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Simple, Transparent and Standardised Securitisation (STS Securitisation) as a Specific Type of Securitisation under the Regulation 2017/2402

Prosta, przejrzysta i standardowa sekurytyzacja (sekurytyzacja STS) jako szczególny rodzaj sekurytyzacji w rozporządzeniu 2017/2402

SUMMARY

The securitisation market worth trillions of dollars collapsed during the financial crisis of 2007–2009 and for many years its volume remained quite low in the European Union, i.a. due to lack of confidence in securitisation products. The purpose of this article is to draw attention to simple, transparent and standardised securitisation (STS securitisation), almost unnoticed in Polish doctrine, being a specific type of securitisation that has appeared lately and develops in the European Union, including Poland, as a way to revive the securitisation. In the course of considerations, after a brief presentation of securitisation, its development and collapse, attention is turned to the 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 EU L 347/35) and the premises it contains that must be met so that the securitisation could be designated as "STS" or "simple, transparent and standardised". The remarks are especially focused on requirements of due diligence, transparency, risk-retention, simplicity and standardisation. The article ends with conclusions on the effectiveness of the adopted solutions in the economic sphere as well as with respect to the unification of securitisation law in the Member States and the restoration of credibility for securitisation in the European Union.

Keywords: securitisation; STS securitisation; Regulation (EU) 2017/2402; requirements of due diligence

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INTRODUCTION

Not long ago there was information that PKO Leasing S.A. – owned by PKO Bank Polski S.A., a major Polish bank – has conducted in 2019 the biggest on Polish market (at that time) STS (simple, transparent and standardised) securitisation transaction that involved the sale of a portfolio of high quality leasing receivables with a total value of PLN 2.5 billion[1]. Recently there were also a couple of changes in Polish and European Union law that were to certain extent connected with the introduction of STS securitisation. Due to this, a question arises, what is STS securitisation under Polish (and European) law. In addition to the practical sphere, the issue is interesting as it has been largely ignored in Polish literature so far.

Securitisation itself is a relatively recent phenomenon. Its roots can be traced back to the 18th century[2], but the modern securitisation is usually said to start in 1970 in the United States[3] when the Government National Mortgage Association (GNMA, also called Ginnie Mae) began publicly trading mortgage-backed securities (MBS), also called "pass-through" securities (as they pass the principal and interest payments on mortgages through to the investor who "purchases a fractional undivided interest in a pool of mortgage loans, and is entitled to share in the interest income and principal payments generated by the underlying mortgages")[4].

There are many definitions of securitisation[5]. For example, S.L. Schwarcz defines it as

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[1] *Rekordowa transakcja na polskim rynku sekurytyzacji*, www.pkoleasing.pl/aktualnosci/rekordowa-transakcja-na-polskim-rynku-sekurytyzacji [access: 23.05.2020].

[2] See R. Frehen, W.N. Goetzmann, K.G. Rouwenhorst, *Dutch Securities for American Land Speculation in the Late Eighteenth Century*, [in:] *Housing and Mortgage Markets in Historical Perspective the Late Eighteenth Century*, eds. E.N. White, K. Snowden, P. Fishback, Chicago 2014, p. 287 ff.

[3] For example, see J.L. Lipson, *Re: Defining Securitization*, "Southern California Law Review" 2012, vol. 85(5), p. 1247.

[4] S.L. Schwarcz, *Structured Finance: The New Way to Securitize Assets*, "Cardozo Law Review" 1990, vol. 11, p. 609. See also P. Katner, *Umowa sekurytyzacyjna*, [in:] *System Prawa Prywatnego*, vol. 9: *Umowy nienazwane*, ed. W.J. Katner, Warszawa 2018, pp. 798–799.

