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Securitization in Greek law: an analysis of goals, procedure and solutions to problems arising from various legislative requirements

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Abstract

This dissertation was written as part of the LLM in Transnational and European Law, Banking Law, Arbitration/Mediation at the International Hellenic University.

Securitisation is a financial structured product consisted of various structural features and counterparties enacted in a transnational framework. For the presentation of securitization under the Greek legal order this paper follows the transactions of the securitization product firstly in the transnational field, then in the European area and finally it examines the legal requirements under Greek legislative provisions. In order to comprehend the securitization transaction in practice, an introduction of the main structural mechanisms (traditional and synthetic), the relevant assets used, the main components and the execution cycle of the transaction is performed. Proceeding with an overview of implementation practices of securitization and the way in which they affected and how they became accountable for the 2007 financial crisis, the basis of understanding future legal reformation is presented. Following the above, the main regulatory reform in the European Union after the financial crisis is mentioned and the Securitisation Regulation (EU 2042/2017) is cited in respect of rectifications introduced to prevent previous pitfalls. Lastly the Greek Securitisation Law (Law n.3156/2003) is presented, the structural mechanism, the transaction provisions, the counterparties involved and examined under the new European legal framework and in connection with other legislative instruments, the prospectus obligation, the General Data protection Regulation and the Greek Non Performing Law (Law N. 4354/2015).

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Keywords: Greek Securitisation Law, European Securitisation Regulation.

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Contents

1.Introduction

Following the financial crisis many companies and financial institutions have come to address a severe liquidity obscure. At the same time new framework of regulations have been introduced within the EU, with legislative acts applicable to credit institutions and investment firms in order to sufficiently improve quality, quantity, and adequacy of capital.

Within this framework, securitization is being encountered again as an alternative for raising capital, enhancing liquidity and improving company balance sheets. In this aspect, in the Greek financial market, securitization is encountered as an option with prospects and is seemed to have become one of the main alternatives in capital funding.

Securitization has witnessed great levels of innovation in the transnational field, reaching a high level of sophistication with a variety of illustrated practices the last decades. It has evolved from a quit linear concept to a financial instrument consisted of various structural features as well as counterparties involved. This structured financial instrument has not yet found a standardized definition and is still characterized for its complexity, lack of clear definitions and use of technical language.

This paper will attempt to address securitization under the Greek legal framework under the view of a financial structure which could stimulate the economy of the private sector. It attempts to review, in the wider range possible, the procedures, how and which other parties are effected and the way by which it could reach the best practice doctrine.

In order to accomplish this goal a presentation of securitisation in the transnational arena will be attempted, the pitfalls of the crisis will be notified in order to understand legal reformation, the present securitisation legal framework in the European Union will be presented and finally the Greek securitization law, practice and potential.

Furthermore the paper shall attempt to acknowledge other legal instruments interplaying in the practice of securitization under Greek law, such as the Prospectus law, GDPR and the NPL LAW).

2.SECURITISATION

Securitization is a technique within the framework of structured finance transactions. The main aspect of these transactions is in transforming illiquid assets, exposures, trade receivables, loans etc. of the originator – usually a credit institution or corporation- into tradable securities. The originator creates a pool of these assets, repackages them under similar characteristics, distinguishes them in matter of risk categories and provides them through a special purpose vehicle to investors of different risk profile in the form of tradable securities**.**

Securitization provides stimulation of liquidity, diversification of funding, resolving balance sheet considerations, arbitrage opportunities and since credit institution are mostly engaged in a securitization transaction an opportunity of regulatory capital diversification on the scope of stimulating credit flow.

Regarding the history of securitization, its stimulation goes back to the housing market in the US of 1970's , with two agencies sponsored by the US government, "Fannie Mae" and "Freddie Mae" that acquired house mortgages from lending institutions and issued securities backed by the pools of those mortgages[1]. In the United Kingdom the first mortgage securitization is traced in 1985, where for the rest of Europe the development seems to follow some years later due to legal complexity. In France the legal framework for securitization is set in 1988, followed by ABS consumer loan issuance, while in 1991 the first RMBS transaction takes place.[2]Since then the volume of issuance had robust and the composition became much more complex and riskier. [3]

Since then, securitization has transformed from a fairly linear concept and practice into a structure of finance transactions employing a range of different players resulting to a difficult and complex operation with various interrelations and interdependences.

2.1. COMPREHENDING THE SECURITISATION TRANSACTION

The basic structure of a securitisation transaction is composed by three actors. The Originator , the Special Purpose Vehicle, SPV (or otherwise Special Purpose Entity, or Securitisation Special Purpose Entity) and the Investors.

Originator → (POOL OF ASSETS) → 2. SPV →(BONDS)→ 3. INVESTORS

[1]Vincenzo Bavoso , "Financial innovation and structured finance: the case of securitization", Journal Article, **Comp. Law. 2013, 34(1), 3-12,**

[2] Miguel Segoviano, Bradley Jones, Peter Lindner, and Johannes Blankenheim,"Securitization: Lessons Learned and the Road Ahead" IMF WORKING PAPER , WP/13/255, pages 54-55

[3] Supra note 2, "Thereafter, securitization-related vehicles became popular in Spain, Belgium, the Netherlands, and other countries. In the Dutch case, ABS amounted to almost €270 billion at end-2007, or 50 percent of Dutch GDP (almost two-thirds of which were comprised of RMBS; Chaudron, 2008). Germany's government-owned 55 development bank, Kreditanstalt für Wiederaufbau (KfW), also issued €125 billion of RMBS and small- and medium-sized-enterprise (SME) securitizations between 2000 and 2008, with the collateral for the former sourced from across the European Union (KfW, undated; Kaiser and Axford, 2006)."

The basic structure of a securitisation transaction:

1. Originator creates a pool of assets, sells and transfers this pool of assets to the SPV
2. The SPV buys the pool of assets, issues securities backed by the pool of assets and offers them in the market
3. investors purchase the notes from the SPV

In this assumingly simple transaction, in every step of the way, a variety of components are or can be added, depending on the incentive and the goal of the transaction stipulated from the originator, in order for the transaction to be effective, efficient and profitable.

The Originator is the initiating party of the transaction. Before in itiating such transaction there are the *strategic considerations* for the originator. Securitisation can *provide a diversification of funding resources* for the originator through the Special Purpose Vehicle. It can be used as a *liquidity tool* by removing assets through securitisation from the balance sheet of a company that are considered illiquid. It can be used as *a regulatory capital management tool* by transferring, via securitisation, risk attached to certain assets and hence free regulatory capital for the originator. It can also be used as a way *of improving key financial ratios* by transferring assets to the SPV, such as the ratio return on assets (RAO), economic value added (EVA) and for credit institutions the return on equity (ROE)ratio[4].

