



Federal Act implementing Regulation (EU) 2017/2402 for laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation

STS Securitisation Enforcement Act (STS-Verbriefungsvollzugsgesetz – STS-VVG)

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Purpose of this Act

Article 1. This Federal Act transposes Regulation (EU) 2017/2402 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. L 347, 28.12.2017 p. 35.

Competent authority

Article 2. (1) The Austrian Financial Market Authority (FMA; Finanzmarktaufsichtsbehörde) is the competent authority for Austria pursuant to Article 29 (4) and (5) of Regulation (EU) 2017/2402. Regardless of the tasks conferred upon the FMA in other Federal Acts, it shall exercise the tasks and powers conferred on the competent authorities pursuant to Article 29 (1) to (5) of the Regulation (EU) 2017/2402 and shall monitor compliance with the regulations in this Federal Act and Regulation (EU) 2017/2402. When performing the tasks and powers conferred upon the FMA in accordance with this Federal Act as well as Regulation (EU) 2017/2402 with regard to credit institutions as defined in Article 1 para. 1 of the Banking Act (BWG; Bankwesengesetz) published in Federal Law Gazette no. 532/1993 as well as branches of CRR-credit institutions pursuant to Article 9 para. 1 BWG the regulations set forth in Article 3 paras. 8 and 9, Article 70, Article 70a para. 2 and Article 79 BWG regarding the cooperation between the FMA and the Oesterreichische Nationalbank shall apply accordingly.

(2) The FMA shall take into account European convergence in respect of supervisory tools and supervisory procedures in the enforcement of this Federal Act and Regulation (EU) 2017/2402. For this purpose the FMA shall apply Guidelines, Recommendations and other measures decided upon that fall within the scope of Regulation (EU) 2017/2402 issued by:

1. The European Banking Authority (EBA) (Regulation (EU) No. 1093/2010, (EU) No. 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12),
2. The European Insurance and Occupational Pensions Authority (EIOPA) (Regulation (EU) No. 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010 2010 S. 48) and
3. The European Securities and Markets Authority (ESMA) (Regulation (EU) No. 1094/2010 establishing a European Supervisory Authority (European Securities and Markets Authority),



amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010 2010 S. 84).

The FMA may deviate from the guidelines and recommendations, provided that justified grounds exist to do so, in particular where they conflict provisions set out under national law.

(3) The FMA and the Oesterreichische Nationalbank shall only exercise the duties, powers and obligations conferred on them by this Federal Act and Regulation (EU) 2017/2402 to the extent that exercising them is not reserved to the European Central Bank on the basis of Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 28.09.2013, p. 63.

Occupational severance and retirement funds

Article 3. The provisions of this Federal Act shall apply to occupational severance and retirement funds pursuant to Article 18 para. 1 of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (BMSVG; Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz) published in Federal Law Gazette I No. 100/2002 as amended, Regulation (EU) 2017/2402 and on the legals issued on the basis thereof, in such a way that occupational severance and retirement funds would be considered institutional investors pursuant to Article 2 (12) of Regulation (EU) 2017/2402. The FMA shall, as the competent authority as defined in Article 29 (1) of Regulation (EU) 2017/2402, monitor compliance with the provisions of this Federal Act and of Regulation (EU) 2017/2402 by occupational severance and retirement funds.

Authorisation of third parties

Article 4. Applications for the granting of an authorisation pursuant to Article 28 (1) of Regulation (EU) 2017/2402 must be submitted to the FMA. The authorisation is to be issued by the FMA in written form, otherwise it shall become null and void; the authorisation may be issued subject to suitable conditions and obligations and may also be restricted in its scope.

Supervision

Article 5. (1) The FMA shall as the competent authority pursuant to Article 29 (1) of Regulation (EU) 2017/2402 monitor compliance with Article 5 of Regulation (EU) 2017/2402 by institutional investors pursuant to Article 2 (12) of Regulation (EU) 2017/2402. It shall exercise this monitoring as a supervisory task in accordance with the relevant supervisory acts for the respective institutional investors that have been issued to transpose or implement the legal acts under Union law listed in Article 2 (12) of Regulation (EU) 2017/2402. In so doing it shall be afforded the supervisory powers and means in the same way and scope as set out in the relevant supervisory laws, which it may also make use of in the enforcement of other obligations in accordance with these supervisory laws.

