



Council of the European Union
General Secretariat

Brussels, 25 November 2015

WK 166/2015 INIT

LIMITE

**EF
ECOFIN
SURE
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services - Securitisation
N° prev. doc.:	ST 14493/15
N° Cion doc.:	COM (2015) 472 final
Subject:	Securitisation - Presidency non-paper on the rationale for changes included in the second compromise proposal for the STSS

**Meeting of the Council Working Party on Financial Services (Securitisation)
26th November 2015 (10:00)**

RATIONALE FOR CHANGES

Art. 1	Editorial change;
Art. 2 (1)	Text deleted and new wording introduced at the end of Art 2. The aim of the clarification is to distinguish specialised lending from securitisation;
Art. 2 (2)	Editorial change;
Art. 2 (3)	Text added to include the case of synthetic securitisations. The wording is in line with point (10) of Article 2;
Art. 2 (4)	Alignment with Article 4 (61) CRR;
Art. 2 (5)	Further clarification with respect to the entity that can receive a delegation from the sponsor. A new recital 6a has also been added in order to provide legal certainty that the sponsor in any case remains responsible for the risk management and cannot transfer the risk retention requirement to his servicer.
Art. 2 (7)	Wording aligned with COM initial proposal and Article 242 (9) CRR;
Art. 2 (10)	Amendment for clarification purposes;
Art. 2 (12)	Clarification regarding IORP delegates;
Art. 2 (21)	As requested by a number of Member States at the WP of 12 November, the definition of “fully-supported ABCP programme” has been added. The wording is based on Article 12a, paragraph 2;
Art. 2 (22)	The definition of ‘fully-supported ABCP transaction has been



	added;
Art. 3 (1) (a)	Amendments for clarification purposes;
Art. 3 (1) (aa)	Editorial change;
Art. 3 (1) (b)	Amendment for clarification purposes (The new wording aims at better clarifying that not each of the parties involved in a securitisation has to retain a material interest);
Art. 3 (1) (ba)	Amendment for clarification purposes (The new wording aims at better clarifying that not each of the parties involved in a securitisation has to retain a material interest);
Art. 3 (1a)	Editorial change;
Art. 3 (2) (ba)	Technical amendment: Point (ba) has been added since in a fully-supported ABCP programme, the transaction specific credit enhancements, triggers or definitions of default are not material for the performance of the commercial paper;
Art. 3 (3) (a)	Text added to ensure a proportionate approach with respect to the trading and non-trading book;
Art. 3 (3) (d)	Editorial change;
Art. 4 (5)	COM initial text re-inserted;
Art. 4 (6) (c)	COM initial text re-inserted;
Art. 5 (1)	Test added to clarify that the information provided in accordance with Art. 5 is made available to potential investors in order to allow them to meet their due diligence requirements;
Art. 5 (1) (a)	As requested by Member States, the COM initial text is re-inserted to ensure that in case of an ABCP, information on the underlying receivables or credit claims is made available on a monthly basis;
Art. 5 (1) (g)	Text added to allow the originator, sponsor or SSPE to provide a sum-up of some documentation due to confidentiality concerns;
Art. 5 (2)	In line with paragraph 1;
Art. 5 (3) (a)	Editorial change;
Art. 5a	Editorial change;
Art. 6	Amendment for clarification purposes; As announced by the Presidency at the WP of 12 November, text transferred from Article 7;
Section 1 Title	Editorial change;
Art. 7	Text transferred to Article 6 in order to cover all STS



