

## STS Securitisations: Further Clarity on Two Sets of Technical Standards

***Within a fortnight of each other, the STS Notification RTS was published in final form and the homogeneity RTS for STS securitisations will enter into force. This alert highlights how STS securitisations will be affected.***

### Key Points:

- The Homogeneity RTS requirement for STS securitisations, which will enter into force on 26 November 2019, clarifies how to determine if a pool of underlying assets is sufficiently homogeneous for a securitisation to be STS-eligible.
- A minimum of one homogeneity factor must be present in respect of certain asset classes, marking a departure from earlier proposals that stipulated that all or most factors would need to be present.
- The RTS on notification requirements for STS securitisations has been published in final form, but is not expected to enter into force until February 2020.
- While there are material differences between the finalised STS notification requirements as adopted and the draft proposed by the ESMA, the STS notification templates in the related annexes remain broadly the same.
- A new double-template process for notification of private STS securitisations will ensure that commercially sensitive information remains private.
- ESMA updated its Q&A Guidance to clarify who can act as first contact point with investors and national competent authorities in respect of STS notifications.

### What Happened

On 7 November 2019, the EU Securitisation Regulation<sup>1</sup> Regulatory Technical Standards (RTS) on the homogeneity requirement for underlying assets in simple, transparent, and standardised (STS) securitisations<sup>2</sup> (the Homogeneity RTS) were published in the *Official Journal of the EU (OJ)*, causing the Homogeneity RTS to enter into force on 26 November 2019 (the 20th day following publication). The Homogeneity RTS sets out in detail how to determine whether the assets underlying a securitisation transaction are similar enough to be considered “simple” according to the STS criteria set out in Articles 24(15) and 20(8) of the EU Securitisation Regulation for asset-backed commercial paper (ABCP) and non-ABCP, respectively.

In addition, on 12 November 2019, the European Commission adopted and published in its register of documents the “final” RTS relating to the information to be provided for notifying the European Securities

and Markets Authority (ESMA) and national competent authorities of STS eligibility (the STS Notification RTS)<sup>3</sup> pursuant to Articles 19-22 and 24-26 of the EU Securitisation Regulation.

The STS Notification RTS was accompanied by annexes containing templates that set out the “meat” of the STS notification content requirements. There are separate templates for ABCP transactions, ABCP programmes, and non-ABCP transactions.

## Homogeneity Concept Clarified

The overarching objective of the homogeneity requirement is to enable investors to assess the risks of the underlying pool of assets on the basis of common points of comparison. The Homogeneity RTS sets out four conditions for the underlying pool to be considered homogeneous. The underlying assets must be:

- Underwritten according to similar underwriting standards
- Serviced according to similar servicing procedures
- Placed within the same category of asset type
- Considered homogeneous with a reference to at least one “homogeneity factor”, provided that the assets fall within a category of asset type to which the homogeneity factor applies

The Homogeneity RTS includes a non-exhaustive list of common types of assets<sup>4</sup> that typically back securitisations in the EU. Originators and sponsors may treat underlying assets falling outside of the prescribed categories as a single asset type, provided that the other three conditions are satisfied. Such assets would fall under the catch-all “other” category in Article 1(a)(d) of the Homogeneity RTS.

## Homogeneity Factors

Relevant homogeneity factors for each asset type include combinations of the following: type of obligor, type of residential or commercial property, jurisdiction in which the assets are located, and ranking of security rights. The applicable combination differs according to the category of asset type, reflecting the nature of the assets. For example, requiring that the underlying assets in an auto loan securitisation be secured by similar types of immovable property (for which there are none) would make little sense.

The list of homogeneity factors to consider is significantly shorter and more straightforward in the Homogeneity RTS than in earlier drafts proposed by the European Banking Authority (EBA). The Homogeneity RTS require only one homogeneity factor to be present, which addresses industry concerns that previous iterations would have required multiple homogeneity factors, leading to STS eligibility being restricted to transactions with smaller, concentrated asset pools. The result would have been an unwanted trade-off between economies of scale and use of the STS designation.

The homogeneity factor requirement does not apply to credit facilities granted to individuals for personal, family, or household consumption purposes (*i.e.*, consumer loans) or to trade receivables. The Homogeneity RTS deems such assets to be sufficiently homogeneous, provided that similar underwriting standards and servicing procedures are applied.<sup>5</sup> The Homogeneity RTS elaborates that the application of homogeneity factors should not be required for consumer loans and trade receivables in order to avoid leading to excessive and undesirable concentrations in underlying asset pools. However, the EBA did not explain in its final report on the final draft RTS<sup>6</sup> what it meant by “excessive” or why concentrations in

underlying pools of consumer loans or trade receivables were less desirable than in respect of other asset classes subject to homogeneity factors.

## Changes to STS Notifications

While the substance of the templates contained in the annexes have remained broadly the same, the STS Notification RTS unexpectedly differs from the final draft proposed by ESMA. The STS Notification RTS uses new language to differentiate between “private” and “public” transactions. ESMA’s earlier draft tracked the wording in the EU Securitisation Regulation, which describes public transactions as those in which “a prospectus *has been drawn up* (emphasis added) in compliance with ... the Prospectus Directive”. The STS Notification RTS departs from this approach and describes private transactions as those in which “no prospectus *must be drawn up* (emphasis added) in accordance with ... the Prospectus Regulation”. This new language raises the question of whether a transaction with a voluntarily produced, Prospectus Regulation<sup>7</sup>-compliant prospectus would be considered a private transaction for STS purposes if a prospectus was not required under the public offer or listing triggers.

