

## COMP D Recitals (15a new) – (32)

If COMP D adopted, the following amendments fall: AMs 6-9 Seekatz; AM 82 Winzig; AM 83 Heinäluoma, Papandreou, Fernández, Repasi; AM 84 Toussaint; AM 85 Doherty; AM 86 Heinäluoma, Papandreou, Fernández, Repasi; AM 87 Kubin; AM 89-90 Boyer, Yon-Courtin; AM 91 Boyer, Yon-Courtin, Kelleher; AM 92 Zijlstra, Pimpie; AM 93 Doherty; AM 94 Gomart; AM 95-96 Ferber; AM 97-98 Zijlstra; AM 99 Kubin; AM100 Zijlstra, Pimpie; AM 101 Heinäluoma, Papandreou, Fernández, Repasi; AM 102-103 Boyer, Yon-Courtin; AM 104-105 Heinäluoma, Papandreou, Fernández, Repasi; AM 106-108 Boyer, Yon-Courtin; AM 109 Heinäluoma, Papandreou, Fernández, Repasi; AM 110-111 Toussaint

**Commented [AM1]:** Application of “amended prudential treatment to existing transactions” on optional basis belongs to CRR part since there are no rules on prudential treatment in Sec. Reg. part. (recital 15a new)

**Commented [AM2]:** AM 88 included in COMP C – Sole purpose test relates to Article 6

- (16) To support access to market-based financing for SMEs, and to facilitate the development of cross-border securitisations involving exposures from multiple Member States, the criteria for the homogeneity of asset pools should be revised. While it is possible to have securitisations involving exposures from multiple Member States, the requirement of homogeneity, as defined at present, is considered as an obstacle for SMEs securitisations. To overcome that obstacle, a pool of underlying exposures should be deemed homogeneous where at least 70 % of the exposures at origination consists of exposures to SMEs. That lower threshold recognises the specific financing needs and characteristics of SMEs and ensures that mixed pools with a predominant SME component can benefit from the legal certainty and operational efficiencies associated with homogeneous pools. The remaining portion of the pool should be allowed to include other types of exposures, also from different Member States, without affecting the securitisation’s status as STS.
- (17) In 2021, Regulation (EU) 2017/2402 was amended by Regulation (EU) 2021/557 of the European Parliament and of the Council<sup>1</sup> to extend the STS framework to synthetic securitisations. As indicated in the report of the Joint Committee of European Supervisory Authorities, that extension of the STS label has led to satisfactory results in terms of opening the way for new issuance and encouraging greater activity in this market segment. However, the practical implementation of the STS requirements has revealed the necessity to further improve the clarity and consistency in specific requirements with some technical adjustments.
- (18) To ensure the consistent selection of the underlying exposures in a securitisation and to enable investors to assess the credit risk of the asset pool prior to investment, active portfolio management on a discretionary basis of a securitisation exposure is prohibited. Article 26b of Regulation (EU) 2017/2402 contains an exhaustive list of permitted management activities and stipulates that certain activities should not be considered active portfolio management on a discretionary basis and therefore not be prohibited. It is necessary to update that list to include removals due to sanctions imposed on an entity during the life of the transaction or fraudulent practices, or amendments to the loan due to a change in the law affecting the enforceability, which are outside the control of the originator. Both circumstances would have an impact on the enforceability of the

<sup>1</sup> Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis (OJ L 116, 6.4.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/557/oj>).

underlying exposures (beyond the control of the originator) and the removal of those underlying exposures should not be considered as active portfolio management on a discretionary basis.

