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From:	Presidency
To:	Working Party on Financial Services - Securitisation
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Subject:	Presidency non-paper on Articles 254 and 270 of the proposal for a Regulation amending CRR

Meeting of the Council Working Party on Financial Services (Securitisation)
12 November 2015 (10:00)

Presidency non-paper on Articles 254 and 270 of the proposal for a Regulation amending CRR

The following non-paper considers possible ways forward on Articles 254 and 270 of the proposal for a Regulation amending CRR.

1. Article 254

Based on the comments received from Member States on Article 254 CRR regarding the hierarchy of methods, the Presidency has considered the range of alternatives suggested by the Member States.

Among the alternatives suggested in the Member States' contributions, the Presidency considered those diverging the most from the Commission's initial proposal, namely:

- applying strictly the BCBS hierarchy as set forth in the Basel III document "Revisions to the securitisation framework" (11 December 2014);¹
- removing the ERBA approach from the hierarchy of methods. It was also suggested to remove ERBA from the hierarchy only for STS securitisations and to keep it for non-STS securitisations; or
- reversing the hierarchy of methods with regards to SEC-ERBA and SEC-SA.

Given that these approaches did not gather broad support, the Presidency has set aside the above alternatives and considered instead intermediate solutions, which are hereby submitted for discussion.

¹ <http://www.bis.org/bcbs/publ/d303.pdf>



Option 1: Removal of the sovereign cap when using the ERBA approach.

A first option could be to remove the sovereign cap from the external credit assessments used in the ERBA approach.

The above could be achieved by requiring the institutions to use a credit assessment which does not take into account the credit assessment of the central administration of the country where the underlying exposures have been originated or where the SSPE is established.

This would be accomplished by incentivizing the External Credit Assessment Institutions ('ECAIs') to produce such a credit assessment. A sovereign cap-free rating would be produced on a voluntary basis by ECAIs. Where such a rating is not available, institutions would have to apply SEC-SA.

" Article 254

Hierarchy of methods

- (1) Institutions shall use one of the methods set out in Subsection 3 to calculate risk-weighted exposure amounts in relation to all the positions they hold in a securitisation.
- (2) The methods set out in Subsection 3 shall be applied in accordance with the following hierarchy:
 - (a) an institution shall use the Internal Ratings-Based Approach (SEC-IRBA) where the conditions set out in Article 258 are met;
 - (b) where the SEC-IRBA may not be used, institutions shall use the Securitisation External Ratings-Based Approach (SEC-ERBA) for rated positions or positions in respect of which an inferred rating may be used in accordance with Articles 261 and 262;
 - (c) where the SEC-ERBA may not be used, institutions shall use the Securitisation Standardised Approach (SEC-SA) in accordance with Articles 263 and 264.

(2a) For the purposes of paragraph 2, point (b), institutions shall use, for the purposes of articles 261 and 262, an eligible credit assessment by an ECAI in accordance with Section 4 which does not take into consideration the credit assessment of the central administration of the country where the underlying exposures of the securitisation have been originated or where the SSPE is established.

Where ECAIs do not publish such a credit assessment, institutions shall use the SEC-SA in accordance with Articles 263 and 264.

- (3) By derogation from paragraph 2, **point (b)**, institutions may use the SEC-SA instead of the SEC-ERBA in relation to all the positions they hold in a securitisation where the risk-weighted exposure amounts resulting from the application of the SEC-ERBA is not commensurate to the credit risk embedded in the exposures underlying the securitisation. Where the institution has decided to apply the SEC-SA in accordance with this paragraph, it shall promptly notify the



competent authority. Where an institution has applied the SEC-SA in accordance with this paragraph, the competent authority may require the institution to apply a different method.

