

## Basic information

**2015/0226(COD)**

COD - Ordinary legislative procedure (ex-codecision procedure)  
Regulation

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

Amending Directive 2009/138/EC [2007/0143\(COD\)](#)  
Amending Directive 2009/65/EC [2008/0153\(COD\)](#)  
Amending Regulation (EC) No 1060/2009 [2008/0217\(COD\)](#)  
Amending Directive 2011/61/EU [2009/0064\(COD\)](#)  
Amending Regulation (EU) No 648/2012 [2010/0250\(COD\)](#)  
Amended by [2020/0151\(COD\)](#)  
See also [2015/0225\(COD\)](#)

### Subject

2.50.03 Securities and financial markets, stock exchange, CIUTS, investments  
2.50.05 Insurance, pension funds  
2.50.08 Financial services, financial reporting and auditing  
2.50.10 Financial supervision

Procedure completed

## Key players

European Parliament

### Committee responsible

**ECON** Economic and Monetary Affairs

### Rapporteur

TANG Paul (S&D)

### Appointed

26/11/2015

### Shadow rapporteur

KARAS Othmar (PPE)

SWINBURNE Kay (ECR)

JEŽEK Petr (ALDE)

VIEGAS Miguel (GUE/NGL)

SCOTT CATO Molly (Verts /ALE)

VALLI Marco (EFDD)

MONOT Bernard (ENF)

### Committee for opinion

**ITRE** Industry, Research and Energy

### Rapporteur for opinion




The committee decided not to give an opinion.

### Appointed

**IMCO** Internal Market and Consumer Protection






The committee decided not to give an opinion.



	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	General Affairs	3578	2017-11-20
	Economic and Financial Affairs ECOFIN	3435	2015-12-08
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events			
Date	Event	Reference	Summary
30/09/2015	Legislative proposal published	COM(2015)0472 	Summary
14/10/2015	Committee referral announced in Parliament, 1st reading		
08/12/2015	Debate in Council		
08/12/2016	Vote in committee, 1st reading		
08/12/2016	Committee decision to open interinstitutional negotiations with report adopted in committee		
19/12/2016	Committee report tabled for plenary, 1st reading	A8-0387/2016	Summary
11/07/2017	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE607.884	
25/10/2017	Debate in Parliament		
26/10/2017	Decision by Parliament, 1st reading	T8-0415/2017	Summary
26/10/2017	Results of vote in Parliament		
20/11/2017	Act adopted by Council after Parliament's 1st reading		
12/12/2017	Final act signed		
12/12/2017	End of procedure in Parliament		
28/12/2017	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2015/0226(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation

<b>Legislative instrument</b>	Regulation
<b>Amendments and repeals</b>	Amending Directive 2009/138/EC <a href="#">2007/0143(COD)</a> Amending Directive 2009/65/EC <a href="#">2008/0153(COD)</a> Amending Regulation (EC) No 1060/2009 <a href="#">2008/0217(COD)</a> Amending Directive 2011/61/EU <a href="#">2009/0064(COD)</a> Amending Regulation (EU) No 648/2012 <a href="#">2010/0250(COD)</a> Amended by <a href="#">2020/0151(COD)</a> See also <a href="#">2015/0225(COD)</a>
<b>Legal basis</b>	Treaty on the Functioning of the European Union TFEU 114
<b>Other legal basis</b>	Rules of Procedure EP 165
<b>Mandatory consultation of other institutions</b>	<a href="#">European Economic and Social Committee</a>
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	ECON/8/04648

<a href="#">Documentation gateway</a>				
<b>European Parliament</b>				
<a href="#">Document type</a>	<a href="#">Committee</a>	<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Committee draft report		<a href="#">PE583.961</a>	06/06/2016	
Amendments tabled in committee		<a href="#">PE587.495</a>	27/07/2016	
Amendments tabled in committee		<a href="#">PE587.508</a>	27/07/2016	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0387/2016</a>	19/12/2016	<a href="#">Summary</a>
Text agreed during interinstitutional negotiations		<a href="#">PE607.884</a>	28/06/2017	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0415/2017</a>	26/10/2017	<a href="#">Summary</a>
<b>Council of the EU</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Draft final act		<a href="#">00039/2017/LEX</a>	13/12/2017	
<b>European Commission</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Legislative proposal		<a href="#">COM(2015)0472</a> 	30/09/2015	<a href="#">Summary</a>
Document attached to the procedure		<a href="#">SWD(2015)0185</a> 	30/09/2015	
Document attached to the procedure		<a href="#">SWD(2015)0186</a> 	30/09/2015	
Document attached to the procedure		<a href="#">SWD(2016)0206</a> 	15/06/2016	
Commission response to text adopted in plenary		<a href="#">SP(2017)766</a>	06/12/2017	
Follow-up document		<a href="#">COM(2020)0284</a> 	24/07/2020	

