

## ***COMP C Recitals (1) – (15) and (22a new)***

*If COMP C adopted, the following amendments fall: AMs 1-AM 5 Seekatz; AM 58 Heinäluoma, Papandreou, Fernández, Repasi; AM 59-61 Crosetto, Vivaldini, Nesci, Ventola, Squarta; AM 62 Zijlstra; AM 63 Ferber; AM 64 Zijlstra, Pimpie; AM 65 Boyer, Yon-Courtin, Kelleher; AM 66 Gomart; AM 67 Zijlstra, Pimpie; AM 68 Heinäluoma, Papandreou, Fernández, Repasi; AM 69 Kubin; AM 70-72 Toussaint; AM 73 Kubin; AM 74 Heinäluoma, Papandreou, Fernández, Repasi; AM 75 Boyer, Yon-Courtin, Kelleher; AM 76 Zijlstra, Pimpie; AM 77 Doherty; AM 78 Heinäluoma, Papandreou, Fernández, Repasi; AM 79 Toussaint; AM 80 Heinäluoma, Papandreou, Fernández, Repasi; AM 81 Boyer, Yon-Courtin, Kelleher; AM 88 Boyer, Yon-Courtin, Kelleher*

Proposal for a

### **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Securitisation can boost investment by allowing banks to transfer risks to those that are able to bear them and thereby free up their capital, which they could use for additional lending to households and businesses, including small and medium-sized enterprises (SMEs). Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>1</sup>, covering both simple, transparent and standardised (STS) and non-STS securitisations, has strengthened market transparency, safety, and standardisation. At the same time,

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<sup>1</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 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 (OJ L 347, 28.12.2017, p. 35, ELI: <http://data.europa.eu/eli/reg/2017/2402/oj>).

that Regulation should be further simplified to more fully exploit the benefits that securitisations can offer.

- (2) It is important that financial institutions employ their capital where it is most needed to reach the Union's economic goals and funding the real economy. In addition to the flexibility provided for by the existing rules, targeted changes to Regulation (EU) 2017/2402 would ensure that the Union securitisation framework better supports investments in the economy and facilitates lending to businesses.
- (3) To enhance transparency and to ensure consistent regulatory treatment aiming at reducing costs for issuers, a definition of public and of private securitisation should be introduced. ~~The scope of public securitisations should cover transactions where the underlying notes are admitted to trading on regulated markets, Multilateral Trading Facilities (MTFs), Organised Trading Facilities (OTFs), or any other trading venue in the Union, and transactions marketed to investors under non-changeable terms and conditions where the package is offered on a "take-it-or-leave-it" basis and investors have no direct contact with the originators or sponsor and can therefore not directly receive necessary information to conduct due diligence without the originator or sponsor disclosing any commercially sensitive information to the market. *A securitisation should be deemed public whenever a prospectus is required to be published or where the underlying pool of exposures is actively managed by the originator or sponsor.*~~ Defining those types of transactions as public, by virtue of their accessibility to a broad range of investors, should ensure that such transactions are subject to the appropriate transparency requirements and regulatory scrutiny and contribute to better market oversight and functioning.
- (4) Due diligence requirements should be proportionate to the risk profile of securitisation positions. Investor due diligence should therefore be focused on the risks characteristics and structural features that can materially affect the performance of the securitisation, avoiding duplicative, overly burdensome or generic obligations that may not be meaningful across different types of securitisation. For the same reason, due diligence obligations should be streamlined, thus reducing unnecessary costs for investors — particularly in lower-risk securitisations — and fostering more proportionate and risk-sensitive investor behaviour in the securitisation market.
- (4a) *The due diligence requirements applicable to securitisations issued by third-country entities currently oblige such issuers to comply with the Union's disclosure requirements, in particular the use of the standardised disclosure templates laid down in the delegated acts under Regulation (EU) 2017/2402. This obligation creates unnecessary barriers to investment, as it requires third-country issuers to replicate the Union's regime even where equivalent or substantially similar information is already provided under their domestic framework. To avoid limiting investment opportunities for EU investors and to support the development of a strong investor base for securitisations within the Union, the requirements should be adjusted so that EU investors, as part of their due diligence, verify that third-country issuers provide information which is substantively equivalent to the transparency standards set out in accordance with Regulation (EU) 2017/2402, without mandating formal adherence to the Union's disclosure templates.* (AM 64 Zijlstra, Pimpie; AM 65 Boyer, Yon-Courtin, Kelleher; AM 66 Gomart)
- (5) Originators, original lenders, sponsors or securitisation special purpose entities (SSPEs) (the 'sell-side entities') that are established in the Union are already subject to supervision in the Union and can be sanctioned in case they breach their obligations

under Regulation (EU) 2017/2402. It is therefore appropriate that investors are no longer required to verify whether Union sell-side entities, where those entities are responsible on behalf of the sell-side parties in the transaction, comply with due diligence requirements set in Regulation (EU) 2017/2402. Investors should, however, still verify whether *transactions that involve sell side entities established in third countries* have complied with their obligations for which third countries' sell-side entities are responsible under Regulation (EU) 2017/2402. (AM 68 Heinäluoma, Papandreou, Fernández, Repasi)

