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'I' ITEM NOTE

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

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures
- Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 20 December 2017, the Commission presented proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures¹.

¹ Doc. 16012/17

II. STATE OF PLAY

2. The proposal was discussed in the Working Party on Financial Services (Attachés) on 18 January 2018. The ECON Committee of the European Parliament agreed on its report on 8 February 2018. Following informal contacts between the institutions, and a silence procedure within the framework of the Working Party on Financial Services, which ended on 9 February 2018, a provisional agreement was reached which resulted in the final compromise text as set out in the Annex to this note.

III. CONCLUSION

3. Against this background, the Permanent Representatives Committee is invited to:
 - (a) approve the final compromise text regarding the Directive of the European Parliament and of the Council amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures, as set out in the Annex to this note, and
 - (b) confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading as regards the Directive of the European Parliament and of the Council amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures, as set out in the Annex to this note, subject, if necessary, to revision of that text by the legal linguists of both institutions, the Council would approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

2017/0350 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) 2016/97 of the European Parliament and of the Council³ harmonises national provisions concerning the distribution of insurance and reinsurance products and insurance-based investment products by insurance intermediaries, insurance companies, their employees, and ancillary insurance intermediaries in the Union.
- (2) Pursuant to Article 42 of Directive (EU) 2016/97, Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 23 February 2018.

² OJ C , , p. .

³ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

- (3) On 21 September 2017, the Commission adopted two Delegated Regulations supplementing Directive (EU) 2016/97, one with regard to product oversight and governance requirements for insurance undertakings and insurance distributors⁴, and one with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products⁵.
- (4) In its decisions to raise no objections to the Delegated Regulations referred to in recital 3⁶, the European Parliament invited the Commission to adopt a legislative proposal setting 1 October 2018 as the date of application of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97, rather than 23 February 2018. The European Parliament substantiated that request by the need to give insurance undertakings and insurance distributors more time to better prepare for a correct and effective implementation of Directive (EU) 2016/97 and to implement the necessary technical and organisational changes to comply with the Delegated Regulations.
- (5) Given the very short period of time left before the national laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97 are to be brought into force, this Directive should enter into force without delay.
- (6) Directive (EU) 2016/97 should therefore be amended accordingly,
- (7) ***In order to ensure legal certainty and avoid potential market disruption, it is necessary that this Directive enters into force as a matter of urgency and that it applies, with retroactive effect, from 23 February 2018.***
- (8) ***Consequently, it is also justified to apply in this case the exception for urgent cases provided for in Article 4 of Protocol (No 1) on the role of national Parliaments in the European Union.***

⁴ [Commission Delegated Regulation (EU) .../... of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ C [...], [...], p. [...])].

⁵ [Commission Delegated Regulation (EU) .../... of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to conduct of business rules applicable to the distribution of the insurance-based investment products (OJ C [...], [...], p. [...])].

⁶ P8 TA-PROV(2017)0404 and P8 TA-PROV(2017)0405, adopted on 25.10.2017, Available at <http://www.europarl.europa>.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2016/97 is amended as follows:

- (1) in Article 42, paragraph 1 is amended as follows:
- (2) (a) the first subparagraph is replaced by the following:
- (3) “By **1 July** 2018, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.”;
- (4) (b) the following subparagraph is added:

"Member States shall apply the measures referred to in the first subparagraph from 1 October 2018 **at the latest**.”;

- (5) in Article 44, the first paragraph is replaced by the following:

"Directive 2002/92/EC, as amended by the Directives listed in Annex II, Part A, to this Directive is repealed with effect from 1 October 2018, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Annex II, Part B to this Directive.”.

Article 2

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply, with retroactive effect, from 23 February 2018.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
