Council of the
European Union

Brussels, 10 February 2015
(OR. en)

6088/15
ADD 1

EF 30
ECOFIN 88
DELACT 15

"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/Council
No. prev. doc.:	5839/15
No. Cion doc.:	C(2015) 361 final
Subject:	COMMISSION DELEGATED REGULATION (EU) No …/.. of 30.1.2015 amending Delegated Regulation (EU) No 241/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions = intention not to raise objections to a delegated act

DECLARATION OF BELGIUM

The Delegated Regulation specifies the meaning of “preferential distributions”. Shares in credit institutions which entitle their holders to preferential distributions, as so defined, will cease to qualify as Core Equity Tier 1 from 1st January 2018. During the consultation process that led to the adoption of the Delegated Regulation, Belgium drew the attention of the EBA to a flaw in the proposed draft: the draft would catch shares subscribed by Member States in the context of bank recapitalisations made during the financial crisis, where a preference was given to the States in order to ensure that historical shareholders were effectively wiped out and that taxpayers’ funds were not used to subsidise these shareholders.

Although the EBA or subsequently the Commission did not expressly disagree with Belgium’s comments, they proceeded without considering the point.

The Belgian and French States made a €5,500 million cash contribution to the capital of Dexia in December 2012 (53% by Belgium and 47% by France). The preference shares that were issued to them at the time currently rank ahead of the historical shareholders. If these shares cease to qualify as CET1 in 2018 because of the applicable preference, they will need to be downgraded into ordinary shares ranking at the same level as the historical shareholders. This would increase the value of the shares held by these shareholders, at the expense of the States whose shares would correspondingly lose the value derived from their preferred status.

The Delegated Regulation will thus have effects that are inconsistent with the Union's policy not to spend taxpayers' money on shareholders of failing banks. For this reason, Belgium has decided to object to the Delegated Regulation.