



Council of the European Union
General Secretariat

Brussels, 07 April 2017

WK 4255/2017 INIT

LIMITE

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MEETING DOCUMENT

From:	Commission
To:	Working Party on Financial Services (Securitisation)
Subject:	COMMISSION SERVICES NON PAPER SUPERVISION – POWERS OF EUROPEAN SUPERVISORY AUTHORITIES

COMMISSION SERVICES NON PAPER

SUPERVISION – POWERS OF EUROPEAN SUPERVISORY AUTHORITIES

7 APRIL 2017

Overview

At the trilogue of 7 March, concerns about the distribution of supervisory responsibilities between national competent authorities and the ESAs were voiced. A strengthened supervisory role for the ESAs in the context of the STS Regulation was also discussed.

Delineating supervisory responsibilities

Supervision of EU financial markets and EU market participants is organised in the framework of the ESFS (European System of Financial Supervision), comprising European and national supervisory authorities. A clear delineation of supervisory responsibilities for securitisation markets is crucial for the efficient functioning of the ESFS. A lack of clarity in the allocation of responsibilities between the European Supervisory Authorities and the national supervisory authorities carries the risk that neither authority ultimately feels responsible.

In the context of the ESFS, national competent authorities generally have direct supervisory powers, while the European Supervisory Authorities – EBA, ESMA, EIOPA – have been granted certain responsibilities to ensure the consistent, efficient and effective application of EU financial regulation and to foster supervisory convergence across the EU. As an exception to this rule, direct supervision over credit rating agencies and trade repositories established under EMIR and SFTR has been assigned to ESMA. However, in those clearly delineated areas, ESMA is solely in charge (and accountable); there is no shared responsibility for direct supervision.

On this basis, it is important that co-legislators assure clarity in the allocation of responsibility for direct supervision in securitisation markets and maintain the principle that compliance of individual market participants with the STS Regulation is supervised by the national competent authorities.

Further strengthening the role of the ESAs

At the same time, strengthening the role of the ESAs is justified by the fact that STS is a European label. Accordingly, it would be appropriate for European authorities to have the final say with regard to the label and should foster consistent EU-wide application of the STS criteria. To this end, it could be envisaged

- to delete the additional procedures which the Council general approach had introduced, before binding mediation of ESMA could take place;
- to further strengthen the role of ESMA in ensuring a consistent application of the STS label by introducing a mandatory peer review after first experiences with the new regime have been made.

Furthermore, the upcoming ESA review provides an opportunity to reflect on the distribution of powers and responsibilities of the ESAs from a horizontal, cross-sectoral point of view.

Drafting suggestions

1. Clear distribution of supervisory responsibilities

- Art 15 para 4a (line 557) - (based on the ECON report)

~~4a. ESMA, together with the national competent authorities responsible for the supervision of securities markets, shall supervise and enforce compliance with the obligations set out in Articles 6 to 14.~~

2. Further strengthening the role of the ESAs

- Art 21 para 5 (lines 639 et seq.) - (based on Council general approach; please note that the part in square brackets is related to another policy point still to be discussed, namely the introduction of a grace period)

5. Upon receipt of the information referred to in paragraph 3, the competent authority of the entity suspected of the infringement shall take within 15 working days any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, the sponsor, and SSPE and the competent authorities of the holder of a securitisation position, when known. In case of disagreement between the competent authorities, the matter may be referred to ESMA in accordance with Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010. The conciliation period referred to in Article 19(2) of Regulation (EU) No 1095/2010 shall be of 1 month.

Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in the first subparagraph, ESMA shall take the decision referred to in Article 19(3) of Regulation (EU) No 1095/2010 within one month.

During the procedure set out in this [Article/paragraph] a securitisation appearing on the list maintained by ESMA pursuant to Article 14 shall continue to be considered as STS pursuant to Chapter 3 and shall be maintained on such list.

~~By derogation to the first subparagraph, where paragraph 4 applies, the competent authority of the entity designated as the first contact point shall assess with the other competent authorities concerned, in particular those of the originator, sponsor and SSPE and the competent authorities of the holder of a securitisation position when known, what action is necessary with regard to any of the entities having made the notification in accordance with article 14(1) and the competent authorities of those entities shall take the necessary actions within 15 working days. The competent~~

~~authority of the entity designated as the first contact point shall ensure that the other competent authorities concerned are informed without delay of the measures taken.~~

[In case the competent authorities of the entity suspected of the infringement concerned agree-concludes that the infringement is related to non-compliance with Article 6 in good faith, ~~they~~ it may decide to grant the originator, sponsor and SSPE a period of up to 3 months to remedy the identified infringement, starting from the day the originator, sponsor and SSPE were informed of the infringement by the competent authority. During this period, a securitisation appearing on the list maintained by ESMA pursuant to Article 14 shall continue to be considered as STS pursuant to Chapter 3 of this Regulation and shall be maintained on such list.]

~~In case one or more of the competent authorities concerned is of the opinion that the infringement is not appropriately remedied within the period set out in subparagraph 3, subparagraph 1 shall apply.~~

~~5a. Where one or more of the competent authorities concerned from different Member States disagree with the decision under paragraph 5, they shall notify the competent authority who has taken the action under paragraph 5 of their findings in a sufficiently detailed manner within 5 working days. Within the same period they shall notify ESMA, EBA and EIOPA thereof. The competent authority who has taken the action under paragraph 5 shall take due consideration of such notification, including whether to revise the decision made under paragraph 5 within an additional 15 working days.~~

~~By derogation to the first subparagraph, where paragraph 4 applies, where one or more of the competent authorities concerned from different Member States disagree with the decision under paragraph 5, they shall notify the competent authority of the entity designated as the first contact point of their findings in a sufficiently detailed manner within 5 working days. The competent authority of the entity designated as the first contact point shall inform without delay the other competent authorities concerned as well as ESMA, EBA and EIOPA. The competent authority who has taken the action under paragraph 5 shall take due consideration of such notification, including whether to revise the decision made under paragraph 5 within an additional 15 working days.~~

~~5b. In case of persistence of disagreement between competent authorities, the competent authority of the entity suspected of an infringement and the other competent authorities concerned shall do everything within their powers to reach a joint decision on the measures to be taken.~~

~~In the absence of a joint decision within 15 working days, the competent authority of the entity or entities suspected of such infringement referred to in paragraph 3 shall make its own decision.~~

~~By derogation to subparagraph 2, where such an infringement concerns an incorrect or misleading notification pursuant to Article 14(1), in the absence of a joint decision within 15 working days, the decision of the competent authority of the entity designated as the first contact point under Article 14(1) shall apply.~~

~~5c. In the event that any of the competent authorities concerned disagrees with the decision made in accordance with paragraph 5b of this Article, it may refer the matter to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply.~~

~~A conciliation period of 1 month shall apply in accordance with Article 19(2) of Regulation (EU) No 1095/2010.~~

~~If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in subparagraph 2, ESMA shall take its decision within one month. In the absence of an ESMA decision within one month, the decision of the competent authority referred to in paragraph 5b shall apply.~~

~~5d. During the decision process referred to in paragraphs 1 to 5c of this Article, a securitisation appearing on the list maintained by ESMA pursuant to Article 14 shall continue to be considered as STS pursuant to Chapter 3 and shall be maintained on such list.~~

- Art 21 para 5a (new) (line 640)

3 years after full application of this Regulation, ESMA shall conduct a peer review in accordance with art 30 of Regulation (EU) No 1095/2010 EC on the implementation of the criteria laid down in Articles 7 to 13 of this Regulation.
