Council of the
European Union

Brussels, 7 July 2023
(OR. en)

**Interinstitutional Files:**
**2021/0341 (COD)**
**2021/0342 (COD)**

**11409/1/23**
**REV 1**

**LIMITE**

**EF 208**
**ECOFIN 723**
**CODEC 1267**



**NOTE**

| | |
|---|---|
| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee |
| Subject: | Basel III finalisation: Capital Requirements Regulation 3 (CRR 3) and Capital Requirements Directive VI (CRD VI)<br>- Presidency debriefing on the outcome of the trilogue |

## I. INTRODUCTION

1. On 27 October 2021, the Commission adopted the "Banking Package 2021" comprising of legislative proposals amending the Capital Requirements Directive (CRD VI)[1] and the Capital Requirements Regulation (CRR III)[2] as well as a separate legislative proposal in the area of resolution.[3]

2. The proposals are based on Articles 53 and 114 of the Treaty on the Functioning of the European Union and are hence subject to the ordinary legislative procedure.

[1] Doc. 13245/21
[2] Doc. 13246/21
[3] Doc. 13247/21. This file was fast tracked and is out of the scope of this note.

3. The Commission's impact assessments[4] of the proposals were presented in the first working party on 3 November 2021. The European Economic and Social Committee adopted its opinion[5] on 23 March 2022 and the European Central Bank delivered its opinions[6] on 24 March and 27 April 2022.

4. The proposals generally aim at i) strengthening EU banks' resilience to potential future economic shocks, notably by implementing the global Basel III-standards, ii) at strengthening banks' resilience towards environmental, social and governance (ESG) risks and iii) at ensuring a stronger and more harmonised supervisory and risk management frameworks of banks across the EU.

5. After thorough scrutiny of the Commission's proposals at working party level during the Slovene, French and Czech Presidencies, and following a preparatory discussion at Coreper[7] on 4 November 2022, ECOFIN agreed on a general approach on 8 November 2022 as set out in docs 13772/22, 13772/22.

6. The European Parliament (Parliament) agreed its negotiating position on 24 January 2023 and announced the ECON Committee decision to enter interinstitutional negotiations in plenary on 13 February 2023.

7. Those negotiations were subsequently commenced by the Swedish Presidency and the Parliament on 9 March 2023. After 6 political trilogues, negotiators reached a provisional agreement ad referendum in the final trilogue on 26–27 June 2023.

---

[4] Docs. 13425/21 ADD 1- ADD 5 and 13246/21 ADD 1 – ADD 6
[5] Docs. 07780/22
[6] Docs. 07603/22 and 14150/22
[7] Doc. 13771/22 + ADD 1

## II. MAIN ELEMENTS OF COMPROMISE

8. The discussions between the Parliament and the Swedish Presidency reflected the very different starting positions of co-legislators. The final agreement respects in substance the Council's position on the main and politically most controversial issues – the level of application of the output floor, the implementation of capital or liquidity waivers and the suitability assessment of bank managers and senior staff ("Fit and Proper"). In particular:

9. As regards the level of application of the output floor and the capital or liquidity waivers, it was agreed to take the relevant parts of the Council's general approach in full. Such an agreement was conditional on a report by the Commission on the performance of the banking prudential framework to be delivered by 2028 and a recital. The Commission expressed its readiness to make a declaration as regards the content of this report, which would also be reflected as a recital, while clearly highlighting that such declaration would be a statement of the Commission, not something co-legislators would have agreed to.

10. As regards the fit and proper framework, it was agreed that no requirement would be imposed on competent authorities to conduct an ex ante process to screen the suitability of bank managers before they take up their position, as in the Council approach. Instead, co-legislators agreed upon an ex ante notification procedure for the largest entities for members of the management body in its executive function and the head of the management body in its supervisory function.

11. With respect to the regime on third country branches, which also featured on the agenda of the final trilogue, the Council accepted in part the approach of the Parliament, namely Article 21c of the CRD on the basis of Parliament's text. It was agreed to keep the exemptions for MIFID services and reverse solicitation that was already embedded in Parliament's text and enhance the exemptions to clearly capture connected and ancillary banking services. But simultaneously, it was also agreed to provide for a grandfathering of existing contracts and a transitional arrangement. There should, furthermore, be a review clause to assess the impact of Article 21c on other financial sector entities than credit institutions and whether additional exemptions from the scope of Article 21c is needed. The EBA should present its report so that the Commission may present a legislative proposal before the transposition date of the amending Directive, as in the daisy chain amendment. As regards systemic third country branches, it was agreed to set out a dedicated cooperation mechanism between competent authorities of different Member States, but no joint decisions would be taken.

12. On other topics, notably the treatment of ESG risks, crypto assets and securitisation, the Council conceded to Parliament in most aspects. To a large extent, the same holds true for certain specific issues, such as the treatment of high-quality object finance, residual risk and the interest, leases, and dividend component, which, however, were modified into temporary arrangements. As regards the treatment of non-performing exposures, the agreement includes a more proportionate treatment for certain types of guarantees and a well-framed exemption from the NPL backstop for specialised debt restructurers.

13. In turn, the Council could retain its position with regards to sovereign exposures; notably in cases such as the extension of the temporary treatment of both, the euro denominated bonds issued by countries outside the euro area, with respect to ERM II currencies, and the prudential filters.

14. Overall, therefore, the Swedish Presidency together with the Parliament concluded that a balanced agreement was struck. It was also acknowledged that a timely implementation of the legislative package would send a clear signal to the international partners of the EU's commitment to its international obligations.

15. As regards next steps, the Spanish Presidency is now tasked with finalising the technical work. At the same time, a more granular overview of the provisional agreement will be circulated in due course to the Working Party. This overview will also guide the Spanish Presidency in its finalisation work at technical level. Once this work is concluded, final full legal texts will be submitted to Coreper for approval.

## III. CONCLUSION

16. The Permanent Representatives Committee is invited to take note of the outcome of the political agreement, as described in this note.