



Brussels, 14 September 2015
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"I/A" ITEM NOTE

From: General Secretariat of the Council
To: COREPER II and the Council

No. prev. doc.: 11508/15
No. Cion doc.: C(2015) 5067 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 28.7.2015 supplementing Directive 2002/87/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the definitions and coordinating the supplementary supervision of risk concentration and intra-group transactions
= Request to extend the period for objections to a delegated act

1. The Commission submitted the above-mentioned delegated act to the Council in accordance with the procedure set out in Article 290 TFEU and with Article 13(1) of Regulation (EU) No 1093/2010¹, Regulation (EU) No 1040/2010² and Regulation (EU) No 1095/2010³.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, *OJ L 331, 15.12.2010, p. 12–47*.

² Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, *OJ L 331, 15.12.2010, p. 48–83*.

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, *OJ L 331, 15.12.2010, p. 84–119*.

2. The Commission notified this delegated act on 21 August 2015, indicating that an objection period of one month applied (Annex 1).
3. On 3 September 2015, the European Parliament sent a letter to the Commission (Annex 2), indicating that in their understanding the above-mentioned delegated act was not the same as the ESAs draft RTS and that therefore, according to Article 13(1) first sub-paragraph of Regulation (EU) No 1093/2010, Regulation (EU) No 1040/2010 and Regulation (EU) No 1095/2010, a 3-month objection period applied.
4. Some Members of the Council share the views of the European Parliament as regards the applicable deadline. For legal certainty reasons relating to the date of entry into force of the delegated act, it is therefore necessary that the Commission provides a timely formal response to the letter of the European Parliament and inform the Council thereof.
5. However, pending a formal reply by the Commission to the European Parliament's letter, it is suggested that the Permanent Representatives Committee recommend to the Council to decide on the extension of the period for raising objections by one month. The Commission and the European Parliament are to be informed thereof.



COMMISSION EUROPÉENNE
SECRETARIAT GÉNÉRAL

Bruxelles, le 21.08.2015
SG-Greffe(2015) D/ 8545

Monsieur le Secrétaire général,

J'ai l'honneur de vous notifier, conformément à l'article 11, paragraphe 2, du règlement (UE) n° 1093/2010, du règlement (UE) n° 1094/2010 et du règlement (UE) n° 1095/2010, respectivement, du Parlement européen et du Conseil du 24 novembre 2010, le « règlement délégué de la Commission complétant la directive 2002/87/CE du Parlement européen et du Conseil par des normes techniques de réglementation précisant les définitions de la concentration de risques et des transactions intragroupe et coordonnant leur surveillance complémentaire ».

Cet acte délégué a été adopté par la Commission le 28 juillet 2015.

Le Conseil dispose d'un délai de 1 mois, à compter de la présente notification, pour formuler des objections à cet acte délégué. Il peut également signaler avant la date limite qu'il n'a pas d'objections.

Le Conseil peut également indiquer à la Commission, avant l'expiration de ce délai, qu'il souhaite bénéficier d'un délai de 1 mois supplémentaire.

Sur la base de l'article 13, paragraphe 1, deuxième alinéa, du règlement (UE) n° 1093/2010 du règlement (UE) n° 1094/2010 et du règlement (UE) n° 1095/2010, respectivement, la période pendant laquelle le Parlement européen et le Conseil peuvent exprimer des objections à l'égard de cette norme technique de réglementation peut être prolongée d'un mois supplémentaire, si nécessaire.

Cet acte sera publié au *Journal Officiel de l'Union européenne* si, à l'expiration de ce délai, ni le Parlement européen ni le Conseil n'ont émis d'objections. L'acte pourra également être publié si, avant l'expiration de ce délai, le Parlement européen et le Conseil ont tous deux informé la Commission de leur intention de ne pas formuler d'objections.

Veillez agréer, Monsieur le Secrétaire général, l'assurance de ma haute considération.

Pour la Secrétaire générale,

Jordi AYET PUIGARNAU
Directeur

p.j. : C(2015) 5067 final du 28 juillet 2015

Monsieur Jeppe TRANHOLM-MIKKELSEN
Secrétaire général
Conseil de l'Union européenne
175, rue de la Loi
1048 BRUXELLES

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Committee on Economic and Monetary Affairs
 The Chair

314281 03.09.2015

SECRETARIAT GÉNÉRAL DU
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 SGE15/08278
 Reçu le 08 -09- 2015
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Lord Jonathan Hill
 Commissioner for Financial Stability, Financial
 Services and Capital Markets Union
 European Commission
 Rue de la Loi 200 314281 03.09.2015
 B – 1049 Bruxelles

Dear Commissioner,

On 21 August 2015 the European Parliament received in all the official languages the Commission Delegated Regulation (EU) of 28.7.2015 supplementing Directive 2002/87/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the definitions and coordinating the supplementary supervision of risk concentration and intra-group transactions (C(2015)5067 final) ("the Delegated Regulation").

In its notification the Commission indicated that an objection period of one month applies. According to Article 13 (1) second sub-paragraph of Regulation (EU) 1093/2010, Regulation (EU) 1094/2010 and Regulation (EU) 1095/2010, the application of this one month provision requires that the Delegated Regulation is "the same" as the draft regulatory technical standard it is based on (the Final draft Regulatory Technical Standard on risk concentration and intra-group transactions ("the ESAs draft RTS")).

However, I would like to inform you that **the three months period for objection applies, i.e. until 21 November 2015**, as provided for under Article 13 (1) first sub-paragraph of Regulation (EU) 1093/2010, Regulation (EU) 1094/2010 and Regulation (EU) 1095/2010, without prejudice to the right of Parliament or Council to extend that period by a further 3 months.

It is our understanding that the two texts - the Delegated Regulation and the ESAs draft RTS - are not the same. Several changes were introduced to the ESAs draft RTS, in particular the deletion of the word "certain" in Article 4 of the Delegated Regulation.

Considering that there are changes to the ESAs draft RTS, the Delegated Regulation cannot be considered "the same" as the draft RTS, within the meaning of Article 13 (1) second subparagraph of Regulation (EU) 1093/2010, Regulation (EU) 1094/2010 and Regulation (EU) 1095/2010. Therefore, the latter provision is not applicable in the current case.

Furthermore, I would like to draw your attention to the fact that the ESAs submitted their draft RTS already on 18 December 2014 and that, in accordance with Article 10 (1), fifth subparagraph, the Commission should have decided within the following three months whether to endorse the draft RTS, i.e. by 18 March 2015. I note that the Commission, as guardian of Treaties, missed the deadline laid down in these Regulations by 4 months. I therefore call on you to take the necessary steps to ensure that the deadlines in the ESA Regulations are respected by the Commission.

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The Council has been informed accordingly.

Yours sincerely,



Roberto Gualtieri

cc: Luxembourg Presidency of the EU