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'I/A' ITEM NOTE

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

Subject: Draft 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 Directives 2009/138/EC and 2013/36/EU **(first reading)**

- Adoption of the legislative act
- Statements

Statement by Austria

"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 enhances this lack of transparency of beneficial ownership of trusts even more as it provides for the anonymity of beneficial owners of certain types of trusts. Therefore, Austria calls for remedying this apparent deficiency of the future EU AML/CFT framework."

Commission statement 1

"The Commission regrets that the revised Directive does not provide the same level of transparency on beneficial ownership of profit-making trusts as it does for companies and other legal entities.

The Commission underlines that, in the light of general principles of EU law and of the duty to state reasons, it is of the utmost importance for Union legislation to include sufficient, specific, adequate and legally sound motivation as to the access to the information of beneficial owners included in central registers. The statement of reasons must disclose, clearly and unequivocally, the reasoning of the author of the measure, in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent courts to exercise their power of review. The Commission considers that granting public access to beneficial ownership information of companies and firms is justified in light of the general need for transparency of corporate affairs in order to protect the interests of third parties and that this aspect of the Directive pertains to Article 50 TFEU. It regrets that Parliament and Council have considered that this aspect should only be regarded as a positive side effect and does not require citing Article 50 TFEU as an additional legal basis.

However, considering that the choice of Article 114 TFEU as the sole legal basis does not imply legal consequences in this case, the Commission can accept the final version of the Directive."

Commission statement 2

"The Commission underlines the need for identification and verification of beneficial owners, bearing in mind that the specific shareholding or ownership interest threshold specified in the Directive is merely indicative and constitutes one evidential factor among others to be taken into account. In light of the inherent risk posed by non-financial entities which do not engage in an active business activity, obliged entities should therefore apply a lower threshold with respect to establishing their Beneficial Ownership. This should in particular be the case of Passive Non-Financial Entities that are a subset of all Reportable Entities, as defined in the Directive on Administrative Cooperation and referred to in the Global Standard on Automatic Exchange of Information (AEOI) developed by the OECD."