



EU Securitisation Regulation – EBA final report on the draft amending RTS on homogeneity standards for STS securitisations published, addressing some of the industry concerns

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In February 2023, the European Banking Authority (**EBA**) published its [final report](#) on the draft amending regulatory technical standards (the **draft RTS**) relating to the homogeneity requirements for simple, transparent and standardised (**STS**) securitisations under the EU Securitisation Regulation. The report includes feedback on comments raised by stakeholders in relation to the [consultation version of the draft RTS](#). The draft RTS apply to both traditional and on-balance sheet (synthetic) STS securitisations, however, the changes are most relevant to on-balance sheet STS securitisations, and traditional STS securitisations of corporate exposures, or exposures to enterprises underwritten as consumer lending. In this briefing, we summarise some of the key points to note.

1. Summary

In relation to grandfathering, a potentially major issue for existing on-balance sheet STS securitisations in the consultation version of the draft RTS has now been resolved. It is to be hoped that a similarly pragmatic approach can be taken in relation to other areas of regulation where the potential lack of grandfathering is a concern.

In relation to corporate exposures, the proposed obligor type homogeneity factor is now workable, if not perfect. It is based on a distinction between micro- and SMEs, on the one hand, and other corporate exposures, on the other, defined - in each case - in line with originators' internal underwriting practices, which the EBA acknowledges will differ, depending on the size and jurisdiction of the originating institution. This is a significant positive development, relative to the consultation version of the draft RTS. There is, however, some unhelpful guidance to the effect that financial institutions cannot be mixed with non-financial corporates and no dedicated asset class is provided for project finance.

In relation to the unsecured consumer lending asset class, this class is extended – as envisaged in the consultation draft RTS – to include lending to enterprises to which the same (i.e. consumer) underwriting standards apply. Conforming amendments are made to the obligor identity homogeneity criterion for auto loans and leases, as well as credit cards.

2. Background and Next Steps

The EBA is mandated, under Article 26b(13) of the EU Securitisation Regulation, to produce regulatory technical standards on homogeneity for purposes of the new on-balance sheet (synthetic) STS securitisation regime introduced in April 2021 under the Capital Markets Recovery Package. However, in order to ensure a level playing field between on-balance sheet STS securitisations and traditional STS securitisations (the EBA's key concern apparently being not to incentivise the use of the synthetic format over the traditional format) and to facilitate investor due diligence across formats, the EBA re-opened the existing homogeneity RTS for traditional securitisations ([Delegated Regulation \(EU\) 2019/1851](#)) and proposed amendments that create a single homogeneity RTS governing all STS transactions.

Adoption of the draft RTS by the European Commission, and scrutiny of the adopted RTS by the European Parliament and Council before the draft RTS can be published in the Official Journal will likely be largely procedural steps, so we do not expect there to be any material changes made to the draft RTS included in the EBA final report. The draft RTS will enter into force on the 20th day of publication in the Official Journal, which is unlikely before Q4 2023.

It should also be noted that, under Article 26a(2) of the EU Securitisation Regulation, the EBA has a mandate to provide guidelines and recommendations on interpretation and application of the on-balance sheet STS requirements, including homogeneity requirements. We understand that later in 2023 the EBA is expected to publish for consultation its proposed guidelines.¹

Finally, the Joint Committee of European Supervisory Authorities (the **JC of ESAs**) formed under the EU Securitisation Regulation may also provide guidance from time to time on STS requirements. In February 2023, the [updated Q&A of the JC of ESAs](#) was published which, among other things, included guidance on whether mortgages secured by non-owner occupied residential / mixed-use real estate properties comply with the STS homogeneity criteria.

¹ EBA guidelines and recommendations for traditional non-ABCP and ABCP STS frameworks were published back in December 2018 and these are available at: <https://www.eba.europa.eu/eba-publishes-final-guidelines-on-the-sts-criteria-in-securitisation>.

3. Grandfathering – potentially major grandfathering issue for existing on-balance sheet STS securitisations now resolved

Once in force, the draft RTS will apply to all *new* securitisations in-scope of the EU Securitisation Regulation STS label.

For traditional STS ABCP and STS non-ABCP securitisations notified to ESMA before the entry into force of the draft RTS, the homogeneity criteria in the existing homogeneity RTS for traditional securitisations continue to apply.

In the consultation version of the draft RTS, the EBA had proposed only one-year *time-limited* grandfathering for on-balance sheet STS securitisations notified to ESMA before the entry into force of the RTS. Market participants (including AFME on whose [response](#) Allen & Overy LLP held the pen) raised concerns about this approach leading to a potential wave of regulatory calls for existing transactions.

The draft RTS simply provide that they do not apply to existing on-balance sheet securitisations that have been notified as STS before the entry into force of the draft RTS (rather than mandating compliance with the existing homogeneity RTS for traditional securitisations, or indeed with any requirements beyond the level 1 text of the EU Securitisation Regulation).

