

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 6

### AMENDMENTS

#### *Article 38*

#### **Amendment to Directive 2009/65/EC**

Article 50a of Directive 2009/65/EC is replaced by the following:

#### *Article 50a*

Where UCITS management companies or internally managed UCITS are exposed to a securitisation that no longer meets the requirements provided for in the Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>(1)</sup>, they shall, in the best interest of the investors in the relevant UCITS, act and take corrective action, if appropriate.

#### *Article 39*

#### **Amendment to Directive 2009/138/EC**

Directive 2009/138/EC is amended as follows:

- (1) in Article 135, paragraphs 2 and 3 are replaced by the following:
  2. The Commission shall adopt delegated acts in accordance with Article 301a of this Directive supplementing this Directive by laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements provided for in Articles 5 or 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>(2)</sup> have been breached, without prejudice to Article 101(3) of this Directive.
  3. In order to ensure consistent harmonisation in relation to paragraph 2 of this Article, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methodologies for the calculation of a proportionate additional capital charge referred to therein.  
  
The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.
- (2) Article 308b(11) is deleted.

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#### Article 40

### Amendment to Regulation (EC) No 1060/2009

Regulation (EC) No 1060/2009 is amended as follows:

- (1) in recitals 22 and 41, in Article 8c and in point 1 of Part II of Section D of Annex I, ‘structured finance instrument’ is replaced by ‘securitisation instrument’;
- (2) in recitals 34 and 40, in Articles 8(4), 8c, 10(3) and 39(4) as well as in the fifth paragraph of point 2 of Section A of Annex I, point 5 of Section B of Annex I, the title and point 2 of Part II of Section D of Annex I, points 8, 24 and 45 of Part I of Annex III and point 8 of Part III of Annex III, ‘structured finance instruments’ is replaced by ‘securitisation instruments’;
- (3) in Article 1, the second subparagraph is replaced by the following:

This Regulation also lays down obligations for issuers and related third parties established in the Union regarding securitisation instruments.
- (4) in Article 3(1), point (l) is replaced by the following:
  - (l) “securitisation instrument” means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 2(1) of Regulation (EU) 2017/2402 (Securitisation Regulation);
- (5) Article 8b is deleted;
- (6) in point (b) of Article 4(3), point (b) of the second subparagraph of Article 5(6) and Article 25a, the reference to Article 8b is deleted.

#### Article 41

### Amendment to Directive 2011/61/EU

Article 17 of Directive 2011/61/EU is replaced by the following:

#### Article 17

Where AIFMs are exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>(3)</sup>, they shall, in the best interest of the investors in the relevant AIFs, act and take corrective action, if appropriate.

#### Article 42

### Amendment to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

- (1) in Article 2, the following points are added:
  - (30) “covered bond” means a bond meeting the requirements of Article 129 of Regulation (EU) No 575/2013.

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(31) “covered bond entity” means the covered bond issuer or cover pool of a covered bond.

(2) in Article 4, the following paragraphs are added:

5. Paragraph 1 of this Article shall not apply with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation, within the meaning of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>(4)</sup> provided that:

- a in the case of securitisation special purpose entities, the securitisation special purpose entity shall solely issue securitisations that meet the requirements of Article 18, and of Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (the Securitisation Regulation);
- b the OTC derivative contract is used only to hedge interest rate or currency mismatches under the covered bond or securitisation; and
- c the arrangements under the covered bond or securitisation adequately mitigate counterparty credit risk with respect to the OTC derivative contracts concluded by the covered bond entity or securitisation special purpose entity in connection with the covered bond or securitisation.

6 In order to ensure consistent application of this Article, and taking into account the need to prevent regulatory arbitrage, the ESAs shall develop draft regulatory technical standards specifying criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty credit risk, within the meaning of paragraph 5.

The ESAs shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

(3) in Article 11, paragraph 15 is replaced by the following:

15. In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying:

- a the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3;
- b the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 6 to 10;
- c the applicable criteria referred to in paragraphs 5 to 10 including in particular what is to be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.

The level and type of collateral required with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation within the meaning of this Regulation and meeting the conditions of Article 4(5) of this Regulation and the requirements set out in Article 18, and in Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (the Securitisation Regulation) shall be determined

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taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or securitisation.

The ESAs shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

Depending on the legal nature of the counterparty, power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

### Article 43

#### Transitional provisions

1 This Regulation shall apply to securitisations the securities of which are issued on or after 1 January 2019, subject to paragraphs 7 and 8.

2 In respect of securitisations the securities of which were issued before 1 January 2019, originators, sponsors and SSPEs may use the designation ‘STS’ or ‘simple, transparent and standardised’, or a designation that refers directly or indirectly to those terms, only where the requirements set out in Article 18 and the conditions set out in paragraph 3 of this Article are complied with.

3 Securitisations the securities of which were issued before 1 January 2019, other than securitisation positions relating to an ABCP transaction or an ABCP programme, shall be considered ‘STS’ provided that:

- a they met, at the time of issuance of those securities, the requirements set out in Article 20(1) to (5), (7) to (9) and (11) to (13) and Article 21(1) and (3); and
- b they meet, as of the time of notification pursuant to Article 27(1), the requirements set out in Article 20(6) and (10), Article 21(2) and (4) to (10) and Article 22(1) to (5).

4 For the purposes of point (b) of paragraph 3, the following shall apply:

- a in Article 22(2), ‘prior to issuance’ shall be deemed to read ‘prior to notification under Article 27(1)’;
- b in Article 22(3), ‘before the pricing of the securitisation’ shall be deemed to read ‘prior to notification under Article 27(1)’;
- c in Article 22(5):
  - (i) in the second sentence, ‘before pricing’ shall be deemed to read ‘prior to notification under Article 27(1)’;
  - (ii) ‘before pricing at least in draft or initial form’ shall be deemed to read ‘prior to notification under Article 27(1)’;
  - (iii) the requirement set out in the fourth sentence shall not apply;
  - (iv) references to compliance with Article 7 shall be construed as if Article 7 applied to those securitisations notwithstanding Article 43(1).