Document attached to the procedure	SWD(2020)0120 	27/07/2020	
Follow-up document	COM(2022)0517 	10/10/2022	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	RO_CHAMBER	COM(2015)0472	04/01/2016	
Contribution	CZ_SENATE	COM(2015)0472	12/01/2016	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES4971/2015	20/01/2016	
ECB	European Central Bank: opinion, guideline, report	CON/2016/0011 OJ C 219 17.06.2016, p. 0002	11/03/2016	Summary

#### Additional information

Source	Document	Date
EP Research Service	Briefing	
European Commission	EUR-Lex	

#### Final act

Regulation 2017/2402 OJ L 347 28.12.2017, p. 0035	Summary
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#### Delegated acts

Reference	Subject
2019/2889(DEA)	Examination of delegated act
2019/2921(DEA)	Examination of delegated act
2019/2958(DEA)	Examination of delegated act
2019/2759(DEA)	Examination of delegated act
2019/2957(DEA)	Examination of delegated act
2019/2558(DEA)	Examination of delegated act
2020/2803(DEA)	Examination of delegated act

<a href="#">2022/2627(DEA)</a>	Examination of delegated act
<a href="#">2021/2683(DEA)</a>	Examination of delegated act
<a href="#">2023/2954(DEA)</a>	Examination of delegated act
<a href="#">2023/2794(DEA)</a>	Examination of delegated act

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

2015/0226(COD) - 30/09/2015 - Legislative proposal

**PURPOSE:** to restart a sustainable securitisation market that will improve the financing of the EU economy, while ensuring financial stability and investor protection.

**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 on an equal footing with the Council.

**BACKGROUND:** securitisation involves transactions that enable a lender – typically a credit institution – to refinance a set of loans or exposures such as loans for immovable property, auto leases, consumer loans or credit cards, by transforming them into tradable securities.

**Securitisation can be an important channel for diversifying funding sources** and allocating risk more efficiently within the EU financial system. Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can create a bridge between credit institutions and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business finance mortgages and credit cards).

In the [Investment Plan for Europe](#) presented on 26 November 2014, the Commission announced its intention to restart high quality securitisation markets, without repeating the mistakes made before the 2008 financial crisis. The Commission considers that the development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union (CMU) and contributes to the Commission's priority objective to support job creation and a return to sustainable growth.

In its [resolution of July 2015 on the Capital Markets Union](#), the European Parliament noted that the **development of simple, transparent and standardised securitisation should be exploited better** and welcomed the initiative to establish a sustainable, transparent securitisation market by developing a specific regulatory framework with a uniform definition of high-quality securitisation, combined with effective methods for monitoring, measuring and managing risk.

**IMPACT ASSESSMENT:** the effects of the initiative are likely to change through time. The Commission considers that if the securitisation market would return to pre-crisis average issuance levels, credit institutions could provide an **additional amount of credit to the private sector ranging between €100-150bn**. This would represent a 1.6% increase in credit to EU firms and households. The policy options taken in this proposal should have **several positive effects on SME financing**.

**CONTENT:** this proposal is based on what has been put in place in the EU to address the risks inherent in highly complex, opaque and risky securitisation. It should help to **better differentiate simple, transparent and standardised (STS) products which can provide a channel of sustainable finance to the EU economy from more opaque and complex products**. This framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products).

The proposal forms a legislative package with the [legislative proposal](#) amending Regulation (EU) No 575/2013 of the European Parliament and of the Council concerning prudential requirements for credit institutions and investment firms. It aims to:

- restart markets on a more sustainable basis, so that simple, transparent and standardised securitisation can act as an effective funding channel to the economy;
- allow for efficient and effective risk transfers to a broad set of institutional investors as well as banks;
- allow securitisation to function as an effective funding mechanism for some longer term investors as well as banks;
- protect investors and manage systemic risk by avoiding a recurrence of the flawed "originate to distribute" models.