The STS Notification RTS does not specify that originators and sponsors are jointly responsible for submitting the STS notification to ESMA; instead, the passive voice of the wording leaves the question open-ended (“the information to be included is ...”). This lack of specificity brings the requirements into line with the Level 1 text, which specifies that only sponsors are responsible for the notification of an STS ABCP programme.

Helpfully, the STS Notification RTS establishes a new bifurcated notification process for private transactions. The STS Notification RTS distinguishes between general information, required for identifying the securitisation, and information detailing how individual STS criteria are satisfied. Originators and sponsors will be able to submit two different templates for private transactions: a limited, anonymised template, and a comprehensive template with all supporting information. Only notifications based on the anonymised template will be published on ESMA’s website for private transactions.

The annexes were amended slightly to include a new disclosure field for the Legal Entity Identifier of the entity designated as the “first contact point”, being whoever the originator or sponsor designate among themselves to be the first point of contact with investors and competent authorities. The added reporting field conforms the annexes to Article 27(1) of the EU Securitisation Regulation. On 15 November 2019, ESMA updated its Q&A Guidance to clarify that designating an entity that is neither an originator nor a sponsor of a securitisation as the first contact point is not possible.<sup>8</sup> ESMA added that certain related operational tasks may be outsourced to third parties. Liability for carrying out the tasks remains with the designated entity.

The final annexes bring the list of types of underlying assets into line with the categories of asset type in the Homogeneity RTS. Specifically, trade receivables were added as an asset type, and leases and small- and medium-sized enterprise (SME) loans were dropped in favour of the broader corporate credit facilities category, which includes both. The “mixed” category of assets was removed, presumably in order to conform to the Homogeneity RTS requirements. In addition, Recital 2 of the STS Notification RTS refers specifically to the homogeneity requirements and states that the STS notification should include the rationale for selecting a homogeneity factor and for excluding others.

## Next Steps

The STS Notification RTS is subject to a three-month review period, during which the European Parliament and Council can either reject or accept the STS Notification RTS as adopted. In any event, the

STS Notification RTS is no longer subject to change (except in the unlikely event the requirements are rejected in their entirety and sent back to the Commission for a re-draft). Once accepted by the European Parliament and Council, the STS Notification RTS will be published in the *OJ* and come into force on the 20th day following publication. If all goes as expected, the STS Notification RTS could enter into force as early as February 2020.

While the STS Notification RTS is not yet in force, it is in final form. Originators and sponsors wishing to notify ESMA and their national competent authorities about STS eligibility should do so using the relevant template(s) in the annex (as opposed to the templates in the version proposed by ESMA). Originators and sponsors of private securitisations should ensure that the correct information is submitted to ESMA for publishing on its website, in order to keep commercially sensitive information private.

In isolation, the implementation of the Homogeneity RTS may not represent a watershed moment for the EU securitisation market. Market participants considered the standards that were published in May 2019 “final” enough to structure and notify their STS transactions accordingly. And since January 2019, more than 90 securitisation transactions have been registered with ESMA as STS-eligible even though the Homogeneity RTS lacked legal force. Other standards such as the STS Notification RTS and the RTS relating to disclosure are either in final form or near-to-final form. Viewed together, these developments indicate that the STS designation process is unlikely to change significantly in the near future. Considering that most implementing measures are unlikely to be adopted until 2020, any amount of certainty is welcome.

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**[Ignacio Gómez-Sancha](#)**

ignacio.gomez-sancha@lw.com  
+34.91.791.5026  
Madrid

**[Frank Bierwirth](#)**

frank.bierwirth@lw.com  
+49.69.6062.6547  
Frankfurt

**[Rafael Molina](#)**

rafael.molina@lw.com  
+34.91.791.5075  
Madrid

**[Thomas Cochran](#)**

tom.cochran@lw.com  
+44.20.7710.4652  
London

**[Thomas Vogel](#)**

thomas.vogel@lw.com  
+33.1.40.62.20.47  
Paris

**[Simeon Rudin](#)**

simeon.rudin@lw.com  
+44.20.7710.1874  
London

**[Jeremiah Wagner](#)**

jeremiah.wagner@lw.com  
+44.20.7710.4790  
London

**[Suzana Sava-Montanari](#)**

suzana.sava-montanari@lw.com  
+33.1.4062.2000  
Paris

**[Sanjev Warna-kula-suriya](#)**

sanjev.warna-kula-suriya@lw.com  
+44.20.7710.3034  
London

**[Christopher Sullivan](#)**

Knowledge Management Lawyer  
christopher.sullivan@lw.com  
+44.20.7710.4524  
London

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**Endnotes**

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<sup>1</sup> Regulation (EU) 2017/2402 (the EU Securitisation Regulation). See [here](#).

<sup>2</sup> Commission Delegated Regulation (EU) 2019/1851 supplementing Regulation (EU) 2017/2402 with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation. See [here](#).

<sup>3</sup> See [here](#).

<sup>4</sup> The following classes of asset type are set out in Article 1(a) of the RTS: residential loans that are secured by one or more mortgages or fully guaranteed by an eligible protection provider, commercial mortgage loans, consumer loans, credit facilities, including loans and leases provided to any type of enterprise or corporation, auto loans and leases, credit card receivables, trade receivables, and any other underlying exposures considered by the originator or sponsor to constitute a distinct asset type.

<sup>5</sup> Recital 5 of the Homogeneity RTS.

<sup>6</sup> EBA Final Draft Regulatory Technical Standards (EBA/RTS/2018/02) 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. See [here](#).

<sup>7</sup> Regulation (EU) 2017/1129 (the Prospectus Regulation). See [here](#).

<sup>8</sup> Questions and Answers on the Securitisation Regulation (ESMA33-128-563) Version 4, updated 15 November 2019. See [here](#).