



A common European framework for securitisation as one of the priorities for building a capital markets union. November 2015.

The European Commission (EC) has published a **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**. In order to achieve consistency of the provisions currently in force on securitisation, the proposal includes amendments of the following: Directive 2009/65/EC on certain undertakings for collective investment in transferable securities (UCITS), Directive 2009/138/EC on Solvency II, Directive 2011/61/EU on Alternative Investment Fund Managers (AIFM), Regulation 1060/2009, on Credit Rating Agencies (CRA), and Regulation 648/2012, on OTC derivatives, central counterparties and trade repositories (EMIR).

This proposal was adopted by the EC within the **action plan**, published on 30 September 2015, **for building a capital markets union (CMU)** in the European Union (EU), and supports the investment plan for Europe (November 2014). The CMU is one of the EC's priorities to ensure that the financial system supports economic and employment growth in the EU. This legislative initiative stems from the public consultation on the possibility of creating a European framework for high-quality securitisation, which was one of the short term actions proposed by the Green Paper of the EC on building the CMU in February 2015. The action plan of the CMU is supplemented by other steps such as the amendment of the Regulation on the prudential requirements for credit institutions and investment firms, a public consultation on the review of the Regulations on venture capital funds and social entrepreneurship funds and another consultation on the EU covered bond market, and a request to the market for feedback on the combined impact of the European financial services regulatory framework.

Securitisation consists of a transaction whereby the originator entity groups a pool of mortgages or loans and transfers them to a third party, which transforms this pool into an issue of tradable securities. Securitisation enables the originator to increase its capacity to fund private individuals, small and medium size enterprises, and infrastructure projects, and gives investors access to the funding market in the real economy.

The proposal contains two parts: the first part is devoted to rules that apply to all securitisation transactions in the various sectors and, therefore, repeals the sector-specific provisions; the second part focuses on simple, transparent and standardised (STS) securitisation.

The most significant aspects of the proposal are as follows:

1. Obligation of due diligence for investors. Institutional investors are subject to the due diligence obligation, which consists of checking, prior to assuming exposure to securitisation, the securitisation structure (transfer of credit, risk retention and transparency obligations) and the risks inherent in the securitisation. In the case of STS securitisations, investors shall verify compliance with the requirements for the said qualification to apply.

2. Risk retention. The originator/sponsor/original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of no less than 5%. The proposal lays down obligations in two respects: the obligations for the originator/sponsor/original lender of retaining the risk of the credits transferred or of other underlying securities of the securitised instruments and of reporting the retention to investors (direct approach), and the obligation for investors to check the risk retention (indirect approach). The direct approach allows investors to check, in a much easier and simpler way, the fact that the risk retention by the entities subject to this requirement has been carried out.

3. Transparency rules. The originator/sponsor and Securitisation Special Purpose Entities (SSPEs) should make available to holders of securitisation positions or to the competent authorities regular information on the exposures underlying the securitisation and on the payments from the securitisation. This information allows investors to understand, assess and compare securitisation transactions and not to rely excessively on third parties, such as, for example, CRAs. The information disclosed allows compliance with the due diligence obligation. Pursuant to the explanatory memorandum of the proposal, the information could be made available to investors, through standardised templates, on a website that meets certain criteria such as control of data quality and business continuity.

4. Requirements for securitisations to be simple, transparent and standardised (STS). Originators/sponsors and SSPEs shall only use the acronym "STS" or a name directly or indirectly referring to the said terms for their securitisation if the latter complies with the technical requirements of simplicity, transparency and standardisation described in the Regulation, or when, in the case of the securitisation of asset-backed commercial paper (ABCP) – short term securitisation –, it complies with the requirements applicable at the level of the programme and with the requirements applicable at the level of the transactions stated in the Regulation proposal. Synthetic securitisations where the credit risk related to the underlying exposures is transferred by means of a guarantee or derivative contract are not considered as STS.

5. Notification and disclosure of securitisations. Originators/sponsors and SSPEs shall jointly notify ESMA the fact that the securitisation complies with the STS requirements and, likewise, they shall notify their competent authority. ESMA will publish the STS notification in its website. The originator/sponsor and the SSPE shall designate amongst themselves one entity that shall be the first contact point for investors and competent authorities.

6. Supervision. The Member States shall designate the competent authorities for carrying out the supervision of securitisation in the field of financial services. In view of the cross-border nature of the securitisation market, cooperation between the different national competent authorities and the ESAs will be necessary. The list of the competent authorities shall be published and maintained updated by ESMA in its website.

Useful links:

[Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating an European framework for simple, transparent and standardised securitisation.](#)

[Action plan for building a Capital Market Union.](#)

[Economic analysis attached to the action plan.](#)

[Proposal for amendment of the Regulation 575/2013, on the prudential requirements for credit institutions and investment firms.](#)

[Proposal for amending the Solvency II Regulation.](#)

[Consultation on covered bonds in the EU.](#)

[Public consultation on the review of the EuVECA and EuSEF Regulations.](#)

[Request to the market for feedback on the combined impact of the European financial services regulatory framework.](#)

[EC document for consultation on high-quality securitisation in the EU \(February 2015\).](#)

[Document for consultation on the Green Paper of the EC on building a Capital Market Union in the EU \(February 2015\).](#)

[Document with responses to the EC Green Paper.](#)