

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

2015/0226(COD) - 26/10/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 459 votes to 135 with 23 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

The European Parliament's position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Aims: the Regulation aims to strengthen the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation, by laying down **a general framework for securitization and a specific framework for simple, transparent and standardised ('STS') securitisation.**

It is specified that securitisation involves transactions that enable a lender or a creditor – typically a credit institution or a corporation – to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities.

Selling of securitisations to retail clients: the amended text states that the seller of a securitisation position shall not sell such a position to a retail client unless a series of specified conditions are fulfilled.

Furthermore, the text states that a securitisation special purpose entity (SSPE) shall not be established in a third country that is **listed as a high-risk and non-cooperative jurisdiction** by the FATF.

Risk retention: the draft regulation provides that the originator, sponsor or the original lender in a securitisation process **must always retain a material net economic interest, measured at the time of origination, in the securitisation of not less than 5%.** A sponsor should be able to delegate tasks to a servicer, but should remain **responsible for risk management.** In particular, a sponsor should not transfer the risk-retention requirement to his servicer.

Transparency requirements for originators, sponsors and SSPEs: the originator, sponsor and SSPE of a securitisation shall make available to holders of a securitisation position, to the competent authorities and, upon request, to potential investors **all underlying documentation** that is essential for the understanding of the transaction.

Ban on resecuritisation: the draft regulation puts in place a ban on resecuritisation, subject to derogations for certain cases of resecuritisations that are used for legitimate purposes. The text states that resecuritisations could hinder the level of transparency that this Regulation seeks to establish, but can also, in exceptional circumstances, be useful in preserving the interests of investors. Therefore, resecuritisations should only be permitted in specific instances as established by this Regulation. In addition, fully supported asset-backed commercial paper (ABCP) will remain outside the scope of the ban on resecuritisation.

It is stipulated that originators, sponsors and original lenders should apply to exposures to be securitised the **same sound and well-defined criteria for credit-granting** which they apply to non-securitised exposures.

Market transparency: it is proposed to establish a **framework for securitisation repositories** (a repository being a legal person that centrally collects and maintains the records of securitisations) to collect relevant reports, primarily on underlying exposures in securitisations. Such securitisation repositories should be **authorised and supervised** by the European Securities and Markets Authority ('ESMA').

Requirements regarding simple, transparent and standardised securitization (STS): these requirements are laid down. For example, in the case of an STS securitisation where the underlying exposures are residential loans or auto loans or leases, the originator, the sponsor and the SSPE should **publish the available information related to the environmental performance of the assets** financed by such residential loans or auto loans or leases. The **STS notification** to ESMA should include an explanation on how each of the STS criteria has been complied with.

The European Banking Authority (EBA) should develop **guidelines** to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues.

Third party verification of conformity with STS criteria: originators, sponsors and SSPEs could use the services of a third party authorised in accordance with the Regulation to assess whether their securitisation complies with the STS criteria. Those third parties should be subject to authorisation by competent authorities. However, the involvement of a third party **should not in any way shift away from originators, sponsors and institutional investors the ultimate legal responsibility** for notifying and treating a securitisation transaction as STS.

Sanctions: competent authorities should apply sanctions **only in the case of intentional or negligent infringements**. The application of remedial measures should not depend on evidence of intention or negligence. In determining the appropriate type and level of sanction or remedial measure, when taking into account the financial strength of the responsible natural or legal person, competent authorities should in particular take into consideration the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person.

Macroprudential oversight of the securitisation market: the European Systemic Risks Board (ESRB) shall continuously monitor developments in the securitisation markets. At least every 3 years, in order to highlight financial stability risks, the ESRB shall, in collaboration with the EBA, publish a report on the financial stability implications of the securitisation market.