[5] In Polish literature see, i.a., J. Zombirt, *Sekurytyzacja – technika zarządzania ryzykiem kredytowym*, „Prawo Bankowe" 2003, no. 3, pp. 29–30; Ł. Reksa, *Sekurytyzacja w krajach Unii Europejskiej oraz w polskim systemie bankowym. Wyniki ankiety badawczej*, Warszawa 2007, pp. 5–6; idem, *Sekurytyzacja wierzytelności na rynkach międzynarodowych*, „Bank i Kredyt" 2004, no. 2, p. 60; J. Grodzicki, R.W. Kaszubski, *Sekurytyzacja – aspekty prawne*, „Glosa" 1999, no. 8, p. 4; B. Smolarek, *Sekurytyzacyjna umowa subpartycypacyjna*, „Przegląd Prawa Handlowego" 2009, no. 8, p. 49; M. Bączyk, *Bankowa umowa sekurytyzacyjna*, [in:] *System Prawa Prywatnego*, vol. 9: *Prawo zobowiązań – umowy nienazwane*, ed. W.J. Katner, Warszawa 2015, pp. 748–749; P. Katner, *Securitization as an economic-legal construction available under Polish law*, [in:] *Právo, obchod, ekonomika V*, eds. J. Suchoža, J. Husár, R. Hučková, Košice 2015, p. 214; idem, *Sekurytyzacja aktywów spółki handlowej*, „Przegląd Prawa Handlowego" 2016, no. 11, pp. 12–13; resolution of the Supreme Court of 7 October 2009, III CZP 65/09, OSNC 2010, no. 4, item 51; resolution of the Supreme Court of 29 November 2007, III CZP 101/07, OSNC 2008, no. 11, item 129.

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[…] a financial transaction in which (1) a special purpose entity issues securities to investors and, directly or indirectly, uses the proceeds to purchase rights to, or expectations of, payment, and (2) collections on the rights or expectations so purchased constitute the primary source of repayment of those securities[6].

A more narrow definition presents J.L. Lipson. In his opinion

[…] true securitization[7] is defined as a purchase of primary payment rights by a special purpose entity that (1) legally isolates such payment rights from a bankruptcy (or similar insolvency) estate of the originator, and (2) results, directly or indirectly, in the issuance of securities whose value is determined by the payment rights so purchased [distinguishing it from other somehow similar transactions such as collateralised debt obligations (CDOs)][8].

The author also analyzes a couple of other – different – legal and non-legal definitions of securitisation in the US[9]. And in one of the publications of the European Parliamentary Research Service, it was stated that

[…] securitisation is a financing technique by which homogeneous income-generating assets – which on their own may be difficult to trade – are pooled and sold to a specially created third party, which uses them as collateral to issue securities and sell them in financial markets[10].

THE DEVELOPMENT OF SECURITISATION, ITS COLLAPSE AND THE NECESSITY OF REVIVAL

Besides Ginnie Mae, the construct of securitisation was initially used also by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)[11] and then by other entities. With time, in the middle 1980s, securitisation appeared in Western Europe and latter it has spread almost all over the world[12]. In the beginning, the only assets securitised were home (residential) mortgages. Later, however, many other types of assets

[6] S.L. Schwarcz, *What is securitization? And for what purpose?*, "Southern California Law Review" 2012, vol. 85, p. 1298.

[7] The spelling "securitization" is used in US English and quite often in literature.

[8] J.L. Lipson, *op. cit.*, p. 1233.

[9] *Ibidem*, p. 1256 ff.

[10] A. Delivorias, *Understanding Securitisation: Background – benefits – risks*, 2016, www.europarl.europa.eu/RegData/etudes/IDAN/2015/569017/EPRS_IDA(2015)569017_EN.pdf [access: 23.05.2020], p. 1.

[11] Among others, see S.Y. Deku, A. Kara, *Securitization: Past, Present and Future*, New York 2017, p. 59.

[12] Among others, see B. Salter, C. Utz, *The Australian securitization market in 2000*, "International Financial Law Review" 2001, vol. 20(1), p. 45; E. Mancuso, *Peru introduces securitization option*, "International Financial Law Review" 1997, vol. 16(10), pp. 59–60; P. Katner, *Securitization as an economic-legal construction…*, pp. 212–218.

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became the subject of securitisation like pools of commercial mortgage loans, trade receivables, auto loans, credit card receivables, and even music royalties[13].

Development of securitisation was due to its varied functions. They include, i.a., obtaining and diversifying the sources of financing for business operations, diversifying and transferring credit risk, releasing regulatory or economic (internal) capital, improving return on assets and return on capital, as well as increasing investment opportunities[14]. As the European Parliament and the EU Council said, "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"[15]. "Securitisations are an important constituent part of well-functioning financial markets insofar as they contribute to diversifying the funding and risk diversification sources of credit institutions and investment firms ('institutions') and releasing regulatory capital which can then be reallocated to support further lending, in particular the funding of the real economy. Furthermore, securitisations provide institutions and other market participants with additional investment opportunities, thus allowing portfolio diversification and facilitating the flow of funding to businesses and individuals"[16].