(2) The FMA is authorised as the competent authority pursuant to Article 29 (2) to (5) of Regulation (EU) 2017/2402 at all times, irrespective of the powers conferred upon on the basis of other provisions,

1. to request the submission of relevant documents and data, and to determine the manner in which the documents are to be submitted;
2. to request information and where applicable to summon and questions a person for the purposes of obtaining information;
3. to conduct pre-announced and unannounced investigations on-site;
4. to request already existing recordings of telephone conversations and data submissions; and
5. to allow examinations or investigations to be conducted by external auditors or experts.

(3) Where a legal entity pursuant to para. 4 breaches provisions of this Federal Act, the provisions of Articles 6 to 9 or Articles 18 to 28 of Regulation (EU) 2017/2402, a delegated legal act issued on the basis of Regulation (EU) 2017/2402 or an administrative decision issued on the basis of these provisions, or where a condition for authorisation pursuant to Article 28 of Regulation (EU) 2017/2402 is no longer satisfied following the granting of the authorisation, then the FMA shall have the following powers irrespective of the powers conferred upon it on the basis of other provisions:

1. to instruct the legal entity under threat of a coercive penalty to restore legal compliance within a period of time which is appropriate in light of the circumstances;
2. to prohibit a legal entity from making use of a designation pursuant to Article 18 of Regulation (EU) 2017/2402 under threat of a coercive penalty;
3. to revoke the authorisation pursuant to Article 28 (1) of Regulation (EU) 2017/2402, if the authorised third party is materially non-compliant with these provisions and where other measures in accordance with this Federal Act or in accordance with Regulation (EU) 2017/2402 are not sufficient for establishing legal compliance;



4. to publicly name a natural or legal person mentioning the infringement committed pursuant to Article 10;
5. to take all necessary measures, to ensure that the general public is informed in an orderly manner, including by means of correction of false or misleading information, including obliging legal entities that have disseminated incorrect or misleading information to publish a correction; or
6. to order that risks arising from securitisation transactions including reputational risks are evaluated and overcome by means of suitable strategies and procedures by originators, sponsors, securitisation special purpose entities (SSPEs) and original lenders.

(4) Legal entities pursuant to para. 3 are:

1. originators pursuant to Article 2 (3) of Regulation (EU) 2017/2402,
2. sponsors pursuant to Article 2 (5) of Regulation (EU) 2017/2402,
3. original lenders pursuant to Article 2 (20) of Regulation (EU) 2017/2402,
4. securitisation special purpose entities (SSPEs) pursuant to Article 2 (2) of Regulation (EU) 2017/2402,
5. authorised third parties pursuant to Article 28 (1) of Regulation (EU) 2017/2402; and
6. institution investors pursuant to Article 2 (12) of Regulation (EU) 2017/2402.

Penal provisions

Article 6. (1) Any person who, as the person responsible (Article 9 Administrative Penal Act (VStG; Verwaltungsstrafgesetz 1991)) of an originator pursuant to Article 2 (3) or a sponsor pursuant to Article 2 (5) of Regulation (EU) 2017/2402, breaches

1. the requirements in relation to retaining a holding for risk retention purposes pursuant to Article 6 of Regulation (EU) 2017/2402,
 2. the requirements in relation to transparency pursuant to Article 7 of Regulation (EU) 2017/2402,
 3. the criteria in relation to granting of credit pursuant to Article 9 of Regulation (EU) 2017/2402,
 4. the requirements in relation to using the designation “simple, transparent and standardised securitisation” pursuant to Article 18 of Regulation (EU) 2017/2402,
 5. the requirements pursuant to Articles 19 to 22 or Articles 23 to 26 of Regulation (EU) 2017/2402 in the case of a securitisation for which a designation pursuant to Article 18 of Regulation (EU) 2017/2402 is used, or
 6. the obligation to notify without delay pursuant to Article 27(4) of Regulation (EU) 2017/2402
- commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, by means of a fine of up to EUR 5 million or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(2) Any person who, as the person responsible (Article 9 VStG) of an original lender pursuant to Article 2 (20) of Regulation (EU) 2017/2402, breaches

