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NOTE

From: Presidency
To: Council
Subject: ESFS Review
- General approach

I. INTRODUCTION

1. On 20 September 2017, the Commission presented a package of legislative proposals referred to as the European System of Financial Supervision package (the “ESFS package”)¹. The European Central Bank adopted its respective opinions on 2 March 2018² and 11 April 2018³. The European Economic and Social Committee adopted its opinion on this package on 15 February 2018⁴.

¹ Documents 12420/17, 12422/17, 12430/17, 12431/17
² Doc. 6828/18
³ Docs. 8019/18 and 9068/18
⁴ Doc. 6700/18

2. The Anti-Money Laundering (AML) component was further added by the Commission to this legislative package with a proposal issued on 12 September 2018⁵. The European Central Bank adopted its opinion on the AML/CFT component on 7 December 2018⁶ and the European Economic and Social Committee adopted its opinion on 12 December 2018⁷.
3. On 19 December 2018, the Permanent Representatives Committee agreed on a partial mandate for negotiations on the AML component⁸, while leaving the remainder of the ESFS file for continued discussion in the Council.
4. On 10 January, European Parliament's Committee on Economic and Monetary Affairs voted its opinion on the whole ESFS package.
5. On 22 January, the Council held a policy debate on the EFSF review, where the Presidency committed to work at technical and political levels to advance the rest of the ESFS package.

II. STATE OF PLAY

6. Following the meeting of the Working Party on Financial Services on 31 January 2019, and a silence procedure within the framework of the Working Party thereafter which ended on 4 February 2019, the latest compromise proposal for a negotiating mandate on the ESAs framework (excluding AML, which has already been agreed), MiFID and Solvency II, and the ESRB regulation, is now supported by all delegations.

⁵ Doc. 12111/18
⁶ Doc. 15468/18
⁷ Doc. 15630/18
⁸ Doc. 15569/18 ADD 1

7. This negotiating mandate is reflected in documents 5834/19 (ESAs framework excluding AML), 5835/19 (MiFID and Solvency II), and 5836/19 (ESRB). Together with the partial negotiating mandate on the AML component agreed by COREPER on 19 December 2018 (document 15569/18 ADD 1), this would therefore constitute the Council's negotiating mandate on the ESFS package.
8. On 6 February 2019, the Permanent Representatives Committee supported the Presidency's approach and agreed to submit this general approach to the Council for agreement . The Netherlands has submitted a statement to the minutes of the COREPER and Council meetings, as set out in the Annex to this note.

III. CONCLUSION

9. Against this background, the Council is invited to:
 - agree on a general approach for the ESFS package, as set out in documents 5834/19 (+COR1), 5835/19 (+COR1), and 5836/19 (+COR1), complementing the partial AML negotiating mandate in doc. 15569/18 ADD 1;
 - invite the Presidency to start, as soon as possible, negotiations with the European Parliament on the basis of the complete ESFS mandate with a view to reaching an agreement at first reading; and,
 - take note of the statement from the NL delegation, as set out in the Annex.

Declaration by the Netherlands to the minutes of Coreper II and the Council

While supporting the overall package of compromise proposals on the review of the European System of Financial Supervision (ESFS review), as presented by the Romanian Presidency, the Netherlands regrets that the compromise proposals on the Regulation on the European Systemic Risk Board (ESRB) do not fully address our expressed concerns with regards to a potential conflict of interest between the ESRB and the European Central Bank (ECB). Although we acknowledge the improvements made in the Council's compromise text, for instance with regards to the strengthening of the position of the ESRB's first Vice-Chair, we consider this an issue that would ideally be further addressed during the trilogues with the European Parliament. Furthermore, we call on the European Commission to consider possible alternative models for the governance of the ESRB when reporting on the mission and organization of the ESRB in a future report on the ESRB. The Netherlands will continue to work constructively towards addressing this issue.
