



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 November 2010

17039/10

**Interinstitutional File:
2010/0251 (COD)**

**EF 193
ECOFIN 783
CODEC 1395**

"I/A" ITEM NOTE

from: Presidency
to: Coreper/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on Short Selling and certain aspects of Credit Default Swaps
- Progress Report

I. INTRODUCTION

1. On 15 September 2010 the Commission transmitted to the Council its proposal for a Regulation of the European Parliament and of the Council on Short Selling and certain aspects of Credit Default Swaps.
2. The proposal has been examined by the Working Party on Financial Services at three meetings during the Belgian Presidency (6 and 20 October, and 24 November 2010).
3. During the discussions in het Working Party on Financial Services the Presidency has tabled one overall compromise proposal (Doc. 16676/10 EF 185 ECOFIN 751 CODEC 1333) in order to make progress on the file.

II. STATE OF PLAY

4. Generally speaking, the initiative of the European Commission has been well received, even though some delegations had concerns about regulation in this field that would go beyond mere notification and disclosure rules. After the latest meeting of the Working Party on 24 November 2010, the outstanding key issues can be summarized as follows:

a) Scope of the Regulation - inclusion of sovereign debt instruments

Some delegations strongly oppose to the inclusion of sovereign debt instruments in the scope of this regulation. They consider that there is no evidence of the need to regulate the sovereign debt market and that these rules might be detrimental to the functioning and the liquidity of this market.

b) Marking of short orders on trading venue

A number of delegations are not in favour of the proposal to oblige trading venues to introduce procedures to mark short orders and to publish daily summaries of short orders. They argue that this would not stand a cost-benefit analysis and that it might drive business out of trading venues. At the latest meeting of the Working Party, the Belgian Presidency asked delegations to consider an alternative, notably the introduction of an additional field in the transaction reporting obligations of intermediaries. This would require an amendment to annex 1 of MiFID regulation 1287/2006.

c) Restrictions on uncovered short sales

The views of delegations are divided on the need to impose permanent restrictions on short selling, more specifically in relation to sovereign debt instruments. Some argue there's not enough evidence to do so, and that this will reduce liquidity on the markets.

d) Buy-in procedures and fines for late settlement

The views of delegations are divided on the proposals to enhance settlement discipline. Some oppose because of the lack of evidence of a causal link between short selling and settlement failures. Some are in favour of rules on settlement discipline, but believe that the draft Regulation on Short Selling is not the appropriate text to do so.

e) Intervention powers of ESMA

The proposed Regulation gives emergency powers to ESMA to intervene in case of unjustified inaction of a competent authority. A number of delegations believe this goes too far, and/or don't want ESMA to interfere in the sovereign debt market. At the latest meeting of the Working Party, the Belgian presidency proposed as a compromise that emergency measures by ESMA in relation to sovereign debt instruments require the consent from the competent authority of the relevant Member State.

f) Delegated acts - Implementing technical standards

Some delegations want to strengthen the conditions for delegated acts by the Commission. Some want more implementing technical standards by ESMA.

5. After the meeting of 24 November 2010 it appeared that further technical debate is necessary before seeking guidance at political level as to the options to be followed.

III. CONCLUSION

6. Against this background the Presidency proposes to the Permanent Representatives Committee to invite the Council to:
- take note of the progress achieved with regard to the proposal;
 - take note of the Presidency compromise proposal discussed during the meeting of 24 November 2010, as set out in Doc. 16676/10 EF 185 ECOFIN 751 CODEC 1333;
 - invite the incoming Hungarian Presidency to continue work on the basis of this compromise proposal in order to reach an agreement on a general approach in the near future.
-