1. the requirements in relation to retaining a holding for risk retention purposes pursuant to Article 6 of Regulation (EU) 2017/2402, or
2. the criteria in relation to granting of credit pursuant to Article 9 of Regulation (EU) 2017/2402

commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, by means of a fine of up to EUR 5 million or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(3) Any person who, as the person responsible (Article 9 VStG) of a securitisation special purpose entity (SSPE) pursuant to Article 2 (2) of Regulation (EU) 2017/2402, breaches

1. the requirements in relation to transparency pursuant to Article 7 of Regulation (EU) 2017/2402,
2. the requirements in relation to using the designation “simple, transparent and standardised securitisation” pursuant to Article 18 of Regulation (EU) 2017/2402, or
3. the requirements pursuant to Articles 19 to 22 or Articles 23 to 26 of Regulation (EU) 2017/2402 in the case of a securitisation for which a designation pursuant to Article 18 of Regulation (EU) 2017/2402 is used

commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, by means of a fine of up to EUR 5 million or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(4) Any person who, as the person responsible (§ 9 VStG) of an originator pursuant to Article 2 no. 3 or of a sponsor pursuant to Article 2 (5) of Regulation (EU) 2017/2402 makes misleading statements in a report pursuant to Article 27 (1) of Regulation (EU) 2017/2402, commits an administrative offence and



shall be punished by the FMA, depending on which amount is higher, by means of a fine of up to EUR 5 million or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(5) Any person who, as the person responsible (§ 9 VStG) of a third party authorised pursuant to Article 28 of Regulation (EU) 2017/2402 who fails to notify material amendments to the information submitted pursuant to Article 28 (1) or any other amendment, where it may be reasonably assumed that doing so has an effect on the FMA's assessment, commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, by means of a fine of up to EUR 5 million or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(6) Fines imposed by the FMA pursuant to paras. 1 to 5 shall be passed on to the Federal Government.

Penal provisions with regard to legal persons

Article 7. (1) The FMA may impose fines against legal persons, if natural persons who acted individually or as part of a body of a legal person and who have a managerial role within the legal person on the basis of:

1. a power of representation of the legal person,
2. a power to take decisions on behalf of the legal person, or
3. a power to exercise control within the legal person

have breached the provisions listed in Article 6 paras. 1 to 5.

(2) Legal persons may also be made responsible for breaches against the provisions listed in Article 6 paras. 1 to 5, where a lack of monitoring or control by a person listed in para. 1 enabled the committing of such breaches by a person active for the legal person.

(3) The fine pursuant to para. 1 or para. 2 shall be:

1. up to EUR 5 million,
2. up to twice the amount of the benefit derived from the breach where that benefit can be determined, or
3. up to 10 percent of the total annual net turnover pursuant to para. 4,

depending on which amount is the higher one.

(4) The total annual net turnover pursuant to para. 3 no. 3 shall be determined on the basis of the most recently adopted annual financial statement. In the case of credit institutions pursuant to Article 1 para. 1 BWG, CRR-credit institutions pursuant to Article 1a para. 1 no. 1 BWG, E-money institutions pursuant to Article 3 para. 2 and Article 9 para. 1 of the E-Money Act (E-Geldgesetz), which are CRR-financial institutions pursuant to Article 4 (1) (26) of Regulation (EU) No 575/2013, in the case of payment institution pursuant to Article 3 no. 4 ZaDiG, which are CRR-financial institutions pursuant to Article 4 (1) (26) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1, in the cases of AIFMs pursuant to Article 2 para. 1 no. 2 in the case of investment firms pursuant to Article 1 no. 1 WAG 2007, and CRR-investment firms pursuant to Article 1 no. 1a WAG 2007 the total annual net turnover is the total of the income items listed in nos. 1 to 7 of Annex 2 to Article 43 BWG less the expenditures listed there. In the case of insurance undertakings pursuant to Article 5 no. 1 VAG 2016, reinsurance undertakings pursuant to Article 5 no. 2 VAG 2016 or small insurance undertakings pursuant to Article 5 no. 3 VAG 2016 the total annual net turnover is the total of the income items listed in Article 146 para. 4 nos. 1 to 8 and 10 to 11 VAG 2016 less the expenditures listed there. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking, which is required to draw up a consolidated financial statement in accordance with Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 19, last amended by Directive 2014/102/EU OJ L 334, 21.11.2014, p. 86, then the authoritative total annual net turnover is the total annual net turnover of the relevant type of income according to the relevant accounting provisions, that was stated in the most recent available consolidated accounts adopted by the competent management body of the ultimate parent undertaking. Where the FMA is unable to determine or calculate the bases for the total annual net turnover, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

(5) Fines imposed by the FMA pursuant to paras. 1 to 3 shall be passed on to the Federal Government.



