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NOTE

From: Mr José Manuel CAMPA, Chair, European Banking Authority (EBA)
On: 19 September 2022
To: General Secretariat of the Council

Subject: Submission of regulatory technical standards specifying the minimum performance-related triggers for STS synthetic securitisation transactions



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EBA/2022/D/4063

John Berrigan
Director General
Directorate-General for Financial Stability,
Financial Services and Capital Markets Union (FISMA)
European Commission
Rue de Spa 2
1049 Brussels
Belgium

19 September 2022

Subject: Submission of the draft RTS on performance-related triggers under the Securitisation Regulation.

Dear Mr Berrigan,

In accordance with Article 26c(5) of Regulation (EU) No 2017/2402 (the Securitisation Regulation), as amended by Regulation (EU) 2021/557, the EBA is required to develop regulatory technical standards specifying the minimum performance-related triggers for STS synthetic securitisation transactions.

It is my pleasure to submit to you today these draft regulatory technical standards as endorsed by the EBA's Board of Supervisors. These standards were developed following the procedure described in Article 10 of Regulation (EU) No. 1093/2010 (EBA Regulation). As previously agreed, the draft regulatory technical standards are attached in Legiswrite format.

In addition, the draft regulatory technical standards will be published on the EBA's public website.

I look forward to the completion of the process of adoption of the standards.

Yours sincerely,

José Manuel Campa

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Brussels, **XXX**
[...] (2022) **XXX** draft

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

of **XXX**

on supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the specification and calibration of the performance-related triggers pursuant to Article 26c(5)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 26c(5) of Regulation (EU) 2017/2402 (the Regulation) 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, delegated acts 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 ('the Regulation') 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 them. 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 final draft technical standards, in accordance with Article 26c(5) of the Regulation, specify the two mandatory triggers under point (a) Article 26c(5), set out the additional mandatory backward-looking trigger under point (b) and the mandatory forward-looking trigger under point (c). The final draft 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.

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

of **XXX**

2. on supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the specification and calibration of the performance-related triggers pursuant to Article 26c(5)

3. (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 of Article 26c (5) sixth subparagraph thereof,

Whereas:

The occurrence of the minimum performance-related triggers as referred to in Article 26c (5) third subparagraph of Regulation (EU) 2017/2402 should lead to the amortisation of the securitisation tranches reverting to a sequential payment in order of seniority, irrespective of whether other triggers apply.

For the purposes of applying the backward-looking triggers set out in Article 26c(5) third subparagraph, point (a) of Regulation (EU) 2017/2402, it is necessary to clarify that the outstanding amount of the underlying portfolio referred to therein should be determined at the closing date of the transaction and, hence, either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses should be measured from that time. However, specific rules should apply to those cases where the transaction features a replenishment period, or a period where the securitised portfolio is built up, after the closing date.

The additional backward-looking trigger referred to in Article 26c(5) third subparagraph, point (b) of Regulation (EU) 2017/2402 should take into account the credit enhancement provided by the most senior protected tranche to more senior tranches retained by the originator throughout the life of the transaction. Accordingly, such backward-looking trigger should occur where the detachment point of the most senior protected tranche decreases below a certain percentage of the initial detachment point, thus preventing that the tranches

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).

providing credit protection have already amortised when significant losses occur at the end of the transaction.

The forward-looking trigger referred to in Article 26c(5) third subparagraph, point (c) of Regulation (EU) 2017/2402 should occur where the performance of the pool of underlying exposures is reduced by an increase in the concentration risk in the securitisation over time or by a deterioration of the average credit quality of that pool of underlying exposures over time.

Concentration risk can be more prevalent in pools of underlying exposures which have a low granularity. Hence, the forward-looking trigger related to concentration risk should apply where the granularity of the pool of underlying exposures measured by the effective number of exposures in the pool is below a given threshold. In order to determine such threshold, a comparison should be made between the sum of the outstanding amounts of the most senior protected tranche and of the tranches subordinated to that tranche and the outstanding amount of a number of the largest securitised exposures towards individual obligors.

