



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 June 2013  
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**"I/A" ITEM NOTE**

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

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**Subject:** Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (**first reading**)  
- Adoption of the legislative act (**LA + S**)  
= Statements  
**COMMON GUIDELINES**  
**Consultation deadline for Croatia: 19.6.2013**

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**Statement by the Commission**

*Article 458 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 458, paragraph 4 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 458, paragraph 4, 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 458, paragraph 4, 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 458, paragraph 4, 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 458, paragraph 4, and in particular where it would not adopt a reasoned decision within the prescribed deadline.

### **Statement by the United Kingdom**

The UK cannot support:

- a) The 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
- b) The Proposal of a Regulation of the European Parliament and the Council on prudential requirements for the credit institutions and investment firms and amending Regulation (EU) n° 648/2012

A future statement will be made in due course, setting out our reasons for voting against.