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REPORT

From: General Secretariat of the Council

To: Delegations

Subject: Single Resolution Mechanism [**First reading**]
- Proposal for a Regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council
= *General approach*

I. INTRODUCTION

1. The above-mentioned Commission proposal has been transmitted to the Council on 10 July 2013. The main objective of this proposal is to set up a Single Resolution Mechanism (SRM) - consisting of the central decision-making body (Single Resolution Board (SRB)) and the Single Resolution Fund (SRF) - to enable in-depth restructuring of the banks with severe financial problems and ensure the sustainability of the financial markets of the Member States participating in the Single Supervisory Mechanism (SSM).

2. The European Council stressed the importance of this file a number of times, and in October 2013 underlined "the commitment to reach a general approach by the Council on the Commission's proposal [...] by the end of the year in order to allow for its adoption before the end of the current legislative period".¹ The relevant extracts of the European Council conclusions are set out in the Annex to this Report.
3. The Committee on Economic and Monetary Affairs of the European Parliament is now expected to adopt its report on 5 December 2013.
4. The Presidency recalls that upon request of the Ad Hoc Working Party on the Single Resolution Mechanism² (AHWP), the Council Legal Service has delivered three opinions: on the proposed legal basis³, on delegation of powers to the SRB⁴ and on EBA's role as regards the Commission⁵. Concerning the legal basis of the Commission proposal, the opinion of the Council Legal Service confirmed that Article 114 of the TFEU may be a suitable legal basis for the establishment of the SRM and of the SRF, subject to certain clarifications to be made in the text of the Commission proposal.
5. Following the examination of the open issues on the basis of the Presidency reports in the meeting of the Committee of Permanent Representatives (Coreper - Part 2) on 7 November 2013⁶ and ECOFIN of 15 November 2013⁷, the AHWP held two additional meetings on 22 and 29 November⁸ to explore further avenues for agreement.
6. In view of the ECOFIN meeting of 10 December 2013, the Presidency proposes a number of further amendments to its fourth compromise text⁹, which are set out in the addendum to this report¹⁰ and are aimed at solving some of the remaining issues.
7. The Presidency is of the view that the concerns raised by the Member States have been addressed to the extent possible, save for the open issues outlined further in this report.

¹ Doc. EUCO 169/13 CO EUR 13 CONCL 7, point 44.

² Doc. 12020/13 EF 142 ECOFIN 679 LIMITE.

³ Doc. 13524/13 JUR 458 ECOFIN 787 UEM 314 LIMITE.

⁴ Doc. 14547/13 JUR 523 EF 189 ECOFIN 867 CODEC2224 LIMITE.

⁵ Doc. 16182/13 JUR 586 EF 228 ECOFIN 1016 CODEC 2568 LIMITE.

⁶ Doc. 15507/13 EF 207 ECOFIN 957 CODEC 2410.

⁷ Doc. 15868/13 EF 216 ECOFIN 988 CODEC 2479.

⁸ Nine AHWP meetings have been convened in total.

⁹ Doc. 17055/13 EF 246 ECOFIN 1090 CODEC 2774.

¹⁰ Doc. 17079/13 EF 247 ECOFIN 1092 CODEC 2778 ADD1.

II. KEY OPEN ISSUES

A. The key outstanding issues, which must be solved if the objectives and deadlines set by the European Council are to be met, remain the following:

a) *Decision-making in the SRM (Article 16) and governance of the SRB (Articles 39, 46, 49, 51 and 52)*

8. The main constitutive elements of this issue have emerged as the main object of the debates:

- should the Commission or the Council trigger resolution;
- composition and governance of executive and plenary sessions of the Single Resolution Board;
- types of decisions to be taken by each of the sessions, and
- the voting modalities in each of these sessions.

There is an overall agreement that any agreed compromise should enable **efficient, effective and speedy resolution decisions**.

9. Given the legal requirements, a Union institution vested with executive powers (the Council or the Commission in this case) must be involved at least at the stage where a decision to trigger resolution is taken (Article 16). A large majority of the delegations remain of the view that this task should be entrusted to the Commission.

10. Following the 15 November ECOFIN, the AHWP further explored an option that the **Council could play a role in the SRM context**. While there is some degree of support for the option that the Council could trigger resolution (especially when key financial decisions (such as borrowing for the SRF) are to be taken), **the majority of delegations continue to favor the Commission as the most efficient alternative**. The Council is seen as the less efficient alternative due to a number of legal, procedural and timing constraints.

11. Noteworthy, there is a variety of Council voting modalities foreseen in the Treaties, that could be used for the SRM purposes, should this institution be ultimately be chosen to trigger resolution. For example, "simple majority", "qualified majority" or "reverse qualified majority".

