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INFORMATION NOTE

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

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers
- Outcome of the European Parliament's first reading
(Strasbourg, 9 to 12 May 2016)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the Committee on Economic and Monetary Affairs presented a report to the plenary which recommended that the Parliament should adopt a position at first reading that took over the Commission's proposal without change. This recommendation reflected the agreement reached during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 11 May 2016, the plenary adopted a first-reading position that took over the Commission's proposal without change (other than changes resulting from legal-linguistic review).

The European Parliament's legislative resolution and its position at first reading are set out in the annex to this note.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

Exemptions for commodity dealers *I**

European Parliament legislative resolution of 11 May 2016 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers (COM(2015)0648 – C8-0403/2015 – 2015/0295(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0648),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0403/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of European Central Bank of 3 March 2016²,
 - having regard to the opinion of the European Economic and Social Committee of 27 April 2016³,
 - having regard to the undertakings given by the Council representative by letter of 29 March 2016 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union
 - having regard to Rules 59 and 50(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0064/2016),
1. Adopts its position at first reading, hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² OJ C 130, 13.4.2016, p. 1.

³ Not yet published in the Official Journal.

Position of the European Parliament adopted at first reading on 11 May 2016 with a view to the adoption of Regulation (EU) 2016/... of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁴,

After consulting the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure⁶,

⁴ OJ C 130, 13.4.2016, p. 1.

⁵ Opinion of 27 April 2016 (not yet published in the Official Journal).

⁶ Position of the European Parliament of 11 May 2016.

Whereas:

- (1) Regulation (EU) No 575/2013 of the European Parliament and of the Council⁷ exempts investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council⁸ and to whom Council Directive 93/22/EEC⁹ did not apply on 31 December 2006 ('commodity dealers') from the requirements for large exposures and from own funds requirements. Those exemptions apply until 31 December 2017.
- (2) Regulation (EU) No 575/2013 also requires the Commission to prepare, by 31 December 2015, a report on an appropriate regime for the prudential supervision of commodity dealers. Furthermore, that Regulation requires the Commission to prepare, by the same date, a report on an appropriate regime for the prudential supervision of investment firms in general. Where appropriate, those reports are to be followed by legislative proposals.

⁷ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁸ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

⁹ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27).

- (3) A review of the prudential treatment of investment firms ('investment firms review'), including commodity dealers is currently underway but has not yet been completed. The finalisation of that review and the adoption of new legislation that may be required in light of that review will be concluded only after 31 December 2017.
- (4) Under the existing regime, after 31 December 2017 commodity dealers will become subject to the requirements for large exposures and own funds requirements. This could force them to significantly increase the amount of own funds that they need to have in order to continue their activities and could therefore increase the related costs of performing such activities.
- (5) A decision to apply the requirements for large exposures and own funds requirements to commodity dealers should not be arrived at as a result of a lapsed exemption. Instead, that decision should be a thoroughly reasoned one, based on conclusions of the investment firms review, and should be clearly expressed in legislation.
- (6) It is therefore necessary to establish a new date until which the exemptions for commodity dealers should continue to apply. Regulation (EU) No 575/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 575/2013 is amended as follows:

(1) in Article 493(1), the second sentence is replaced by the following:

"This exemption is available until 31 December 2020 or the date of entry into force of any amendments pursuant to paragraph 2 of this Article, whichever is the earlier.";

(2) in Article 498(1), the second subparagraph is replaced by the following:

"This exemption shall apply until 31 December 2020 or the date of entry into force of any amendments pursuant to paragraphs 2 and 3, whichever is the earlier.".

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President