After concluding on the desired goal the originator plans to accomplish through securitisation, the originator should decide on the type of securitization transaction to be implemented depending a. on the structure mechanism of the asset (distinction between traditional or synthetic securitisation) b. on the type of the Special Purpose Vehicle (corporate and trust distinction) and c. on the passivity or dynamism of the flow of receivables structure. More distinctions of securitisation structure can be found in the relevant literature, the most prominent of which are described bellow:

a. Traditional securitization or "true sale" securitisation

True sale securitisation is the used more commonly. The transaction's essential feature is that it revolves around the transfer of the assets by way of sale (assignment) form the originator to the SPV, resulting to the risks attached to those assets moving to the SPV. The 'true sale" term has different meanings among different disciplines, but it's core concept is that the assets transferred from the originator to the SPV through the securitisation transaction are alienated from the originator to the extent that they cannot be considered or regarded in any case as the originator's property in case of insolvency.

b. Synthetic securitization

[4] Markus Krebsz, Wiley Finance, 2011"Securitization and structured finance post credit crunch, a best practice deal lifecycle guide" Pages 49 -154

The main characteristic in synthetic securitisation is that the transfer encompasses only the risk of the assets to the SPV. Synthetic securitization is consider to be a credit derivative, or in other words a credit default swap.[5]

Strategy considerations should include the type of *investors* to which the issued securities shall be offered, shall there be a private issuance, or a public issuance, the type of pool of assets, the diversified exposure underlying these pools in order for the issued securities to be able to attract different types of investors.

Furthermore provisions should be made around the classification of the securities to be issued into *asset classes*, usually depending on the underlying assets of each pool of assets, for which there shall be relevant reference bellow:

2.1.1 THE POOL OF ASSETS

In the securitization transaction the pool of assets transferred to the SPV is distinguished in classes, the so called asset classes, according to the type of assets being securitized. Within this aspect, asset classes have been developed, usually referring to the underlying collateral inherent in these assets. Under this scope the following asset classes are usually used (with many other combinations found in practice):

1. *Mortgage-backed securities or MBS* are the securities where the pool of assets are backed by mortgage collateral. The securities in this class are backed up by the interest and principal of mortgage loans. There is a further distinction of MBS where a *Residential MBS (RMBS*) refers to individual mortgages and *commercial MBS (CMBS***)** with the collateral of commercial property underlying the assets.
2. *Collateralized debt obligations or CDOs* is a pool of assets backed by bonds, loans or credit derivatives.
3. *Collateralizes Loan Obligations (CLO***)** refer to receivables backed by loans
4. *Asset-backed securities* **(**ABSs) is a pool of assets backed by a more heterogenic form of collaterals, usually referring to a mixture of credit card receivable, auto loan, consumer loans lease receivables, etc.

Additionally, the originator must take decisions over the use of a *credit enhancement scheme* for the absorption of contingent losses by the transferred receivables.

The structure of the transaction shall involve further classification of the assets into *tranches*, in regard of the risk each tranche is most likely to experience in its lifecycle.

This classification, known as tranching can be described as follows: the pool of assets is split up into tranches, depending on the subordination order, in case of default the rank in which they are repaid. Basic types of tranches are senior, mezzazine and junior.

Depending on the structure of the transaction more components can be found engaging on the securitisation, the most common of which are described bellow.

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[5] Jan Job de Vries Robbe, Securitization Law and Practice, Kluwer Law International , International Banking and Finance Law Series, 2008 page 8

2.1.2 BASIC COMPONENTS OF THE SECURITISATION TRANSACTION

The Originator/sponsor

The originator is the entity who generates the asset which will be securitized and initiates the transaction.

The sponsor

In the case where the asset pool is compromised from assets of different originators then an entity other than the originator could act as the sponsor, initiating the transaction. [6] In other occasions a sponsor may be a third party buying the asset pool with the intention of latter securitization.

The underwriter

In the structuring stage an underwriter also may be involved in providing consultation for the formation of the upcoming transaction in order for it to be attractive to investors. Latter in the transaction the underwriter may subscribe the securities and help placing them with the public or with more sophisticated investors

Rating agencies

The rating agencies's role is to provide rating on the creditworthiness of the notes to be issued after having reviewed the information provided by the transaction parties. In this aspect the rating agencies overview the structure of the securities, they comment on the strength and weakness of the credit, the true sale and bankruptcy factor. After their initial analysis, rating agencies continue to provide, through the lifecycle of the transaction, surveilling and performance analysis services. Rating agencies expressed opinion is not that of a guarantee or of a recommendation. It is merely an opinion statement abolishing usually any liability.

Credit enhancement and division in tranches provider

In cases of serious transaction imbalances the credit or liquidity provider may commit itself in case of default in the pool or deterioration of the pool to either supply the funds necessary to cover principal and interest payments or to purchase the defaulted assets, pursuant to a stand by letter of credit agreement.

As a general rule cash from the receivables is first employed to pay investors in senior tranches and then in the junior tranches. The most junior tranches are called "residual" interest or principal only, or interest only and gives its holders the right to receive the remaining funds one all other investors have been satisfied.

Special Purpose Vehicle

The most significant element in a securitization transaction is constituted by the definition of the SPV. The SPV is an entity which is characterized by the generic limitation of activities found in its articles of incorporation. Its primary purpose is to provide the necessary insulation between the assets being securitized and the originator of these assets. Thus providing that the risk in which the investors are

[6] David Ramos Munoz, The Law of transnational securitization, Oxford University Press 2010, page 4

exposed to are the risk of the assets. The main concept of securitization is the insulation of these assets from the originator. This insulation provides securitization with it's main appeal since the securities issued will not be exposed neither to the originators risk of insolvency but to the risk of the assets being securitized. This risk when isolated from the originator can be calculated through statistical methods in a most accurate way.

The servicer and cash manager / depositor

The servicer is the entity in the securitization process which overtakes the responsibility for the performance of the securitized assets, ensuring that payments are being made by the debtors and initiating, when necessary, enforcement actions such as foreclosures and liquidizing collateral. Further more in practice it is often for the servicer to provide further services as those of the depositor or cash manager making sure that the payments are appropriately placed in the accounts of all parties.

Investors

Investors buy the securities by the SPV and are entitled to receive the repayment and interest based on the cash flow generated by the underlying assets. Collaterals ensure the pecuniary claims from these assets.

Trustee / management company

The trustee is the party representing investor's interests. It could be that they supervise some servicing tasks especially when default occurs. its responsibilities will vary every time and are described in a separate trust agreement.

2.1.3 THE "EXECUTION" CYCLE OF A SECURITISATION TRANSACTION

We have evidenced already how a modest three component transaction can become a complex and opaque one. By retaining this simple form in order to perceive the transaction, a demonstration of the execution cycle shall be presented as follows:

A. Preliminary status

The decision referring to the financial strategy has been reached.

The legal department reviews necessary documentation, provides necessary legal opinions, coordinates with regulatory authorities and rating agencies.

The IT department provides components with the necessary data of the portfolio (among others ongoing performing data). The necessary documentation is prepared in order to have detailed knowledge on asset information on loan data in order to become clear which assets are for securitisation and what kind of data are required for this particular transaction by the market and by the rating agency. Furthermore the transactional triggers are defined (i.e. early amortization trigger, borrower concentration limits trigger, portfolio delinquency default trigger).

B. Pre-deal status

The originator receives the preliminary rating indications and prepares the offering circular (OC) which includes terms and conditions of the bonds, a summary of the transaction, mentions the counterparties involved, outlines the risks involved for the note holders, indicates due diligence and regulatory liabilities and how they are being met, gives information about the pool of underlying assets, clearing issues, listing, tax issues and other. The originator engages several data quality reviews and takes representation and warranties tests in order to submit a provisional pool to the rating agency to obtain a "Credit assessment letter" (for private placements) or a "pre/sale report" (for public placements) and must meet other regulatory provision at this pre-deal stage usually statutory reporting and other documentation requirements.

