



Brussels, 7.11.2023
C(2023) 7418 final

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

of 7.11.2023

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in simple, transparent and standardised securitisations

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 26b(13) of Regulation (EU) 2017/2402 ('the Securitisation Regulation') as amended by the Capital Markets Recovery Package Regulation (EU) 2021/557 empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Banking Authority (EBA) developed in close cooperation with ESMA and EIOPA, and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, regulatory technical standards specifying the conditions for the assessment of the homogeneity of the underlying exposures in a pool of a simple, transparent and standardised (STS) on-balance-sheet securitisation in accordance with Article 26b(8) of the Securitisation Regulation.

In accordance with Article 10(1) of Regulation (EU) No 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 (EU) No 1093/2010, the EBA has carried out a public consultation on the draft regulatory technical standards submitted to the Commission in accordance with Article 26b(13) of the Securitisation Regulation. A consultation paper was published on the EBA internet site on 28 July 2022 and the consultation closed on 28 October 2022. Moreover, the EBA consulted the ESMA and EIOPA and requested the Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them. Together with the draft regulatory 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 regulatory technical standards submitted to the Commission.

Together with the draft regulatory technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has submitted its impact assessment, including its analysis of the costs and benefits, related to the draft technical regulatory standards submitted to the Commission. This analysis is available at [Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation | European Banking Authority \(europa.eu\)](#), pages 12-18 of the Final Report on the draft regulatory technical standards.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The final draft technical standards specify the conditions for the assessment of the homogeneity of the underlying exposures in a pool of an STS on-balance-sheet securitisation in accordance with Article 26b(8) of the Securitisation Regulation. These draft regulatory technical standards, in accordance with Article 26b(13) of the Securitisation Regulation, amend the Commission Delegated Regulation (EU) 2019/1851 on the homogeneity of the underlying exposures in ABCP and non-ABCP securitisation extending the scope to on-balance-sheet securitisations. These draft regulatory technical standards establish the same conditions for the homogeneity of the assets for all types of securitisations (ABCP, non-ABCP and on-balance-sheet securitisations). They carry over a significant part of the provisions on homogeneity set out in the 2019 Commission Delegated Regulation with minor

modifications. These modifications aim at ensuring consistency with the new enlarged scope and providing further clarity on specific requirements.

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(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 Council of 12 December 2017 laying down a 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 20(14) third subparagraph, Article 24(21), third subparagraph, and Article 26b(13), third subparagraph, thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2019/1851² lays down uniform criteria to determine the homogeneity of underlying exposures in simple, transparent and standardised (STS) securitisations.
- (2) Regulation (EU) 2021/557 of the European Parliament and of the Council³ amended Regulation (EU) 2017/2402 to ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis, *inter alia* by introducing the possibility for on-balance-sheet securitisations to be recognised as STS securitisations.
- (3) Unlike traditional securitisations, securitised exposures in an on-balance-sheet securitisation always remain on the originator's balance sheet. In order for the exposures in a securitisation to be deemed homogeneous in accordance with the homogeneity criterion referred to in Article 1, point (c), of Delegated Regulation (EU) 2019/1851, the securitised exposures should be subject to similar servicing procedures, including monitoring, collecting and administering cash receivables, irrespective of whether they remain on the originator's balance sheet, as in the case of on-balance-sheet securitisations, or on the SSPE's balance sheet, as in the case of traditional

¹ OJ L 347, 28.12.2017, p.35.

² Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1).

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).

securitisations. For this reason, the reference to ‘the asset side of the SSPE’ should be deleted in Article 1, point (c), of Delegated Regulation (EU) 2019/1851.

- (4) Where the underlying exposures share similar characteristics and the associated underlying risks of exposures to enterprises and exposures to individuals are assessed on the basis of common methodologies and parameters, those exposures should be grouped in the same asset type.
- (5) Originators or original lenders may assess the credit risk of auto loans and leases, and of credit card receivables granted to enterprises, using an approach more similar to that applied to exposures to individuals rather than corporate exposures. For that reason, it is necessary to amend the list of homogeneity factors related to the type of obligors for those asset types.
- (6) This Regulation should apply to securitisations issued on or after ... [PO please insert date = the date of entry into force of this Regulation]. However, in order not to interfere with existing contracts concluded before the establishment of the amended homogeneity criteria, it is necessary to provide for a transitional regime for those contracts.
- (7) One of the main principles underlying the amendment of Regulation (EU) 2017/2402 by Regulation (EU) 2021/557 was to ensure a high degree of consistency between the STS requirements for on-balance-sheet STS securitisations and the already existing STS requirements for ABCP and non-ABCP securitisations. It follows that rules for determining the homogeneity of the underlying exposures in on-balance-sheet STS securitisations should be aligned as much as possible with the rules that already exist for ABCP and non-ABCP STS securitisations. To facilitate a comprehensive assessment of all rules for determining the homogeneity of underlying exposures, and to provide easy access to those rules to the parties subject to the corresponding obligations, it is necessary to combine the regulatory technical standards on homogeneity for non-ABCP, ABCP and on-balance-sheet STS securitisations in a single Regulation.
- (8) Delegated Regulation (EU) 2019/1851 should therefore be amended accordingly.
- (9) This Regulation is based on the draft regulatory technical standards developed in close cooperation with the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority and submitted to the Commission by the European Banking Authority.
- (10) 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 Council⁴,

⁴ 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).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2019/1851

Delegated Regulation (EU) 2019/1851 is amended as follows:

1. in Article 1, the first paragraph is amended as follows:
 - (a) the introductory wording is replaced by the following:

‘For the purposes of Articles 20(8), 24(15), and 26b(8) of Regulation (EU) 2017/2402, underlying exposures shall be deemed to be homogeneous where all of the following conditions are met.’;
 - (b) in point (a), point (iii) is replaced by the following:

‘(iii) credit facilities provided to individuals for personal, family or household consumption purposes, and credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals not covered under points (i) and (ii) and points (iv) to (viii).’;
 - (c) points (c) and (d) are replaced by the following:

‘(c) they are serviced in accordance with similar procedures for monitoring, collecting and administering cash receivables;

(d) one or more of the homogeneity factors are applied in accordance with Article 2, where applicable.’;
2. Article 2 is amended as follows:
 - (a) in paragraph 4, point (a), point (i) is replaced by the following:

‘(i) individuals, and enterprises where the originator applies the same approach for assessing the credit risk associated with exposures to enterprises as for exposures to individuals.’;
 - (b) in paragraph 5, point (a), point (i) is replaced by the following:

‘(i) individuals, and enterprises where the originator applies the same approach for assessing the credit risk associated with exposures to enterprises as for exposures to individuals.’.

Article 2

Outstanding STS securitisations

For STS securitisations the securities of which are issued, or the securitisation positions of which are created, in accordance with terms of agreements adopted, and that have been notified to ESMA in accordance with Article 27(1) of Regulation (EU) 2017/2402, before [OJ please insert the date = date of entry into force of this Regulation], originators, sponsors and SSPEs may, without complying with the requirements laid down in Article 1 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 Regulation (EU) 2017/2402.

Article 3
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, 7.11.2023

For the Commission
The President
Ursula VON DER LEYEN