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Recommendation for a

COUNCIL DECISION

**on the amendment to the Monetary Agreement with the Principality of Andorra and to
the Monetary Agreement with the Republic of San Marino**

EXPLANATORY MEMORANDUM

The European Union has signed a Monetary Agreement with the Principality of Andorra¹ and another Monetary Agreement with the Republic of San Marino².

In accordance with the Monetary Agreements, the euro is the official currency of the Principality of Andorra and the Republic of San Marino. Under the Monetary Agreements, and in order to ensure the smooth use and protection of the euro, the two countries have to transpose EU legal acts of a monetary law nature. Given that the Principality of Andorra and the Republic of San Marino each have a significant banking sector operating in close connection with those of the euro area, the Principality of Andorra and the Republic of San Marino must also implement EU banking and financial legislation relevant for the protection of the euro. In particular, this is in relation to the activity and supervision of financial institutions concerned, pursuant to the terms and conditions set out in each Monetary Agreement. Moreover, both countries must implement all EU legal acts on anti-money laundering and countering the financing of terrorism (AML/CFT). The EU legal acts to be implemented under the Monetary Agreements are listed in the annexes thereto.

The negotiations on an Association Agreement with the Principality of Andorra and the Republic of San Marino were finalised in December 2023. In accordance with the Association Agreement, the two countries are to implement and apply completely, and effectively all applicable EU provisions covering banking, insurance, asset management, and securities markets. The Association Agreement will also provide for the full implementation and application of all EU legal acts on AML/CFT.

The EU banking and financial services acts that are relevant for the euro and which the Principality of Andorra and the Republic of San Marino must implement under the Monetary Agreements are only a subset of the EU financial services acts that they will have to enact further to the Association Agreement. The set of EU legal acts on AML/CFT is identical in the Monetary Agreements and in the Association Agreement.

There is a partial overlap of EU legal acts to be implemented pursuant to the different agreements. This means that, in the absence of action, the overlapping acts would have to be listed in the annexes to both agreements. Given this, a solution should be found to clarify the duties and avoid duplication of efforts while guaranteeing legal certainty and swift application of the agreements.

An integration of the Monetary Agreements into the Association Agreement is not possible as they have different purposes and legal bases. The legal basis of the Monetary Agreements is Article 219(3) of the Treaty on the Functioning of the European Union (TFEU). In accordance with this, the Council - representing only those Member States that have changed over to the euro - acts by the default rule of qualified majority on a recommendation from the Commission and after consulting the European Central Bank. The Association Agreement is based on Article 218 TFEU, whereby, further to the consent of the European Parliament, the Council - representing all Member States - will adopt a decision concluding the agreement.

A viable and simple solution consists in amending the Monetary Agreements. By means of

¹ OJ C 369, 17.12.2011, p. 1.

² OJ C 121, 26.4.2012, p. 5.

the proposed amendment, the legislative acts of a monetary law nature (such as those concerning banknotes and coins, fraud and counterfeiting, statistical reporting to the European Central Bank, and acts under Article 133 TFEU) would continue to be listed in the Annexes to the Monetary Agreements. However, a clause would be inserted into the Monetary Agreements to provide for the inclusion in the Association Agreement of all new EU legal acts on AML/CFT and all new EU legal acts on banking and finance relevant for the euro, once these EU legal acts become applicable under the Association Agreement. Until the segments of the protocol on financial services of the Association Agreement come into effect for an associated State and the EU legal acts pertaining to those segments become applicable to that associated State, the relevant EU acquis would continue to be incorporated and considered in the annex of the Monetary Agreements of that associated State. This procedure would be applied for each segment in case their coming into effect is progressive.

The acts concerning AML/CFT and banking and finance listed in the Association Agreement but relevant for the euro would be clearly marked as such, so that when their implementation is assessed, this can be done at the same time for the purposes of the Monetary Agreements. This will ensure streamlining of agendas and avoid duplication of efforts in the Joint Committee meetings for the Association Agreement and those for the Monetary Agreements. It is the intention of the Commission services to invite their European Central Bank counterparts to join the European Commission delegation to the Sub-committee on financial services established under the Association Agreement when it discusses the implementation of the acts on AML/CFT, banking and finance relevant for the euro.

To ensure legal certainty, another clause would be added to the Monetary Agreements to guarantee the independence of the Association Agreement and of the Monetary Agreements. It would also provide for the transfer to the Monetary Agreements of the acts on banking and finance relevant for the euro and on AML/CFT in the event that the Association Agreement were to be partially or fully suspended or terminated.

Recommendation for a

COUNCIL DECISION

on the amendment to the Monetary Agreement with the Principality of Andorra and to the Monetary Agreement with the Republic of San Marino

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 219(3) thereof,

Having regard to the recommendation from the Commission¹,

Having regard to the opinion of the European Central Bank²,

Whereas:

- (1) The Union has the exclusive competence for monetary and exchange rate matters as of the date of the introduction of the euro.
- (2) The Union has signed a Monetary Agreement with the Principality of Andorra³ and another Monetary Agreement with the Republic of San Marino⁴.
- (3) Following the finalisation of the negotiations in December 2023, the Union is expected to sign an Association Agreement with the Principality of Andorra and the Republic of San Marino. Under the Association Agreement and its protocol on financial services, Andorra and San Marino will progressively join the single market for financial services, which means Andorra and San Marino should transpose all the Union acquis and new legislation on combating money laundering or terrorist financing and on financial services.
- (4) Both the Monetary Agreements and the Association Agreement provide for the implementation of Union legal acts by Andorra and San Marino. Those acts are listed in the Annexes to the respective Agreements.
- (5) The Union legal acts on combating money laundering or terrorist financing, to be implemented pursuant to both types of agreement, are identical. In contrast, the acts on financial services overlap only partially. The acts applying under the Monetary Agreements mainly concern banking and financial law related to the supervision of financial institutions which are relevant for the euro, whereas all Union legal acts on financial services fall within the scope of the Association Agreement.

