Council of the European Union
General Secretariat

Brussels, 07 April 2017

WK 4258/2017 INIT

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MEETING DOCUMENT

From:	Commission
To:	Working Party on Financial Services (Securitisation)
Subject:	COMMISSION SERVICES NON-PAPER SUGGESTIONS FOR AMENDMENTS FOR EP PROVISIONS INTRODUCING SECURITISATION REPOSITORIES

COMMISSION SERVICES NON-PAPER

SUGGESTIONS FOR AMENDMENTS FOR EP PROVISIONS INTRODUCING SECURITISATION REPOSITORIES

7 APRIL 2017

Overview

The ECON text introduces in the STS Regulation a data repository system, which has been inspired by the system devised for derivatives transactions established under EMIR. If such a system is to become part of an overall political agreement on STS, some streamlining of the drafting proposed by the EP would be beneficial

- to ensure consistency with other pieces of legislation like EMIR and SFTR (both introducing comparable trade repository systems but with non-identical objectives) and
- to avoid a dissuasive effect on issuers or investors, by creating considerably higher costs without corresponding benefits. The latter is particularly relevant for private securitisation transactions.

Furthermore, any rules applying to the collection of securitisation data should ensure that experience of existing reporting procedures and infrastructure are used to the greatest extent possible, thus avoiding duplication of expensive data collection and reporting activities. These considerations are addressed in the drafting suggestion below.

Finally, the question of who should act as a repository in the event where there are no private operators available, for example due to the lack of a business case or to supervisory actions, remains unanswered. A solution to this problem is crucial, since access to data is key for investors to perform their due diligence. To this end, further discussion in the political trilogue seems appropriate.

Private Transactions

Private transactions are contracts between parties, who negotiate the terms of a deal in order to tailor it to the specific needs of the buyer. They differ from normal (public) transactions in that there is direct contact between the originator of the note and the investor and the terms of the deal are negotiated by them, whereas in public transactions the originator and investor will not meet and the transaction will take place via exchanges and/or intermediaries. As a consequence, private deals are not standardised, are generally not traded (i.e. they are "buy and hold" instruments) and do not require extensive disclosure requirements needed to protect the investor, since this latter has direct access to the seller data before any transaction takes place. Private transactions could be identified as those where no obligation arises under the Prospectus Directive to publish a prospectus.

Important parts of the EU securitisation market works via private transactions. The ABCP market, for example, is predominantly a private transaction market. The ABCP market represents roughly 40% of securitisation issuance in the EU and it finances consumer credit (e.g. credit cards), as

well as a host of corporate credit channels (e.g. trade receivables, auto loans and leases). It is, therefore, a key funding channel for the EU economy.

There are **three main reasons for using a private transaction**:

1. to avoid disclosing sensitive commercial information on the occurrence of the transaction (e.g. disclosing that a certain company needs funding to expand production or that an investment firm is entering a new market as part of its strategy) and/or related to the underlying assets (e.g. on the type of trade receivable generated by an industrial firm);
2. to tailor the transaction so that specific features that are not present in standardised, public transactions can be introduced (e.g. different credit enhancements);
3. to avoid expensive disclosure/publication requirements (e.g. relating to the need for a prospectus).

Why should private transactions be excluded by the securitisation repository?

Requiring the reporting of private transactions in a securitisation repository would defeat the very purpose of private transactions. It would force disclosure of confidential information and it would impose relevant data gathering and reporting costs for entities that may use private transactions precisely to avoid such costs (e.g. an SME selling trade receivables to an ABCP programme).

Extending to private transactions the obligation to notify all information to a securitisation repository is also disproportionate. Prudential supervisors already have access to the relevant data (e.g. banking supervisors receive these data via the data reporting system CoRep), while investors receive the necessary information for their due diligence and business decision via their direct contact with the originator of the note.

