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NOTE

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

Subject: Bank Recovery and Resolution [**First reading**]
Proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD)
- approval of the final compromise text (declaration for the minutes)

Please find enclosed declarations to the minutes of 20 December Permanent Representatives Committee (part 2) circulated by AT/DE/FI, BG, SE and the UK.

Declaration by Austria, Germany and Finland

Germany, Austria and Finland recognize the major importance of the BRRD in the general framework of the EU financial markets regulation and welcome its rapid conclusion. The BRRD introduces for the first time harmonized rules for the resolution of financial institutions in every Member State protecting tax payers and ensuring a contribution of shareholders and creditors to the loss absorption and recapitalization of institutions under resolution. It provides authorities with a credible set of tools to intervene sufficiently early and quickly in unsound or failing institutions. Against this background we accept the compromise package.

- I. However, we emphasize our understanding that the bail-in rule is under all circumstances fully respected and in any case a contribution of shareholders and creditors to the maximum extent possible is ensured.

- II. Furthermore, with a view to the provisions on Government Stabilisation Tools provided for in Articles 50a-50d of the BRRD these tools may be applied only as last resort in very extraordinary situations, under two conditions:
 - a. Only if shareholders and creditors have contributed to loss absorption and recapitalization at least 8% of total liabilities including own funds of the respective institution; and
 - b. a prior assessment and approval of the existence of a very extraordinary situation by the Commission.

- III. Germany, Austria and Finland emphasize their understanding that the Government Stabilisation Tools are not introduced for the SRF. Furthermore, the Government Stabilisation Tools will not impact on intergovernmental or supranational arrangements. Any financial consequences of the decision to deviate from the general rule of bail-in and to use Government Stabilisation Tools shall be born by the respective Member State. In particular the very exceptional use of Government Stabilisation Tools can not be directly financed by intergovernmental or supranational financial support mechanisms.

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Declaration by Bulgaria

Bulgaria will not object to the approval of the BRRD compromise text. Nevertheless Bulgaria points out its remaining concerns: the date of entry into force of the bail-in tool and the insufficient flexibility at a national level about the use of private money accumulated in the national resolution fund.

First, Bulgaria is concerned about the advancement of the date of the bail-in tool two years earlier than the date agreed in the Council (ECOFIN) general approach on 27 June 2013. Since the funding structure of the banking system in Bulgaria, beyond the equity capital, consists almost entirely of core deposits, the possibility of imposing hair-cuts on large deposits, irrespective of the depositor type, has the potential to create risks for financial stability. Therefore, a later entry into force of the bail-in tool is needed in order both to allow banks to adjust their liabilities structure, as appropriate, and to have more time to accumulate private funds in the national resolution fund.

Furthermore, as the countries outside the euro area cannot rely on the backstop available in the euro area (the ESM), imposing uniform early obligation for the bail-in of large depositors in both euro area and non-euro area countries creates unequal treatment and distorts the fair competition among Member States. That ultimately risks a further fragmentation of the Internal market in financial services in the EU.

Second, Bulgaria is concerned about the lack of sufficient flexibility allowing exclusion of certain groups of creditors upon discretion of the national resolution authority when there are financial stability concerns. Within that context, Bulgaria does not support the dedicated right of the Commission to prohibit or require amendments to bail-in tool exclusions as intended to be applied, in full compliance with European law, by a national resolution authority.

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Declaration by Sweden

Sweden supports the Banking Recovery and Resolution Directive. However, Sweden would like to make a declaration with regards to the possible non-compatibility of the Swedish constitution with the provisions in Articles 3.3 and 76.1a obliging resolution authorities to adopt internal rules on secrecy.

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Declaration by the UK

The UK strongly supports the Directive on Recovery and Resolution which, when implemented, should strengthen financial stability and protect taxpayers across the European Union.

The UK reserves its position on the lawfulness of the carve-out of variable remuneration regulated by a collective bargaining agreement from the scope of the bail-in tool and the compatibility of specific provisions with the restriction set out in Article 114(2) TFEU pending the judgment of the Court of Justice of the European Union in C-507/13.

The UK notes it is essential that the text of the proposed Regulation establishing the Single Resolution Mechanism is fully aligned with this Directive in order to protect the functioning of the internal market.
