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2024/0101 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Agreement establishing an association between the European Union and the Principality of Andorra and the Republic of San Marino respectively

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On the basis of the negotiating directives adopted by the Council in December 2014, the Commission has negotiated a far-reaching association agreement with Andorra and San Marino providing for the participation of these countries in the European Union's internal market and for cooperation outside the four freedoms. In its conclusions adopted in June 2022, the Council called on the Commission to finalise the negotiations by the end of 2023. On 7 December 2023, the negotiations were completed and an Association Agreement was agreed at the level of the Chief Negotiators. The negotiations were conducted in consultation with the Council's EFTA Working Party. The European Parliament has been informed about the outcome of the negotiations.

The attached proposal constitutes the legal instrument for authorising the conclusion of the Agreement establishing an association between the European Union ('EU') and the Principality of Andorra ('Andorra') and the Republic of San Marino ('San Marino'), respectively (hereinafter referred to as 'the Agreement').

The Agreement provides for the participation of Andorra and San Marino, respectively, to a homogenous extended internal market under equal conditions of competition and respect of the same rules, and related horizontal and flanking policies, while also replacing the current customs unions between the EU and each of these countries.

In addition, the Agreement includes a framework for possible cooperation in policy areas outside the four freedoms such as research and development, education, social policy, the environment, consumer protection, culture and regional cooperation.

To ensure the effective functioning of the internal market, the Agreement foresees dynamic regulatory alignment. It also provides for the Commission as the responsible authority in charge of applying EU law on State aid in Andorra and San Marino. The Agreement further includes provisions establishing a dispute settlement mechanism with the Court of Justice of the European Union as arbiter for disputes on the interpretation and application of the Agreement.

Finally, the situation of Andorra and San Marino as small-sized States is taken into account, in accordance with Declaration 3 on Article 8 of the Treaty on European Union (TEU)[1]. This is reflected in a number of adaptations to the provisions of EU legal acts included in the annexes to the Agreement, as well as in several transitional periods for the implementation and application of parts of the EU acquis. Sectoral adaptations concern in particular the area of free movement of persons where quantitative limits regarding certain types of residence inspired by those agreed with Liechtenstein in the Agreement on the European Economic Area[2] are foreseen. Transitional periods are also provided for in areas such as telecommunications, transport or energy. Specific adaptations are also included concerning the absence of a certain industrial sector such as parts of the transport sector.

The Agreement also allows for a staggered access to the EU's internal market for financial services, whereby Andorra and San Marino may decide not to seek access to the entire EU internal market for financial services. This possibility should not last longer than 15 years

[1] Declaration on Article 8 of the Treaty on European Union: "*The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it*."

[2] See Annex VIII to the EEA Agreement.

after the entry into force of the Agreement. In light of the specificities of Andorra and San Marino and the related specific rules and provisions introduced to cater for orderly and sound market integration, it was necessary to subject market access in the area of financial services to specific additional safeguards to those that govern relations between Member States in the internal market, in particular regarding the requirements on local provision of services and emergency powers of the European Supervisory Authorities.

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

The Agreement is a significant milestone which responds directly, on the one hand, to the EU's objective to develop a special relationship with neighbouring countries as set out in Article 8 TEU and, on the other hand, to these two countries' stated interest in building closer relations with the EU.

The EU's main interests, as stated in the 2012 Commission Communication[3] and 2013 report,[4] reflected in subsequent Council conclusions, and eventually in the Council's negotiating directives, include the contribution that closer economic ties could make to greater employment, trade and investment activity in EU regions neighbouring these countries. Given the obstacles to the small countries' access to the EU's internal market and cooperation in other areas, there would be significant potential to develop relations further for mutual benefit by breaking down barriers to cross-border economic activity.

In addition, the Agreement establishes a coherent and efficient institutional framework for relations, including institutional provisions to ensure the preservation of the homogeneity and the good functioning of the internal market, the indivisibility of the four freedoms and legal certainty, while taking into account the particular situation of each these countries.

a) The EU and Andorra

The EU and Andorra have progressively established close links, *inter alia*, following the conclusion of several bilateral agreements.

The bilateral agreements listed below shall cease to have effect, and shall be replaced and superseded by the Agreement. The termination of those agreements shall take effect from the date of entry into force of the Agreement:

- Agreement in the form of an Exchange of Letters between the European Economic Community and Andorra of 28 June 1990[5]; and
- Cooperation Agreement between the European Community and Andorra of 15 November 2004[6].

