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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services - Securitisation
Subject:	Presidency non-paper Proposal for a Regulation of the European Parliament and of the Council on a European Framework for simple, transparent and standardised securitisation (the “STS Securitisation Regulation”)/ Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 575/2014 on prudential requirements for credit institutions and investment firms (the “CRR Amendment”) Meeting of the Council Working Party on Financial Services (Securitisation - attachés only) 17 January 2017

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PRESIDENCY NON-PAPER

**Proposal for a Regulation of the European Parliament and of the Council on a European Framework for simple, transparent and standardised securitisation (the “STS Securitisation Regulation”)/
Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 575/2014 on prudential requirements for credit institutions and investment firms (the “CRR Amendment”)**

Meeting of the Council Working Party on Financial Services (Securitisation - attachés only) 17 January 2017

The Maltese Presidency would like to thank the Luxembourg Presidency for their hard work, which enabled the Council to finalise a general approach on the introduction of the STS Securitisation Regulation and the CRR Amendment. The ECON-Committee of the European Parliament (EP) has finalised its position on 8 December 2016 we are ready to start trilogues.

The EP and the Presidency have both expressed their willingness to start trilogues as soon as possible and consequently have agreed on the following (tentative) dates for political trilogues:

- Thursday 19 January (STR)
- Tuesday 7 February (BRU)
- Tuesday 7 March (BRU)
- Poss. April (date tbc)
- Poss. Wednesday 10 May OR Thursday 11 May (BRU)
- Poss. meetings in June depending on the state of progress

Comment [NC1]: These are fine

In preparation for each political trilogue, we intend to convene a Council Working Party (attaché-only) and invite Member States to submit written comments. After each trilogue we will circulate a flash report as soon as possible detailing the issues discussed, the points agreed and any follow up work identified.

We also intend to commence technical work as soon as possible, starting with at least one technical trilogue in January. We will initially start on aligning the texts of the Council and

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the EP where there are currently differences of a technical nature. We also consider that there are areas of difference between the Council and EP texts which could potentially be resolved in technical trilogues should it become apparent that the intentions of both Council and the EP are substantially the same, even if on paper the texts diverge. If in the course of the technical trilogues we are presented with text that would involve a substantive change to the Council general approach, we will revert to the Council and possibly move the issue to the political trilogues. We will update the Member States on progress during the technical trilogues.

The Presidency has sought to identify a preliminary list of issues where we consider there are possible political differences between the Council and EP texts. Annex 1 focus on the STS Regulation while Annex 2 on the CRR Amendment. These issues will consequently be dealt with in the political trilogues. Recitals are not included in the annex as these are linked to the articles in the Directive.

We hope that this non-paper will be helpful in your analysis of the EP position. We look forward to hearing your views.

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ANNEX 1

List of possible political issues - STS Securitisation Regulation

Issue		Related article(s)	Related line(s)
1.	Restriction on market participants: The EP has inserted a new Article 2a that (1) limits investors in securitisations to the regulated EU institutional investors specified in Article 2 (or institutions of third countries whose supervisory and regulatory requirements are deemed equivalent to the requirements of the EU) and (2) requires at least one of the originator, sponsor or original lender to be an EU regulated credit institution, insurance undertaking, investment firm, financial institution or multilateral development bank. The EP has also inserted a new Article 2b that precludes the use of SSPEs established in certain third Countries.	Article 2 Article 2a Article 2b	55-87 88-95 96-104
2.	Due diligence requirements: The Council text contains provisions with derogations for fully supported ABCP transactions. These are not included in the EP position. There are also divergences between the Council and the EP positions on delegation of investment decisions.	Article 3	115, 119, 125 129-131
3.	Risk retention: The provisions on risk retention in the EP and Council texts diverge substantially which creates several issues. Among other issues, the EP text (1) proposes a 5% horizontal or 10% vertical risk retention requirement (which departs from both the Council text and the current global standard), (2) empowers to the EBA to raise retention rates to 20%, and (3) imposes an obligation for supervisors to investigate asset selection and potentially impose fines where losses on securitised assets are higher than losses on the assets retained by the originator.	Article 4	132-160
4.	Transparency: The EP text provisions on transparency represent a significant departure from the Council position, introducing the concept of a securitisation repository system through which all information for all securitisation transactions (not just STS securitisations) will be made available, with ESMA in charge of authorisation and supervision of the repository. The EP text has also introduced a new requirement to disclose (for all securitisations) investor names, their ultimate beneficial owners and details on the investment positions.	Article 5 Article 5(1)(a) Article 5(2) Articles 22a-e	161-210 164 197 659-708

