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**NOTE**

From:	Presidency
To:	Working Party on Financial Services (Securitisation)
Subject:	Presidency Flash Note - 4th Trilogue Securitisation



## **PRESIDENCY FLASH NOTE**

On 28 March 2017, the fourth political trilogue on the Regulation on Simple, Transparent and Standardised securitisation (STS) and the Regulation amending the Capital Requirements Regulation (CRR) took place in the European Parliament (EP).

### **Validation of technical work**

Technical work on CRR was agreed with the exception for a number of lines where either the EP or the Council wanted to discuss further in the technical group (see Annex). Technical work on STS was not validated given that several MS submitted comments late and these could not be assessed in time for validation at the political trilogue.

### **CRR specific issues**

#### **Determination of KIRB and KSA (CRR Article 255): CRR lines 278-283**

The EP agreed to the Council text on lines 278-283, including the two specifications proposed by the Commission, i.e. lines 280 and 281 should read:

- (b) use of different risk factors and proxy data, as necessary, on the underlying pool to estimate PD and LGD; and
- (c) due diligence requirements to monitor the actions and policies of receivables sellers or other originators.

These specifications were acceptable also for the Council.

#### **Determination of tranche maturity (MT) (CRR Article 257): CRR lines 304 and 306**

All the trilogue participants agreed to reintroduce the text of the Commission proposal on line 304, and to have the Council text in line 306 (which was also in the Commission proposal).

#### **Conditions to use the SEC-IRBA (CRR Article 258): CRR lines 310-311**

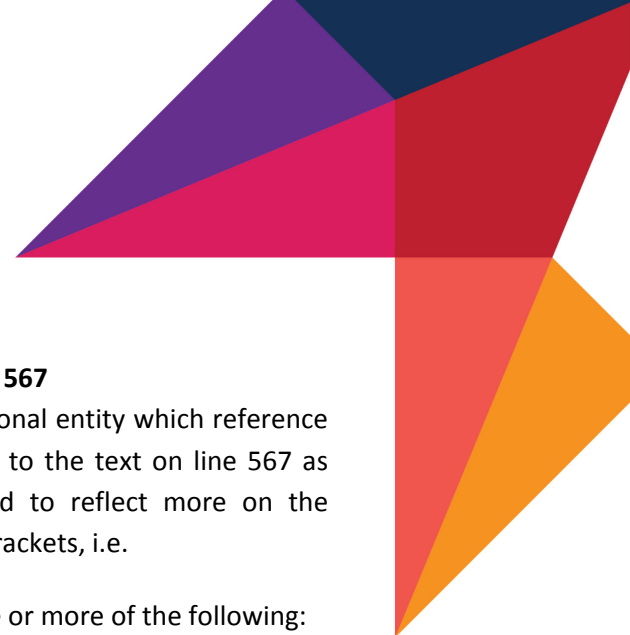
The Council agreed to the EP text on lines 310 and 311 since the EP text was aligned closer to Basel.

#### **Scope and operational requirements for the Internal Assessment Approach (IAA) (CRR Article 265): CRR lines 497, 498 and 501**

The participants agreed to the EP text on line 497 and to the Council text on lines 498 and 501.

#### **Maximum capital requirements (CRR Article 268): CRR lines 548-550**

The EP agreed to the Council text on lines 548-550.



**Senior positions in SME securitisations (CRR Article 270(e)): CRR line 567**

The Council and the EP re-confirmed again the reference to promotional entity which reference is present in both texts in line 567. Participants agreed in principle to the text on line 567 as proposed by the Commission under sub-para (e). The EP wanted to reflect more on the reference to cash assimilated instruments, which was put in square brackets, i.e.

- (e) the third party to which the credit risk is transferred is one or more of the following:
- (i) the central government or the central bank of a Member State, a multilateral development bank, an international organisation or a promotional entity, provided that the exposures to the guarantor or counter-guarantor qualify for a 0% risk weight under Chapter 2 of Part 3;
  - (ii) an institutional investor as defined in Art. 2(12) of [STS Regulation] provided that the guarantee or counter-guarantee is fully collateralised by cash on deposit with, [or cash assimilated instruments held by], the originator institution.

**STS specific issues**

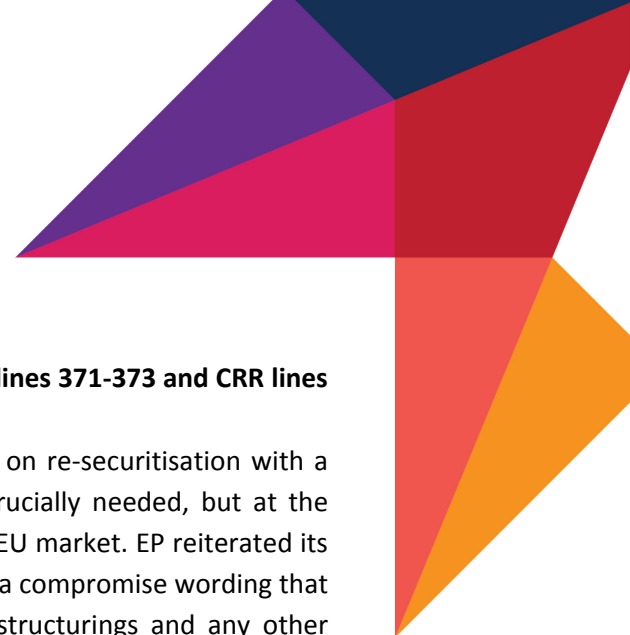
**Parties to the securitisation market (STS Article 2a EP): STS lines 88-95**

In response to the compromise proposal for Article 2a in the Commission's non-paper, the STS Rapporteur signalled that it still strongly preferred strict regulation of investors in securitisation, in order to have an overview of the market as complete as possible and to avoid market instability. The rapporteur therefore rejected the Commission's suggestion of a suitability test for retail investors, and instead proposed to limit eligible investors to professional clients as defined in MiFID II. The Presidency remarked that a restriction to 'professional clients' would be an acceptable solution, provided that it is confirmed that this would not exclude sophisticated investors/high net worth individuals (which would generally qualify as 'elective' professional clients under MiFID). The Chair put forward another option, namely the introduction of a quantitative threshold (like for ELTIFs). All parties agreed to the principle of limiting the participation of retail investors to exceptional cases, and will reflect on the abovementioned options.