C. At close status

The marketing of the transaction with meetings and presentations to prospect investor takes place and the issuance of the pre-sale report by the credit rating agency. The securitized assets are "flagged" (something that can usually change in the event where a certain asset is in breach of representation) usually at the overall total value of the deal. The "new issuance" report is issued from the credit rating agency usually identical to the pre-sale report.

D. Post close status

After the deal has launched servicing reporting requirements, rating agency pool specific reporting requirements and investor reporting requirements must be met [7].

3.THE CAUSES FOR THE 2007 FINANCIAL CRISIS

Securitization transactions have been given a large proportion of the "blame" regarding the 2007 financial crisis. In order to understand regulatory transformations taking place after the crisis regarding securitization, there shall be an overview of the main factors involved, by summarizing the comments made by the International Monitory Fund[8] (WP/13/255) which are the following:

1. Loan origination practices
2. Issuance of complex securitization products
3. Reliance on Credit Rating Agencies
4. Leveraged investors

[7] Jan Job de Vries Robbe, Securitization Law and Practice, Kluwer Law International, International Banking and Finance Law Series, 2008 page 111-

[8] Miguel Segoviano, Bradley Jones, Peter Lindner, and Johannes Blankenheim, "Securitization: Lessons Learned and the Road Ahead" 2013 International Monetary Fund

3.1 LOAN ORIGINATION PRACTICES

Loan origination practices where tied to compensation arrangements deteriorating the lending practices and standards, also associated with little or no documentation practices. The loan origination was driven by volume and commission compensations rather than adjusting products to consumers on a suitability manner. The so called "predatory lending" emerged. This led to the rise of the subprime mortgage market especially in the US.

3.2 THE ISSUANCE OF COMPLEX SECURITIZATION PRODUCTS

The issuance of complex securitization products was a driver for the increase in demand of low quality loans to serve as collateral. This demand created a feedback loop between opaque and complex securitization of high fee-earning and large quantities of underlying loans. Until year 2000, dept securities where backed by the so called "plain vanilla" 9. The demand on low quality loans started generating in the early 2000s where broker-dealers used structuring techniques in order to transform their collateral into structured securities, as these generated higher than usual fees with their incarnation in securitized products. The re-securitization of Asset Backed Securities (ABS) into Commercial Debt Obligations, square CDOS and other synthetic securitizations created even greater high yield securitization products and Asset Backed derivatives. It has been stated by some analysts that the "uniform capital rule" exemption by the Securities and Exchange Commission (SEC) played an important role in the leverage increase employed by some broker/dealers10. In many such cases banks retained clear or implied contingent exposure with these entities, since they became the intermediary between the broker/dealer and the securitization transaction. This interconnection between the broker/dealer and the banks resulted into concentration of risk since in some cases when the markets where unable to roll over maturing liabilities they were committed to place these assets onto their own balance sheets. Another factor described in the IMF Working Paper[11] (WP/13/255) is the role of quality control entities in the respect of representations and warranties (RWS) enforcement.

3.3 RELIANCE ON CREDIT RATING AGENCIES

Reliance on Credit Rating agencies resulted to a dependence of securitized products and their credit risk assessment. Credit rating was compulsory for banks or other investment firms in order to calculate capital requirements for potential securitized products and investors leaned on these ratings in order to decide on their investment

[9] Supra note, "plain vanilla" : residential and commercial mortgages, credit card receivables, student loans, auto loans and others of high quality.

[10] Supra note, This ruling exempted large U.S. broker/dealers (those with net capital in excess of US$5 billion) from the larger uniform capital requirements imposed on smaller institutions, which had been in place since 1975 (GAO, 2004). broker/dealers (those with net capital in excess of IS5BILLION)). Upon receiving SEC approval, such firms were permitted to use internal mathematical models to compute the haircuts and corresponding capital requirements associated with their security holdings Risk concentrations Hundreds of billions of dollars of structured products were sold to SIVs, ABCP conduits, and SIV-lites. Given the relatively short duration of their liabilities-such entities were often funded largely with commercial paper (CP)-these entities harbored significant maturity and rollover risk.

[11] Miguel Segoviano, Bradley Jones, Peter Lindner, and Johannes Blankenheim, "Securitization: Lessons Learned and the Road Ahead" 2013 International Monetary Fund

strategies. In some cases of securitized products "rating shopping" occurred and higher then estimated ratings were awarded underestimating correlations. The dominant role of credit rating agencies has been scrutinized after the crisis. These ratings were assumed to be independent, objective and free of any competing interests existing or potential between parties involved in the transaction[12]. The issue of dependence and dominance still remain since there are three agencies, the so called "Big Three" which concentrate almost 97 percent of rating reports, even after the crisis. The complex models used for structured financial products where sensitive to small parametrical changes. The valuation methologies proved misleading with errors occurring in modeling and estimation techniques. Furthermore an issue of interaction between CRAs and issuers or arrangers occurred. In order to reach the desirable outcome which is a rating that attracted investors ensuring high demand of the issued product, small modification could be made to variables that would maximize proceeds.

3.4 LEVERAGED INVESTORS

Leveraged investors and institutional investors search for yield in a highly accommodative monetary policy seems to have contributes in the increase of demand for complex securitization products. New types of specialized entities in investment emerged with the growth securitization. Many investors avoided their due diligence responsibilities, relying on external ratings excessively, due to the lack of resources in order to conduct a sufficient credit analysis.

4.REGULATORY REFORM IN THE EUROPEAN UNION

In order to reestablish confidence in securitization after the 2007 crisis, regulatory reform has taken place in European legislation accompanying the BASEL III, in order to create a more stable environment and to revitalize the market.

In this aspect the European Central Bank (ECB) concluded in the publication of the "Loan Level Data Initiative" to confront the lack of transparency of the assets eligible

[12] An important judgment concerning Credit rating Agencies is the following: Attorney General Eric Holder announced today that the Department of Justice and 19 states and the District of Columbia have entered into a $1.375 billion settlement agreement with the rating agency Standard & Poor's Financial Services LLC, along with its parent corporation McGraw Hill Financial Inc., to resolve allegations that S&P had engaged in a scheme to defraud investors in structured financial products known as Residential Mortgage-Backed Securities (RMBS) and Collateralized Debt Obligations (CDOs). The agreement resolves the department's 2013 lawsuit against S&P, along with the suits of 19 states and the District of Columbia. Each of the lawsuits allege that investors incurred substantial losses on RMBS and CDOs for which S&P issued inflated ratings that misrepresented the securities' true credit risks. Other allegations assert that S&P falsely represented that its ratings were objective, independent and uninfluenced by S&P's business relationships with the investment banks that issued the securities. "On more than one occasion, the company's leadership ignored senior analysts who warned that the company had given top ratings to financial products that were failing to perform as advertised," said Attorney General Holder. "As S&P admits under this settlement, company executives complained that the company declined to downgrade underperforming assets because it was worried that doing so would hurt the company's business. While this strategy may have helped S&P avoid disappointing its clients, it did major harm to the larger economy, contributing to the worst financial crisis since the Great Depression. "Justice Department and State Partners Secure $1.375 Billion Settlement with S&P for Defrauding Investors in the Lead Up to the Financial Crisis, https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors

as collateral in the Eurosystem. Under this scope issuers of ABS securities where required to provide information at individual loan level in order to provide transparency and improve any risk assessment. This submission of information was introduced gradually for Residential Mortgage Backed Securities (RMBS), Small and Medium Sized Entities (SMEs) and Commercial Mortgage Backed Securities and later to other securities backed by consumer loans, auto loans and leasing as well as credit card receivable. [13]

In the year 2014 the European Central Bank, the Bank Of England and the European Banking Authority (EBA) in order to establish distinctive treatment of high quality securitization promoted the notion of standards in securitization through discussion papers and in December of the same year the Basel Committee on Banking Supervision (BCBS) in coordination with the Securities Supervision (Board of the International Organization of Securities Commissions) IOSCO, published similar consultations. Through these publications the concept of simple, standard and transparent securitizations arose in order to assure prudent practices and a sound market.