Drafting suggestions

The EP text on articles 5a to 5q (lines 213 et seq.) and articles 22a to 22e (lines 661 et seq.) should be deleted and substituted by the following text:

Article 2 para (XX) (new)

(XX)'securitisation repository' means a legal person that centrally collects and maintains the records of securitisation notes acting as a specialized trade repository for securitisation notes.

Art 5 para 2 - *(Based on ECON text)*

2. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to fulfil the information requirements pursuant to **lit a, b, d, e, f, g** of paragraph 1. ~~**The originator, sponsor and SSPE shall ensure that the information is available free of charge to**~~

~~the holder of a securitisation position, potential investors and competent authorities, in a timely and clear manner.~~

The entity designated ~~to fulfil the requirements set out in paragraph~~ **in accordance with subparagraph** 1 ~~and 1a~~ shall make the information ~~for a securitisation transaction~~ available by means of a ~~supervised~~ securitisation repository ~~which shall meet the requirements set out in Articles 22a to 22d of this Regulation.~~

The entity responsible for reporting the information ~~pursuant to this Article,~~ and the ~~supervised~~ securitisation repository where the information is made available shall be indicated in the documentation regarding the securitisation.

Articles 5a to 5h (new)

Chapter 2a

Securitisation Repositories

Article 5a

Registration of a securitisation repository

1. A securitisation repository shall register with ESMA for the purposes of Article 5 under the conditions and the procedure set out in this Article.

2. To be eligible to be registered under this Article, a securitisation repository shall be a legal person established in the Union, apply procedures to verify the completeness and correctness of the details reported to it under Article 5(1), and meet the requirements laid down in Articles 78, 79 and 80 of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 5 of this Regulation.

3. The registration of a securitisation repository shall be effective for the entire territory of the Union.

4. A registered securitisation repository shall comply at all times with the conditions for registration. A securitisation repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

5. A securitisation repository shall submit to ESMA either of the following:

(a) an application for registration;

(b) an application for an extension of registration for the purposes of Article 5 of this Regulation in the case of a trade repository already registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012 or under Title I, Chapter III of Regulation (EU) No 2365/2015.

6. ESMA shall assess whether the application is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the securitisation repository is to provide additional information.

After having assessed an application as complete, ESMA shall notify the securitisation repository accordingly.

7. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:

(a) the procedures referred to in paragraph 2 of this Article and which are to be applied by securitisation repositories in order to verify the completeness and correctness of the details reported to them under Article 5(1);

(b) the application for registration referred to in point (a) of paragraph 5;

(c) a simplified application for an extension of registration referred to in point (b) of paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by [XXX].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards specifying the format of both of the following:

(a) the application for registration referred to in point (a) of paragraph 5;

(b) the application for an extension of registration referred to in point (b) of paragraph 5.

With regard to point (b) of the first subparagraph, ESMA shall develop a simplified format avoiding duplicate procedures.

ESMA shall submit those draft implementing technical standards to the Commission by [XXX].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 5b

Notification of and consultation with competent authorities prior to registration or extension of registration

1. Where a securitisation repository applies for registration or for an extension of its registration as trade repository and is an entity authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay,

notify and consult that competent authority prior to the registration or extension of the registration of the securitisation repository.

2. **ESMA and the relevant competent authority shall exchange all information that is necessary for the registration, or the extension of registration, of the securitisation repository as well as for the supervision of the compliance of the entity with the conditions of its registration or authorisation in the Member State where it is established.**

Article 5c

Examination of the application

1. **ESMA shall, within 40 working days of the notification referred to in Article 5a(6), examine the application for registration, or for an extension of registration, based on the compliance of the securitisation repository with this Chapter and shall adopt a fully reasoned decision accepting or refusing registration or an extension of registration.**

2. **A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.**

Article 5d

Notification of ESMA decisions relating to registration or extension of registration

1. **Where ESMA adopts a decision as referred to in Article 5c or withdraws the registration as referred to in Article 5f(1), it shall notify the trade repository within five working days with a fully reasoned explanation for its decision.**

   ESMA shall, without undue delay, notify the competent authority as referred to in Article 5b(1) of its decision.

