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PROPOSAL

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on sovereign bond-backed securities

(Text with EEA relevance)

{SEC(2018) 251 final} - {SWD(2018) 252 final} - {SWD(2018) 253 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal aims to enable a market demand-led development of Sovereign Bond-Backed Securities (SBBSs), to support further integration and diversification within Europe's financial sector, leading to a stronger and more resilient Economic and Monetary Union. This initiative complements other elements of Banking Union and Capital Markets Union by enhancing integration, risk diversification and risk reduction in the financial system.

Since the global financial crisis and the euro area sovereign debt crisis, considerable progress has been achieved in stabilising the EU and euro area financial sector and creating the conditions for further integration, by implementing common robust prudential and resolution rules for financial institutions. This is, among others, due to reforms such as the Bank Recovery and Resolution Directive[1], the creation of the Single Supervisory Mechanism[2] and the Single Resolution Mechanism as well as the Capital Requirements Regulation.[3] Nevertheless, a further integration and diversification of financial markets across national borders has significant potential to make Europe and its Economic and Monetary Union more resilient through better risk diversification and better shock absorption via capital markets. This is the objective of the Commission's efforts to deepen and integrate further Europe's capital markets in the context of the Capital Market Union. The euro-area banking sector in particular continues to be vulnerable to the sovereign-bank nexus, i.e. the strong two-way link between the creditworthiness of a government and that of the banks in its jurisdiction, which is in part due to banks' tendency to concentrate their sovereign bond portfolios in their own sovereign (so-called "home bias"). The resulting potential for destabilising mutual contagion and financial instability became apparent during the euro-area sovereign debt crisis: deteriorating creditworthiness of a sovereign leads, via lower bond values, to balance sheet strains for banks in its jurisdiction; in turn, banks' woes put pressure on the government budget either directly ("bailout") or via, e.g., lower tax revenues from weakened credit and economic activity. Beyond these links to their own government, banks also remain strongly exposed to economic developments in their home country (due to insufficient cross-border diversification).

Moreover, despite an increase in overall public debt until recently in the wake of the global financial crisis, the supply of high-rated euro-denominated sovereign bonds, which act as "safe assets" in the modern financial system, has declined. At the same time, banks' and other financial institutions' demand for such assets has increased, including because of new regulatory requirements to hold sufficient buffers of highly liquid assets (e.g., in terms of liquidity coverage ratios).

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1. Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173, 12.6.2014, p. 190).
2. Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).
3. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

As part of the Commission's efforts to advance the Banking Union and deepen the Economic and Monetary Union, in line with the May 2017 Reflection Paper on the deepening of the Economic and Monetary Union, and as announced in the 2017 September Letter of Intent accompanying President Juncker's State of the Union Address, and the December 2017 EMU deepening package, this proposal aims at providing an enabling framework for a market-led development of Sovereign Bond-Backed Securities (SBBSs).

SBBSs would be created by the private sector. A private sector entity would assemble an underlying portfolio of sovereign bonds from the market and would subsequently transfer them to a legally separate, self-standing entity, specifically set up for the sole purpose of issuing to investors a series of securities representing claims on the proceeds from this underlying portfolio. The various securities issued would bear any losses from the underlying portfolio in a certain sequence (i.e., losses would accrue first to holders of sub-senior, or subordinated, securities and only after such securities have been completely wiped out would they also accrue to the holders of senior claims).

SBBSs would not rely on any risk sharing or fiscal mutualisation between Member States. Only private investors would share risks and possible losses. SBBSs are therefore very different from Eurobonds.

In mid-2016, the European Systemic Risk Board (ESRB) established a high-level task force (henceforth, the ESRB task force) to assess SBBSs' merits and feasibility. The ESRB task force comprised representatives from many Member States' central banks and financial supervisory authorities, as well as of European institutions (the European Central Bank and the European Commission) and agencies (the European Banking Authority and the European Insurance and Occupational Pensions Authority), public debt management officers and academics.

The ESRB task force concluded[4] that a market for SBBSs can develop under certain conditions. Yet, whether or not SBBSs are viable can ultimately only be ascertained by putting them to a market test. This proposal paves the way for such a market test.

A key finding of the ESRB task force, corroborated also by interactions with market participants and other stakeholders, is that the current regulatory framework constitutes a significant hindrance to the development of SBBSs. Under the existing regulatory framework, SBBSs would be defined as securitisation products, and hence would be treated significantly less favourably than their underlying portfolio of euro area sovereign bonds (e.g., via higher capital requirements, limited/no eligibility for liquidity coverage and collateral, stricter investment limits for various investor classes, etc.). However, due to the nature of their underlying assets and their standardised and simple nature, SBBSs carry risks that are comparable to the underlying sovereign bonds rather than regular securitisations. For example, there is no asymmetry of information between the issuer of SBBSs securitisation and the final investors, because the underlying assets are well-known and traded on the market.

It is therefore necessary that the regulatory framework is suitably adapted to capture the unique features of SBBSs. Importantly, enabling SBBSs does not involve changing the regulatory treatment of sovereign exposures. As set out in the May 2017 Reflection Paper on

[4] See volumes I ("main findings) and II ("technical analysis") of the ESRB task force report "Sovereign bond-backed securities: feasibility study", available at: https://www.esrb.europa.eu/pub/task_force_safe_assets/html/index.en.html

the deepening of the Economic and Monetary Union, the latter would have profound implications, including in terms of financial stability and level-playing field for EU banks.

- **Consistency with existing policy provisions in the policy area**

As SBBSs represent a novel concept and do not yet exist in practice, no appropriate regulation for this kind of instrument has yet been created that would take into account their unique properties.

Under the current legal framework, as indicated above, SBBSs would be defined as securitisation products. Thus, as a result of the regulatory framework for securitisations – which is, as such, appropriate for existing securitisations – investing in SBBSs would be associated with higher regulatory charges than investing directly in euro area sovereign bonds, which constitute SBBSs' underlying portfolio. For example, when it comes to capital requirements for banks, euro area sovereign bonds are zero-risk weighted (that is, banks need not hold any capital against their investment in these bonds), but investments in securitisation tranches are associated with positive and—depending on the seniority—often quite high capital requirements.

The justification for these higher charges for securitisation products in general (the so-called "non-neutrality" of the securitisation framework) lies in securitisation-specific risks, primarily due to asymmetric information between the originator of the securitisation products and the investors. This is typically compounded by the opaque nature of the securitised assets and the complexity of the structure, which entail agency risks and legal risks. In typical securitisations, agency risks stem from the fact that originators of such products know substantially more than investors about the assets composing the securitisation pool. This is obviously the case where, for instance, a bank issues mortgages and then securitises them. An investor does not have access to the same information on the mortgage borrowers as does the bank. Thus they may also assume that the bank may securitise first/only the least profitable/more risky mortgages. It is because of this agency problem that many institutional investors as well as banks are prevented from investing in securitisations unless the issuer retains some exposure to the underlying assets.

However, SBBSs are a specific financial product with two key characteristics. First, many of the asymmetries of information and complexities of a typical securitisation structure are not present because SBBSs' underlying pool is composed of euro-area central government bonds. These assets are well known and understood by market participants. Moreover, the structure of the underlying asset pool for SBBSs is pre-determined (e.g., the weights of the individual Member States' central government bonds would be in line with their contribution to capital of the European Central Bank, with little deviation). Second, euro area sovereign bonds are regularly traded in the markets. This means that anyone can acquire a financial exposure to them without resorting to securitisation.

Hence, securitisation-specific regulatory charges are not justified for SBBSs as defined in this regulatory proposal.

This proposal addresses a similar problem as has been addressed with the recent Simple, Transparent and Standardised (STS) Securitisation Regulation. Specifically, the rationale for the recent STS Regulation (Regulation (EU) 2017/2402) is that, in the presence of securitisations which are structured in a simple, transparent and standardised way and according to EU standards, failing to recognise such properties with a specific (and, in practice, more favourable) regulatory treatment would have unduly hindered their development.

Given the special nature of SBBSs' underlying assets, namely euro area central government bonds, the wedge between the regulatory treatment of (traditional) securitisations and the actual risk/uncertainty of the instrument is even more pronounced for SBBSs than was the case for STS securitisations. This is for two reasons: (1) the underlying assets (i.e. namely, euro area sovereign bonds) are even more simple, transparent and standardised; and (2) euro area sovereign bonds themselves receive the most favourable regulatory treatment in light of their properties and functions in the financial sector.

In addition, investment decisions as regards government bonds are particularly sensitive to costs and fees because of the volumes involved, the strong competition, and the high market liquidity. Relevant costs, from the viewpoint of a financial institution intending to invest in such assets, include the cost of capital associated with their purchase. Therefore, failure to address this regulatory barrier is likely to have a correspondingly greater impeding effect on the developments of the market for SBBSs than would have been, for example, the case for STS securitisations.

- **Consistency with other Union policies**

Reducing risks to financial stability by facilitating the diversification of banks' sovereign portfolios and further weakening the bank-sovereign nexus is of high importance for the completion of the Banking Union.

This legislative proposal is part of the Commission's efforts to enhance Banking Union and Capital Markets Union. It aims to enable the emergence of an efficient market for SBBSs over time. In turn, SBBSs could support further portfolio diversification in the financial sector, while creating a new source of high-quality collateral particularly suited for use in cross-border financial transactions. Also, it could render sovereign bonds issued in otherwise small and less liquid markets more attractive for international investors. This would foster private-sector risk sharing and risk reduction and promote a more efficient allocation of risks among investors. Furthermore, enabling SBBSs would increase the range of available instruments on financial markets, which feeds into the Commission's efforts to deepen and integrate further Europe's capital markets in the context of Capital Markets Union. By thereby helping to complete Banking Union and advance Capital Market Union, SBBSs would effectively contribute to the advancement of the Financial Union and the deepening of Economic and Monetary Union.

As mentioned, SBBSs will be a market-based instrument which is likely to develop gradually over time, as an alternative and complementary investment opportunity, next to sovereign bonds. SBBSs are not expected to have any material negative impact on existing national bond markets and are not expected to replace them.