In order to revitalize the securitization market many regulatory amendments have been introduced in the European legal framework. Alongside with the Dood-Frank Act in the USA Capital Requirements Directive (DRD) IV, Capital Requirements Regulation a, Solvency II and Basel III where regulations developed in the European area [14].

Alongside with the above legislative changes many other instruments have been introduced in the European legal text[15]. In order to establish a more coherent legal environment for financial structured products enhancing the financial markets regulatory reform took place with the latest being that of the Securitisation Regulation. Consideration is given to the basic legal reforms that have been introduced, effecting securitization practices and parties involved.

As mentioned above the main parties involved in a securitization transaction are the debtor, the originator, the servicer, the SSPE, the investor. The regulation applies as we will see to some of these actors: to institutional investors, originators, sponsors, original lenders and securitisation special purpose entities. Other parties such as the CRA, the borrower, the servicer are mentioned but not arranged by the regulation.

In order to get acquainted with the regulation there shall be some reference to its structure, in order to realize the general framework of the securitization structure and practice.

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[13] Deloitte, White paper No.81 February 2018 p.2

[14] Ahmed Arif, "Regulations for Securitisation and Covered Bonds: Too Much or Too Little", ECFR 2019, 535–556, Bereitgestellt von | De Gruyter / TCS Angemeldet Heruntergeladen am | 21.11.19 10:19, ECFR 5/2019, "These regulations became a subject of widespread criticism from the market analysts, academics, and other market stakeholders The regulations devised after the GFC have been repeatedly revised in response to this criticism. A fourth (revised) draft of Basel III was issued by the Basel Committee on Banking Supervision (BCBS) in July 2016, followed by three initial drafts in 2013, 2012 and 2014. The European Commission (EC) also issued a proposal on September 30, 2015 (hereinafter referred as 'STS framework') to promote Simple, Transparent and Standardised (STS) securitisation8, 9 . This proposal is analogous to the BCBS Proposal for Simple, Transparent and Comparable (STC) Securitisation, but the former is proposed as the EU law. A delegatedAct Supporting the Solvency II directive was also issued in 2014 and amendments were introduced in 201510. This highlights the intensity of the challenge faced by the regulators while devising regulations for securitisation." pages 538-539

[15] Directives 2009/65/EC, 2009/138/EC, 2011/61/EU (3) of the European Parliament and of the Council, Regulations (EC) No 1060/2009, (EU) No 648/2012 (5) of the European Parliament and of the Council, Commission Delegated Regulation (EU) No 231/2013, Regulation (EU) No 575/2013 of the European Parliament and of the Council, Commission Delegated Regulation (EU) No 625/2014, Commission Delegated Regulation (EU) 2015/3

The regulation gives through the preambles general guidelines and then separates securitization on the basis of scope, between traditional securitization and synthetic securitization, on type, long term securitization and short term securitization or ABCP, and describes in detail the format of STS securitization which is out of this paper's scope.

As we have seen securitization is a structure finance transaction operating globally with many different perceptions and interpretations. It can evolve from a three tier transaction to a multy participation transaction. Since this paper aims to comprehend the main structure of the securitization transaction it shall focus on basic elements.

4.1THE SECURITISATION REGULATION SUBJECT MATTER AND SCOPE

In the Regulation (EU) 2017/2402 of the European Parliament and of the of 12 December 2017 in Article 1 the subject matter and scope of the regulation is where par.1 "This Regulation lays down a general framework for securitisation. It defines securitisation and establishes due diligence, risk-retention and transparency requirements for parties involved in securitisations, criteria for credit granting, requirements for selling securitisations to retail clients, a ban on re-securitisation, requirements for SSPEs as well as conditions and procedures for securitisation repositories. It also creates a specific framework for simple, transparent and standardised ('STS') securitization" and par.2 introduces where it applies "This Regulation applies to institutional investors and to originators, sponsors, original lenders and securitisation special purpose entities".

The Securitisation Regulation in the preamble describes securitization as an important element of financial markets well-functioning. It defines it furthermore as an alternative channel of funding and risk allocation which enhances a broader and wider risk distribution within the Union, able to improve balance sheets of the originator resulting to further lending, connecting credit institutions with the capital market with benefits for citizens and businesses. It acknowledges that securitization raises increased interconnectedness and excessive leverage. [16]

4.2OVERVIEW OF THE SECURITISATION REGULATION AND MAIN ELEMENTS

One of the basic elements of the "Securitisation Regulations" is that it provides securitization with a definition in order to distinguish it among other structured financial products:

" securitisation' means 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;

[16] Preamble 2, Regulation (EU) 2017/2402

(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(8) of Regulation (EU) No 575/2013"

A definition of traditional securitization and synthetic is also illustrated in art. 2 of definitions:

Article 2 par. 9 "traditional securitization" means a securitisation involving the transfer of the economic interest in the exposures being securitized through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator;

Article 2 par.10 'synthetic securitisation' means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator'.

The general guidelines of the regulation set out in the preambles provide the context in which the regulation must be interpreted and can be divided in two main categories.

4.2.1SOUND PRACTICE OF THE TRANSACTION

In the scope of achieving sound practice in a securitization transaction through the recital of the regulation, guidelines are provided regarding the exposures and the underlying assets. It sets out that the exposures being transferred to the SSPE must have clear, defined and meet predetermined eligibility criteria in order not to allow any discretionary management[17]. Exposures in default or exposures where the debtors are in situations of credit impairments should not be included, and exposures subsequently restructured should be approached prudently [18]. Securitization transactions should be backed by pools of exposures homogenous in asset type and not include transferable securities[19]. In order to avoid the occurrence of "originate to distribute models " the exposures to be securitized should be originated in the ordinary course of the originator's business pursuant to underwriting standards applied in exposures which are not securitized, where applicable the creditworthiness of the barrower should be under the provisions set out in 2008/48 or 2014/17 EU directives and any changes on underwriting standards should be disclosed to the parties exposed[20]. The entity that manages the securitized exposures should be a regulated asset manager[21]. The environmental impact and performance of assets underlying securitisations by originator and sponsor should be published[22].
Further more , it provides the opportunity for competent authorities to impose sanctions in cases where originators or sponsors take advantage of information

[17] Recital (25) of EU2042/2017 Regulation
[18] Recital (26) of EU2042/2017 Regulation
[19] Recital (27) of EU2042/2017 Regulation
[20] Recital (28) of EU2042/2017 Regulation
[21] Recital (7) of EU 2042/2017 Regulation "such as an undertaking for the collective investment in transferable securities (UCITS) management company, an alternative investment fund manager (AIFM) or an entity referred to in Directive 2014/65/EU of the European Parliament and of the Council (1) (MiFID entity)"
[22] Recital (30) of EU2042/2017 Regulation

imbalance in order to transfer exposures with a higher credit risk profile than that of the ones held on the originators balance sheet. In case of this instance it requires for investors to be informed and imposes to the competent authorities to supervise misconduct of this kind by comparability techniques[23], and imposes for the publication of administrative sanctions of this kind[24].