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5.	Ban on re-securitisation: The EP text includes a new Article prohibiting the inclusion of securitisations as the underlying exposures in a securitisation.	Article 5r	371-373
6.	ABCP Remaining Weighted Average Life and Residual Maturity: The EP text has (1) reduced the remaining WAL limit for all ABCP transactions to 1 year (in line with the Council Text, while differing from the Commission Text of 2 years) and (2) increased the remaining WAL and residual maturity limits in respect of auto loans/leases and equipment leases to 4.5 years (<u>departing from the Council Text of 3.5 years</u>) and 6 years (in line with the Council Text while differing from the Commission Text of 3 years), respectively.	Article 11-13	446-514
7.	Third party verification of STS compliance: The EP text has adopted the Commission position of allowing voluntary verification of STS compliance by non-regulated third parties but departs from the Council position (by not including Article 14a proposed by the Council), which required voluntary third party verifiers to be authorised/regulated.	Article 14a Article 30	528-543 766-768
8.	Supervision: The EP text expands significantly on the Commission and Council texts by (1) requiring ESMA to supervise and enforce compliance together with national competent authorities (NCAs), (2) imposing detailed and specific monitoring obligations on NCAs, (3) creating a macro-prudential oversight role for the European Systemic Risk Board (ESRB) and a micro-prudential oversight role for the EBA, requiring the EBA (in close cooperation with the ESRB) to draft Regulatory Technical Standards by specified dates, and (4) requiring the creation of a securitisation committee within the framework of the joint-committee of the European Supervisory Authorities.	Article 15(4a) Article 16(3a) Article 16a Article 16(3) Article 21(1a)	557 566- 570 572-585 565 635
9.	Third country regime: The EP text introduces a specific empowerment for the Commission to adopt, through delegated acts, a framework for determining the equivalence of non-EU jurisdictions in respect of securitisations.	Articles 22f	711-717

ANNEX 2

List of possible political issues – CRR Amendments

Issue	Related article(s)	Related line(s)
1. Hierarchy of approaches: The proposals put forward by the parties in connection with the hierarchy of approaches for institutions to calculate risk-weighted exposure amounts are not aligned. Where the SEC-IRBA may not be used, the EP is proposing to place the SEC-SA ahead of the SEC-ERBA in the hierarchy of approaches, whereas hierarchies proposed by Council and COM place the SEC-ERBA before the SEC-SA. The parties' proposals are also not aligned when it comes to defining the circumstances in which competent authorities may prohibit the use of SEC-SA.	Article 254	244-262
2. Determination of KIRB and KSA: Council is proposing that the EBA develops draft regulatory standards to specify in greater detail the conditions to allow institutions to calculate KIRB for the underlying pools of securitization for the calculation of capital requirements for purchased receivables. Council is proposing that these draft regulatory standards should focus on (a) internal credit policy and models for calculating KIRB for securitisations; (b) use of different risk factors on the underlying pool to estimate PD and LGD; and (c) due diligence requirements to monitor the actions and policies of receivables sellers. It is proposed that the EBA shall submit these draft regulatory standards to COM by one year after entry into force of the CRR. The proposals put forward by the COM and EP do not include reference to the development of these draft regulatory standards by the EBA.	Article 255(9)	278-283
3. Scope and operational requirements for the Internal Assessment Approach (IAA): (498) Council is proposing that competent authorities <i>shall</i> grant institutions permission to use the IAA within a clearly defined scope of application where certain conditions are met, whereas proposals from the COM and EP allow for discretion at the level of the competent authorities by providing that competent authorities <i>may</i> grant this permission. (501) With respect to the conditions attached to the aforementioned permission, Council is adding an additional	Article 265 (1), (2) - introductory part and (2) - point ba	497, 498, 501

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	<p>criterion (which does not feature in COM and EP proposals) to the effect that the commercial paper issued from the ABCP programme is predominantly issued to third party investors.</p> <p>(497) Relatedly, Council is also proposing that where an institution has received a permission in accordance with the above, and a specific position in an ABCP programme falls within the scope of application covered by such permission, the institution shall apply the IAA to calculate the risk-weighted exposure amount of that position. This suggestion is not reflected in the COM and EP proposals.</p>		
4.	Re-securitisation: While the Council and COM version regulate such securitization the EP insists on banning it.	Article 269	553-560
5.	<p>Macroprudential oversight of the securitization market: the EP is proposing that the European Systemic Risk Board shall be responsible for the macroprudential oversight of the EU's securitization market and that the EBA shall be responsible for the microprudential oversight.</p> <p>The EP is also proposing that following the publication of the biennial report on the securitisation market referred to in the STS Regulation, in view of certain criteria specified in its proposal, the COM shall, within six months after the publication of the report and every two years thereafter, consider adjusting certain tools and/or ratios contemplated under the CRR.</p>	Article 270f	600-606
6	<p>Delegated Acts: COM and EP are proposing to empower COM to adopt delegated acts to amend the provisions concerning the calculation of the risk-weighted exposure amounts of securitization positions to take account of developments to international standards on securitisations. This extension does not feature in the proposals put forward by the Council.</p>	Article 456(1) point k	618-619
7.	Implementation Report: There remains divergence as to the level of detail the Commission should apply in drawing up its report.	Article 519	623-629