



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 March 2013

**Interinstitutional File:
2011/0202(COD)
2011/0203 (COD)**

7748/13

**EF 52
ECOFIN 216
CODEC 651**

"I" ITEM NOTE

from: Secretariat
to: Permanent Representatives Committee (Part II)
Subject: Revised capital requirements rules (CRD IV) [**First Reading**]
a) Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms
b) Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate
- Approval of the final compromise text

1. The above mentioned Commission proposals have been transmitted to the Council on 20 July 2011¹.
2. The European Central Bank delivered its opinion on these proposals on 25 January 2012.² The opinion of the European Economic and Social Committee was issued on 18 January 2012.³ The European Data Protection Supervisor has issued his opinion on 10 February 2012.⁴

¹ Doc. 13284/11 EF 112 ECOFIN 531 CODEC 1284 +ADD1 +ADD2 +ADD3 +ADD4 and doc. 13285/11 EF 113 ECOFIN 532 CODEC 1285 +ADD1 + ADD2, as well as the updated legislative financial statement in doc. 7745/13 EF 49 ECOFIN 213 CODEC 648.

² OJ C 105, 11.04.2012, p. 1. (Doc. 5876/12 EF 22 ECOFIN 78 CODEC 224).

³ OJ C 68, 6.3.2012, p. 39.

⁴ OJ C 175, 19.06.2012, p. 1. (Doc. 6808/12 ADD 1 EF 48 ECOFIN 182 DROIPEN 23 CODEC 463 ADD 1).

3. The European Parliament Committee on Economic and Monetary Affairs (ECON) adopted the reports on 14 May 2012. The position of the European Parliament at first reading is still pending. Following the Economic and Financial Affairs Council (ECOFIN) agreement on a general approach on these proposals of 15 May 2012⁵, the Presidency has conducted negotiations with the European Parliament and the European Commission in view of reaching an agreement on the compromise text with the aim of adoption of this compromise at first reading. The Economic and Financial Affairs Council (ECOFIN) has granted broad political endorsement to the outcome of the political trilogue of 27 February 2013 on a number of key issues.⁶
4. It is recalled that the European Council of 14-15 March 2013 concluded that progress towards a more integrated financial framework is urgently needed to restore normal lending, improve competitiveness and help bring about the necessary economic adjustments. Further to the progress achieved on the new rules for banks' capital requirements, the remaining outstanding technical issues must be rapidly finalised in order to allow final agreement to be reached by the end of the month.⁷
5. The texts resulting from the political trilogues⁸ are now acceptable to a qualified majority of delegations. The UK delegation could not confirm to having no objections, nor that it would be in a position to give political agreement to these texts.

⁵ Doc. 10099/12 EF 120 ECOFIN 418 CODEC 1349 and doc. 10100/12 EF 121 ECOFIN 419 CODEC 1350.

⁶ See doc. 6947/13 EF 32 ECOFIN 161 CODEC 455.

⁷ See doc. EUCO 23/13 CO EUR 3 CONCL 2, point 12.

⁸ Doc. 7746/13 EF 50 ECOFIN 214 CODEC 649 and doc. 7747/13 EF 51 ECOFIN 215 CODEC 650.

6. With regard to the Directive, a few delegations have furthermore raised concerns with regard to two issues. First, delegations have noted that the specific solution found in this file in relation to explanatory documents is not in line with the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission. This issue is currently addressed by making the agreement on explanatory documents conditional upon the European Parliament making the statement set out in Annex I of this report. Secondly, some delegations have raised concerns that the deadline for transposition of this legislation is too short. With regard to this issue, the Presidency invited the delegations to take note of the message from the Commission services, set out in Annex II.

7. Against this background, the Permanent Representatives Committee (Part II) is invited to:

a) approve the final compromise text;

b) confirm that the Presidency can indicate to the European Parliament that,

- should the European Parliament adopt its position at first reading in the exact form as set out in doc. 7746/13 EF 50 ECOFIN 214 CODEC 649 and doc.

7747/13 EF 51 ECOFIN 215 CODEC 650, and

- insert into its legislative resolution the statement as set out in the Annex I to this report,

the Council would approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position, subject, if necessary, to revision by the legal linguists of both institutions.

Statement by the European Parliament

"It is hereby declared that the agreement reached between the European Parliament and the Council concerning the new Capital Requirements Directive that would grant the rights to the Commission, upon a request from EBA in view of the application of Regulation (EU) No. 1095/2010 or on its own initiative, to require Member States to provide more detailed information regarding the transposition and implementation of their national provisions and this Directive, shall not constitute a precedent for negotiations on legislative acts in other policy areas.

This specific solution is required due to particular circumstances relating to the European Supervisory Architecture. The issue of explanatory documents shall, as a general rule, continue to be handled in line with the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission."

Message from the Commission Services

".../ immediately after 1/1/2014, the transposition date of the Directive, any country not having notified transposition will receive an automatic non transposition notification from the Commission.

However, and after that, the Commission will retain full discretion on the opening of a possible infringement procedure. In exercising that discretion the Commission will verify with Member States in question the progress, the efforts of the Member State and the likely delay that is going to occur, taking into account the constitutional framework of the Member State in question. /.../"