Securitisations that do not feature a low granularity should be subject to the forward-looking trigger related to the average credit quality of the underlying portfolio. For the purposes of setting this trigger, the credit quality of the underlying portfolio should be measured since origination in terms of the migration of exposures towards higher credit risk buckets of the underlying portfolio. Where originators have received permission from their competent authority to apply the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013² to the underlying exposures of the transaction, the assignment of exposures to credit risk buckets should be based on the assignment of exposures to rating grades or pools as applied within the respective rating systems used under the IRB Approach. Where originators do not apply the IRB Approach to the underlying exposures, the assignment of exposures to credit risk buckets should instead be based on the differentiation in terms of credit risk of exposures as recorded by the originator in its financial statements in accordance with the applicable accounting framework.

Since it is not possible to provide for a one-size-fits-all calibration that would be applicable to all transactions, it is appropriate to set criteria for setting the levels of triggers as referred to in Article 26c(5) third subparagraph points (a) to (c) in a prudent manner for the parties to the securitisation to agree with. These criteria should ensure that there is no significant risk that tranches providing credit protection amortise to an extent that they cannot cope with significant losses occurring at the end of the transaction. For this 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 inception.

This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

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 opinion of the Banking Stakeholder Group established in

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council,³

HAS ADOPTED THIS REGULATION:

*4. Article 1
Definitions*

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

‘Most senior protected tranche’ in a securitisation means the least subordinated tranche in terms of distribution of losses that benefits from eligible credit protection.

‘Credit risk bucket’ means a segment of the underlying portfolio to which the exposures from the underlying portfolio are assigned that entails a certain degree of credit risk as measured on the basis of credit risk-related criteria clearly set out in the transaction documentation and where a certain segment entails a credit risk greater than or less than another segment.

5. Article 2

Backward-looking triggers under Article 26c(5), third subparagraph, point (a) of Regulation (EU) 2017/2402

1. For the purposes of the backward-looking triggers set out 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, and the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses shall be calculated from that moment.

Where the securitisation features a replenishment period, the outstanding amount shall be the lower of the outstanding amount at the closing date of the transaction and the outstanding amount at the end of the replenishment period, and the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses shall be calculated from the closing date of the transaction.

Where the securitisation features a pre-defined period during which the portfolio of securitised exposures is built up, which is starting with the closing date of the transaction and the credit protection agreement is applicable since the closing date of the transaction, the outstanding amount shall be: (i) the maximum outstanding amount of the securitised exposures allowed in the credit protection agreement at the end of that period, during the period in which the portfolio of securitised exposures is built up; and (ii) the outstanding amount at the end of that period from that moment on. In both cases, the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses shall be calculated from the closing date of the transaction.

³ 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).

6. Article 3

Additional backward-looking trigger under Article 26c(5) third subparagraph, point (b) of Regulation (EU) 2017/2402

The additional backward-looking trigger referred to in Article 26c (5) third subparagraph, point (b) of Regulation (EU) 2017/2402 shall occur where at any point in time after the closing date of the transaction the detachment point, as defined in the second subparagraph of Article 256 (2) of Regulation (EU) No 575/2013, of the most senior protected tranche decreases below a certain percentage of that detachment point determined at the closing date of the transaction.

7. Article 4

Forward-looking trigger under Article 26c(5) third subparagraph, point (c) of Regulation (EU) 2017/2402

1. Where the effective number of exposures (N) in the pool, as defined in Article 259 (4) of Regulation (EU) No 575/2013 is below 100 at the closing date of the transaction, the forward-looking trigger shall occur where the number of the largest securitised exposures towards individual obligors, the total outstanding amount of which exceeds the sum of the outstanding amount of the most senior protected tranche and of the outstanding amount of other tranches subordinated to it, falls below a given number.

