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The Securitisation Regulation and Alternative Investment Funds: Friends or Foes?


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Introduction

In 2019, the European securitisation landscape became subject to a major overhaul when the Regulation (EU) 2017/2402 of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the **Securitisation Regulation**) entered into force. The aim of the Securitisation Regulation is essentially to consolidate the legal framework governing European securitisations.

In contrast with the previously existing regime focusing mainly on the investor side, the Securitisation Regulation imposes a heavy regulatory load also on the sell-side entities and the securitisation issuers (among others requirements with regard to risk retention, due diligence, transparency and disclosure, restrictions on sale to retail investors, etc.).

With this in mind, it is crucial to determine already at the outset of a transaction whether the envisaged structure is subject to the provisions of the Securitisation Regulation. Unfortunately, this task is often anything but straightforward, as the definition of "*securitisation*" introduced by the Securitisation Regulation is very broad and also encompasses transactions beyond the conventional market understanding of securitisation.

In particular, many practitioners have raised the question of whether certain investment fund structures, notably alternative investment funds (**AIFs**, as defined in the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the **AIFMD**)) investing into receivables, debt instruments or other similar assets carrying credit risk (such as debt funds) and issuing tranched debt (in the form of debt securities, loans or other debt instruments) may fall within the rather large net cast by the Securitisation Regulation, and bear substantial compliance costs as a result. While an alternative investment fund manager (the **AIFM**) that manages AIFs investing into securitisation positions would be obliged to comply with the due diligence requirements for institutional investors under the Securitisation Regulation, there may be questions regarding whether the acquisition of receivables, debt instruments or other similar assets carrying credit risk, and the issuance of tranched debt by an AIF, would in itself constitute a securitisation for the purpose of the Securitisation Regulation. This risk is particularly relevant in case of asset-backed fund finance transactions where the creditors are relying on the underlying investments of the borrower funds as the main recourse, and not on the investor commitments of such borrower funds. Such facilities are much more likely to result in "tranching" within the meaning of the Securitisation Regulation in certain situations and thus may trigger the application of severe regulatory requirements not only with regard to the borrower AIF, but also the investors, creditors and the sellers of the underlying assets who could be regarded as originators.

This chapter assesses whether the Securitisation Regulation should be applicable to AIFs as issuers and securitisation special purpose entities. For the purpose of this assessment, guidance has been taken from the position of the European Court of Justice that has stated in numerous cases that EU legislation should be construed in a teleological manner, i.e. broadly, and with the objectives of the legislation taking a higher priority, in terms of interpretation, than a literal construction of the actual wording (not least because these wordings exist in multiple languages). Therefore, in order to decode the meaning of a legal rule, the European Court of Justice analyses it especially in the light of its purpose (teleological interpretation) as well as its context (systemic interpretation).[1] This principle should therefore also apply to the Securitisation Regulation.

General Considerations

Article 2(1) of the Securitisation Regulation defines "*securitisation*" as a transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched, having all of the following characteristics:

(a) payments in the transaction or scheme are dependent on the performance of the exposure or the pool of exposures; and

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

The transactions falling within the "specialised lending" exception (as described in article 147(8) of the Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms) are not subject to the Securitisation Regulation, even if the above conditions are satisfied.

In addition, it has to be assessed whether any of the involved entities may be considered as a securitisation special purpose entity (**SSPE**) for the purpose of the Securitisation Regulation. According to article 2 of the Securitisation Regulation, an SSPE is defined as "*a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplish that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator*".

The definition of securitisation under the Securitisation Regulation is thus quite large and captures the transactions beyond the traditionally understood securitisations. Counter-intuitively, the Securitisation Regulation does not require the issuance of securities. Instead, the focus is mainly on the following key elements:

(a) the underlying assets carry credit risk (as opposed to market risk);
(b) the debt of the entity is contractually tranched; and
(c) the credit risk of the investors is dependent on the performance of the underlying assets during the life of the transaction.

It is easy to see how the debt funds fulfil the first condition investing by their very nature into credit risk carrying assets. The financing structure of these vehicles thus becomes crucial in order to assess whether the other criteria are met and whether such funds and the transactions they enter into might be captured by the Securitisation Regulation.

On the financing side, one of the focus points under the Securitisation Regulation is indeed the tranching. A transaction would only fall within the scope of the Securitisation Regulation if the securitised credit risk is tranched. The Securitisation Regulation defines "*tranche*" as:

(a) a contractually established segment of the credit risk associated with an exposure or a pool of exposures;
(b) where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in another segment; and
(c) without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments.