The EBA's change of position on this point is extremely welcome. It is to be hoped that a similarly pragmatic approach can be taken in relation to other areas of regulation where the potential lack of grandfathering is a concern. In particular, such a pragmatic approach will be welcome as part of the adoption process (which is yet to take place) by the European Commission of the EBA final report of 19 September 2022 on the [final draft RTS on performance-related triggers in STS on-balance-sheet securitisations](#). In addition, this may also be potentially relevant in the context of the anticipated delegated regulation implementing aspects of the [EBA's 2020 report on significant risk transfer](#), the draft of which we expect to see later in 2023.

4. Homogeneity for corporate exposures – obligor type homogeneity factor now workable, if not perfect, which is a significant positive development

The proposed changes to the eligibility criteria in the existing homogeneity RTS for traditional securitisations (which, as amended, apply to all STS deals (on-balance sheet and traditional, ABCP and non-ABCP) relate to the basis for distinguishing between different types of exposures to corporates and enterprises. The changes impact the corporate asset class, evidently, but also the auto loans and leases, as well as credit cards, asset classes where these distinctions are relevant for purposes of the obligor identity homogeneity criterion. The EBA's stated aim is to better reflect originators' credit risk assessment methodologies.

The EBA has responded to industry criticism of its proposed definition, in the consultation version of the draft RTS, of "*large corporates*", for purposes of establishing homogeneity based on *obligor type* for corporate exposures² (as well as for auto loans and leases³ and credit card receivables⁴ where the obligor type homogeneity factor is used and the obligor is a corporate). The proposed definition (which was set very high, in line with a new definition to be included in the EU Capital Requirements Regulation (**CRR**) under the European Commission's CRR III proposals,⁵ requiring group-wide consolidated annual sales > EUR 500 million) had been likely to require homogeneously-originated portfolios to be split on both sides of this – arbitrary – dividing line.

² I.e. the asset type "credit facilities, including loans and leases, provided to any type of enterprise or corporation" in Article 1(a)(iv) of the homogeneity RTS.

³ I.e. the asset type in Article 1(a)(v) of the homogeneity RTS.

⁴ I.e. the asset type in Article 1(a)(vi) of the homogeneity RTS.

⁵ Proposed new Article 142(1) of the CRR.

The distinction, for the purposes of the obligor type homogeneity factor for corporates (as well as for auto loans and leases and credit card receivables where the obligor type homogeneity factor is used and the obligor is a corporate), is now (as it is under the existing homogeneity RTS for traditional securitisations) between “*micro, small- and medium-sized enterprises*”, on the one hand, and “*other types of enterprises and corporates*” on the other. No definition of these terms is proposed, and originators are (as we requested when holding the pen for AFME) explicitly allowed to define micro, SMEs, and other corporate exposures in line with their internal originating practices, which the EBA acknowledges will differ, depending on the size and jurisdiction of the originating institution. This is a very positive change.

It can be hard to establish homogeneity based on jurisdiction for corporate exposure securitisations (which are often multi-jurisdictional) and some in the market had wanted the EBA to go further and permit corporate exposures to be deemed homogenous without the need for further homogeneity factors at all, or to permit homogeneity based on obligor type for corporate exposures including a specified percentage of headroom for mixing between SMEs and other corporate exposures (as was permitted under former Article 270 of the EU CRR, a predecessor provision to the on-balance sheet STS regime permitting an STS-like treatment for synthetic securitisations of ≥70% SME pools). Concerns were raised that the requirement to distinguish between SMEs and other corporate exposures would create issues for the corporate securitisation market in terms of transaction granularity/concentration, and have a dampening effect on the market as a whole (making it harder to originate pools of sufficient granularity, or of marketable size at all). However, the ability to define micro SMEs and other corporate exposures based on internal underwriting policies will, we anticipate, significantly reduce these concerns. The revised proposal is better than expected, and probably the extent of what is politically possible.

5. Homogeneity for corporate exposures – unhelpful clarification that financial institutions cannot be mixed with non-financial corporates

The EBA, in its responses to consultation comments, unhelpfully indicated that exposures to financial institutions cannot be *mixed* with non-financial corporates where homogeneity for corporate exposures is established based on obligor type.⁶ The EBA indicates that this is because “*exposures to non-financial corporates and exposures to financial institutions would have different underwriting standards*”, though, in practice, we understand that on-balance sheet securitisations by multi-jurisdictional originators may combine loans to larger non-financial corporates with loans to corporates that are financial institutions, with such lending being underwritten and serviced in accordance with centrally defined policies and IRB models/credit risk management.

