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'I/A' ITEM NOTE

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

No. prev. doc.: 9397/20
No. Cion doc.: COM(2016) 856 final

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU and (EU) 2017/1132
- Political agreement

I. INTRODUCTION

1. On 28 November 2016, the Commission transmitted to the Council the above-mentioned proposal¹. The proposal aims at establishing a framework for the recovery and resolution of Central Counterparties (CCPs), thereby ensuring that both CCPs and national authorities in the EU have the means to act decisively in case a CCP faces severe distress or failure.

II. STATE OF PLAY

2. The proposal has been examined by the Working Party on Financial Services in seventeen meetings during the Slovak, Maltese, Estonian, Romanian and Finnish Presidencies.

¹ Doc. 14835/16 + ADD 1 + ADD 2 + ADD 3

3. On 27 March 2019, the European Parliament adopted a legislative resolution with its position at first reading².
4. On 4 December 2019, COREPER agreed on a mandate for negotiation with the European Parliament³.
5. Four trilogues were held during the Croatian Presidency and on 23 June 2020, a provisional agreement was reached with the European Parliament on the text of the Regulation on a framework for the recovery and resolution of CCPs. On 22 July 2020, COREPER endorsed the final compromise text of the Regulation⁴.
6. The European Parliament's Committee on Economic and Monetary Affairs (ECON) voted on 2 September 2020 in favour of the agreed text.
7. On 3 September 2020, the Chair of the ECON Committee addressed a letter to the Presidency indicating that she would recommend to the Plenary that the Council's position be accepted, subject to legal-linguistic verification, at Parliament's second reading. The letter, including the negotiated text of the Regulation, is reproduced in doc. 10341/20.
8. The text contained in the Annex to that letter is set out in Addendum 1 to this note. That text is identical to the compromise text endorsed by the Permanent Representatives Committee on 22 July 2020.

² 7740/19.

³ 14540/19.

⁴ 9397/20.

III. CONCLUSION

9. In view of the above, the Permanent Representatives Committee is invited to:

- confirm the agreement reached with the European Parliament, as set out in Addendum 1 to this note,
- invite the Council to adopt a political agreement on the text of this Regulation and to decide that the statement in the annex to this note will be entered into the minutes of its meeting.

After adoption of the political agreement, the text will be sent for lawyer-linguist revision so that the Council can adopt its first reading position as an "A" item at a forthcoming Council. Subsequently, the Council's position at first reading will be communicated to the European Parliament with a view to approval by the Plenary without amendment in second reading.

Statement by the European Commission

"The Commission takes note of the fact that the political agreement relative to the Commission proposal on a framework for the recovery and resolution of central counterparties 2016/0365 (COD) has included provisions relative to open access requirements under articles 35 and 36 of the Market in Financial Instrument Regulation (MiFIR). These provisions were not included in the initial proposal of the Commission.

"In the Commission's view, these provisions are not entirely in line with the EU's institutional set-up, in particular the Commission's right of initiative, and cannot constitute a precedent for future negotiations.

"As the MiFIR changes at issue do not entail a substantive change of policy, but are rather limited to a short postponement of the MiFIR access provisions, the Commission will not now stand in the way of their adoption. This is without prejudice to any policy that the Commission may propose on this issue in the future."