



Brussels, 13.12.2023
C(2023) 8579 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 13.12.2023

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the performance-related triggers and the criteria for the calibration of those triggers

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 26c(5) of Regulation (EU) 2017/2402 as amended by the Regulation (EU) 2021/557 of 31 March 2021 empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, regulatory technical standards specifying the minimum performance-related triggers for STS on-balance-sheet securitisation transactions; and, where relevant, calibrating them.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, 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 No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 26c(5) of Regulation (EU) 2017/2402 as amended by the Regulation (EU) No 2021/557. A consultation paper was published on the EBA internet site on 20 December 2021, and the consultation closed on 28 February 2022. Moreover, the EBA requested the Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on the content of the draft technical standards. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its impact assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The technical standards specify the two mandatory triggers under point (a) of Article 26c(5), third subparagraph of Regulation (EU) 2017/2402, set out the additional mandatory backward-looking trigger under point (b) and the mandatory forward-looking trigger under point (c). The technical standards also set out criteria to be fulfilled by the parties to the securitisation in order to set the level of the mandatory triggers.

COMMISSION DELEGATED REGULATION (EU) .../...

of 13.12.2023

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the performance-related triggers and the criteria for the calibration of those triggers

(Text with EEA relevance)

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 Council¹, and in particular Article 26c(5), sixth subparagraph thereof,

Whereas:

- (1) For the purposes of the application of the backward-looking triggers referred to in Article 26c(5), third subparagraph, point (a), of Regulation (EU) 2017/2402, it is necessary to specify the starting point as of which either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses is to be measured. As a general rule, the closing date of the transaction should be taken as a starting measuring point. There may, however, be cases where it is not possible to use that closing date of the transaction as a starting measuring point, including where the transaction includes a replenishment period, or a pre-defined period in which the securitised portfolio is built up, after the closing date. It is therefore necessary to lay down specific rules for those cases.
- (2) The detachment point (D) of a tranche determines the point at which the principal of that tranche is completely eroded as a result of losses in the underlying pool. Consequently, when the protected tranche starts bearing losses, the detachment point decreases correspondingly. To prevent that the tranches providing credit enhancement have already been amortised when significant losses occur at the end of the transaction, the additional backward-looking trigger referred to in Article 26c(5), third subparagraph, point (b), of Regulation (EU) 2017/2402 should be linked to a reduction of the detachment point of the most senior protected tranche, so as to guarantee the credit enhancement provided by the most senior protected tranche relative to more senior tranches retained by the originator throughout the life of the transaction. For the same reason, the forward-looking trigger referred to in Article 26c(5), third subparagraph, point (c), of Regulation (EU) 2017/2402 should occur where the expected performance of the pool of underlying exposures is reduced by an increase in the concentration risk in the securitisation over time or, for transactions where concentration risk is less pronounced, by a deterioration of the average credit quality of that pool of underlying exposures over time.

¹ 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 648/2, (OJ L 347, 28.12.2017, p. 35).

- (3) A highly concentrated pool of underlying exposures increases the risk of major losses in the securitisation. Since concentration risk is more prevalent in pools of underlying exposures which have a low granularity, it is necessary to lay down a threshold for the minimum granularity of the pool of underlying exposures measured by the effective number of exposures in the pool. Where the concentration risk is less prevalent, the forward-looking trigger should be subject to the average credit quality of the underlying portfolio. To set that trigger, the credit quality of the underlying portfolio should be measured since origination of the securitisation.
- (4) Since it is not possible to provide for a one-size-fits-all calibration that would be applicable to all transactions, given the variety in the types of underlying portfolios and structures in on-balance-sheet securitisations, it is necessary to set out criteria for setting the levels of the performance-related triggers referred to in Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402. To ensure that there is no significant risk that tranches providing credit enhancement amortise to an extent that there would not be sufficient protection to absorb significant losses occurring at the end of the transaction, those criteria should be set in a prudent manner. For that purpose, the parties to the securitisation should test the effectiveness of the backward-looking triggers in a back-loaded loss distribution scenario taking into account the losses expected over the entire maturity of the transaction at its closing date.
- (5) In order not to interfere with existing contracts concluded before the specification of the mandatory performance-related triggers and the criteria for their calibration, it is necessary to provide for a transitional regime for outstanding STS on-balance-sheet securitisations.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (7) The European Banking Authority 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1 **Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘most senior protected tranche’ in a securitisation means the least subordinated tranche in terms of distribution of losses that benefits from eligible credit protection under the credit protection agreement;
- (2) ‘credit risk bucket’ means a segment of the underlying portfolio to which the exposures from that portfolio are assigned in accordance with Article 4(5) and that entails a degree of credit risk as measured on the basis of credit risk-related criteria, where each mutually exclusive segment entails a credit risk that is greater than or less than another segment;