SBBSs are conceptually distinct and different from the European safe asset as discussed in the May 2017 Reflection Paper on the deepening of the Economic and Monetary Union. The European safe asset – differently from SBBSs – would be a new financial instrument for the common issuance of debt. Developing such European safe asset raises a number of complex legal, political and institutional questions that need to be explored in great detail. It would have to be designed in line with the limitations in the Treaty in terms of public sector risk sharing and in particular the "no bail-out clause" (Art. 125 TFEU). In the Roadmap as presented in the above-referenced Reflection Paper, the issuance of such a European safe asset is envisaged as a possible further step during the years until 2025. It is, therefore, an innovation for the medium term.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

SBBSs are a tool to enhance financial stability and risk sharing across the euro area. They can thereby further deepen the internal market. This proposal thus has as legal basis Article 114 TFUE, which confers to the European institutions the competences to lay down appropriate provisions that have as their objective the establishment and functioning of the internal market.

- **Subsidiarity (for non-exclusive competence)**

The identified regulatory impediments to the development of SBBSs markets are laid down in several pieces of Union legislation[5]. As a consequence, individual Member State action would not be able to achieve the goals of this legislative initiative, i.e. to remove such regulatory impediments, since amendments of EU legislation can only be done through EU action.

Aside from this legal consideration, action at the Member States' level would be suboptimal. It could result in different instruments being "enabled" in different Member States. This would render the market opaque and would segment market demand in various different instruments. This would make it difficult or even impossible for any one of them to acquire the requisite liquidity. Furthermore, even if they all targeted the same instrument, national legislators could end up engaging in a race to offer to such instrument a regulatory treatment that is as favourable as possible. In both cases, i.e. addressing differently defined products or giving different regulatory treatment, national-level action would create obstacles to the single market. These obstacles would have sizeable effects, given the very high integration of the underlying government bond markets and the identical regulatory treatment of these across the EU. For all these reasons, action at the EU level is necessary and appropriate.

- **Proportionality**

The proposed regulation aims at enabling the new instrument by removing regulatory barriers to the gradual emergence of an SBBSs market. This intervention is proportionate by levelling the playing field between the new instrument and its underlying assets. The proposal is not expected to have any material impact on existing national sovereign bond markets.

- **Choice of the instrument**

This proposal aims at enabling a demand-led market development of SBBSs. To this end, the proposal provides for the criteria to be met by the instrument to be labelled as SBBSs and provides the necessary supervisory framework.

In order to achieve the targeted benefits, it is necessary that a standardised product is enabled. This standardisation should be uniform across the EU, thus a fully harmonised definition and regulatory treatment of SBBSs at EU level is required. Article 114(1) TFEU provides the legal basis for a Regulation creating uniform provisions aimed at improving the functioning of

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[5] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR) (OJ L 176, 27.6.2013, p. 1); Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1); Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

the internal market. A Directive would not lead to the same results, as implementation of a Directive, due to the discretion exercised when transposing it, might lead to differences, which, in the case of the SBBSs market, could lead to distortion of competition and regulatory arbitrage.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

As part of its SBBSs feasibility assessment, the ESRB task force conducted a public consultation in late 2016 and obtained input and feedback from the industry, i.e. various financial institutions, and from public debt management officers (DMOs), through a range of bilateral meetings as well as two dedicated workshops in 2016 and 2017. The Commission did not launch an open public consultation of its own to avoid duplication. It should be noted that the proposed initiative is not directed towards consumers or retail investors.

The above-mentioned consultation among industry representatives sought feedback on several key issues regarding the possible implementation of SBBSs, in particular regarding the regulatory treatment and the economic aspects of SBBSs. The feedback, in particular, showed strong consensus on the increasing scarcity of "safe" (low-risk) assets in the market. The majority of respondents were of the view that at least senior SBBSs should receive the same regulatory treatment as their underlying sovereign bonds.

While market participants overall agreed that deeper financial integration and a diversification of banks' sovereign portfolio would be necessary in Europe, views were mixed as to the viability of SBBSs. In particular, the marketability of the junior tranche of the product was questioned. Participants broadly agreed that for an SBBSs market to emerge, the following would be required: (1) coordination of issuances by Debt Management Officers (DMOs); (2) a regulatory framework that levels the playing field between sovereign bonds and SBBSs; (3) simple and standardised SBBSs characteristics, including a fixed portfolio weights on the asset side and a maximum of three tranches on the liability side; (4) sufficient liquidity in the SBBSs market; and (5) clarity on the procedure in the event of a (selective) sovereign default. A detailed breakdown of answers on key questions and general conclusions drawn from the survey are presented in Volume II of the above-referenced ESRB task force report.

In a dedicated workshop, DMOs raised concerns regarding the design and implementation of SBBSs and took the view that SBBSs would neither to break the bank-sovereign nexus nor create a euro area low-risk asset. More specifically, DMOs' concerns related to the impact of SBBSs on national sovereign bond markets (in particular on their liquidity), the implications of primary and/or secondary market sovereign bond purchases by SBBSs issuers, and the possible regulatory treatment of SBBSs. They also voiced concerns about the technical feasibility and economic viability of the new instrument.

Besides the above mentioned stakeholder consultations as part of the ESRB feasibility assessment, the Commission reached out to Member States and organised a meeting of the Commission's Expert Group on banking, payments and insurance (EGBPI) on 11 April 2018 in order to receive technical feedback on specific questions. Participants pointed to the need to first discuss the necessity of SBBSs before providing technical advice, as in their view the need for SBBSs was not obvious. They provided useful views on select technical issues, in particular calling for greater flexibility to market participants when it comes to determining the fundamental characteristics of SBBSs (i.e. with respect to the weights of different Member States' sovereign bonds in the underlying portfolio or the tranching levels).

- **Collection and use of expertise**

The Commission actively contributed to the work of the above-mentioned ESRB task force. This regulatory proposal builds to a large extent on the work of the task force. Further, the Commission has met with public authorities and private sector representatives to seek their expertise and corroborate the findings of the task force.

- **Impact assessment**

For the preparation of this proposal, an Impact Assessment was prepared and discussed with an Inter-service Steering Group on several occasions. The Impact Assessment considered the following policy choices: (i) the scope of applicability of the proposed framework (i.e., to any securitisation of euro area sovereign bonds, or only to those complying with certain standardisation requirements); (ii) whether to restore "regulatory neutrality", i.e., grant the same treatment as that of the underlying sovereign bonds only to the senior tranche of SBBSs issue or to all tranches of SBBSs issue; and (iii) how to monitor and ensure compliance with the proposed framework (i.e., whether through a self-attestation approach or via ex-ante certification).

The Impact Assessment highlighted several important trade-offs. For example, removing regulatory impediments for all and any securitisations would allow maximum flexibility to market participants to design the new instrument to maximize returns while minimizing risks. On the other hand, a certain degree of prescribed standardisation might better ensure that the liquidity of the new instrument is not dissipated across many different variants. Similarly, whereas granting the same treatment of sovereign bonds only to the senior tranche may give greater incentives for banks to focus on senior tranches, such an approach would be inconsistent with the current regulatory treatment of sovereign exposures (and would be less "enabling" of SBBSs in general, since it would have reduced the potential investor base).

The Impact Assessment assessed the effects of the various options on the extent to which the identified regulatory hindrances would be removed, the extent to which the new instruments would help with risk-reduction in banks' balance sheets and with expanding the supply of euro-denominated low-risk assets, and the benefits of the various compliance and supervision approaches in terms of instilled market confidence vis-à-vis the associated costs (both public and private).

Because the proposed framework only enables the private-sector led development of an SBBSs market, but does not guarantee it, the Impact Assessment considered two distinct scenarios to evaluate impacts, one in which SBBSs reach only a limited volume (EUR 100 billion) and a steady-state one in which they reach EUR 1,5 trillion—a macro-economically relevant volume (albeit still contained relative to the overall euro area sovereign debt market, which amounted to EUR 9 trillion as of the second quarter of 2017).

A quantitative indication of the significance of the obstacles that would be removed with this proposal can be obtained by comparing, e.g., the capital requirements banks would incur if they bought SBBSs today versus those they would incur for the same purchases under the proposed bespoke regulatory framework. Of course, such (virtual) savings would depend on the assumptions made (including on the risk weights warranted by the sub-senior tranches). In the limited-volume scenario assuming banks purchase all tranches, and that banks using the standardised approach account for a share of such purchase equal to their current share of government bond purchases, aggregate risk-weighted assets would increase by some EUR 87 billion. For the steady state scenario the equivalent calculation yields an increase in aggregate risk-weighted assets to the tune of EUR 1.3 trillion.

When it comes to the impact on the volume of euro-denominated AAA-rated assets, the calculation is based on Eurostat data on euro area central government debt as of December 2016,[6] as well as Standard & Poor's ratings of euro area sovereign governments on the same date.[7] This calculation shows that AAA-rated assets would increase by 2% (respectively, 30%) in the limited-volume (respectively, steady state) scenario.

Finally, as regards the impact of SBBSs on the diversification of banks' sovereign portfolios, the analysis in the Impact Assessment shows that the impact would be small in the limited volume scenario, but significant under the steady state scenario. Under those assumptions, the home bias in the sample of euro area banks covered by the transparency exercise conducted by the European Banking Authority would be reduced by 42%.

The Impact Assessment report was submitted to the Regulatory Scrutiny Board on 19 January 2018. The board meeting took place on 14 February 2018. The Board gave a positive opinion and called for changes and additional input in the following areas: (1) to clarify whether this initiative aims at providing an enabling framework and market test or an incentive structure for SBBSs; (2) to develop further the initiative's potential net public benefit, as well as risks or unintended consequences; and (3) to better present the trade-offs between alternative policy proposals. These issues have been addressed and incorporated in the final version which accompanies this proposal.

- **Regulatory fitness and simplification**

This initiative does not aim at simplification or reduction of administrative burden resulting from existing legislation, but instead provides for new rules to enable the development of SBBSs instruments in the market.