4.2.2INVESTOR PROTECTION THROUGH DUE DILIGENCE AND TRANSPARENCY REQUIREMETNS

In order protect investors, avoid risks transferred to other sections through securitization and to enhance confidence between parties involved, it imposes due diligence requirements to institutional investors [25]. In the instance where a third party is covenant to fulfil due diligence requirements, other than the institutional investor, under article 5 of the regulation, sanctions, in case of breach of due diligence requirements, are imposed to that party.

In order to increase investor protection it engages information disclosure and transparency requirements through access to information by the establishment of securitization repositories in order to systematically collect and provide the necessary information, during the whole life of the transaction, freely and easily to the investors[26] (This does not apply on private securitisations[27]). For investors to be able to examine the risks involved in a securitization transaction originators sponsors and SSPEs must provide all relevant data regarding credit quality and performance of the exposures[28]. Resecuritisation is permitted only in specific instances as established by this Regulation in order to avoid lack of transparency[29].

4.2.3OTHER IMPORTANT ELEMENTS OF THE REGULATION

Selling to retail clients

Under article 3 of the regulation, selling of securitisations to retail clients is prohibited unless a suitability test has been performed, the outcome of the test concludes that the securitization position is suitable for that client, the report is immediately reported to the client and a proportionality requirement is also met in relation with the clients financial instrument portfolio status.

Requirements for SSPEs

Under article 4 of the regulation SSPEs must be established only in countries which fully comply with standards of the OECD Model tax Convention on Income and in

[23] Recital (11) of EU2042/2017 Regulation
[24] Recital (35) of EU2042/2017 Regulation

[25] Recital (9) EU 2042/2017 Regulation
[26] Recital (12) EU 2042/2017 Regulation
[27] Recital (13) EU 2042/2017 Regulation

[28] Recital (16) EU 2042/2017 Regulation
[29] Recital (8) EU 2042/2017 Regulation

Capital or in the OECD Model Agreement on the Exchange of information on Tax Matters and have signed an agreement with a Member State, and are not listed as high risk or non- cooperative jurisdiction by FATF.

Due diligence requirements

Article 5 sets forth due diligence assessment for the institutional investor. The institutional investor before holding a securitization position shall verify

1. that the originator or original lender has an efficient system of procedures and processes of credit granting approval, amendment, renewal, and financing credits, irrespectively if they are to be securitized or not, in order to assess that the debtor shall be able under the agreement to meet his obligations. In regard for ABCP transactions when the originator or original lender are established in the Union but are not credit institutions or investment firms the sponsor shall verify the above.
2. That the originator, sponsor or original lender complies with the risk retention provisions of a material net economic interest of at least 5% through the life of the securitization transaction and the disclosure of the above to the institutional investors.
3. that the originator, sponsor and SSPE comply with the transparency requirements set in this regulation as to frequency and modality requirements

Furthermore the institutional investor shall:

- consider all criteria set forth by the regulation in order to realize the risk involved in any securitization position, STS designated, ABCP, or other.

- introduce written policies in order to observe on a continuing basis compliance of the above in order to be able to evaluate the securitization position's performance, generate reports to the management body in order to manage adequately any material risks arising, demonstrate to competent authorities compliance by maintaining relative records in order to demonstrate full understanding of credit quality and underlying risks.

Risk retention

Under Art 6 of the Securitisation Regulation , the originator, sponsor or original lender and in the case of disagreement between the parties the originator, shall provide the risk retention responsibility of a material net economic interest of at least 5% through the whole life of the securitization transaction[30]. Risk retention requirements are introduced in order to promote alignment between participating parties and improve the quality of the underlying assets.

Transparency requirements

[30] And article 405, Regulation 575/2013(EU)

Under article 7 of the Securitisation Regulation the originator, the sponsor or the SSPE are required to provide information to holders of a securitization position, competent authorities and potential investors, upon request regarding relevant documentation and agreements that could have a material impact on the performance of the securitisation position, for the understanding of the transaction.

Ban on resecuritisation

Under article 8 of the Regulation, in order for a securitization to have another securitization as a underlying position (resecuritisation) the competent authority of the originator must grant its permission deeming the use of resecuritisation is used for legitimate purposes as defined by the regulation.

Criteria for credit granting

Under article 9 of the regulation originator must have clearly established and well defined processes for approving, amending, and refinancing credits to exposures both securitized and non-securitized in order to ensure the prospect og the obligor of meeting his credit agreement obligations, with special provisions relating to residential loans.

4.2COMMENTS ON THE SECURITISATION REGULATION

The Securitisation Regulation provides a common set of substantive rules applying across the Union for all securitisations and establishes criteria in order to identify Single Transparent and Standardised (STS) Securitisation.

In this aspect the Secuitisation Regulation could be observed though the two main parts of the regulation. On chapter two(2) with provisions applicable to all securitizations, and on chapter four (4) for identifying Simple Transparent and Standardized Securitisation.

Furthermore, the Regulation presents and distinguishes between traditional securitization, synthetic securitization, long term securitization and short term securitization (ABCP), and describes in detail the format of STS labeling securitization.

It sets forth information disclosure, transparency, due diligence and risk retention requirements, ban on resecuritisation, credit granting criteria and engages supervisory authorities and their competences both regarding securitization practice in general and referring to STS in particular.

As set out in the proposal of the European Parliament and of the Council (COM (2015) 472 final), the scope of the regulation is to create a sustainable market for securitization, to establish sound practice in order to diversify funding sources, to allocate risk more efficiently, to distribute the risk of the financial sector in a broader way, creating a bridge between credit institutions and capital markets. Under this

framework, and as mentioned by the Proposal the legislation aims to restart the market on a more sustainable basis and allow for efficient and effective risk transfer.[31]

In accordance with the provisions regarding the general framework, applied to all securitisations, of the securitization transaction there have been arguments regarding the effectiveness of the above provisions.

Regarding the risk retention provisions there are arguments that the investors may get mis-informed and that reliance may also shift on the signal generated by the originator[32]. Regarding the disclosure requirements it is argued that they may not prove effective since disclosure requirements where applied already, not being able to prevent the collapse of the securitization market. Further more to evaluate the disclosed information is a difficult task with complex legal and technical terms, which may eventually discourage investors[33].Regarding the due diligence provision it is argued that these requirements may be characterized as "too paternalistic"[34]. It is the view of the author that even though the judgement of these provisions and requirements do have a realistic basis, the necessity for their applicability is undoubtful. A securitization transaction, as a structured financial product addressed to large companies and institutions, with large numbers of assets and receivables, is expected to conclude large matter of legal, formative and contractual procedures. In order for these procedures to be controlled the parties involved must be prepared to respond.

It is the author's perspective that the provisions of the Securitisation Regulation do set out the necessary framework for the notion of simple, sustainable and effective securitization.

4.2.1CREDIT GRANTING CRITERIA

Under the legislative text applying to all securitisations, the regulation presents requirements for "traditional securitization" presenting the notion of sustainable, simple and effective securitization through the credit granting criteria, by referring in particular to two EU Directives, 2008/48/EC and 2014/17/EU of the European Parliament and the Council (in recital n. 28 and article 9 of the regulation) and furthermore to the notion of "sound and well defined criteria for credit granting" with "clearly established processes for approving, amending, renewing and refinancing credits"[35] .

