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THE EUROPEAN UNION**

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REPORT

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| from : | Presidency |
| to : | Permanent Representatives Committee (Part 2) |
| No. Cion prop.: | 13284/11 EF 112 ECOFIN 531 CODEC 1284 + ADD1, ADD2 13285/11 EF 113 ECOFIN 532 CODEC 1285 |
| Subject : | Revised capital requirements rules (CRD IV) 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 = <i>General approach</i> |

1. The latest Presidency compromise text¹ of the above-mentioned Commission proposals has been discussed at the Committee of Permanent Representatives (Part 2) on 19 April 2012, where a number of delegations have raised their principal concerns that prevent them from agreeing on the general approach for the moment.

¹ Docs. 8467/12 EF 84 ECOFIN 311 CODEC 904 and 8468/12 EF 85 ECOFIN 312 CODEC 905.

2. Following that debate, and in view of the ECOFIN meeting of 2 May 2012, the Presidency has further explored avenues for an agreement and proposes amendments to the compromise text, set out in the addendum to this Report². The Presidency is of the view that these amendments, to the extent possible, address the issues specific to certain Member States, to enable them to agree on the overall compromise text.
3. Nevertheless, the qualified majority can not yet be reached because of the following outstanding issues:

a) Mechanism of the systemic risk buffer (Directive, Articles 124a, 124b and 124c); and country-specific prudential measures (Regulation, Articles 443a and 443b)

In view of the Presidency, all delegations agree that this is the key outstanding issue that blocks delegations from agreeing on the general approach. The principal features of the systemic risk buffer have been outlined in the report to Coreper meeting of 19 April 2012³ including the suggestion to raise the limit of the buffer requirement for domestic exposures and exposures in third-countries to 5 % in 2015 *without preceding Commission approval*.

In order to address the concerns of the Member States expressed at Coreper, the Presidency proposes the following modifications, set out in the addendum to this report:

- i) In Article 443a of the Regulation, reflecting a number of interventions on Coreper of 19 April the Presidency suggests **to insert provisions on optional recognition for branches** located in the Member State applying the national measures. This suggestion is made in order to accommodate to the extent possible the interventions on Coreper of 19 April;
- ii) In Article 443b, the Presidency suggests **to limit the right of the Commission to adopt delegated acts**, so that it can be only exercised in case where risks affect the whole of the EU.

² Doc. 8879/12 EF 94 ECOFIN 334 CODEC 1014 ADD 1 (to be issued).

³ Doc. 8710/1/12 REV 1 EF 91 ECOFIN 322 CODEC 974.

b) Leverage ratio: disclosure and mandatory nature (Regulation, Article 436 and 482)

On this issue the Presidency does not propose any changes to its compromise text presented to Coreper of 19 April. The Presidency compromise follows the Commission proposal that the **legal regime of the leverage ratio** from 1 January 2018 would be determined by an ordinary legislative procedure on the basis of the Commission report due by end of 2016. Mandatory disclosure of this ratio would start in the EU from 1 January 2015.

Some delegations are against mandatory disclosure until the final decision on the calibration of the leverage ratio and some of the delegations insist that legislative text is drafted to reflect that introduction of mandatory maximum level of leverage ratio, after final calibration, is a binding commitment at the EU level.

4. On the question of financial conglomerates and investment in insurance companies (Regulation, Article 46) the approach chosen by the Presidency was supported by a clear qualified majority on Coreper of 19 April 2012. The Presidency therefore proposes no further changes to this point of the text.
5. Relating to the definition of Common Equity Tier 1 (CET1) items (Regulation, Article 24) there was general support on Coreper of 19 April 2012 to the way CET1 items are defined in the Presidency compromise. However, some delegations expressed concern relating to the role of EBA in this process. The Presidency has therefore inserted a new paragraph in Article 75 of the Regulation stating that in certain instances the Competent Authority shall explain its reasoning to EBA as to the recognition of CET1 instruments. The Presidency hopes that this change meets the concerns of delegations.
6. The Presidency will address any further outstanding technical and timing issues in the following stages of negotiations on these texts, where the Presidency will act in accordance with the guidance and mandate it will receive from Member States.

III. CONCLUSION

7. Against this background the Permanent Representatives Committee is invited to:

- resolve the outstanding issues and agree on the general approach with regard to the proposed legislative package on capital requirements and prudential supervision;
 - recommend to the Council to:
 - a) finalise the agreement on the general approach;
 - b) invite the Presidency to start negotiations as soon as possible with the European Parliament on the basis of this general approach with a view to reaching an agreement at first reading.
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