Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2015/0226(COD)	Procedure completed

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

Amending Directive 2009/138/EC 2007/0143(COD)
Amending Directive 2009/65/EC 2008/0153(COD)
Amending Regulation (EC) No 1060/2009 2008/0217(COD)
Amending Directive 2011/61/EU 2009/0064(COD)
Amending Regulation (EU) No 648/2012 2010/0250(COD)
See also 2015/0225(COD)
Amended by 2020/0151(COD)

Subject
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments
2.50.05 Insurance, pension funds
2.50.08 Financial services, financial reporting and auditing
2.50.10 Financial supervision

Legislative priorities
Joint Declaration 2017

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs		26/11/2015
	S&D TANG Paul	
	Shadow rapporteur	
	epp KARAS Othmar	
	ECR SWINBURNE Kay	
	JEŽEK Petr	
	SCOTT CATO Molly	
	EFD VALLI Marco	
	ENF MONOT Bernard	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3578	20/11/2017
	Economic and Financial Affairs ECOFIN	3435	08/12/2015
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events

30/09/2015	Legislative proposal published	COM(2015)0472	Summary
14/10/2015	Committee referral announced in Parliament, 1st reading		
08/12/2015	Debate in Council	3435	
08/12/2016	Vote in committee, 1st reading		
08/12/2016	Committee decision to open interinstitutional negotiations with report adopted in committee		
19/12/2016	Committee report tabled for plenary, 1st reading	A8-0387/2016	Summary
11/07/2017	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE607.884	
25/10/2017	Debate in Parliament		
26/10/2017	Results of vote in Parliament		
26/10/2017	Decision by Parliament, 1st reading	T8-0415/2017	Summary
20/11/2017	Act adopted by Council after Parliament's 1st reading		
12/12/2017	Final act signed		
12/12/2017	End of procedure in Parliament		
28/12/2017	Final act published in Official Journal		

Technical information

Procedure reference	2015/0226(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Directive 2009/138/EC 2007/0143(COD) Amending Directive 2009/65/EC 2008/0153(COD) Amending Regulation (EC) No 1060/2009 2008/0217(COD)

	Amending Directive 2011/61/EU 2009/0064(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD) See also 2015/0225(COD) Amended by 2020/0151(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/04648

Documentation gateway

Legislative proposal		COM(2015)0472	30/09/2015	EC	Summary
Document attached to the procedure		SWD(2015)0185	30/09/2015	EC	
Document attached to the procedure		SWD(2015)0186	30/09/2015	EC	
Economic and Social Committee: opinion, report		CES4971/2015	20/01/2016	ESC	
European Central Bank: opinion, guideline, report		CON/2016/0011 OJ C 219 17.06.2016, p. 0002	11/03/2016	ECB	Summary
Committee draft report		PE583.961	06/06/2016	EP	
Document attached to the procedure		SWD(2016)0206	15/06/2016	EC	
Amendments tabled in committee		PE587.495	27/07/2016	EP	
Amendments tabled in committee		PE587.508	27/07/2016	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0387/2016	19/12/2016	EP	Summary
Text agreed during interinstitutional negotiations		PE607.884	28/06/2017	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0415/2017	26/10/2017	EP	Summary
Commission response to text adopted in plenary		SP(2017)766	06/12/2017	EC	
Draft final act		00039/2017/LEX	13/12/2017	CSL	
Follow-up document		COM(2020)0284	24/07/2020	EC	
Document attached to the procedure		SWD(2020)0120	27/07/2020	EC	
Follow-up document		COM(2022)0517	10/10/2022	EC	

Additional information

Research document	Briefing

Final act

Regulation 2017/2402
OJ L 347 28.12.2017, p. 0035 Summary

Final legislative act with provisions for delegated acts

Delegated acts	
2019/2889(DEA)	Examination of delegated act
2019/2921(DEA)	Examination of delegated act
2019/2958(DEA)	Examination of delegated act
2019/2759(DEA)	Examination of delegated act
2019/2957(DEA)	Examination of delegated act
2019/2558(DEA)	Examination of delegated act
2020/2803(DEA)	Examination of delegated act
2022/2627(DEA)	Examination of delegated act
2021/2683(DEA)	Examination of delegated act
2023/2954(DEA)	Examination of delegated act
2023/2794(DEA)	Examination of delegated act

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

PURPOSE: to restart a sustainable securitisation market that will improve the financing of the EU economy, while ensuring financial stability and investor protection.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: securitisation involves transactions that enable a lender typically a credit institution to refinance a set of loans or exposures such as loans for immovable property, auto leases, consumer loans or credit cards, by transforming them into tradable securities.

Securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can create a bridge between credit institutions and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business finance mortgages and credit cards).

