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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council - Presidency note

Following the meeting of JHA Counsellors on 7 October, an inter-institutional technical meeting was held on 10 October. The co-legislators again exchanged on outstanding issues. The discussions can be summarised as follows:

Work towards finalisation of the four column table

- Recital 5a (line 13a): The negotiation team continue to approach an agreement, however the presidency underlined that following the counsellors meeting October 7th the inclusion of the terms "amnesty" and "pardon" remain controversial. The discussions will continue.

- Recital 12 (line 20): The negotiation teams reached a provisional agreement on the recital on trading in influence, as set out in the four-column table.

- Recital 15a (line 23b): The recital on illegal political financing was provisionally agreed on.

- Recitals 17 and 27, Article 21 (lines 25, 35 and 186 ff): Following the agreement in principle on the wording of recital 17, the lines in the table concerning limitation periods were provisionally marked as green in the table.

- Article 13a (lines 120b-c): The provision on concealment was provisionally agreed on after a short exchange.

- Article 14(3)(line 124): The EP does not consider that the wording suggested by the Council (*i.e.* Member States "shall consider" to criminalise attempt of other offences than those referred to in Articles 13 and 13a) is sufficient and insists that Member States should be obliged to criminalise attempt to commit at least one more offence under the Directive, whereby EP seems to focus in particular on Article 9 (misappropriation).

  In the light of these discussions, the Presidency would invite delegations to consider if the following compromise wording of Article 14(3) could be acceptable as part of a global compromise:

  "Member States shall take the necessary measures to ensure that the following is punishable as a criminal offence:

  a) an attempt to commit the offences referred to in article 13 and 13 a

  b) an attempt to commit a serious violation of the offence referred to in article 9."

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- Article 21a (lines 203b-m): After a small adjustment of the text of paragraph 3, the whole Article is now indicated as green in the four column table.

- Article 26 (lines 218ff): The discussions on the provision on data collection and statistics are continuing on the basis of the text in the fourth column. It is the clear impression of the Presidency that the EP will be minded to agree to the deletion the terms "each of" in paragraph 1 and 2e, if the inclusion of the reference to "number of pardons" is included in point 2 (the discussion on this reference is linked to the broader discussion involving also lines 13a and 142c, see further in the four column table in relation to line 142c).

Other issues

- It was agreed to revert to the informal suggestions regarding alignment of recitals (see WK 12946/25) and the wording of Articles 7-10 and 12-14 of lawyer-linguists at a later meeting.

- As regards Article 11 (Abuse of functions), the Commission outlined some general options on the basis of which a compromise solution could be elaborated, without entering into the details of such a compromise text. It clearly appears that this Article will be of primordial importance for the final part of the negotiations, whereby the EP will continue to insist on a mandatory criminalisation of at least certain acts referrable to the notion of abuse of function.

- In this context, the Presidency would draw the attention to the following general consideration. If a compromise on Article 11 which is satisfactory to the EP can be reached, there would be reasons to believe that the EP will (1) agree to the deletion of the term "amnesty" in recital 5a, (2) drop its request for added wording in recital 24 (see line 32 in the table), (3) drop its request for the inclusion of the terms "each of" in two paragraphs in Article 26, while (4) maintaining point k) in Article 26(2). **Delegations are invited to indicate whether they could accept a partial compromise package along those lines.**

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- As regards penalties for legal persons (Article 17, lines 150-161e) and jurisdiction (Article 20, lines 180-185), discussions are formally still ongoing. However, the Presidency has the strong impression that the EP will agree to the text as set out in the four column table, provided that its requests regarding Article 11 can be (at least partially) satisfied.

The Presidency invites delegations to indicate if they have any remarks, questions or suggestions with regard to the text above as well as on the new version of four column table, in the light of the efforts to strike a balanced compromise on the whole text of the Directive.

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