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (3) 'back-loaded loss distribution scenario' means a scenario in which two-thirds of the absolute amount of losses expected to occur over the entire maturity of the transaction at its closing date take place in the last third part of its expected maturity.

Article 2

Specification of the outstanding amount of the underlying portfolio for the backward-looking triggers referred to in Article 26c(5), third subparagraph, point (a), of Regulation (EU) 2017/2402

1. Except for the cases referred to in paragraphs 2 and 3, for the purposes of applying the backward-looking triggers referred to in Article 26c(5), third subparagraph, point (a), of Regulation (EU) 2017/2402, the outstanding amount of the underlying portfolio shall be the outstanding amount at the closing date of the transaction.
2. Where the securitisation includes a replenishment period, the outstanding amount of the underlying portfolio shall be the lower one of the following:
 - (a) the outstanding amount at the closing date of the transaction;
 - (b) the outstanding amount at the end of the replenishment period.
3. Where the securitisation includes a pre-defined period during which the portfolio of securitised exposures is built up, and which is starting at the closing date of the transaction, and where the credit protection agreement is applicable from the closing date of the transaction, the outstanding amount of the underlying portfolio shall be the following:
 - (a) during the pre-defined build-up period, the outstanding amount shall be the maximum amount of the securitised exposures allowed in the credit protection agreement at the end of that pre-defined period;
 - (b) after the end of the pre-defined build-up period, the outstanding amount shall be the outstanding amount at the end of that pre-defined period.
4. For the purposes of paragraphs 1 to 3, the parties to the credit protection agreement shall calculate the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses from the closing date of the transaction.

Article 3

Specification of the application of the additional backward-looking trigger referred to in Article 26c(5), third subparagraph, point (b), of Regulation (EU) 2017/2402

1. The parties to the credit protection agreement shall set a threshold for the percentage of the reduction of the detachment point of the most senior protected tranche, calculated in accordance with Article 256(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council³, from its level at the closing date of the transaction, or, where the securitisation includes a pre-defined period during which the portfolio of securitised exposures is built up, at the end of that pre-defined build-up period.
2. The additional backward-looking trigger referred to in Article 26c(5), third subparagraph, point (b), of Regulation (EU) 2017/2402 shall occur at any point in

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

time after the closing date of the transaction where the decrease of the detachment point exceeds the threshold determined in accordance with paragraph 1 of this Article.

Article 4

Specification of the application of the forward-looking trigger referred to in Article 26c(5), third subparagraph, point (c), of Regulation (EU) 2017/2402

1. The forward-looking trigger shall be determined in accordance with paragraph 2 or with paragraph 4 of this Article, depending on the effective number of exposures in the pool ('N'), calculated in accordance with Article 259(4) of Regulation (EU) No 575/2013, at the closing date of the transaction.
2. Where N is less than 100, the parties to the credit protection agreement shall set a threshold for the number of the largest securitised exposures towards individual obligors, calculated in accordance with paragraph 3.

The forward-looking trigger shall occur where, at any point in time, the number of the largest securitised exposures towards individual obligors, calculated in accordance with paragraph 3, falls below the threshold determined in accordance with the first subparagraph.

3. To determine the number of the largest securitised exposures towards individual obligors, as referred to in paragraph 2, the parties to the securitisation shall take the following steps in the following order:
 - (a) they shall consolidate multiple exposures to the same obligor and treat them as a single exposure;
 - (b) they shall sort the consolidated exposures to individual obligors by their outstanding amount, in descending order;
 - (c) they shall add the outstanding amounts of the consolidated exposures towards individual obligors, starting with the largest exposure, in descending order;
 - (d) the addition referred to in point (c) shall stop before adding the next exposure results in the total being higher than the sum of the outstanding amounts of the most senior protected tranche and of the tranches subordinated to it.
4. Where N is equal to or greater than 100, the parties to the credit protection agreement shall set a threshold for the increase between the ratio of the outstanding amount of the higher credit risk buckets, as determined according to paragraph 8, divided by the total outstanding amount of all the securitised exposures ('higher credit risk buckets ratio'), and the corresponding ratio at the closing date of the transaction.