Before the financial crisis of 2007–2009 the securitisation market was growing rapidly and was estimated in hundreds of billions, and even in trillions of dollars[17]. However, the crisis led to a worldwide collapse in these numbers[18] and for several years the scope of securitisation remained low in the EU. The reasons for such

[13] S.L. Schwarcz, B. Markell, L.L. Broome, *Securitization, Structured Finance and Capital Markets*, London 2004, p. 3.

[14] Among others, see A. Stopyra, [in:] *Prawo bankowe*, ed. H. Gronkiewicz-Waltz, Warszawa 2013, p. 310. As to profits that can be driven from securitisation, see P. Katner, *Securitization as an economic-legal construction…*, p. 218.

[15] Recital 1 of the 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 EU L 347/35), hereinafter: the Regulation 2017/2402.

[16] Recital 1 of the Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) no. 575/2013 on prudential requirements for credit institutions and investment firms (OJ EU L 347/1), hereinafter: the Regulation 2017/2401.

[17] S.L. Schwarcz, B. Markell and L.L. Broome (*op. cit.*, p. 1) state that in 2004 securitisation was a $6 trillion ($6,000,000,000,000) industry. According to M. Cheng, D.S. Dhaliwal and M. Neamtiu (*Asset Securitization, Securitization Recourse, and Information Uncertainty*, "The Accounting Review" 2011, vol. 86(2), DOI: https://doi.org/10.2308/accr.00000020, p. 541 ff.) in 2007 it was roughly $8,9 trillion.

[18] Among others, see Association for Financial Markets in Europe, *AFME/ESF Securitisation Data Report Q4:2009*, www.sifma.org/wp-content/uploads/2017/05/afme-esf-securitisation-data-report-2009-q4.pdf [access: 23.05.2020], p. 21.

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a situation were found, i.a., in the post-crisis stigma attached by investors to the whole securitisation market, in the macro-economic environment that unfolded since the financial crisis, in the tightening of the main credit rating agencies' rating methodologies and rating policies, affecting the securitisation asset class following the negative experience of securitisation ratings during the years of the crisis, in the change of investor base and the lack of secondary market liquidity, in a uniform approach of existing regulations to varied securitisations (regardless of how they are conducted, collateralised and the degree of complexity) and in the potential regulatory uncertainty among issuers and investors as a result of the numerous regulatory initiatives, both at the EU and global level[19]. At the same time, the US securitisation market was recovering much faster despite the fact that the US securitisation instruments during the crisis had reached much higher default rates than the ones originated in the EU[20].

To change the situation and taking into account the importance of soundly structured securitisation for the market[21], and the works of the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO), the EU has initially implemented a legislative framework to address the risks inherent in securitisation and then it started work on rules adapted to better differentiate simple, transparent and standardised (STS) products from complex, opaque and risky ones. As a result, on September 30, 2015, the European Commission has presented the proposal for a regulation laying down common rules on securitisation and creation a European framework for simple, transparent and standardised securitisation (STS securitisation)[22]. The Regulation 2017/2402 has been adopted on December 12, 2017, entered into force on January 18, 2018, and has been applied since January 1, 2019. Simultaneously the Regulation 2017/2401 has been adopted, amending former provisions with respect to rules concerning securitisation. Next, they were followed by other legislative acts related to STS securitisation[23].

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[19] See European Banking Authority, *EBA report on qualifying securitisations*, 2014, www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf [access: 23.05.2020], p. 7, 24 ff.; A. Delivorias, *op. cit.*, p. 17; P. Katner, *Umowa…*, p. 814.

[20] See the Explanatory memorandum of 30 May 2015 of 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 as of 30 September 2015, COM/2015/0472 final – 2015/0226 (COD).

[21] See Recital 4 of the Regulation 2017/2402.

[22] Explanatory memorandum of 30 May 2015 of the Proposal for a Regulation of the European Parliament and of the Council.

[23] For example Commission delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard

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STS SECURITISATION IN THE REGULATION 2017/2402

STS securitisation is a specific type of securitisation. The latter is defined in Article 2 para. 1 of the Regulation 2017/2402, for its purposes, as "a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranched, 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 para. 8 of the Regulation (EU) no. 575/2013"[24].

Article 2 of the Regulation 2017/2402 provides also definitions of all other key concepts of securitisation (and STS securitisation), like standard and synthetic securitisation, resecuritisation, originator, original lender, securitisation special purpose entity (SSPE), sponsor, (institutional) investor, servicer, asset-backed commercial paper programme/transaction (ABCP programme/transaction), etc.

