

EBA FINAL REPORT ON DRAFT RTS ON HOMOGENEITY OF UNDERLYING EXPOSURES IN STS SECURITISATIONS

On 14 February 2023, the European Banking Authority ("EBA") published its final report (the "**EBA Final Report**") on draft regulatory technical standards ("**RTS**") specifying the criteria for the underlying exposures in securitisation transactions to be deemed homogeneous. The relevant mandate was part of the introduction of a cross-sectoral framework for simple, transparent and standardised ("**STS**") on-balance-sheet synthetic securitisations. In particular, Regulation (EU) 2017/2402 (the "**Securitisation Regulation**") together with Regulation (EU) 575/2013 (the "**CRR**") established a general EU framework for securitisation and created a specific framework for STS securitisations.

Until 9 April 2021, only traditional (or "true sale") securitisations were eligible to attain STS status pursuant to the EU securitisation framework. For the purposes of determining which underlying exposures are deemed to be homogeneous in the context of the STS framework for traditional securitisations, the Commission adopted Delegated Regulation (EU) 2019/1851 (the "**Existing RTS**").

On 6 April 2021, the Securitisation Regulation was amended pursuant to Regulation (EU) 2021/557 to include a cross-sectoral framework for STS for on-balance-sheet (synthetic) securitisations as well, effective as of 9 April 2021. As part of this change, and given that the STS requirements for on-balance-sheet synthetic securitisations did not exist at the time when the Existing RTS was published, the EBA was mandated to develop draft RTS further specifying which underlying exposures are deemed to be homogeneous in the context of the STS framework for on-balance-sheet (synthetic)

Key issues

- The EBA proposes to extend the scope of the existing RTS on homogeneity of the underlying exposures for traditional securitisations to on-balance-sheet securitisations, with certain amendments.
- Such amendments include:
 - a clarification in respect of the (i) auto loans and leases and (ii) credit card receivables asset types that, where the relevant homogeneity factor is the 'type of obligor' category of individuals, this should also include those enterprises where the originator applies the same credit risk assessment approach as for exposures to individuals; and
 - an amendment to the "credit facilities provided to individuals for personal, family or household consumption purposes" asset type to also include credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals.
- The EBA has abandoned certain proposals it had made in its relevant consultation paper, including (1) the distinction of the 'type of obligor' based on the 'large corporate' definition in the Commission's CRR III proposal and the EUR 500mn turnover threshold and (2) the transitional provisions for on-balance-sheet securitisations, whereby the amending RTS would apply to such securitisations one year after its entry into force.

securitisations (see Article 26b(13) of the Securitisation Regulation).

BACKGROUND

For the purposes of developing the draft RTS, the EBA launched a public consultation on 28 July 2022. The EBA considered a few options, including (i) to extend the scope of the Existing RTS on homogeneity of the underlying exposures for traditional securitisations to on-balance-sheet securitisations with certain amendments or (ii) to develop a new separate RTS for STS on-balance-sheet securitisations, and opted for the former.

The amendments that the EBA proposed with regard to the Existing RTS were both in relation to the 'types of obligors' and the 'asset types'.

For the former, the EBA proposed certain amendments to paragraphs (3), (4) and (5) of Article 2 of the Existing RTS which set out the 'types of obligors' in respect of the following asset types respectively: (i) credit facilities, including loans and leases, provided to any type of enterprise or corporation, (ii) auto loans and leases and (iii) credit card receivables.

In particular, it was proposed that a separate type of obligor for exposures to large corporates should be introduced and exposures to other types of enterprises and other corporates should be reallocated to the existing type of obligor for exposures to micro-, small- and medium-sized enterprises. Furthermore, and to ensure a consistent and harmonised application of the requirements, considering that the term 'large corporate' varies greatly across jurisdictions, the EBA decided to use the 'large corporate' definition pursuant to Article 142(1) point (5a) of the Commission's CRR III proposal, i.e. "any corporate undertaking having consolidated annual sales of more than EUR 500 million or belonging to a group where the total annual sales for the consolidated group is more than EUR 500 million".

The proposals in respect of (i) auto loans and leases and (ii) credit card receivables (which would be mostly relevant to traditional securitisations) also included a clarification that the category of individuals additionally includes those enterprises where the originator applies the same credit risk assessment approach as for exposures to individuals.

For the 'asset types', the EBA proposed an amendment to the "credit facilities provided to individuals for personal, family or household consumption purposes" to also include credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals.

Lastly, and given that the proposed amendments were envisaged to apply to all types of securitisations, the EBA also proposed certain transitional provisions. In particular, with regard to all traditional STS securitisations which were deemed homogeneous in accordance with the Existing RTS, the EBA proposed the inclusion of grandfathering provisions. With regard, however, to on-balance-sheet synthetic securitisations which were deemed homogeneous before the entry into force of the amending RTS, the EBA proposed that the amending RTS should apply to such securitisations one year after the amending RTS's entry into force.

THE EBA FINAL REPORT

The consultation period lasted for three months and ended on 28 October 2022. In total, the EBA received nine responses, and a public hearing was held on 28 September 2022.

Most of the industry's responses raised concerns in respect of two proposed amendments in the consultation paper on the draft RTS, i.e. (1) the distinction

of the 'type of obligor' based on the 'large corporate' definition in the Commission's CRR III proposal and the EUR 500mn turnover threshold and (2) the transitional provisions for on-balance-sheet securitisations.