¹ OJ C , , p. .

² OJ C , , p. .

³ Monetary Agreement between the European Union and the Principality of Andorra (OJ C 369, 17.12.2011, p. 1).

⁴ Monetary Agreement between the European Union and the Republic of San Marino (OJ C 121, 26.4.2012, p. 5).

- (6) The Monetary Agreements, on the one hand, and the Association Agreement, on the other, are independent of each other and have different purposes and legal bases. The legal basis of the Monetary Agreements is Article 219(3) TFEU, whereby, the Council - representing only those Member States that have changed over to the euro - acts by the default rule of qualified majority on a recommendation from the Commission and after consulting the European Central Bank. The Association Agreement is based on Article 218 TFEU, whereby, further to the consent of the European Parliament, the Council - representing all Member States - will adopt a decision concluding the agreement. Therefore, the Agreements are independent of each other, and the Monetary Agreements cannot be integrated into the Association Agreement.
- (7) A mechanism should be found to address the partial overlapping of identical duties under the different agreements and ensure the smooth interaction between them. A viable and simple solution consists in amending the Monetary Agreements.
- (8) A clause should be inserted into the Monetary Agreements that provides for the incorporation in the Association Agreement of all new Union legal acts on combating money laundering or terrorist financing and all new relevant Union legal acts on banking and finance relevant for the euro once those Union legal acts become applicable under the Association Agreement. The assessment of the implementation of all those acts, whether past or future, should be undertaken in the framework of the Association Agreement, and may be relevant for the application of the Monetary Agreements.
- (9) Union legal acts of a monetary law nature should remain governed exclusively by the Monetary Agreements.
- (10) A clause should be inserted into the Monetary Agreements to guarantee the independence of the agreements.
- (11) The Union legal acts on banking and finance relevant for the euro and on combating money laundering or terrorist financing that have become part of the Association Agreement should be incorporated in the Monetary Agreements automatically if the Association Agreement is partially or fully suspended or if it is terminated.
- (12) The Council is to determine the arrangements for the amendment to agreements concerning monetary or foreign exchange regime matters,

HAS ADOPTED THIS DECISION:

Article 1

The Commission shall seek the following changes in the Monetary Agreements in the negotiation of an amendment to the Monetary Agreement with the Principality of Andorra and an amendment to the Monetary Agreement with the Republic of San Marino:

- (a) Insertion of a clause in the Monetary Agreements by which all new acts pertaining to the subset of Union legal acts on banking and financial law relevant for the euro and all new Union legal acts on combating money laundering or terrorist financing become part of the relevant Annex to the Association Agreement exclusively once these Union legal acts become applicable under the Association Agreement;

- (b) Insertion of a clause in the Monetary Agreements which ensures that the assessment of the implementation of all Union legal acts on banking and financial law relevant for the euro and all Union legal acts on combating money laundering or terrorist financing, whether past or future, should be undertaken in the framework of the Association Agreement, and may be relevant for the application of the Monetary Agreements. The clause should also clearly state that Union legal acts on banking and financial law relevant for the euro be clearly marked as such, so that when their implementation is assessed, this can be done at the same time for the purpose of the Monetary Agreement, as it is also done at the same time for all Union legal acts on combating money laundering or terrorist financing;
- (c) Insertion of a clause in the Monetary Agreement by which the Union legal acts on banking and financial law necessary for the euro and all Union legal acts on combating money laundering or terrorist financing that are listed in the Association Agreement but are relevant for the smooth use and protection of the euro are clearly marked, so that the assessment of the implementation of these acts in the Principality of Andorra and the Republic of San Marino under the Association Agreement can be done at the same time for the purposes of the Monetary Agreements;
- (d) Insertion of a clause in the Monetary Agreements by which the subset of all new Union legal acts on banking and financial law relevant for the euro and all new Union legal acts on combating money laundering or terrorist financing, having become part of the Association Agreement, are automatically incorporated in the Annexes to the Monetary Agreements if the Association Agreement is partially or fully suspended or if it is terminated;
- (e) Insertion of a clause in the Monetary Agreements which ensures that Union legal acts of a monetary law nature shall remain governed exclusively by the Monetary Agreements.

The Commission shall inform the Principality of Andorra and the Republic of San Marino of the need and of the Union's readiness to amend the Monetary Agreements.

Article 2

The Commission is empowered to negotiate, conclude, and sign the amendment to the Monetary Agreement with the Principality of Andorra in four languages: Catalan, French, English and Spanish. The text in each of these languages shall be considered equally authentic.

The Commission is empowered to negotiate, conclude, and sign the amendment to the Monetary Agreement with the Republic of San Marino in English.

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*