

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

[^{F1}CHAPTER 4

SIMPLE, TRANSPARENT AND STANDARDISED SECURITISATION

SECTION 2

Requirements for simple, transparent and standardised ABCP securitisation

[^{F1}Article 24

Transaction-level requirements

1 The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.

2 For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

- a provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;
- b provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3 For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4 Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5 Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

- a severe deterioration in the seller credit quality standing;
- b insolvency of the seller; and
- c unremedied breaches of contractual obligations by the seller, including the seller's default.

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6 The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

7 The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8 The underlying exposures shall not include any securitisation position.

9 The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

- a has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
 - (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and
 - (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;
- b was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or
- c has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

10 The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

11 The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another

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third party shall not be considered to depend on the sale of assets securing those underlying exposures.

12 The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

13 The transaction documentation shall set out, in clear and consistent terms, definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset-performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

14 The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Where the sponsor does not have access to such data, it shall obtain from the seller access to data, on a static or dynamic basis, on the historical performance, such as delinquency and default data, for exposures substantially similar to those being securitised. All such data shall cover a period no shorter than five years, except for data relating to trade receivables and other short-term receivables, for which the historical period shall be no shorter than three years.

15 ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point [F²(24) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, other than corporate bonds] that are not listed on a trading venue.

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[^{F3}In the fourth subparagraph the reference to Regulation (EU) No 575/2013 is a reference to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as it had effect immediately before IP completion day.]

16 Any referenced interest payments under the ABCP transaction's assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, but shall not reference complex formulae or derivatives. Referenced interest payments under the ABCP transaction's liabilities may be based on interest rates reflective of an ABCP programme's cost of funds.

17 Following the seller's default or an acceleration event:

- a no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;
- b principal receipts from the underlying exposures shall be passed to investors holding a securitisation position via sequential payment of the securitisation positions, as determined by the seniority of the securitisation position; and
- c no provisions shall require automatic liquidation of the underlying exposures at market value.

18 The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to the sponsor and other parties directly exposed to the ABCP transaction without undue delay. The seller shall have expertise in originating exposures of a similar nature to those securitised.

19 Where an ABCP transaction is a revolving securitisation, the transaction documentation shall include triggers for termination of the revolving period, including at least the following:

- a a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; and
- b the occurrence of an insolvency-related event with regard to the seller or the servicer.

20 The transaction documentation shall clearly specify:

- a the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;
- b the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;
- c provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency and other specified events, where applicable; and
- d how the sponsor meets the requirements of Article 25(3).

21 [^{F4}The FCA may make] technical standards further specifying which underlying exposures referred to in paragraph 15 are deemed to be homogeneous.

^{F5} ...]

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Textual Amendments

- F1** Regulation revoked (14.12.2023 for the revocation of Art. 46) by [Financial Services and Markets Act 2023](#) (c. 29), s. 86(3), **Sch. 1 Pt. 1** (with s. 1(4)) (with savings and transitional provisions in S.I. 2024/104, regs. 52, Sch. 3); S.I. 2023/1382, reg. 2(b)(i)
- F2** Words in Art. 24(15) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **22(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 24(15) inserted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **22(a)(ii)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 35(d)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F4** Words in Art. 24(21) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **22(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 24(21) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **22(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to :

- Regulation savings for revocation of 2017 EUR2402 by 2023 c. 29, Sch. 1 Pt. 1 in S.I. 2024/102, reg. 52A (as inserted) by [S.I. 2024/705 reg. 2\(10\)](#)