Essentially, this proposal contains two main parts. The first part is devoted to rules that apply to all securitisation, whilst the second part focuses only on STS Securitisation. Its main elements are as follows:

- **Due diligence rules for investors:** since securitisations are not always the simplest and most transparent financial products and can involve higher risks than other financial instruments, institutional investors are subject to due diligence rules. The proposal also requires investors to perform appropriate due diligence before investing in STS securitisations. They also remain responsible for assessing risks inherent to their exposure to the securitisation position and whether the securitisation is suitable and appropriate for the needs of the investor.
- **Risk retention:** the proposal imposes a direct risk retention requirement and a reporting obligation on the originator, sponsor or the original lenders. Investors will thus in a simple manner be able to check whether these entities have retained risk.

- **Transparency rules:** the proposal ensures that investors will have all the relevant information on securitisations at their disposal. It covers all types of securitisations and applies across sectors. It requires originators, sponsors and Securitisation Special Purpose Entities (SSPEs) to make freely available the information to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity.
- **STS securitisations:** there will be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). To a large extent the requirements are however similar. This proposal only allows 'true sale' securitisation to become STS. The Commission will assess whether some synthetic securitisations that have performed well during the financial crisis and that are simple, transparent and standardised should be able to meet the STS requirements.
- **STS notification and disclosure:** originators, sponsors and SSPEs take responsibility for their claim that the securitisation is STS and that there is transparency on the market. Originators and sponsors shall be liable for any loss or damage resulting from incorrect or misleading notifications under the conditions stipulated by national law.
- **Surveillance :** the proposal requires Member States to designate competent authorities in accordance with existing EU legal acts in the area of financial services to ensure effective surveillance of the securitisation market.
- **Third country dimension:** this proposal provides essentially for a system that is open to third country securitisations. EU institutional investors can invest in non-EU securitisations and will have to perform the same due diligence as for EU securitisations. Moreover, non-EU securitisations can also meet the STS requirements.

**BUDGETARY IMPLICATIONS:** this legislative proposal would have limited consequences on the EU budget (**EUR 1,733 millions**). It will imply further policy development within the Commission and in the three ESAs (EBA, ESMA and EIOPA).

**DELEGATED ACTS:** the proposal contains measures empowering the Commission to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

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

2015/0226(COD) - 19/12/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Paul TANG (S&D, NL) 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 committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

**Aim:** 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.

Members added that for that purpose, this Regulation should introduce a **ban on re-securitisation and enhance the conditions for complying with the risk retention obligations**.

The amended Regulation stipulated that **investors in securitisation** shall be institutional investors, other than the originator, sponsor or original lender of a securitisation, or institutions of third countries and territories, whose supervisory and regulatory requirements are considered equivalent to the requirements of the Union.

The Securitisation Special Purpose Entity (SSPEs) shall not be established in a **third country** if the third country promotes itself as an off-shore financial centre; there is a lack of effective exchange of information with foreign tax authorities; there is a lack of transparency with regard to legislative, judicial or administrative provisions.

**Risk retention:** the amended text stipulated that the originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a **material net economic interest in the securitisation of not less than 5 % or 10 %** depending on the retention modality chosen.

Moreover, the securitised exposures should not deliver a performance that would be significantly different from exposures that have not been securitised

The European Banking Authority (EBA) in close cooperation with the European Systemic Risk Board (ESRB) shall take a reasoned decision on required retention rates of up to 20 % in light of market circumstances

**Transparency requirements:** the originator, sponsor and SSPE of a securitisation shall make at least the following information available to holders of a securitisation position, investors prior to them being exposed to a securitisation position and to the competent authorities: (i) all underlying documentation that is essential for an understanding of the transaction, including, to the extent that they are available, at least; (ii) a detailed description of the priority of payments; (iii) information about the credit granting and credit scoring process followed for the underlying assets in the securitisation and the historical evolution of non-performing loans underwritten by the originator; (iv) details regarding loss waterfall.

The investor in a securitisation position on the secondary market shall make at least the following information available to the competent authorities: (a) its beneficial owner, including the country of establishment and business sector; and (b) the size of their investment and to which tranche of the securitisation it relates.

