



The new Securitisation Regulation and its implementing measures. February 2019.

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 (Securitisation Regulation) was published in the Official Journal of the European Union on 28 December 2017 and applies as of 1 January of this year.

It is one of the cornerstones of the Capital Markets Union, which aims to build a single market for financial services and activities and to ensure a high level of harmonised protection for investors in financial instruments in the European Union.

The Regulation provides that the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), will draft technical standards for implementing certain aspects of the Regulation.

As of today, all Level II implementing measures provided for in the Securitisation Regulation have been submitted to the European Commission and are pending approval.

This article aims to provide a brief introduction to the Regulation, ESMA's new responsibilities under the Regulation, the different technical standards that ESMA and the EBA have proposed to the European Commission, as well as the various statements issued individually by ESMA and jointly by ESMA, the EBA and EIOPA on how to comply with certain aspects of the Regulation as from its application on 1 January of this year.

Article 2(1) of the Regulation defines securitisation as a transaction or scheme whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics: (i) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures; (ii) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme and (iii) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation 575/2013 .

General framework for securitisations

The Regulation lays down a general framework for 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, as well as conditions and procedures for securitisation repositories.

Specific framework for STS securitisations

The Regulation also defines securitisations simple, transparent and standardised (STS) for the first time and establishes a specific framework for them. Originators, sponsors and securitisation special purpose entities

(SSPEs) may use the designation “STS” only when: (i) the securitisation meets certain requirements and (ii) the securitisation is included in the list drawn up by ESMA (originators and sponsors will have to demonstrate to ESMA that the requirements are met).

In accordance with Article 18, the originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the European Union.

The requirements to be met depend on the type of securitisation. The Regulation divides STS securitisations into two groups: i) those that are not part of an asset-backed commercial paper (ABCP) programme and ii) ABCP securitisations. Non-ABCP securitisations must comply with simplicity, standardisation and transparency requirements. With regard to ABCP securitisations, the Regulation lays down specific obligations for the programme, the transactions that form part of it and its sponsor.

The corresponding originators, sponsors and SSPEs shall immediately notify ESMA when a securitisation no longer meets the STS requirements.

In addition, ESMA has the mandate to publish a list on its website with notified STS securitisations that meet the criteria set by the Regulation.

Creation of Securitisation Repositories

Another important aspect of the Regulation is the creation of securitisation repositories, which are set up as a single and supervised source of data which may be accessed by investors and potential investors in order to comply with due diligence requirements prior to making an investment.

The Regulation designates ESMA as the supervisor of securitisation repositories in a similar way as it is the supervisor of trade repositories under Regulation (EU) No 648/2012, on OTC derivatives, central counterparties and trade repositories (EMIR Regulation) and Regulation (EU) 2015/2365, on transparency of securities financing transactions and of reuse (SFTR Regulation).

Implementing measures of the Securitisation Regulation

The Regulation mandates ESMA to develop technical standards to specify various aspects of the Regulation and to establish templates relating to: i) transparency obligations of originators, sponsors and SSPEs; ii) notification requirements for STS securitisations; iii) authorisation of third parties verifying STS compliance; iii) securitisation repositories (application for registration, terms and conditions for access and operational standards) and iv) cooperation, exchange of information and notifications between competent authorities and European Supervisory Authorities (ESAs) in order to comply with the obligations imposed by the new Regulation.

ESMA has been working continuously over 2018 in order to be able to submit its proposals to the European Commission prior to the deadline set out in the Regulation.

In July 2018, ESMA published the Final Report (ESMA33-128-473) that contained the first package of regulatory technical standards (RTSs) and implementing technical standards (ITSs) on: i) the information and templates that originators and sponsors of securitisations must use to notify ESMA of compliance with the STS criteria by a securitisation transaction (Articles 27(6) and (7) of the Regulation) and ii) the information that must be provided to competent authorities in the application for the authorisation of a third party verifying STS compliance (Article 28(4) of the Regulation).

Subsequently, in August 2018, and pursuant to the mandate received in Articles 7(3) and 17(2) of the Regulation, ESMA published a new Final Report in which it included a second package of regulatory and implementing standards on disclosure requirements applicable to originators, sponsors and SSPEs, which also

included the notification templates for these purposes.

It is worth noting that with regard to the second package, in December the European Commission formally requested ESMA to make certain amendments to its proposal, in particular for it to allow the use of “No data” options in more fields than those initially proposed in the notification templates. In response to this petition, on 31 January ESMA published its Opinion (ESMA33-128-600), which included a new drafting of the aforementioned transparency rules as well as revised templates to implement the amendment requested by the European Commission.

In November 2018, ESMA published a new Final Report (ESMA33-128-488), which included a new package of RTSs and ITSs on the operational standards that securitisation repositories must use for data collection, aggregation and comparison and the conditions that the repositories must require from users in order to provide them with access to the data held in securitisation repositories (Article 17(2)). The final report also includes the RTSs and ITSs that define the requirements for the application for registration as a securitisation repository (Article 10(7)(b) and (c)).

At the same time as the publication of this Final Report, in November ESMA also published its technical advice to the Commission (ESMA33-128-505) on fees for securitisation repositories under the Securities Regulation.

And in January of this year, pursuant to Article 36(8) of the Regulation, ESMA published a new Final Report (ESMA33-128-557), which includes its proposal for regulatory technical standards on cooperation, exchange of information and notification between competent authorities and ESAs (ESMA, EBA and EIOPA) under the Securitisation Regulation. As the different parties involved in a securitisation (investors, originators, sponsors, lenders and SSPEs) may be established in different Member States and supervised by different competent authorities, it is essential that they all cooperate in order to comply with the supervisory obligations provided for in the Regulation.

