

Level-2 measures under the new Securitisation framework

Committee on Economic and Monetary Affairs Scrutiny Session of 29 August 2018

This briefing has been drawn up to support ECON's work on the scrutiny of delegated acts, in particular for the discussion of 29 August 2018 on the state of play of the implementing measures under the new Securitisation Regulation (EU) 2017/2402¹ and the amending Regulation (EU) 2017/2401² on the treatment of regulatory capital requirements for credit institutions that originate, sponsor or invest in securitisations.

In brief

As part of its Capital Markets Union (**CMU**) initiative, the Commission adopted on 30 September 2015 a Proposal for a regulation laying down a general framework for securitisation and a dedicated framework for 'simple, transparent and standardised' securitisation (**STS Regulation**) and an amendment to the Capital Requirements Regulation (**CRR**) to identify features which make securitisation transactions 'simpler, transparent and standardised' (**'STS'**), and to ensure incentives are in place to manage the risks of these instruments, based on clear eligibility criteria. The framework entered into force on 17 January 2018, and will apply as from 1 January 2019. The STS Regulation empowers the Commission to adopt delegated acts (**DAs**) and implementing acts (**IAs**), including Regulatory and Implementing Technical Standards (**RTS** and **ITS**). This briefing provides an overview of the implementing measures, for which drafts are currently being prepared by the European Supervisory Agencies (**ESAs**), including – for the European Securities and Markets Authority (**ESMA**) – technical standards on information in the STS notification and information to be provided in the application for the authorisation of a third party verifying STS compliance, and – for the European Banking Authority (**EBA**) – on the homogeneity of asset classes and on risk retention.

IMPLEMENTING MEASURES - PREPARATORY WORK BY ESMA

RTS and ITS on information in the STS notification (Art. 27)

On 16 July 2018, ESMA transmitted to the Commission final [draft RTS and ITS](#) on information in the STS notification. The STS Regulation includes requirements to identify securitisations with separate criteria for long term (non-Asset-Backed Commercial Paper, ABCP) and short term (ABCP) securitisations. All securitisations fulfilling the criteria, should be notified to ESMA - **the**

CONTACTS

ECON Secretariat
econ-secretariat@ep.europa.eu

ECON Committee webpage
<http://europarl.europa.eu/econ>

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¹ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35–80.

² Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, OJ L 347, 28.12.2017, p. 1–34.

draft RTS specify which information is to be provided by originators and sponsors to comply with these notification requirements, the ITS contain the templates to be used. Whilst also including general information to identify the securitisation transaction which is designated as STS by the originators and sponsors, ESMA has structured the draft RTS by differentiating between non-ABCP and ABCP securitisations (including a distinction of ABCP transactions and ABCP programmes for the latter). The draft RTS refers to fields contained in annexes, including the type of explanation required (“confirmation”, “concise explanation”, “detailed explanation”). ESMA considers that certain information required to be provided in an investment prospectus is relevant to some of the STS criteria. Where such a prospectus exists, cross-references could be included in order to facilitate access and help demonstrate compliance with the applicable STS requirements.

RTS on third parties authorisation (Art. 28)

On 16 July 2018, ESMA transmitted to the Commission final [draft RTS](#) on authorisation rules for third-party firms verifying STS status. **The draft RTS covers information requirements of the competent authorities, for the firm that seeks authorisation.** ESMA proposes, based on the requirements for the applicant set in Art. 28(1) of the STS Regulation, to include general information (e.g. the LEI, details about the scope and nature of the applicant’s activities and the envisaged scope of services provided), information on fee structure (e.g. information on pricing policies), information related to the applicant’s independence (e.g. information on other activities), information related to its management body (e.g. composition and members’ qualifications), as well as information related to conflicts of interests, operational safeguards and internal processes that enable the third-party firm to assess STS compliance.

