

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

## CHAPTER 1

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter and scope**

1 This Regulation lays down a general framework for securitisation. It defines securitisation and establishes due-diligence, risk-retention and transparency requirements for parties involved in securitisations, criteria for credit granting, requirements for selling securitisations to retail clients, a ban on re-securitisation, requirements for SSPEs as well as conditions and procedures for securitisation repositories. It also creates a specific framework for simple, transparent and standardised ('STS') securitisation.

2 This Regulation applies to institutional investors and to originators, sponsors, original lenders and securitisation special purpose entities.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (A1) [<sup>F1</sup>'Regulation (EU) No 575/2013' means 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;
- (A2) 'Regulation (EU) No 648/2012' means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
- (A3) 'the 2000 Act' means the Financial Services and Markets Act 2000;
- (A4) 'competent authority' means an authority designated or required to be designated for the purpose of supervising compliance by an entity with obligations set out in this Regulation; and in relation to an entity, means the authority designated for the purpose of supervising compliance with such obligations by that entity;
- (A5) 'the FCA' means the Financial Conduct Authority;
- (A6) 'the FCA Handbook' means the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the 2000 Act (as that Handbook has effect on IP completion day);

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (A7) ‘the PRA’ means the Prudential Regulation Authority;
- (A8) ‘third country’ means a country other than the United Kingdom;]
- (1) ‘securitisation’ means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranced, having all of the following characteristics:
- (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;
  - (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
  - (c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.
- (2) ‘securitisation special purpose entity’ or ‘SSPE’ means a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator;
- (3) ‘originator’ means an entity which:
- (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or
  - (b) purchases a third party’s exposures on its own account and then securitises them;
- (4) ‘resecuritisation’ means securitisation where at least one of the underlying exposures is a securitisation position;
- (5) [<sup>F2</sup>‘sponsor’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 or an investment firm as defined in paragraph 1A of Article 2 of Regulation 600/2014/EU, whether located in the United Kingdom or in a third country, which—
- (a) is not an originator; and
  - (b) either—
    - (i) establishes and manages an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities; or
    - (ii) establishes an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity which is authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established.]
- (6) ‘tranche’ means a contractually established segment of the credit risk associated with an exposure or a pool of exposures, where a position in the segment entails a risk of

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- credit loss greater than or less than a position of the same amount in another segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;
- (7) ‘asset-backed commercial paper programme’ or ‘ABCP programme’ means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;
- (8) ‘asset-backed commercial paper transaction’ or ‘ABCP transaction’ means a securitisation within an ABCP programme;
- (9) ‘traditional securitisation’ means a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator;
- (10) ‘synthetic securitisation’ means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator;
- (11) ‘investor’ means a natural or legal person holding a securitisation position;
- (12) ‘institutional investor’ means an investor which is one of the following:
- (a) an insurance undertaking as defined in [F<sup>3</sup>section 417(1) of the 2000 Act];
  - (b) a reinsurance undertaking as defined in [F<sup>4</sup>section 417(1) of the 2000 Act];
  - (c) [F<sup>5</sup>an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993 that has its main administration in the United Kingdom, or a fund manager of such a scheme appointed under section 34(2) of the Pensions Act 1995 that, in respect of activity undertaken pursuant to that appointment, is authorised for the purposes of section 31 of the 2000 Act.
  - (d) an AIFM (as defined in regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013 ) which markets or manages AIFs (as defined in regulation 3 of those Regulations) in the United Kingdom;
  - (e) a management company as defined in section 237(2) of the 2000 Act ;
  - (f) a UCITS as defined by section 236A of the 2000 Act , which is an authorised open ended investment company as defined in section 237(3) of that Act;
  - (g) a CRR firm as defined by Article 4(1)(2A) of Regulation (EU) No 575/2013;]
- (13) ‘servicer’ means an entity that manages a pool of purchased receivables or the underlying credit exposures on a day-to-day basis;
- (14) ‘liquidity facility’ means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors;
- (15) ‘revolving exposure’ means an exposure whereby borrowers’ outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit;