In the Investment Plan for Europe presented on 26 November 2014, the Commission announced its intention to restart high quality securitisation markets, without repeating the mistakes made before the 2008 financial crisis. The Commission considers that the development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union (CMU) and contributes to the Commission's priority objective to support job creation and a return to sustainable growth.

In its resolution of July 2015 on the Capital Markets Union, the European Parliament noted that the development of simple, transparent and standardised securitisation should be exploited better and welcomed the initiative to establish a sustainable, transparent securitisation market by developing a specific regulatory framework with a uniform definition of high-quality securitisation, combined with effective methods for monitoring, measuring and managing risk.

IMPACT ASSESSMENT: the effects of the initiative are likely to change through time. The Commission considers that if the securitisation market would return to pre-crisis average issuance levels, credit institutions could provide an additional amount of credit to the private sector ranging between 100-150bn. This would represent a 1.6% increase in credit to EU firms and households. The policy options taken in this proposal should have several positive effects on SME financing.

CONTENT: this proposal is based on what has been put in place in the EU to address the risks inherent in highly complex, opaque and risky securitisation. It should help to better differentiate simple, transparent and standardised (STS) products which can provide a channel of sustainable finance to the EU economy from more opaque and complex products. This framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products).

The proposal forms a legislative package with the legislative proposal amending Regulation (EU) No 575/2013 of the European Parliament and of the Council concerning prudential requirements for credit institutions and investment firms. It aims to:

- restart markets on a more sustainable basis, so that simple, transparent and standardised securitisation can act as an effective funding channel to the economy;
- allow for efficient and effective risk transfers to a broad set of institutional investors as well as banks;
- allow securitisation to function as an effective funding mechanism for some longer term investors as well as banks;
- protect investors and manage systemic risk by avoiding a recurrence of the flawed "originate to distribute" models.

Essentially, this proposal contains two main parts. The first part is devoted to rules that apply to all securitisation, whilst the second part

focuses only on STS Securitisation. Its main elements are as follows:

- Due diligence rules for investors: since securitisations are not always the simplest and most transparent financial products and can involve higher risks than other financial instruments, institutional investors are subject to due diligence rules. The proposal also requires investors to perform appropriate due diligence before investing in STS securitisations. They also remain responsible for assessing risks inherent to their exposure to the securitisation position and whether the securitisation is suitable and appropriate for the needs of the investor.
- Risk retention: the proposal imposes a direct risk retention requirement and a reporting obligation on the originator, sponsor or the original lenders. Investors will thus in a simple manner be able to check whether these entities have retained risk.
- Transparency rules: the proposal ensures that investors will have all the relevant information on securitisations at their disposal. It covers all types of securitisations and applies across sectors. It requires originators, sponsors and Securitisation Special Purpose Entities (SSPEs) to make freely available the information to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity.
- STS securitisations: there will be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). To a large extent the requirements are however similar. This proposal only allows 'true sale' securitisation to become STS. The Commission will assess whether some synthetic securitisations that have performed well during the financial crisis and that are simple, transparent and standardised should be able to meet the STS requirements.
- STS notification and disclosure: originators, sponsors and SSPEs take responsibility for their claim that the securitisation is STS and that there is transparency on the market. Originators and sponsors shall be liable for any loss or damage resulting from incorrect or misleading notifications under the conditions stipulated by national law.
- Surveillance : the proposal requires Member States to designate competent authorities in accordance with existing EU legal acts in the area of financial services to ensure effective surveillance of the securitisation market.
- Third country dimension: this proposal provides essentially for a system that is open to third country securitisations. EU institutional investors can invest in non-EU securitisations and will have to perform the same due diligence as for EU securitisations. Moreover, non-EU securitisations can also meet the STS requirements.

BUDGETARY IMPLICATIONS: this legislative proposal would have limited consequences on the EU budget (EUR 1,733 millions). It will imply further policy development within the Commission and in the three ESAs (EBA, ESMA and EIOPA).

DELEGATED ACTS: the proposal contains measures empowering the Commission to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

The Committee on Economic and Monetary Affairs adopted the report by Paul TANG (S&D, NL) on the proposal for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

The committee recommended that the European Parliaments position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Aim: the Regulation aims to strengthen the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation.

Members added that for that purpose, this Regulation should introduce a ban on re-securitisation and enhance the conditions for complying with the risk retention obligations.

The amended Regulation stipulated that investors in securitisation shall be institutional investors, other than the originator, sponsor or original lender of a securitisation, or institutions of third countries and territories, whose supervisory and regulatory requirements are considered equivalent to the requirements of the Union.

The Securitisation Special Purpose Entity (SSPEs) shall not be established in a third country if the third country promotes itself as an off-shore financial centre; there is a lack of effective exchange of information with foreign tax authorities; there is a lack of transparency with regard to legislative, judicial or administrative provisions.