The regulatory proposal is not expected to directly affect retail investors, households, SMEs or micro-enterprises, because it is unlikely that they would be active in SBBSs markets. At the same time, these sectors would benefit indirectly from this regulatory proposal as a result of enhanced resilience of the financial sector – to the extent that the expected macroeconomic and financial-stability benefits materialise.

- **Fundamental rights**

This proposal complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the rights to property and the freedom to conduct a business, and has to be applied in accordance with those rights and principles. In particular, this Regulation ensures the protection of SBBSs investors' rights by ensuring the integrity of the issuance of SBBSs and of the underlying portfolio of sovereign debt.

[6] Downloaded from Eurostat website on 21 December 2017 at 10:42.
[7] Downloaded from S&P website on 21 December 2017.

4. BUDGETARY IMPLICATIONS

This regulatory proposal will have limited novel financial implications for public budgets, since the compliance mechanism would be based on self-attestation by SBBSs issuers and supervisors would check compliance ex-post in the course of their routine supervisory activities. In view of the envisaged new tasks, and taking account of possible synergies with its existing functions, some additional resources are necessary for ESMA (see legislative financial statement). Issuers of SBBSs would incur the self-attestation costs, which should however be quite small given the simplicity of the financial product (the extent to which these are translated to investors would depend on the competitiveness of the market).

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

The specific objectives of this initiative—i.e., to eliminate regulatory hindrances and to contribute to the liquidity of the new SBBS products, including by granting them "benchmark" regulatory treatment—would indeed be achieved once the proposed legislation enters into force. This is the case because only a standardised product would then be eligible for the envisaged specific regulatory treatment and the regulatory treatment of SBBSs would be equated to that of the underlying sovereign bonds.[8]

In terms of the general objective to enable markets for SBBSs, the impact of the legislation will be assessed by monitoring the extent to which these new products will actually be assembled and traded and the extent to which the emergence of SBBSs contributes to expansion in the amount of low risk assets and reducing banks' "home bias". The impact of SBBSs on the liquidity of national sovereign bond markets will also be assessed.

When interpreting the results of these analyses, it needs to be kept in mind that the development of SBBSs markets and the evolution of the above-mentioned benchmarks depend on several other factors which are independent of, or may be only tenuously linked to, the regulatory framework. This is likely to make it difficult to disentangle the effects of the proposed legislation from these other factors. In particular, the supply of new products is also likely to depend on the legal costs of setting up the issuing vehicle, the ease of procuring bonds of sufficiently uniform terms, the costs of servicing the structure, etc. Similarly, their demand will depend on the overall interest rate environment, risk appetite, and the demand from various investor types for the different tranches. Market developments may well be non-linear, as the envisaged product will benefit from returns to scale from size and network externalities. Thus, for example, if the product appears to attract sufficient investor interest, debt managers may decide to organise dedicated auctions for the production of SBBSs, with standardised bonds of varying maturities. This would in turn reduce production costs and could accelerate the growth of the market.

• Detailed explanation of the specific provisions of the proposal

This proposal contains four parts. The first part provides a set of rules that define the constitutive elements of SBBSs. These rules are necessary to ensure that as standardised a product as possible is produced by the markets. This in turn favours its liquidity and appeal to investors. The second part provides rules that define notification and transparency

[8] Some specific hindrances, e.g. differential eligibility for liquidity coverage requirements between SBBS and euro area sovereign bonds, would be addressed in separate pieces of legislation, as they stem from delegated acts.

requirements for the issuing entity to ensure that self-attestation is performed in a harmonised and credible way. The third part contains rules regarding the supervision of SBBSs and possible sanctions in case of non-compliance and/or fraudulent behaviour of the issuing entity. The fourth part contains a set of amendments to the existing legal framework required to grant SBBSs a regulatory treatment in line with their unique design and properties.

Introductory provisions (Articles 1 to 3)

The provisions explain the subject matter, scope and the definitions used for the purposes of providing a general framework for standardised SBBSs and entities involved in the issuance and the holding of such instruments. The definitions used are consistent with those used in other pieces of Union law.

Eligibility and composition of the underlying portfolio and tranching of SBBSs issues (Articles 4 to 6)

The underlying portfolio of SBBSs should be composed of sovereign bonds of all EU Member States whose currency is the euro. This restriction is to ensure that none of the bonds in the underlying portfolio of SBBSs is affected by currency risk. The relative weight of the sovereign bonds of each Member State should be very close to the relative weight of the respective Member State' participation to the ECB capital key. The ECB capital key is a proxy of each Member State's economic size and its stake in the stability of the European financial system. Other keys have been considered but have been found to be inferior. For example, a key based on each Member State's outstanding sovereign debt could give rise to moral hazard, whereby a Member State may benefit more from the product if it increases its overall outstanding debt.

Maturities of underlying sovereign bonds should be closely aligned to the maturity of the SBBSs issue.

An SBBSs issue should be composed of a senior tranche, corresponding to 70 percent of the nominal value of SBBSs issue, and one or more subordinated tranches.[9] The purpose of the subordinated tranches is to provide protection to the senior tranche, which therefore is a low-risk instrument. The precise split of the subordinated portion of the SBBSs issue construction in the various tranches is left at the discretion of the issuer, who will maximize the total price including by catering to the specific risk/return demand of various investor types. The senior tranche is set at 70 percent of the overall structure to ensure standardisation of this tranche across different issues. To limit the risk of the junior tranche (the tranche bearing losses before any other tranche), the nominal value of the junior tranche should be at least 2 percent of the outstanding nominal value of the entire SBBS issue. The ESRB task force has shown by way of a comprehensive analysis that a 30-percent thick subordinated tranche is sufficient to ensure low risk of default for the corresponding (that is, 70 percent thick) senior tranche including in scenarios of market stress.

Articles 4 and 6 foresee specific circumstances in which the structure of the SBBSs issue (composition of underlying portfolio and size of senior tranche) can be changed for future issuances and describe the relevant procedures. Sovereign bonds of a particular Member State may be excluded from the underlying portfolio when and until the issuance of sovereign bonds by a Member State is significantly limited due to a reduced need for public debt or

[9] In the version analysed by the ESRB task force there were two subordinated tranches, a mezzanine and a junior tranche, corresponding respectively to 20 and 10 percent of the nominal value of SBBSs issue.

impaired market access. Also, the tranching structure may be changed in exceptional cases where adverse market developments that severely disrupt the functioning of sovereign debt markets in a Member State or in the Union require a smaller senior tranche to ensure its continued high quality/low risk. ESMA is tasked to monitor whether the conditions for a change in the composition of the underlying portfolio or in the size of senior tranche exist and to inform the Commission accordingly. The Commission may decide that such conditions exist or have ceased to exist by adopting an implementing act. Such an implementing act could only enter into force following a vote by Member States representatives in the European Securities Committee, in accordance with the examination procedure. SBBSs issued after the adoption of such an implementing act shall reflect the changes in the composition of underlying portfolio or the size of senior tranche for which the implementing act was issued.

Issuance and management of SBBSs (Articles 7 and 8)

To ensure that investors are protected from the risk of insolvency of the institution that acquires the sovereign bonds (original purchaser, typically a bank), the issuance of SBBSs should be undertaken by a Special Purpose Entity (SPE) that is exclusively devoted to the issuance and management of SBBSs and that does not undertake any other risky activities, such as provision of credit.

The SPE should be subject to strict asset segregation requirements to ensure the integrity of the SBBSs issue and of the positions held by SBBSs investors. SPEs should ensure that the composition of the underlying pool of sovereign bonds is fixed throughout the lifecycle of an SBBSs. To manage limited maturity mismatches, SPEs should be allowed to invest the proceeds from the underlying portfolio only in cash or in highly liquid financial instruments with low market and credit risk.

Since investors in SBBSs issues' tranches would have claims only on the underlying portfolio of sovereign bonds, but not on the issuer's or original purchaser's balance sheet, the SPE and its underlying portfolio should not need to be consolidated in the portfolio of the original purchaser.

Use of the designation 'Sovereign Bond-Backed Securities' (Article 9)

To ensure the standardisation of SBBSs, only those products that fulfil the requirements regarding the composition and maturity of the underlying sovereign bonds and the tranching should enjoy the same regulatory treatment as that of the underlying sovereign bonds. A system of notification to ESMA is set out to ensure that no abuses are committed. A product can thus be qualified as SBBS only if both the substantive and notification requirements have been fulfilled.

SBBSs notification and transparency requirements (Articles 10 to 12)

The SPEs are responsible for compliance with the product and notification requirements. ESMA is entrusted with the publication of notifications on its website. This will ensure that the SPEs take responsibility for claiming that a product qualifies as an SBBS and that there is transparency in the market. SPEs shall be liable for any loss or damage resulting from incorrect or misleading notifications under the conditions stipulated by national law. Investors will have to perform the due diligence required for any investment in financial products but may place appropriate reliance on the SBBSs notification and the information disclosed by SPEs concerning compliance with specific SBBSs product requirements. Transparency requirements imposed on SBBSs and underlying sovereign bonds should allow investors to understand, assess and compare transactions in SBBSs and not to rely solely on third parties, such as credit rating agencies. They should allow investors to act as prudent investors and do their due diligence. This proposal ensures that investors will have all the relevant information on SBBSs at their disposal. To facilitate the process for investors and SPEs, the information to be provided to ESMA will be harmonised and a template will be developed by ESMA for the assessment of SBBSs. SPEs should make the information freely available to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity. Moreover, before the transferring of SBBSs investors should receive information regarding the allocation of proceeds and the procedure to be followed in anticipation or following a non-payment of an underlying asset. To allow supervisory authorities to be informed and perform their tasks related to the issuance of an SBBSs issue, ESMA should inform the relevant competent authorities of each notification of SBBSs received.

Supervision and cooperation among authorities (Articles 13 and 14)

To safeguard financial stability, ensure investors' confidence and promote liquidity, a proper and effective supervision of the SBBSs markets is important. To this end, the proposal requires Member States to designate competent authorities in accordance with existing EU legal acts in the area of financial services. Compliance with the requirements set out in the Regulation should be primarily performed to ensure investors' protection and, where applicable, on prudential aspects that may be linked to the issuance or holding of SBBSs by regulated entities. The designated supervisors should have the powers that are granted to it under the relevant financial services legislation.