2. **ESMA shall communicate, without undue delay, any decision taken in accordance with paragraph 1 to the Commission.**

3. **ESMA shall publish on its website a list of securitisation repositories registered in accordance with this Regulation. That list shall be updated within five working days of the adoption of a decision under paragraph 1.**

Article 5e

Powers of ESMA

1. **The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 5h(1) of this Regulation respectively.**

2. The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 61, 62 and 63 of Regulation (EU) No 648/2012 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 5f

Withdrawal of registration

1. Without prejudice to Article 73 of Regulation (EU) No 648/2012, ESMA shall withdraw the registration of a securitisation repository where the securitisation repository:

(a) expressly renounces the registration or has provided no services for the preceding six months;

(b) obtained the registration by making false statements or by other irregular means;

(c) no longer meets the conditions under which it was registered.

2. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 5b(1) of a decision to withdraw the registration of a securitisation repository.

3. The competent authority of a Member State in which the securitisation repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the securitisation repository concerned are met. Where ESMA decides not to withdraw the registration of the securitisation repository concerned, it shall provide detailed reasons for its decision.

4. The competent authority referred to in paragraph 3 of this Article shall be the authority designated under Article 15 of this Regulation.

Article 5g

Supervisory fees

1. ESMA shall charge the securitisation repositories fees in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article. Those fees shall be proportionate to the turnover of the securitisation repository concerned and fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of securitisation repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 5e(1) of this Regulation. In so far as Article 5e(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this Article.

Where a trade repository has already been registered under Title VI, Chapter 1, of Regulation (EU) No 648/2012 or under Title I, Chapter III of Regulation (EU) No 2365/2015, the fees referred to in the first subparagraph of this paragraph shall only be adjusted to

reflect additional necessary expenditure and costs relating to the registration, recognition and supervision of securitisation repositories pursuant to this Regulation.

2. The Commission shall be empowered to adopt a delegated act in accordance with Article 30a to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 5h

Availability of data held in a securitisation repository

1. Without prejudice to paragraph 2 of Article 5, a securitisation repository shall collect and maintain the details of securitisation notes. It shall provide direct and immediate access free of charge to all of the following entities to enable them to fulfil their respective responsibilities and mandates and obligations:

(a) ESMA;

(b) EBA;

(c) EIOPA;

(d) ESRB;

(e) the relevant members of the ESCB, including the European Central Bank (ECB) in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013;

(f) the relevant authorities whose respective supervisory responsibilities and mandates cover transactions, markets, participants and assets which fall within the scope of this Regulation;

(g) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council;

(h) the Single Resolution Board established by Regulation (EU) No 806/2014 of the European Parliament and of the Council ;

(i) the authorities referred to in Article 15;

(j) investors and potential investors.

2. ESMA shall, in close cooperation with EBA and EIOPA and taking into account the needs of the entities referred to in paragraph 1, develop draft regulatory technical standards specifying:

(a) the details of securitisation notes referred to in paragraph 1 that the originator, sponsor or SSPE shall provide in order to comply with their obligations under paragraph 1 of Article 5;

(b) the standardised templates by which the originator, sponsor or SSPE shall provide the information to the securitisation depository, taking into account solutions developed by existing securitisation data collectors, in particular the European Data Warehouse.

(c) the operational standards required, to allow the timely, structured and comprehensive:

(i) collection of data by securitisation repositories;

(ii) aggregation and comparison of data across securitisation repositories;

(d) the details of the information to which the entities referred to in paragraph 1 are to have access, taking into account their mandate and their specific needs;

(e) the terms and conditions under which the entities referred to in paragraph 2 are to have direct and immediate access to data held in securitisation repositories.

ESMA shall submit those draft regulatory technical standards to the Commission by [XXX].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 30a (new)

Article 30

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5g(2) shall be conferred on the Commission for an indeterminate period of time from [XXX].

3. The delegation of power referred to Article 5g(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 5g(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

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