The European Securities and Markets Authority (ESMA) must safeguard the transparency of the securitisation market to the benefit of market participants and supervisors. It may adopt guidelines in order to further specify the conditions in which the securitised exposures do not represent material risk exposure.

**Conditions and procedures for registration of a securitisation repository:** the proposed amendments seeks to introduce new articles as regards:

- the **registration** of a securitisation repository with ESMA, examination of the application, notification of ESMA decisions relating to registration;
- the possibility for the ESMA, by simple request or by decision, to require securitisation repositories and related third parties to whom the securitisation repositories have outsourced operational functions or activities to provide all **information that is necessary** in order to carry out its duties under this Regulation;
- the possibility for the ESMA to conduct necessary **investigations** and **on-site inspections**;
- procedural rules concerning the adoption of surveillance measures and imposing **fin**es: the basic amounts of the fines shall range from EUR 5 000 to EUR 200 000 depending on the type of infringement;
- ESMA shall, by decision, impose **periodic penalty payments** in order to compel a securitisation repository to put an end to an infringement: the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year;
- the opportunity for persons to be **heard** before the ESMA takes any decision on a fine or on a periodic penalty payment. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment;
- **supervisory measures** used ESMA, for instance, to require the securitisation repository to bring the infringement to an end; to impose a temporary prohibition on the acceptance of new originators, sponsors or SSPE or the extension of the services that the securitisation repository offers, when these would compromise the stability or the accuracy of data; require the removal of a natural person from the governing bodies of a trade repository.

**Simple, transparent and standardised securitisation (STS):** the amended text underlined that the ESMA should therefore, together with the national authorities competent for securities markets, **supervise compliance with the STS criteria** and develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues.

The originator and the sponsor shall publish **information on the long-term, sustainable nature of the securitisation for the investors**, using environmental, social and governance criteria to describe how the securitisation contributed to real economy investments and in which way the original lender used the freed-up capital.

**Simple, transparent and standardised asset-backed commercial paper (ABCP) securitisation:** there should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). Members proposed regular stress testing for financial institutions that want to support an ABCP programme.

## 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.

## 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.

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

2015/0226(COD) - 11/03/2016

**OPINION OF THE EUROPEAN CENTRAL BANK** on (a) a **proposal for a regulation** laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation; and (b) a **proposal for a regulation** amending Regulation (EU) No 575 /2013 on prudential requirements for credit institutions and investment firms.

**The ECB welcomed the objectives of the proposed regulations** of promoting the further integration of Union financial markets, diversifying funding sources and unlocking capital for sound lending to the real economy. It considered that the proposed regulations strike the right balance between the need to revive the European securitisation market by making the securitisation framework more attractive for both issuers and investors, and the need to maintain the prudential nature of the regulatory framework.

**As regards the proposal for a regulation laying down common rules on securitisation**, the ECB made the following recommendations:

**Provisions applicable to all securitisations:** the ECB welcomed the proposed securitisation regulation's consolidation and harmonisation of existing regulatory requirements in a common set of rules for all securitisations.

In order to **avoid unnecessary duplication** of transparency and disclosure obligations the proposed securitisation regulation, the ECB recommended the repeal of Article 8b of [Regulation \(EC\) No 1060/2009](#) of the European Parliament and of the Council on credit rating agencies but also, after the expiry of the transitional period provided for in the proposed securitisation regulation, of the related [Commission Delegated Regulation \(EU\) 2015/3](#).

While welcoming the proposed securitisation regulation's approach to transparency requirements, the ECB considered that the **transparency requirements** need to be balanced against the confidentiality of private and bilateral transactions.

Prospectuses or equivalent offering documents, loan-level data and other securitisation documentation should be disclosed to prospective investors as well. However, such data should only be disclosed publicly in the case of public transactions and otherwise should only be disclosed to the prospective investors to which a transaction is marketed.

At the same time, the ECB recommended exempting certain securitisations from unnecessary disclosure burdens, such as intra-group transactions or where there is a single investor only.

The ECB also recommends that loan-level data is expressly required, redacted where this is necessary to protect confidentiality for corporate clients of sponsors.