In view of the cross-border nature of the SBBSs market, cooperation between competent authorities and the ESMA should be ensured through information exchange, cooperation in supervisory activities and investigations and coordination of decision-taking.

To ensure a consistent interpretation and common understanding of the SBBSs requirements by competent authorities, ESMA should facilitate the coordination of the work of competent authorities and assess practical issues which may arise with regards to SBBSs.

Sanctions and remedial measures (Article 15 to 18)

As a deterrent to prevent abusive behaviour and keep trust in the product, appropriate administrative sanctions and remedial measures should be provided for situations where a product that is declared by an SPE to be an SBBS does not fulfil the requirements for that product to be considered an SBBS or other notification or transparency requirements. The fact that a product which is declared to be an SBBS is effectively that is of particular importance to ensure investors' protection. For this reason, Article 15 provides for a specific procedure according to which a competent authority has to decide whether a product which is suspected not to comply with the requirements set out in the Regulation is an SBBS or not. Where criminal sanctions for certain infringements are provided for under national law, competent authorities should have the powers to transmit to ESMA and other competent authorities relevant information regarding criminal investigations and proceedings related to the infringement. Sanctions inflicted to an SPE should be published. Moreover, an SBBS that is found not fulfilling the requirements laid down in the proposed Regulation should be removed without undue delay from the list of SBBSs compiled by ESMA.

Macroprudential monitoring (Article 19)

According to the analysis performed ahead of the issuance of this proposal it appears that SBBSs will not have impact on the liquidity of other financial products on the market or have an impact on financial stability. However, since SBBSs are a new product it is appropriate that the ESRB, within its mandate, monitor the development of the market.

Notifications (Article 20)

Member States shall notify the Commission and ESMA about the laws, regulations and administrative provisions related to the implementation of supervisory and sanctioning obligations provided for in the Regulation.

Amendments to other legal acts (Articles 21 to 24)

Articles 21 to 24 amend some articles of other legal acts, in particular the undertakings for collective investment in transferable securities (UCITS) Directive, the Capital Requirement Regulation (CRR), the institutions for occupational retirement provision (IORP II) Directive and the Insurance (Solvency II) Directive. These modifications are needed to ensure that investments in SBBSs receive in all financial sectors regulated at European level a regulatory treatment equivalent to the one given to their underlying assets, i.e. euro area sovereign bonds.

In particular, UCITS need to respect diversification rules, which may prevent them from holding certain volumes of SBBSs. The aim of amending the UCITS Directive is to ensure that when Member States authorise UCITS to invest up to 100% in transferrable securities issued or guaranteed by a public body, this exception is also granted to SBBSs. To this end a new Article 54a is inserted in the Directive.

For insurance companies, SBBSs would be treated as securitisation. Under the Solvency II standard formula, any securitisation is subject to capital requirements related to spread risk in the calculation of the basic solvency capital requirement. SBBSs would therefore be subject to capital requirements for spread risk, putting them at a disadvantage relative to direct holdings of Member States' central government bonds denominated and funded in domestic currency. Article 104 of the Solvency II Directive is thus amended by adding a new paragraph, to ensure that for the purposes of the calculation of capital requirements, SBBSs are treated as Member States' central government and central banks denominated and funded in their domestic currency.

Similarly, the Capital Requirement Regulation is amended to ensure that capital requirements and exposure limits for institutions holding SBBSs are the same as holding Member States' sovereign bonds directly. This goal is achieved, through the addition of a paragraph to Article 268 (as modified by Regulation (EU) 2017/2401), by extending to all tranches of SBBSs issues the look-through approach granted to the exposure to securitisation positions in the calculation of capital requirements. This ensures that exposures to all tranches of SBBSs issues get the same prudential treatment as the underlying assets. In addition, by amending Article 304, the same treatment as granted to sovereign bonds in market risk capital requirements is granted to SBBSs. Finally, Article 390 is also amended to ensure that for exposure limits the look though approach used for securitisation is applied also to exposures to SBBSs.

For occupational pension funds, the IORP II Directive sets out spread risk limits that Member States may choose not to apply to investments in government bonds. Moreover, Member States may impose quantitative restrictions for securitisations. To ensure the same treatment for SBBSs, a new Article 18a is added in IORP II Directive.

The Commission will adopt the necessary changes to the delegated acts linked to the above mentioned pieces of legislation where necessary.

This is in particular the case for the Liquidity Coverage Ratio Regulation (Commission Delegated Regulation (EU) No 2015/61[10]), for which the change should ensure that SBBSs are qualified as Level 1 assets that represent claims on the central government of a Member State or that are guaranteed by a central government of a Member State, and insurance prudential requirements (Commission Delegated Regulation (EU) 2015/35[11]) to ensure that rules applicable to exposures of insurance companies to euro area sovereign bonds are also applicable to exposures to SBBSs.

Until the (relevant provisions in the) delegated acts based on these Directives and Regulations are amended, they will remain applicable as such.

The Commission will also adopt the necessary changes to the prospectus schedules and building blocks (Commission Delegated Regulation (EU) 2017/1129[12]) to ensure that appropriate disclosure for this new type of financial instrument, tailored to the characteristics of the product, are set out. This should be done in a proportionate manner, taking into account the comparably simple nature of the product and with the aim of avoiding unnecessary administrative burden.

[10] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 11 17.1.2015, p.1).

[11] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

[12] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

2018/0171 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on sovereign bond-backed securities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[13],

Having regard to the opinion of the European Economic and Social Committee[14],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Sovereign Bond-Backed Securities (‘SBBSs’) can address some vulnerabilities that have been exposed by or have resulted from the 2007-2008 financial crisis. More specifically, SBBSs can help banks and other financial institutions better diversify their sovereign exposures, further weaken the bank-sovereign nexus and enhance the supply of low-risk euro denominated assets. SBBSs could in addition render bonds issued in small and less liquid national markets more attractive for international investors, which can foster private sector risk sharing and risk reduction and promote a more efficient allocation of risks among financial operators.

(2) Under the existing legal framework, SBBSs would be treated as securitisations and thus be subject to additional charges and discounts relative to the charges and discounts faced by the euro area sovereign bonds in the underlying portfolio. Those additional charges and discounts would hinder the production and use of SBBSs by the private sector, despite the fact that SBBSs do not carry the risks associated with securitisations that justify such charges and discounts. SBBS should therefore be subject to a regulatory framework that better takes into account the unique features and properties of SBBSs to enable that product to emerge on the market. To that end, the removal of regulatory obstacles is neecessary.

(3) Enabling a market-led development of SBBSs is part of the Commission's efforts to reduce risks to financial stability and advance towards completion of the Banking Union. SBBSs could support further portfolio diversification in the banking sector, while creating a new source of high-quality collateral, which is particularly suited for use in cross-border financial transactions. Furthermore, enabling SBBSs could also

[13] OJ C , , p. .

[14] OJ C , , p. .

increase the number of instruments available for cross-border investment and risk sharing, which feeds into the Commission's efforts to deepen and integrate further Europe's capital markets in the context of the Capital Markets Union.

(4) SBBSs do not involve any mutualisation of risks and losses among Member States because Member States will not mutually guarantee their respective liabilities within the portfolio of sovereign bonds underlying the SBBSs. Enabling the emergence of SBBSs neither involves any changes to the current regulatory treatment of sovereign exposures.

(5) To achieve the objectives of geographic risk diversification within the Banking Union and the internal market, the underlying portfolio of SBBSs should be composed of sovereign bonds of Member States whose currency is the euro. To avoid currency risks only euro-denominated sovereign bonds issued by Member States whose currency is the euro should be allowed for inclusion in the SBBSs underlying portfolio. To ensure that sovereign bonds of each euro-area Member State contribute to the production of SBBSs in line with each Member State's stake in the stability of the overall euro area, the relative weight of the national sovereign bonds in the SBBSs' underlying portfolio should be very close to the relative weight of the respective Member States in the key for subscription by the national central banks of Member States of the European Central Bank's capital.

(6) To provide for a high quality low-risk asset and at the same time cater for investors' different levels of risk appetite, an SBBS issue should be composed of both a senior tranche and one or more subordinated tranches. The senior tranche, corresponding to seventy percent of the nominal value of an SBBS issue, should keep the SBBS issue expected loss rate in line with that of the safest euro area sovereign bonds, taking into account the risk and correlation of the sovereign bonds in the SBBSs underlying portfolio of sovereign bonds. The subordinated tranches should provide for protection to the senior tranche. The seniority of the tranches should determine the order in which losses on the underlying portfolio of sovereign bonds should be borne by investors. To limit the risk of the junior tranche (the tranche bearing losses before any other tranche), the nominal value of the junior tranche should however be at least 2 percent of the outstanding nominal value of the entire SBBSs issue.

(7) To ensure the integrity of an SBBS issue and limit as much as possible the risks related to the holding and management of the underlying portfolio of sovereign bonds, maturities of underlying sovereign bonds should be closely aligned with the maturity of the SBBSs and the composition of the underlying portfolio of sovereign bonds should be fixed for the entire lifecycle of the SBBSs.

(8) The standardised composition of the underlying portfolio of an SBBSs may render difficult or impede the issuance of an SBBS issue when sovereign bonds of one or more Member States are not available on the market. For that reason, it should be possible to exclude sovereign bonds of a particular Member State from future issuances of SBBSs where and as long as the issuance of sovereign bonds by that Member State is significantly limited due to a reduced need for public debt or impaired market access.

(9) To ensure that SBBSs are sufficiently homogeneous, the exclusion and re-integration of sovereign bonds of a particular Member State from the underlying portfolio of sovereign bonds should be allowed only following a decision of the Commission, ensuring that all SBBSs issued at the same time have the same underlying portfolio of sovereign bonds.

(10) The fixed size of the senior tranche of each SBBS issue may be reduced for future SBBSs issuances where, due to adverse market developments that severely disrupt the functioning of sovereign debt markets in a Member State or in the Union, a smaller size is required to ensure continued high credit quality and low risk for the senior tranche. When such adverse market developments end, the size of the senior tranche for future SBBSs issuances should be brought back to its initial value of seventy percent. To ensure that SBBSs are standardised, the variation of the senior tranche should be allowed only following a decision of the Commission, ensuring that all senior tranches of SBBSs issues issued at the same time have the same size.