6. Project finance exposures – no dedicated asset class provided

It may be tricky to fit project finance exposures within the homogeneity criteria for corporate exposures applying (as may be necessary, given the multi-jurisdictional nature of these pools), the obligor type homogeneity factor since the direct obligor can be either a special purpose entity, or a substantive operating entity. However, the EBA has not accommodated requests to create a standalone exposure class for project finance exposures with no further homogeneity factors. The EBA does confirm that specialised lending (including project finance) exposures are capable of classification as (and generally will be classified as) corporate exposures⁷ for homogeneity purposes (some market participants had expressed doubt about this).

⁶ EBA response: “According to Article 1 of the Delegated Commission Regulation (EU) 2019/1851, one of the prerequisites for the assessment of homogeneity is for the underlying exposures to have been underwritten in accordance with standards that apply similar approaches for the credit risk assessment. This will enable the originators and the investors to conduct an appropriate assessment of the underlying risks in the pool of securitised exposures on the basis of common parameters and methodologies. It is understood that exposures to non-financial corporates and exposures to financial institutions would have different underwriting standards. It is not deemed necessary to specify further in the RTS.”

⁷ I.e. the asset type “credit facilities, including loans and leases, provided to any type of enterprise or corporation” in Article 1(a)(iv) of the homogeneity RTS

The EBA also keeps the door open for classification of specialised lending exposures as “*other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type on the basis of internal methodologies and parameters*”⁸ as envisaged by recital 2 of the existing homogeneity RTS for traditional securitisations⁹, provided that “*those internal methodologies and parameters have been consistently applied by the originator*”.

7. Extension of the unsecured consumer lending asset class – as envisaged in the consultation draft RTS – to include lending to enterprises to which the same (i.e. consumer) underwriting standards apply, and conforming amendments to the obligor identity homogeneity criterion for auto loans and leases, and credit cards

As envisaged in the consultation draft RTS, the asset type comprising unsecured consumer lending (“*credit facilities provided to individuals for personal, family or household consumption purposes*” in Article 1(a)(iii) of the existing homogeneity RTS for traditional securitisations) is, helpfully, expanded to include lending to “*enterprises*” to which the same (i.e. consumer) underwriting standards apply (“*credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals not covered under [other asset classes]*”).

Conforming amendments are made to the homogeneity criterion relating to obligor identity for auto loans and leases (Article 4(a)(i) of the existing homogeneity RTS for traditional securitisations) and credit cards (Article 5(a)(i) of the existing homogeneity RTS for traditional securitisations) approach for assessing the credit risks associated with exposures to enterprises as for exposures to individuals.

8. Post-Brexit considerations from the perspective of the UK Securitisation Regulation regime

In the light of Brexit, the draft RTS will not have direct relevance to the homogeneity criteria for the purposes of the UK STS regime under the UK Securitisation Regulation.

The UK does not currently have (nor does it propose to introduce at this stage) a synthetic STS securitisation framework.

Under the Financial Services and Markets Bill and the package of reforms, known as the “Edinburgh Reforms”, unveiled in December 2022, there will be an overhaul of the current securitisation regulation regime in the UK. We expect to see later in 2023 how under its new rule-making powers, the FCA proposes to move into its Handbook the detailed provisions and guidance on traditional non-ABCP and ABCP STS criteria requirements, at which point the FCA may choose to adopt some of the amendments introduced by the EBA in the draft RTS.

It should be separately noted that, until the end of 2024, EU traditional ABCP and non-ABCP securitisations notified to ESMA as EU STS are recognised for life as UK STS, provided such transactions continue meeting the EU STS eligibility requirements. We do not expect that compliance of new EU STS (non-synthetic) securitisations with the amended EU RTS on homogeneity, once these changes are in force, should impact on the UK recognition of such EU STS transactions in the UK. As an aside, this temporary recognition will in due course be replaced by a permanent framework on the equivalence of third country STS securitisations under the reform to the UK securitisation regulation regime mentioned above.

⁸ I.e. the asset type in Article 1(a)(viii) of the homogeneity RTS.

⁹ EBA response: “*For specialised lending exposures it is expected that they would fall under the asset category of “credit facilities, including loans and leases, provided to any type of enterprise or corporation”. Therefore, it was not deemed necessary to introduce a separate asset class for project finance exposures. Furthermore, as mentioned also in Recital 2 of the Delegated Commission Regulation (EU) 2019/1851 in case a pool of underlying exposures does not correspond to one of the well-established asset types these should be allowed to be considered a single asset type provided those internal methodologies and parameters have been consistently applied by the originator.*”

In conclusion we note that we lead many trade associations working groups and continue to be actively involved in discussions with the market participants, regulators and lawmakers in relation to the reforms of the EU and UK securitisation regulation regimes, and we encourage interested clients to contact us with any questions.

Contacts

Click [here](#) for the contact details of our global Securitisation Team.