



Brussels, 31.3.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 31.3.2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 2021/557 amended Regulation (EU) No 2017/2402 (‘the Securitisation Regulation’) creating a specific framework for simple, transparent and standardised (STS) on-balance-sheet securitisation. Thus, the scope of the STS label was expanded beyond traditional securitisations (i.e. ones where the securitised assets are sold to a special purpose entity) to include also securitisations where the assets remain on the balance sheet of the issuer.

Article 27(6) of Regulation (EU) No 2017/2402 mandates the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards (RTS) specifying the information that originators and sponsors are required to provide in order to comply with the STS notification requirements. ESMA was required to submit those draft standards to the Commission by 10 October 2021.

This RTS concerns in particular STS on-balance-sheet securitisations, as Commission Delegated Regulation (EU) 2020/1226 already specifies the information to be provided to ESMA with regard to traditional “term” securitisations and asset-backed commercial papers that wish to use the STS designation.

In accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has carried out a public consultation. A consultation paper was published on 27 May 2021 and the consultation period closed on 20 August 2021. In accordance with the legal mandate, ESMA has closely cooperated with the European Banking Authority and the European Insurance and Occupational Pensions Authority while developing the RTS.

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, all relevant background information – notably the background and rationale of the draft technical standards, the impact assessment and the feedback on the public consultation- is included in the final report. ESMA’s Board of Supervisors approved the final report on 7 October 2021 and it was published on ESMA’s public website.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This RTS sets out the information that should be notified to ESMA by originators of on-balance-sheet synthetic securitisations that seek to claim the STS designation. Similar to the information required by traditional securitisations, originators are required to submit information about the compliance of the securitisation with each individual STS criterion. The technical standards group the STS criteria into three categories, each of which is associated with a different degree of detail, depending on the complexity of the criterion, in order to enable investors to understand how the securitisation complies with the STS requirements. These categories are: i) a confirmation; ii) concise explanation; and iii) detailed explanation.

In cases of private on-balance-sheet securitisations, originators notify ESMA via two templates: a fully completed STS notification, which will not be made public, and an anonymised STS notification suitable for publication on ESMA website. Originators are expected to inform their respective competent authorities about the full contents of STS notification for private securitisations as per Article 27(1) of the Securitisation Regulation.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012¹, and in particular Article 27(6), third subparagraph thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/1226² specifies the information that securitisation parties have to provide to the European Securities and Markets Authority (ESMA) in accordance with the simple, transparent and standardised (STS) notification requirements for traditional true sale securitisations laid down in Articles 19 to 22 and Articles 23 to 26 of Regulation (EU) 2017/2402.
- (2) Regulation (EU) 2021/557 of the European Parliament and of the Council³ amended Regulation (EU) 2017/2402 by extending the STS securitisation framework to on-balance-sheet synthetic securitisations. Accordingly, it is necessary to specify the information that originators have to submit to ESMA to comply with the STS notification requirements for on-balance-sheet synthetic securitisations.
- (3) To provide investors, potential investors and competent authorities with a comparative overview of all types of STS securitisations, it is appropriate to ensure consistency across all the STS notifications. Therefore, the information that originators must submit regarding compliance with the STS requirements set out in Articles 26b to 26e of Regulation (EU) 2017/2402 should follow similar standards and level of detail as those set forth in Annexes I, II and III to Delegated Regulation (EU) 2020/1226. In particular, a simple confirmation of compliance is sufficient for some criteria, while others require additional information. It is therefore necessary to distinguish between those STS criteria for which a simple confirmation is sufficient and those for which a concise explanation or a detailed explanation is necessary.

¹ OJ L 347 28.12.2017, p. 35.

² Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements (OJ L 289, 3.9.2020, p. 285).

³ Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis (OJ L 116, 6.4.2021, p. 1).

- (4) On-balance-sheet synthetic securitisations where no prospectus must be drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council⁴ allow parties to enter into securitisation transactions without disclosing sensitive commercial information. It is therefore appropriate to restrict the information to be published of the STS notifications of such securitisations to non-sensitive commercial information.
- (5) To facilitate access to information relevant to the STS requirements, originators should be allowed to refer to any relevant prospectus drawn up for an on-balance-sheet synthetic securitisation in accordance with Regulation (EU) 2017/1129 or other relevant underlying documentation as referred to in Article 7(1), point (b) of Regulation (EU) 2017/2402. Additionally, originators should be allowed to refer to any other document relating to the investors and originators, the credit protection agreement, the third-party verification agent and, where available, the transaction documentation backing the credit linked notes.
- (6) In order to improve the transparency and consistency of information between interrelated fields and to clarify specific features of certain securitisations, including master trust securitisations, it is necessary to clarify the information to be reported under the columns 'Field name' and 'Content to be reported' for certain fields in Annexes I, II and III to Delegated Regulation (EU) 2020/1226.
- (7) Delegated Regulation (EU) 2020/1226 should therefore be amended accordingly.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/1226

Delegated Regulation (EU) 2020/1226 is amended as follows:

- (1) Article 1 is amended as follows:
 - (a) in paragraph 1, the following point (d) is added:

‘(d) where the securitisation is an on-balance-sheet synthetic securitisation, the information specified in Annex IV to this Regulation.’;
 - (b) in paragraph 2, the following point (d) is inserted:

⁴ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84).

‘(d) where the securitisation is an on-balance-sheet synthetic securitisation, the information specified in fields STSSY2, STSSY10, STSSY12 and STSSY13 of Annex IV to this Regulation.’;

(2) Article 2 is amended as follows:

(a) the introductory sentence is replaced by the following:

‘Where the following documents include information relevant to the STS notification, a reference to the relevant parts of those documents may be provided in the additional information column in Annexes I, II, III or IV to this Regulation and, where such information is provided, that documentation shall be clearly identified.’;

(b) point (c) is replaced by the following:

‘(c) any other document with information relevant to the STS notification, including, for on-balance-sheet synthetic securitisations, documents related to any originator, any investor, the credit protection agreement, the third-party verification agent referred to in Article 26e(4) of Regulation (EU) 2017/2402, and, where available, the documentation supporting the credit linked notes referred to in Article 26e(10), fifth subparagraph, of Regulation (EU) 2017/2402.’;

(3) Annexes I, II and III are amended as set out in Annex I to this Regulation.

(4) Annex IV, as set out in Annex II to this Regulation, is added.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31.3.2022

For the Commission
The President
Ursula VON DER LEYEN