Council of the
European Union

Brussels, 11 February 2016
(OR. en)

15112/1/15
REV 1

LIMITE

PV/CONS 72
ECOFIN 961

DRAFT MINUTES[1]

Subject:	**3435th** meeting of the Council of the European Union **(ECONOMIC AND FINANCIAL AFFAIRS)** held in Brussels on 8 December 2015

[1] Information on Council legislative deliberations, on other cases of Council deliberations open to the public and on public debates may be found in Addendum 1 to these minutes.

CONTENTS

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1. Adoption of the provisional agenda
14921/15 OJ CONS 72 ECOFIN 946

The Council adopted the above-mentioned agenda.

LEGISLATIVE DELIBERATIONS
(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

2. Approval of the list of 'A' items
14922/15 PTS A 97

The Council adopted the "A" items as listed in doc. 14922/15.

Details on the adoption of these items are set out in the Addendum.

3. Enhanced cooperation in the area of financial transaction tax
– **Proposal for a Council Directive implementing enhanced cooperation in the area of Financial Transaction Tax**
= State of play
14942/15 FISC 181 ECOFIN 947

The Council held a discussion on a state of play on this dossier, as set out in the Presidency note set out in doc. 14942/15.

On the basis of a presentation by Austria, 10 Member States, participating in the enhanced co-operation, have agreed the following statement to be inserted into the minutes of this Council meeting (as set out in the Addendum to these minutes, pages 4/5).

4. Common Consolidated Corporate Tax Base (CCCTB)
– Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)
= State of play
14509/15 FISC 169 ECOFIN 916

The Council took note of the progress achieved so far at technical level with regard to a possible split from the pending CCCTB proposal focusing on its international anti-BEPS (base erosion and profit shifting) aspects and exchanged views on how best to implement OECD BEPS recommendations in the EU. The Commission announced its intention to put forward an anti-BEPS package of legislative and non-legislative proposals in January 2016, building on the work of the Council, and the Presidency concluded that the Council looks forward to these proposals.

5. **Completing the Banking Union**

– **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 and Directive 2014/49/EU in order to establish a European Deposit Insurance Scheme (EDIS)**

– **Commission Communication 'Towards the completion of the Banking Union'**

= Presentation by the Commission and exchange of views
14649/15 EF 213 ECOFIN 928 CODEC 1604
14650/15 EF 214 ECOFIN 929

The Council held a first exchange of views on the package. The Presidency concluded that an *ad hoc* working party on the completion of the Banking Union would be established, which would consider at the same time the EDIS proposal and the measures set out in the communication. The Council will return to this issue in March.

6. **Any other business**

– **Current legislative proposals**

= Information from the Presidency

The Council took note of the state of play in relation to legislative financial services files.

NON-LEGISLATIVE ACTIVITIES

7. **Approval of the list of 'A' items**
14923/15 PTS A 98

The Council adopted the "A" items as listed in doc. 14923/15.

The documents on item 17 should read as follows:

Item 17: 14656/15 AVIATION 143
14656/15 AVIATION 143
+ 1 REV 1 (en)

Statements to these items are set out in Annex.

8. **Implementation of the Banking Union**
= Information on the state of play regarding the relevant files

The Council was informed of the state of play on implementation of the Banking Union and took note of the urgency to speed up the necessary measures at national level.

9. **Fight against the financing of terrorism**
= Presentation by the Commission on the next steps to reinforce the European framework in the fight against the financing of terrorism, and exchange of views

The Council received a presentation from the Commission on possible next steps in work on strengthened measures to prevent the financing of terrorism, followed by an exchange of views.

10. **Future of the Code of Conduct (Business Taxation)**
– Draft Council conclusions
= Adoption
14945/15 FISC 182 ECOFIN 949

The Council adopted conclusions on the Future of the Code of Conduct (Business Taxation) as set out in doc. 14945/15 with one amendment in paragraph 9. The outcome of proceedings is published in doc. 15148/15.

11. **Base erosion and profit shifting (BEPS)**
– Draft Council conclusions
= Adoption
14947/15 FISC 183 ECOFIN 950

The Council adopted the Council conclusions as set out in doc. 14947/15 with one amendment at paragraph 10. The outcome of proceedings is published in doc. 15150/15.