- (3a)** Where an institution has applied the SEC-SA in accordance with ~~this paragraph~~ **2a or 3**, the competent authority may require the institution to apply a different method.
- (4) Without prejudice to paragraph 2, institutions may use the Internal Assessment Approach (IAA) to calculate risk-weighted exposure amounts in relation to an unrated position in an ABCP programme in accordance with Article 266, provided that the conditions set out in Article 265 are met.
- (5) For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 263, with the modifications set out in Article 269.
- (6) In all other cases, a risk weight of 1,250 % shall be assigned to securitisation positions.
- (7) The competent authorities shall inform EBA of any notifications received and decisions made in accordance with paragraph 3a. EBA shall monitor the range of practices in connection with paragraphs **2a and 3** and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.”

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Option 2: Keep the approach adopted by the Commission in its initial proposal.

A second option would be to maintain “as is” the approach adopted by the Commission in its proposal, which respects the hierarchy of methods as provided by the BCBS, but grants a certain amount of flexibility to use SEC-SA instead of SEC-ERBA if the risk-weighted exposure amounts resulting from the application of the SEC-ERBA are not commensurate to the credit risk embedded in the exposures underlying the securitisation.

Option 3: Keep the approach adopted by the Commission, but enhance the framing of the flexibility.

A third option would be based on the approach adopted by the Commission, while providing further framing of the flexibility to use SEC-SA instead of SEC-ERBA.

The question arises whether the flexibility should be further framed either in the Level 1 text or by means of regulatory technical standards. However, given that the hierarchy of methods is of paramount importance, it appears essential to provide as much details as possible in the Level 1 text.

To further frame the flexibility with regard to the application of SEC-SA instead of SEC-ERBA, a suggestion would be to define “not comensurate” as the situation where the application of the SEC-ERBA would lead to exceeding the risk-weighted exposure amounts that would result from the application of the SEC-SA by more than [25]%. This would constrain the flexibility within the hierarchy of



methods and limit the risk of “cherry-picking” since choosing to apply SEC-ERBA instead of SEC-SA when the threshold is met would result in a more conservative treatment of the exposures.

“Article 254

Hierarchy of methods

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- (1) Institutions shall use one of the methods set out in Subsection 3 to calculate risk-weighted exposure amounts in relation to all the positions they hold in a securitisation.
- (2) The methods set out in Subsection 3 shall be applied in accordance with the following hierarchy:
 - (a) an institution shall use the Internal Ratings-Based Approach (SEC-IRBA) where the conditions set out in Article 258 are met;
 - (b) where the SEC-IRBA may not be used, institutions shall use the Securitisation External Ratings-Based Approach (SEC-ERBA) for rated positions or positions in respect of which an inferred rating may be used in accordance with Articles 261 and 262;
 - (c) where the SEC-ERBA may not be used, institutions shall use the Securitisation Standardised Approach (SEC-SA) in accordance with Articles 263 and 264.
- (3) By derogation from paragraph 2, **point (b)**, institutions may use the SEC-SA instead of the SEC-ERBA in relation to all the positions they hold in a securitisation **only** where the risk-weighted exposure amounts resulting from the application of the SEC-ERBA is not commensurate to the credit risk embedded in the exposures underlying the securitisation. **For the purpose of this paragraph, “not commensurate” shall mean that the application of the SEC-ERBA leads to exceeding the risk-weighted exposure amounts that would result from the application of the SEC-SA by more than [25]%.**

Where the institution has decided to apply the SEC-SA in accordance with this paragraph, it shall ~~promptly~~**without undue delay** notify ~~the~~ competent authority. **Upon receipt of the notification, Where an institution has applied the SEC-SA in accordance with this paragraph, the competent authority may require the institution to apply a different method, in which case it shall notify its decision to the institution within [x] months of the receipt of the notification.**

The institution shall regularly review whether the condition laid down in this paragraph is still met, and shall notify its assessment to its competent authority. Upon receipt of the notification, the competent authority may review its assessment.

- (4) Without prejudice to paragraph 2, institutions may use the Internal Assessment Approach (IAA) to calculate risk-weighted exposure amounts in relation to an unrated position in an



ABCP programme in accordance with Article 266, provided that the conditions set out in Article 265 are met.