5 In respect of securitisations the securities of which were issued on or after 1 January 2011 but before 1 January 2019 and in respect of securitisations the securities of which were issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014, the due-diligence requirements as provided for in Regulation (EU) No

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575/2013, Delegated Regulation (EU) 2015/35 and Delegated Regulation (EU) No 231/2013 respectively shall continue to apply in the version applicable on 31 December 2018.

6 In respect of securitisations the securities of which were issued before 1 January 2019 credit institutions or investment firms as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, insurance undertakings as defined in point (1) of Article 13 of Directive 2009/138/EC, reinsurance undertakings as defined in point (4) of Article 13 of Directive 2009/138/EC and alternative investment fund managers (AIFMs) as defined in point (b) of Article 4(1) of Directive 2011/61/EU shall continue to apply Article 405 of Regulation (EU) No 575/2013 and Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Delegated Regulation (EU) No 231/2013 respectively as in the version applicable on 31 December 2018.

7 Until the regulatory technical standards to be adopted by the Commission pursuant Article 6(7) of this Regulation apply, originators, sponsors or the original lender shall, for the purposes of the obligations set out in Article 6 of this Regulation, apply Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014 to securitisations the securities of which are issued on or after 1 January 2019.

8 Until the regulatory technical standards to be adopted by the Commission pursuant to Article 7(3) of this Regulation apply, originators, sponsors and SSPEs shall, for the purposes of the obligations set out in points (a) and (e) of the first subparagraph of Article 7(1) of this Regulation, make the information referred to in Annexes I to VIII of Delegated Regulation (EU) 2015/3 available in accordance with Article 7(2) of this Regulation.

9 For the purpose of this Article, in the case of securitisations which do not involve the issuance of securities, any references to ‘securitisations the securities of which were issued’ shall be deemed to mean ‘securitisations the initial securitisation positions of which are created’, provided that this Regulation applies to any securitisations that create new securitisation positions on or after 1 January 2019.

#### Article 44

#### Reports

By 1 January 2021 and every three years thereafter, the Joint Committee of the European Supervisory Authorities shall publish a report on:

- (a) the implementation of the STS requirements as provided for in Articles 18 to 27;
- (b) an assessment of the actions that competent authorities have undertaken, on material risks and new vulnerabilities that may have materialised and on the actions of market participants to further standardise securitisation documentation;
- (c) the functioning of the due-diligence requirements provided for in Article 5 and the transparency requirements provided for in Article 7 and the level of transparency of the securitisation market in the Union, including on whether the transparency requirements provided for in Article 7 allow the competent authorities to have a sufficient overview of the market to fulfil their respective mandates;
- (d) the requirements provided for in Article 6, including compliance therewith by market participants and the modalities for retaining risk pursuant to Article 6(3).

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## Article 45

### Synthetic securitisations

1 By 2 July 2019, the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the feasibility of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation.

2 By 2 January 2020, the Commission shall, on the basis of the EBA report referred to in paragraph 1, submit a report to the European Parliament and the Council on the creation of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation, together with a legislative proposal, if appropriate.

## Article 46

### Review

By 1 January 2022, the Commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, if appropriate, by a legislative proposal.

That report shall consider in particular the findings of the reports referred to in Article 44, and shall assess:

- (a) the effects of this Regulation, including the introduction of the STS securitisation designation, on the functioning of the market for securitisations in the Union, the contribution of securitisation to the real economy, in particular on access to credit for SMEs and investments, and interconnectedness between financial institutions and the stability of the financial sector;
- (b) the differences in use of the modalities referred to in Article 6(3), based on the data reported pursuant to point (e)(iii) of the first subparagraph of Article 7(1). If the findings show an increase in prudential risks caused by the use of the modalities referred to in points (a), (b), (c) and (e) of Article 6(3), then suitable redress shall be considered;
- (c) whether there has been a disproportionate rise of the number of transactions referred to in the third subparagraph of Article 7(2), since the application of this Regulation and whether market participants structured transactions in a way to circumvent the obligation under Article 7 to make available information through securitisation repositories;
- (d) whether there is a need to extend disclosure requirements under Article 7 to cover transactions referred to in the third subparagraph of Article 7(2) and investor positions;
- (e) whether in the area of STS securitisations an equivalence regime could be introduced for third-country originators, sponsors and SSPEs, taking into consideration international developments in the area of securitisation, in particular initiatives on simple, transparent and comparable securitisations;
- (f) the implementation of the requirements provided for in Article 22(4) and whether they need to be extended to securitisation where the underlying exposures are

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- not residential loans or auto loans or leases, with the view to mainstreaming environmental, social and governance disclosure;
- (g) the appropriateness of the third-party verification regime as provided for in Articles 27 and 28, and whether the authorisation regime for third parties provided for in Article 28 fosters sufficient competition among third parties and whether changes in the supervisory framework need to be introduced in order to ensure financial stability; and
- (h) whether there is a need to complement the framework on securitisation set out in this Regulation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

#### *Article 47*

### **Exercise of the delegation**

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions provided for in this Article.

2 The power to adopt delegated acts referred to in Article 16(2) shall be conferred on the Commission for an indeterminate period of time from 17 January 2018.

3 The delegation of power referred to Article 16(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 16(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 48*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2019.

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- (1) 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).<sup>7</sup>
- (2) 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).<sup>7</sup>
- (3) 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).<sup>7</sup>
- (4) 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).<sup>7</sup>

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