# Procedure file

## Basic information

| | |
|---|---|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation — 2018/0171(COD) | Awaiting Council's 1st reading position |
| Sovereign bond-backed securities<br><br>Amending Directive 2009/138/EC 2007/0143(COD)<br>Amending Directive 2009/65/EC 2008/0153(COD)<br>Amending Regulation (EU) No 575/2013 2011/0202(COD)<br>Amending Directive (EU) 2016/2341 2014/0091(COD)<br><br>Subject<br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments | |

## Key players

| | | | |
|---|---|---|---|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| | ECON Economic and Monetary Affairs | | 31/05/2018 |
| | | S&D FERNÁNDEZ Jonás | |
| | | Shadow rapporteur | |
| | | MARTUSCIELLO Fulvio | |
| | | LUCKE Bernd | |
| | | CALVET CHAMBON Enrique | |
| | | URTASUN Ernest | |
| | | MONOT Bernard | |
| | | ZANNI Marco | |
| Council of the European Union | | | |
| European Commission | Commission DG | Commissioner | |
| | Financial Stability, Financial Services and Capital Markets Union | DOMBROVSKIS Valdis | |
| European Economic and Social Committee | | | |

## Key events

| | | | |
|---|---|---|---|
| 24/05/2018 | Legislative proposal published | COM(2018)0339 | Summary |
| 05/07/2018 | Committee referral announced in Parliament, 1st reading | | |
| 21/03/2019 | Vote in committee, 1st reading | | |
| 22/03/2019 | Committee report tabled for plenary, 1st reading | A8-0180/2019 | Summary |

| | | | |
|---|---|---|---|
| 15/04/2019 | Debate in Parliament | | |
| 16/04/2019 | Results of vote in Parliament | | |
| 16/04/2019 | Decision by Parliament, 1st reading | T8-0373/2019 | Summary |

## Technical information

| | |
|---|---|
| Procedure reference | 2018/0171(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Regulation |
| | Amending Directive 2009/138/EC 2007/0143(COD)<br>Amending Directive 2009/65/EC 2008/0153(COD)<br>Amending Regulation (EU) No 575/2013 2011/0202(COD)<br>Amending Directive (EU) 2016/2341 2014/0091(COD) |
| Legal basis | Treaty on the Functioning of the EU TFEU 114 |
| Mandatory consultation of other institutions | European Economic and Social Committee |
| Stage reached in procedure | Awaiting Council's 1st reading position |
| Committee dossier | ECON/8/13261 |

## Documentation gateway

| | | | | | |
|---|---|---|---|---|---|
| Legislative proposal | | COM(2018)0339 | 24/05/2018 | EC | Summary |
| Document attached to the procedure | | SWD(2018)0252 | 24/05/2018 | EC | |
| Document attached to the procedure | | SWD(2018)0253 | 24/05/2018 | EC | |
| Economic and Social Committee: opinion, report | | CES2774/2018 | 17/10/2018 | ESC | |
| Committee draft report | | PE629.500 | 19/10/2018 | EP | |
| Amendments tabled in committee | | PE630.618 | 20/11/2018 | EP | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0180/2019 | 22/03/2019 | EP | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T8-0373/2019 | 16/04/2019 | EP | Summary |
| Commission response to text adopted in plenary | | SP(2019)440 | 08/08/2019 | EC | |

## Additional information

| | |
|---|---|
| Research document | Briefing |

## Sovereign bond-backed securities

PURPOSE: to create a framework for sovereign bond-backed securities (SBBSs), to support further integration and diversification within Europe's financial sector.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: sovereign bond-backed securities (SBBSs) can address some vulnerabilities that have been exposed by or have resulted from the 2007-2008 financial crisis.

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.

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 concluded 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. 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.

The Commission will also adopt the necessary changes to the prospectus schedules and building blocks to ensure that appropriate disclosure for this new type of financial instrument, tailored to the characteristics of the product, are set out.

IMPACT ASSESSMENT: 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.

As regards the impact of SBBSs on the diversification of banks' sovereign portfolios, the assessment showed that the impact would be small in the limited volume scenario, but significant under the steady state scenario.

CONTENT: this proposal aims to provide an enabling framework for a market-led development of Sovereign Bond-Backed Securities.

- SBBS operation: SBBSs would be created by the private sector 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.
- Composition and structure of a SBBS issue: the proposal 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.
- Under the proposal, the underlying portfolio of SBBSs should be composed of sovereign bonds of all EU Member States whose currency is the euro. A 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. The purpose of the subordinated tranches is to provide protection to the senior tranche, which therefore is a low risk instrument.
- Notification and transparency: the proposal provides rules that define notification and transparency requirements for the issuing entity to ensure that self-attestation is performed in a harmonised and credible way. 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.
- The SPEs are responsible for compliance with the product and notification requirements. The European Securities and Markets Authority (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.
- Monitoring: the proposal contains rules regarding the supervision of SBBSs and possible sanctions in case of non-compliance and/or fraudulent behaviour of the issuing entity. It requires Member States to designate competent authorities in accordance with existing EU financial services legislation. The sanctions inflicted to a special purpose entity should be published. In addition, an SBBS which is found not fulfilling the requirements of the proposed Regulation should be removed without undue delay from the list of SBBS established by ESMA.

Lastly, the proposal contains a set of amendments to the existing legal framework required to grant SBBSs regulatory treatment in line with their unique design and properties.