Risk retention: the amended text stipulated that the originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 % or 10 % depending on the retention modality chosen.

Moreover, the securitised exposures should not deliver a performance that would be significantly different from exposures that have not been securitised

The European Banking Authority (EBA) in close cooperation with the European Systemic Risk Board (ESRB) shall take a reasoned decision on required retention rates of up to 20 % in light of market circumstances

Transparency requirements: the originator, sponsor and SSPE of a securitisation shall make at least the following information available to holders of a securitisation position, investors prior to them being exposed to a securitisation position and to the competent authorities: (i) all underlying documentation that is essential for an understanding of the transaction, including, to the extent that they are available, at least; (ii) a detailed description of the priority of payments; (iii) information about the credit granting and credit scoring process followed for the underlying assets in the securitisation and the historical evolution of non-performing loans underwritten by the originator; (iv) details regarding loss waterfall.

The investor in a securitisation position on the secondary market shall make at least the following information available to the competent authorities: (a) its beneficial owner, including the country of establishment and business sector; and (b) the size of their investment and to which tranche of the securitisation it relates.

The European Securities and Markets Authority (ESMA) must safeguard the transparency of the securitisation market to the benefit of market participants and supervisors. It may adopt guidelines in order to further specify the conditions in which the securitised exposures do not represent material risk exposure.

Conditions and procedures for registration of a securitisation repository: the proposed amendments seeks to introduce new articles as regards:

- the registration of a securitisation repository with ESMA, examination of the application, notification of ESMA decisions relating to registration;
- the possibility for the ESMA, by simple request or by decision, to require securitisation repositories and related third parties to whom the securitisation repositories have outsourced operational functions or activities to provide all information that is necessary in order to carry out its duties under this Regulation;
- the possibility for the ESMA to conduct necessary investigations and on-site inspections;
- procedural rules concerning the adoption of surveillance measures and imposing fines: the basic amounts of the fines shall range from EUR 5 000 to EUR 200 000 depending on the type of infringement;
- ESMA shall, by decision, impose periodic penalty payments in order to compel a securitisation repository to put an end to an infringement: the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year;
- the opportunity for persons to be heard before the ESMA takes any decision on a fine or on a periodic penalty payment. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment;
- supervisory measures used ESMA, for instance, to require the securitisation repository to bring the infringement to an end; to impose a temporary prohibition on the acceptance of new originators, sponsors or SSPE or the extension of the services that the securitisation repository offers, when these would compromise the stability or the accuracy of data; require the removal of a natural person from the governing bodies of a trade repository.

Simple, transparent and standardised securitisation (STS): the amended text underlined that the ESMA should therefore, together with the national authorities competent for securities markets, supervise compliance with the STS criteria and develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues.

The originator and the sponsor shall publish information on the long-term, sustainable nature of the securitisation for the investors, using environmental, social and governance criteria to describe how the securitisation contributed to real economy investments and in which way the original lender used the freed-up capital.

Simple, transparent and standardised asset-backed commercial paper (ABCP) securitisation: there should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). Members proposed regular stress testing for financial institutions that want to support an ABCP programme.

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

The European Parliament adopted by 459 votes to 135 with 23 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

The European Parliaments position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Aims: the Regulation aims to strengthen the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation, by laying down a general framework for securitization and a specific framework for simple, transparent and standardised (' STS') securitisation.

It is specified that securitisation involves transactions that enable a lender or a creditor typically a credit institution or a corporation to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities.

Selling of securitisations to retail clients: the amended text states that the seller of a securitisation position shall not sell such a position to a retail client unless a series of specified conditions are fulfilled.

Furthermore, the text states that a securitisation special purpose entity (SSPE) shall not be established in a third country that is listed as a high-risk and non-cooperative jurisdiction by the FATF.

Risk retention: the draft regulation provides that the originator, sponsor or the original lender in a securitisation process must always retain a material net economic interest, measured at the time of origination, in the securitisation of not less than 5%. A sponsor should be able to delegate tasks to a servicer, but should remain responsible for risk management. In particular, a sponsor should not transfer the risk-retention requirement to his servicer.

Transparency requirements for originators, sponsors and SSPEs: the originator, sponsor and SSPE of a securitisation shall make available to holders of a securitisation position, to the competent authorities and, upon request, to potential investors all underlying documentation that is essential for the understanding of the transaction.