The forward-looking trigger shall occur where, at any point in time, the threshold determined in accordance with the first subparagraph is breached.

5. The parties to the credit protection agreement shall clearly set out in the transaction documentation the criteria for assigning exposures to credit risk buckets.

For the purposes of the first subparagraph, the parties to the credit protection agreement shall determine, in the credit protection agreement, the differentiation between individual credit risk buckets based on the following:

- (a) the grades referred to in Article 170(1), point (b), of Regulation (EU) No 575/2013, where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of that Regulation to determine the own funds requirements for credit

risk for securitised exposures to corporates, with the exception of specialised lending exposures referred to under point (b), institutions and central governments and central banks;

- (b) the grades referred to in Article 170(2) of Regulation (EU) No 575/2013, where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of that Regulation to determine the own funds requirements for credit risk for securitised exposures that are treated as specialised lending exposures to which the methods set out in Article 153(5) of that Regulation apply;
 - (c) the grades or pools referred to in Article 170(3), point (b), of Regulation (EU) No 575/2013 where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of that Regulation to determine the own funds requirements for credit risk for securitised exposures that are treated as retail exposures;
 - (d) in all other cases, in accordance with the applicable accounting framework applied by the originator in its financial statements.
6. The parties to the credit protection agreement shall assign the following exposures to higher credit risk buckets from the credit risk buckets determined in accordance with paragraph 5:
- (a) all exposures in default as referred to in Article 178(1) of Regulation (EU) No 575/2013;
 - (b) all exposures to a credit-impaired debtor;
 - (c) all other exposures entailing higher credit risk according to the credit protection agreement, other than those referred to in points (a) and (b).

The parties to the credit protection agreement shall exclude from the assignment referred to in the first subparagraph all exposures that have been subject to a credit event under the credit protection agreement and for which an interim or a final credit protection payment has been made that has reduced the total amount of the protected tranche and the other tranches that are subordinated to it.

7. Where the securitised exposures include more than one of the groups of exposures referred to in paragraph 5, points (a) to (d), the parties to the credit protection agreement shall assign the exposures to the higher credit risk buckets for each of these groups determined in accordance with paragraph 5.
8. For the purposes of paragraph 4, the outstanding amount of the higher credit risk buckets shall be the sum of the outstanding amounts of all the securitised exposures assigned to the buckets in accordance with paragraph 6 and 7.

Article 5

Criteria for setting the level of the triggers referred to in Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402

The parties to the credit protection agreement shall set the thresholds for the performance-related triggers referred to in Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402 at a level which ensures that all of the following criteria are met:

- (a) the triggers are activated before the tranches providing credit protection have been amortised to an extent that those tranches cannot absorb significant losses occurring in the last part of the maturity of the transaction;

- (b) in relation to backward-looking triggers, the effectiveness of those triggers has been tested in a back-loaded loss distribution scenario;
- (c) where the originator applies Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013 to determine the own funds requirements for its exposure to the securitisation, both the calculation of the lifetime expected losses and the assumptions to be made under a back-loaded loss distribution scenario are consistent with those used for the significant and commensurate risk transfer assessment under Article 245 of that Regulation.

Article 6

Outstanding STSs on-balance-sheet securitisations featuring non-sequential priority of payments

For STS on-balance-sheet securitisations that feature non-sequential priority of payments and performance-related triggers in accordance with Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402, and that were notified to the European Securities and Markets Authority in accordance with Article 27(1) of that Regulation before ... [OP please insert the date = date of the entry into force of this Regulation], originators and SSPEs may, without complying with the requirements laid down in Articles 1 to 5 of this Regulation, continue to use the designation 'STS' or 'simple, transparent and standardised' or a designation that refers directly or indirectly to those terms, provided that those securitisations comply with Article 18 of that Regulation

Article 7

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, 13.12.2023

For the Commission

The President

Ursula VON DER LEYEN