12. <u>**European Semester**</u>

– **Annual Growth Survey 2016**

– **Macroeconomic Imbalance Procedure – Commission Alert Mechanism Report 2016**

– **Draft Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro**

= Presentation by the Commission and exchange of views

14270/15 ECOFIN 875 UEM 415 SOC 676 EMPL 441 COMPET 519 ENV 705 EDUC 300 RECH 279 ENER 391 JAI 873

14272/15 ECOFIN 877 UEM 416 SOC 677 EMPL 442

14291/15 ECOFIN 882 UEM 421 SOC 678 EMPL 443 COMPET 520 ENV 709 EDUC 301 RECH 280 ENER 394 JAI 883

<u>The Council</u> took note of the documents presented by the Commission and will come back to it in January.

13. <u>**Common Position on flexibility in the Stability and Growth Pact**</u>

= Information from the Presidency

14345/15 ECOFIN 888 UEM 422

<u>The Council</u> took note of the agreement reached by the EFC on a common position on flexibility in the Stability and Growth Pact.

14. <u>**Statistics**</u>

– **EU statistics**

– **Implementation of the European Statistics Code of Practice**

= Draft Council conclusions

14597/15 ECOFIN 921 STATIS 87 UEM 426

<u>The Council</u>

- took note of the information on EU statistics provided by Commissioner THYSSEN, and
- adopted the conclusions as set out in doc. 15003/15.

15. **<u>European Court of Auditors' annual report on the implementation of the budget of the European Union for the financial year 2014</u>**

= Presentation and exchange of views

Following the presentation by the President of the European Court of Auditors, Mr Vítor Caldeira, of the Annual Report of the Court of Auditors on the implementation of the budget concerning the financial year 2014, <u>the Council</u> welcomed the report and the conclusions drawn therein, which could be taken into account in the mid-term Multiannual Financial Framework review exercise. Furthermore, the Council invited the Permanent Representatives Committee to examine the report, with a view to drawing up a recommendation of the Council to the European Parliament on the discharge to be given to the Commission for the implementation of the budget for 2014. The Council is expected to adopt that recommendation at its meeting on 12 February 2016.

16. **<u>Any other business</u>**

No issues were raised under this item.

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STATEMENTS FOR THE COUNCIL MINUTES

Ad "A" item 7: **Commission Delegated Regulation (EU) …/... of 30.9.2015 amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings**
= **Intention not to raise objections to a delegated act**

STATEMENT BY THE CZECH REPUBLIC

"The Czech Republic would like to thank to the Council for the opportunity to raise objections on delegated regulation amending delegated regulation (EU) 2015/35 adopted by the Commission on 30 September 2015.

Although the Czech Republic is well aware of the Capital Markets Union project and of the Commission´s efforts to boost growth of the EU economy, one still has to keep in mind that the primary role of the insurers is to meet its liabilities towards the policyholders and hence protect their interests. Investments of insurance companies should therefore be considered a secondary activity.

Generally, we disagree with the Commission´s position that the delegated regulation aim at removing barriers to long-term investments. The requirements of the Solvency II (e.g. higher calibration for this type on investments) do not constitute a barrier to the investment in a situation when they reflect risks connected with a certain investment type. A prudential attitude in this case is reasoned by risks connected to the long-term investments (low liquidity, volatility, absence of data for the calibration etc.) and it cannot be automatically interpreted as a barrier to the investments.

1. A new infrastructure asset class

The Czech Republic does not find the delegated regulation conceptual and in compliance with the main principles on which the Solvency II regime is based. Directive 2009/138/EC, among others, regulates the amount of capital that EU insurance companies must hold to be able to meet their liabilities.

Solvency II adopts an economic risk-based approach providing incentives for insurance and reinsurance undertakings to properly measure and manage their risks, which shall then be reflected in the capital requirement. The regulation sets specific rules for the valuation of assets and liabilities, including technical provisions, in order to efficiently assess the risk exposure. On that account, the insurance companies should be allowed to invest only in those securities, projects and instruments, where the associated risks are identifiable, manageable and monitored, and shall hold adequate capital which corresponds to the risks assumed.

The proposed delegated regulation of the Commission is now trying to motivate the insurance undertakings to invest in assets with higher risk exposures (we are not convinced that the infrastructure project have lower risk profile) in exchange for the capital relief. For this reason, we believe this concept completely contradicts the main principles of the Solvency II directive. Such measures could distort the insurance companies´ investment behaviour and hence could threaten their financial stability.

