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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Amending Protocol to the Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance

Delegations will find attached document COM(2025) 377 final.

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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and provisional application of the Amending Protocol to the Agreement between the European Union and the Swiss Confederation 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 signature of the Amending Protocol to the Agreement between the European Union and the Swiss Confederation (Switzerland) on the automatic exchange of financial account information to improve international tax compliance[1] (the Agreement).

The Agreement provides the legal basis for the reciprocal automatic exchange of financial account information between the EU Member States and Switzerland, 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/EU[2] (DAC 2 – the first amendment to Directive 2011/16/EU[3] on administrative cooperation in the field of taxation – DAC)[4].

Important changes to the CRS were approved at international level on 26 August 2022[5] and will apply from 1 January 2026. Council Directive (EU) 2023/2226[6] (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 Switzerland 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 Swiss national data protection legislation were also updated. Furthermore, these amendments reflect the continued

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1 OJ L 385, 29.12.2004, p. 30 to 42. OJ L 333, 19.12.2015, p. 12 to 49.
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.

application of the EU Adequacy Decision concerning Switzerland[8] and the Opinion released on 8 July 2015 on the agreement by the European Data Protection Supervisor (EDPS)[9].

Finally, in the absence of an existing legal framework that provides for mutual assistance in the collection of direct and indirect taxes between the European Union and Switzerland, the Member States sought the inclusion of such provisions by way of corresponding amendments to the Agreement.

The negotiated provisions ensure the recovery of VAT claims, to avoid non-taxation and combat tax fraud in such a manner that closely aligns with the related provisions of the agreement between the European Union and Norway on administrative cooperation, combatting fraud and recovery of claims in the field of VAT[10] (the EU-Norway agreement). The latter agreement in turn is based on Directive 2010/24/EU[11] for recovery assistance between Member States of the European Union (EU Recovery Directive). Simultaneously, the negotiated agreement contains a commitment to explore mutual assistance in recovering other tax claims within a four-year period following the first day of January after the signature of this Amending Protocol.

A Council decision authorising the opening of negotiations for the amendment of the Agreement concerning the automatic exchange of financial account information to improve international tax compliance between the European Union and the Swiss Confederation was adopted on 21 May 2024[12].

Several rounds of negotiations were held and a provisional agreement was reached in December 2024. Subsequently, the draft text of the Amending Protocol was initialled by the Chief negotiators on 1 April 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 shared with the European Parliament, together with information about the intended provisional application.

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

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

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

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

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

10 OJ L 195, 1.8.2018, pp. 3-22

11 OJ L 84, 31.3.2010, p. 1–12

12 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

The negotiated Amending Protocol ensures that the existing agreement between the European Union and Switzerland 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 Switzerland, 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 negotiated Amending Protocol provides a legislative framework for mutual assistance between the European Union and Switzerland for the recovery of VAT claims. This framework closely aligns with the EU-Norway agreement, which in turn is similar to the EU Recovery Directive. Therefore, this initiative deepens Member States cooperation with Switzerland in line with the EU acquis.

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.

•2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The present proposal to the Council is submitted pursuant to Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(5) TFEU and the second subparagraph of Article 218(8) TFEU.

Given that the main objectives and components of the Amending Protocol to the Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve tax compliance are to improve administrative cooperation in the area of direct and indirect taxation, including the recovery of VAT claims, the substantive legal basis are Articles 113 and 115 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".

Under the case law of the Court of Justice, an agreement may affect common rules or alter their scope when it falls within an area which is already largely covered by such rules[13].

[13] Judgement of the Court of 4 September 2014, C-114/12, ECLI:EU:C:2014:2151, paragraphs 69 and 70.

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 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.

The inclusion of provisions on mutual assistance that ensure the recovery of VAT claims, to avoid non-taxation and combat tax fraud, also falls within the Union's exclusive competence, which is based on the EU Recovery Directive.

- **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 Switzerland in an uninterrupted manner, and in a manner that aligns with the new requirements of the CRS, as already incorporated in the DAC8.

Simultaneously, the amendments of the Agreement do not go beyond what is necessary to meet the objective of providing a common framework for mutual assistance in the recovery of VAT claims between the European Union and Switzerland. These amendments will enable the Member States' authorities responsible for the collection of VAT claims to cooperate with the Swiss tax authorities in a similar manner that they cooperate between themselves in the EU based on the EU acquis.

- **Choice of the instrument**

Article 218(5) 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 authorising the signing and the provisional application 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.

3. RESULTS OF IMPACT ASSESSMENTS

- **Impact assessment**

According to tool 7 of the Better Regulation[14], 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

[14] https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf

by means of the DAC8. As regards the amendments with respect to mutual assistance in the recovery of VAT claims, they align as much as possible with the relevant provisions of the EU-Norway agreement which, in turn, replicates the EU Recovery Directive. Finally, the changes on data protection, are merely aimed at updating references to the EU and Swiss 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 Switzerland 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.

