



Brussels, 21 October 2014  
(OR. en)

---

---

**Interinstitutional File:**  
**2011/0361 (COD)**

---

---

14205/1/14  
REV 1

EF 258  
ECOFIN 908  
DELECT 193

**"I/A" ITEM NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

---

No. Cion doc.: 13783/14 + ADD 1, 13786/14 + ADD 1, 13787/14 + ADD 1

---

Subject: Three Commission Delegated Regulations supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council  
- Intention not to raise objections to the delegated acts

---

1. On 30 September 2014 the Commission submitted three delegated acts to the Council in accordance with the procedure set out in Article 290 TFEU and Article 11(2) of Regulation (EU) 1095/2010:
  - a) Commission Delegated Regulation (EU) No .../..of 30.9.2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments (doc. 13783/14 EF 243 ECOFIN 863 DELACT 180 + ADD 1)
  - b) Commission Delegated Regulation (EU) No .../.. of 30.9.2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority (doc. 13786/14 EF 244 ECOFIN 865 DELACT 181+ ADD 1)

c) Commission Delegated Regulation (EU) No .../..of 30.9.2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of on-going supervision by the European Securities and Markets Authority (doc. 13787/14 EF 245 ECOFIN 866 DELACT 182 + ADD 1).

2. The Commission having notified the delegated acts to the Council on 30 September 2014, according to Article 13(1) of Regulation (EU) 1095/2010, the Council may object to the delegated acts within a period of one month, i.e. until 30 October 2014.

3. During the silence procedure within the framework of the Working Party on Financial Services, which ended on 15 October 2014, no delegation indicated an intention to object to any of the delegated acts, with the exception of the DE and FR delegations, who indicated their intention to object to the delegated act referred to in point 1(a) of this note (doc. 13783/14 EF 243 ECOFIN 863 DELACT 180 + ADD 1). These delegations have together 58 votes, whereas the requirement for the Council to object to the delegated act is a qualified majority (260 votes).

4. It is therefore suggested that Coreper invites the Council at a forthcoming meeting to:

- confirm that the Council has no intention to object to the three delegated acts listed in points 1(a) to (c) of this note, and that the Commission and the European Parliament are to be informed thereof; this implies that, unless the European Parliament objects to them, the delegated acts shall be published and enter into force in accordance with Article 13(2) of Regulation (EU) 1095/2010, and
- enter into its minutes the statements, which are set out in the Annex.

Statement by France

France would like to object to the Draft delegated regulation supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments, submitted to the Council of the European Union and the European Parliament on 30th September 2014.

With respect to securitisation and other structured finance instruments, France fully shares the objectives of ensuring sufficiently transparent structures and providing enough information about the underlying assets to allow investors to perform a thorough analysis and reduce the dependency on external credit ratings and third party assessment.

However, the market for asset-backed commercial papers presents specificities (especially its revolving nature) that are not fully compatible with the provisions of the draft delegated regulation. As currently contemplated by the draft regulation, the volume of information to be disclosed at loan-level may be unworkable while adding little relevant information to allow for an informed judgment about the risk-profile of ABCP programs. In addition, some confidentiality concerns should be more carefully considered.

ESMA and the Commission recognize that a phase-in approach is warranted for some structured finance instruments, especially that “this phase-in approach of reporting obligations should also be applied to asset-backed commercial paper programs”, as mentioned in the explanatory memorandum.

However, the legal provisions of the draft delegated regulation do not provide for a phase-in approach except with limitations of the list of underlying assets (article 4), which nonetheless encompasses type of assets which are used in ABCP programs.

Therefore, France would like that the specificities of the market of ABCPs will be fully taken into consideration in the future technical works announced by ESMA and the Commission in the context of the phase-in approach.

## Statement by Germany

Concerning the Commission Delegated Regulation (EU) No .../of 30.9.2014 supplementing Regulation (EU) No 1060/2009 of the European Parliament and of the Council with regard to regulatory standards on disclosure requirements for structured finance instruments (Doc. No. 13783/14+ADD 1).

In principle, we support a high transparency of the database by disclosure requirements as a helpful element for the rating processes. Nevertheless, it is important to avoid an excessive requirement such as those for ABCP programs that might have negative effects on the financing of small medium-sized entities.

In particular, detailed disclosure requirements with regard to ABCP programs as proposed in recital 3 of the Delegated Regulation (Doc. No. 13783/14) are problematic. In addition to loan level information which has to be disclosed pursuant to Article 3 (a) the contractual documentation of the underlying transaction would also have to be disclosed pursuant to Article 3 (b). This contractual documentation of ABCP might contain competition sensitive information regarding individual payment terms. The obligation to disclose this information to the database might cause that these papers are no longer being issued in Germany or are only issued within a limited extent, which eliminates or at least reduces the extent of an important financing alternative especially for non-publicly traded small medium-sized entities in Germany. In this respect, it is important to take into account these possible impacts on the ABCP market.

On top of that it is questionable whether a detailed disclosure of individual exposure data for ABCP is suitable to achieve the respective regulatory purpose (please refer to recital 3). Given the very short term of the Commercial Papers and the granularity of the relevant asset pool which contains a high number of individual claims with relatively low amounts that are mostly short term based, a retrospective analysis of individual exposure data does not seem to be important either for individual investors or data evaluating third-parties.

Furthermore, the added value of an analysis of individual receivables data for fully-supported ABCP could be doubted because the sponsoring bank regularly covers the underlying credit and liquidity risks of the securitized receivables by providing comprehensive liquidity facilities and thus the creditworthiness of the sponsor is the basis for the ABCP rating process applied by rating agencies.

Moreover, it should be noted that during the financial crisis the problem of maturity mismatches between an ABCP and the underlying receivables as well as the mingling of securitization positions with a high risk profile in the asset pool can very well be analyzed at an aggregate level, particularly regarding the volumes of securitized assets for individual maturity bands and the volumes of the underlying exposures for different types of receivables.

### **Statement by Greece**

We regret the postponement of the implementation of article 8b of CRA3, with regard to a series of structured finance products. We are much concerned about lack of full transparency, when circumstances require the opposite: a robust and comprehensive regulatory regime regarding SFIs. Moreover, the fact that, although the proposed regulation shall apply from 1.1.2017, ESMA will not be bound to have completed even by then the development of the required templates and infrastructure, could result in making the postponement permanent, which is all the more problematic.

## Statement by Spain

Spain recognises and supports the introduction of transparency measures related to structured finance instruments. Still, some of the requirements imposed by the Commission Delegated Regulation (EU) No .../..of 30.9.2014, supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments, may impose an excessive burden on EU issuers without obvious benefit for investors, in particular regarding private transactions and asset backed commercial programmes (ABCP). Imposing the obligation to publish loan-by-loan information as well as contractual documentation of the underlying transactions to private transactions can deter agents from using securitisations; in addition, there are no investor protection concerns in this market as the buyers are exclusively institutional investors. Regarding ABCP, we have doubts regarding the benefits to be obtained from this measure due to the high level of granularity of the asset pool and its short-term maturity.

Spain is striving to develop alternative financing sources to banking credit, where securitizations have an important role to play in the near future. The sector is being revitalised and new issuances are taking place. For this reason, any new measures should be adequately balanced to promote transparency, without endangering the recuperation of the securitization market.