In all other cases, the forward-looking trigger shall occur where the ratio between the outstanding amount of underlying exposures assigned to higher credit risk buckets and the outstanding amount of the underlying portfolio (higher credit risk bucket ratio) exceeds the corresponding proportion at the closing date of the transaction by a given percentage.

For the purposes of determining the number of the largest securitised exposures referred to in paragraph 1, multiple exposures to the same obligor shall be consolidated and treated as a single exposure and the consolidated exposures to individual obligors shall be sorted, in descending order, by the outstanding amount of the consolidated exposures to single obligors. The outstanding amount of the largest securitised exposures towards individual obligors shall then be determined by adding up the outstanding amounts of the consolidated exposures to individual obligors in descending order, starting with the largest consolidated exposure to an individual obligor, up to the point where adding the outstanding amount of the next consolidated exposure to an individual obligor first results in the total outstanding amount of the largest securitised exposures towards individual obligors being higher than the sum of the outstanding amount of the most senior protected tranche and of the outstanding amount of other tranches subordinated to it.

For the purposes of determining the increase in the higher credit risk bucket ratio referred to in paragraph 1 the differentiation between individual credit risk buckets shall be based on the following:

where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013 using own PD estimates to determine the own funds requirements for credit risk for underlying exposures other than retail exposures, the rating grades as referred to in point (b) of Article 170(1) of that Regulation;

where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013 to determine the own funds requirements for credit risk for underlying exposures using the methods set out in Article 153(5) of that Regulation for specialised lending exposures, the rating grades as referred to in Article 170(2) of that Regulation;

where the originator applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013 to determine the own funds requirements for credit risk for underlying exposures treated as retail exposures, the rating grades that are used for the assignment of PD estimates to exposures or the pools, as applicable, as referred to in point (b) of Article 170(3) of that Regulation;

in all other cases, the differentiation of the credit risk of exposures shall be determined as recorded by the originator in its financial statements in accordance with the applicable accounting framework.

Where more than one criterion referred to in points (a) to (d) of the first subparagraph apply to different parts of the underlying portfolio of a securitisation, the outstanding amount of underlying exposures assigned to higher credit risk buckets shall be determined as the sum of the total outstanding amount of underlying exposures assigned to higher credit risk buckets in accordance with each of the applied criteria.

For the purposes of determining the outstanding amount of underlying exposures assigned to higher credit risk buckets as set out in paragraph 3 all exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, all exposures to a credit-impaired debtor and all other exposures entailing higher credit risk shall be assigned to the higher credit risk buckets. Exposures that have caused a credit event under the credit protection agreement and an interim or a final credit protection payment that has reduced the amount of the protected tranche shall be excluded from that assignment.

8. Article 5

Criteria for setting the level of the triggers under Article 26c(5) third subparagraph points (a) to (c) of Regulation (EU) 2017/2402

The minimum performance-related triggers to be included in transactions by the parties of the securitisation referred to in Article 26c(5) third subparagraph points (a) to (c) shall be set at a level which ensures that the following criteria are met:

- (a) The triggers are activated before the tranches providing credit protection have been amortised to an extent that they cannot cope with significant losses occurring in the last part of the maturity of the transaction.

In relation to backward-looking triggers the effectiveness of the triggers has been tested in a back-loaded loss distribution scenario taking into account the losses expected over the entire maturity of the transaction at the closing date of the transaction.

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 shall be consistent with those used for purposes of the significant and commensurate risk transfer assessment under Article 245 of that Regulation.

9. Article 6

Transitional provisions concerning outstanding STS on-balance-sheet securitisations featuring non-sequential priority of payments

In respect of STS on-balance-sheet securitisations, which include triggers related to the performance of the underlying exposures in accordance with the third subparagraph of Article 26c (5) of Regulation (EU) 2017/2402 and which were notified to ESMA in accordance with Article 27(1) of that Regulation before the entry into force of this Regulation, originators may continue to use the ‘STS’ designation without meeting the requirements of Articles 1 to 6 of this Regulation until 31.12.2024.

10. 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,

For the Commission
The President
[\[...\]](#)