As a specific type of securitisation, regulated under Chapter 4 of the Regulation 2017/2402, STS securitisation must follow the general framework laid down by the regulation for securitisation (unless specific provisions on STS securitisation provide for more extensive criteria). This framework entails due-diligence, risk-retention and transparency requirements for parties involved in securitisations, but also provides specific criteria for credit granting, a ban on re-securitisation, restrictions in selling securitisation positions to retail clients and requirements for SSPEs.

To this extent, the seller of a securitisation position can sell such a position to a retail client only if all specific conditions from Article 3 of the Regulation 2017/2402 are fulfilled. Next, SSPEs are limited as to the countries where they can be established (provisions on STS securitisation provide further restriction). Then,

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to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ EU L 285/1).

[24] The definition is quite similar to the one that was originally placed in Article 4 para. 1 point 61 of the 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 (OJ EU L 176/1). The Article 147 para. 8 of that Regulation provides that within the corporate exposure class (one of exposure classes distinguished in Article 147 para. 2 of the Regulation) "institutions shall separately identify as specialised lending exposures, exposures which possess the following characteristics: a) the exposure is to an entity which was created specifically to finance or operate physical assets or is an economically comparable exposure; b) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate; c) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise".

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as a rule, 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 (Article 9 of the Regulation 2017/2402).

With respect to due-diligence requirement, it is addressed to institutional investors, other than the originator, sponsor or original lender, who are obliged to verify varied information related to securitisation and take steps in order to ensure that they properly assess the risks arising from securitisation, to the benefit of end investors. To do so they may inform themselves with the information disclosed by the securitising parties, in particular – in case of STS securitisation – the STS notification and the related information disclosed in this context, which should provide investors with all the relevant information on the way STS criteria are met, but they shouldn't rely solely and mechanistically on such notification and such information[25].

As performing the due-diligence requirement requires access to information on a given securitisation instrument, the originator, sponsor and SSPE should make at least certain information and documents available – as a rule by means of securitisation repository – to holders of a securitisation position, to the competent authorities[26] and, upon request, to potential investors (transparency requirement). Such repositories are legal persons authorised and supervised by the European Supervisory Authority (European Securities and Markets Authority, ESMA), acting on conditions specified in the Regulation 2017/2402, that centrally collect and maintain the records of securitisations[27]. Their main purpose is to provide the investors with a single and supervised source of the data necessary for performing their due diligence.

Finally, the risk-retention requirement is intended to ensure that the interests of originators, sponsors, original lenders and investors are aligned. In order to achieve this, the originator, sponsor or original lender has to retain on an ongoing basis a material net economic interest (defined in Article 6 para. 3 of the Regulation 2017/2402) in the securitisation of not less than 5% so that it retains a material net economic exposure to the underlying risks in question (with certain exceptions). The material net economic interest should not be split amongst different types of retainers and should not be subject to any credit-risk mitigation or hedging. The originators are also forbidden to select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred to the SSPE higher than the losses over the same period on comparable assets held on the balance sheet of the originator[28].

[25] See Recital 9 and Article 5 of the Regulation 2017/2402.

[26] Under Article 3d para. 1 of the Act of 21 July 2006 on Financial Market Supervision (consolidated text Journal of Laws 2020, item 180 as amended) in Poland such an authority is Financial Supervision Authority.

[27] See Recitals 11–13 and Articles 7 and 10–17 of the Regulation 2017/2402.

[28] See Recital 10 and Article 6 of the Regulation 2017/2402.

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Apart from the general requirements for securitisation, the STS securitisation has to meet also specific criteria provided in Chapter 4 of the Regulation 2017/2402. As Article 18 provides, 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 for their securitisation, only where: the securitisation meets these criteria, ESMA has been notified about that and the securitisation is included in the list of all notified STS securitisations maintained by ESMA. The originator, sponsor and SSPE involved in a securitisation considered STS must also be established in the European Union.

In order to allow for the different structural features, in Chapter 4 of the Regulation 2017/2402 there are two sets of criteria for STS securitisation: one in Articles 19–22 for term (long-term) securitisation (non-ABCP [asset-backed commercial paper] securitisation; securitisations except for ABCP programmes and ABCP transactions, as defined in Article 2 points 7 and 8 of the Regulation 2017/2402), and one in Articles 23–26 for short-term securitisation (ABCP securitisation), with respect to ABCP programmes and ABCP transactions. The criteria are largely similar to simple, transparent and standardised character of STS securitisation and the differences in case of ABCP securitisations are adapted to reflect the specificities of the short-term securitisation. However, the way the criteria for non-ABCP securitisation are regulated focuses on the distinction between simplicity, transparency and standardisation, while provisions related to ABCP securitisation focus on the distinction between transaction, sponsor- and programme-level criteria[29].