12. The **decision to trigger resolution will in any case be prepared by the SRB**, and it is thus of key importance how the SRB takes its decisions.
13. The Presidency remains convinced that its current compromise text continues to gather the largest available support of the delegations. This compromise foresees that the representatives of NRAs concerned and the SRB executive session (the Executive Director and members, appointed by the Council) would reach decisions by a joint agreement (consensus) but, should they fail to do so, the Executive Director and the appointed members would have the right to take a decision by a simple majority of votes (one member - one vote, in all cases).
14. To address the need to have stronger voting rules for the decisions involving use of funds the current Presidency compromise text foresees that the SRB plenary session would have the right to oppose the SRB executive session on certain decisions relating to the use of the SRF means.
15. The Presidency notes that other various options have been proposed, in particular:
- i) that decisions on the resolution scheme and actions should be taken in a specific composition of the SRB executive session, which would be composed of permanent officials and of the representatives of the national resolution authorities (NRAs) concerned, to whom votes would be attributed in accordance with the weighting rules set out in the SRM Regulation, permitting to reflect the balance between "home" and "host" NRAs;
 - ii) that the SRB plenary session (all NRAs) role should be strengthened so that where NRAs concerned are not able to reach joint agreement (consensus), the SRB plenary session would have to decide by a simple majority (each member of the plenary session would have one vote).
16. The Presidency observes that there is no qualified majority supporting demands of some delegations **to further strengthen the role of the SRB plenary session in situations where SRF means are used beyond a certain threshold** or where SRF would have to be complemented with borrowed means or ex post contributions to the SRF by requiring that the SRB plenary session would have to vote with an even **higher qualified majority in favour**.

17. Generally, the discussions in the Working Party demonstrated that while various options have been advocated by several delegations, the Presidency compromise remains the best balance and so far the only one acceptable to a majority.

b) Financing arrangements of the SRM (Articles 56, 57, 62, 65, 67 to 69)

18. The Commission proposed to establish a single fund (the SRF, financed from the contributions by all institutions covered by the SRM), to be used for financing resolution of banks and banking groups of the participating Member States. In the ECOFIN of 15 November the President of the ECOFIN concluded that further ways should be explored to ensure the broadest possible agreement on the structure and financing arrangements of the SRF. The Ad Hoc Working Party has, however, not been able to identify any consensual solution to this question.

19. In addition, several delegations maintain their views that agreement on the common backstop is a key element for credibility of the future SRM. The Presidency reiterates that, to address the issue of possible support (backstop) to the SRM, the preparatory work in the Economic and Financial Committee (EFC) and the Eurogroup Working Group (EWG) **will continue in 2014.**

20. In view of the deadlines set by the European Council and given that the trilogues with the European Parliament should start as soon as possible, the Presidency is of the view that Article 69 of the compromise now reflects the best available solution in terms of efficiency - it leaves open the possibility for the SRM to resort to a backstop. This also leaves room for the EFC and the EWG to complete their work on the backstop issue in time for the final agreement to be reached in trilogues, still during this Parliamentary term. **Any further linking of these issues seriously elevates the risk of considerable delay of the SRM project.**

c) Advancing the bail-in date (Articles 24 and 88)

21. Some delegations continue to call for further limitations on the possibility of public sector involvement by making the **bail-in tool mandatory in the Member States participating in the SRM from the date when SRM Regulation becomes effective** (scheduled for 1 January 2015). Alternatively, these delegations ask to postpone SRM operations till the date of mandatory application of the bail-in tool under BRRD (foreseen in 2018, under the Council general approach¹¹).

B. Some delegations have signalled other particular concerns:

i) National financial immunity in case of Union non-contractual liability

22. Some Member States (that are not participating in the SSM) strongly insist that their national budgets remain fully immune to any potential **costs and non-contractual liabilities** of the Commission when performing tasks under the SRM. Presidency does not provide a solution for this issue in its last compromise given that potential solutions could be explored outside SRM regulation.

ii) lending to national deposit guarantee schemes

23. Some Member States have requested to reinsert, as it was foreseen in Article 73(4) of the 2nd Presidency compromise, the possibility for the SRM to lend the necessary resources to a deposit guarantee scheme, in the event resources of that deposit guarantee scheme are not sufficient to cover the payments to be made to depositors, provided that all the conditions under Article 10 of Directive 94/19/EC are met. However, other delegations oppose this option, especially in the cases where such lending would not be related to bail-in activities.

¹¹ Doc. 11148/1/13 EF 132 ECOFIN 572 DRS 121 CODEC 1511 REV 1 + COR 1.

III. OTHER ISSUES

24. Following the last meeting of the Ad Hoc Working Party, the Presidency has revised its compromise on some issues, set out in the addendum to this report¹²:

- scope of institutions subject to the SRM. Here the text has been amended closer to reflect the distribution of supervisory tasks within the SSM;
- equal treatment of Member States non-participating in the SSM (EBA role in SRM context);
- proper safeguards to address conflicts of interests in the Commission while executing its discretionary powers under SRM, and
- clarification of rules on calculation of contributions to the SRF.