By entering these provisions in the legislative framework, controlling the initial transaction that of the loan lending standards, it illustrates the formation of clear and efficient exposures.

[31] European Parliament and of the Council (COM (2015) 472 final), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0472:FIN

[32] Ahmed Arif, "Regulations for Securitisation and Covered Bonds: Too Much or Too Little", ECFR 2019, 535–556, Bereitgestellt von | De Gruyter / TCS Angemeldet Heruntergeladen am | 21.11.19 10:19, ECFR 5/2019

[33] Supra note

[34] Supra note

[35] Article 9 par. 1 EU 2042/2017

This requirement establishes the exposures securitized to be able to generate stable income flows, when appropriate criteria have been set for the obligor meeting his credit agreement obligations. In this manner risk hindered within the performance of the exposure itself are controlled. By creating a stable and constant basis for exposures to be securitised it deescalates probable liquidity obscureness of the structured financial product. It could be argued that in this regard the risk undertaken by credit institutions on their lending policy is transferred to investors as such. As lending policies are strictly scrutinized by competent authorities, it should come as a result for the investor confidence to be re- established and securitization to become a true alternative for both investors and originators.

4.2.2BANNING OF RESECURITISATION

The banning of resecuritization is respectfully another basic element of the regulatory provisions in this regulation.

This restriction reestablishes a more linear concept of the securitization transaction through the ability of comprehending the final beneficiary of the financial structured product, contributing to the overall understanding of its function.

The foremost outcome of this aspect is that the securitization product recedes from rating dependencies when exposures are closely associated to their underlying assets, in the absence of multiple succession agreements. It has been stated that the European market "became illiquid and prices fell resulting in accumulation of market-to market losses"[36], it is from the author's perspective that resecuritisation alienated the securitization product from it's initial characteristics (the prime obligator and the underlying collateral) and in combination with other factors created a confusion of it's generic transaction (that of sale and transfer of a receivable). This confusion resulted to a "trend" or "rating" dependency and consequently to a fall of interest by the market investors, thus not for the product itself but for the whole market conclusively.

5.SECURITISATION IN GREECE UNDER LAW 3156/2003

The Greek Securitisation Law, article 10 (asset securitization) and art. 14 (tax provisions) Law 3156/2003, has been used mostly by the Greek credit institutions, facilitating the asset backed security market. The main provisions are presented.

Definition of securitization

Under the Greek Securitization Law (law3156/2003 article 10 and 14), "securitization of claims " is defined as the transfer (assignment) of commercial/trade receivables, by way of sale from the transferor (the originator) to the transferee (a Special Purpose Entity, or Special Purpose Vehicle as the predominant definition) in conjunction with

[36] Ahmed Arif, "Regulations for Securitisation and Covered Bonds: Too Much or Too Little", ECFR 2019, 535–556, Bereitgestellt von | De Gruyter / TCS Angemeldet Heruntergeladen am | 21.11.19 10:19, ECFR 5/2019

the issuance and distribution of bonds through a private placement only (among pre-selected investors and institutions). Under the scope of this law private placement, as above mentioned, is the distribution of the issued bonds to limited number of investors, not exceeding the number of a hundred and fifty (150). In order for investment companies established in Greece to participate in this private placement, the bonds issued must have a "investment grade" rating (falling within a specific range, depending on the credit rating agency) given by an internationally recognized rating agency.[37]

The originator

The originator can be any "merchant", person or legal entity pursuing commercial activities as its core business activity (art.1 of the Greek Commercial Law regarding the distinctness of a merchant) established or operating in Greece and the receivables are generated through commercial activities.

The Special Purpose Entity

The transferee company (Special Purpose Entity), is a legal entity with the sole purpose (article 10 par.2) of acquiring the commercial receivables from the originator in order to securitize them and issue the asset backed bonds. They are no limitations regarding the establishment of the SPE under the Greek Securitisation Law.[38] If the SPE is established in Greece it must have the form of a "societe anonyme", public limited company, governed by Greek company Law with the special provisions set out in the securitization law preceding those of Greek company law[39], and with registered shares (not to the bearer)[40]. Decisions regarding the bonds, issuance and type, of the bonds are taken by the Board of Directors of the SPE, with each bond having a nominal value not less than 100.000€[41]. The Special Purpose Entity for the purpose of the securitization, moreover in order to counterbalance the underlying credit risk, is authorized to conclude loan, credit, insurance or securing agreements, including financial derivative agreements[42]

The trade receivables

The trade receivables to be securitized, can be of any kind, conditional, existing or future claims, provided they are defined or definable, even against consumers. Formative or other rights, subsequent to the claims transferred, may be transferred with the claims. The originator is obliged to inform the Special Purpose Entity on the conclusion of the claims. The sale and transfer transaction of the claims is regulated

[37] Article 10 par.1 law 3156/2003
[38] Art. 10 par.2 law 3156/2003
[39] Those are under article 3 of the Greek Securitisation Law the provisions of the laws under which limited companies are regulated (law 4548/2018), law of 17 July/13.08.1923 excluding article 48 of law 2190/1920
[40] Art.10 par 3 and 4 Law 3156/2003
[41] Art.10 par.5 Law 3156/2003
[42] Art.10 par. 7 Law 3156/2003

under article 513 et seq and 455 et seq of the Greek Civil Code, under the condition they do not come in conflict with the rules of the Securitization Law[43].

Perfection of transaction and notification requirements

A summary of the sales and transfer agreement of the receivables incorporating its main provisions is registered in the public registry set up under art. 3 Law 2844/2000 law. The sales and transfer agreement has overriding effects to any prior agreement restricting assignment of the receivables concluded between the originator and obligor[44].

The perfection of the transfer is resulted by registration of the sales and transfer agreement in the public registry, as mentioned above. The transfer must then be notified in written form to the debtors by the originator or by the SPE, the notification must define the claims which are transferred[45]. The registration of the contract to the public registry also provides that the notification has occurred, addressing the issues arising from the general assignment rules in relation to notification[46].

The sales and transfer agreement

A fiduciary transfer of the receivables is not permitted and any fiduciary or conditional term to the contrary is not valid. Purchase price adjustments and crediting the purchase price and then rescind the purchase agreement is permitted according to its terms and the provision of articles 513 et seq of the Greek Civil Code, moreover entering into succeeding agreements for the repurchase of the receivables from the Originator of the trade receivables is also permitted. In cases of refinancing securitized receivables or adjusting their terms, such actions should not violate rights of the bondholders or result to the degradation of the rating status of the bonds issued[47].

Substantial, procedural, and tax status of the transferred receivables, and relevant rights remain the same even after the sales and transfer transaction. Any legal and enforcement privilege applicable to the originator is preserved in the name of the SPE[48].

Investor protection- true sale provisions

Regarding the transferred receivables no pledge or collateral can be conferred[49], other than the statutory pledge that is created upon registration, in favor of the bondholders and other creditors of the transaction. Such statutory pledge is created also upon the collection account of the receivables[50], an account specifically operating by the servicer in order to deposit collections generated by the receivables, segregated from

[43] Art.10 par.6 law 3156/2003
[44] Art. 10 par. 8 Law 3156/2003
[45] Art. 10 par.9 Law 3156/2003
[46] Art.10 par.10Law 3156/2003
[47] Art 10 par.11 Law 3156/2003
[48] Art 10 par. 13 Law 3156/2003
[49] Art. 10 par. 12 Law 3156/2003
[50] Art. 10 par. 18 Law 3156/2003

the solvency estate of the credit institution and the servicer, in a credit institution operating in the European Economic Area[51].

