**CONSEIL DE
L'UNION EUROPEENNE**

SECRETARIAT GENERAL

Bruxelles, le 4 juillet 2012

CM 3799/12

**PROCED
CODEC
EF
ECOFIN**

COMMUNICATION

FIN DE LA PROCEDURE ECRITE

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Objet :	Proposition de règlement du Parlement européen et du Conseil sur les produits dérivés négociés de gré à gré, les contreparties centrales et les référentiels centraux (EMIR) (2010/0250 COD) - Fin de la procédure écrite relative à l'adoption de l'acte législatif (CM 3770/12)	

J'ai l'honneur de vous informer que la procédure écrite relative à l'adoption de la proposition de règlement du Parlement européen et du Conseil sur les produits dérivés négociés de gré à gré, les contreparties centrales et les référentiels centraux (EMIR) (2010/0250 COD) est terminée aujourd'hui, le 4 juillet 2012, et que toutes les délégations ont marqué leur accord.

Ci-après la déclaration conjointe de la République de Bulgarie et de la République Tchèque et une déclaration de la Commission.

Declaration by the Commission

The Commission welcomes the political agreement reached on EMIR, but notes for the minutes that it has legal objections against one provision in the text.

The Commission considers that Article 82 (3) should be deleted.

The Commission is of the view that Article 290 of the TFEU is to be interpreted as meaning that it is autonomous in the preparation and adoption of delegated acts. The standard recital on expert advice contained in the Common Understanding agreed between the three institutions is a reflection of this interpretation. It is therefore not acceptable and is contrary to Article 290 to go beyond the recital as agreed in the Common Understanding and to include an obligation to consult experts in the substantive provisions.

Declaration by the Republic of Bulgaria and the Czech Republic

The Republic of Bulgaria and the Czech Republic express strong concern about the scope of Article 25(1) where a recognition of a CCP established in a third country is demanded by ESMA in all cases and for all types of financial instruments, irrespective of whether an obligation for mandatory clearing through CCP is required or not. It would not be allowed under any circumstances a CCP established in a third country to provide clearing services to EU counterparties or trading venues without such recognition and the freedom to choose a CCP on a contractual basis will be restricted in cases where no obligation for central clearing through CCP is required by this regulation or by other EU legislation.