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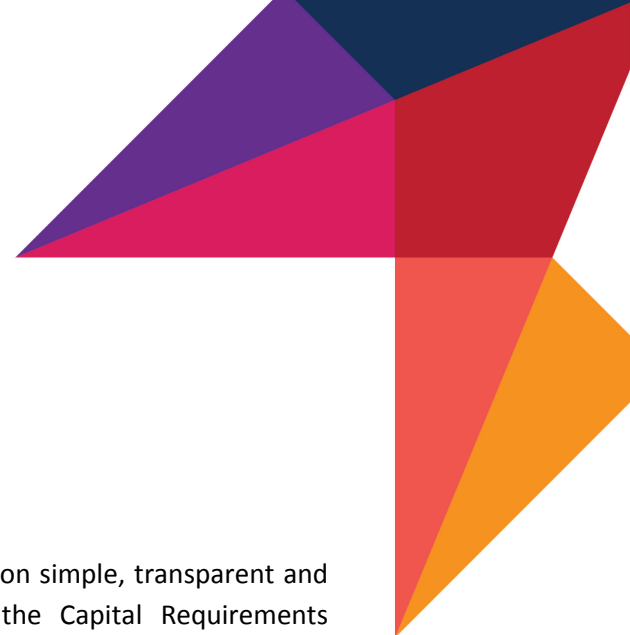
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From:	Presidency
To:	Working Party on Financial Services (Securitisation)
Subject:	Securitisation - 2nd Political Trilogue on 7 February 2017 Presidency Flash Note



PRESIDENCY FLASH NOTE

On 7 February 2017, the second political trilogue on the Regulation on simple, transparent and standardised securitisation (STS) and the Regulation amending the Capital Requirements Regulation (CRR) took place in the European Parliament (EP).

Hierarchy of methods for calculating the risk exposure (CRR Article 254)

The CRR rapporteur explained that, in order to prevent suboptimal results resulting from SEC-ERBA due to sovereign rating caps, the EP had opted for reversing the external ratings-based approach (SEC-ERBA) and the standardised approach (SEC-SA) in the hierarchy of methods, while providing for two derogations to avoid adverse effects. He also emphasised the fact that the EP and the Commission, unlike the Council, provided for the same hierarchy of methods for STS and non-STs securitisation. Furthermore, he referred to the opinion of the ECB on this matter.

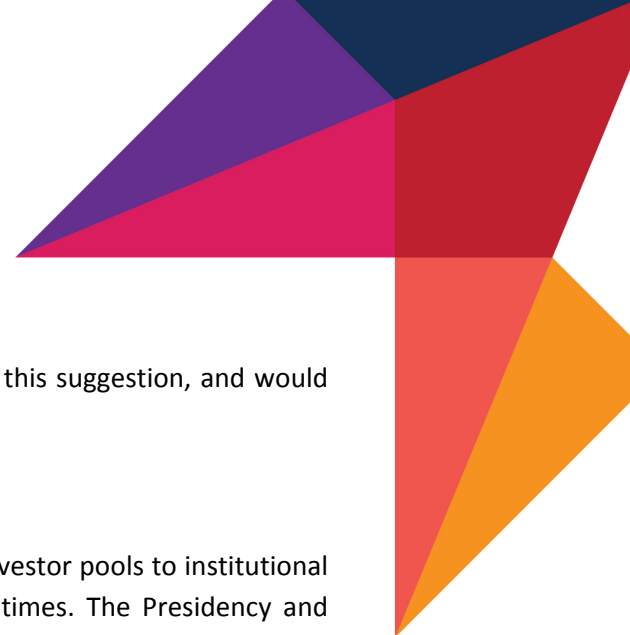
The Presidency underlined the importance of aligning to international standards, while introducing flexibility for EU-specific features, and tabled a number of arguments against reversing the order of SEC-ERBA and SEC-SA, notably related to higher risk sensitivity of SEC-ERBA, improved regulation of external ratings since the financial crisis, and the risk of cherry picking in case of a reversed hierarchy.

The Commission stressed the common goals shared by the co-legislators and stated that there were different parameters that could be used to find the right balance in Article 254. It also said that deviating from international standards, which are based on risk sensitivity, should be done only on solid grounds, and stated that it considered the Commission's proposal to be the middle ground between the Council's general approach and the EP's position (providing flexibility for all tranches and all securitisations).

Senior positions in SME securitisations (CRR Article 270)

On line 565, the EP explained why it had lowered the threshold of SME exposures in a portfolio, stating that in fact to be adequate for smaller markets the threshold should have been even lower, i.e. 40%, and referring to existing safeguards in the form of due diligence requirements. The co-legislators agreed on including the EP's threshold of 70% of SME exposures in a portfolio, while keeping the Council's amendment clarifying its application for revolving securitisations.