## Sovereign bond-backed securities

The Committee on Economic and Monetary Affairs adopted the report by Jonás FERNÁNDEZ (S&D, ES) on the proposal for a regulation of the European Parliament and of the Council on sovereign bond-backed securities.

The proposal aims to provide a framework for the market-led development of sovereign bond backed securities (SBBS). SBBSs might be able to 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 facilitating the implementation of monetary policy.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

Surveillance by ESMA

The amended Regulation assigns to the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (ESMA) the duty of monitoring the markets for SBBSs and the underlying government bonds for signs of disruption.

On the basis of ESMAs observations and supported by their reports, the Commission shall be empowered to provide a clear definition of market liquidity and a method for its calculation, and to determine the criteria by which ESMA shall assess whether a Member State no longer enjoys market access for the purposes of this Regulation.

Given that SBBSs are new products, whose effects on the markets for the underlying sovereign debt securities is unknown it is appropriate that the European Systemic Risk Board (ESRB) and the national competent and designated authorities for macroprudential instruments oversee the SBBSs market.

To that end, the ESRB shall avail itself of the powers conferred on it under Regulation (EU) No 1092/2010 of the European Parliament and of the Council and, if appropriate, should issue warnings and make suggestions for remedial actions to the competent authorities.

Structure of tranches, payments and losses

Under the Regulation, 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 five percent of the outstanding nominal value of the entire SBBSs issue.

Issuance of SBBS and obligations of special purpose entities

SBBS shall be developed by private entities created for the sole purpose of issuing and managing these instruments.

Member States shall ensure that holdings of sovereign bonds by SPEs enjoy the same treatment as any other holdings of the same sovereign bond or of other sovereign bonds issued with the same terms.

SBBS notification requirements

An SPE shall submit an application for certification of an SBBS issue by notifying ESMA at least one week before issuance of an SBBSs issue by means of the template that an SBBSs issue meets the requirements of the Regulation.

ESMA shall certify an SBBS issue only where it is fully satisfied that the applicant SPE and the SBBS issue comply with all the requirements laid down in this Regulation. ESMA shall inform the applicant SPE without undue delay whether certification has been granted or refused.

ESMA shall withdraw the certification for an SBBS issue if for example the SPE has obtained the certification by making false statements or by any other irregular means or no longer meets the conditions under which it was certified.

The withdrawal of the certification shall have immediate effect throughout the Union.

Supervisory fees

ESMA shall charge the SPE fees. Those fees shall be in proportion to the turnover of the SPE concerned and shall fully cover ESMAs necessary expenditure relating to the licensing of SBBSs and supervision of SPEs.

## Sovereign bond-backed securities

The European Parliament adopted by 448 votes to 199, with 8 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on sovereign bond-backed securities.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Creating a SBBS framework

The proposal aims to provide a framework for the market-led development of sovereign bond backed securities (SBBS). SBBSs might be able to 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 facilitating the implementation of monetary policy.

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.

Surveillance by ESMA

The amended Regulation assigns to the European Supervisory Authority (European Securities and Markets Authority - ESMA) the duty of monitoring the markets for SBBSs and the underlying government bonds for signs of disruption.

ESMA should be informed about the issuance of SBBSs and should receive from SPEs all the relevant information needed to perform its supervisory tasks

On the basis of ESMAs observations and supported by their reports, the Commission shall be empowered to provide a clear definition of market liquidity and a method for its calculation, and to determine the criteria by which ESMA shall assess whether a Member State no longer enjoys market access for the purposes of this Regulation.

Given that SBBSs are new products, whose effects on the markets for the underlying sovereign debt securities is unknown it is appropriate that the European Systemic Risk Board (ESRB) and the national competent and designated authorities for macroprudential instruments oversee the SBBSs market.

To that end, the ESRB shall avail itself of the powers conferred on it under Regulation (EU) No 1092/2010 of the European Parliament and of the Council and, if appropriate, should issue warnings and make suggestions for remedial actions to the competent authorities.

Structure of tranches, payments and losses

Under the Regulation, 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 five percent of the outstanding nominal value of the entire SBBSs issue.

Issuance of SBBS and obligations of special purpose entities

SBBS shall be developed by private entities established by the European Union and created for the sole purpose of issuing and managing these instruments.

Member States shall ensure that holdings of sovereign bonds by SPEs enjoy the same treatment as any other holdings of the same sovereign bond or of other sovereign bonds issued with the same terms.

SBBS notification requirements

An SPE shall submit an application for certification of an SBBS issue by notifying ESMA at least one week before issuance of an SBBSs issue by means of the template that an SBBSs issue meets the requirements of the Regulation.

ESMA shall certify an SBBS issue only where it is fully satisfied that the applicant SPE and the SBBS issue comply with all the requirements laid down in this Regulation. ESMA shall inform the applicant SPE without undue delay whether certification has been granted or refused.

ESMA shall withdraw the certification for an SBBS issue if for example the SPE has obtained the certification by making false statements or by any other irregular means or no longer meets the conditions under which it was certified.

The withdrawal of the certification shall have immediate effect throughout the Union.

ESMA shall maintain on its official website a list of all SBBSs issues that have been certified by ESMA.

Supervisory fees

ESMA shall charge the SPE fees. Those fees shall be in proportion to the turnover of the SPE concerned and shall fully cover ESMAs necessary expenditure relating to the licensing of SBBSs and supervision of SPEs.