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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC
= Negotiating mandate
- Statements

Declaration by Austria to the minutes of Coreper II and Council

Austria is strongly concerned that the current text does not enhance transparency on beneficial ownership necessary to avoid the abuse of trusts for the purpose of money laundering and terrorist financing. There is a clear need to establish mandatory central and public beneficial owner registries for trusts in the Member State by whose laws trusts are governed (Art. 31 of Directive 2015/849). Unfortunately, the current text is just a mere reflection of the status quo and does not go beyond what is already in place in the EU. Therefore, Austria calls for further improvements of the text within the up-coming negotiations with the European Parliament.

Statement by the Polish delegation to be included in the minutes of the Coreper meeting on 20 December 2016 relating to the adoption of the Council negotiating mandate on a Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Projekt dyrektywy w obecnym brzmieniu nie realizuje w pełni celów postępowania karnego. Centralny Rejestr Rachunków Bankowych, o którym mowa w dodawanym art. 32a, a odnośnie którego na chwilę obecną wprowadzono termin przechowywania danych w wymiarze 5 plus dodatkowe 5 lat, mógłby po uwzględnieniu propozycji Polski umożliwić bezterminowe przechowywanie danych. Wprowadzenie bezterminowego przechowywania danych wynika z konieczności zapewnienia realizacji ww. celów przez organy ścigania m.in. w przypadku przestępstwa prania brudnych pieniędzy, które zgodnie z polskim porządkiem prawnym przedawnia się po upływie 15 lat. W konsekwencji może to prowadzić do tego, że niezbędne dane zostaną usunięte z rejestru krajowego w okresie kiedy ścigane przestępstwo nie uległo jeszcze przedawnieniu. Podobny termin przedawnienia przewidują ustawodawstwa także innych Państw Członkowskich. Powyższy problem dotyczyć zatem będzie czynności podejmowanych przez organy ścigania, które nie będą mogły realizować swoich zadań chociaż wedle krajowych porządków prawnych dane przestępstwo jeszcze się nie przedawniło.

STATEMENT BY THE REPUBLIC OF SLOVENIA

With reference to the Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

The Republic of Slovenia fully supports the objectives of the proposed Directive and efforts to reach a compromise within Council that is both effective and workable ahead of further discussions with the European Parliament.

However, the Republic of Slovenia does not approve the proposal for amendment of the 4th AMLD stipulated in the text proposed to the Coreper with regard to the Politically Exposed Persons. In line with the Ecofin political commitment from February 12, 2016 Slovenia already transposed the 4th AMLD into national legislation. Proposed changes to AMLD IV with regard to Politically Exposed Persons backtrack political decisions which were taken in the 4th AMLD. There was intense discussion on this issue already in the context of the 4th AMLD, and a regime that was decided then was found compatible with the FATF standards and the EU Treaty. Loosening this regime by making parts of it optional for Member States would lead to greater discretionary judgements by the obliged entities and would be a step back from the high-level of anti-money laundering and terrorist financing standards already agreed in the 4th AMLD. In our view the proposed amendment should be carefully re-examined in the context of the trilogue with the European parliament.

Statement by France and Italy to be included in the minutes of the Coreper meeting on 20 December 2016 relating to the adoption of the Council negotiating mandate on a Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

While supporting the agreement reached by the Slovak Presidency, France and Italy regret the introduction of new transposition deadlines in articles 1(24) and 3 of the draft directive amending Directive (EU)/2015/849. These deadlines are excessively long: while a reasonable period of time needs to be define, 36 months after the publication of the amending directive to grant access to the information on beneficial owners recorded in the central registers for both companies and trusts would mean a large decline compared to current Directive (EU)/2015/849, notably for the companies registers. It would also send a negative signal of the Council's will to speedily reinforce EU defence mechanisms against money laundering and terrorism financing, and to address the lack of transparency on beneficial ownership schemes that can facilitate money-laundering, corruption and tax evasion as illustrated by the Panama papers scandal. France and Italy consider that this issue should be addressed during the trilogues with the European Parliament and will continue to work constructively towards achieving such an outcome.