On line 567, co-legislators agreed on the inclusion of the reference to promotional entities. The Presidency proposed that an additional amendment should be introduced so as to extend eligibility to fully cash-funded credit protection provided by private investors in the form of cash deposited with the originator institution provided that specific criteria are fulfilled (based on the



EBA report on synthetic securitisation). The EP showed openness to this suggestion, and would also propose additional drafting in this regard for line 567.

Parties to the securitisation market (STS Article 2a EP)

As regards its Article 2a(1) (line 90), the EP stated that limiting the investor pools to institutional investors would help to prevent destabilisation of markets in bad times. The Presidency and Commission, on the other hand, argued that limiting the investor base would not help to revitalise the market for securitisation and, instead, would increase concentration risk. They also thought that the prudential oversight would address the EP's concerns. Parties agreed on the fact that retail investors would be excluded from access to the securitisation.

As regards Article 2a(2) (lines 91-95), the Presidency, while understanding the rationale for the EP's amendment, expressed concerns that it would prevent EU investors from investing in non-EU securitisations and create an un-level playing field with other financial instruments.

The Commission was asked to prepare a compromise proposal for line 90, taking into account the link with the micro- and macro-prudential framework, and a non-paper on lines 91-95.

Ban on re-securitisation (STS Article 5r EP and CRR Article 269)

The EP explained that it introduced a complete ban on re-securitisation to reduce complexity and increase transparency. The Presidency said that while such a ban for STS securitisations could be justified, the Presidency expressed concerns on possible unintended consequences of a complete ban for cases where re-securitisation is used in a legitimate manner. The Commission, seeing some merit in a ban on re-securitisation, suggested that a differentiation should be made between existing and future securitisations by means of the introduction of a grandfathering clause, to which the EP could agree. The Presidency agreed to take this compromise suggestion back to the Council.

Simple, transparent and standardised securitisation

The technical group was asked to work on lines 382-386 on the use of the designation "simple, transparent and standardised securitisation" (STS Article 6), with the exception of the reference to the EP's equivalence regime (last part of line 386) which will be discussed at a later trilogue.

As regards the requirements for simple, transparent and standardised securitisation (STS Articles 7 and 8), co-legislators agreed the following:

- The Presidency agreed to the principle of providing for a transitional period (lines 391-393) and the technical group was asked to work on the drafting.
- The Presidency agreed to include guidelines (line 394) only if those would be optional ("may"); the EP suggested extending the mandate to ABCP requirements and reflecting

on whether EBA and EIOPA should be involved. The technical group was asked to work on the drafting on this basis.

- The EP agreed in principle to the Council's amendments as regards clawback provisions (line 397) with some technical remarks to be addressed by the technical group.
- As regards the homogeneity requirement (line 403), co-legislators showed openness to each other's amendments (including the Council's reference to listing on a trading venue) and the Commission was asked to prepare a compromise proposal combining both texts. While the EP would like ESMA to develop RTSs (lines 415-419) to specify this requirement, the Presidency and Commission would prefer to leave this mandate optional, if at all.
- While the EP would like to exclude arbitrage synthetic securitisations also in the future (line 414), the Presidency questioned the added value of this amendment and feared the risk of confusion in the absence of a definition of arbitrage synthetic securitisation. The technical group was asked to further look into this provision, ensuring consistency between STS and CRR.

As regards the requirements for simple, transparent and standardised ABCP securitisation (STS Articles 11, 12, 12a) co-legislators agreed the following:

- The technical group was asked to work on lines 445-448.
- The EP agreed to follow the Council's structure for lines 451-466 and the technical group was asked to look at the drafting.
- The EP agreed to the Council's maturity caps in line 467 (3,5 years for car loans).
- The EP agreed to the Council's text in line 483 (i.e. limiting who can be a sponsor)
- As regards the EP's reference to stress tests in line 485, the Presidency feared the risk of duplicating existing obligations; the Commission, in addition, expressed some unease with the EP's conditionality ("Before being able to..."). The Commission was asked to provide drafting based on the EP's text taking into account those concerns.

Other issues

Technical work on the issues that have not been listed as political is ongoing; in addition, the technical group will start working on the follow-up of the political trilogue as per above. Delegations will shortly receive the outcome of the work done so far for their scrutiny.

Further trilogues

The next trilogue has been scheduled for 7 March, with further trilogues on 29 March and 17 May. Additional trilogues might be scheduled if need be.

The Presidency will hold a Working Party meeting on 27 February to prepare the next trilogue.