

EU Securitisation Reporting Rules Hit the Home Stretch

Originators, sponsors, and issuers should prepare now for the new securitisation disclosure and reporting rules.

Key Points:

- Disclosure and reporting standards under the EU Securitisation Regulation are finalised but not yet in force.
- While interim reporting measures still apply, affected reporting entities should start preparing to migrate reporting systems and processes to accommodate the new templates as soon as possible.
- It is still too early to migrate public transaction reporting to securitisation repositories because no securitisation repositories yet exist.

On 16 October 2019, the European Commission published Delegated Regulation (C(2019) 7334 final)¹ supplementing Regulation (EU) 2017/2402 (the EU Securitisation Regulation)² with regulatory technical standards (RTS) specifying the information to be made available by originators, sponsors, and/or securitisation special purpose entities (SSPEs) (each a reporting entity).

Annexed to the RTS are reporting templates for various classes of underlying assets, investor reports, and inside information/significant events. The RTS also detail how to comply with the disclosure and reporting requirements under Article 7 of the EU Securitisation Regulation for private and public securitisations.

The RTS remain substantively the same as the draft published by the European Securities and Markets Authority (ESMA) in January 2019, except for one reporting field in the Annex relating to non-performing exposures, which affords slightly greater flexibility with respect to reporting “no data”. Unhelpfully, the RTS were not amended to include a dedicated template for non-asset-backed commercial paper (non-ABCP) transactions backed by trade receivables transactions.

In its Questions and Answers on the Securitisation Regulation (Q&A Guidance),³ ESMA specifies that the template for “esoteric” assets should be used for reporting trade receivables securitised as part of a non-ABCP transaction. The esoteric template acts as a catch-all for any securitised assets that do not fall within a class of assets with a dedicated reporting template. Much of the data required in the esoteric template is not applicable to trade receivables, such as collateral type, credit granting criteria, and ongoing performance (trade receivables typically involve a single payment). In addition, restrictions on reporting “no data” presents a challenge for completing data fields where no such data is generated. The

European Supervisory Authorities (including ESMA) are mandated to publish a report by 1 January 2021 (and every three years thereafter) on, among other things, the functioning of the esoteric template in the context of trade receivables. In the meantime, some teething problems may arise.

The RTS have been laid before the European Council and the European Parliament for a three-month review period, during which either entity may object and veto the RTS — a move that is not expected in view of timing, current politics, and the technical nature of this document. The review period could be extended by another three months, but again, this is extremely unlikely. If the three-month period expires without objection, the RTS will be published in the *Official Journal of the EU (OJ)*. The RTS will enter into force 20 days after publication. Therefore, the RTS could enter into force as early as February 2020.

Next Steps

The RTS are in final form but are not yet in force. However, reporting entities should start preparing to migrate reporting platforms that conform to the new templates (which can take months). Reporting entities should continue to report under the follow interim measures until the RTS enter into force:

- To the extent possible, reporting entities should continue using reporting templates in Annexes⁴ I to VIII of Delegated Regulation (EU) 2015/3 under the Regulation (EU) No 462/2013 (the Credit Rating Agency Regulation, or CRA 3).⁵
- CRA 3 Annexes I to VIII provide reporting templates for securitisations backed by residential or commercial mortgages, SME loans, auto loans, consumer loans and credit cards, and leases. However, CRA 3 templates are not suitable for reporting transactions with underlying asset classes that fall outside of these categories.
- In its Q&A Guidance, ESMA states that reporting entities are not required to re-report previously reported information using the new templates.

While the EU Securitisation Regulation requires that disclosure for “public” transactions (*i.e.*, transactions for which a prospectus is produced in accordance with Regulation (EU) 2017/1129) be made to securitisation repositories, the necessary technical standards empowering ESMA to authorise securitisation repositories are not yet final. As a result, ESMA lacks the legal mandate to grant such authorisation. In the absence of any registered securitisation repositories, disclosure for public transactions should be made on a website that:

- Includes a well-functioning data quality control system
- Is governed, operated, and maintained in order to ensure continuity and functionality
- Is subject to systems, controls, and procedures to mitigate operational risk
- Archives information for at least five years after the final maturity date of the transaction⁶

Market participants should take note that there will be no transitional period other than the 20 day period following publication in the *OJ*. Hence, now that the new templates are in final form, reporting entities should be able to treat this time as an informal transitional period during which they can put their processes and systems in place to report under the new rules while continuing to report according to interim measures.

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Endnotes

¹ See <https://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-7334-F1-EN-MAIN-PART-1.PDF>.

² See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=en>.

³ See <https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-questions-and-answers-securitisation-regulation>.

⁴ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0003&from=EN>.

⁵ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0462&from=EN>.

⁶ Article 7(2) of the EU Securitisation Regulation.