Council of the
European Union

Brussels, 26 January 2016
(OR. en)

5580/16

Interinstitutional Files:
2015/0226 (COD)
2015/0225 (COD)

EF 7
ECOFIN 47
SURE 1
CODEC 83

COVER NOTE

From:	European Economic and Social Committee
To:	General Secretariat of the Council
Subject:	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 **[doc. 12601/15 - COM(2015) 472 final]** Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms **[doc. 12603/16 - COM(2015) 473 final]** *- Opinion of the European Economic and Social Committee*

Delegations will find attached the above-mentioned document.

European Economic and Social Committee

ECO/385
A legal framework for securitisation

Brussels, 20 January 2016

OPINION

of the
European Economic and Social Committee
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
COM(2015) 472 final - 2015/0226 (COD)
and the
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms
COM(2015) 473 final - 2015/0225 (COD)

Rapporteur: **Mr Mareels**

On 27 October 2015 and 14 October 2015 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), 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*
> COM(2015) 472 final - 2015/0226 (COD)
> and the
> *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms*
> COM(2015) 473 final - 2015/0225 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 2015.

At its 513th plenary session, held on 20 and 21 January 2016 (meeting of 20 January), the European Economic and Social Committee adopted the following opinion by 176 votes to 1 with 6 abstentions.

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1. Conclusions and recommendations

1.1 The **EESC welcomes the proposals** to establish a system of "**simple, transparent and standardised" securitisation** (STS securitisations) and to amend the framework in respect of prudential requirements for credit institutions and investment firms. These proposals fit within the **broader context** of the Action Plan on Building a **Capital Markets Union**[1].

[1] See the *Action Plan on Building a Capital Markets Union*, published on 30 September 2015 – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 468 final. See http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447000363413&uri=CELEX:52015DC0468

1.2 The Committee welcomes the fact that the **proposals on securitisation** have been published swiftly, and simultaneously with the action plan to build a Capital Markets Union. It is important to **take action on this in the short term**. That should enable significant additional resources to be generated for bank funding. That is very important, for SMEs and households in particular.

1.3 In the current European financial system, bank loans currently account for 75-80% of the total funding of the economy and in the future **SMEs and households** will undoubtedly remain largely dependent on bank funding. Reviving securitisation markets could unlock an additional amount of credit for the private sector of EUR 100 to 150 billion, representing a 1.6% increase in credit to EU firms and households. Furthermore, given their huge role in the European economy, the EESC has previously underlined the importance of securitisation as regards SMEs.

1.4 With regard to **bank funding**, the Committee believes that this goes hand in hand with **market-based funding**, which is to be further developed within the Capital Markets Union. The two forms of funding should be considered **complementary** rather than competing.

1.5 The Committee believes that taking a **holistic approach** should be a key priority. In establishing the new securitisation framework, the EU should proceed on a **sustainable** and **thorough** basis and seek to strike the **right balance**. At all levels, all the required objectives and the interests of all stakeholders should be taken into account. In this regard, the efforts being made to enhance the stability of the financial system are appreciated, as is the approach taken whereby investors have both rights and obligations.

1.6 **To revive securitisation** the rules need to be sufficiently broad. The STS criteria should be realistic and feasible for all banks, both the large banks and the small local banks, which are involved in issuing bank loans. Securitisation should be equally attractive to investors. If successful, it could make an important contribution to ensuring better funding of the economy, increasing investment and boosting **growth**. At the same time, there should be **clarity** as to the **risk** involved and **who bears that risk**, taking account of the whole chain from the issuer to the investor. The important thing now is that the mistakes of the past are not repeated.

1.7 The principles of **security, transparency and enforcement** should all feature in the new framework, in order to bolster confidence in the new markets. **Supervision** by both the ECB and national supervisory authorities should be developed appropriately, and the **international dimension** must not be overlooked.

1.8 Due to the complexity and risk involved, the Committee concurs with the view that **small investors and consumers should not have access** to securitisation. The Committee believes, however, that the current non-binding approach is not sufficient and calls for a **formal prohibition** to be explicitly included in the texts.

1.9 It is proposed that the **system** be assessed after a period of four years. The **Committee** would prefer to see this **assessment happen sooner**. A period of **2 years** would be appropriate.

1.10 In the Committee's view, it is very important that **EU policy makers play a key role** in the **international and global debate** on securitisation in order to safeguard the European *acquis* and ensure sufficient harmonisation at international level.