Other measures under administrative procedural law

Article 8. In the case of one of the administrative offences listed in Article 6 paras. 1 to 5 irrespective of other powers in accordance with other administrative provisions, the FMA may take the following administrative measures:

1. an order requiring the natural or legal person to cease such conduct and to desist from a repetition of that conduct;
2. a temporary ban that prevents the responsible members of the management body of the originator, sponsor or the securitisation special purpose entity (SSPE) or other natural person responsible for the breach from performing managerial tasks in such companies;
3. in the case of the breaches listed in Article 6 para. 1 no. 5, Article 6 para. 3 no. 3 or Article 6 para. 4, a temporary ban, which prevents the originator and the sponsor, in accordance with Article 27 (1) of Regulation (EU) 2017/2402 from reporting that a securitisation fulfils the requirements set out in Articles 19 to 22 or Articles 23 to 26 of the Regulation (EU) 2017/2402;
4. in the case of the breach listed in Article 6 para. 5, a temporary revocation of the authorisation granted to a third party in accordance with Article 28 of Regulation (EU) 2017/2402, which permits the third party to review whether a securitisation corresponds to Articles 19 to 22 or Articles 23 to 26 of Regulation (EU) 2017/2402.

Exercising of supervisory powers for imposing of penalties and measures under administrative law

Article 9. (1) Irrespective of the other applicable provisions under administrative law, when determining the type of the sanction or measure for breaches against the provisions of this Federal Act or Regulation (EU) 2017/2402 as well as when calculating the amount of a fine, where appropriate, the FMA shall in particular take the following circumstances into account:

1. the materiality, severity and duration of the breach;
2. the level of responsibility of the natural or legal person responsible;
3. the financial strength of the responsible natural or legal person, insofar as it in particular may be deduced from the total net revenue of the responsible legal person or the annual income of the responsible natural person;
4. the amount of profits gained or losses avoided by the responsible natural or legal person, insofar as such amounts can be determined;
5. the losses that third parties incurred as a result of the breach, insofar as such amounts can be determined;
6. the willingness of the responsible natural or legal person to cooperate with the FMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person; and
7. previous breaches by the responsible natural or legal person;

Announcements of sanctions under administrative procedural law

Article 10. (1) The FMA shall announce on its official Internet presence every legally final administrative sanction imposed for a breach against Article 6, 7, 9 or Article 27 (1) of Regulation (EU) 2017/2402 including the identity of the natural or legal person against whom the sanction is imposed and information about the type and character of the underlying breach without delay once the affected person has been informed about the sanction.

(2) If the FMA is of the opinion that the announcing of the identity of a legal person affected by the decision or the personal data of a natural person would be disproportionate on the basis of a case-by-case assessment, that the announcement would jeopardise the stability of the financial markets or ongoing criminal investigations, or would cause those involved a disproportionately high level of damage, where this amount is able to be determined, then the FMA may either

1. delay the publication of the decision imposing an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist;
2. publish the decision anonymously, where the anonymous publication guarantees effective protection of relevant personal data;
3. not publish the decision, where it is of the opinion that a publication pursuant to no. 1 or 2 is not sufficient to guarantee that
 - a) the stability of the financial markets is not jeopardised, or
 - b) with regard to measures deemed to be of a minor nature, that proportionality is preserved in publishing the decision.



(3) Where grounds exist for anonymous publication pursuant to para. 2 no. 2, but where it may be assumed that such grounds will cease to exist in the foreseeable future, then the FMA may refrain from an anonymous publication, and may also announce the sanction pursuant to para. 1 once the grounds pursuant to para. 2 no. 2 have ceased to apply.