	securitisations;
Art. 8 (1)	Text deleted and aligned to COM initial proposal. The term “severe” clawback provision has been re-inserted. However, to respond to concerns expressed by a number of Member States, recital 15 has been adapted; In line with the conclusions of the WP of 12 November, the text stating that a legal opinion may confirm the true sale has been transferred to recital 15a;
Art. 8 (4)	Text changed for clarification;
Art. 8 (6) subpara. 1	Text deleted as it is already covered by subparagraph 3, last sentence;
Art. 8 (6) subpara. 3	Insertion of “without undue delay” due to the deletion in subparagraph 1;
Art. 8 (7) (a)	For the sake of legal certainty, text is added to clarify that the approach in paragraph 7 with respect to debt-restructuring processes should apply to exposures which have been non-performing and subsequently restructured and have not presented new arrears since the date of the restructuring which must have taken place at least one year prior to the date of transfer to the SSPE;
Art. 8 (7) (a) (i)	Clarification;
Art. 8 (7) (a) (ii)	In light of concerns raised by a number of Member States at the WP of 12 November, a provision has been added in order to ensure full transparency with regard to re-structured loans included in the pool of underlying assets. Information on the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring has to be provided in accordance with Article 5, paragraph 1 points (a) and (e) (i);
Art. 8 (7) (b)	As requested by a number of Member States at the WP of 12 November, the wording has been aligned to the EBA advice and allows to accommodate situations where there is no registry or no public registry;
Art. 8 (8)	Text changed for clarification since the reference to the guarantor may lead to unintended ambiguity in this case;
Art. 9 (4)	Text changed for clarification;



Art. 9 (4) (b)	Text transferred to separate subparagraph;
Art. 9 (5)	Reference to revolving securitisation which is a defined terms pursuant to Art. 2;
Art. 9 (6) (b)	Text changed for the sake of legal certainty;
Art. 10 (1)	Text deleted as it is not relevant for ABSs;
Art. 10 (3)	Amendment for clarification purposes;
Art. 10 (4)	Amendment for clarification purposes;
Section 2 Title	Editorial change;
Art. 12 (1a)	Text aligned to Art. 8(1);
Art. 12 (1e)	Text aligned to Art. 8(7);
Art. 12 (1f)	Text aligned to Art. 8(8);
Art. 12 (1j)	In line with editorial changes made in Art. 10 (1);
Art. 12 (2)	Following the discussions at the WP of 12 November, the weighted average maturity of the pool is reduced to 1 year with a max maturity cap of three year for the underlying exposures, except for pools of auto loans auto leases and equipment lease transactions which shall have a remaining exposure weighted average life of not more than four years (parameter X) and none of the underlying exposures shall have a residual maturity of longer than seven years (parameter Y); At the programme level, the maturity of the APBC programme shall not be more than 2 years (see text added in Art. 13).
Art. 12 (4)	Text aligned to Art. 9 (4) (a);
Art. 12a (6)	Text deleted for clarification purposes;
Art. 13 (1)	Following the discussions at the WP on 12 November, and taking into account the recalibration of the maturity caps in Art. 12 (2), the Z parameter is fixed at 98%. Furthermore, it is clarified that some parameters are transaction level parameters which should not benefit from the flexibility granted whereas other limited parameters from Art. 12 need some level of flexibility in order to avoid a disqualification of the whole programme in case of a problem on one underlying asset;
Art. 13 (1a)	Text added to ensure that at the programme level, the remaining weighted average life of the underlying exposures shall not be more than 2 years;
Art. 14 + 14a + 14b	Based on written comments received from Member States and



following the discussions at the WPs of 12 and 20 November, the package for STS certification is based on option 2 of the first compromise text and hence aims at ensuring a sufficient but light touch supervisory involvement with respect to the authorization of third parties assessing the compliance of a securitisation with the STS criteria. In line with COM initial proposal, the involvement of a third party remains optional. In light of split views of Member States on who shall be in charge of the authorisation, the proposed text foresees a middle ground solution where NCAs are in charge of the authorisation, but a coherent European approach is guaranteed through an ESMA empowerment to issue RTSs specifying the information to be provided in the application for an authorization.

The criteria to be authorized as a third party have been modified so as to open up this possibility to a broad range of entities. The third party should however not be a regulated entity in the meaning of Art. 2(4) of Directive 2002/87/EC. It is also specified that the third party shall not provide advisory, audit or equivalent services to the originator, sponsor or SSPE involved in the securitization that is assessed. The not-for-profit criterion is removed and replaced by rules regarding the fees to be charged which are inspired by the regulation on CRAs. Furthermore, to accommodate concerns expressed by a number of Member States in relation to conflicts of interest, robust provisions on the prevention, identification, elimination and management of conflicts of interest are introduced in line with similar provisions in the CRA regulation.