Any collateral, capital, or securities delivered to the servicer for the benefit of bondholders are segregated from the servicer's solvency estate and cannot be subject to any seizure or set off rights[52].

Upon registration, the validity of the sales and transfer agreement, any ancillary rights of the transferred receivables and the statutory pledge cannot be challenged by insolvency proceedings against the originator, the SPE, any security provider, or the service, which could give rise to the containment or prohibition of control of the transferred assets. This also applies to future claims [53.]

Servicing agreement and servicer

The Special Purpose Vehicle is able to assign, through a written agreement, the administration and collection of the receivables a. to the originator b. to a credit or financial institution operating within the EEA (European Economic Area) or c. to a third party provided that the servicer (the third party) is a guarantor of the transferred receivables or was responsible for the management or the collection of the receivables prior to their transfer to the SPV. Either the SPV or the servicer must be established in Greece on the occasion that the receivables are payable by consumers in Greece[54].

5.1.2 LEGAL INSTRUMENTS INTERPLAYING WITH SECURITISATION

PROSPECTUS OBLIGATION

Under the Greek Securitisation law as mentioned, the placement of the bonds issued through securitization can be offered to a limited (up to 150) number of investors, through private placement only. Under the provisions set out in Prospectus Regulation 2017/1129/EU article 1 par.4 point (a) and (b), in combination with preamble number 15 and 25, the obligation for a prospectus to be published does not apply, for securities offered solely to "qualified investors"[55] or to limited, fewer than 150, natural or legal persons, unless "any resale to the public, or public trading through admission to trading on a regulated market should require the publication of a prospectus". [56]

[51] Art. 10 par. 15 Law 3156/2003
[52] Supra note
[53] Art. 10 par. 19 Law 3156/2003
[54] Art.10 par. 14 Law 3156/2003
[55] Definition of the term qualified investor under Regulation 2017/1129/EU art. 2 point (e): 'qualified investors' means persons or entities that are listed in points (1) to (4) of Section I of Annex II to Directive 2014/65/EU, and persons or entities who are, on request, treated as professional clients in accordance with Section II of that Annex, or recognised as eligible counterparties in accordance with Article 30 of Directive 2014/65/ EU unless they have entered into an agreement to be treated as non-professional clients in accordance with the fourth paragraph of Section I of that Annex. For the purposes of applying the first sentence of this point, investment firms and credit institutions shall, upon request from the issuer, communicate the classification of their clients to the issuer subject to compliance with the relevant laws on data protection;
[56] To address an private offering in Greece an "Informational Document" must be submitted to the Athens stock exchange market under the regulations of the Greek Alternative Financial Market (Decision n. 3 of the Board of Directors of the Athens stock exchange market, «Αγορά Εταιρικών Ομολόγων στο Χρηματιστήριο Αθηνών Ξέρετε ότι…?» Δεκέμβριος 2018, "Addressing company bonds in the Athens stock exchange market Did you know? " December 2018

5.1.3DATA PROTECTION ISSUES

The Greek Securitization law article 10 par. 21 requires that the process of personal data of the debtors takes place according to the Law 2472/1997 (Data Protection Law) and excludes the requirement both of prior authorization from the Data Protection Authority and for the debtor's consent for the processing of their data, provided that it is conducted to the extent necessary for the purposes of the securitization.

Furthermore under par.22 , the conveyor of the data may provide the Special Purpose Vehicle with any data relating to the securitized claims and the respective debtors. The same applies to the Special Purpose Vehicle over the bondholders, their representatives as well as other parties involved in the proceedings under the securitization law.

The Hellenic Data Protection Authority has given an interpretation on the matter in many instances.

- 2012 Annual Report[57] par. 3.6.6 under the title "Bank securitization" the Authority states, after complaints for unlawful data processing by the SPV in securitization bank practices, that the processing that the data processed under a securitization are characterized as simple personal data as defined in art. 2 point b of law 2472/1977 (Data Protection Law) and that the consent of the subject is not necessary as defined and under the provisions of art.10 par 21 of the securitization law 3156/2003. Furthermore, it states that the transfer of such data from the originator to the SPV is under the provisions of art. 456 of the Greek Civil Code (assignment of claims) and as such it applies under art. 5 par. 2 point b of the Data Protection Law 2472/1997 to fulfill obligations arising from the execution of the law. It states that for securitization as the transfer of these data constitute a necessary condition, outweighs the rights and the interests of the obligors, notwithstanding their fundamental interests and freedoms as long as the processing takes place under the securitization law for a limited number of recipients.
- 2014 Annual Report[58] par. 3.6.2 under the title "Bank securitization" the Authority states, after complaints concerning the transfer of data regarding their loans to SPV entities without their consent and with no prior notification to the subjects of those data, that the Greek securitization law stipulates the registration of a summary including essential elements of the assignment contract to the public registry (as defined under art.3 Law 2844/2000), and is notified to the obligor. Furthermore, this registration is reputed to be a notification to the obligor with no further obligation for a written notification to the data subject. It further recommends that the processor of the data during the accumulation of data, or at the latest after the securitization is concluded, to inform the data subject in person, concluding that in accordance with the systematic interpretation of the relative legislation, the more specific

[57] 2012 Hellenic Data Protection Authority Annual Report, www.dpa.gr
[58] 2014 Hellenic Data Protection Authority Annual Report, www.dpa.gr

provisions for the securitization law waives the obligation of informing the data subject only to the point necessary to apply the content of the law and not the true obligation of information itself, pointing out the subject's rights on data protection under art. 12 and 13 of law 2472/1997 (right of access and right to object).

Three most recent decisions of the Decision (n.134/2017, n.71/2018, n.23/2018)[59] (A.P. ΓΝ/ΕΞ/2979-1/1911-2017) OF THE Hellenic Data Protection Authority come to the following, among other, conclusions:

1 The controller must inform the data subject appropriately and clearly of the following at least: a. his identity and the identity of any representative b. the purpose of the processing c. their recipients or categories of recipients.
2 Any third party, natural or legal entity, to which personal data are disclosed (recipient) in the securitization proceeding and practice, shall be in compliance with the data protection rules applicable, according to the purposes of the processing
3 The applicable law in the case where the protection of personal data of a Member State is other than the Member State in which the controller is registered, is that of the Member State of the processing of the data concerned (Case C-230/14, Weltimmo)[60]
4 The more specific provisions of the securitization law override the obligation of informing the data subject, only to the point necessary to apply the content of the law and not the true obligation of information itself.
5 The enhancement of the subject's right to information is explicitly addressed under the General Data Protection Regulation (EU)2016/679 (art.5,13,14) in line with regulation n. 1/1999 "Data subject to information

[59] Decisions of the Hellenic Data Protection Authority n. 71/2018 Protocol :Γ/ΕΞ/9679/03-12-2018, n. 23/2018 Protocol: Γ/ΕΞ/1852/07-03-2018, n. 134/2017 Protocol :ΓΝ/ΕΞ/2979-1/16-11-2017

