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## EU Commission adopts Risk Retention Regulatory Technical Standards (RTS)

On 7 July 2023, the European Commission adopted risk retention regulatory technical standards (the "2023 RTS"), almost five years after the EBA first published a final draft of the RTS. You can access the Commission-adopted text which has been published [here](#). The 2023 RTS text is very similar to the final draft published by the EBA in April 2022 on which they were based, although there are quite a number of largely cosmetic and clarificatory changes. Two more significant changes we have noted include:

- The "sole purpose" test set out in article 2(7) of the 2023 RTS has subtly shifted. The familiar tests to do with resources/assets and governance still apply, but the 2022 final draft RTS set them out as a list of factors to be taken into account in order to determine whether an entity has been established or operates for the sole purpose of securitising exposures. The 2023 RTS treats them instead as a safe-harbour style test where, if you meet all of the tests listed then you're not a sole purpose originator while staying silent on what happens if you don't meet all the tests.
- In relation to securitisations of debt instruments, a new article 16 provides that the risk retention requirements are deemed to be fulfilled where the securitisation is exclusively of an entity's own issued debt instruments (including its own covered bonds where they meet the requirements of the new EU directive on covered bonds).

We are now in the objection period, during which either the Parliament or the Council can object to the 2023 RTS. The objection period lasts two months, after which the Commission can publish the 2023 RTS in the Official Journal of the European Union. The 2023 RTS enter into force on the 20<sup>th</sup> day after its publication in the Official Journal.

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