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NOTE

From:	Mr Wojciech Rafał WIEWIÓROWSKI, European Data Protection Supervisor
On:	25 August 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision on the signing and conclusion of the provisional application of the Amending Protocol to the Agreement between the EU and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance

Delegations will find attached the opinion of the European Data Protection Supervisor concerning the abovementioned legislative proposals.

E-MAIL

EUROPEAN DATA PROTECTION SUPERVISOR

A IM 8332 2025
21-03-2025

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

H.E. Ambassador Carsten GRØNBECH-JENSEN
Permanent Representative of Denmark to the European Union

Ms Thérèse BLANCHET
Secretary-General
Council of the European Union

Brussels,
WRW/AF/mt/D(2025)3088 **C2025-0651**
Please use policy-consult@edps.europa.eu for all correspondence

Subject: Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision on the signing and conclusion of the provisional application of the Amending Protocol to the Agreement between the EU and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance

Your Excellency,
Dear Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed our Opinion on the Proposal for a Council Decision on the signing and conclusion of the provisional application of the Amending Protocol to the Agreement between the EU and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance.

We have sent a copy of this Opinion to the President of the European Commission and the President of the European Parliament.

Yours sincerely,
p.o.

Digitally signed.
Date: 2025-08-20
09:02:10 UTC

Encl.: Opinion

Cc: Mr Serge DE BIOLLEY, Director for Justice, Secretariat General of the Council

Contact persons: *Alessandra Furfaro (alessandra.furfaro@edps.europa.eu), Matthias Pollmann (matthias.pollmann@edps.europa.eu)*

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EDPS
EUROPEAN DATA PROTECTION SUPERVISOR
The EU's independent data protection authority
Opinion 18/2025
on the Proposal for a Council Decision on the signing and conclusion of the provisional application of the Amending Protocol to the Agreement between the EU and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance
edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates to (i) the 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[1]; and to (ii) the 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 Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance[2].

This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposals that are relevant from a data protection perspective.

[1] COM(2025) 377 final.
[2] COM(2025) 376 final.

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Executive Summary

The EDPS is consulted on the Proposals for Council Decisions to sign, provisionally apply, on behalf of the Union, and to conclude 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.

The Amending Protocol aims to ensure that the automatic exchange of financial account information between EU Member States and Switzerland is aligned with the updated Common Reporting Standard developed by the Organisation for Economic Co-operation and Development. In addition, the Amending Protocol aims to align the text of the Agreement with the new data protection framework (i.e. the GDPR for EU Members States and the Federal Act on Data Protection of 25 September 2020 and its ordinance of 31 August 2022 for Switzerland).

The Amending Protocol would ensure that the existing agreement between the European Union and Switzerland remains aligned with Union legislation in the same field. It also aims to establish a framework for recovery assistance between the EU Member States and Switzerland, in order to enable the authorities responsible for the application of VAT legislation to assist each other in ensuring compliance with that legislation and in protecting VAT revenue.

Any transfer of information containing personal data from the European Union to Switzerland constitutes an international transfer of personal data in the meaning of Chapter V of the GDPR. The international transfer of personal data from Member States to Switzerland does not require specific authorisations nor safeguards under Chapter V of Regulation 2016/679, by virtue of Commission Decision 2000/518/EC. The EDPS recommends including a reference to the EU adequacy decision concerning Switzerland in a recital of both the Signing and the Conclusion Proposals.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ('EUDPR')[3], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 10 July, the European Commission issued:

   - a 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 ('the Signing Proposal')[4];

   - a Proposal for a Council Decision on the conclusion, 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 ('the Conclusion Proposal')[5].

2. The objective of the Signing Proposal is to authorise the signing, on behalf of the Union, and the provisional application 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 ('the Agreement').

3. The objective of the Conclusion Proposal is to approve the Amending Protocol[6].

4. 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).