- (5) For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 263, with the modifications set out in Article 269.
- (6) In all other cases, a risk weight of 1,250 % shall be assigned to securitisation positions.
- (7) The competent authorities shall inform EBA of any notifications received and decisions made in accordance with paragraph 3. EBA shall monitor the range of practices in connection with paragraph 3 and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.
- (8) The Commission shall be empowered to adopt delegated acts in order to review the excess percentage of the SEC-ERBA as compared to SEC-SA in terms of risk-weighted exposure amounts, as specified in paragraph 3, at least every two years after the entry into application of this Regulation. “**

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Finally, delegations might also wish to consider a combination of elements from the above options.

2. Synthetic securitisations & Article 270 CRR

In light of Member States' comments on the issue of synthetic securitisation and on Article 270 CRR, the Presidency considers that the Commission has struck a careful balance which should be preserved. Only a limited number of changes would be necessary.

In light of the ongoing work on a possible qualification of synthetic securitisations as STS in various fora, it appears wise to leave sufficient time to carefully assess the issue before drawing any conclusions in a legislative act. Concerns expressed by a number of Member States that the Commission proposals do not go far enough on the treatment of synthetic securitisations would be addressed by the introduction of a new Article 29a in the STS Regulation, which provides for an EBA report on synthetic securitisations and a review by the Commission.

In light of the overarching objective of the securitisation package to contribute to generating an adequate flow of funding to support EU economic growth and given that the SMEs constitute the backbone of the EU economy, the Commission included a specific provision on SME securitisations in the Regulation amending CRR (Article 270). It targets in particular those securitisations of SME loans where the credit risk related to the mezzanine tranche (and in some cases the junior tranche) is guaranteed by a restricted list of third parties, including in particular the central government or central bank of a Member State, or counter-guaranteed by one of those.

It has been highlighted that a number of national promotional banks provide also guarantees/counter guarantees in order to foster lending to SMEs. The Presidency would see merits in accepting those



promotional banks as eligible guarantors/counter guarantors, particularly in light of the idea of setting up a common platform of the European Investment Bank and national promotional banks which is currently explored in connection with the Juncker plan.

As a consequence, the Presidency would like to suggest the following compromise drafting for synthetic securitisations.

I. STS regulation:

"Article 29a

Synthetic securitisations

1. By [6 months after entry into force of this Regulation], the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the determination of the STS criteria for synthetic securitisations.

2. By [1 year after entry into force of this Regulation], the Commission, taking into consideration the report referred to in paragraph 1, shall submit a report to the European Parliament and the Council on the eligibility of synthetic securitisations as STS securitisation together with a legislative proposal if appropriate."

II. Regulation amending the CRR:

1. Introduction of a new definition in Article 242 of the CRR (definition as contained in Commission Delegated Regulation (EU) 2015/63 of 21 October 2014):

"(20) 'promotional bank' means any undertaking or entity set up by a Member State, central or regional government, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government's public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or the promotional loan it grants is directly or indirectly guaranteed by the Member State's central or regional government."

2. Article 270



“Article 270

Senior positions in SME securitisations

An originator institution may calculate the risk-weighted exposure amounts in respect of a securitisation position in accordance with Articles 260, 262 or 264, as applicable, where the following conditions are met:

- a) the securitisation meets the requirements for STS securitisations set out in **Section 1 of Chapter 3** ~~Article 6(2)~~ of the [Securitisation Regulation], other than ~~point (a) of that~~ paragraphs **1, 2 and 3 of Article 8**;
- b) the position qualifies as the senior securitisation position;
- c) the securitisation is backed by a pool of exposures to undertakings, provided that at least 80% of those in terms of portfolio balance qualify as SMEs as defined in Art 501 at the time of issuance of the securitisation;
- d) the credit risk associated with the positions not retained by the originator institution is transferred through a guarantee or a counter-guarantee meeting the requirements for unfunded credit protection set out in Chapter 4 for the Standardised Approach to credit risk;
- e) the guarantor or counter-guarantor, as applicable, is the central government or the central bank of a Member State, a multilateral development bank, ~~or an international organisation~~ or a promotional bank, provided that the exposures to the guarantor or counter-guarantor qualify for a 0% risk weight under Chapter Two of Part Three.”