In classical securitisation transactions, tranching is customarily used by a securitisation undertaking to allocate the profit and losses between various classes of investors having different risk appetite and subject to different regulatory treatment. It is usually achieved by issuing two or more classes of securities where the net return from the underlying pool of investments is allocated among the classes in accordance with their seniority. For example, the senior tranches would be the first to receive the cash flows after the transaction related costs are paid. Any residual balance would then be made available to mezzanine and junior tranches in accordance with the waterfall and subordination provisions included in the issuance documentation. Conversely, the junior tranche would be the first to absorb the losses and would bear the highest risk (but also the highest yield).

While tranching is indeed sometimes seen as a common feature of (at least conventional) securitisation structures and is often subject to careful structuring by sponsors and investors alike, it is not inherent exclusively to securitisations. In fact, it is not that uncommon to see tranching in other, often plain vanilla, financing structures. For example, standard corporate loans would usually subordinate any shareholder debt to the claims of senior lenders by way of contractual intercreditor arrangements. Given that the Securitisation Regulation does not require the issuance of securities for a transaction to fall within its scope, the existence of any debt with different levels of seniority at the level of the AIF may thus result in tranching. At the same time, the Securitisation Regulation explicitly provides that only contractually achieved tranching is relevant for its purposes and, for this reason, standard equity instruments would usually not constitute a separate tranche for the purpose of the Securitisation Regulation.

The existence of tranched debt alone is however not sufficient to satisfy the criteria of a securitisation under the Securitisation Regulation, even in the presence of credit risk carrying assets. It is indeed necessary that, in addition, the "dependency test" is met. A transaction is thus only regarded as securitisation within the meaning of the Securitisation Regulation where the credit risk of the investors is dependent on the performance of the underlying assets during the life of the transaction.

It is often the dependency test that would be a lifebuoy for the debt funds in the context of the regulatory risk constituted by the Securitisation Regulation. In case of an investment fund financed by subscription line facilities where the recourse of the lenders is against the undrawn commitments of the investors, the credit risk of the lenders would be not (or at least not exclusively) on the assets of the fund, but mainly on the investors.

The situation is quite different for debt funds having obtained necessary funding through an asset back facility, also referred to as a net asset value (**NAV**) facility. Unlike subscription line facilities, these financing instruments are secured and dependent on the underlying assets and cash flows, rather than on the investor commitments, and are much more likely to meet the "dependency test". For instance, the combination of such facilities with a subordinated debt (notably subordinated financing provided by the investors in certain situations) may result in tranching and as a result, the relevant debt fund may fall into the regulatory pit of the Securitisation Regulation.

The consequences of the application of the Securitisation Regulation in relation to AIFs (but also for the other parties involved) would be quite severe. In fact, the very nature of these consequences is the first and perhaps the most important argument against the application of the Securitisation Regulation to AIFs and the transactions constituted thereby.

Arguments Against the Application of the Securitisation Regulation to AIFs

Requiring institutional investors, AIFs and the sellers of the investment assets to comply with the Securitisation Regulation would not be compatible with the specifics of the industry and would undermine the confidence of the market

If the Securitisation Regulation were to apply to debt AIFs, the relevant actors would have to comply with numerous burdensome requirements that were originally designed for the securitisation transactions. Often, the compliance with such requirements would be incompatible with the current market practice in the funds industry and would not even be feasible commercially:

(a) *Risk retention*: according to the Securitisation Regulation, the originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5%.[2] As a result, in case of acquisition of the investment assets by the captured AIFs, an entity would need to retain such interest (e.g. the seller of such assets). This would not in practice be possible for an AIF acquiring multiple investment assets (notably loans or debt securities) on the open market or on a stock exchange, as the sellers to an AIF are not involved in the structuring of the transaction. This requirement would deter the sellers from the transaction and they would seek alternative purchasers, thus undermining the efficient functioning of the investment market and the possibility for AIFs to acquire investments.
(b) *Investors due diligence*: institutional investors in the captured AIFs would have to perform due diligence on the underlying investment assets[3] and would in particular be obliged to, *inter alia*:
    (i) verify the credit-granting criteria of the relevant seller and the internal processes and systems of the seller, when the latter is not a credit institution or an investment firm established in the European Union;[4]
    (ii) verify that the seller complies with the risk retention requirements;[5]

(iii) verify the compliance of the seller or the AIF with the transparency requirements under the Securitisation Regulation;[6]

(iv) carry out a due diligence assessment of the risk characteristics of the individual investment and of the underlying exposures, on all the structural features of the transaction, etc.;[7] and

(v) have written procedures in place in order to monitor the compliance with the above obligations and the performance of the investment and underlying exposures and perform regular stress tests, etc.[8]

It is clear that for institutional investors in an AIF, complying with these obligations is neither feasible nor appropriate. It also needs to be considered that at the time of the admission and commitments of the institutional investors in the AIF, the potential investments are often not yet identified and certain discretions as to the choice of the underlying portfolio assets lies with the AIFM.

