



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 November 2012**

**15895/12**

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**Interinstitutional File:  
2012/0150 (COD)**

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**EF 252  
ECOFIN 921  
DRS 124  
CODEC 2599  
INST 637  
PARLNAT 357**

**COVER NOTE**

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from: The Czech Senate

date of receipt: 5 November 2012

to: President of the European Union

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010

[doc. ST 11066/12 EF 136 ECOFIN 552 DRS 91 CODEC 1600 - COM(2012) 280 final]

- *Opinion<sup>1</sup> on the application of the Principles of Subsidiarity and Proportionality*

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Delegations will find attached the abovementioned Opinion.

Encl.:

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<sup>1</sup> Translation(s) may be available in the Interparliamentary EU information exchange site IPEX at the following address: <http://www.ipex.eu/IPEXL- WEB/search.do>



**THE SENATE  
OF THE PARLIAMENT OF THE CZECH REPUBLIC**

**8<sup>TH</sup> TERM**

**765<sup>th</sup>**

**RESOLUTION OF THE SENATE**

delivered on the 26<sup>th</sup> meeting held on 25<sup>th</sup> April 2012

**on the Proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 77/91/EEC and 82/891/EEC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005 56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010**

**(Senate Press no. N 167/08)**

The Senate

**I.**

**1. Supports**

the European Commission's initiative to coordinate procedures and tools for resolution of economic problems of credit institutions within the European Union;

**2. Has, however, reservations**

about the proposed transfer of some key powers in the field of banking supervision from the Czech authorities to bodies of other Member States and to the European Banking Authority;

## **II.**

### **1. Considers**

the issue of resolution of credit institutions (hereafter „resolution“) as a matter of cross-border significance for the Member States and finds its regulation at the European level appropriate;

### **2. Is of the opinion**

that the creation of an effective resolution framework can contribute to higher financial stability of both the Czech and the European financial systems;

### **3. Agrees**

with general resolution principles as laid out in Article 29 of the Proposal and it particularly supports the European Commission’s effort to minimize costs incurred by the taxpayer in the process of resolution of credit institutions by using preventive and resolution tools defined in the Proposal;

### **4. Is aware**

that the proposed legal harmonisation, which does not aim at resolution of individual credit institutions separately, but at resolution on the group level involving a parent company and its subsidiaries operating in various Member States, is inevitably connected with a certain degree of centralisation of decision-making powers of the supervisory authorities;

### **5. Believes, however,**

that with regard to that centralisation, the supervisory authorities of the Member States must not be stripped of their decision-making powers that are crucial for their ability to effectively foster and maintain stability of the credit institutions operating in a given Member State, and, in so doing, meet their obligations toward domestic depositors and the public;

### **6. Points out**

that the banking sector in the Czech Republic is predominantly made up of subsidiaries of foreign credit institutions and that it is necessary to ensure that the foreign credit institutions do not abuse their position to the detriment of their subsidiaries operating in the Czech Republic, in particular by enforcing loans from their subsidiaries without adequate real consideration, or any other unilaterally disadvantageous transfers of capital;

### **7. Is convinced**

that the risk can best be averted when the final decision on approval of intra-group financial support will be made by the supervisory authority in the country where the credit institution providing the support is established;

## **8. Is of the opinion**

that the creation of the European system of financing arrangements that leads to sharing of resolution costs among the Member States, with the involvement of deposit guarantee schemes, exceeds the approximation of national regulations related to the functioning of the internal market according to Article 114 of the Treaty on the Functioning of the European Union;

## **9. Considers it, therefore, questionable**

whether Article 114 of the Treaty on the Functioning of the European Union forms a proper legal basis for creating the European system of financing arrangements as stipulated in the Proposal for a directive;

## **10. Takes a critical stand**

on the scope of delegation of powers on the European Commission to adopt implementing acts because the delegation relates to key aspects of the entire Proposal, for instance the form of particular resolution tools, lending conditions between the Member States and conditions allowing a Member State to refuse to provide a loan; these issues should be precisely clarified directly in the Proposal so that the Commission would follow up only with acts containing technical details;

## **III.**

### **1. Requests**

the Government to inform the Senate about the way this position was taken into account and to provide the Senate with information on the further proceeding of negotiations;

### **2. Authorises**

the President of the Senate to forward this Resolution to the presidents of the European Commission, the European Parliament and the Council.

Milan Štěch

sign manual

President of the Senate

Jaromír Štětina

sign manual

Senate Verifier