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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 July 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 398 final
Subject:	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 Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance

Delegations will find attached document COM(2025) 398 final.

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2025/0215 (NLE)

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 Republic of San Marino 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 Republic of San Marino (San Marino) 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 San Marino, 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).

Important changes to the CRS were approved at international level on 26 August 2022[4] and will apply from 1 January 2026. Council Directive (EU) 2023/2226[5] (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 San Marino 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")[6] 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 San Marino national data protection legislation were also updated. Finally, Article 6 of the Agreement as well as the additional data protection safeguards regarding the treatment of data processed under this agreement (Annex III) have been slightly adjusted to fully align the wording and ensure continued compliance with the GDPR.

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1 OJ L 381, 28.12.2004, p. 33.

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/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html, pages 62 to 102.

5 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)

6 OJ L119 of 4 May 2016, p. 1 to 88

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 Republic of San Marino was adopted on 21 May 2024[7].

Several rounds of negotiations were held and a provisional agreement was reached in March 2025. Subsequently, the draft text of the Amending Protocol was initialled by the chief negotiators on 15 May 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 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 Republic of San Marino 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 San Marino 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 San Marino, 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.

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[7] 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

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 Council Directive (EU) 2023/2226.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Given the main objective and components of the Agreement, the substantive legal basis of the present proposal to the Council is Article 115 of the Treaty on the functioning of the European Union (TFEU).

The Council is to adopt the decision concluding the Amending Protocol after consulting the European Parliament. Given that Article 115 TFEU is the substantive legal basis, the European Parliament should give its opinion. Therefore, the procedural legal basis of the decision concluding the Amending Protocol is Article 218(6), second subparagraph, point (b), TFEU. As Article 115 TFEU requires unanimity for Union act, the procedural legal basis for the conclusion of the Amending Protocol should include 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 scope[8]. This jurisprudence of the Court of Justice 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 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 San Marino 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 instrument

This proposal for a Council decision is submitted in accordance with paragraph 6 of Article 218 TFEU, which envisages the adoption by the Council of a decision concluding an

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

international agreement. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal. 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[9], 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. Finally, the changes on data protection, are merely aimed at updating references to the EU and San Marino data protection legislation and slightly adjusting Article 6 as well as the additional data protection safeguards included in Annex III of the Agreement to fully align the wording and ensure continued compliance with the GDPR.

- **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 TFEU 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 San Marino 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[10]. These provisions allow to limit instances of duplicative reporting, while maintaining a

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

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

maximum amount of operational flexibility of Reporting Financial Institutions that are also subject to obligations under the CARF.

These amended reporting and automatic exchange of information requirements are provided for within Articles 1-3 and Annex I. They will apply from 1 January 2026.

2. Update to the legal reference on data protection legislation and specification of additional data protection safeguards

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 San Marino has been updated to Law No. 171 of 21 December 2018. Finally, Article 6 and the additional data protection safeguards included in Annex III have been slightly adjusted to align the wording and ensure continued compliance with the GDPR.

- **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 the 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 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 opinion of the European Parliament[11],

Whereas:

(1) The Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance[12] ('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[13] and have been introduced in the EU legislation with the amending of Council Directive 2011/16/EU by Council Directive (EU) 2023/2226[14].

(3) Therefore, the Agreement needs to be amended to ensure that the automatic exchange of financial account information between EU Member States and the Republic of San Marino 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 Republic of San Marino 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.

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[11] Opinion of XXX (not yet published in the Official Journal)

[12] OJ L346 of 31 December 2015, pages 1 to 41; OJ L140 of 27 May 2016, pages 1 to 2.

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

[14] 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)

(5) In accordance with Council Decision (EU) XXXX[15], the Amending Protocol to the Agreement was signed on XXXX subject to its conclusion at a later date.

(6) 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.[16]

(7) The Amending Protocol to the Agreement and the joint declarations attached to it should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Amending Protocol to the Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance is hereby approved on behalf of the Union.

The text of the Amending Protocol to the Agreement is attached to this Decision.

Article 2

The Joint Declaration of the Contracting Parties on the Agreement and the Annexes, the Joint Declaration of the Contracting Parties on Article 5 of the Agreement, the Joint Declaration of the Contracting Parties on the relations between San Marino and the European Union, the Joint Declaration of the Contracting Parties on the definition of Central Bank and the Joint Declaration of the Contracting Parties on the entry into force of the Amending Protocol 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

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15 Council Decision (EU) xxxx on the signing, on behalf of the Union, of the Amending Protocol to the Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance (OJ L XXXX)

16 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39-98)