The amendments also contain provisions to ensure an efficient interaction between the CRS and the separate Crypto-Asset Reporting Framework (CARF) developed by the OECD[15]. 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.

Finally, the amendments reflect the new optional category of Non-Reporting Financial Institutions for genuine non-profit Entities operating for the public benefit (Qualified Non-Profit Entity), which is provided in the Commentaries to the update to the CRS. Switzerland has exercised this option and is in the process of setting up the legal and administration mechanisms to ensure that any Entity claiming the status of a Qualified Non-Profit Entity is confirmed to fulfil the relevant conditions laid down in the above-mentioned Commentaries. On the contrary, EU Member States have note exercised this option, in line with Council Directive (EU) 2023/2226.

These amended reporting and automatic exchange of information requirements are provided for within Title 1 and Title 4. They will provisionally apply from 1 January 2026.

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

2. Amendments to include legal provisions that provide for assistance in the recovery of VAT claims

The foreseen amendments establish a new legal framework for mutual assistance to ensure the recovery of VAT claims between the Member States and Switzerland. Simultaneously, Article 4s commits the parties to explore the extension of this mutual assistance to other tax claims within a four-year period following the first day of January after the signature of this Amending Protocol.

As mentioned, the negotiated framework remains closely aligned to the related provisions of the EU-Norway agreement, which in turn is based on the EU Recovery Directive. It includes, inter alia, provisions on notification of documents, recovery and precautionary measures, exchange of information. Moreover, Article 4p establishes a Joint Committee composed of representatives of the contracting parties, that shall ensure the proper functioning and implementation of the Title dealing with tax recovery. There are only a few deviations from the EU-Norway agreement, notably in Article 4g (conditions governing a request for recovery), Article 4m (limits to the requested authority's obligations) and in Article 4o (costs).

These amendments are provided for within a new Title 2. This inaugural framework between the Member States and Switzerland for the recovery of VAT claims will apply from the first day of January of the first year, after the entry into force of the Amending Protocol with regard to tax claims arising after the first day of January after the signature of the Amending Protocol. The provision concerning the establishment of the Joint Committee (Article 4p) will provisionally apply from 1 January 2026.

3. 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 Switzerland has been updated to the Federal Act on Data Protection of 25 September 2020 and its ordinance of 31 August 2022.

- **Signing and the text of the Agreement**

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

In accordance with the Treaties, it is for the Commission to ensure the signing of the Amending Protocol, subject to its conclusion at a later date.

In accordance with the Treaties, it is also for the Commission to notify Switzerland of the Union's intention to apply provisionally the amendments concerning the following articles of the Agreement, annexes to the Agreement and declarations: Article 1(1), subparagraphs (m) and (u); Article 2; Article 3; Article 4p; Annex I; Annex III; and the Joint Declarations of the Contracting Parties to the Agreement.

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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 Articles 113 and 115, in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance[1] ('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 2022[2] and have been introduced in Union legislation with the amending of Council Directive 2011/16/EU by Council Directive (EU) 2023/2226[3].

(3) On 21 May 2024, the Council authorised the Commission to open negotiations with Switzerland for an amendment of the Agreement to reflect the changes to the CRS approved at the international level. The negotiations were successfully concluded by the initialling of an Amending Protocol.

(4) The Amending Protocol expands the scope of reporting for CRS to include new digital financial products, such as Specified Electronic Money Products and Central Bank Digital Currencies whilst simultaneously introducing more detailed reporting requirements and strengthened due diligence procedures. It also introduces provisions on mutual assistance in the collection of direct and indirect taxes between the European Union and Switzerland and updates the legal references to the data protection legislation of the Contracting Parties.

(5) Therefore, the Amending Protocol to the Agreement should be signed on behalf of the Union.

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1 OJ L 385, 29.12.2004, p. 30 to 42. OJ L 333, 19.12.2015, p. 12 to 49.

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

3 OJ L, 24.10.2023 [http://data.europa.eu/eli/dir/2023/2226/oj]

(6) Certain provisions of the Amending Protocol should be applied provisionally, pending its entry into force.

(7) 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 signing, on behalf of the Union, of the Amending Protocol to the Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance is hereby authorised, subject to the conclusion of the said Amending Protocol[4].

Article 2

The amendments set out in Article 1 of the Amending Protocol concerning the following articles of the Agreement, annexes to the Agreement and declarations shall be applied provisionally, in accordance with Article 2(2) of the Amending Protocol, pending its entry into force:

- Article 1(1), subparagraphs (m) and (u);
- Article 2;
- Article 3;
- Article 4p;
- Annex I;
- Annex III;
- the Joint Declarations of the Contracting Parties[5].

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

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

[5] The date from which the parts of the Amending Protocol to the Agreement will be provisionally applied will be published in the Official Journal of the European Union.