- (19) The criteria relating to standardisation laid down in Article 26c of Regulation (EU) 2017/2402 outline the mechanisms for loss allocation to securitisation position holders and determine the application of various amortisation methods to tranches. The central aim of those criteria is to ensure that non-sequential amortisation is employed only when accompanied by distinctly specified contractual triggers. Those triggers are intended to prompt a switch to sequential payments based on the hierarchy of seniority, thereby protecting the transaction from the premature amortisation of credit enhancement in the event of a decline in credit quality. Such premature amortisation could expose originators holding those tranches to risks associated with a diminishing credit enhancement cushion. However, those criteria fail to adequately consider the loss-bearing capacity of tranches subordinated to the protected tranches within a securitisation, leading to misapplication when interpreted literally in the context of synthetic securitisations that include mezzanine tranches. Those criteria inadvertently assume that all associated losses fall solely on the protected tranche, and thus ignoring an assignment to more junior tranches. It should therefore be specified that, in instances where junior tranches absorb portions of the underlying exposure losses, their loss-bearing capacities should be taken into consideration for the application of the criteria.
- (20) Article 26e(3) of Regulation (EU) 2017/2402 currently specifies that the credit protection premiums to be paid under the credit protection agreement are to be structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche. To ensure the effectiveness of the credit protection agreement from the originators' perspective and at the same time provide legal certainty for investors on the termination date to make payments by specifying the maximum extension period for the debt workout, it should be specified that only credit protection premiums contingent on the size of the outstanding tranche and credit risk of the protected tranche are allowed.
- (21) Article 26e(7) of Regulation (EU) 2017/2402 specifies the conditions under which an originator may commit synthetic excess spread as credit enhancement for investors. One of those conditions is that, for originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the calculation of the one-year expected loss of the underlying portfolio is to be clearly determined in the transaction documentation. In order to specify the requirements for the synthetic excess spread committed by the originator and available as credit enhancement for the investors, a specific criterion has been introduced in the 2021 amendment to Regulation (EU) 2017/2402. The application of this criterion has shown that it requires further clarification. In addition, an inconsistency has been identified regarding the requirements for originators not using the IRB Approach. That requirement should be amended to align with the intent to set a cap, equivalent to one year's expected loss, on the total amount of synthetic excess spread that the originator should commit per year, thereby ensuring consistency and clarity in the application of that provision.
- (22) The current criterion requiring credit protection is to be funded in the STS framework for on-balance-sheet synthetic securitisation under the STS regime has limited the ability of insurance or reinsurance companies to participate in the on-balance-sheet STS securitisation market. That is detrimental to the development of the STS market and the

ability of originators to transfer credit risk outside the banking system. Allowing unfunded credit protection to be eligible for the STS label should, however, not undermine the quality of the STS label or the reliability of the credit protection agreement, nor should it create incentives for inexperienced or undiversified insurance or reinsurance undertakings to become exposed to high levels of risk. It is therefore appropriate to put in place safeguards to ensure that participation is limited to insurers with a certain level of robustness and diversification. Therefore, eligibility for providing unfunded credit protection under the STS label should be accompanied by requirements related to diversification, solvency, risk measurement, and minimum size of the protection provider. Specifically, when it comes to risk measurement, the insurance or reinsurance undertaking should use an approved internal model to calculate capital requirements for such credit protection agreements. When it comes to solvency, the insurance or reinsurance undertaking should comply with the Solvency Capital Requirement and Minimum Capital Requirement referred to in Articles 100 and 128 of Directive 2009/138/EC, respectively, and should have been assigned to credit quality step 2 or better **at the time the credit protection was first recognised**. When it comes to diversification, the insurance or reinsurance undertaking should ~~effectively operate~~ **have significant** business activities in ~~at least two~~ classes of non-life insurance **that are not correlated with the provision of credit protection**, which should reduce overexposure to any single risk type. Finally, when it comes to minimum size, ~~the insurance or reinsurance undertaking should have the value of the total assets of the insurance or reinsurance undertaking should be laid down at solo and consolidated level and should take account of the market structure above EUR 20 billion.~~