The Presidency considers that the revised compromise reflects the best achievable balance among the points of view expressed by Member States, and expects that any remaining reservations on these issues can be lifted.

25. Once the final political agreement on the BRRD is reached in the trilogues, the SRM text should be aligned with it. The Presidency has attempted to align the SRM compromise to the Council general approach on the BRRD, however it has become apparent that the ultimate solution for this issue needs to be further postponed until the final political agreement on the BRRD is reached in the trilogues. Such alignment can in principle be done also during the trilogues on the SRM.

26. Some delegations have also raised a number of technical concerns, that do not block them from accepting the overall compromise on the principal elements of the SRM. The Presidency expects to address these issues in the following stages of negotiations on this text.

¹² Doc. 17079/13 EF 247 ECOFIN 1092 CODEC 2778 ADD1.

IV. CONCLUSION

27. The Presidency invites delegations to lift their remaining reservations in order to enable the Presidency to start negotiations with the European Parliament in accordance with the mandate received, in view of reaching a timely agreement on the overall compromise text.
 28. Against this background, the Committee of Permanent Representatives is invited to recommend to the Council to:
 - a) finalise the agreement on the general approach, and
 - b) invite the Presidency to start negotiations with the European Parliament as soon as possible on the basis of the general approach with a view to reaching an agreement at first reading.
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ANNEX

EXTRACTS FROM THE EUROPEAN COUNCIL CONCLUSIONS RELATING TO THE SRM

1. December 2012 European Council

"Roadmap for the completion of EMU

[...]

10. It is imperative to break the vicious circle between banks and sovereigns. [...]

[...]

11. In a context where bank supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools.[...] The Commission will submit in the course of 2013 a proposal for a single resolution mechanism for Member States participating in the SSM, to be examined by the co-legislators as a matter of priority with the intention of adopting it during the current parliamentary cycle. It should safeguard financial stability and ensure an effective framework for resolving financial institutions while protecting taxpayers in the context of banking crises. The single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements. This backstop should be fiscally neutral over the medium term, by ensuring that public assistance is recouped by means of *ex post* levies on the financial industry."

2. March 2013 European Council

"Deepening EMU

[...]

13. The European Council recalls that it is imperative to break the vicious circle between banks and sovereigns. [...]. The Commission intends to submit by summer 2013 a legislative proposal on a Single Resolution Mechanism for countries participating in the SSM, to be examined as a matter of priority with the intention of adopting it during the current parliamentary cycle. It should ensure an effective framework for resolving financial institutions while protecting taxpayers in the context of banking crises, be based on contributions from the financial sector itself and include appropriate and effective backstop arrangements, in line with its conclusions of December 2012. The integrity of the Single Market will be fully respected and a level playing field will be ensured between Member States which take part in the SSM and those which do not."

3. June 2013 European Council

"III. COMPLETING THE ECONOMIC AND MONETARY UNION

[...]

13. In the short run, the key priority is to complete the Banking Union in line with the European Council conclusions of December 2012 and March 2013. This is key to ensuring financial stability, reducing financial fragmentation and restoring normal lending to the economy. The European Council recalled that it is imperative to break the vicious circle between banks and sovereigns and underlined the following points:

[...]

- (e) a fully effective SSM requires a Single Resolution Mechanism (SRM) for banks covered by the SSM. The European Council looks forward to the Commission's proposal establishing an SRM with a view to reaching agreement in the Council by the end of the year so that it can be adopted before the end of the current parliamentary term. [...]"

4. October 2013 European Council

"III. ECONOMIC AND MONETARY UNION

33. Following the December 2012 and June 2013 European Council meetings, the European Council has focused its discussion on banking and economic union but will return to all issues in December 2013. [...]

[...]

Banking Union

41. The European Council has been actively steering the process of establishing the Banking Union. [...]

[...]

43. [...] It also calls on the Eurogroup to finalise guidelines for European Stability Mechanism direct recapitalisation so that the European Stability Mechanism can have the possibility to recapitalise banks directly, following the establishment of the Single Supervisory Mechanism.
44. Completing the Banking Union is urgent and requires not only a Single Supervisory Mechanism but also a Single Resolution Mechanism. The European Council calls on the legislators to adopt the Bank Recovery and Resolution Directive and the Deposit Guarantee Directive by the end of the year. The European Council underlines the need to align the Single Resolution Mechanism and the Bank Recovery and Resolution Directive as finally adopted. It also underlines the commitment to reach a general approach by the Council on the Commission's proposal for a Single Resolution Mechanism by the end of the year in order to allow for its adoption before the end of the current legislative period."