As to requirements related to simplicity, the title to the underlying exposures must 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. That excludes (at least for the moment) synthetic securitisation and allows only for traditional securitisations to be designated as STS[30]. The transfer or assignment of the underlying exposures to the SSPE (and to the seller, if he is not the original lender) cannot be subject to clawback provisions in the event of the seller's insolvency, described in Article 20 para. 2 and Article 24 para. 2 of the Regulation 2017/2402. This limitation does not apply to 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

[29] See European Banking Authority, *Guidelines on STS criteria for ABCP securitisation*, EBA/GL/2018/08, 12.12.2018, https://eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/guidelines-on-the-sts-criteria-for-abcp-and-non-abcp-securitisation [access: 23.05.2020], p. 4.

[30] However, Article 45 of the Regulation 2017/2402 has left open the possibility of introduction of STS balance-sheet synthetic securitisation. See also European Banking Authority, *EBA report on STS framework for synthetic securitisation under Article 45 of Regulation (EU) 2017/2402*, EBA/OP/2020/07, 6.05.2020, https://eba.europa.eu/eba-proposes-framework-sts-synthetic-securitisation [access: 23.05.2020].

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improperly favour particular creditors over others" (Article 20 para. 3 and Article 24 para. 3 of the Regulation 2017/2402). In addition to this, the seller should 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 (Article 20 para. 6 and Article 24 para. 6 of the Regulation 2017/2402).

In case of STS securitisation the Regulation 2017/2402 provides also specific features of the underlying exposures. They should, i.a., meet pre-defined, clear and documented eligibility criteria which do not allow for the active portfolio management of those exposures on a discretionary basis. The underlying exposures should not include e.g. certain transferable securities and – without exceptions – any securitisation positions. The securitisation (ABCP transaction) should be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics (Article 20 para. 7–8 and Article 24 para. 7 and 15 of the Regulation 2017/2402). Recital 27 of the Regulation 2017/2402 as examples gives pools of residential loans, pools of corporate loans, leases and credit facilities to undertakings of the same category, pools of auto loans and leases, pools of credit facilities to individuals for personal, family or household consumption purposes. A pool of underlying exposures should comprise only one asset type. The underlying exposures should contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors. They should have defined (in case of non-ABCP securitisation – periodic) payment streams and may also generate proceeds from the sale of any financed or leased assets.

To prevent the creation of "originate to distribute" models[31], where lenders grant credits applying poor and weak underwriting policies as they know in advance that related risks are eventually sold to third parties, the underlying exposures, in particular, should be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. And the originator or original lender should have expertise in originating exposures of a similar nature to those securitised. The assessment of the borrower's creditworthiness should meet, where applicable, certain requirements. In the case the underlying exposures are residential loans, the pool of loans shouldn't include any loan that was marketed and underwritten on the premise that the loan

[31] Among others, see R.J. Rosen, *The impact of the originate-to-distribute model on banks before and during the financial crisis*, 2010, www.kansascityfed.org/publicat/events/research/2011DayAhead/Rosen.pdf [access: 23.05.2020].

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applicant or, where applicable, intermediaries were made aware that the information provided by the loan applicant might not be verified by the lender. The underlying exposures should be transferred to the SSPE after selection without undue delay and shouldn't include, at the time of selection, exposures in default or exposures to a credit--impaired debtor or guarantor as specified in Article 20 para. 11 or Article 24 para. 9 of the Regulation 2017/2402. As a rule, the debtors should, at the time of transfer of the exposures, have made at least one payment. Finally, as a rule, the repayment of the holders of the securitisation positions should not have been structured to depend predominantly on the sale of assets securing the underlying exposures[32].

The STS securitisation requires also a wider scope of transparency than the one provided within the general framework for securitisation. Among the requirements, the originator and the sponsor should 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. Those data should cover a period of at least five (in certain cases – three) years[33]. And a sample of the underlying exposures should be subject to external verification by an appropriate and independent party in certain moments[34].