- (6) Senior tranches, typically benefiting from substantial credit enhancement and posing lower risk, should require a less extensive due diligence review than junior or mezzanine tranches, which bear higher risk and greater exposure to losses. That proportional approach supports more efficient allocation of resources by investors and avoids excessive burdens for low-risk investments.
- (7) Since compliance with the STS requirements is already subject to separate regulatory oversight and notification, the obligation for investors to verify compliance with those requirements is redundant. Moreover, verifying compliance with the STS criteria is not relevant for all types of investors. The corresponding requirement should therefore be deleted.
- (8) Investors should be allowed to conduct simplified due diligence to investments in repeat transactions where key risk characteristics are already well understood. For those purposes, investment in repeat transactions should be considered as investment in securitisation positions issued by the same originator, backed by the same type of underlying assets, exhibiting the same structural features, and offering the same or lower level of credit risk compared to previous investments. ~~That change~~ ***For that purpose, a definition of repeat transactions should be introduced in Regulation (EU) 2017/2402. Those changes*** should ensure consistency in due diligence practices while facilitating investor participation in well-known and transparent structures. (AM 2 Seekatz)
- (9) Multilateral development banks can play a significant role in facilitating investor access to securitisation markets, enhancing liquidity, and supporting the objectives of the Savings and Investments Union. Where a securitisation position is fully, unconditionally and irrevocably guaranteed by a multilateral development bank listed in Article 117(2) of Regulation (EU) 575/2013 of the European Parliament and of the Council<sup>2</sup>, the credit risk arising from the securitisation position is effectively transferred from the pool of underlying assets to the guarantor, resulting in a 0% risk weight of such exposure. In addition, such securitisation position is categorised as Level 1 asset under Article 10(1), point (g), of Commission Delegated Regulation (EU) 2015/61<sup>3</sup>. In such cases, it is appropriate to exempt institutional investors, except the entity providing the guarantee, from their due diligence requirements in full under Regulation (EU) 2017/2402.
- (10) Transactions where the first loss tranche is either held or guaranteed by the Union, national promotional banks or institutions within the meaning of point (3) of Article 2

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<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/201 (OJ L 176, 27.6.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/575/oj>).

<sup>3</sup> Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1, ELI: [http://data.europa.eu/eli/reg\\_del/2015/61/oj](http://data.europa.eu/eli/reg_del/2015/61/oj)).

of Regulation (EU) 2015/1017 of the European Parliament and of the Council<sup>4</sup> inherently possess characteristics that mitigate the need to carry out the full due diligence and fulfil the risk retention requirement. These transactions carry an assurance by the guarantor, who carries out due diligence processes before affording such a guarantee. This assessment removes the need for the institutional investors to perform a full due diligence assessment under Regulation (EU) 2017/2402. Furthermore, the essence of a guarantee is the assumption of risk by the guarantor. Therefore, it is appropriate to lift the risk retention requirement. These changes are expected to crowd in private investment in derisked structures with a public guarantee.

- (11) An institutional investor that delegates the authority to make investment management decisions to another institutional investor should be able to instruct the delegate to perform the due diligence obligations set out in Regulation (EU) 2017/2402. ***In such cases*** However, such delegation should not transfer legal responsibility. the delegating institutional investor should remain ultimately responsible for ensuring compliance with the ***assess and monitor the effectiveness of the delegate's ability to perform the delegated*** due diligence ***tasks*** requirements. That specification is intended to reflect established regulatory practice and to ensure that obligations are fulfilled effectively while maintaining clear lines of accountability. (AM 75 Boyer, Yon-Courtin, Kelleher)
- (11a) ***The “sole purpose test” is an important safeguard to avoid loopholes on risk retention. However, its implementation needs to be recalibrated to avoid creating obstacles for businesses, which are considered as economically suitable to act as retainers. The EBA should in greater detail specify the criteria whereby an entity should not be considered to have been established or to operate for the sole purpose of securitising exposures. In particular, those criteria should ensure that entities acting as an originator, that provide SME loans, consumer credit or residential mortgages, and that can demonstrate that securitising exposures is a means to finance their business or that of an entity belonging to the same group, which is centred on the provision of goods or non-financial services, should be deemed to satisfy the “sole purpose test”. When an entity does not meet the criteria as set out in a delegated regulation adopted pursuant to this Regulation, the actual purpose for which the entity was established and operates should be examined by the competent authority on a case-by-case basis to ascertain that it has a real substance and is suitable to perform the role of a retainer in a securitisation transaction.***
- (12) The disclosure requirements should consider the granularity of the underlying pool of exposures, i.e. how many loans are in the underlying pool. ~~In addition, it is important to consider the average maturity of the underlying exposures.~~ Loan level disclosure for highly-granular pools of ~~very short-term~~ exposures can be particularly costly and entails a considerable burden for issuers, often without offering significant benefits in terms of additional information to investors. Therefore, disclosure requirements for securitisations of ~~credit card exposures and~~ certain types of ***underlying exposures*** ~~consumer loans~~ should not need to encompass reporting at the level of each individual underlying exposure. ***At the same time, the degree of granularity of underlying exposures which justifies aggregated reporting might differ from asset class to asset***