For the first of these concerns, respondents highlighted, amongst other things, the difficulties of securitising exposures on the basis of the proposed definition, and the impact on sufficient portfolio granularity. As a result, the EBA decided to abandon the relevant proposal and recommended that the distinction in the Existing RTS, which differentiates between SME and non-SME corporate obligors, should be maintained. In addition, and similar to the approach followed in the Existing RTS, no definition of SMEs has been introduced and it is expected that the assignment of a particular exposure to a category will be based on the internal classification of the originator.

For the second concern, respondents pointed out that the lack of grandfathering provisions for on-balance-sheet STS securitisations would have a significant impact on the market, as it would result in a large number of transactions losing their STS classification due to the complexity in amending the existing transactions to meet the new requirements. Following such feedback, the EBA now proposes in its Final Report that grandfathering provisions should also be included for the STS on-balance-sheet securitisations which were notified to ESMA prior to the entry into force of the RTS.

While there had been some hope that the EBA might include some additional homogeneity classifications for certain types of corporate exposures, the industry will likely generally welcome the EBA's decision to retain the status quo, which has been working reasonably well for on-balance-sheet STS securitisations since April 2021.

The rest of the changes that were the subject of the EBA's public consultation remained intact (see also the Annex hereto). So, in summary, the EBA Final Report proposes:

- An extension of the scope of application of the Existing RTS to on-balance-sheet synthetic securitisations entered into after the entry into force of the amending RTS.
- A clarification in respect of the (i) auto loans and leases and (ii) credit card receivables asset types that, where the relevant homogeneity factor is the 'type of obligor' category of individuals, this should also include those enterprises where the originator applies the same credit risk assessment approach as for exposures to individuals.
- An amendment to the "credit facilities provided to individuals for personal, family or household consumption purposes" asset type to also include credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals.

NEXT STEPS

The final draft RTS will be submitted to the Commission for endorsement and will then be published in the Official Journal of the European Union.

ANNEX

Article 1

Homogeneity of underlying exposures

For the purposes of Articles 20(8) ~~and~~, 24(15) and 26b(8) of Regulation (EU) 2017/2402, underlying exposures shall be deemed to be homogeneous where all of the following conditions are met:

- (a) they correspond to one of the following asset types:
 - (i) residential loans that are either secured by one or more mortgages on residential immovable property or that are fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽³⁾ and qualifying for the credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;
 - (ii) commercial loans that are secured by one or more mortgages on commercial immovable property, including offices or other commercial premises;
 - (iii) credit facilities provided to individuals for personal, family or household consumption purposes, [and credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals not covered under points \(i\), \(ii\) and \(iv\) to \(viii\)](#);
 - (iv) credit facilities, including loans and leases, provided to any type of enterprise or corporation;
 - (v) auto loans and leases;
 - (vi) credit card receivables;
 - (vii) trade receivables;
 - (viii) 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;
- (b) they are underwritten in accordance with standards that apply similar approaches for assessing associated credit risk;
- (c) they are serviced in accordance with similar procedures for monitoring, collecting and administering cash receivables [of the originator, or](#) on the asset side of the SSPE;
- (d) one or more of the homogeneity factors are applied in accordance with Article 2, [where applicable](#).

For the purposes of point (a) of this Article, where an underlying exposure corresponds to more than one asset type, that exposure shall be assigned to only one asset type in that securitisation.

Any changes to underlying exposures in a pool that is deemed to be homogenous pursuant to this Regulation shall not affect such homogeneity where such changes are due to reasons outside the control of the originator or sponsor.

Article 2

Homogeneity factors

[...]

4. The homogeneity factors for the asset type referred to in Article 1(a)(v) shall be the following:

- (a) type of obligor, whereby the pool consists of underlying exposures with only one of the following types of obligors:
 - (i) individuals and enterprises where the originator applies the same approach for assessing the credit risk associated with exposures to enterprises as for exposures to individuals;
 - (ii) micro-, small- and medium-sized enterprises;
 - (iii) other types of enterprises and corporates;
 - (iv) public sector entities;
 - (v) financial institutions;
- (b) jurisdiction, whereby the pool consists of underlying exposures to obligors with residence in the same jurisdiction.

5. The homogeneity factors for the asset type referred to in Article 1(a)(vi) shall be the following:

- (a) type of obligor, whereby the pool consists of underlying exposures with only one of the following types of obligors:
 - (i) individuals and enterprises where the originator applies the same approach for assessing the credit risk associated with exposures to enterprises as for exposures to individuals;
 - (ii) micro-, small- and medium-sized enterprises;
 - (iii) other types of enterprises and corporates;
 - (iv) public sector entities;
 - (v) financial institutions;
- (b) jurisdiction, whereby the pool consists of underlying exposures to obligors with residence in the same jurisdiction.

CONTACTS



Timothy Cleary
Partner,
London

T +44 207006 1449
E timothy.cleary@cliffordchance.com



Adam Craig
Partner,
London

T +44 207006 8862
E adam.craig@cliffordchance.com



Kevin Ingram
Partner,
London

T +44 207006 2416
E kevin.ingram@cliffordchance.com



Jessica Littlewood
Global Operations and
Business Transformation
Partner, London

T +44 207006 2692
E jessica.littlewood@cliffordchance.com



Martin Clarke
Senior Associate,
London

T +44 207006 4581
E martin.clarke@cliffordchance.com



Thea Gausel
Senior Associate,
London

T +44 207006 2097
E thea.gausel@cliffordchance.com



Christopher Leonard
Senior Associate,
London

T +44 207006 5298
E christopher.leonard@cliffordchance.com



Konstantinos Voulgarakis
Senior Associate,
London

T +44 207006 4671
E konstantinos.voulgarakis@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2023

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.