[60] http://curia.europa.eu/juris/document/document.jsf;jsessionid=8779AF0219737D52A5B2AE4A7F4D6938?text=&docid=168944&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7477785(Case C-230/14):On those grounds, the Court (Third Chamber) hereby rules: 1.Article 4(1)(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as permitting the application of the law on the protection of personal data of a Member State other than the Member State in which the controller with respect to the processing of those data is registered, in so far as that controller exercises, through stable arrangements in the territory of that Member State, a real and effective activity — even a minimal one — in the context of which that processing is carried out. In order to ascertain, in circumstances such as those at issue in the main proceedings, whether that is the case, the referring court may, in particular, take account of the fact (i) that the activity of the controller in respect of that processing, in the context of which that processing takes place, consists of the running of property dealing websites concerning properties situated in the territory of that Member State and written in that Member State's language and that it is, as a consequence, mainly or entirely directed at that Member State, and (ii) that that controller has a representative in that Member State, who is responsible for recovering the debts resulting from that activity and for representing the controller in the administrative and judicial proceedings relating to the processing of the data concerned. By contrast, the issue of the nationality of the persons concerned by such data processing is irrelevant.

pursuant to article 11 of Law 2472/1997"of the Hellenic Data protection Authority [61] and Law 2472/1997[62].

The General Data Protection Regulation (GDPR) addresses the protection in relation to data processing of a natural person as a fundamental right. It stresses the need for setting out the rights of data subjects and the obligations of the controllers and processors in detail. It outlines the principle of transparency *" It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed.", "any information and communication relating to the processing of those personal data be easily accessible…", "… information to the data subjects on the identity of the controller and the purposes of the processing.."* [63]and information[64] "*The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling...*".

Under this scope and in order for the data subject, in the case of a securitization the obligor, to be able to exercise his rights, the controller of the data (any party that shall determine the purposes and means of the processing of personal data in the securitization transaction) should provide (under article 12 of the GDPR) any information referred to in article 13 and 14 to the data subject within a reasonable period after obtaining the data, but at the latest within one month (art. 14 par.3 point (a)), notwithstanding the special provisions of the securitization law 3156/2003. For the purposes of the above, in the case where controllers or processors are not established in the Union , under article 27 of the General Data Protection Regulation, the controller or processor shall designate a representative in the Union.

5.1.4NPL LAW 4354/2015

The current condition regarding the Greek economic sector and particularly the credit institutions on the confrontation of the large amount of non-performing loans in the Greek banking sector has raised the issue of evaluating the applicability of the securitization law in this respect65. In order to reflect on this concern, some of the

[61]Κανονιστική Πράξη 1/1999, Ενημέρωση υποκειμένου των δεδομένων κατ' άρθρο 11 Ν. 2472/1997, 06 Μάϊου 1999, Αριθμός Φύλλου 555, Regulation act 1/1999 of the Hellenic Data Protection Authority "Data subject to information pursuant to article 11 of Law 2472/1997"06/05/1999

[62] Law 2472/1997 has been annulled by Law 4624/2019 (implementing GDPR) since 28/08/2019

[63] Preamble n. 39 of the General Data Protection Regulation (eu) 2016/ 679

[64] Preamble n. (60)

[65]Dr Dimitrios K. Roussis, "The autonomous application of the Securitisation Law within the sale of the NPEs loans in Greece" Journal Article, Journal of International Banking Law and Regulation, J.I.B.L.R. 2018, 33(11), 429-433

basic provisions regarding the NPL law (specifically introduced in order to confront the npl issue) are mentioned bellow.

Enacted in 2015, the NPL Law (4345/2015) established a framework for the management of non- performing loans in Greece. The law covers receivables and credits granted by financial and credit institutions, covering consumer, residential and SME loans, over 90 days of delinquency, and without that restriction applied when referring to the same debtor.

The NPL law sets out certain requirements in order for an Asset Purchaser Company (APC) to proceed with the sale and purchase procedure. The basic requirements encompass an APC to assign the administration and collection of the receivables (servicing) to an NPL asset management company (AMC), licensed and supervised by the Bank of Greece. The servicing agreement must be concluded prior to the acquirement of the loan portfolio. Moreover the procedure requires to notification to the obligor and guarantor, for extra judicial settlement according to the Bank Code of Conduct. If these requirements are not fulfilled the transfer agreement should be considered void. 66

CONCLUSIONS

"Traditional Securitisation" under the Greek securitization legislation

The Greek legislator has chosen to introduce through the securitization legislation the structure of "traditional securitization" in the Greek premises. The true sale notion of traditional securitization is presented by the provisions regarding the insulation of the assets securitized from the originator and its creditors.. It segregates the securities, ancillary rights of the assets form the originator's solvency estate and prohibits any insolvency proceeding against counterparties of the transaction to give rise to the containment or prohibition of control of the assets transferred.

Enhancing securitization

In order to enhance the transaction it introduces provisions deviating from substantial and procedural legislation such as the overriding effect on restriction of assignment between parties, the ranking of the claims on which the statutory pledge has been introduced ahead of any statutory preferential creditors, the exemptions form bank confidentiality and data protection laws. It stipulates the preservation in the name of the Special Purpose Entity legal and enforcement privileges of the originator and provides statutory pledge on those assets and the collection account where the income flows are deposited

[66] Supra note

It could be argued that this legislation potentiates in a large extent the notion of assignment of claims in order to reinforce financial transactions by facilitating economic mobility.

Securitisation Law and NPL law

The Securitisation Regulation as mentioned above sets out a framework for applying the securitization transaction in a clear and efficient way. Though the introduction of information disclosure, transparency, due diligence, risk retention requirements and further more by introducing credit lending criteria and ban on resecuritisation the structured financial product of securitization is anticipated to enhance funding and liquidity alternatives by employing exposures which generate stable income flows through a more linear and straight forward structure of transactions, replacing prior opaque and complex practices.

Under this aspect the application of the securitization law for the premises of handling non performing loans in the Greek territory seems out of scope under the combination of the Securitisation Regulation and the Greek securitization Law.

Furthermore as the securitization law in respect of the transfer transaction of receivables is stipulated under the general principles of assignment rules under the Greek Civil Code, which prohibits the detriment of the obligor regarding his substantive and judicial position, the provisions of the NPL law seem more suitable, since they provide that provision of the Bank Code of Conduct are in effect even after the sale transaction to the Asset Purchaser Company.

Other practical concerns on the realization of a securitization transaction

It is the author's perspective that securitization agreements should include clauses allowing incorporation of adjustments for the underlying receivables, specifically in cases where the receivables are pools of loans (consumer, mortgage, SME loans) when these adjustments are imposed or optional under the introduction of new legal instruments. Taking into account the long term status of loan agreements and the notion of bank lending dependence, such provisions should be taken into account in order for avoid detriment of the obligor.

Regarding practical concerns in the implementation of the securitization transaction, it has been mentioned above that under the 2042/2017 EU regulation, there is an exemption for the introduction of prospectus information to the investors.

Regarding Data Protection Issues, even though the securitization transaction under the Greek legislative framework registry of the agreement to the public register may qualify as notification to the obligors, the General Data Protection Regulation imposes obligation of notification from the controller of the data to the data subject in order for the data subject to able to exercise its rights.

Securitisation, through the transition of credit risk from the originator to investors, can provide regulatory capital diversification, it can stimulate liquidity, support diversification on funding and resolve balance sheets consideration preeminently for financial institutions as long as they consider the risk undertaken by investors is

operated in the same way as they operate similar exposures.

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