



**COUNCIL OF
THE EUROPEAN UNION**

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"I" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

Subject: = Proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

= Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property (Mortgage Credit Directive-MCD)

- Declaration from the Commission

COMMISSION DECLARATION

At the request of the European Parliament and the Council the Omnibus II Directive and the Directive on credit agreements relating to residential immovable property will contain new articles – Articles 2ab and 2ac amending the ESMA and the EIOPA Regulations, and Articles amending Articles 13(1) and 17(2) of the EBA Regulation. Amending Union regulations by the legislative instrument of a Union directive is not in line with the principles of good legislative drafting.

Moreover, the Commission is of the view that the three ESA Regulations constitute an essential building block of the supervisory architecture within the internal market for financial services and thus for the Banking Union. Due to the fundamental nature of the three ESA Regulations and for reasons of legal certainty, it is in the view of the Commission paramount to preserve the integrity and coherence of these Regulations, avoiding subsequent or uncoordinated changes through sectoral legislation.

It follows that while the Commission can accept the substance of these amendments made by Council and the European Parliament in the context of the final agreement on both proposals, which are essential for the application of Solvency II and thus for the introduction of a modern and risk-based solvency regime for the insurance and reinsurance industry in Europe, and for ensuring that mortgage credit markets operate in a responsible manner, the Commission is of the opinion that it would have been more appropriate to determine these issues in the context of the forthcoming horizontal review of the ESA Regulations.
