

Securitisation in the EU and UK: Final EU risk retention rules and UK Mansion House Reforms published

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This briefing note sets out what market participants need to know in relation to the EU's final Risk Retention RTS and the UK's Mansion House Reforms, both published in the past week.

Final draft Risk Retention RTS

On 7 July 2023, the European Commission adopted the final draft Risk Retention RTS (the 'Risk Retention RTS')¹.

The final draft will remain open for review by the European Parliament and the Council for a period of up to two months. Objections and further amendments are not expected at this stage, however, and once the final text has been published in the Official Journal, it will enter into force 20 days later.

Prior to the entry into force of the Risk Retention RTS, transitional provisions under the EU Securitisation Regulation provide for the continued application of regulatory technical standards drawn up under the EU Capital Requirements Regulation (the 'CRR RTS')². Those legacy provisions will cease to apply when the Risk Retention RTS enters into force.

The publication of the final form of the Risk Retention RTS has been long-awaited; the text is now expected to come into effect in late 2023 or early 2024, around five years from the EU Securitisation Regulation entering into force on 1 January 2019. Despite not having been in force or in final form however, the market has already been looking to the draft Risk Retention RTS for guidance in respect of the application of risk retention rules under the EU Securitisation Regulation. The final

Key points

EU Risk Retention RTS

- The EU's final draft Risk Retention RTS have now been adopted and are expected to enter into force in its current form in Q4 2023 or Q1 2024.
- Some changes were made in the final draft, but no significant departures or big surprises.

UK Mansion House Reforms

- The UK's Chancellor has announced the 'Mansion House Reforms', building on last December's Edinburgh Reforms.
- Second and 'near final' draft of the UK Securitisation Regulations published in connection with Mansion House Reforms.
- It is expected that the Securitisation Regulations will be passed into law before the end of 2023.
- Some changes were made in the second draft SI but the general approach, including devolution of rulemaking to UK regulators, remains the same.
- A brief consultation period on the Securitisation Regulations will run until 21 August 2023 – no significant changes are expected.

¹ Available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)1563&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)1563&lang=en)

² See Article 43(7) of the EU Securitisation Regulation and Commission Delegated Regulation (EU) No 625/2014



amendments to the Risk Retention RTS consist mainly of drafting and clarificatory changes, together with a handful of substantive differences (as compared to the April 2022 draft). The approach on risk retention does not deviate significantly from the previously existing draft, and certain specific points of interpretive uncertainty remain unchanged.

The substantive changes between the final Risk Retention RTS and the April 2022 draft include (i) several additional factors to be taken into account by retention holders where selecting exposures to be retained as part of a random selection, and (ii) a new article providing that where an entity securitises its own issued debt instruments (e.g. covered bonds), and the underlying exposures of the securitisation comprise exclusively those own issued debt instruments, the risk retention requirements will be considered complied with.

The Risk Retention RTS will not be on-shored into the UK. The earlier CRR RTS has been on-shored and there has been a general expectation that the UK would seek to align its own draft RTS on risk retention with the final EU position. However, this, of course, remains subject to the wider ongoing regulatory and legislative review of the UK's securitisation regime in the UK, which also saw some developments this week.

The UK's Mansion House Reforms

On 10 July, the UK Chancellor presented a series of new reform proposals in a speech at Mansion House. Dubbed the 'Mansion House Reforms', these new measures build on the Edinburgh Reforms announced in December last year, which were introduced with the stated aim of driving growth and competitiveness in the financial services sector.

Among the documents published as part of the Mansion House Reforms is a revised draft of The Securitisation Regulations 2023 (the first draft of which was published as part of the Edinburgh Reforms), along with a Policy Note and Delivery Plan³. The latter suggests that the new regulations will be passed into law before the end of 2023. The first draft of The Securitisation Regulations 2023 did not represent a significant overhaul of the substance of securitisation regulation in the UK, although it did set out some changes (including some which represent points of divergence between the EU and UK rules), perhaps the most significant of which being that responsibility for the development of a regulatory regime for securitisations in the UK has shifted away from primary legislation and will now sit in large part with the regulators themselves. The regulators are expected to begin consultations in relation to those delegated rules in Q3 2023.

3 Accessible here: <https://www.gov.uk/government/publications/securitisation-regulations-2023-draft-si-and-policy-note>

The near final draft of The Securitisation Regulations 2023 includes some changes as compared to the first version published. Amongst other things:

- it has been clarified that the definition of ‘institutional investor’ (and related due diligence obligations) will apply only to UK AIFMs;
- the FCA is given a power of direction in respect of authorised firms as well as other entities not authorised by it, who are engaged in certain designated activities in relation to securitisation;
- the prohibition on the use of securitisation special purpose entities in certain high-risk or non-cooperative jurisdictions has been clarified, so as to apply to providers of securitisations and institutional investors seeking to invest in securitisations;
- there are some changes to the equivalence framework for STS securitisations to align with the ambition for creating a ‘Smarter Regulatory Framework’;
- the due diligence obligations applicable to occupational pension schemes have been restated and clarified;
- provisions empowering the regulators to grant permissions in respect of the issuance of re-securitisations have been repealed (and are expected to be covered instead via the FSMA); and
- provisions in the current UK Securitisation Regulation designating certain powers and obligations to the regulators are repealed.

Although the revised draft of The Securitisation Regulations 2023 is now open for ‘technical comments’ until 21 August 2023, the current version is expressed to be the ‘near-final version’. As such, we do not anticipate there being significant or substantive amendments prior to its coming into force.

If you would like to discuss any of the issues raised in this article, please contact one of the lawyers listed further below.

This article should not be construed as legal advice. Readers are advised to speak to their legal counsel before taking action in relation to any of the matters described above

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