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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Commission Staff Working Document Stakeholder Feedback on the Commission 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

Delegations will find attached document SWD(2016) 206 final.

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COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER FEEDBACK

on the

Commission 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

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The Commission legislative proposals on securitisation

As part of the Capital Markets Union (CMU) Action Plan[1], the European Commission adopted on 30 September 2015 a package of two legislative proposals:

- A Securitisation Regulation[2] that will apply to all securitisations and include due diligence, risk retention and transparency rules together with the criteria for Simple, Transparent and Standardised ("STS") Securitisations;

- A proposal to amend the Capital Requirements Regulation[3] to make the capital treatment of securitisations for banks and investment firms more risk-sensitive and able to reflect properly the specific features of STS securitisations.

On 2 December 2015 the Council of the European Union agreed on its negotiating stance on the Commission proposals. The European Parliament has not yet started to examine the two proposals.

Feedback on the Commission proposals

In line with the Better Regulation agenda, stakeholders have the possibility to provide feedback on legislative proposals within 8 weeks of their adoption by the Commission. In the present case the feedback period started on 30.09.2015 and ended on 27.11.2015. This staff working document presents that feedback to the co-legislators. Four feedback documents were received, all from German industry associations. The feedback documents are available at: http://ec.europa.eu/finance/feedback/index_en.htm.

Summary of the key elements raised in each feedback statement

Feedback 1 - Automotive industry associations: Arbeitskreis Autobanken (AKA), Comité des Constructeurs Français d'Automobiles (CCFA), The Society of Motor Manufacturers & Traders (SMMT) and Verband Der Automobilindustrie (VDA)

The respondents support the overall initiative, stating "The European institutions' initiatives to foster a simple, transparent and standardised (STS) securitisation market are to be welcomed". However, they argue the securitisation proposal has two limitations:

1) Some criteria for STS securitisations are too vague. This, together with the sanctions envisaged in case of non-compliance, is problematic.

2) The number of supervisory authorities involved in the interpretation and application of the STS Regulation may create legal uncertainty.

To solve these issues the respondents propose: 1) to define more precisely some criteria, 2) to confer the originator of a securitisation the right to request a binding confirmation of conformity by its competent authority, in absence of 3rd party intermediation.

[1] COM(2015) 468 final
[2] COM(2015) 472 final
[3] COM(2015) 473 final

Feedback 2 - True Sale International (financial industry association)

True Sale International supports the overall initiative of the Commission, stating: "We appreciate the EU's current efforts to establish an STS securitisation framework. We also concur with the European Commission's analyses and objectives that underpin the draft Regulation."

Three comments are put forward: 1) the capital charges envisaged for STS securitisations are too high, 2) some STS criteria are not easily workable and 3) the supervisory process creates too much uncertainty.

Feedback 3 - German Banking Industry Committee (GBIC) (financial industry association)

The feedback of this association focuses on banking issues and in particular the capital charges and hierarchy of approaches for prudential capital regulation.

On the first point the GBIC welcomes the Commission's plan to reduce risk weights for STS securitisations compared to those proposed in the Basel Committee securitisation framework that has to be implemented by 1 January 2018. It argues however that the Commission could have opted for a bigger reduction.

On the second point GBIC affirms that the hierarchy for the calculation of capital requirements entailing the ranking of approaches: securitisation internal rate based approach (SEC-IRBA), securitisation external rate based approach (SEC-ERBA) and standardised approach (SA) should be retained also for calculation of the capital requirements for high-quality securitisations. GBIC argues this is the case because: 1) it would keep the securitisation framework simple, 2) SEC-ERBA is more risk-sensitive than the SA and should therefore rank above the SA in the hierarchy and 3) the SEC-ERBA is a precondition for the application of the Internal Assessment Approach (IAA).

Feedback 4 - Bundesverband der Deutschen Industrie, Deutscher Industrie- und Handelskammertag and Deutsches Aktieninstitut (financial and non-financial industry associations)

The respondents "welcome the draft proposals of the European Commission for a regulatory framework to promote simple, transparent and standardised securitisations."

Nonetheless, the associations raised concerns in three areas:

1) The prudential treatment of STS securitisations increases capital charges compared to the status quo and these are still higher compared to investment alternatives such as covered bonds or other forms of credit transfers.

2) Some STS criteria are considered impracticable or insufficiently precise.

3) The number of supervisory authorities involved in the interpretation and application of the STS Regulation may create uncertainty. To solve this issue the respondents propose to confer

the originator of a securitisation the right to request a binding confirmation of conformity by its competent authority, in absence of 3rd party intermediation.

Conclusions

The issues raised by the respondents had already been raised by stakeholders in the policy preparation phase. These were taken into consideration by the Commission and integrated in the adopted proposal as follows:

a) issue #1 - STS criteria are vaguely defined: it is necessary to strike a balance between having too flexible and too prescriptive criteria, which could be unworkable in both cases. The Commission drew from the substantial preparation work on criteria carried about by the European Banking Authority and the International Organisation of Securities Commissions aiming at striking that balance.

b) issue #2 – the large number of supervisors involved increases legal uncertainty: the option to use binding mediation through the European Securities and Markets Authority is envisaged to ensure common interpretation and application of the criteria

c) issue #3 – Capital charges are raised for STS as well: on average, capital charges are considerably lowered with respect to the regime envisaged prior to the introduction of the STS proposal

d) issue #4 – The hierarchy of approaches to compute prudential capital should be SEC-IRBA SEC-ERBA and SA: this is as per the Commission proposal.