**Criteria for STS securitisations:** the ECB supported the establishment of criteria to identify a subset of securitisations which can be classified as simple, transparent and standardised (STS) and welcomes the proposed CRR amendment's adjustment to capital charges to provide for a more risk-sensitive treatment for STS securitisations.

- **Clear criteria:** the ECB stressed the importance that the criteria and their application are not overly complex, to ensure, inter alia, that investors are not hindered in fulfilling their extensive due diligence obligations. The onus of ensuring and notifying compliance with STS criteria rests with the securitising parties. Thus, the clarity of the STS criteria is key to the decision by originators and sponsors to apply the STS framework and expose themselves to the sanctions regime for failing to fulfil the criteria.

The ECB considered **most of the criteria to be sufficiently clear**. However, it recommended mandating the European Banking Authority (EBA) to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), regulatory technical standards on STS criteria where further clarification is needed.

- **Sound asset quality:** this is key to the STS framework and underpins the capital charges for STS securitisations. Thus, performing loans restructured more than three years prior to inclusion in an STS securitisation can be allowed. However, any relaxation beyond this threshold would require a recalibration of the capital charges envisaged in the current proposal, to maintain the prudential nature of the STS framework.

- **Asset-backed commercial paper (ABCP) programmes:** although ABCP programmes have the potential to support financing of the real economy, the ECB considered however that preferential regulatory capital treatment should be restricted to ABCP programmes **without maturity mismatches** between the underlying assets and commercial paper liabilities. From a prudential perspective, maturity mismatches expose investors, in the case of sponsor default, to extension risk and potential losses, and sponsors to liquidity strains or even losses if investors no longer roll over short-term paper in times of market disruption. Therefore, the ECB recommended a one-year, rather than a three-year, up to six-year, residual maturity cap for underlying assets of STS ABCP programmes, with which most existing ABCP programmes could comply or adjust to.

- **Transparency standards:** STS securitisations should meet higher transparency standards than non-STS securitisations. The proposed securitisation regulation should therefore clarify that higher standards for investor reporting are mandatory for STS securitisations.

**Repayment:** the ECB considered that securitisations whose repayment is dependent on collateral liquidation should not qualify under the STS framework. Only securitisations whose repayment depends strictly on obligors' willingness and ability to meet their obligations should be eligible under the STS framework.

**STS attestation, notification and due diligence:** the ECB supported the proposed securitisation regulation's approach of requiring both that securitising parties jointly self-attest to the compliance of a securitisation with the STS criteria and that investors conduct their own due diligence on STS compliance.

The EB stipulated that **third parties should not be expressly granted a role by law** in the STS attestation process in the proposed securitisation regulation as this would weaken a key pillar of the STS framework. Instead, the ECB considers that legal certainty for securitising parties should mainly be achieved by making the STS criteria sufficiently clear.

**The STS notification process should ensure greater clarity** for investors by explicitly documenting, in the summary of the prospectus or equivalent information memorandum, whether and, if so, how the STS criteria have been fulfilled.

**Effective cooperation between supervisory authorities:** the ECB recommended:

- enhancements to the cooperation procedures between competent authorities and the EBA, ESMA and EIOPA to resolve more efficiently disagreements between two or more competent authorities, especially in cases when one or more of them decides that a securitisation should lose its STS status;
- that the ESMA should keep a centralised register of all remedial actions undertaken with respect to securitisations regulated under the proposed securitisation regulation.

**Sanctions regime:** the ECB recommended a reduction in the types of administrative sanctions available by limiting the extent of fines, the removal of the possibility for Member States to impose criminal sanctions for infringements of the proposed securitisation regulation, and the imposition of sanctions **only in the event of negligence**, including negligent omissions, rather than on a strict liability basis.

**Ensuring robust supervision of third country STS securitisation:** the ECB supported an STS securitisation framework that is open to accepting STS securitisations issued in third countries provided that such acceptance is complemented by a requirement that the third country originator, sponsor and SSPE taking part in such securitisation are **subject to a robust supervisory framework** in relation to their STS securitisation activities, which the European Commission has assessed as equivalent to the Union framework.

**ECB's supervisory competences in respect of securitisation:** the ECB also assessed its role under the new securitisation regime. It considered that the proposed securitisation regulation should be amended to ensure that the ECB's competences under the proposed securitisation regulation reflect the tasks conferred on it by [Council Regulation \(EU\) No 1024/2013](#).