- (23) Third-party verifiers have a role in assessing the compliance of securitisations to the STS criteria. Regulation (EU) 2017/2402 only requires third-party verifiers to be authorised by national competent authorities. Such authorisation is, however, of limited assurance if competent authorities are not in position to assess whether those third-party verifiers continue to comply with the conditions for their authorisation on an ongoing basis. **To ensure consistency in the supervision of third party verifiers and monitoring on an ongoing basis**, it is therefore appropriate to lay down that competent authorities are also **ESMA** is responsible for the **authorisation and** ongoing supervision of such third-party verifiers and adequately empowered to do so. **This would also strengthen investor confidence and ensure a level playing field in terms of authorisation requirements and ongoing supervision and eliminate the risk of regulatory arbitrage across Member States.** (AM 89 and 103 Boyer, Yon-Courtin)
- (24) To ensure the effective implementation and enforcement of Regulation (EU) 2017/2402, it is necessary to clarify the responsibilities of competent authorities in supervising the compliance of all relevant parties involved in a securitisation. Competent authorities should oversee the conduct of originators, sponsors, original lenders, and SSPEs. ~~This includes verification of whether individual securitisation transactions comply with the applicable requirements under this Regulation.~~ (AM 7 Seekatz; AM 90 Boyer, Yon-Courtin)
- (25) In order to strengthen compliance with, and to enhance the effectiveness of, Regulation (EU) 2017/2402, the scope of sanctioning powers under Article 32 of that Regulation should be broadened to explicitly include infringements of due diligence obligations. Institutional investors play a key role in ensuring the soundness and transparency of the securitisation market by conducting appropriate due diligence before and during their exposures. To ensure consistent enforcement across the Union of those due diligence requirements, it should be specified that failure to comply with those requirements is to

be subject to remedial measures and administrative sanctions by competent authorities. ***However, if the sanctioning regime for infringements of the due diligence requirements is too harsh, new investors might be disincentivised from participation. Therefore, a more proportionate sanctioning regime vis-à-vis institutional investors as compared to the sanctions applicable to the sell-side requirements would be better suited to achieve the objective of widening the investor base in securitisation markets.*** (AM 8 Seekatz)

- (26) Fostering supervisory convergence is essential to the proper functioning and further development of the securitisation market which brings together a wide range of economic actors often based in different jurisdictions, even for the same transaction. The involvement of several competent authorities, combined with the current complexity of the decision-making process, highlights the need to strengthen the supervisory coordination. Simplifying and reinforcing existing frameworks for supervisory coordination, where feasible, should support the broader aim of simplification in regulation and supervision. Stronger convergence can be achieved by using more efficiently and effectively existing powers that allocated to the ESAs and the competent authorities. This outcome should be also supported by giving a more prominent role to the EBA, which should assume permanent stewardship of supervision coordination issues for the securitisation market in the Union.
- (27) The Joint Committee Securitisation Committee, composed of market and prudential competent authorities, should focus on issues stemming from supervision and should facilitate and promote supervisory convergence through common supervisory practices. The current mandate of the JCSC should be reviewed to put emphasis on supervisory convergence and work related to Article 44 of this Regulation. The JCSC can meet in different formats or establish subgroups for specific tasks according to the issues to be discussed. The EBA should provide the secretariat and a vice-chairperson for the Joint Committee Securitisation Committee on a permanent basis, deputising and supporting the chairperson in the exercise of his or her duties. In the absence of the chairperson, the vice-chairperson should perform the tasks of the chairperson, including in situations where no chairperson is elected. Representatives to this body from participating market and prudential competent authorities should have the appropriate level of knowledge and experience in matters under discussion. The regular monitoring of the state of the market and evaluation of the supervisory securitisation framework in the Union through monitoring reports, development of guidelines and regular peer reviews would further strengthen the supervisory framework promoting best (supervisory) practices.
- (28) Given that securitisation activity in the Union is primarily concentrated in the banking sector, it is appropriate that the EBA assumes the permanent stewardship role in the Joint Committee Securitisation Committee. In the exercise of its permanent role in the Joint Committee Securitisation Committee, the EBA should attach particular attention to nourishing strong and collaborative working relationships with the European Securities Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) and duly taking account of their sectoral perspectives. It should be expected that such reinforced supervisory coordination will result in more robust and consistent supervision of the securitisation market in the Union. In this capacity, the EBA should also lead the work on the development of the disclosure templates as provided for in Article 7 of this Regulation. This will be instrumental in preparing the market for the anticipated growth and developing supervisory capacity and preparedness to support this expansion. Assigning a stewardship role to EBA in