RTS and ITS on disclosure requirements for securitisations (Art. 7 & 17)

On 22 August 2018, ESMA transmitted to the Commission its final [draft RTS and ITS](#) on disclosure requirements for securitisation instruments. ESMA proposes to regroup mandates in one RTS - whilst recognising they may not be identical, it has identified an overlap between:

- Art. 7 - which mandates ESMA to **draft RTS and ITS specifying information on securitisation underlying exposures and investor reports**, and;
- Art. 17 - which mandates ESMA to **draft RTS specifying the information and standardised templates that should be provided by the originator, sponsor, or securitisation special purpose entity (SSPE)** to comply with the information requirements of Art. 7(1).

The draft RTS contain several disclosure requirements on either underlying exposures information or investor report information, as well as provisions on “no data options” for selected fields, information granularity regarding the different templates in the annexes of the RTS and when they should be filled out, and on information timeliness. A key point for ESMA was the scope of information to be disclosed by each entity listed in the STS Regulation - for example, investors, potential investors, national competent authorities, and the ESAs. The specific templates are laid out in the ITS.

RTS on operational standards and access conditions (Art. 17)

The consultation of 19 December 2017 also included **draft RTS that detail operational standards for data collection by securitisation repositories, data aggregation and comparison across securities repositories, data access, and procedures to verify the completeness and consistency of information.** ESMA has joined the mandate of Art. 10(7)(a) to this RTS, concerning the information made available under the STS Regulation’s transparency requirements of Art. 7(1). Provisions included in the RTS concern “unique identifiers” for all securitisations reported on, details for the end-of-day reports, calculations for data completeness, checks for the completeness and consistency of the information made available, and the accessibility of information and data.

RTS and ITS on application requirements for securitisation repositories (Art. 10)

In a consultation that opened on 23 March 2018, ESMA proposes [draft RTS and ITS](#) that lay down what **information is to be provided to ESMA in order for it to assess the registration of a securitisation repository, as well as the format of this application**. In determining what information is to be submitted by a candidate securitisation repository, ESMA will take into account whether a securitisation repository is already registered as a trade repository for the purposes of EMIR and/or SFTR. Further to Art. 10(2) of the STS regulation, a securitisation repository must meet those criteria as specified in EMIR Art. 78, 79, 80(1) to (3), (5) and (6). These articles include provisions on general requirements, operational reliability and data safeguarding and reporting. Examples of information to be provided by the applicant, in the draft RTS, include details on organisational charts, on internal control systems, on ownership and on staffing policies.

DA on fees for securitisation repositories (Art. 16)

According to Art. 16 of the STS Regulation, ESMA shall charge the securitisation repositories fees to cover for expenditures relating to their registration, recognition and supervision. To prepare for the adoption of a **DA that formulates rules for these fees, including the types of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid**, the Commission [mandated](#) ESMA on 31 January 2018 to provide Technical Advice (TA). ESMA's consultation report of 23 March 2018 includes a draft TA in which it proposes a single registration fee for new registrations and for extensions of registrations for existing trade repositories. ESMA proposes annual supervisory fees that are determined in accordance with the budgeting procedure and that reflect the proportion of repositories' turnovers of the total turnover of all registered repositories. The draft TA also contains sections on payment modalities and reimbursement conditions.

IMPLEMENTING MEASURES - PREPARATORY WORK BY THE JOINT ESAs

Amendment to EMIR RTS on bilateral margins for derivatives related to STS securitisations

Adopted largely on the basis of the ESAs' draft RTS, Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 currently supplements Art. 11(15) of EMIR by setting out the risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP.

The STS Regulation amends EMIR to ensure **consistency of treatment between derivatives associated with covered bonds and derivatives associated with securitisations, with regard to the clearing obligation (CO) and the margin requirements on non-centrally cleared OTC derivatives**. As such the ESAs were mandated to develop new RTS on conditions for exemption from the CO under Art. 4 EMIR and a revision to the RTS under Art. 11(15) EMIR. They launched two joint consultations on 4 May 2018:

- The amendments included in the [draft amending RTS](#) of the first consultation aim to extend the type of exemption currently associated with covered bonds, i.e. no exchange of Initial Margins and collection only of Variation Margins, to STS securitisations, under a set of **conditions** which are similar to the conditions required for covered bonds.
- The [draft RTS](#) contained the second consultation on the CO specify criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty risk and thus could enable to benefit from an **exemption** from the CO.