The bilateral agreements listed below will remain in place after the entry into force of the Agreement:

- Monetary Agreement between the EU and Andorra of 30 June 2011[7]; and

[3] Commission Communication on EU relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino — Options for closer integration with the EU (COM(2012) 680 final/2), Brussels 20.11.2012.

[4] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino: Options for their participation in the Internal Market **(**COM/2013/0793 final), Brussels, 18.11.2013.

[5] OJ L 374, 31.12.1990, p. 16.

[6] OJ L 135, 28.5.2005, p. 14.

[7] OJ C 369, 17.12.2011, p. 1.

- Agreement between the European Community and Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income of 15 November 2004[8].

b) The EU and San Marino

The EU and San Marino have progressively established close links, *inter alia*, following the conclusion of several bilateral agreements.

The bilateral agreement listed below shall cease to have effect, and shall be replaced and superseded by the Agreement. The termination of this agreement shall take effect from the date of entry into force of the Agreement:

- Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino of 16 December 1991[9].

The bilateral agreements listed below will remain in place after the entry into force of the Agreement:

- Monetary Agreement between the EU and San Marino of 27 March 2012[10]; and
- Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding of 7 December 2004[11].

• Consistency with other Union policies

The Agreement is fully consistent with EU policies and fully respects the Treaties, preserving the integrity and the autonomy of the EU legal order. The Agreement will not require the EU to amend its rules, regulations or standards in any regulated area. They promote the values, objectives, and interests of the EU, and ensure the consistency, effectiveness and continuity of its policies and actions.

2. LEGAL BASIS

The substantive legal basis for the proposed Council Decision on conclusion is Article 217 of the Treaty on the Functioning of the European Union (TFEU). This legal basis is the most appropriate given the broad scope of the envisaged Agreement.

The procedural legal basis is Articles 218(6) TFEU, Article 218(7) TFEU and the second subparagraph of Article 218(8) TFEU.

Article 218(6) TFEU provides for a conclusion pursuant to a decision of the Council, following the European Parliament's consent.

The second subparagraph of Article 218(8) TFEU provides for unanimity voting in the Council.

In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve on the EU's behalf certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement.

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8 OJ C 359, 4.12.2004, p. 33.
9 OJ C 302, 22.11.1991, p. 12.
10 OJ C 121, 26.4.2012, p. 5.
11 OJ C 381, 28.12.2004, p. 33.

Thus, the legal basis for the proposed Council Decision is Article 217 TFEU, read in conjunction with Articles 218(6) TFEU, Article 218(7) TFEU and the second subparagraph of Article 218(8) TFEU.

3. OTHER ELEMENTS

- **Implementation by bodies established under the Agreement**

The Agreement sets up an institutional framework composed of an Association Committee consisting of representatives of the EU, Andorra and San Marino, as well as a Joint Committee and several Subcommittees between the EU and each of the two countries. The Agreement provides for a mechanism to address failure by one of the Parties to fulfil obligations assumed under the Agreement.

- **Implementation and application of the Agreement**

In accordance with Article 216(2) TFEU, agreements concluded by the EU are binding upon the institutions of the Union and its Member States.

It is appropriate to authorise the Commission, pursuant to Article 218(7) TFEU, to approve on behalf of the Union certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement. Such modifications relate to Article 108 of the Framework Agreement as regards amendments to the Associated State Protocols, excluding their Annexes.

The Commission should inform the Council of the above-mentioned proposed modifications in advance. The Council may object to those proposed modifications by a blocking minority of the Council in accordance with Article 16(4) TEU. In that case, the Commission has to reject the proposed modifications on behalf of the Union, without prejudice to the possibility of subsequently making a proposal to the Council in accordance with Article 218(9) TFEU.

It is also appropriate to authorise the Commission, pursuant to Article 218(7) TFEU, to approve on behalf of the Union the position regarding decisions by the Joint Committees that simply extend EU acts included in the Annexes to the Associated State Protocols to Andorra and San Marino respectively, subject to technical adaptations.

