Council of the European Union
General Secretariat

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WRITTEN PROCEDURE

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Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis Outcome of the written procedure initiated by CM 2438/21: – Adoption of the legislative act

Delegations are informed that the written procedure, opened by CM 2438/21 of 26 March 2021 was completed on 30 March 2021 and that all delegations voted in favour of, except for Ireland that voted against and Luxembourg that abstained, the adoption of the Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis, as set out in PE-CONS 70/20.

The required qualified majority has been reached. Therefore, the above Regulation is adopted.

The statements by Ireland and Luxembourg are reproduced in the Annex to this CM and will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

Statement by Ireland

Ireland cannot support this proposal. We have concerns about the new text in the recital and article and the process utilised to achieve agreement of the text. It has been a long established arrangement that tax matters are only discussed and agreed in by tax experts in relevant tax working parties in Council. This respects the provisions of the special legislative procedure and unanimity for tax matters as is enshrined in the Treaties. Under the Treaties, the European Parliament has merely as consultative role in tax matters yet in this agreement the European Parliament has had a drafting role in the final text. We do not believe that tax is sufficiently connected to the successful realisation of the CMRP Securitisation proposal and we oppose tax being used as a makeweight in a Financial Services file to get agreement with the European Parliament. We are concerned that a dangerous precedent is being set and that the sovereign right of Member States to set tax policy is being encroached upon, without any reference to, or consultation with, the relevant Council formations for taxation.

We would have preferred more time for the Member States' tax experts to have been properly consulted and to have provided a considered opinion. Such a consultation would have allowed Council and Parliament to reach a timely solution that assists Capital Markets to recover from the Covid-19 pandemic without unnecessarily impinging on Member States sovereignty with regard to matters of taxation.

Statement by Luxembourg

Luxembourg cannot support the text of the regulation and will abstain. While we do not oppose the objectives of the regulation as such, we have concerns about the process utilised to achieve agreement on the wording in Article 1(2) (c) and recitals (6) and (7) related thereto which create a notification procedure to Member States' tax authorities for SSPE established in jurisdictions mentioned in Annex II of the EU list of non-cooperative jurisdictions for the reason of operating a harmful tax regime in a financial services file for which Article 114 of the Treaty on the Functioning of the European Union has served as a legal basis. We recall that tax matters are the sole competence of the Member States and tax policy decisions are the sovereign right of Member States, which is why the Treaty on the Functioning of the European Union contains a special legislative procedure and unanimity voting in Council while the role of the European Parliament is merely consultative.