ESMA has now complied with all the mandates received and is waiting for the European Commission to approve its proposals.

For its part, EBA received the mandate to develop two regulatory technical standards on: (i) the criteria for specifying which underlying exposures are homogenous (Article 20(14)) and (ii) the requirement for risk retention by the originator, the sponsor or the original lender of a securitisation (Article 6(7)). Both RTSs were submitted to the Commission in July 2018 and are also pending approval. In addition, as provided for in Articles 19(2) and 23(3) of the Regulation, on 12 December the ECB published guidelines on the STS criteria for ABCP securitisation and for non-ABCP securitisation, which aim to provide a harmonised interpretation for the three sectors (banking, securities, insurance) in the EU of the criteria to be met by STS securitisations. The guidelines will apply from 15 May of this year, although it is expected that the competent authorities and other addressees of the Guidelines will generally apply the approach set out in the guidelines as from the application date of the Regulation.

Statement on ESMA’s near-term implementation of the Securitisation Regulation

In view of the imminent entry into force of the Regulation and the uncertainty generated in the industry as Level II measures have not been adopted, in November ESMA published a Statement (ESMA33-128-577) to provide additional information to the industry on the short-term application of several aspects of ESMA’s new responsibilities deriving from the Regulation, in particular: (i) certain aspects of securitisation repositories; (ii) disclosure requirements and (iii) provisional procedures for STS notification.

The most noteworthy aspects of this Statement are:

- With regard to registration as a securitisation repository (SR), and until the European Commission

approves the corresponding RTSs and ITSs, there is no legal basis for ESMA to receive and assess any application. However, ESMA encouraged parties interested in understanding the application process in more detail to contact it via the following email address: SR-Registration@esma.europa.eu.

- With regard to disclosure requirements for reporting entities (originators, sponsors and SSPEs), and pending adoption of the corresponding Level II standards, said information must be provided through a website, as provided for in Article 7(2) of the Regulation.
- With regard to the preparations for setting the tolerance thresholds that securitisation repositories must apply to underlying exposure data submissions that contain “No Data” options, ESMA indicated that it is already working on publishing them in good time on its website in a format that facilitates market participants’ understanding. Work has also already begun on an initial methodology and calibration for the thresholds and ESMA plans to consult market participants shortly on these arrangements.
- With regard to the instructions for provisional STS notification, ESMA announced the publication on its website, <https://www.esma.europa.eu/policy-activities/securitisation>, of a series of provisional templates to be used to submit the necessary information to ESMA, pending development of ESMA’s STS notifications register. ESMA also warns that said instructions are based on the premise that the Commission will adopt the corresponding RTSs and ITSs without any modifications, indicating that, should this not be the case, it will make the necessary adjustments in the provisional templates to adapt them to what the European Commission approves.

Joint statement by ESMA, the EBA and EIOPA on disclosure requirements for EU securitisations and consolidated application of securitisation rules for EU credit institutions (JC 2018 70)

With regard to compliance with the disclosure requirements imposed by the Regulation, on 30 November, the ESAs issued a joint statement indicating that, given that the disclosure templates developed by ESMA would not be approved prior to the application date of the Regulation, the Securitisation Regulation transitional provisions will apply (Article 43). These provisions require the use of the CRA3 templates (Annexes 1 to 8 of Delegated Regulation (EU) 2015/3) until the disclosure templates proposed by ESMA have been adopted.

However, this poses severe operational challenges for the industry in terms of the complexity and costs for their reporting systems as it implies having to temporarily adapt to CRA3 templates and then to adapt to the disclosure template proposed by ESMA once they are adopted. Consequently, the ESAs stated that they expected competent authorities to supervise said requirements in a proportionate and risk-based manner and to undertake a case-by-case assessment of compliance with said requirements by the reporting entities, bearing in mind the type and the scope of the information they were already publishing.

Links of interest:

[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](#)

ESMA

[Opinion. Amendments to ESMA’s draft technical standards on disclosure requirements under the Securitisation Regulation \(ESMA33-128-600\).](#)

[Statement on ESMA’s near-term implementation of the Securitisation Regulation \(ESMA33-128-577\)](#)

[Final Report. Draft technical standards on cooperation, exchange of information and notification between competent authorities and ESMA, the EBA and EIOPA under the Securitisation Regulation \(ESMA33-128-557\).](#)

[Final Report. ESMA's technical advice to the Commission on fees for securitisation repositories under the Securitisation Regulation \(ESMA33-128-505\).](#)

[Final report. Securitisation Regulation technical standards on securitisation repository application requirements, operational standards, and access conditions \(ESMA33-128-488\).](#)

[Final report. Technical standards on disclosure requirements under the Securitisation Regulation \(ESMA33-128-474\).](#)

[Final report. Draft RTS on authorisation of firms providing STS verification services \(ESMA33-128-473\).](#)

ESAs

[Joint Statement. Disclosure requirements for EU securitisations and consolidated application of securitisation rules for EU credit institutions \(JC 2018 70\).](#)

EBA

[Final Report on Guidelines on STS criteria for ABCP securitisation \(EBA/GL/2018/08\)](#)

[Final Report on Guidelines on STS criteria for non-ABCP securitisation \(EBA/GL/2018/09\)](#)

[EBA Final Draft Regulatory Technical Standards On the homogeneity of the underlying exposures in securitisation under Articles 20\(14\) and 24\(21\) of Regulation \(EU\) No. 2017/2402, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation \(EBA/RTS/2018/02\)](#)

[EBA Final Draft Regulatory Technical Standards Specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6\(7\) of Regulation \(EU\) 2017/2402 \(EBA/RTS/2018/01\)](#)