5. The Amending Protocol aims to (i) 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; to (ii) align the text

[3] OJ L 295, 21.11.2018, p. 39.
[4] COM(2025) 377 final.
[5] COM(2025) 376 final.
[6] Conclusion Proposal, Article 1.

of the Agreement with the new data protection framework (i.e. 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) for EU Members States; and the Federal Act on Data Protection of 25 September 2020[7] and its ordinance of 31 August 2022[8] for Switzerland); and to (iii) establish a legislative framework for mutual assistance between the EU and Switzerland for the recovery of VAT claims[9].

6. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 10 July 2025, pursuant to Article 42(1) of the EUDPR. The EDPS welcomes the reference to this consultation in Recital 7 of the Signing Proposal and in Recital 7 of the Conclusion Proposal.

2. General Remarks

7. The EDPS welcomes the objectives pursued by the Proposals, notably to improve administrative cooperation in the area of direct taxation, and to improve international tax compliance. The EDPS acknowledges that 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 Council Directive 2014/107/EU amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 2)[10] as amended by Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8)[11]. The EDPS has already issued an opinion on DAC8[12]. The EDPS has already issued an opinion on DAC8 on 3 April 2023[13].

8. The EDPS regrets not having been consulted on the Council Decision authorising the opening of negotiations for the amendment of the Agreement in line with Article 42(1) EUDPR.

9. The EDPS notes that the Proposals' objective is also to establish a legal legislative framework for mutual assistance between the EU and Switzerland for the recovery of VAT claims. This would enable the authorities responsible for the application of VAT legislation to assist each other in ensuring compliance with that legislation and in protecting VAT revenue. 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. The negotiated provisions would 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

[7] RS 235.1.
[8] RS 235.11
[9] Signing Proposal and Conclusion Proposal, Explanatory Memorandum, page 1, 2, and 3.
[10] OJ L359 of 16.12.2014, p. 1 to 29.
[11] OJ L, 24.10.2023.
[12] OJ L, 24.10.2023.
[13] EDPS Opinion 9/2023 on the Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

and recovery of claims in the field of VAT (the EU-Norway agreement), on which the EDPS issued an opinion on 13 December 2023[14].

10. Any transfer of information containing personal data from the European Union to Switzerland constitutes an international transfer of personal data in the meaning of Chapter V of the GDPR.

11. On 26 July 2000, the Commission adopted a decision recognising that the Swiss Confederation ensures an adequate level of protection for personal data transferred within the scope of the Directive 95/46/EC of the European Parliament and of the Council (Data Protection Directive)[15] from the European Union to Switzerland (the 'Adequacy Decision')[16].

12. With the entry into application of the GDPR, the adequacy decisions adopted under the Data Protection Directive (including the one concerning Switzerland) remained in force. Pursuant to Article 97 GDPR, the Commission shall periodically review adequacy decisions, every four years, in order to determine whether the countries and territories that received an adequacy finding continue to provide an adequate level of protection for personal data.

13. On 15 January 2024, the Commission confirmed that Switzerland continues to provide an adequate level of protection for personal data transferred within the scope of the GDPR from the EU to Switzerland [17]. As a result, data transfers from the EU to Switzerland can take place without additional requirements.

14. The EDPS welcomes that the preamble of the Agreement and the Explanatory Memoranda of both Signing and Conclusion Proposals refer to the Adequacy Decision. As the Adequacy Decision would cover the transfer of personal data regulated by the Agreement, the EDPS recommends including a reference to it in a recital of both the Signing and the Conclusion Proposals.

3. Conclusions

15. In light of the above, the EDPS recommends to include a reference to Commission Decision 2000/518/EC in a recital of both the Signing and the Conclusion Proposals.

Brussels,

p.o. Leonardo CERVERA NAVAS

Digitally signed.

Date: 2025-08-20

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[14] EDPS Opinion 54/2023 on the on the Proposals for a Council Decision on the conclusion and signing on behalf of the Union of the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax.

[15] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ EU L 281, 28.11.1995, p. 31).

[16] Commission Decision 2000/518/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland (OJ L 215, 25.08.2000, p. 1).

[17] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the first review of the functioning of the adequacy decisions adopted pursuant to Article 25(6) of Directive 95/46/EC, COM(2024) 7 final, p. 13.