All parties agreed to the compromise for Article 5a on credit underwriting standards as proposed by the Commission. As regards the proposal for Article 12a(3) on sponsor supervision, while there was some openness in the EP to the Presidency's and Commission's arguments against specifics stress tests for securitisation, the rapporteur insisted on this point and proposed to provide a non-paper with the EP's views on micro- and macro-prudential supervisory framework, including a proposal for Article 12a.

**Due diligence (STS Article 3): STS lines 115 and 131**

The EP agreed to the Council text on line 115 and deletion of line 131.



**Ban on re-securitisation (STS Article 5r EP and CRR Article 269): STS lines 371-373 and CRR lines 553-560**

The Presidency conveyed the Council's rejection of a complete ban on re-securitisation with a grandfathering clause. The Commission agreed that a ban is not crucially needed, but at the same time did not think it would have a very disruptive effect in the EU market. EP reiterated its strong preference for a complete ban. Presidency offered to propose a compromise wording that would address concerns related to ABCPs, private transactions, restructurings and any other transactions that might inadvertently be affected by the ban; EP re-affirmed their reservation towards a carve-out solution even if this would be extremely limited and that introducing this ban is a very important point for the EP.

**Homogeneity criteria (STS Articles 8(4), 8(9b) and 12(2)): STS lines 415-419**

Based on the Commission's compromise proposal, EP and Council agreed that regulatory technical standards would be a better tool than guidelines, and that EBA would be best placed to draft those. Commission stressed that the level 1-text should leave enough room for EBA to develop the RTSs. The technical group was mandated to work on this basis.

**Third-country regime (STS Articles 6 and 22f): STS lines 386 and 709-717**

Commission and Presidency, as well as the Chair, agreed that this is neither the right place or time for the introduction of an equivalence regime. In response to the Presidency's suggestion that the introduction of some flexibility as to the location of the securitisation parties could be a way forward, the rapporteur insisted on keeping the first sentence as proposed by both co-legislators in line 386 ("the originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the Union"). The Rapporteur showed openness to allowing third country investors in the EU securitisation market. No further conclusion was reached on this issue.

**Other issues**

Technical work on the issues that have not been listed as political is ongoing; in addition, the technical group was mandated to start working on the follow-up of the political trilogue as per above.. Delegations will be kept up-to-date on the outcome of the work and revised technical tables will be circulated for comments in the coming days.

**Further trilogues**

The next trilogue has been scheduled for 12 April, with a further trilogue on 16 May. Additional trilogues might be scheduled if need be.

The Presidency will hold a Working Party meeting on 25 April to prepare for the May trilogue.

**Date: 27 March 2017 - overview table for 4th trilogue on 28 March 2017**

**Only CRR lines** will be for validation at the trilogue, as the Presidency is still receiving some comments from MS.

<u>Status</u>	<u>Line numbers in STS tables</u>	<u>Line numbers in CRR table</u>
<b>Lines for validation</b>	406 to 410, 412-413, 424, 432-434, 441-442, 445, 447, 451, 468, 469, 470, 471, 474, 476, 479 to 484, 486-487, 489, 491, 495 to 497, 499, 500, 501, 503, 505 to 514, 517, 520, 522 to 524  <u>[To be validated after all MS' comments have been collected]</u>	69 82 89-91 125 173-180 197-202, 209 203 204 206 212 265 275, 276 286-288 290-298 314-316 343 366 378
<i>Lines remaining open due to EP comments</i>	440-444	60, 63, 65, 67, 70, 82
<i>Lines remaining open due to MS comments</i>	66, 74, 81, 114, 116, 120, 397, 401, 402, 405, 423, 435, 444, 488, 490, 501, 518, 525-526  <u>[To be reviewed after all MS' comments have been collected]</u>	56a, 62-66, 67-69, 70, 77, 85, 86, 110-112, 114, 121, 122, 159, 163, 211
<i>Lines remaining open due to outstanding technical work or to (connection to) political issues</i>	54 61 65	24 26

	73 80 82 to 87 96 to 104 110 to 113 121 123 and 124 127 129 and 130 374 to 377 386 391 to 394 411, 414 to 419, 425-426- 436, 443, 448a, 452 to 466, 467, 485, 488, 494, 498, 504, 519, 521, 525 to 527a	57 59 to 61 84 120 171 278-283 304, 305, 306 310, 311 355 365 381
<i>Lines already validated on 7 March 2017</i>	50 to 53 55 to 60 62 to 64 67 to 72 75 to 79 105 to 109 117 to 119 122 125 and 126 378 to 385 387 to 390 395 396 398-400 404	9 10a 21 to 22a 33 36 41 to 46 48 to 56 58 76 80 92 98 103 108 116 138 143 to 146 150 153 to 156 165 169 and 170 196 224