

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

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The Committee on Economic and Monetary Affairs adopted the report by Paul TANG (S&D, NL) on the proposal for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

The committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Aim: the Regulation aims to strengthen the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation.

Members added that for that purpose, this Regulation should introduce a **ban on re-securitisation and enhance the conditions for complying with the risk retention obligations**.

The amended Regulation stipulated that **investors in securitisation** shall be institutional investors, other than the originator, sponsor or original lender of a securitisation, or institutions of third countries and territories, whose supervisory and regulatory requirements are considered equivalent to the requirements of the Union.

The Securitisation Special Purpose Entity (SSPEs) shall not be established in a **third country** if the third country promotes itself as an off-shore financial centre; there is a lack of effective exchange of information with foreign tax authorities; there is a lack of transparency with regard to legislative, judicial or administrative provisions.

Risk retention: the amended text stipulated that the originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a **material net economic interest in the securitisation of not less than 5 % or 10 %** depending on the retention modality chosen.

Moreover, the securitised exposures should not deliver a performance that would be significantly different from exposures that have not been securitised

The European Banking Authority (EBA) in close cooperation with the European Systemic Risk Board (ESRB) shall take a reasoned decision on required retention rates of up to 20 % in light of market circumstances

Transparency requirements: the originator, sponsor and SSPE of a securitisation shall make at least the following information available to holders of a securitisation position, investors prior to them being exposed to a securitisation position and to the competent authorities: (i) all underlying documentation that is essential for an understanding of the transaction, including, to the extent that they are available, at least; (ii) a detailed description of the priority of payments; (iii) information about the credit granting and credit scoring process followed for the underlying assets in the securitisation and the historical evolution of non-performing loans underwritten by the originator; (iv) details regarding loss waterfall.

The investor in a securitisation position on the secondary market shall make at least the following information available to the competent authorities: (a) its beneficial owner, including the country of establishment and business sector; and (b) the size of their investment and to which tranche of the securitisation it relates.

The European Securities and Markets Authority (ESMA) must safeguard the transparency of the securitisation market to the benefit of market participants and supervisors. It may adopt guidelines in order to further specify the conditions in which the securitised exposures do not represent material risk exposure.

Conditions and procedures for registration of a securitisation repository: the proposed amendments seeks to introduce new articles as regards:

- the **registration** of a securitisation repository with ESMA, examination of the application, notification of ESMA decisions relating to registration;
- the possibility for the ESMA, by simple request or by decision, to require securitisation repositories and related third parties to whom the securitisation repositories have outsourced operational functions or activities to provide all **information that is necessary** in order to carry out its duties under this Regulation;
- the possibility for the ESMA to conduct necessary **investigations** and **on-site inspections**;
- procedural rules concerning the adoption of surveillance measures and imposing **fin**es: the basic amounts of the fines shall range from EUR 5 000 to EUR 200 000 depending on the type of infringement;
- ESMA shall, by decision, impose **periodic penalty payments** in order to compel a securitisation repository to put an end to an infringement: the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year;
- the opportunity for persons to be **heard** before the ESMA takes any decision on a fine or on a periodic penalty payment. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment;
- **supervisory measures** used ESMA, for instance, to require the securitisation repository to bring the infringement to an end; to impose a temporary prohibition on the acceptance of new originators, sponsors or SSPE or the extension of the services that the securitisation repository offers, when these would compromise the stability or the accuracy of data; require the removal of a natural person from the governing bodies of a trade repository.

Simple, transparent and standardised securitisation (STS): the amended text underlined that the ESMA should therefore, together with the national authorities competent for securities markets, **supervise compliance with the STS criteria** and develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues.

The originator and the sponsor shall publish **information on the long-term, sustainable nature of the securitisation for the investors**, using environmental, social and governance criteria to describe how the securitisation contributed to real economy investments and in which way the original lender used the freed-up capital.

Simple, transparent and standardised asset-backed commercial paper (ABCP) securitisation: there should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). Members proposed regular stress testing for financial institutions that want to support an ABCP programme.