this supervisory capacity aligns with the strategic vision of an efficient and simplified regulatory landscape.

- (29) In case of cross-border securitisations, appointing a lead supervisor would streamline the supervision of compliance with Regulation (EU) 2017/2402 and ensure consistency and better coordination among the different competent authorities. The lead supervisor should be appointed from among the competent authorities of the entities involved in the transaction, with the decision taken by the competent authorities concerned. In case of disagreements the matter should be dealt with at the level of the Joint Committee Securitisation Committee. Whenever a new transaction involves entities supervised by the same competent authorities, the lead previously appointed can keep that role.
- (29a) *In line with the European Commission's objectives of simplification, reducing reporting burdens, ensuring consistent and effective supervision across the Union and advancing the Savings and Investments Union agenda, EBA should be responsible for supervising compliance with Articles 18 to 27 of this Regulation by originators, sponsors, and SSPEs to ensure consistent supervision and enforcement at Union level. To fulfil this role and the role of ESMA in authorising and supervising third party verifiers, ESMA should be granted the necessary investigatory and enforcement powers, including the ability to request information, carry out on-site inspections and impose administrative measures and sanctions where appropriate.*** (AM 101 Heinäluoma, Papandreou, Fernández, Repasi; AM 102 and 106 Boyer, Yon-Courtin)
- (29b) *To ensure appropriate funding of its new supervisory tasks, in accordance with this Regulation, EBA and ESMA should be empowered to levy annual fees on entities submitting STS notifications and on third party verifiers. Those fees should reflect EBA's and ESMA's supervisory costs and be proportionate to the turnover of the entity, relative to the total turnover of all such entities for that period.*** (AM 104 Heinäluoma, Papandreou, Fernández, Repasi; AM 107 Boyer, Yon-Courtin)
- (29c) *Close cooperation and timely information exchange between ESMA, national competent authorities, and the European Central Bank - particularly in relation to the supervision of significant institutions under Articles 6 to 9 - should be ensured. Governance-related findings and risk indicators should be shared to avoid duplication and ensure an efficient and coordinated supervisory approach across prudential and investor protection mandates.*** (AM 105 Heinäluoma, Papandreou, Fernández, Repasi; AM 108 Boyer, Yon-Courtin)
- (30) It is important to ensure that the regulatory framework for securitisations remains effective and adapts to the evolving financial landscape. For that reason, the Commission should comprehensively review the impact and functionality of this Regulation within 5 years after its adoption, with careful attention to its influence on the securitisation market and its broader economic implications. That review should focus on critical aspects, including market dynamics, the accessibility of credit in particular for SMEs, investments, and the interconnectedness of financial institutions which is vital for maintaining the stability of the financial sector. Combining insights from the reports referred to in **Article 31 and Article 44** of Regulation (EU) 2017/2402 and further analyses, the Commission should determine the necessity for legislative updates to safeguard the role of Regulation (EU) 2017/2402 in supporting a resilient and dynamic economy within the European Union. (AM 109 Heinäluoma, Papandreou, Fernández, Repasi)

Commented [AM3]: ESRB report

- (31) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States given that securitisation markets operate globally and that a level playing field in the internal market for all institutional investors and entities involved in securitisation should be ensured but, by reason of their scale and effects, can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (32) Regulation (EU) 2017/2402 should therefore be amended accordingly,