(11) Investors should be protected from the risk of insolvency of the institution that acquires the sovereign bonds ('original purchaser') for the purposes of assembling the SBBSs underlying portfolio. For that reason, only special purpose entities (‘SPEs’) that are exclusively devoted to the issuance and management of SBBSs and that do not undertake any other activities, such as providing credit, should be allowed to issue SBBSs. For the same reason, SPEs should be subject to strict asset segregation requirements.

(12) To manage limited maturity mismatches in the time period between receipt of proceeds of debt service on the underlying portfolio and pay out dates to SBBSs investors, SPEs should be allowed to invest the proceeds from the debt service on the underlying portfolio of sovereign bonds of the SBBSs only in cash and highly liquid financial instruments with low market and credit risk.

(13) Only products that fulfil the requirements regarding the composition and maturity of the underlying portfolio as well as the size of the senior and the subordinated tranches as provided for in this Regulation should enjoy the same regulatory treatment as the regulatory treatment granted to sovereign exposures in terms of capital requirements, concentration limits, and liquidity.

(14) A system of self-attestation by SPEs should ensure that an SBBS issue complies with the requirements of this Regulation. ESMA should therefore keep a list of SBBSs issued, enabling investors to verify whether a product that is offered for sale as an SBBS is indeed an SBBS. For the same reason, ESMA should indicate in that list whether any sanction in relation to a SBBS has been imposed and remove from that list those products that are found to be in violation of this Regulation.

(15) Investors should be able to rely on the notification of SBBSs by SPEs to ESMA and on the information provided by SPEs. Information on SBBSs and the sovereign bonds in the SBBSs underlying portfolio should empower investors to understand, assess and compare SBBSs transactions and not to rely solely on third parties, including credit rating agencies. That possibility should enable investors to act prudently and to carry out their due diligence efficiently. Information on SBBSs should therefore be freely available to investors, via standardised templates, on a website that ensures continuous accessibility.

(16) To prevent abusive behaviour and to ensure that trust in SBBSs is maintained, appropriate administrative sanctions and remedial measures should be provided for by Member States for cases of negligent or intentional infringements of notification or product requirements for SBBSs.

(17) Investors in different financial sectors should be able to invest in SBBSs under the same conditions as they invest in the underlying euro area sovereign bonds. Directive

2009/65/EC of the European Parliament and of the Council[15], Regulation (EU) No 575/2013 of the European Parliament and of the Council[16], Directive 2009/138/EC of the European Parliament and of the Council[17] and Directive (EU) 2016/2341 of the European Parliament and of the Council[18] should therefore be amended to ensure that SBBS are granted the same regulatory treatment as their underlying assets across the various regulated financial sectors.

(18) To safeguard financial stability, ensure investors' confidence and promote liquidity, a proper and effective supervision of SBBSs markets is important. To that end, competent authorities should be informed about the issuance of SBBSs and should receive from SPEs all the relevant information needed to perform their supervisory tasks. Supervision of compliance with this Regulation should primarily be performed to ensure investors' protection and, where applicable, on aspects that may be linked to the issuance and holding of SBBSs by regulated financial entities.

(19) Competent authorities should closely coordinate their supervision and ensure that their decisions are consistent. Where an infringement of this Regulation concerns the fulfilment of the obligations required for a product to be qualified as an SBBS, the competent authority identifying that infringement should inform ESMA, as well as the competent authorities of the other Member States concerned. In the event of disagreement between the competent authorities, ESMA should exercise its binding mediation powers in accordance with Article 19 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[19].

(20) Given that SBBSs are new products, it is appropriate that the European Systemic Risk Board (ESRB) and the national competent and designated authorities for macroprudential instruments oversee the SBBSs market.

(21) As a body with highly specialised expertise regarding securities markets, it is appropriate to entrust ESMA with the development of draft regulatory technical standards concerning the types of investment that the SPE may conduct with the proceeds from the payments of principal or interest of the SBBSs' underlying portfolio, the information to be provided by the SPE for the notification to ESMA of an issuance of SBBSs issues, the information to be provided before transfering a an SBBS and the cooperation and information exchange obligations among competent authorities. The Commission should be empowered to adopt those standards in accordance with Article 290 of the Treaty on the Functioning of the European Union ('TFEU') and with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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15 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

16 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR) (OJ L 176, 27.6.2013, p.1).

17 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).

18 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p.37).

19 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L331, 15.12.2010, p. 84).

(22) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010 with regard to notification requirements of SPEs prior to the issuance of an SBBS issue.

(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to decide whether sovereign bonds of a Member State should be removed from or included in the SBBSs' underlying portfolio and whether the size of the senior tranche of the future SBBSs issues to be issued should be changed. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[20].

(24) Since the objective of this Regulation, namely laying down a framework for SBBSs, cannot be sufficiently achieved by the Member States, given that the emergence of a SBBSs market depends on the removal of obstacles resulting from the application of Union legislation and that a level playing field in the internal market for all institutional investors and entities involved in the operation of SBBSs, can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Chapter 1

Subject matter, scope and definitions

Article 1

Subject matter

This Regulation lays down a general framework for sovereign bond-backed securities ('SBBSs').

Article 2

Scope

This Regulation applies to original purchasers, special purpose entities, investors and any other entity involved in the issuance or holding of SBBSs.

[20] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘competent authority’ means a public authority or a body officially recognised by national law that is empowered by national or Union law to perform the tasks set out in this Regulation;

(2) ‘sovereign bond’ means any debt instrument issued by the central government of a Member State that is denominated and funded in the domestic currency of that Member State and has an original maturity of one year or more;

(3) ‘sovereign bond-backed security’ or ‘SBBS’ means a financial instrument denominated in euro whose credit risk is associated with the exposures to a portfolio of sovereign bonds and that complies with this Regulation;

(4) ‘special purpose entity’ or ‘SPE’ means a legal person, other than the original purchaser, that issues SBBSs and carries out the activities in relation to the underlying portfolio of sovereign bonds in accordance with Articles 7 and 8 of this Regulation;

(5) ‘original purchaser’ means a legal person that purchases sovereign bonds on its own account and subsequently transfers those sovereign bonds to an SPE for the purpose of issuing SBBSs;

(6) ‘investor’ means a natural or legal person that holds an SBBS;

(7) ‘tranche’ means a contractually established segment of the credit risk associated with the SBBSs' underlying portfolio of sovereign bonds and that bears a risk of greater or smaller credit loss than a position of the same amount in another segment of that credit risk;

(8) ‘senior tranche’ means the tranche within an SBBSs issue that bears losses after all the subordinated tranches of that SBBS issue have done so;

(9) ‘subordinated tranche’ means any tranche within an SBBSs issue bearing losses before the senior tranche;

(10) ‘junior tranche’ means the tranche within an SBBSs issue bearing losses before any other tranche..

Chapter 2

Composition, maturity and structure of SBBSs

Article 4

Composition of the underlying portfolio

1. The underlying portfolio of an SBBS issue shall only consist of the following:

   (a) sovereign bonds of Member States whose currency is the euro;

   (b) the proceeds from the redemption of those sovereign bonds.

2. The weight of sovereign bonds of every Member State within an SBBSs' underlying portfolio (‘baseline weight’) shall be equal to the relative weight of the contribution

to the European Central Bank (ECB) by that Member State in accordance with the key for subscription, by the national central banks of Members States, of the ECB's paid-in capital as laid down in Article 29 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

SPEs may however deviate from the nominal value of sovereign bonds of each Member State, as given by the application of the baseline weight, by maximum five percent.

3. Sovereign bonds of a Member State shall be excluded from the SBBSs' underlying portfolio where the Commission has adopted an implementing act establishing that any of the following situations exist:

(a) over the previous twelve months ('period of reference'), the Member State has issued less than half of the amount of sovereign bonds resulting from its relative weight determined in accordance with paragraph 1, multiplied by the aggregate amount of SBBSs issued in the twelve months prior to the period of reference;

(b) over the previous twelve months, the Member State has financed at least half of its annual funding requirements through official financial assistance in support of the implementation of a macroeconomic adjustment programme as specified in Article 7 of Regulation (EU) No 472/2013 of the European Parliament and of the Council[21].

Where the first subparagraph applies, SPEs shall determine the baseline weights of sovereign bonds of the remaining Member States by excluding the sovereign bonds of the Member referred to in the first subparagraph and applying the calculation method of paragraph 1.

4. ESMA shall monitor and assess whether the situation referred to in points (a) or (b) of paragraph 3 exist or has ceased to exist and inform the Commission thereof.

5. The Commission may adopt an implementing act establishing that the situation referred to in points (a) or (b) of paragraph 3 exist or has ceased to exist. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 26(2).

Article 5

Maturity of the underlying assets

1. SBBSs tranches that are part of the same issue shall have a single original maturity date. That maturity date shall be equal to or up to one day longer than the remaining maturity of the sovereign bond with the longest remaining maturity within the underlying portfolio.

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21 Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p. 1).

2. The remaining maturity of any sovereign bond in an SBBSs' underlying portfolio shall not be shorter than six months than the remaining maturity of the sovereign bond with the longest remaining maturity in that portfolio.

Article 6

Structure of the tranches, payment and losses

1. An SBBSs issue shall be composed of one senior tranche and one or more subordinated tranches. The outstanding nominal value of the senior tranche shall be seventy percent of the outstanding nominal value of the entire SBBSs issue. The number and the outstanding nominal values of the subordinated tranches shall be determined by the SPE, subject to the limitation that the nominal value of the junior tranche shall be at least two percent of the outstanding nominal value of the entire SBBSs issue.

2. Where adverse developments severely disrupt the functioning of sovereign debt markets in a Member State or in the Union, and where that disruption has been confirmed by the Commission in accordance with paragraph 4, SPEs shall lower the outstanding nominal value of the senior tranche to sixty percent for any SBBSs issue issued after that confirmation.

