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NOTE

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

Subject: Commission non-paper on key elements of a refined methodology for identifying high-risk third countries under Directive (EU) 2015/849

Delegations will find attached the above-mentioned Commission non-paper, with a view to the Council (ECOFIN) meeting of 10 October.

Non-paper

on key elements of a refined methodology for identifying high-risk third countries under Directive (EU) 2015/849

Under the Anti-Money Laundering Directive (AMLD), the Commission has a legal obligation to identify high-risk third countries having strategic deficiencies in their regime on anti-money laundering and countering terrorist financing in order to ensure that due diligence measures are applied by obliged entities in transactions or business relationships with those third countries. The 5th AMLD adopted by the European Parliament and Council in July 2018 further strengthened the criteria for the identification of high-risk third countries, going beyond the criteria of the Financial Action Task Force (FATF), in particular as regards beneficial ownership information..

Following the objection by the Council on 7 March 2019 to the Delegated Regulation identifying high-risk third countries adopted by the Commission on 13 February 2019, and the European Parliament resolution¹ of 14 March 2019, the Commission has been working within the above legal framework to address concerns expressed by the Council as regards the transparency of the process and the need to incentivise third countries and respect their right to be heard. The Commission is also engaging with the European Parliament, which has stressed the importance of an autonomous EU listing process.

The key new elements of a refined methodology for identifying high-risk third countries concern: (i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with the third countries; and (iii) reinforced consultation of Member States experts.

¹<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2019-0216&format=XML&language=EN>

(i) As regard the **interaction between the EU and the Financial Action Task Force (FATF)**, third countries listed by the Financial Action Task Force will in principle also be listed by the EU. For countries de-listed by the Financial Action Task Force, the Commission will assess whether the FATF Action Plans for a delisting are sufficiently comprehensive also in view of an EU delisting. Only where need be, specific EU requirements would “top up” the existing FATF Action Plan, by referring to additional EU specific conditions for example the level of threat a third country is precisely presenting to the EU or requirements on beneficial ownership transparency. In case third countries that may present a risk and are not (yet) subject to the FATF procedure should be flagged by the Commission/Member States in the FATF before considering an autonomous listing by the EU.

(ii) As regards the **engagement with third countries**, a staged approach should be undertaken: 1) consulting them on preliminary findings, 2) drafting country-specific “EU benchmarks” to address each country’s concerns (identified on a preliminary basis) in relation to the criteria set by the Anti-Money Laundering Directive, 3) seeking third countries’ commitment to implementing specific corrective measures before a listing is considered. A deadline of 12 months would be given to third countries to address concerns. A listing would only occur should the country not implement in full the benchmarks / commitments and only then would the concerns be identified as strategic deficiencies within the meaning of the Anti-Money Laundering Directive. In case jurisdictions are not cooperative (i.e. refusing to express a commitment) or jurisdictions fail to implement the benchmarks within the agreed period, the Commission would proceed with a listing. In case there is an overriding level of risk that needs to be mitigated, the Commission would also reserve the possibility to proceed immediately with formally identifying strategic deficiencies on the basis of the Anti-Money Laundering Directive and thus with a listing.

(iii) **Member States experts will be consulted at every stage of the process** regarding the assessments of third countries’ regime, the definition of mitigating measures, third countries’ implementation of “EU Benchmarks” and the preparation of the Delegated Regulation. This consultation will include specific Member States competent authorities (law enforcement, intelligence services, Financial Intelligence Units (FIUs)).