And with respect to standardisation requirement, STS securitisation assumes certain standardisation of practices and documentation. To this extent, among the others, the interest-rate and currency risks arising from the securitisation should be appropriately mitigated and any measures taken to that effect should be disclosed. As a rule, the SSPE should not enter into derivative contracts and should ensure that the pool of underlying exposures does not include derivatives. Any referenced interest payments under the securitisation assets and liabilities should be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds. Delivery of an enforcement or an acceleration notice should have certain consequences. And the transaction documentation should contain certain provisions (e.g. in case an ABCP transaction is a revolving securitisation, the transaction documentation should include triggers for termination of the revolving period, including at least two specified by Article 24 para. 19 of the Regulation 2017/2402)[35].

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[32] See Article 20 para. 13 and Article 24 para. 11 of the Regulation 2017/2402. Recital 29 of the Regulation explains that "a strong reliance of the repayment of securitisation positions on the sale of assets securing the underlying assets creates vulnerabilities, as illustrated by the poor performance of parts of the market for commercial mortgage-backed securities (CMBS) during the financial crisis. Therefore, CMBS should not be considered to be STS securitisations".

[33] See Article 22 para. 1 and Article 24 para. 14 of the Regulation 2017/2402.

[34] See Article 22 para. 2 and Article 26 para. 1 of the Regulation 2017/2402. For more on transparency requirement in case of STS securitization, see i.a. Article 22 of the Regulation 2017/2402.

[35] For more on standardisation requirement, see i.a. Article 21 and Article 24 para. 12–13, 16–17 and 19–20 of the Regulation 2017/2402.

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Apart from that, the provisions on simple, transparent and standardised ABCP securitisation provide also certain requirements that refer to sponsor (e.g. the sponsor of the ABCP programme should be a credit institution supervised under Directive 2013/36/EU, it should perform its own due diligence and verify compliance with the requirements set out in Article 5 para. 1 and 3 of the Regulation 2017/2402) and that are to be fulfilled on programme-level (e.g. the remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years)[36].

The number and complexity of criteria for considering securitisation as STS could limit the use of this structure. Therefore, Regulation 2017/2402 provides that the originator, sponsor or SSPE may use the service of a third party authorised by the competent authority under Article 28 of the Regulation to check whether a securitisation complies with requirements set for the STS securitisation. This solution aims also to contribute to increasing confidence in the market for STS securitisations. However, the use of such a service will neither affect the liability of the originator, sponsor or SSPE in respect of their legal obligations under the regulation nor affect the due diligence obligations imposed on institutional investors.

As it was stated, the fulfilment of the above-mentioned requirements doesn't make automatically securitisation as STS securitisation. To achieve this it is necessary to notify ESMA of that fact and the securitisation must be included in the list of all notified STS securitisations maintained on ESMA's official website. The notification should be performed jointly by originators and sponsors (in case of an ABCP programme, only the sponsor is responsible for the notification of that programme and, within that programme, of the ABCP transactions complying with Article 24 of the Regulation 2017/2402) and should include an explanation by the originator and sponsor of how each of the STS criteria set out in Articles 20–22 or Articles 24–26 of the Regulation 2017/2402 has been complied with, accompanied – where appropriate – by additional statements. Originators and sponsors of the securitisation should also inform their competent authorities of the STS notification and designate amongst themselves one entity to be the first contact point for investors and competent authorities[37].

In the end, it is necessary to mention that compliance of originators, original lenders, sponsors and SSPEs with provisions on STS securitisation is subject to supervision by the competent authorities designated by the Member States. To this extent, an act of negligence or intentional infringement committed by any of them can result in appropriate administrative sanctions, remedial measures, or even criminal sanctions.

[36] For more, see Articles 25 and 26 of the Regulation 2017/2402.

[37] See Article 27 of the Regulation 2017/2402.

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CONCLUSION

The above considerations lead to the conclusion that STS securitisation is a specific type of securitisation which, in addition to meeting the criteria set by the general framework for securitisation, in particular regarding transparency, due diligence and risk retention, should meet the requirements of simplicity, standardisation, increased transparency of securitisation and location of the seat of certain participating entities in the European Union. Its main goal is to increase confidence in securitisation and to develop the EU securitisation market. In order to ensure uniform solutions in the Member States, the STS securitisation has been regulated in the regulation (Regulation 2017/2402), not in a directive, and the uniformity of interpretation and application of the adopted provisions is ensured by secondary acts, issued i.a. by the European Commission and the European Bank Authority. However, the shape of STS securitisation is not final as evidenced by the work on the STS balance-sheet synthetic securitisation.

