Council of the
European Union

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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
No. prev. doc.:	11509/15 + ADD 1
No. Cion doc.:	C(2015) 5390 final
Subject:	COMMISSION DELEGATED REGULATION (EU) …/... of 6.8.2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation =intention not to raise objections to a delegated act

1. On 21 August 2015 the Commission submitted the abovementioned delegated act[1] to the Council in accordance with the procedure set out in Article 290 TFEU and Article 11(2) of Regulation (EU) No 1095/201 of the European Parliament and of the Council of 24 November 2010.

2. According to Article 13(1) of Regulation (EU) No 1095/2010, the Council may object to a delegated act within a period of three months, i.e. until 21 November 2015.

[1] Doc. 11509/15+ ADD 1.

3. During the silence procedure within the framework of the Working Party on Financial Services, which expired on 7 October 2015, no delegation indicated an intention to object to the delegated act.

4. It is therefore suggested that Coreper (Part 2) invites the Council at a forthcoming meeting to:

- confirm that the Council has no intention to object to the delegated act and that the Commission and the European Parliament are to be informed thereof; this implies that, unless the European Parliament objects to it, the delegated act shall be published and enter into force in accordance with Article 13(2) of Regulation (EU) No 1095/2010, and

- enter into its minutes the statement set out in Annex.

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Annex

Statement by Italy and France

Italy and France welcome the Delegated Regulation laying down the classes of the OTC derivative contracts that are subject to the clearing obligation and the different categories of counterparties for which different phase-in periods apply.

Italy and France support the derogation regime exempting intragroup transactions from clearing obligation, as it allows for a more efficient intragroup liquidity management.

However, Italy and France deem some further clarification would be needed as far as the notification procedure envisaged in Art. 3.2 para. e is concerned, granting the exemption of intragroup transactions from clearing obligation also where one of the counterparties is established in a third country.

In particular, the compliance with Art. 3.2 para d is difficult to assess in the case of third country entities.

Indeed, while EU competent authorities (CAs) can easily assess whether a EU-counterparty is "subject to appropriate centralized risk evaluation, measurement and control procedure" on the basis of a common EU supervisory framework, that could not be the case for third country entities.

Lack of both details on information that third country counterparties have to provide to CAs when applying for being exempted and common standards that CAs may refer to when assessing such information, could lead to different implementations of the same rules in different Member States. That risks to create regulatory arbitrage and/or legal uncertainty and possible disputes, especially in the case of counterparties applying for being exempted in more than one Member State.

Therefore, Italy and France urge the European Commission to provide for further guidance on this issue. In this regard Italy and France would welcome a Q&A clarifying how Art. 3.2 para. d would apply to third country entities, introducing common standards based, for example, on the experience of the Supervisory and Resolution Colleges to deal with third countries or on compliance of third country jurisdictions with the standards set out by international bodies (such as FMI assessment, BCBS or IOSCO principles).