We are also concerned about the fact that the delegated regulation on infrastructure investments is based mostly on experts' opinions and lacks empirical evidence and sound data analysis in the impact assessment.

Although we understand that the lack of empirical evidence might make it very difficult to develop new methods and come to reliable conclusions, we strongly disagree with the assumptions made only by comparison with the portfolio of corporate bonds.

Moreover, we would like to point out shortcomings of dataset used to calibrate standard formula parameters for equity infrastructures. More concretely, the calibration is based on dataset containing only a very limited number of UK companies. In addition, it is planned to apply results of this insufficient sample to all EU companies. We are confident that a much larger sample would be necessary.

As regards debt-based infrastructure investments, there are no reasons presented for indicating that the most suitable approach is to combine credit and liquidity part of the spread. At the same time there is no reasoning for using lower calibration of the proposed spread 30-39% as regards equity based infrastructure investments. The proposed spread is still lower than the calibration for type 1 equity according to standard formula for the SCR calculation.

Without proper analysis the Commission should not intend to enlarge the scope of infrastructure investments eligible for capital relief above the EIOPA proposal, which sets a definition of the eligible infrastructure investments.

For all these reasons we cannot agree to the introduction of a capital relief for investments in infrastructure debt and equities, as such an approach is not sufficiently prudent and in the end may threaten the insurance undertakings´ stability and the interests of the policyholders.

2. The capital treatment of European Long Term Investment Funds

We do not consider it prudent to provide insurance undertakings the capital relief for investing in European long-term investment funds (ELTIFs). Insurance companies cannot efficiently assess the risk exposure of the funded projects due to the information asymmetry caused by insufficient disclosure. The regulation of these European funds does not cover the risk exposure and the transparency requirements of the projects to which ELTIF invests (as does for example MiFID to MTFs and regulated markets). It covers only the transparency of the ELTIF itself which is insufficient for the insurance company in order to assess the risk.

3. Multilateral trading facilities

Multilateral trading facilities unlike regulated markets do not ensure complete transparency either since the trading of equities can occur without consent from the issuer in which case no disclosure or prospectus is required.

In case of MTF it is questionable whether these instruments will meet the liquidity conditions (e.g. in the UK the markets are very liquid, on the contrary in the Czech Republic the amount of transactions is very low).

4. The scope of the equity transitional measure

We disagree with the amended scope of the transitional measure (Article 308b(13) in Omnibus II) that enables to use a lower standard parameter for calculating the equity risk sub-module for equity investment purchased before 1 January 2016.

Although we understand the aim presented by the Commission, we deem an extended scope proposed as inappropriate change since it leads to underestimation of risks connected with type 2 equities which are considered of significantly lower quality compared to type 1. Moreover, we are confident that such an important extension significantly changes an importance and impact of transitional measure which was formulated as a part of the Omnibus II agreement and in terms of the original scope reflected in the delegated regulation. Therefore we prefer to respect compromises reached and not to change the original scope of this transitional measure.

From our point of view, even equities held within collective investment undertaking or investment as funds might be using the lower standard parameter but only under the condition that they would fulfil the same requirements and be treated equally to directly held equities. Otherwise, it could be considered as preferential treatment of one of the equities holding.

Consequently, if the ITS requirements are not fulfilled, it should not be allowed to use the lower standard parameter for calculating the capital requirement."

STATEMENT BY THE CZECH REPUBLIC AND HUNGARY

"The Czech Republic and Hungary would like to point out that the current prudential attitude of Solvency II in case of infrastructure projects is adequate and is reasoned by risks connected to the long-term investments (low liquidity, volatility, absence of data for the calibration etc.). On that account, the insurance companies should be allowed to invest only in those securities, projects and instruments, where the associated risks are identifiable, manageable and monitored, and shall hold adequate capital which corresponds to the risks assumed. The proposed Delegated Regulation inappropriately motivates the insurance undertakings to invest in assets with higher risk exposures in exchange for the capital relief, which completely contradicts the main principles of the Solvency II directive.

We are also concerned about the fact that the delegated regulation is based mostly on experts' opinions and lacks empirical evidence and sound data analysis in the impact assessment. We strongly disagree with the assumptions made only by comparison with the portfolio of corporate bonds. Moreover, we would like to highlight the insufficient sample of a very limited number of UK companies used to create a dataset for calibration of standard formula parameters for equity infrastructures. We are confident that a much larger sample would be necessary."