Ban on resecuritisation: the draft regulation puts in place a ban on resecuritisation, subject to derogations for certain cases of resecuritisations that are used for legitimate purposes. The text states that resecuritisations could hinder the level of transparency that this Regulation seeks to establish, but can also, in exceptional circumstances, be useful in preserving the interests of investors. Therefore, resecuritisations should only be permitted in specific instances as established by this Regulation. In addition, fully supported asset-backed commercial paper (ABCP) will remain outside the scope of the ban on resecuritisation.

It is stipulated that originators, sponsors and original lenders should apply to exposures to be securitised the same sound and well-defined

criteria for credit-granting which they apply to non-securitised exposures.

Market transparency: it is proposed to establish a framework for securitisation repositories (a repository being a legal person that centrally collects and maintains the records of securitisations) to collect relevant reports, primarily on underlying exposures in securitisations. Such securitisation repositories should be authorised and supervised by the European Securities and Markets Authority (ESMA).

Requirements regarding simple, transparent and standardised securitization (STS): these requirements are laid down. For example, in the case of an STS securitisation where the underlying exposures are residential loans or auto loans or leases, the originator, the sponsor and the SSPE should publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases. The STS notification to ESMA should include an explanation on how each of the STS criteria has been complied with.

The European Banking Authority (EBA) should develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues.

Third party verification of conformity with STS criteria: originators, sponsors and SSPEs could use the services of a third party authorised in accordance with the Regulation to assess whether their securitisation complies with the STS criteria. Those third parties should be subject to authorisation by competent authorities. However, the involvement of a third party should not in any way shift away from originators, sponsors and institutional investors the ultimate legal responsibility for notifying and treating a securitisation transaction as STS.

Sanctions: competent authorities should apply sanctions only in the case of intentional or negligent infringements. The application of remedial measures should not depend on evidence of intention or negligence. In determining the appropriate type and level of sanction or remedial measure, when taking into account the financial strength of the responsible natural or legal person, competent authorities should in particular take into consideration the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person.

Macroprudential oversight of the securitisation market: the European Systemic Risks Board (ESRB) shall continuously monitor developments in the securitisation markets. At least every 3 years, in order to highlight financial stability risks, the ESRB shall, in collaboration with the EBA, publish a report on the financial stability implications of the securitisation market.

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

PURPOSE: restart a high-quality securitisation market that will improve the financing of the Unions real economy while ensuring financial stability and investor protection.

LEGISLATIVE ACT: Regulation (EU) 2017/2402 of the European Parliament and of the Council 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.

CONTENT: the Regulation creates a general framework for securitisation. It defines securitisation and establishes (i) due diligence, risk-retention and transparency requirements for parties involved in securitisations, (ii) criteria for granting credit, (iii) requirements for the sale of securitisations to retail clients, (iv) a prohibition on resecuritisation, (v) requirements applicable to securitisation special purpose entities (SSPEs), and the conditions and procedures applicable to securitisation standards.

It also creates a specific framework for simple, transparent and standardised securitisations (STS).

Securitisation involves transactions that enable a lender or a creditor typically a credit institution or a corporation to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities.

The Union intends to strengthen the legislative framework put in place in the wake of the financial crisis to counter the risks inherent in highly complex, opaque and risky securitisation transactions.

The Regulation:

- states that the seller of a securitisation position should not sell that position to a retail client unless all of the conditions specified in the Regulation are met;
- sets a risk retention requirement for the securitisation originator to maintain a material net economic interest of at least 5% in the securitisation at all times. A sponsor should be able to delegate tasks to a servicer, but should remain responsible for risk management. A sponsor may delegate tasks to a management body but will remain responsible for risk management. In particular, a sponsor should not transfer the risk-retention requirement to his servicer;
- requires the originators of a securitisation to make available to holders of a securitisation position, competent authorities and, on request, potential investors, all underlying documentation that is essential to the understanding of the transaction;
- establishes a framework for securitisation repositories to collect relevant reports on securitisation transactions, which will increase market transparency;
- establishes a prohibition on resecuritisation, subject to exemptions in certain cases of resecuritisations used for legitimate purposes;
- establishes a simplified authorisation procedure for third parties that help to verify compliance with STS securitisation requirements. The goal is to avoid conflicts of interest. The Regulation states that, even where a third party is involved in the STS verification process, the responsibility for compliance remains with originators, sponsors and institutional investors.

By 1 January 2022 at the latest, the Commission will submit a report to the European Parliament and the Council on the functioning of the Regulation, accompanied, if necessary, by a legislative proposal.

ENTRY INTO FORCE: 17.1.2018.

APPLICATION: from 1.1.2019

DELEGATED ACTS: the Commission may adopt delegated acts to amend non-essential elements of the Regulation. The power to adopt such

acts is conferred on the Commission for an indeterminate period from 17 January 2018. The European Parliament or the Council may oppose a delegated act within a period of two months (this may be extended by two months) from the notification of the act.