

Navigating the EU Securitisation Regulation

Since the start of 2019, the securitisation markets have been living with the EU Securitisation Regulation (Regulation (EU) 2017/2402, the **SR**) regime, which established a common framework for all securitisations within its scope as well as provided harmonised foundation criteria for identifying “simple, transparent and standardised” (**STS**) securitisations.

Allen & Overy produced the third edition of the 84-page briefing that provides a primer and an overview of the SR regime, covering the latest status of the applicable legislation and available guidance, as well as practical considerations in relation to some of the key aspects of the SR regime and considerations that arise in the context of some of the Brexit-related matters (with a focus on non-ABCP aspects).

To access the full briefing, please liaise with your usual A&O contacts to receive a copy of the briefing, or alternatively please send your request to CapitalMarkets@allenoverly.com.

By way of background, the SR regime is a complex regulatory framework, which is subject to certain grandfathering and transitional provisions and its full implementation is subject to the development of a number of technical standards,

delegated legislation and level 3 guidance. Almost two years into the application of the SR regime, some of these (most notably, the technical standards on risk retention) still remain outstanding. However, on 3 September 2020, some of the key outstanding technical standards on disclosure and reporting requirements, STS notification requirements and securitisation repositories were finally published in the Official Journal and will come into force on 23 September 2020. Following these recent publications, we are now closer than ever to the near-final position on most of the requirements of the SR regime; nevertheless, the need for ongoing guidance on the interpretation of certain SR requirements from the European Supervisory Authorities and the national competent authorities will remain for some time to come.

Whilst we are only now drawing closer to the near-final position on most of requirements of the SR regime as originally enacted, at the end of July 2020 the European Commission published legislative proposals for a package of amending measures dubbed the “Capital Markets Recovery Package” (the **Commission Proposals**). The Commission Proposals are intended to introduce targeted amendments to existing financial legislation in order to foster economic recovery following the Coronavirus pandemic. Recognising that securitisation can play an important role in such recovery,



the Commission Proposals contain a number of proposed amendments to the SR regime, including the introduction of a regulatory regime for balance sheet synthetic STS securitisations and changes aimed at addressing regulatory obstacles affecting securitisation of non-performing exposures. The Commission Proposals are now subject to the scrutiny and approval of the European Parliament and the Council, and it is generally expected that the final (or near-final) position will be confirmed by the end of the year.

The SR regime will also be subject to a comprehensive review by January 2022, so that the European Commission, when preparing its report to the European Parliament and the Council (as required under Article 46 of the SR) will have an opportunity to assess the functioning of the SR

regime (in the form as amended by the Commission Proposals) and, if appropriate, put forward further legislative proposals. In this context, the final report of the High-Level Forum on the Capital Markets Union of 10 June 2020 set out a number of recommendations in respect of disclosure and reporting, investor due diligence requirements, securitisation of legacy portfolios and NPEs, and the development of a regulatory regime for balance sheet synthetic STS securitisations, as well as a number of other significant changes in relation to securitisation prudential regulation. The Commission Proposals partially address certain recommendations with regard to a framework for balance sheet synthetic STS securitisations and NPE securitisations, however it remains to be seen whether and how the European Commission will accommodate other recommendations from the report.

Whether and how the SR regime applies requires deal-specific analysis and relevant jurisdictional legal advice from the EU jurisdictions in which relevant transaction parties are supervised for the purposes of the SR regime. Given the end of the transition period in the Brexit process is fast approaching, it will also be necessary to analyse the implications of the post-Brexit position on any existing and new securitisation with a UK nexus.

Allen & Overy has been and continues to be actively involved in the industry discussions and advocacy efforts, including directly engaging with the relevant regulators, with regard to the SR regime and Brexit-related considerations, and we encourage interested clients to contact us for deal-specific advice.

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