To guarantee compliance with the obligations under the Agreement, there are robust enforcement mechanisms. The Agreement also provides for the possibility for the Parties to take measures to protect their interests, such as compensatory measures for the incorrect application of the Agreement, safeguard measures in the event of serious economic, societal and environmental difficulties of a regional nature that are caused by the application of the Agreement or safeguard measures in the event of a terrorist attack or a natural or man-made disaster that affects one of the Parties. It is important for the EU to be fully able to deploy these measures rapidly and effectively. For this purpose, until a specific legislative act regulating the adoption of the above-mentioned measures enters into force in the EU, any decision of the EU to take such measures should be taken by the Commission in accordance with the conditions set out in the corresponding provisions of the Agreement.

- **Detailed explanation of the specific provisions of the Agreement**

The Agreement is formed of the following elements: a Framework Agreement; seven Framework Protocols; two Associated State protocols; and 25 technical Annexes to each Associated State protocol, containing all EU legal acts falling within the scope of the Agreement.

The main elements of the Agreement are the following:

a) The Framework Agreement

The Framework Agreement outlines the essential elements for the future association between the EU and Andorra and San Marino respectively, which ensures the participation of Andorra and San Marino to a homogenous extended internal market under equal conditions of competition and respect of the same rules, while at the same time establishing a framework to develop and promote dialogue and cooperation in other areas of common interest. The Framework Agreement foresees that the EU law principle of non-discrimination on grounds of nationality is respected by Andorra and San Marino.

The Framework Agreement also establishes a coherent, effective and efficient institutional framework with a view to ensuring the homogeneity of the internal market and legal certainty for (*inter alia*) economic operators and citizens.

The Agreement provides for the possibility of an application of the Agreement between the EU and one of the Associated States, pending the finalisation of the ratification procedure for the entry into force of the agreement between the three contracting parties.

b) Seven Framework Protocols

The Agreement contains seven Framework Protocols aimed at clarifying and detailing the provisions included in the Framework Agreement.

Among these Framework Protocols, Framework Protocol 1 (on horizontal adaptations) contains a number of general rules, including with regard to the functioning of specific adaptations, including transitional periods and certain derogations.

Framework Protocol 3 (on financial services) is organised on the basis of the following elements:

- access to the EU single market on financial services depends on a comprehensive evaluation on the full and effective implementation of the EU acquis for the financial sector and the robustness of the Associated States' regulatory and supervisory frameworks.
- the Framework Protocol provides for a staggered approach, whereby the Associated States may decide not to seek access to the entire EU internal market for financial services; this possibility will not last longer than 15 years after the entry into force of the Agreement.
- market access requires the adoption by the Commission of a positive recommendation that all necessary conditions set out in the protocol have been fulfilled.
- in case the regulatory and supervisory frameworks of an Associated State show deficiencies, the EU has the possibility to suspend market access.
- local presence and provision of services in the Associated States are required;
- compliance with the anti-money laundering *acquis* is a pre-condition to access the EU market for financial services.
- the European Supervisory Authorities will be instrumental in the auditing process, in which competent authorities of EU Member States may also participate. Furthermore, they will be able to exercise their authority vis-à-vis the Associated States and their financial services sector.

The other Framework Protocols cover aspects such as: (a) implementation of competition rules applicable to undertakings; (b) organisation of cooperation in the field of statistics; (c)

status of the parliamentary association committee; (d) arbitration procedures; and (e) existing agreements.

c) Two Associated State Protocols

The Associated State Protocols contain matters which are strictly bilateral (between the EU and one of the Associated States) such as provisions concerning customs cooperation.

d) 25 Annexes to each Associated State Protocol

Each Associated State Protocol is accompanied by 25 Annexes, containing the EU legal acts falling within the scope of the Agreement. The Annexes include several sectoral or specific adaptations to take account of the specificities of Andorra and San Marino arising from their specific relations of proximity with their neighbours, their size and their relatively small populations. The Annexes also include transitional periods for the take-over, implementation, and application of certain EU legal acts by the two countries.