A new criterion also provides for proper operational safeguards and internal processes.

As requested by a number of Member States, the provision on the liability in connection with STS notification is removed as this aspect is covered by national contract and/or tort law.

Art. 15

Clarification;

Art. 16

Editorial changes;

Art. 17 (1) (bb)

Text added to ensure that Member States lay down rules establishing administrative sanctions or remedial measures in case of a breach of Art. 5a;

Art. 17 (1) (f)

Text changed to ensure that Member States lay down rules establishing administrative sanctions or remedial measures in case an authorised third party has failed to notify material



changes to the information provided under Art. 14a;

Art. 21 (5)	As requested by a number of Member States, a remedy period for infringements committed in good faith has been introduced;
Art. 21 (5a)	Further framing of the procedure in case of cross-border disagreements by the insertion of specific timeframes;
Art. 22 (3)	COM initial text re-inserted;
Art. 23	Following requests from Member States, it is suggested to replace Art. 50a of Directive 2009/65/EC by a provision clarifying the consequences and measures to take by UCITS that discover, after the assumption of an exposure to a securitisation, that the securitisation does not longer fulfill the requirement laid down in the STS Regulation;
Art. 25	In line with discussions at the last WP meeting, Article 8b of Regulation No 2009/1060 is deleted as those requirements are now covered by the STS regulation;
Art. 26	Following requests from Member States, it is suggested to replace Art. 17 of Directive 2011/61/EU by a provision clarifying the consequences and measures to take by AIFMs that discover, after the assumption of an exposure to a securitisation, that the securitisation does not longer fulfill the requirement laid down in the STS Regulation;
Art. 28	Changes in order to render the transitional provisions operational, notably as regards the use of the STS label for outstanding securitisations that fulfill the STS criteria;
Art. 29a	Amendment for clarification purposes;
Art. 30	Text changed to ensure that COM revises the STS regulation after 3 years.

Recitals:

Recital (1)	Amendment for clarification purposes;
Recital (6a)	Additional clarification that the sponsors can delegation tasks to a service which should be a regulated asset manager. The recital also provides legal certainty that sponsor remains in any event responsible for the risk management and cannot transfer the risk retention requirement;



Recital (11)	Text added to clarify the meaning of “appropriate reliance” by stating that the investor should not solely and mechanistically rely on a STS notification and information disclosed in line with Art. 3 (2) (c);
Recital (13)	In line with changes made in Art. 5, the recitals clarifies that the information is made available to investors as well as potential investors;
Recital (13a)	As requested by Member States, a recital has been added that specifies that securitization instruments, due to the potential level of risks, are not appropriate for retail investors;
Recital (14a)	Due to the insertion of Art. 5a, a new recital clarifies that originators, sponsors and original lenders have to apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. To the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables;
Recital (15)	In order to respond to concerns expressed by a number of Member States and in line with the amendment in Art. 8 (1), the proposed wording is inserted to clarify that in any case, the clawback provisions should be without prejudice to legal provisions of public order;
Recital (15a)	In line with the discussion at the WP of 12 November, the text stating that a legal opinion may confirm the true sale has been transferred from Art. 8 (1) to recital 15a;
Recital (16)	Text added in order to take into consideration the review clause on synthetic securitisation in Art. 29a;
Recital (17a)	Recital is aligned to Art. 8 (7);
Recital (18)	Alignment with Art. 8 (4);
Recital (19a)	Clarification that CMBSs should not be considered as STS securitisations;
Recital (20)	In line with Art. 14, the STS notification should include an explanation on how each of the STS criteria has been complied with.
Recital (22)	Clarification
Recital (23)	Recital aligned to the package on STS certification and optional



	involvement of a third party that is authorized in accordance with Art. 14a.
Recital (24)	Deletion is in line with Art. 15
Recital (31a)	For consistency purposes, text has been transferred from recital 33.
Recital (32)	Recital aligned to Art. 14 (ITS instead of RTS);
Recital (33)	See above;
Recital (37)	Clarification regarding outstanding securitisations which may use the STS label;
Recital (38)	Amendment for clarification purposes;