(c) *Transparency and disclosure*: the captured AIFs would have to comply with stringent transparency and disclosure requirements,[9] in addition to those already included in the AIFMD. According to the Securitisation Regulation, certain transparency and disclosure will also lie with the sellers (if they are considered as originators), which would effectively deter such sellers from entering into sale transactions with an AIF.

(d) *Resecuritisation ban*: the captured AIFs would not be able to hold securitisation positions. This should not be a desirable outcome and would in fact be in contradiction with the AIFMD and the Securitisation Regulation which expressly refers to AIFs being exposed to a securitisation as institutional investors and introduces certain obligations for AIFMs when investing in securitisations.

To summarise, imposing the above requirements on an AIF investing into debt instruments, its investors and sellers of investment assets to such AIF would not be compatible with the standards applicable in this segment of the market and may substantially decrease investors' and sellers' interest in these types of AIFs.

Different nature and macroeconomic impact of securitisation vehicles and AIFs call for an application of different rules

Although certain structural features can make some AIFs and SSPEs within the meaning of the Securitisation Regulation rather similar, especially in case of AIFs investing into receivables or other similar assets carrying credit risk, and issuing tranched debt, the driving considerations behind these two vehicles are quite different.

The set-up of a securitisation structure is often driven by the originator and the focus of the transaction is on the transfer of the securitised credit risks to a securitisation vehicle (and ultimately to its investors) for financing purposes, resulting in a more advantageous treatment for the (regulated) originator, better access to the financial markets and higher credit quality and attractive yields. The main purpose of an AIF, on the other hand, is to make investments for the collective benefit of the investors with a view to increase the return on their investment. Unlike in securitisation transactions, the authorised AIFM is entrusted with the (active) collective management of the investment portfolio and the identity of the AIFM and the portfolio manager (if any) is often of primary importance to investors. Therefore, a securitisation vehicle is mainly a risk transfer tool, while AIFs can be regarded as an investment management tool.

Further to the 2007 financial crisis, it has also been found that the macroeconomic impact of the two types of structures is different. In February 2009, the High-Level Group on Financial Supervision in the European Union chaired by J. de Larosière mandated by the European Commission presented a report[10] (the **Larosière Report**) exploring the causes of the financial crisis, followed by recommendations of regulatory initiatives to be adopted globally. These recommendations have been taken into account and have ultimately resulted in the modern regulatory framework, including the amendments to CRD[11] then in effect, the introduction of CRR,[12] being the precursors of the Securitisation Regulation establishing various requirements for investors in securitised positions, as well as AIFMD.

The Larosière Report states, *inter alia* (applicable to securitisations): "*The extreme complexity of structured financial products, sometimes involving several layers of CDOs, made proper risk assessment challenging for even the most sophisticated in the market. […] There was little knowledge of either the size or location of credit risks. While securitised instruments were meant to spread risks more evenly across the financial system, the nature of the system made it impossible to verify whether risk had actually been spread or simply re-concentrated in less visible parts of the system. This contributed to uncertainty on the credit quality of counterparties, a breakdown in confidence and, in turn, the spreading of tensions to other parts of the financial sector. […] The originate-to-distribute model as it developed, created perverse incentives. Not only did it blur the relationship between borrower and lender but also it diverted attention away from the ability of the borrower to pay towards lending – often without recourse – against collateral. A mortgage lender knowing beforehand that he would transfer (sell) his entire default risks through MBS or CDOs had no incentive to ensure high lending standards.*"[13]

The report on asset securitisation incentives prepared in July 2011 by the Basel Committee on Banking Supervision[14] (the **Basel Committee Report**) further points out the misalignment of incentives and conflict of interest inherent to pre-financial crisis securitisation structures that have contributed to the loss of investor confidence and are generally thought to have been caused by the evolution of the originate-to-distribute models, the involvement of a relatively large number of parties in securitisation transactions and the increasing distance between the loan's originator and the ultimate bearer of the loan's default risk.[15]