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (16) ‘revolving securitisation’ means a securitisation where the securitisation structure itself revolves by exposures being added to or removed from the pool of exposures irrespective of whether the exposures revolve or not;
- (17) ‘early amortisation provision’ means a contractual clause in a securitisation of revolving exposures or a revolving securitisation which requires, on the occurrence of defined events, investors’ securitisation positions to be redeemed before the originally stated maturity of those positions;
- (18) ‘first loss tranche’ means the most subordinated tranche in a securitisation that is the first tranche to bear losses incurred on the securitised exposures and thereby provides protection to the second loss and, where relevant, higher ranking tranches.
- (19) ‘securitisation position’ means an exposure to a securitisation;
- (20) ‘original lender’ means an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;
- (21) ‘fully- supported ABCP programme’ means an ABCP programme that its sponsor directly and fully supports by providing to the SSPE(s) one or more liquidity facilities covering at least all of the following:
- (a) all liquidity and credit risks of the ABCP programme;
  - (b) any material dilution risks of the exposures being securitised;
  - (c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;
- (22) ‘fully supported ABCP transaction’ means an ABCP transaction supported by a liquidity facility, at transaction level or at ABCP programme level, that covers at least all of the following:
- (a) all liquidity and credit risks of the ABCP transaction;
  - (b) any material dilution risks of the exposures being securitised in the ABCP transaction;
  - (c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;
- (23) ‘securitisation repository’ means a legal person that centrally collects and maintains the records of securitisations.

For the purpose of Article 10 of this Regulation, references in Articles 61, 64, 65, 66, 73, 78, 79 and 80 of Regulation (EU) No 648/2012 to ‘trade repository’ shall be construed as references to ‘securitisation repository’.

#### Textual Amendments

- F1** Arts. 2(A1)-(A8) inserted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **4(2)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 35(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F2** Art. 2(5) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **4(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 2(12)(a) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **4(4)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 2(12)(b) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **4(4)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Art. 2(12)(c)-(g) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **4(4)(c)** (as amended by [S.I. 2020/1385](#), regs.1(4), **59(3)**) (with savings in [S.I. 2019/680](#), **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

### Article 3

#### Selling of securitisations to retail clients

1 The seller of a securitisation position shall not sell such a position to a retail client, as defined in <sup>F6</sup>rule 3.4.1 of the Conduct of Business sourcebook of the FCA Handbook (retail clients)], unless all of the following conditions are fulfilled:

- a the seller of the securitisation position has performed a suitability test in accordance with <sup>F7</sup>rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook of the FCA Handbook (assessing suitability to buy and hold an investment)];
- b the seller of the securitisation position is satisfied, on the basis of the test referred to in point (a), that the securitisation position is suitable for that retail client;
- c the seller of the securitisation position immediately communicates in a report to the retail client the outcome of the suitability test.

2 Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not exceed EUR 500 000, the seller shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that the retail client does not invest an aggregate amount exceeding 10 % of that client's financial instrument portfolio in securitisation positions, and that the initial minimum amount invested in one or more securitisation positions is EUR 10 000.

3 The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in securitisation positions.

4 For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

#### Textual Amendments

- F6** Words in Art. 3(1) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **5(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 3(1)(a) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **5(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## Article 4

### Requirements for SSPEs

SSPEs shall not be established in a third country to which any of the following applies:

- (a) the third country is listed as a high-risk and non-cooperative jurisdiction by the FATF;
- (b) the third country has not signed an agreement with [<sup>F8</sup>the United Kingdom] to ensure that that third country fully complies with the standards provided for in Article 26 of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital or in the OECD Model Agreement on the Exchange of Information on Tax Matters, and ensures an effective exchange of information on tax matters, including any multilateral tax agreements.

#### Textual Amendments

- F8** Words in [Art. 4\(b\)](#) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), [6](#) (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

Regulation (EU) 2017/2402 of the European Parliament and of the Council, CHAPTER 1 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.