   Where the Commission, in accordance with paragraph 4, has confirmed that that disruption has ceased to exist, paragraph 1 will apply to all SBBSs issues issued after that confirmation.

3. ESMA shall monitor and assess whether the situation referred to in paragraph 2 exists or has ceased to exist and inform the Commission thereof.

4. The Commission may adopt an implementing act establishing that the disruption referred to in paragraph 2 exists or has ceased to exist. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 26(2).

5. Payments under an SBBS shall be dependent upon the payments of the underlying portfolio of sovereign bonds.

6. The distribution of losses and the order of payments shall be determined by the tranche of the SBBSs issue and shall be fixed for the entire life cycle of the SBBSs issue.

   Losses shall be recognised and assigned as they materialise.

Article 7

Issuance of SBBSs and obligations of SPEs

1. SPEs shall comply with all of the following requirements:

   (a) they are established in the Union;

   (b) their activities are limited to issuing and servicing SBBSs issues and managing the underlying portfolio of those SBBSs issues in accordance with Articles 4, 5, 6 and 8;

   (c) SPEs are solely responsible for the provision of services and activities referred to in point (b).

2. SPEs shall have full ownership of the underlying portfolio of an SBBSs issue.

The underlying portfolio of an SBBSs issue shall constitute a security financial collateral arrangement as defined in Article 2(c) of Directive 2002/47/EC of the European Parliament and of the Council[22] securing the financial obligations of the SPE towards investors in that SBBSs issue.

Holding an SBBS of a specific SBBS issue shall not provide for any rights or claims on the assets of that SPE issuing the SBBSs issue that go beyond the underlying portfolio of that isse and the income generated from holding that SBBS.

Any reduction in the value or proceeds of the underlying portfolio of sovereign bonds shall not give rise to a liability claim from investors.

3. An SPE shall keep records and accounts so that it:

(a) segregates its own assets and financial resources from those of the underlying portfolio of the SBBSs issue and the related proceeds;

(b) segregates the underlying portfolios and proceeds of different SBBSs issues;

(c) segregates the positions held by different investors or intermediaries;

(d) verifies that at any point in time the number of SBBSs of one issue is equal to the sum of the SBBSs held by all investors or intermediaries in that issue;

(e) verifies that the outstanding nominal value of the SBBSs of one issue is equal to the outstanding nominal value of the underlying portfolio of sovereign bonds of that issue.

4. SPEs shall hold the sovereign bonds referred to in Article 4(1)(a) in custody, as permitted under point (1) of Section B of Annex I to Directive 2014/65/EU of the European Parliament and of the Council[23] and point (2) of Section A of the Annex to Regulation (EU) No 909/2014 of the European Parliament and of the Council[24] only at central banks, central securities depositories, authorised credit institutions or authorised investment firms.

Article 8

Investment policy

1. An SPE shall invest payments of principal or interest from the sovereign bonds referred to in Article 4(1)(a) that are due prior to payments of principal or interest under the SBBS only in cash, or in highly liquid financial instruments denominated in euro with low market and credit risk. Those investments shall be eligible for liquidation within one day with minimal adverse price effect.

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22 Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

23 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

24 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p.1).

An SPE shall hold in custody, as permitted under point (1) of Section B of Annex I to Directive 2014/65/EU and point (2) of Section A of the Annex to Regulation (EU) No 909/2014, the payments referred to in the first subparagraph only at central banks, central securities depositories, authorised credit institutions or authorised investment firms.

2. An SPE shall not change the underlying portfolio of an SBBS until the maturity of that SBBS.

3. ESMA shall develop draft regulatory technical standards further specifying the financial instruments that can be considered to be highly liquid with minimal market and credit risk as referred to in paragraph 1. ESMA shall submit those draft regulatory technical standards to the Commission by [*6 months from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Chapter 3

Use of the designation SBBS and notification, transparency and information requirements

Article 9

Use of the designation 'Sovereign Bond-Backed Securities'

The designation ‘Sovereign Bond-Backed Security’ or ‘SBBS’ shall only be used for financial products that comply with both of the following conditions:

(a) the financial product complies on an ongoing basis with Articles 4, 5 and 6;

(b) ESMA has been notified of that financial product in accordance with Article 10(1) and the financial product has been included in the list referred to in Article 10(2).

Article 10

SBBS notification requirements

1. An SPE shall notify ESMA at least one week before issuance of an SBBSs issue by means of the template referred to in paragraph 5 of this Article that an SBBSs issue meets the requirements of Articles 4, 5 and 6. ESMA shall inform the SPE's competent authority thereof without undue delay.

2. ESMA shall maintain on its official website a list of all SBBSs issues that have been notified by SPEs. ESMA shall update that list instantly and remove any SBBSs issue that is no longer considered to be an SBBSs issue following a decision of competent authorities in accordance with Article 15.

3. A competent authority that has imposed remedial measures or administrative sanctions as referred to in Article 15 shall immediately notify ESMA thereof. ESMA shall immediately indicate on the list referred to in paragraph 2 of this Article that a

competent authority has imposed administrative sanctions for which there is no longer a right of appeal, in relation to the SBBS concerned.

4. ESMA shall develop draft regulatory technical standards specifying the information referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [*6 months from the date of entry into force of this Regulation*].

Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. ESMA shall develop draft implementing technical standards to establish the templates to be used for the provision of the information referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by [*6 months from the date of entry into force of this Regulation*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 11

Transparency requirements

1. An SPE shall, without undue delay, provide investors and competent authorities with the following information:

(a) information on the underlying portfolio that is essential for assessing whether the financial product complies with Articles 4, 5 and 6;

(b) a detailed description of the priority of payments of the tranches of the SBBSs issue;

(c) where no prospectus has been drawn up in the cases set out in Articles 1(4), 1(5) or 3(2) of Regulation (EU) No 2017/1129 of the European Parliament and of the Council[25], an overview of the main features of the SBBS, including, where applicable, details regarding the exposure characteristics, the cash flows and loss waterfall;

(d) the notification referred to in Article 10(1).

The information referred to in point (a) of this paragraph shall be made available at the latest one month after the due date for the payment of interest of the SBBS.

2. An SPE shall make the information referred to in paragraph 1 available on a website that:

(a) has a well-functioning data quality control system;

(b) is subject to appropriate governance standards and is maintained and operated in accordance with an organisational structure that ensures the continuity and orderly functioning of the website;

[25] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p.12).

(c) is subject to systems, controls and procedures that identify all relevant sources of operational risk;

(d) includes systems that ensure the protection and integrity of the information received and the prompt recording of that information;

(e) makes it possible to keep records of the information for at least five years after the maturity date of every SBBSs issue.

Information referred to in paragraph 1 and the location where the information is made available shall be indicated by the SPE in the documentation regarding the SBBSs provided to investors.

Article 12

Information requirements

1. Before transferring an SBBS, the transferor shall provide to the transferee all the following information:

(a) the procedure to allocate proceeds from the underlying portfolio of sovereign bonds to the different tranches of the SBBSs issue, including following or in anticipation of a non-payment on the underlying assets;

(b) how voting rights on an exchange offer following or in anticipation of a non-payment on any sovereign bonds in the underlying portfolio shall be assigned to investors and how any losses from a debt non-payment shall be allocated across the different tranches of the SBBSs issue.

2. ESMA shall develop draft regulatory technical standards to specify the information referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [*6 months from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Chapter 4

Product oversight

Article 13

Supervision

1. Member States shall designate one or more competent authorities to supervise the compliance of SPEs with this Regulation. Member States shall inform the Commission and ESMA about those competent authorities and, where relevant, about how their functions and duties are divided.

The competent authority of the Member State of where the SPE is established shall supervise compliance with the requirements laid down in this Regulation.

2. Member States shall ensure that competent authorities have the supervisory, investigatory and sanctioning powers to fulfil their duties under this Regulation.

They shall have the power to, at least:

(a) request access to any documents in any form to the extent that they relate to SBBSs, and to receive or take a copy thereof;

(b) require the SPE to provide information without delay;

(c) require information from any person related to the activities of the SPE;

(d) carry out on-site inspections with or without prior announcement;

(e) take appropriate measures to ensure that an SPE continues to comply with this Regulation;

(f) issue an order to ensure that an SPE complies with this Regulation and desists from a repetition of any conduct that breaches this Regulation.

3. ESMA shall publish and keep up-to-date on its website a list of competent authorities.

Article 14

Cooperation between competent authorities and ESMA

1. Competent authorities and ESMA shall cooperate closely and exchange information to carry out their duties. In particular, they shall closely coordinate their supervision to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation and provide cross-jurisdictional assessments in the event of any disagreements.

To facilitate the use of powers of competent authorities and ensure the consistent application and enforcement of the obligations set out in this Regulation, ESMA shall act within the powers set out in Regulation (EU) No 1095/2010.

2. A competent authority that has clear and demonstrable grounds that an SPE is in breach of this Regulation shall promptly inform in a detailed manner the competent authority of the Member State where the SPE is established. The competent authority of the Member State where the SPE is established shall take appropriate measures, including the decision referred to in Article 15.

3. Where the SPE persists in acting in a manner that is clearly in breach of this Regulation despite measures taken by the competent authority of the Member State where it is established, or because that competent authority has failed to take measures within a reasonable time, the competent authority that has detected a breach of this Regulation may, after informing the competent authority of the Member State where the SPE is established and ESMA, take all appropriate measures to protect investors, including prohibiting the SPE from carrying out any further marketing of SBBSs within its territory and taking the decision referred to in Article 15.

Article 15

Misuse of the SBBS designation

1. Where there are reasons to believe that an SPE in infringement of Article 9 has used the designation 'SBBS' to market a product that fails to comply with the requirements set out in that Article, the competent authority of the Member State where the SPE is established shall follow the procedure provided for in paragraph 2.

2. Within 15 days after becoming aware of the possible infringement referred to in paragraph 1 the competent authority of the Member State where the SPE suspected of the infringement is established shall decide whether Article 9 has been infringed and shall notify ESMA and the other relevant competent authorities thereof, including the competent authorities of the investors, when known. A competent authority that disagrees with the decision taken shall notify all other relevant competent authorities about its disagreement without undue delay. Where that disagreement is not resolved within three months of the date on which all relevant competent authorities have been notified, the matter shall be referred to ESMA in accordance with Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010. The conciliation period referred to in Article 19(2) of Regulation (EU) No 1095/2010 shall be one month.

Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in the first subparagraph, ESMA shall take the decision referred to in Article 19(3) of Regulation (EU) No 1095/2010 within one month. During the procedure set out in this paragraph, an SBBS appearing on the list maintained by ESMA pursuant to Article 10(2) shall continue to be considered a SBBS and shall be kept on that list.

Where the relevant competent authorities agree that the infringement by the SPE is related to non-compliance with Article 9 in good faith, they may decide to grant the SPE a period of maximum three months to remedy the identified infringement, starting from the day the SPE was informed of the infringement by the competent authority. During that period, an SBBS appearing on the list maintained by ESMA pursuant to Article 10(2) shall continue to be considered an SBBS and shall be kept on that list.

3. ESMA shall develop draft regulatory technical standards to specify the cooperation obligations and the information to be exchanged under paragraph 1 and 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [*6 months from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 16

Remedial measures and administrative sanctions

1. Without prejudice to the right for Member States to lay down criminal sanctions pursuant to Article 17, competent authorities shall impose on the SPE or the natural person managing the SPE the appropriate remedial measures, including the decision referred to in Article 15, and the appropriate administrative sanctions set out in paragraph 3 where SPEs:

(a) have failed to comply with the obligations set out in Articles 7 and 8;

(b) have failed to meet the requirements of Article 9, including where they have not notified ESMA in accordance with Article 10(1), or have made a misleading notification;

(c) have failed to meet the transparency requirements of Article 11.

2. The administrative sanctions referred to in paragraph 1 shall be at least the following:

(a) a public statement indicating the identity of the natural or legal person having committed the infringement and the nature of the infringement;

(b) an order requiring the natural or legal person that committed the infringement to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban preventing any member of the SPE's management body or any other natural person held responsible for the infringement from exercising management functions in SPEs;

(d) in case of an infringement as referred to in point (b) of paragraph 1, a temporary ban on the SPE from making a notification as referred to in Article 10(1);

(e) an administrative pecuniary sanctions of maximum EUR 5 000 000, or in Member States the currency of which is not the euro, the corresponding value in the national currency on [*the date of entry into force of this Regulation*], or of maximum 10 % of the total annual net turnover of the SPE, as established in the most recent available accounts approved by the management body of the SPE;

(f) an administrative pecuniary sanctions of maximum twice the amount of the benefit derived from the infringement where that benefit can be determined, even where that benefit exceeds the maximum amounts referred to in point (e).

3. Competent authorities, when determining the type and level of administrative sanctions, shall take into account the extent to which the infringement was intentional or results from negligence and all other relevant circumstances, including, where appropriate:

(a) the materiality, gravity and the duration of the infringement;

(b) the degree of responsibility of the natural or legal person responsible for the infringement;

(c) the financial strength of the responsible natural or legal person;

(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as those profits or losses can be determined;

(e) the losses for third parties caused by the infringement;

(f) the level of cooperation of the responsible natural or legal person with the competent authority;

(g) previous infringements by the responsible natural or legal person.

4. Member States shall ensure that any decision imposing the remedial measures or administrative sanctions is properly reasoned and is subject to a right of appeal.

Article 17

Interaction with criminal sanctions

Member States that have laid down criminal sanctions for the infringement referred to in Article 16(1) shall give their competent authorities all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive from, and to provide to, other competent authorities and ESMA specific information about criminal investigations or proceedings commenced for the infringements referred to in Article 16(1).

Article 18

Publication of administrative sanctions

1. Competent authorities shall publish on their website any decision imposing an administrative sanction in respect of which there is no longer a right of appeal and which is imposed for an infringement as referred to in Article 16(1) without undue delay and after the person concerned has been informed.

   The publication referred to in subparagraph 1 shall include information on the type and nature of the infringement, the identity of the natural or legal person on whom the administrative sanction has been imposed.

2. Competent authorities shall publish the administrative sanction on an anonymous basis, in accordance with national law, in any of the following circumstances:

   (a) where the administrative sanction is imposed on a natural person and, following an prior assessment, publication of personal data is found to be disproportionate;

   (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

   (c) where publication would cause disproportionate damage to the SPE or natural persons involved.

   Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time.

3. Competent authorities shall ensure that information published under paragraph 1 or 2 remains on their official website for five years. Personal data shall be retained on the official website of the competent authority only for the period necessary.

Article 19

Macroprudential oversight of the SBBSs market

Within the limits of its mandate laid down in Regulation (EU) No 1092/2010 of the European Parliament and of the Council[26], the ESRB shall be responsible for the macroprudential

[26] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p.1).

oversight of the Union's SBBSs market and act in accordance with the powers set out in that Regulation.

Article 20

Member States notifications

Member States shall notify the laws, regulations and administrative provisions referred to in Articles 13 and 16 to the Commission and ESMA by [*one year from the date of entry into force of this Regulation*]. Member States shall notify the Commission and ESMA of any subsequent amendments thereto without undue delay.

Chapter 4
Implementing powers and final provisions

Article 21

Amendment to Directive 2009/65/EC

In Directive 2009/65/EC the following Article 54a is inserted:

"Article 54a

> 1. Where Member States apply a derogation as referred to in Article 54 or grant a waiver as referred to in Article 56(3), the competent authorities of the UCITS home Member State shall:
>
> (a) apply the same derogation or grant the same waiver for UCITS to invest up to 100% of their assets in SBBSs as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*] in accordance with the principle of risk-spreading where those competent authorities consider that unit-holders in the UCITS have a protection that is equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 52;
>
> (b) shall waive the application of paragraphs 1 and 2 of Article 56.
>
> 2. By [*6 months from date of entry into force of SBBS Regulation*], Member States shall adopt, publish and communicate to the Commission and ESMA measures necessary to comply with paragraph 1.".

Article 22

Amendment to Directive 2009/138/EC

In Article 104 of Directive 2009/138/EC, the following paragraph 8 is added:

> "8. For the purposes of the calculation of the Basic Solvency Capital Requirement, exposures to sovereign bond-backed securities as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*]

shall be treated as exposures to Member States' central governments or central banks denominated and funded in their domestic currency.

By [*6 months from date of entry into force of SBBS Regulation*], Member States shall adopt, publish and communicate to the Commission and ESMA measures necessary to comply with the first subparagraph.".

Article 23

Amendments to Regulation EU No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) in Article 268 , the following paragraph 5 is added:

"5. By way of derogation from the first paragraph, sovereign bond-backed securities as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*] may always be treated in accordance with the first paragraph of this Article.";

(2) in Article 325, the following paragraph 4 is added:

"4. For the purpose of this Title, institutions shall treat exposures in the form of sovereign bond-backed securities as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*] as exposures to the central government of a Member State.";

(3) in Article 390(7), the following subparagraph is added:

"The first subparagraph shall apply to exposures to sovereign bond-backed securities as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*].".

Article 24

Amendment to Directive (EU) 2016/2341

In Directive (EU) 2016/2341, the following Article 18a is inserted:

"*Article 18a*

Sovereign-Bond Backed Securities

1. In their national rules regarding the valuation of assets of IORPs, the calculation of own funds of IORPs, and the calculation of a solvency margin for IORPs, Member States shall treat sovereign-bond backed securities, as defined in Article 3(3) of Regulation [*reference of the SBBS Regulation to be inserted*], in the same way as euro area sovereign debt instruments.

2. By [*6 months from date of entry into force of the SBBS Regulation*], Member States shall adopt, publish and communicate to the Commission and ESMA measures necessary to comply with paragraph 1.".

Article 25

Evaluation clause

No sooner than five years after the date of entry into force of this Regulation and once sufficient data have become available, the Commission shall carry out an evaluation of this Regulation assessing whether it has achieved its objectives to eliminate undue regulatory hindrances to the emergence of SBBSs.

Article 26

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[27]. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 27

Entry into force

This Regulation shall enter into force the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

[27] Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

LEGISLATIVE FINANCIAL STATEMENT

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on sovereign bond-backed securities

1.2. Policy area(s) concerned

Financial Market Regulation, Banking Union

1.3. Nature of the proposal/initiative

☑ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[28]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The proposal is part of the Commission's ambitions to complete the Banking Union by fostering risk reduction and private sector risk sharing. It consists of an enabling framework that overcomes the present regulatory impediments to Sovereign Bond-Backed Securities (SBBSs) that stem from the difference of treatment between SBBSs themselves and government bonds, which constitute SBBSs' underlying portfolio. SBBSs could help banks (and other institutions) diversify their sovereign bond portfolios and weaken the bank-sovereign nexus, which despite recent progress remains strong in some cases.

1.4.2. Specific objective(s)

<u>Specific objective No</u> For an asset like SBBSs to be "enabled", thus allowing for a market test of its viability, the following two specific objectives would have to be achieved: 1. Eliminate undue regulatory hindrances (i.e., restore regulatory "neutrality" for SBBSs). 2. Encourage liquidity and "benchmark" quality (i.e., the new instrument should be treated like other benchmarks in regulation—de jure liquidity—and should be capable of attaining a sufficient critical mass/standardisation so as to be liquid also de facto).

[28] As referred to in Article 54(2)(a) or (b) of the Financial Regulation

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The key stakeholders that would be affected by the proposed legislation include banks (and other financial institutions subject to CRR/CRD), other asset managers, the arrangers/issuers of the product, supervisors, and debt management officers (as proxies for the effect of the legislation and of SBBSs on the national sovereign debt markets).

The impact, both in terms of potential benefits and potential costs, would depend on the size of the market for this novel financial product. The proposed intervention aims only at "enabling" this novel product, which presently does not yet exist. The viability of this novel product, however, and thus the extent to which a market for this novel financial product may develop, depends also on factors other than their regulatory treatment and can thus only be ascertained via a market test—which the proposed intervention makes possible.

