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NOTE

From:	General Secretariat of the Council
To:	Working Party on General Affairs

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Subject:	Proposal for a Directive on Transparency of Interest Representation on behalf of Third Countries - Joint proposal from Irish and Dutch delegations
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Delegations will find in Annex a joint proposal from Irish and Dutch delegations on the revised Presidency compromise text, in particular concerning the point on the civil society organisations and specifically on Article 3.2a, Article 4.1, recital 26, a new recital 26a and recital 27. They supersede previous proposals made by Ireland on these specific elements.

Drafting Proposals by Ireland and The Netherlands - Proposal for a Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries

Ireland and the Netherlands recall that the scope of this directive concerns the activities carried out by entities on behalf of third countries, and not activities conducted on behalf of the entities themselves. In particular, the proposal does not target civil society organisations. To this end, the below amendments jointly proposed by Ireland and the Netherlands aim to provide greater clarity in the text.

Furthermore, we consider it essential to uphold appropriate safeguards within the text to ensure that CSO's whose activities may fall within the scope of the proposal are not subject to undue stigmatization. Such safeguards should uphold the role of civil society in a democratic society and ensure that legitimate activities are not inadvertently discouraged or misrepresented negatively.

In that regards, Ireland and the Netherlands underline the importance of retaining existing recitals and articles which provide such safeguards.

Substantive Proposals

Ireland and Netherlands propose the following texts as amendments to the existing Presidency draft:

Proposals on Articles

On Article 3(2a) we propose a short text referring to all the relevant types of funding and providing two alternatives to the word 'conditional'.

Article 3(2a):

Contributions to the core funding of an entity or third country donor grant funding or similar financial support shall not be considered as remuneration for an interest representation service where such funding is not **[conditional / dependent / contingent]** on the performance of an interest representation activity on behalf of a third country entity, that is, where the entity would have received such funding regardless of whether it carried out specific interest representation activities.

On Article 4(1) we propose reinstating the text in black below which was lost in the first PRES compromise draft:

Article 4(1):

Member States may maintain existing or introduce additional measures to promote a higher level of transparency or democratic accountability of interest representation activities falling within the scope of this Directive provided that such measures are consistent with the objectives laid down in this Directive and respect Union law. ***In particular, such measures shall not constitute arbitrary restrictions towards specific entities.***

Proposals on Recitals

On the issue of Charitable status, we propose the following:

Recital 26

R26 (NL and Ireland propose returning to the original CION text) For the purpose of interest representation services provided to a third country entity, any consideration received in return for the interest representation service in question should be considered as remuneration for the purposes of this Directive. This could cover financial contributions, such as loans, capital injection, debt forgiveness, fiscal incentives or tax exemptions. Remuneration could also include benefits in kind, such as the provision, construction and maintenance of office space in return for an interest representation service. In such situations, the interest representation services provider would be responsible for estimating the value of the benefit received, for example by using the market rate.

R26a (New recital) The award of charitable tax status by a third country does not in and of itself constitute proof of a contract for an interest representation service. To be considered a form of remuneration for interest representation services for a third country, there must be a demonstrable link between the award of charitable tax status and the provision of a specific interest representation service on behalf of a third country.

Recital 27

In the first sentence of recital 27 we propose to quote in full the same sentence in the relevant judgement referenced by the Commission in its proposal.

R27 The Court has held that ‘the essential characteristic of remuneration lies in the fact that it constitutes consideration for the services in question, **and is normally agreed upon between the provider and the recipient of the service**’¹. Accordingly, contributions to the core funding of an entity (including natural persons) or similar financial support, for example provided under a third country donor grant scheme, should not be considered as remuneration for an interest representation service where they are unrelated to an interest representation activity **that is** where the entity would receive such funding regardless of whether it carries out specific interest representation activities **and the interest representation activity is undertaken in pursuit of the objectives or goals of the entity.**

1 Judgment of the Court of 27 September 1988. - Belgian State v René Humbel and Marie-Thérèse Edel. - Reference for a preliminary ruling: Justice de paix de Neufchâteau - Belgium. - Non-discrimination - Access to education - Enrolment fees. - Case 263/86. Para 17

ENDS