2. Background

2.1 Upon taking office, the Juncker Commission set itself three **top priorities**: **growth, jobs and investment**.

2.2 To achieve this, it drew up an Investment Plan for Europe based on 3 pillars:

- mobilising investments of at least EUR 315 billion in three years;
- supporting investment in the real economy; and
- **creating an investment-friendly environment**[2].

2.3 With its **action plan to build a Capital Markets Union**, published on 30 September 2015, the Commission is seeking to mobilise capital in Europe, create a single capital market and achieve a major part of the third pillar of its Investment Plan by 2019.

2.4 The proposals on **securitisation**[3] were put forward simultaneously with the action plan. They comprise a legislative package of **two proposals**, which deal with each individual aspect:

2 See the European Commission's website http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm.

3 In the proposed regulation, securitisation is defined as follows (Recital 1): securitisation involves transactions that enable a lender – typically a credit institution – to refinance a set of loans or exposures such as loans for immovable property, auto leases, consumer loans or credit cards, by transforming them into tradable securities. The lender pools and repackages a portfolio of its loans, and organises them into different risk categories for different investors, thus giving investors access to investments in loans and other exposures to which they normally would not have direct access. Returns to investors are generated from the cash flows of the underlying loans.

2.4.1 firstly, a proposal on **securitisation**. The proposed regulation covers the development of a common substantive securitisation framework for all participants in this market and the identification of a subset of transactions meeting certain eligibility criteria: "**simple, transparent and standardised securitisation**" or "**STS-securitisation**"; [4][5] and

2.4.2 secondly, a proposal to amend the existing regulatory framework on **capital requirements for credit institutions and investment firms** (the Capital Requirements Regulation ("CRR")), which aims to provide for a more risk-sensitive prudential treatment of STS securitisations[6], so that the specific features of STS securitisations are duly taken into consideration.

2.4.3 While the first proposal includes a number of provisions applicable to all securitisations, above all it also creates a specific framework for **STS-securitisations**. "STS" refers to the process through which the securitisation is structured and not the underlying credit quality of the assets involved.

2.4.4 The second, complementary, proposal concerns the **prudential treatment** of securitisations, to better reflect their specific features. In particular, it sets out the capital requirements for positions in securitisations, including a more risk-sensitive treatment for STS securitisations.

3. Observations and comments

3.1 The EESC welcomes the fact that the proposals on securitisation have been published simultaneously with the action plan to build a Capital Markets Union. It is now important to move quickly here. Indeed, Europe's economies remain hugely dependent on bank funding. In the European financial system, bank loans account for 75-80% of the total funding of the economy[7]. The Committee believes that bank- and market-based funding go hand in hand and should be considered complementary to each other.

4 Proposal for a regulation on securitisation (see footnote 3).

5 The acronym "STS" is taken from the English "simple, transparent and standardised" securitisations.

6 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms. See https://www.eerstekamer.nl/eu/europeesvoorstel/com_2015_473_verordening_van_het/document/f=/vjy5afglmfet.pdf.

7 See *Bank deleveraging, the move from bank to market-based financing, and SME financing*, OECD 2012. Available at: http://www.oecd.org/finance/financial-markets/Bank_deleveraging-Wehinger.pdf.

3.2 Furthermore, investment levels remain well below what they were prior to the economic and financial crisis. While gross domestic product (GDP) and private consumption in the EU were in the second quarter of 2014 roughly at the same level as in 2007, total investment was about 15% below 2007 figures[8].

3.3 The EESC has previously underlined the importance of securitisation, particularly as regards SMEs, which remain dependent on bank funding[9]. SMEs play an important role in the European economy as they account for more than 98% of Europe's businesses, provide more than 67% of private sector jobs in the EU and account for 58% of gross value added produced by businesses in the EU[10].

3.4 In addition, SME loan securitisation is currently very limited, in contrast to property securitisation, which suffered little from the financial crisis. For the time being, SMEs account for only 8% of the securitisation market, as against 58% for RMBS[11]. The Committee considers, therefore, that there should be a particular emphasis on SME-backed securitisation under the strategy for establishing a single capital market.

3.5 Reviving the securitisation market, and particularly the SME segment, is important. In the Investment Plan for Europe, establishing a sustainable market for high-quality securitisation was listed as one of the five areas where short-term action was needed. If the securitisation market were to return to pre-crisis average issuance levels and new issuance were used by credit institutions to provide new credit, this would unlock an additional amount of credit for the private sector ranging from EUR 100 to 150 billion. This would represent a 1.6% increase in credit to EU firms and households[12].

8 Factsheet 1 Why does the EU need an investment plan? Joint European Commission and EIB document. See http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/factsheet1-why_en.pdf.

