

## Article 14 CRR Update

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Friday, June 14, 2019

On 7 June 2019, Regulation (EU) 2019/876 (“**CRR II**”)<sup>[1]</sup> was published in the Official Journal of the EU. CRD II amends the Capital Requirements Regulation in a number of respects. For securitisation market participants, a key change is an amendment to Article 14 of CRR and its effect on the application of key obligations in the Securitisation Regulation to members of a consolidated banking group.

### The Article 14 Issue

Article 14 of the CRR, as amended by the 2017 CRR Amendment Regulation<sup>[2]</sup> (which was introduced at the same time as the Securitisation Regulation), applies the obligations concerning transparency requirements, risk retention, due diligence, criteria for credit-granting and the ban on re-securitisation to EU institutions subject to the CRR on a consolidated basis. The drafting of Article 14, as it existed at the time the Securitisation Regulation began to apply, provided that all of these requirements could apply on a consolidated basis to a non-EU subsidiary of an EU bank. Such a subsidiary would have to comply both with the EU transparency and risk retention requirements and with any locally applicable rules.

### The CRR II Repair

On 30 November 2018, a Joint Statement of the European Supervisory Authorities (“**ESAs**”) recognised the difficulties that would arise for such non-EU subsidiaries engaging in local securitisation in non-EU countries, particularly with regard to compliance with the EU transparency and risk retention requirements. The ESAs acknowledged that these practical issues were an unforeseen consequence of the 2017 CRR Amendment Regulation and indicated that these issues would be addressed through a further amendment in the wider CRR II / CRD V project.

As expected, the revised version of Article 14 of CRR replaces a reference to Chapter 2 of the Securitisation Regulation (which sets out all of the key requirements under that law, including risk retention and transparency) and instead the CRR will only apply the Securitisation Regulation’s Article 5 due diligence requirements on a consolidated basis.

In practice, non-EU subsidiaries of EU banks have a reprieve from complying with the most onerous aspects of the Securitisation Regulation including retention and transparency. They will, however, be required to comply with the due diligence requirements. This effectively puts such entities in the same position they were in prior to the Securitisation Regulation becoming effective.

CRR II will enter into force on 27 June 2019 and this amendment will apply from that date (unlike many other provisions in CRR which will only apply from 2021).

It will certainly be a relief to securitisation market participants to have this clarification added to the CRR, as previously participants had been relying on national regulators taking a risk-based, proportionate approach in determining not to enforce the original wider requirements of Article 14 after the Securitisation Regime took effect on 1 January 2019.



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[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0876&from=EN>.

[2] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2401>.

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