(4) The person affected by a publication may apply to have the legality of the publication pursuant to para. 1 or para. 2 reviewed in a procedure to be concluded by the FMA by means of an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in the same way as the original publication. If, in the course of this review, it is found that the publication was unlawful, then the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its website.

(5) In the event that the decision underlying the publication pursuant to para. 1 is appealed against, then this as well as the outcome of this procedure shall be published in the same manner as the original publication. In the event that suspensory effect is granted for such an appeal in a procedure in a court of law, then the FMA shall also make this known. If an appeal is granted against the decision underlying the publication pursuant to paras. 1 or 2, the publication must be removed as the request of the affected party from the FMA's internet presence.

(6) When a publication pursuant to para. 1 or para. 2 no. 2 is not revoked or removed from the FMA's Internet presence on the basis of a decision pursuant to paras. 4 and 5, then the FMA shall ensure that every announcement as well as every supplement in this regard remains accessible from the time of its publication for a period of five years on the FMA's Internet presence. Publication of the personal data shall however only be maintained for as long as none of the criteria for an anonymised publication are fulfilled.

Reporting to ESMA

Article 11. (1) The FMA shall inform ESMA of all administrative penalties imposed pursuant to Articles 6 and 7, as well as all appeals in conjunction with sanctions and the outcomes of the appeal procedures.

Submission of information to the FMA

Article 12. The FMA may more closely define by means of a Regulation, while taking into consideration the European practices in this area, the type and form of submission of the information to be provided pursuant to Article 7 of Regulation (EU) 2017/2402 to the FMA as the competent authority pursuant to Article 29 of Regulation (EU) 2017/2402, which is not made available pursuant to Article 7 (2) 2nd subparagraph by means of a securitisation repository. In this way, the FMA may prescribe that submissions that are made by legal entities to be described more precisely in the Regulation, who are supervised by the FMA in accordance with the AIFMG, BWG, InvFG 2011, PKG, VAG 2016 or WAG 2018, shall be made exclusively in electronic form as well as corresponding to certain formats, technical minimum requirements and methods of transmission. In so doing, the FMA shall, taking into consideration the European practices in this area, observe the principles of economy and expediency, ensuring that the data is electronically available to the FMA at all times and that supervisory interests are not compromised. The FMA shall ensure that appropriate arrangements are in place that the parties subject to reporting requirements or as applicable the individuals charged with submitting the reports are able to check the accuracy and completeness of the data in the system for a reasonable period of time that was reported by them or their submission officers.

Information exchange with third country authorities

Article 13. The submission of information by the FMA to authorities in third countries, which perform tasks corresponding to the tasks performed by the FMA in relation with financial market supervision, shall only be permissible on a case-by-case basis, provided that doing so is necessary for the performance of tasks that correspond to the FMA's tasks in accordance with this Federal Act or Regulation (EU) 2017/2402, or is necessary for other legal tasks in relation to the requesting authority's supervision of the financial market, and the submitted data is subject at such authorities to professional secrecy that is comparable to professional secrecy pursuant to Article 14 FMABG and which are in line with Chapter V of Regulation (EU) 2016/679. The FMA may exclusively make use of its powers for the purposes of the cooperation in accordance with this paragraph; that shall also apply, in the case that the cooperation occurs on the basis of an investigative procedure in a third country in relation to behaviour that does not constitute a breach of a regulation applicable in Austria.

Costs

Article 14. The costs of the FMA arising from its activity as the competent authority shall be assigned:

1. to the appropriate accounting group pursuant to Article 19 para. 1 FMABG; or
2. to the appropriate sub-accounting group, where sub-accounting groups are to be established within the accounting group



to which the conducting of supervisory tasks in accordance with the GMSVG and the relevant supervisory laws that have been issued to transpose or implement the legal acts under Union law listed in Article 29 paras. 1 to 3 of Regulation (EU) 2017/2402 are to be assigned.

Gender-neutral use of language

Article 15. Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

Enforcement

Article 16. The Federal Minister of Finance shall be responsible for enforcing this Federal Act.

References

Article 17. Where references to other Federal Acts are made in this Federal Act, those acts are to be applied in their respective current versions.

Entry into force

Article 18. This Federal Act shall enter into force on 1 January 2019.