (DAC 2 – the first amendment to Directive 2011/16/EU⁷ on administrative cooperation in the field of taxation – DAC).

Important changes to the CRS were approved at international level on 26 August 2022⁸, 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)⁹.

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. The updated CRS now also contains provisions to ensure an efficient interaction between the CRS and the separate Crypto-Asset Reporting Framework (“CARF”)¹⁰ which was agreed at international level on the same date of the updated CRS. 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.

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

¹ OJ L339 of 24 December 2015, p. 1 to 35.

² OJ L346 of 31 December 2015, p. 1 to 41 (provisional application); OJ L140 of 27 May 2016, p. 1 to 2, with formal entry into force on 1 June 2016.

³ OJ L268 of 1 October 2016, p. 38 to 76.

⁴ OJ L333 of 19 December 2015, p. 10 to 49.

⁵ OJ L225 of 19 August 2016, p. 1 to 40 (provisional application); OJ L280 of 18 October 2016, p. 1 to 2, with formal entry into force on 1 February 2017.

⁶ OJ L359 of 16 December 2014, p. 1 to 29.

⁷ OJ L 64 of 11 March 2011, p. 1 to 12.

⁸ <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.

⁹ Council Directive (EU) 2023/2226 of 17 October 2023, OJ L 2023/2226 of 24 October 2023.

¹⁰ <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.

2026, it is necessary to negotiate and agree corresponding amendments to the above mentioned 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”)¹¹ 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.

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

This Recommendation is fully consistent with and precisely aims at ensuring that the existing agreements between the EU and the five non-EU countries remain aligned with EU legislation in the same field, notably the DAC, as amended by DAC8. DAC8 includes, among others, the latest changes to the OECD CRS. In the light of the close relationships between the EU and each of the five non-EU countries concerned by this Recommendation, 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. A timely update of the five EU agreements would ensure the smooth and effective continuation of this administrative cooperation beyond 1 January 2026.

Such an update would also have the advantage of facilitating the tasks of Reporting Financial Institutions, which would be able to follow uniform procedures, for the Customer Due Diligence and the reporting, under DAC and under the five EU agreements at stake. The requested software developments and the administrative adaptations would be more limited for them.

- **Consistency with other Union policies**

This Recommendation takes 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 agreements, will be substantially aligned with those that the same Financial Institutions have to apply as obliged entities under the EU legal framework set to fight against money laundering and terrorist financing.

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This Recommendation to the Council is submitted pursuant to Article 218(3) and (4) of the Treaty on the functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

This Recommendation concern the adoption by the non-EU countries in question of measures equivalent to the system established within EU legislation in the same field, notably under the DAC, as amended by DAC8. The Union has therefore competence to negotiate and conclude

¹¹ OJ L119 of 4 May 2016, p. 1 to 88.

the amendments to the related agreements which are necessary to this aim. As previously mentioned, this amendment of the EU agreements will enable the Reporting Financial Institutions in the EU to follow uniform procedures, for the Customer Due Diligence and the reporting, under DAC and under the five EU agreements at stake. The negotiation at Union level on these aspects is in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union.

- **Proportionality**

This Commission Recommendation is in line with the principle of proportionality and do not go beyond what is necessary to meet the objective of providing a uniform framework for the administrative cooperation between the EU Member States and the five non-EU countries concerned in the field of automatic exchange of financial account information between tax authorities.

- **Choice of instruments**

Decision of the Council of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Informal consultations between the Commission services and the relevant authorities of each of the five non-EU countries concerned were held during the first Semester of 2023. Member States were informed about the outcome of those informal consultations.

- **Impact assessment**

In line with tool 7 of the Better Regulation Toolbox¹², an impact assessment was not carried out because the Commission has little or no choice in the matter.

Indeed, the Recommendation concerns amendments of the five existing agreements and is aimed at aligning them with what has been already agreed at international level i.e. the changes to the CRS that were approved at the OECD on 26 August 2022.

- **Fundamental rights**

Where authorised by the Council to open and conduct the negotiation, the Commission will be vigilant at ensuring that any amended agreement will respect the key values of the European Union as established in Article 2 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union.

As the five agreements at stake were concluded or negotiated before the adoption and/or the entry into application of the GDPR, and as they involve the exchange of personal data, the negotiation will include a review and, where appropriate, an updating of the legal references and of the data protection provisions in line with the requirements of the GDPR.

¹² [Better regulation toolbox_Final.pdf \(europa.eu\)](#)

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget, notably because the Commission has, and will continue to have, no role in the processing of the financial account information and personal data exchanged between tax authorities under the five agreements at stake.

5. OTHER ELEMENTS

Not applicable.

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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 218(3) and (4),

Having regard to the recommendation from the European Commission,

Whereas:

- (1) These five agreements¹ at present 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 internationally agreed OECD Common Reporting Standard (“CRS”). They are aimed at improving international tax compliance while assisting tax authorities in preventing and tackling tax fraud and evasion.
- (2) The same standard is implemented within the EU for exchanges between its Member States under the Council Directive 2014/107/EU of 9 December 2014², the first amendment to Council Directive 2011/16/EU³ on administrative cooperation in the field of taxation.
- (3) Important changes to the CRS were approved at international level on 26 August 2022⁴, with implementation from 1 January 2026.
- (4) The implementation of these changes within the EU has been included in the seventh amendment to Council Directive 2011/16/EU on administrative cooperation in the field of taxation⁵.
- (5) Article 8 of each of these five agreements contains identical provisions for bilateral formal consultations between the Contracting Parties 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

¹ OJ L333 of 19 December 2015, p. 10 to 49 (agreement with the Swiss Confederation); OJ L339 of 24 December 2015, p. 1 to 35 (agreement with the Principality of Liechtenstein); OJ L268 of 1 October 2016, p. 38 to 76 (agreement with the Principality of Andorra); OJ L225 of 19 August 2016, p. 1 to 40 and OJ L280 of 18 October 2016, p. 1 to 2 (agreement with the Principality of Monaco); OJ L346 of 31 December 2015, p. 1 to 41 and OJ L140 of 27 May 2016, p. 1 to 2 (agreement with the Republic of San Marino).

² OJ L359 of 16 December 2014, p. 1 to 29.

³ OJ L 64 of 11 March 2011, p. 1 to 12.

⁴ <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.

⁵ Council Directive (EU) 2023/2226 of 17 October 2023, OJ L 2023/2226 of 24 October 2023.

be amended by means of a protocol or a new agreement between the Contracting Parties”.

- (6) It is in the interest of the European Union and its Member States to achieve a smooth continuation beyond 1 January 2026 of the cooperation in the field of automatic exchange of financial account information between tax authorities which is provided by these five agreements.
- (7) To this aim, a negotiation should be opened with a view to amending these 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,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, to amend the 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.

Article 2

The Commission shall conduct the negotiations in accordance with the negotiating directives set out in the Annex, and in consultation with the special committee designated by the Council in accordance with Article 218 (4) TFEU.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*