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<sup>4</sup> Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

*class. Therefore mapping the granularity of pools of exposures allowing for aggregated reporting to specific underlying asset classes, including mortgages, corporate loans, credit cards, consumer loans, auto loans and trade receivables should be trusted to the EBA.* However, *in duly justified cases, the* competent authorities should still have the possibility to ask for additional information to ensure that they have a complete overview of the market, including on the exposures that constitute the underlying pool, in carrying out their duties under Regulation (EU) 2017/2402.

- (13) The current reporting templates<sup>5</sup> both for public and private securitisations are too costly and burdensome. The burden on entities when complying with their reporting obligations should be therefore reduced, without undermining the goal of providing transparency to the market. The reporting templates should be streamlined to reduce the number of mandatory data fields. The revision of the template should aim to bring a reduction of at least 35% of mandatory data fields. The conversion of certain mandatory fields into voluntary fields could add further flexibility, but appropriate attention should be given to ensure that that does not compromise data quality or usability.
- (14) The reporting framework should account for the specific characteristics of private securitisations. A dedicated and simplified reporting template for private securitisations should be developed *since it should not be required to report the same amount of information for private securitisations as for public securitisations.* In specifying the details of reporting requirements, the information required to be reported should be aligned as closely as possible with other well-established templates, in particular with the guide on the notification of securitisation transactions developed by the European Central Bank in accordance with Article 6(5), point (a), of Council Regulation (EU) No 1024/2013<sup>6</sup>. Any future changes to the European Central Bank guide should be assessed and the reporting templates may need to be reviewed, where appropriate. To allow for basic visibility for supervisors over the private market, private securitisations should report to repositories. *Leveraging securities repositories for private securitisations will allow national competent authorities to reduce costs and to benefit from existing reporting infrastructure established under the EU securitisation regulation.* Private securitisations should not need to report the same amount of information as public securitisations. Requiring private transactions to report to securitisation repositories, using a simplified template, would improve supervisory oversight and market monitoring. However, to ~~maintain~~ *ensure the required high level of* the confidentiality of private transactions, data from those transactions should not be publicly disclosed. (AM 5 Seekatz; AM 80 Heinäluoma, Papandreou, Fernández, Repasi; AM 81 Boyer, Yon-Courtin, Kelleher )
- (15) The securitisation sub-committee of the Joint Committee of the European Supervisory Authorities (the “Joint Committee Securitisation Committee - JCSC”), referred to in

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<sup>5</sup> Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE and Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 laying down implementing technical standards with regard to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE (OJ L 289, 3.9.2020, p. 1, ELI: [http://data.europa.eu/eli/reg\\_del/2020/1224/oj](http://data.europa.eu/eli/reg_del/2020/1224/oj)).

<sup>6</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63, ELI: <http://data.europa.eu/eli/reg/2013/1024/oj>).

Article 36(3) of Regulation (EU) 2017/2402, under the leadership of the European Banking Authority (EBA), should develop draft regulatory technical standards to further specify the information that the originator, sponsor and SSPE are to provide to comply with the reporting obligation. Those draft regulatory technical standards should take into account the usefulness of the information for the holder of the securitisation position, whether the securitisation is public or private, whether the securitisation position is of a short-term nature and, in the case of an asset-backed commercial paper programme (ABCP) transaction, whether it is fully supported by a sponsor. The Commission should be empowered to supplement Regulation (EU) 2017/2402 by adopting those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>7</sup>, Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>8</sup> and Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>9</sup>. Moreover, the JCSC, under the leadership of the EBA, should develop draft implementing technical standards to specify the format for the provision of the information to repositories. The Commission should be empowered to adopt those implementing technical standards by means of an implementing act pursuant to Article 291 TFEU and in accordance with Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

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<sup>7</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>).

<sup>8</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48)

<sup>9</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84)