On the other hand, in relation to investment funds, the Larosière Report concludes that their role in the financial crisis was limited: "*A small number of investment funds in the EU have faced temporary difficulties in meeting investor redemption demands because of the unexpected contraction of liquidity in previously highly liquid markets (e.g., asset backed commercial paper, short-term banking paper). This highlights in particular the need for a common EU definition of money market funds, and a stricter codification of the assets in which they can invest in order to limit exposure to credit, market and liquidity risks.*"[16] The Larosière Report further recommends introducing common rules for investments funds in the EU, notably concerning definitions, codifications of assets and rules for delegation, as well as tighter supervisory control over the independent role of depositories and custodians.[17]

Regarding hedge funds, the Larosière Report similarly concludes that "*they did not play a major role in the emergence of the crisis. Their role has largely been limited to a transmission function, notably through massive selling of shares and short-selling transactions*".[18] The report recognises a need for greater transparency and registration of hedge funds, allowing a formal authority to assess their strategy, methods and leverage.[19]

It can be concluded that the risks pertaining to securitisation vehicles lie in the complexity and opaque nature of the issued instruments, the conflict of interest and chain of participants involved in the seller/originator-SPV-investor relationship and

the information asymmetry between the same. In contrast, the risks pertaining to AIFs relate to the AIFM, the external valuer (if any), the portfolio manager, investor protection and delegation of functions issues. The AIFMD has hence developed a strict functional and hierarchical separation of functions between the risk management function and the portfolio management function. The conflict of interest is equally relevant for AIFs, but it seems to occur in the AIFM-investor relationship rather than on the seller/originator side, as is the case for securitisation vehicles.

The difference in nature between securitisation vehicles and AIFs and the different effects of these two types of structures on the economy have resulted in two substantially different legal frameworks. The adopted CRD V,[20] CRR II[21] and the Securitisation Regulation aim to rectify the flaws in securitisation structures that have historically contributed to the financial crisis. In particular, they aim to (i) reduce the complexity of securitisation transactions and the uncontrolled risk spreading by introducing a ban on re-securitisations and a framework for simple, transparent and standardised (**STS**) securitisations, (ii) address the misalignment of incentives and conflict of interest through the risk retention requirement, (iii) limit the originate-to-distribute model by establishing credit-granting criteria and the due diligence requirements for the investors, and (iv) remedy the information asymmetry through rigorous disclosure and transparency rules.

On the other hand, the AIFMD focuses on the regulation of the risk pertaining to this particular industry segment. Among other things, it (i) addresses the investment assets protection by introducing risk and liquidity management standards and restrictions on leverage, (ii) includes various investor protection rules, (iii) imposes obligations on the AIFM and regulates the delegation by the AIFM, as well as the depositary, external valuer (in case AIFM does not perform such function) and auditor roles, (iv) reduces the systemic risk by common rules for authorisation, organisation and supervision of AIFMs, and (v) sets out various transparency and disclosure rules.

There are certainly areas of overlapping concerns for both the securitisation and AIFs segment, such as transparency which is addressed in each Securitisation Regulation and the AIFMD. The existence of certain overlaps alone should not, however, be an argument for the overlapping regulation, as long as issues of concerns are sufficiently regulated in either applicable framework.

It can be concluded that, while certain structures may indeed be somewhat similar, securitisation vehicles and AIFs have different purposes and macroeconomic impacts. Consequently, they are and should be subject to different legal frameworks appropriate to address the legal risks inherent to each structure. As long as a structure is subject to, and is directly or indirectly regulated by, the AIFMD, it should not be at the same time subject to the Securitisation Regulation.

The definition of an SSPE under the Securitisation Regulation aims to exclude the structures that are not established for the purpose of carrying out a securitisation (i.e. AIFs)

The Securitisation Regulation defines a securitisation special purpose entity (**SSPE**) as a "corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator".

It is clear that this definition of SSPE carries a subjective element and the intention of the parties to carry out a securitisation is decisive in the assessment of the status of an SSPE. Furthermore, it is important that the structure is limited solely to the activities appropriate for carrying out securitisations and that the parties intend to isolate the SSPE from the originator.

On the other hand, the AIFMD defines an AIF as a "collective investment undertaking, including investment compartment thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors [and does not require authorisation pursuant to Article 5 of Directive 2009/65/EC]".[22]

Hence, the objective of an AIF is different: it is first and foremost the investment and management of the investors' capital for the benefit of these investors. As the Securitisation Regulation requires the intention to carry out a securitisation and that the activities of the vehicle would be limited to accomplishing this objective, an AIF within the meaning of the AIFMD does not satisfy the criteria of an SSPE set out in the Securitisation Regulation. As a result, it can be concluded that an AIF does not constitute an SSPE within the meaning of the Securitisation Regulation.

