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'I/A' ITEM NOTE

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

Subject: Draft Regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (**first reading**)

- Adoption of the legislative act
- Statements

Commission statement

Under Article 53(1) of the draft DIRECTIVE (EU) 2018/...OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ...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 (AMLD 5), the Financial Intelligence Units exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the Financial Intelligence Unit related to money laundering or terrorist financing. The decision on whether the information is relevant or not to be exchanged remains with the Financial Intelligence Unit, including for data to be received under the proposed Regulation on controls of cash. In this respect, the Commission underlines that, in the light of the general principles of EU law, the provisions of Article 8 of the proposed Regulation cannot be interpreted as affecting the provisions of the future Fifth Anti-Money Laundering Directive or as creating a mandatory obligation for exchange of information between Financial Intelligence Units for the purposes of the proposed Regulation.

Under Article 65(2) of the draft DIRECTIVE (EU) 2018/...OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ...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 (AMLD 5), the Commission must assess the framework for Financial Intelligence Units ' cooperation with third countries and obstacles and opportunities to enhance cooperation between Financial Intelligence Units in the Union including the possibility of establishing a coordination and support mechanism. In this context, the Commission will also assess whether there is a need to further strengthen the cooperation between Financial Intelligence Units.

Statement by Germany

In Germany's view, the uniform retention period of five years provided for in Article 13(4) appears problematic, because data may also be collected on individuals who have not violated any rules and who themselves have not given any cause for their data to be stored. It would therefore have been preferable for Article 13(4) to differentiate between retention periods for suspicious and non-suspicious individuals. However, Germany welcomes the compromise that was reached during the negotiations whereby the permissible one-off extension of the retention period is limited to three years in accordance with Article 13(5).