IMPLEMENTING MEASURES - PREPARATORY WORK BY THE EBA

RTS on STS homogeneity criteria (Art. 20 & 24)

On 31 July 2018, the EBA submitted draft measures to the Commission, including the final [draft RTS](#) on STS homogeneity criteria. The **draft RTS on the homogeneity criteria specify which underlying exposures are deemed homogeneous, one of the requirements on simplicity of the securitisation transaction**.

It includes a set of criteria for this homogeneity, which should enable investors to assess the exposures on the basis of common methodologies and parameters. The following conditions should be met for the pool of exposures to be considered homogeneous; (i) the underlying exposures have been underwritten according to similar underwriting standards; (ii) they are serviced according to similar servicing procedures; (iii) they fall within the same asset category, and (iv) for a majority of asset categories, they need to be homogeneous with reference to at least one “homogeneity factor”. The draft RTS specify asset categories (e.g. residential loans secured with one or several mortgages and credit facilities) and then map the different “homogeneity factors” (e.g. type of obligor and ranking of security on collateral) that should be considered for each of these categories.

RTS on risk retention (Art. 6)

On 31 July 2018, the EBA also published its final [draft RTS](#) intended to specify **requirements for originators, sponsors and original lenders relating to risk retention**. Details to be included in particular concern aspects listed in Art. 6 of the STS Regulation, such as the modalities of retaining risk (including fulfilment through a synthetic or contingent form of retention), the measurement of the level of retention, the conditions for retention on a consolidated basis, as well as the conditions for exempting transactions based on a clear, transparent and accessible index, and, finally, the prohibition of hedging or selling the retained interest. The EBA has specified that the RTS were drafted ensuring that, where possible, the rules set out in the [DA \(EU\) No 625/2014](#), “the current RTS on risk retention” under CRR Art. 410(2), continue to apply. Certain provisions of the CRR RTS fall outside the scope of the “new RTS”, including on due diligence requirements, policies for credit granting and disclosure requirements of materially relevant data.

Guidelines on the STS criteria for ABCP and non-ABCP securitisation (Art. 23 & 19)

Finally, on 20 April 2018, the EBA also opened two consultations on draft guidelines on the STS criteria for [ABCP securitisation](#) and [non-ABCP securitisation](#). The main objectives of the guidelines are to provide single points of consistent interpretation of respectively the transaction-level and programme-level criteria for ABCP securitisation and of the STS criteria for non-ABCP securitisation.

OVERVIEW OF TECHNICAL STANDARDS

	STS Regulation Article(s)	Consultation Paper	Final report (RTS) or Final advice (DA)
ESMA			
RTS and ITS on information in the STS notification	27(6) and (7)	19 Dec. '17	16 July '18
RTS on third parties authorisation	28(4)	19 Dec. '17	16 July '18
RTS and ITS on disclosure requirements	7(3) 17(2)	19 Dec. '17	22 August '18
RTS on operational standards and access conditions	17(2) 10(7)(a)	19 Dec. '17	Draft RTS expected by Q3/4 '18
RTS and ITS on application procedures for repositories	10(7)(b)-(c)	23 March '18	Draft RTS and ITS expected by Q3/4 '18
DA on fees for securitisation repositories	16(2)	23 March '18	TA expected by Q3 '18
Joint ESAs			
Amendment to EMIR RTS on bilateral margins for derivatives related to STS securitisations	EMIR 4 and 11, as amended by 42 STS Regulation	4 May '18 4 May '18 (CO)	Draft RTS expected by Q3 '18
EBA			
RTS on STS homogeneity criteria	20(14) 24(21)	15 Dec. '17	31 July '18
RTS on risk retention	6(7)	15 Dec. '17	31 July '18

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