



**COUNCIL OF
THE EUROPEAN UNION**

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ADDENDUM TO "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
- Statements by the Commission

Delegations will find attached the statements made by the Commission.

Article 443a of the Regulation:

The modifications made to this Article would permit the creation of 27 different national approaches on key elements of the single rule book such as own funds, risk weights and exposure limits. Moreover, in an area governed by co-decision where implementing powers are normally conferred on the Commission, implementing powers relating to national deviations from an EU regulation would be conferred exclusively on the Council, and the Commission be reduced to a mere advisory role, along with EBA and ESRB.

To ensure compatibility with Article 114 TFEU, the Commission is of the opinion that Article 443a, paragraph 2 must be interpreted as requiring that, upon receipt of a proposal from the Commission, the Council must always adopt a reasoned decision within the prescribed deadline. The last sub-paragraph of Article 443a, paragraph 2, which establishes the legal position of the Member State concerned where the Council wrongfully fails to act, cannot be interpreted as releasing the Council from its obligation to act in accordance with the fifth sub-paragraph of Article 443a, paragraph 2, namely the obligation to always adopt a reasoned decision. In the absence of such a reasoned decision of the Council, the last sub-paragraph of Article 443a, paragraph 2, would permit derogations disproportionate with respect to the harmonisation achieved by the Regulation without allowing judicial review, which would be contrary to Article 114 TFEU. The Commission therefore reserves the right to bring the matter before the Court of Justice where the Council would ignore the legal obligations imposed upon it by Article 443a, paragraph 2, and in particular where it would not adopt a reasoned decision within the prescribed deadline.

Article 124d of the Directive:

The Commission regrets that, in the context of the modalities around the conferral on EBA of binding settlement powers as regards higher buffer requirements established by a national authority, the fact that a recommendation of the Commission is given the same weight as that of the ESRB does not reflect the correct institutional balance between the ESRB and the Commission.

Article 151(1) of the Directive:

The Commission considers that Article 151(1) is not in compliance with Article 260(3) TFUE, which provides for the obligation upon Member States "to notify measures transposing a directive adopted under a legislative procedure". Since the Commission interprets such a provision of the Treaty as imposing upon Member States to notify to the Commission all measures aimed at transposing a directive, it will require Member States to communicate to the Commission all laws, regulations and administrative provisions necessary to comply with CRD IV.