Annex I (Veterinary and Phytosanitary Matters)	Annex VI (Social Security)	Annex XI (Electronic Communication, Audiovisual Services and Information Society Telecommunication)	Annex XVI (Procurement)	Annex XXI (Statistics)
Annex II (Technical Regulations, Standards, Testing and Certification)	Annex VII (Recognition of Professional Qualifications)	Annex XII (Free Movement of Capital)	Annex XVII (Intellectual Property)	Annex XXII (Company Law)
Annex III (Product Liability)	Annex VIII (Right of Establishment)	Annex XIII (Transport)	Annex XVIII (Health and Safety at Work, Labour Law and Equal Treatment for Men and Women Health and safety at work)	Annex XXIII (Customs)
Annex IV (Energy)	Annex IX (Financial Services)	Annex XIV (Competition)	Annex XIX (Consumer Protection)	Annex XXIV (Agriculture)
Annex V (Free Movement of Workers)	Annex X (Services in general)	Annex XV (State Aid)	Annex XX (Environment-Climate)	Annex XXV (Trade)

ATTACHEMENTS:

Annex, Part 1: Framework Agreement, Framework Protocols

Annex, Part 2: Andorra Protocol

Annex, Part 3: Annex I to the Andorra Protocol

Annex, Part 4: Annex II to the Andorra Protocol

Annex, Part 5: Annexes III, IV, V, VI, VII, VIII, IX, X to the Andorra Protocol

Annex, Part 6: Annexes XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX to the Andorra Protocol

Annex, Part 7: Annexes XX, XXI, XXII, XXIII, XXIV, XXV to the Andorra Protocol

Annex, Part 8: San Marino Protocol

Annex, Part 9: Annex I to the San Marino Protocol

Annex, Part 10: Annex II to the San Marino Protocol

Annex, Part 11: Annexes III, IV, V, VI, VII, VIII, IX, X to the San Marino Protocol

Annex, Part 12: Annexes XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX to the San Marino Protocol

Annex, Part 13: Annexes XX, XXI, XXII, XXIII, XXIV, XXV to the San Marino Protocol

Annex, Part 14: Declarations

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), and in particular Article 217, in conjunction with Article 218(6), Article 218(7) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) On [DATE], the Council adopted Council Decision No (EU) …, regarding the signing, on behalf of the Union of the Agreement establishing an association between the European Union (the 'Union') and the Principality of Andorra ('Andorra) and the Republic of San Marino ('San Marino') respectively (the 'Agreement').

(2) The Agreement provides for the participation of the two countries in the Union's internal market and related horizontal and flanking policies, while also replacing the current customs unions between the Union and each of these countries. The Agreement also includes a framework for possible cooperation in policy areas outside the four freedoms such as research and development, education, social policy, the environment, consumer protection, culture and regional cooperation.

(3) To ensure the effective functioning of the Union's internal market, the Agreement foresees dynamic regulatory alignment. The Agreement further includes provisions establishing a dispute settlement mechanism with the Court of Justice of the European Union as arbiter for disputes on the interpretation and application of the Agreement.

(4) The situation of Andorra and San Marino as small-sized States is taken into account, in accordance with Declaration 3 on Article 8 of the Treaty on European Union ('TEU'). This is reflected in a number of adaptations to the provisions of Union legal acts included in the annexes to the Agreement, as well as in several transitional periods for the implementation and application of parts of the Union's acquis.

(5) The Agreement allows for a staggered access to the Union's internal market for financial services, whereby Andorra and San Marino may decide not to seek access to the entire EU internal market for financial services. This possibility should not last longer than 15 years after the entry into force of the Agreement.

(6) In light of the specificities of Andorra and San Marino and the related specific rules and provisions introduced to cater for orderly and sound market integration, it was necessary to subject market access in the area of financial services to specific additional safeguards to those that govern relations between Member States in the

internal market, in particular regarding the requirements on local provision of services and emergency powers of the European Supervisory Authorities.

(7) Access to the Union's internal market on financial services should therefore depend on a comprehensive evaluation on the full and effective implementation of the Union's acquis for the financial sector and the robustness of Andorra's and San Marino's regulatory and supervisory frameworks and will require the adoption by the European Commission of a positive recommendation that all necessary conditions set out in the Agreement have been fulfilled. The assessment of Andorra's and San Marino's regulatory and supervisory frameworks state should be based on rules that are foreseen in the Union's regulatory framework.

(8) It is appropriate to define the modalities of the Union's representation in the Association Committee and the Joint Committees established by the Agreement. The European Commission, as provided for in Article 17(1) TEU, is to represent the Union and to express the European Union's positions in accordance with the Treaties.