At the moment, it is difficult to tell whether the objective of regulating STS securitisation in the Regulation 2017/2402 will be achieved. On the one hand, the regulation has been in force for a short time, and on the other hand, the current bad economic situation associated with the COVID-19 pandemic has a negative impact on the present picture of securitisation. One may only objectively state that in 2019 the STS securitisation issuance reached EUR 67.6 billion (out of EUR 216.8 billion in total in the EU) and the cumulative number of STS notifications at the end of the first quarter of 2020 was 248[38]. However, from a legal point of view, it can be noticed that the solutions adopted in the Regulation 2017/2402 lead to ordering the market, separating STS securitisation from other types of securitisations as higher-quality securitisation and, combined with the enforcement by relevant authorities of obligations imposed on actors who take part in securitisation, should ensure increased security of trading and thus encourage investment.

REFERENCES

Literature

Association for Financial Markets in Europe, *AFME/ESF Securitisation Data Report Q4:2009*, www.sifma.org/wp-content/uploads/2017/05/afme-esf-securitisation-data-report-2009-q4.pdf [access: 23.05.2020].

[38] Association for Financial Markets in Europe, *AFME Securitisation Report Q1:2020*, www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Q1%202020%20Securitistion%20Report%20(PDF)-1.pdf [access: 23.05.2020], p. 11, 14.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 05:10:24

Association for Financial Markets in Europe, *AFME Securitisation Report Q1:2020*, www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Q1%202020%20Securitistion%20Report%20(PDF)-1.pdf [access: 23.05.2020].

Bączyk M., *Bankowa umowa sekurytyzacyjna*, [in:] *System Prawa Prywatnego*, vol. 9: *Prawo zobowiązań – umowy nienazwane*, ed. W.J. Katner, Warszawa 2015.

Cheng M., Dhaliwal D.S., Neamtiu M., *Asset Securitization, Securitization Recourse, and Information Uncertainty*, "The Accounting Review" 2011, vol. 86(2), **DOI: https://doi.org/10.2308/accr.00000020**.

Deku S.Y., Kara A., *Securitization: Past, Present and Future*, New York 2017.

Delivorias A., *Understanding Securitisation: Background – benefits – risks*, 2016, www.europarl.europa.eu/RegData/etudes/IDAN/2015/569017/EPRS_IDA(2015)569017_EN.pdf [access: 23.05.2020].

European Banking Authority, *EBA report on qualifying securitisations*, 2014, www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf [access: 23.05.2020].

European Banking Authority, *EBA report on STS framework for synthetic securitisation under Article 45 of Regulation (EU) 2017/2402*, EBA/OP/2020/07, 6.05.2020, https://eba.europa.eu/eba-proposes-framework-sts-synthetic-securitisation [access: 23.05.2020].

European Banking Authority, *Guidelines on STS criteria for ABCP securitisation*, EBA/GL/2018/08, 12.12.2018, https://eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/guidelines-on-the-sts-criteria-for-abcp-and-non-abcp-securitisation [access: 23.05.2020].

Frehen R., Goetzmann W.N., Rouwenhorst K.G., *Dutch Securities for American Land Speculation in the Late Eighteenth Century*, [in:] *Housing and Mortgage Markets in Historical Perspective the Late Eighteenth Century*, eds. E.N. White, K. Snowden, P. Fishback, Chicago 2014.

Grodzicki J., Kaszubski R.W., *Sekurytyzacja – aspekty prawne*, „Glosa" 1999, no. 8.

Katner P., *Securitization as an economic-legal construction available under Polish law*, [in:] *Právo, obchod, ekonomika V*, eds. J. Suchoža, J. Husár, R. Hučková, Košice 2015.

Katner P., *Sekurytyzacja aktywów spółki handlowej*, „Przegląd Prawa Handlowego" 2016, no. 11.

Katner P., *Umowa sekurytyzacyjna*, [in:] *System Prawa Prywatnego*, vol. 9: *Umowy nienazwane*, ed. W.J. Katner, Warszawa 2018.

Lipson J.L., *Re: Defining Securitization*, "Southern California Law Review" 2012, vol. 85(5).

Mancuso E., *Peru introduces securitization option*, "International Financial Law Review" 1997, vol. 16(10).

