Council of the European Union

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From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	COM (2013) 44 final COM (2013) 45 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing - Declarations by Member States

DECLARATION BY AUSTRIA

Austria is strongly concerned that the current text does not enhance transparency on beneficial ownership information necessary to avoid the abuse of trusts for the purpose of money laundering and terrorist financing. There is a clear need to establish central and public beneficial owner registries in the very country by whose laws a legal person or a trust is governed. As far as legal persons are concerned, the current text (Article 29) states that the location of the beneficial owner registry shall be the country by whose laws the legal person is governed. Unfortunately, the same does not hold true for trusts (Article 30).

The current wording does not clearly state the location of trust registries. In our view, meaningful trust registries need to be located in the countries by whose laws the trust is governed. Any other location would not serve the purpose of creating greater transparency, particularly because trusts are not recognized in the majority of Member States.

Above all, the current wording leaves room for extensive interpretation when it comes to national implementation of Article 30. There is a clear danger that Member States will interpret the provision of Article 30 differently, which eventually will result in some Member States establishing beneficial owner registries for trusts while others will not. That being said, the current wording of Article 30 opens the floodgates to abuse, in particular with respect to the usage of trusts in cross-border circumstances. Furthermore, Article 30 paragraph 4 determines the registration of beneficial owners of trusts only when a trust "generates tax consequences". In our view, this wording is too broad and highly prone to circumvention and evasion. For example, a tax exemption for certain types of trusts introduced by a Member State would consequently result in the abolition of the obligation to register the beneficial owner of such trusts. Such intended or unintended consequences may undermine the purpose of the provision. Austria remains highly critical of the current wording of Article 30 and does not support it. However, in order not to jeopardize an otherwise reasonable compromise text, Austria can accept the political compromise. Nevertheless, given the current wording of Article 30, Austria sees no need for implementing a beneficial owner registry for trusts in Austria.

DECLARATION BY THE CZECH REPUBLIC

While the Czech Republic welcomes compromise on the proposal for an AML Directive and Regulation, it nevertheless regrets that these acts set additional rules which do not duly correspond to the spirit of the relevant FATF recommendation (no. 11). This recommendation stipulates only a minimum limit for keeping all necessary records for prosecution of criminal activity. Art. 39 of the AMLD proposal (and similarly art. 16 of the AMLR proposal) however counteracts the meaning and purpose of the measures against money laundering and terrorist financing by setting the maximum time period for record keeping (10 years). This limitation on record keeping contradicts the needs of the criminal proceeding.

The records on transactions may be important for criminal investigation of serious crimes for which the prescription period is stipulated up to 20 years in the Czech Republic or the prescription is fully excluded in case of terrorist criminal offences including terrorist financing. Investigation of these crimes would be thus in many cases hampered by disposing of evidence.

The Czech Republic assumes that only the minimum limit for record keeping should be stipulated to fulfil the meaning and purpose of these acts. The determination of the maximum time period for record keeping should be left on consideration and decision of Member States to ensure compliance with their national prescription period for criminal offences and the needs of the criminal proceeding.

STATEMENT BY THE UNITED KINGDOM

We welcome the agreement reached in trilogues on these files and particularly thank the Italian Presidency for their hard work on delivering such an agreement before the end of 2014 The Directive and the Regulation intend to implement at EU level the latest guidance and recommendations of the Financial Action Task Force concerning money laundering and terrorist financing.

We look forward to transposition discussions with Member States and the Commission going forward, including ensuring consistency with the FATF standards, including Politically Exposed Persons and the registration of trusts. The UK notes the Directive exempts companies listed on regulated markets from beneficial ownership provisions where they are already subject to stringent ownership disclosure and transparency requirements under the EU Transparency Directive. The UK continues to believe that markets other than “regulated markets”, such as AIM, should also be exempt when they are subject to similar transparency requirements, in order to prevent unnecessary burden and on the grounds of consistency. We hope that this can be reconsidered in the future following appropriate steps and discussions with the Commission.

Finally, the UK considers that one of the predominant purposes of the 4th Anti-Money Laundering Directive is Justice and Home Affairs-related in the form of co-operation against terrorist financing, as made clear by the references in the text to Articles 1-4 of the Framework Decisions on combating terrorism. The UK therefore considers that its JHA opt-in applies and that a JHA legal base should be cited in the measure.

DRAFT JOINT DECLARATION OF THE COMMISSION AND THE COUNCIL IN THE CONTEXT OF THE ENDORSEMENT OF THE ANTI-MONEY LAUNDERING (AML) PACKAGE

1/ The recent attacks in Paris have demonstrated the need to take decisive actions against terrorist financing. The adoption of the 4th Anti-Money Laundering Directive and of the Regulation on the Information Accompanying Transfers of Funds, which are strategic texts for the European Union, represent a significant step towards improved effectiveness in this fight.

2/ To enhance the efficiency of the new rules brought by this package, further efforts should be promoted, notably towards:

i) Speeding up the process of national implementation of those rules;

ii) Further strengthening cooperation on terrorist financing between Financial Intelligence Units at European level (for example through the work of European fora such as the FIU Platform);

iii) Addressing terrorist financing risks via the EU's supranational risk assessment, which should notably also assess the risks posed by virtual currencies;

3/ It is of utmost importance that coordinated action at international, European and national level to tackle terrorist financing is as effective as possible. Council and Commission will be examining further actions on countering terrorist financing in the context of the upcoming European agenda on security. A first discussion on this is expected to take place at the informal meeting of the European Council on 12 February.