(9) It is appropriate to define the modalities for deciding on the positions to be taken on the Union's behalf in the Joint Committees established by the Agreement in order to guarantee that the legal acts adopted by the Union in the fields covered by the Agreement are incorporated into the Agreement as soon as possible after their adoption and transmission to Andorra and San Marino with a view to ensuring, to the extent possible, the simultaneous application of those legal acts in the Union and in Andorra and San Marino respectively.

(10) It is appropriate to authorise the European Commission, pursuant to Article 218(7) TFEU, to approve on the Union's behalf certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement in accordance with the provisions of that agreement. The procedure of consultation of the Council regarding such modifications should be established.

(11) With a view to enabling the Union to take rapid and effective action to protect its interests in accordance with the Agreement, and until a specific legislative act regulating the adoption of remedial measures under the Agreement is adopted and enters into force in the Union, the European Commission should be empowered to take remedial measures, such as compensatory measures for the incorrect application of the Agreement, safeguard measures in the event of serious economic, societal and environmental difficulties of a regional nature that are caused by the application of the Agreement or safeguard measures in the event of a terrorist attack or a natural or man-made disaster that affects the Union.

(12) The Agreement was signed in Brussels on (…). The Agreement and the attached Declarations should be approved, on behalf of the Union.

(13) The Commission should proceed, on behalf of the Union, to the deposit of the instrument of approval provided for in Article 112 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement establishing an association between the Union and Andorra and San Marino, respectively is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

1. The European Commission shall represent the Union within the Association Committee, the Joint Committees, the Customs Cooperation Subcommittees, the Subcommittees on Food Safety and Veterinary and Phytosanitary Matters, the Subcommittees on Financial Services, the Statistical Subcommittees, as well as in any additional subcommittees and working groups that are established in accordance with paragraph 8 of Article 76 of the Framework Agreement.

2. When the European Commission represents the Union in bodies created by the Agreement, it shall inform the Council in a timely manner about the discussions and the outcome of the meetings and of the acts adopted in those meetings. The European Commission shall also inform the European Parliament as appropriate.

Article 3

1. When the European Commission submits a proposal to the Council which it considers to fall within an area covered by the Agreement, it shall indicate that, after its adoption, the future legal act shall be extended to Andorra and San Marino respectively.

2. The European Commission shall be authorised to take, on behalf of the Union, any position in the Joint Committees set out by Article 76 of the Framework Agreement regarding decisions that simply extend Union legal acts to Andorra and San Marino respectively, subject to any technical adjustments needed.

3. For decisions adopted by the Joint Committees other than those referred to in paragraph 2 of this Article, the positions to be taken on the Union's behalf shall be established in accordance with the procedure set out in Article 218(9) TFEU.

Article 4

1. Without prejudice to Article 3, the Commission shall be authorised to approve, on behalf of the Union, modifications to the Associated State Protocols to the Agreement to be adopted by the Joint Committees in accordance with Article 108 of the Framework Agreement.

2. The Commission shall submit the proposed modifications specified in paragraph 1 to the Council before their approval.

   The Commission shall approve those proposed modifications on behalf of the Union unless, within one month after the Commission has submitted them to the Council, a number of Member States representing a blocking minority of the Council in accordance with Article 16(4) TEU object to them. If there is such an objection, the Commission shall reject the proposed modifications on behalf of the Union.

Article 5

The European Commission shall transmit and inform the Council of the draft assessment criteria and methodology received from the EU Supervisory Authorities in application of Article 10 of the Framework Protocol 3 (on financial services) to the Agreement prior to their adoption.

Article 6

Before adopting a decision in accordance with Article 15 of Framework Protocol 3 (on financial services) to the Agreement, the EU supervisory authorities shall inform the European Commission, who shall inform the Council.

Article 7

Until a specific legislative act regulating the adoption of the measures listed in points (a) to (c) of this Article enters into force in the Union, any decision of the Union to take such measures shall be taken by the Commission in accordance with the conditions set out in the corresponding provisions of the Agreement:

(a) compensatory measures for the incorrect application of the Agreement with a view to remedying imbalances in accordance with Article 90 of the Framework Agreement;

(b) safeguard measures in the event of serious economic, societal and environmental difficulties of a regional nature that are caused by the application of the Agreement and that are likely to persist in accordance with Article 97 of the Framework Agreement;

(c) safeguard measures in the event of a terrorist attack or a natural or man-made disaster that affects the Union in accordance with Article 98 of the Framework Agreement.

Article 9

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President