In general terms, if SBBSs—once enabled from a regulatory perspective by, for example, eliminating regulatory surcharges as regards capital requirements and liquidity coverage requirements—prove viable, the following benefits are expected

- Availability of a new product which would help banks, insurance companies, pension funds and other investors to diversify their sovereign bond portfolios.

- Enhanced financial stability as SBBSs would help weaken the bank-sovereign loop. Further, SBBSs could also prove stabilising in times of financial market stress as the share of the outstanding sovereign bonds held in SBBS would not be liable to fire sales.

- Expanded investor base for European sovereign debt, an effect which is expected to be larger for smaller Member States whose sovereign bonds may not be on the radar screen of international investors.

- Indirect benefits for retail investors, households and SMEs to the extent that above-mentioned benefits in terms of enhanced financial stability materialise.

As regards the costs, these are expected to be limited.

- For citizens/consumers indirect limited costs may appear due to SBBS's impact on some sovereign bond markets' liquidity which could lead to higher costs of financing, which would in turn be carried by the tax-payer. If SBBSs prove viable, these effects are likely to be offset by the reduction in overall risk (and thus borrowing costs) from enhanced financial stability.

- Issuers of SBBSs would have to bear the limited costs of creating such a product, such as legal costs of setting up the issuing vehicle, etc.

- Administrations (the Commission, ESMA, national supervisory authorities, …) would bear the rather limited costs of the drafting of the legislation and of the legislative interventions that were to be required in the future to adapt it to evolving circumstances. The new instrument would also give rise to supervision costs, but these are likely to be marginal (since supervisors would need to supervise SBBSs investors regardless).

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The impact of the legislation could be assessed by monitoring the extent to which these new products will be actually created and traded. It needs to be kept in mind, however, that the enabling legislation will allow for a market test of the product's viability and that the development of this new market depends on several other factors which are independent of, or may be only tenuously linked to, the regulatory framework. This is likely to make it difficult to disentangle the effects of the proposed legislation per se (in other words, the legislation may work precisely as intended, and yet SBBSs may fail to develop for independent reasons). Similarly, demand for SBBSs will depend on the overall interest rate environment, the risk appetite and the demand from various investor types for the different tranches, etc. In other words, while SBBSs may not develop in the current economic backdrop, it does not mean that they won't in the future, once the regulatory hindrances are successfully removed.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

In the short term, ESMA is tasked with developing its capacity to receive notifications for SBBSs issuances, to verify their compliance with the regulation, to inform national competent authorities and receive information from them and to publish notified SBBSs issuances and national competent authorities on its website.

In addition, ESMA will need to develop regulatory and implementing technical standards within XXX months after the date of entry into force of this initiative.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

SBBSs are a tool to enhance financial stability and risk sharing across the euro area. They can thus contribute to the better functioning of the internal market. Article 114 TFEU, that confers to the European institutions the competence to lay down appropriate provisions that have as their objective the establishment and functioning of the internal market, is thus the appropriate legal basis. The identified regulatory impediments to the development of SBBSs markets are laid down in several pieces of EU legislation. As a consequence, individual Member State action would not be able to achieve the goals of this legislative initiative, i.e. to remove such regulatory impediments, since amendments of EU legislation can only be done through EU action.

Expected generated Union added value (ex-post)

The legislative proposal aims at progressing in the area of Banking Union. SBBS could help banks and other institutions diversify their sovereign bond portfolios and weaken the bank-sovereign nexus, thus enhancing financial stability at large.

1.5.3. Lessons learned from similar experiences in the past

ESMA has been charged keeping registers already for UCITS, AIFs, EuVECA and EuSEF. The experience has been overall positive.

1.5.4. Compatibility and possible synergy with other appropriate instruments

The initiative is in line with the enhanced role ESMA is given in the proposal concerning the ESAs' review. It has, however, no direct impact on the Commission’s proposal on the ESA’s review since it concerns specific technical issue not addressed in the review.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☑ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) planned[29]

☐ **Direct management** by the Commission through

– ☐ executive agencies

☐ **Shared management** with the Member States

☑ **Indirect management** by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

☑ bodies referred to in Articles 208 and 209;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

N/A

[29] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements, ESMA prepares regular reports on its activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and undergoes audits by the Court of Auditors and the Internal Audit Service on its use of resources. Monitoring and reporting of the present proposed actions will comply with already existing requirements.

2.2. Management and control system

2.2.1. Risk(s) identified

In relation to the legal, economic, efficient use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new risks that would not be currently covered by an ESMA existing internal control framework.

2.2.2. Control method(s) envisaged

Management and control systems as provided for in the ESMA Regulation are already implemented. ESMA works closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all internal control areas. These arrangements will apply also with regard to the role of ESMA according to the present proposal. Annual internal audit reports are sent to the Commission, Parliament and Council.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) applies to ESMA without any restriction. ESMA currently has a dedicated anti-fraud strategy and resulting action plan. The strategy and action plan has been put in place in 2014. ESMA's strengthened actions in the area of anti-fraud will be compliant to the rules and guidance provided by the Financial Regulation (anti-fraud measures as part of sound financial management), OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2011)376) as well as set out by the Common Approach on EU decentralised agencies (July 2012) and the related roadmap. The Regulation establishing ESMA sets out the provisions on implementation and control of the ESMA budget and applicable financial rules.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	1a: Competitiveness for growth and jobs	Diff./Non-diff.[30]	from EFTA countries[31]	from candidate countries[32]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1.a	12 02 06 ESMA	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading………………………………………]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

30 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
31 EFTA: European Free Trade Association.
32 Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	1A	Competitiveness for growth and jobs

ESMA			Year N[33]	Year N+1[34]	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
Title 1:	Commitments	(1)	0.419	0.225	0.225	0.225	0.225	0.225	0.225	
	Payments	(2)	0.419	0.225	0.225	0.225	0.225	0.225	0.225	
Title 2:	Commitments	(1a)								
	Payments	(2a)								
Title 3:	Commitments	(3a)								
	Payments	(3b)								
TOTAL appropriations for ESMA	Commitments	=1+1a +3a	0.419	0.225	0.225	0.225	0.225	0.225	0.225	
	Payments	=2+2a +3b	0.419	0.225	0.225	0.225	0.225	0.225	0.225	

33 Year N is the year in which implementation of the proposal/initiative starts.

34 The expenditure for the period after 2020 is given only for illustrative purposes. The financial impact on the European Budget post 2020 will be part of the Commission proposals for the next Multiannual Financial Framework.

Heading of multiannual financial framework	5	‘Administrative expenditure’

EUR million (to three decimal places)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
DG: <…….>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								
TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year **N**[35]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.419	0.225	0.225	0.225	0.225	0.225	0.225	
	Payments	0.419	0.225	0.225	0.225	0.225	0.225	0.225	

35 Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. Estimated impact on ESMA's appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☑ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**[36]		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[37]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[38]…																		
- Developing an SBBS notifications register, an SBBS sanctions database, a list of SBBS NCAs and models for SBBS				0.281		0.097		0.097		0.097		0.097		0.097		0.097		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		

36 The expenditure for the period after 2020 is given only for illustrative purposes. The financial impact on the European Budget post 2020 will be part of the Commission proposals for the next Multiannual Financial Framework.

37 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

38 As described in point 1.4.2. 'Specific objective(s)…'

Subtotal for specific objective No 2																
TOTAL COST		0.281		0.097		0.097		0.097		0.097		0.097		0.097		

3.2.3. Estimated impact on ESMA's human resources

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N**[39]	Year **N+1**[40]	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL** [41]
Officials (AD Grades)	0.087	0.082	0.082	0.082	0.082	0.082	0.082	
Officials (AST grades)								
Contract staff	0.051	0.046	0. 046	0. 046	0. 046	0. 046	0. 046	
Temporary staff								
Seconded National Experts								
TOTAL	**0.119**	**0.128**	**0.128**	**0.128**	**0.128**	**0.128**	**0.128**	

Estimated impact on the staff (additional FTE) – establishment plan

Function group and grade	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
AD16				
AD15				
AD14				
AD13				

39 Year N is the year in which implementation of the proposal/initiative starts.

40 The expenditure for the period after 2020 is given only for illustrative purposes. The financial impact on the European Budget post 2020 will be part of the Commission proposals for the next Multiannual Financial Framework.

41 Including recruitment costs

AD12 AD11 AD10 AD9 AD8 AD7 AD6 AD5	1	1	1	1
AD Total	1	1	1	1
AST11 AST10 AST9 AST8 AST7 AST6 AST5 AST4 AST3 AST2 AST1				
AST Total				
AST/SC 6 AST/SC 5 AST/SC 4				

AST/SC 3 AST/SC 2 AST/SC 1				
AST/SC Total				
GRAND TOTAL				

Estimated impact on the staff (additional) – external personnel

Contract agents	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
Function group IV Function group III Function group II Function group I	0.5	1	1	1
Total	0.5	1	1	1

Seconded National Experts	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
Total				

Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations in an annex.

3.2.3.2. Estimated requirements of human resources for the parent DG

– ☑ The proposal/initiative does not require the use of human resources.

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• **External staff (in Full Time Equivalent unit: FTE)**[42]							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the Delegations)							
XX 01 04 *yy*[43] - at Headquarters[44]							
XX 01 04 *yy*[43] - in Delegations							
XX 01 05 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

[42] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations.

[43] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

[44] Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. Compatibility with the current multiannual financial framework

– ☐ The proposal/initiative is compatible the current multiannual financial framework.

– ☑ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[45].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. […]

3.2.5. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year **N**	Year **N+1**[46]	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
NCAs[47]	0.600	0.338	0.338	0.338	0.338	0.338	0.338	
TOTAL appropriations co-financed	0.600	0.338	0.338	0.338	0.338	0.338	0.338	

45 See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.

46 The expenditure for the period after 2020 is given only for illustrative purposes. The financial impact on the European Budget post 2020 will be part of the Commission proposals for the next Multiannual Financial Framework.

47 The level of co-financing for the ESAs is calculated according to the current governance and funding modalities and does not take into account the proposal of the Commission on the ESAs review which is not adopted yet.

3.3. Estimated impact on revenue

– ☑ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– ☐ on own resources

– ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[48]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[48] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.