9 See information report on *Access to finance for SMEs*, EESC- 2014-06006-00-00-RI-TRA, point 1.2.5, and opinion on *Finance for business/alternative supply mechanisms*, point 1.5.

10 Annual report on European SMEs 2013/2014, as noted in the information report on *Access to finance for SMEs*, EESC- 2014-06006-00-00-RI-TRA.

11 Residential Mortgage-Backed Securities.

12 Proposal for a regulation on securitisation.

3.6 The EESC has previously advocated a revival of this market, albeit subject to certain conditions. It believes that, in order to avoid the past mistakes of the US, the use of securitisation should be properly regulated[13]. Also, to achieve a sustainable high-quality securitisation market, basic structures must be promoted, with short chains of intermediaries to link borrowers and savers directly[14].

3.7 In the EESC's view, it is now important to take a holistic approach and proceed on a sustainable and thorough basis, taking into account and striking the right balance between all of the required objectives and the interests of all stakeholders. Any action taken should have positive and beneficial effects for the financing of the economy (see above), for the stability of the financial system and for the interests of investors.

3.8 Opting for a regulation to achieve this initiative is a good choice in the Committee's view, if the aim here really is to build a single market. The rules need to be sufficiently broad and attractive to investors, so that, in practice, they can have the desired effect.

3.9 The Committee acknowledges the efforts being made to enhance the stability of the financial system and the potential contained therein. Thus, a number of transparency obligations are provided for in the proposals and they facilitate a broader, more efficient distribution of risk across multiple players both within and outside the financial sector.

3.10 The EESC attaches importance to these transparency obligations, given that a lack of transparency and standardisation constitute one of the biggest obstacles to the development of the securitisation market. The basic principle of distinguishing between the various categories of securitised products and the introduction of simple, transparent and standardised products is thus considered a suitable means of increasing investor confidence and reviving the market.

3.11 The risk retention requirement obliges the originators themselves to retain a minimum level of risk in the portfolio, and the Committee deems this to be an appropriate general principle . It is also stated that a recurrence of the "originate to distribute" models must be prevented.

3.12 Investors have both rights and obligations. Responsibility lies with investors, not least as regards the due diligence obligation they have towards securitisations in which they are going to invest. Otherwise, if all responsibility were transferred to the supervisory authorities and governments, an undesirable "moral hazard" issue would arise.

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13 See EESC opinion on *Long-term financing – follow-up* OJ C 451, 16.12.2014, point 3.3.2.

14 See EESC opinion on the *Green Paper on Building a Capital Markets Union* – OJ C 383, 17.11.2015, p. 64-73, point 3.9.

3.13 Securitisation transactions and markets can, in certain circumstances, entail some risk, as the mistakes made in the recent past have clearly shown. In proceeding to revive the securitisation market, it is crucial that past mistakes are not repeated, as indeed was expressly stated by the Commission in its Investment Plan in late 2014. In the new environment, there should be clarity as to the risk involved and who bears that risk. With the harmonisation of reporting standards, the submission of more structured data and the use of standard templates, it will be possible to increase investor confidence and enhance risk assessment. Combined with better quality data, this should help to largely do away with the need for the involvement of external credit rating agencies.

3.14 The principles of security, transparency and enforcement should all feature in the new framework, which may also benefit confidence in the new markets. Supervision should be developed appropriately and the international dimension must not be overlooked.

3.15 Furthermore, the Committee welcomes the principle whereby these transactions and markets are restricted to professional and institutional investors, banks and other long-term investors. The draft texts put forward the view that small investors and consumers should not have access to this market. Given the complexity of the issue and the risks involved, this is the right approach, but the Committee calls for this to be formally incorporated into the texts as an express prohibition.

3.16 This Committee is aware that these proposals are limited to promoting the harmonisation of a number of key elements in the securitisation markets and do not pre-judge further complementary market-led harmonisation of processes and practices in these markets. All efforts in this area warrant careful attention, monitoring and evaluation.

3.17 As regards the review of this initiative, which is to take place four years after its entry into force, the Committee would advocate shortening this period to two years, in order to maximise its chances of success.

3.18 Furthermore, it is important that EU policy makers play a key role in the international debate on this issue, in particular in the discussions in Basel[15] on developing a prudential framework for simple, transparent and standardised securitisations, in order to ensure sufficient harmonisation at international level.

15 Consultation by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) on criteria for identifying simple, transparent and comparable securitisations. The consultation ran from 11 December 2014 to 13 February 2015.

Brussels, 20 January 2016

The President
of the
European Economic and Social Committee

Georges Dassis

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