Securitisation special purpose entities are exempted from the scope of the AIFMD. Similarly, AIFs should not subject to the Securitisation Regulation

Pursuant to Article 2.3(g) of the AIFMD, securitisation special purpose entities (entities whose sole purpose is to carry out a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions)[23] are exempted from the scope of the AIFMD. Although it must be noted that the definition of a securitisation special purpose entity used by the AIFMD for the purpose of the exemption differs somewhat from the definition of an SSPE under the Securitisation Regulation, it can nevertheless be inferred that:

(a) SSPEs under the Securitisation Regulation, which constitute securitisation special purpose entities for the purpose of the AIFM exemption, are excluded from the scope of the AIFMD; and

(b) similarly, any AIFs (falling within the scope of the AIFMD) should be exempted from the scope of the Securitisation Regulation.

Indeed, there is no substantive reason to believe that the EU legislator intended to exempt the securitisation special purpose entities from the AIFMD, but not AIFs from the Securitisation Regulation and thus from the application of a double framework of two specific industry-related and often overlapping (but also incompatible) regulations.

Overregulation should be avoided due to macroeconomic impact

It must be kept in mind that AIFs are already subject to a very broad and stringent legal framework aiming to ensure a stable and functioning investment market. Exposing them to an extra layer of regulation would result in additional compliance costs. It is generally acknowledged that overregulation should be avoided, as it slows down financial innovation and undermines economic growth in the wider economy.[24]

Exposure of AIFs to the Securitisation Regulation would be in breach of the EU law principle of proportionality

The widely recognised EU law principle of proportionality[25] requires measures adopted by EU institutions to be appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question, and where there is a choice between several appropriate measures, the least onerous measure must be used. Subjecting AIFs (investing into debt instruments) to a double set of regulation under the AIFMD legal framework and the Securitisation Regulation is neither appropriate nor necessary to achieve a functioning economy and investors' protection already sufficiently secured by the AIFMD.

Conclusion

Although the Securitisation Regulation does not contain a clear-cut exemption carving out AIFs from its scope, its application to the debt AIFs, likely to be captured by its provisions, should be avoided, as it would not be compatible with the realities of the market and could have a potentially detrimental effect on the very existence of AIFs investing into credit risk carrying assets. The imposition of a double legal framework consisting of both the AIFMD and the Securitisation Regulation on a structure already regulated (directly or indirectly) by the AIFMD is neither necessary in light of the macroeconomic considerations, nor appropriate in view of the general principles of the European Union law. With this in mind, it would be advisable for the European regulators to shed more light on this matter by issuing guidelines with regard to the applicability of the Securitisation Regulation to AIFs investing into receivables, debt instruments or other similar assets carrying credit risk.

Endnotes

1. http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599364/EPRS_BRI(2017)599364_EN.pdf.
2. Article 6 of the Securitisation Regulation.
3. Article 5 of the Securitisation Regulation.
4. Article 5, para 1(a) and (b) of the Securitisation Regulation.
5. Article 5, para 1(c) and (d) of the Securitisation Regulation.
6. Article 5, para 1(e) of the Securitisation Regulation.
7. Article 5, para 3 of the Securitisation Regulation.
8. Article 5, para 4 of the Securitisation Regulation.
9. Article 7 of the Securitisation Regulation.
10. Available on the website of the European Parliament.
11. Capital Requirements Directives. The current framework includes Directive 2013/36/EU of the European Union and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (**CRD IV**) and Directive (EU) 2019/878 of the European Union and of the Council of 20 May 2019 amending CRD IV as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (**CRD V**).
12. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, as amended.
13. See para 14, 15 and 17 of the Larosière Report.
14. Available at: https://www.bis.org/publ/joint26.pdf.
15. See para 2.3 "Misalignment of incentives and conflicts of interest", page 13 of the Basel Committee Report.
16. See para 96 and 97 "Money market fund issues", page 26 of the Larosière Report.
17. See Recommendation 9, page 26 of the Larosière Report.
18. See para 86, page 24 of the Larosière Report.
19. See para 88, page 24 of the Larosière Report.
20. Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending CRD IV as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.
21. Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending CRR (the Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms) as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements.
22. 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).
23. Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 has been repealed and replaced by Regulation (EU) No 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation.
24. See para 42, pages 13–4 of the Larosière Report.
25. Court of First Instance, 2 October 2001, Martinez e.a./ Parlement (T-222/99, T-327/99 et T-329/99, Rec. p. II-2823) (points 215–217) and Court of First Instance, 16 December 1999, Acciaierie di Bolzano/ Commission (T-158/96, Rec.p.II-3927) (points 95–98).

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