Dear Sir William Cash,

Chair, European Scrutiny Committee
14 Tothill Street
House of Commons
London
SW1H 9NB

17th January 2018


Thank you for your report of 22 November on the above proposals. The report raised a number of questions, to which I will respond in this letter.

As you may, however, be aware from public reports a provisional political agreement on these proposals was reached following a trilogue that took place on 13 December. This agreement meets many of the UK’s negotiating priorities, including avoiding public access to our register of trust beneficial ownership; ensuring appropriate criteria against which high-risk third countries will be assessed; and requiring other EU Member States to follow our leadership in establishing public registers of company beneficial ownership. The agreement also includes a review clause requiring the European Commission to consider the proportionality of applying enhanced due diligence measures to all Politically Exposed Persons, and to publish a report addressing this point in the course of 2019.

It is anticipated that this provisional agreement will return to the Council and the European Parliament early this year for formal agreement prior to the final text of the amending Directive being published in the Official Journal of the European Union. I would therefore be grateful if the Committee could clear these proposals from scrutiny, so that the Government is in a position to vote on the final text of the amending Directive.

The envisaged implementation period for the future arrangements between the UK and the EU

As the Prime Minister set out in Florence, the Government is proposing a time-limited implementation period during which both the UK and the EU are able to access one another’s markets on current terms. The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations. The precise terms of this implementation period remain subject to negotiation
with the European Union. The Prime Minister has been clear, however, that it is in the
interests of all parties for the detailed terms of the implementation period to be agreed
as soon as possible, and that businesses should only have to plan for one set of changes
in the relationship between the UK and the EU.

The future economic partnership between the UK and the EU

The Prime Minister was clear in Florence that the negotiating principles she set out in
January still stand. This includes pursuing a bold and ambitious agreement on free trade
with the European Union, where the UK is outside of the single market and the customs
union. The exact terms of the future economic partnership will be determined following
negotiations between the UK and the EU, and will reflect these principles. It is in the
interests of all parties to secure a deal on financial services and we are confident in our
ability to do so, as we start from a unique position of regulatory alignment.

As you will be aware, Parliament is currently also considering the Sanctions and Anti-
Money Laundering Bill which will provide a legal basis through which the UK will be able
to make, amend and repeal secondary legislation for the detection, investigation or
prevention of money laundering or terrorist financing after the UK leaves the EU.

The status of the proposals under scrutiny

You asked several questions relating to the status of individual proposals that are currently
under scrutiny, which I will address in turn.

The text on which provisional political agreement has been reached does not require that
third countries entering into free-trade agreements with the EU must meet specified anti-
money laundering and counter-terrorist financing (AML/CTF) standards.

After the UK ceases to be a member of the EU and becomes a “third country” for the
purposes of the Fourth Money Laundering Directive, the European Union (Withdrawal)
Bill will preserve the Money Laundering, Terrorist Financing and Transfer of Funds
(Information on the Payer) Regulations 2017 (the Money Laundering Regulations), subject
to minor amendments necessary to rectify deficiencies within the legislation caused by the
UK no longer being a member of the EU. The existing risk-based approach of UK
supervisors and firms to complying with their obligations under the Money Laundering
Regulations will therefore remain unchanged once the UK becomes a “third country”.

In preserving the Money Laundering Regulations, the European Union (Withdrawal) Bill
will also ensure the preservation of the legal basis for the register of trusts with UK tax
consequences that we established in July. While this register is a valuable tool for law
enforcement authorities that can access information held on it, the Government is
opposed to granting public access to such information so as to protect individual privacy
rights. The provisional political agreement on these proposals gives Member States the
right to define who should be considered to have a “legitimate interest” in information
held on national registers of trust beneficial ownership. We will consider how best to
consult with interested stakeholders on how this definition should be applied in the UK, in view of the fact that many trusts are established for personal or family reasons.

We have further ensured that these proposals do not impose obligations upon trustees to register in multiple Member States. Such obligations would have been disproportionate, and would have imposed needless costs upon trustees. The text on which provisional political agreement has been reached would require registration in the Member State in which the trustee is established or resides. This will ensure that details of the beneficial ownership of UK-administered trusts need only be registered in the UK.

The UK plays a leading role in the Financial Action Task Force (FATF), which sets international AML/CTF standards. As such, the UK is committed to a full and effective implementation of the FATF standards. FATF maintains a list of countries with strategic deficiencies in their AML/CTF systems which currently forms the basis for the EU list of high-risk third countries under Article 9 of the Fourth Money Laundering Directive. When last updated in November, the FATF list consisted of Bosnia and Herzegovina; Ethiopia; Iran; Iraq; North Korea; Sri Lanka; Syria; Trinidad and Tobago; Tunisia; Vanuatu; and Yemen. The UK and other Member States are strongly supportive of the EU list of high-risk third countries being aligned to the FATF list of high-risk countries, so as to ensure that a consistent approach is taken to identifying such countries. The FATF standards do not require countries to establish national registers of trusts or other legal arrangements.

FIU co-operation

As you will be aware, the Government published, in September of last year, the future partnership paper “Security, law enforcement and justice”. This sets out the Government’s plan to seek a new relationship that provides for practical operational cooperation on law enforcement and national security. We want to ensure that the UK-EU relationship can be kept versatile and dynamic enough to respond to the ever-changing threat environment; create an ongoing dialogue in which law enforcement and criminal justice challenges and priorities can be shared and, where appropriate, tackled jointly.

I am copying this letter to Lord Boswell of Aynho, Chair of the House of Lords European Union Committee; Lynn Gardner, Clerk to the European Scrutiny Committee; Chris Johnson, Clerk to the Lords Committee; Julia Labeta, Clerk to the Lords Home Affairs Subcommittee; Les Saunders, Department for Exiting the EU; Frances Milsom and Ross Turner, HM Treasury.

with very best regards

JOHN GLEN
ECONOMIC SECRETARY TO THE TREASURY