



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 May 2011

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

10070/11

LIMITE

**EF 70
ECOFIN 261
CODEC 797**

REPORT

from : Presidency
to : Council

No. Cion prop.: 13840/10 EF 115 ECOFIN 539 CODEC 870

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

I. INTRODUCTION

1. On 20 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 (doc. 13840/10 EFR 115 ECOFIN 539 CODEC 870).
2. The proposal has been examined by the Working Party on Financial Services at several meetings during the Belgian and Hungarian Presidencies, and the Council (ECOFIN) had a discussion on the state of play on 15 March 2011.

3. The European Economic and Social Committee adopted its opinion on the proposal on 20 January 2011, and the European Central Bank respectively on 3 March 2011. The ECON Committee of the European Parliament adopted its report on 7 March 2011.
4. In these circumstances the Presidency aims at an agreement on the Council's general approach as soon as possible in order to allow the Presidency to start negotiations with the EP with a view to a first reading agreement.

II. STATE OF PLAY

5. Following the discussion at Coreper on 11 May 2011, there is now a very broad agreement on the Presidency compromise as set out in doc. 6823/3/11 EF 18 ECOFIN 82 CODEC 272 REV 3, which the Presidency considers the best achievable balance between the views expressed.
6. However, the DE delegation still has some concerns as to how the uncovered position of sovereign credit default swaps was addressed in the compromise text; the DE delegation would prefer to have a permanent ban on transactions that lead to uncovered position in these instruments.
7. The UK delegation, supported by SE delegation, finds that Article 24 would not be a robust and legally watertight basis for ESMA to exercise the proposed powers. For this reason, the UK delegation considers that the role of the Council as a final decision-maker in exceptional situations should be enhanced and clearly spelled out in the text (this could be done for example by basing the intervention powers to Article 18 of the ESMA Regulation).

On the other hand a number of delegations have, however, indicated that they can not accept any further changes to the current Presidency compromise proposal for Article 24.

The Commission for its part has expressed concerns that the intervention powers of ESMA with regard to sovereign debt instruments will depend on the consent of the relevant competent authority.

III. CONCLUSION

8. Against this background the Council is invited to:
- agree on the general approach with regard to the proposed Regulation, as set out in doc. 6823/3/11 EF 18 ECOFIN 82 CODEC 272 REV 3;
 - invite the Presidency to start negotiations with the European Parliament on the basis of this general approach with a view to reaching an agreement at first reading.