Rekordowa transakcja na polskim rynku sekurytyzacji, www.pkoleasing.pl/aktualnosci/rekordowa-transakcja-na-polskim-rynku-sekurytyzacji [access: 23.05.2020].

Reksa Ł., *Sekurytyzacja w krajach Unii Europejskiej oraz w polskim systemie bankowym. Wyniki ankiety badawczej*, Warszawa 2007.

Reksa Ł., *Sekurytyzacja wierzytelności na rynkach międzynarodowych*, „Bank i Kredyt" 2004, no. 2.

Rosen R.J., *The impact of the originate-to-distribute model on banks before and during the financial crisis*, 2010, www.kansascityfed.org/publicat/events/research/2011DayAhead/Rosen.pdf [access: 23.05.2020].

Salter B., Utz C., *The Australian securitization market in 2000*, "International Financial Law Review" 2001, vol. 20(1).

Schwarcz S.L., *Structured Finance: The New Way to Securitize Assets*, "Cardozo Law Review" 1990, vol. 11.

Schwarcz S.L., *What is securitization? And for what purpose?*, "Southern California Law Review" 2012, vol. 85.

Schwarcz S.L., Markell B., Broome L.L., *Securitization, Structured Finance and Capital Markets*, London 2004.

Smolarek B., *Sekurytyzacyjna umowa subpartycypacyjna*, „Przegląd Prawa Handlowego" 2009, no. 8.

Stopyra A., [w:] *Prawo bankowe*, red. H. Gronkiewicz-Waltz, Warszawa 2013.

Zombirt J., *Sekurytyzacja – technika zarządzania ryzykiem kredytowym*, „Prawo Bankowe" 2003, no. 3.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 05:10:24

Legal acts

Act of 21 July 2006 on Financial Market Supervision (consolidated text Journal of Laws 2020, item 180 as amended).

Commission delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ EU L 285/1).

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 (OJ EU L 176/1).

Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) no. 575/2013 on prudential requirements for credit institutions and investment firms (OJ EU L 347/1).

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 EU L 347/35).

Case law

Resolution of the Supreme Court of 29 November 2007, III CZP 101/07, OSNC 2008, no. 11, item 129.

Resolution of the Supreme Court of 7 October 2009, III CZP 65/09, OSNC 2010, no. 4, item 51.

STRESZCZENIE

Rynek sekurytyzacji, wart biliony dolarów, uległ załamaniu w czasie kryzysu finansowego z lat 2007–2009 i przez kolejne lata jego rozmiary w Unii Europejskiej utrzymywały się na dość niskim poziomie, m.in. z powodu braku zaufania do sekurytyzacji. Celem niniejszego artykułu jest przybliżenie niemal niedostrzeżonej w polskiej doktrynie prostej, przejrzystej i standardowej sekurytyzacji (sekurytyzacji STS) jako szczególnego rodzaju sekurytyzacji, który niedawno pojawił się w Unii Europejskiej, w tym także w Polsce, stanowiąc sposób na ożywienie działalności sekurytyzacyjnej. W toku rozważań, po krótkim przedstawieniu sekurytyzacji, jej rozwoju i upadku, przeanalizowano rozporządzenie Parlamentu Europejskiego i Rady (UE) 2017/2402 z dnia 12 grudnia 2017 r. w sprawie ustanowienia ogólnych ram dla sekurytyzacji oraz utworzenia szczególnych ram dla prostych, przejrzystych i standardowych sekurytyzacji, a także zmieniające dyrektywy 2009/65/WE, 2009/138/WE i 2011/61/UE oraz rozporządzenia (WE) nr 1060/2009 i (UE) nr 648/2012 (Dz.Urz. UE L 347/35) i wskazane w nim przesłanki, które muszą zostać spełnione, aby sekurytyzacja mogła być oznaczona jako „STS" lub „prosta, przejrzysta i standardowa". Skoncentrowano się w szczególności na wymaganiach dotyczących obowiązku dołożenia należytej staranności, przejrzystości, zatrzymania ryzyka, prostoty i standaryzacji. Artykuł kończy się uwagami dotyczącymi skuteczności przyjętych rozwiązań w sferze gospodarczej oraz w zakresie ujednolicenia prawa sekurytyzacyjnego w państwach członkowskich i przywrócenia wiarygodności sekurytyzacji w Unii Europejskiej.

Słowa kluczowe: sekurytyzacja; sekurytyzacja STS; rozporządzenie Parlamentu Europejskiego i Rady (UE) 2017/2402; obowiązek dołożenia należytej staranności