

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

2015/0226(COD) - 12/12/2017 - Final act

PURPOSE: restart a high-quality securitisation market that will improve the financing of the Union's real economy while ensuring financial stability and investor protection.

LEGISLATIVE ACT: Regulation (EU) 2017/2402 of the European Parliament and of the Council laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

CONTENT: the Regulation creates a **general framework for securitisation**. It defines securitisation and establishes (i) due diligence, risk-retention and transparency requirements for parties involved in securitisations, (ii) criteria for granting credit, (iii) requirements for the sale of securitisations to retail clients, (iv) a prohibition on resecuritisation, (v) requirements applicable to securitisation special purpose entities (SSPEs), and the conditions and procedures applicable to securitisation standards.

It also creates a **specific framework for simple, transparent and standardised securitisations (STS)**.

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.

The Union intends to strengthen the legislative framework put in place in the wake of the financial crisis to counter the risks inherent in highly complex, opaque and risky securitisation transactions.

The Regulation:

- states that the **seller of a securitisation position** should not sell that position to a retail client unless all of the conditions specified in the Regulation are met;
- sets a **risk retention requirement** for the securitisation originator to maintain a material net economic interest of at least **5%** in the securitisation at all times. A sponsor should be able to delegate tasks to a servicer, but should remain responsible for risk management. A sponsor may delegate tasks to a management body but will remain responsible for risk management. In particular, a sponsor should not transfer the risk-retention requirement to his servicer;
- requires the originators of a securitisation to make available to holders of a securitisation position, competent authorities and, on request, potential investors, **all underlying documentation** that is essential to the understanding of the transaction;
- establishes a framework for **securitisation repositories** to collect relevant reports on securitisation transactions, which will increase market transparency;
- establishes a **prohibition on resecuritisation**, subject to exemptions in certain cases of resecuritisations used for legitimate purposes;
- establishes a **simplified authorisation procedure for third parties** that help to verify compliance with STS securitisation requirements. The goal is to **avoid conflicts of interest**. The Regulation states that, even where a third party is involved in the STS verification process, the responsibility for compliance remains with originators, sponsors and institutional investors.

By 1 January 2022 at the latest, the Commission will submit a report to the European Parliament and the Council on the functioning of the Regulation, accompanied, if necessary, by a legislative proposal.

ENTRY INTO FORCE: 17.1.2018.

APPLICATION: from 1.1.2019

DELEGATED ACTS: the Commission may adopt delegated acts to amend non-essential elements of the Regulation. The power to adopt such acts is conferred on the Commission for an **indeterminate period** from 17 January 2018. The European Parliament or the Council may oppose a delegated act within a period of two months (this may be extended by two months) from the notification of the act.