



Brussels, 5.3.2024
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COMMISSION DELEGATED REGULATION (EU) .../...

of 5.3.2024

supplementing Regulation (EU) 2017/ 2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying, for simple, transparent and standardised non-ABCP traditional securitisation, and for simple, transparent and standardised on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The second sub-paragraphs of Articles 22(4) and 26d(4) of Regulation (EU) No 2017/2402 ('the Securitisation Regulation'), as amended by the Capital Markets Recovery Package Regulation (EU) 2021/557, provide originators of Simple, Transparent and Standardised (STS) securitisations with the option to disclose available information related to the principal adverse impacts on sustainability factors of the assets financed by residential loans, auto loans or leases. This disclosure would be voluntary. Should originators choose to fulfil it, it would derogate them from the requirement to disclose the available information related to the environmental performance of the assets financed by residential loans, auto loans or leases.

Articles 22(6) and 26d(6) of the Securitisation Regulation empower the Commission to adopt, following submission of draft standards by the European Supervisory Authorities (ESAs), via their Joint Committee, and in accordance with Articles 10 to 14 of 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, ESMA), of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority, EIOPA), and of 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, EBA), amending Decision No 716/2009/EC and repealing respectively Commission Decision 2009/77/EC, Commission Decision 2009/79/EC and Commission Decision 2009/78/EC ('the ESAs Regulations'), a delegated act specifying the content, methodologies and presentation of this voluntary disclosure.

Where relevant, the delegated act shall mirror or draw upon the Commission Delegated Regulation (EU) 2022/1288, developed in compliance with the mandate given to the ESAs in Regulation (EU) 2019/2088, in particular in Article 2a, and Article 4(6) and (7) thereof.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Article 10 of the ESAs Regulations requires the ESAs, where appropriate, to conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits.

On 2 May 2022, the ESAs published a consultation paper setting out the draft the regulatory technical standards. The consultation closed on 2 July 2022. The ESAs received 18 responses amongst which four were not relevant for the purpose of the consultation.

Overall, the respondents welcomed the initiative to enhance transparency regarding climate-related disclosures for STS securitisations. The ESAs did not receive any feedback in relation to their impact assessment analysis.

The ESAs consulted their respective Stakeholders Groups, namely EIOPA's Occupational Pensions Stakeholder Group and the Insurance and Reinsurance Stakeholder Group, ESMA's Securities and Markets Stakeholder Group, and EBA's Banking Stakeholder Group, who decided not to opine on the draft regulatory technical standards.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act lays down the content, methodologies, and presentation of information on principal adverse impacts on sustainability factors of the assets financed by residential loans, auto loans or leases for non-ABCP traditional securitisations and on-balance-sheet STS securitisations. The delegated act seeks to ensure as much consistency as possible with the ESAs' work in respect of sustainability-related disclosures in financial services under the Sustainable Finance Disclosure Regulation (SFDR), which sets out sustainability-related disclosure requirements. Although securitisations are not "financial products" as defined by the SFDR, they are indirectly subject to the SFDR through the entity-level disclosure requirements for financial market participants and when financial products invest in securitisation positions.

The regulatory technical standards apply to STS securitisations where the underlying exposures are residential loans, auto loans or leases and distinguishes between mandatory indicators and additional indicators.

Originators of STS securitisations can decide to comply with either the original disclosure requirements set out in the first subparagraph of Articles 22(4) and Article 26d(4) of the Securitisation Regulation or with the alternative disclosure set out in this delegated act.

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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 laying down a general framework for securitisations 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 22(6), third subparagraph, and Article 26d(6), third subparagraph thereof,

Whereas:

- (1) To ensure that investors have all the necessary information to be able to take informed decisions regarding the sustainability impacts of their investments, sustainability-related disclosures should be sufficiently clear, concise, and prominent.
- (2) To improve the comparability of principal adverse impacts of the assets financed by underlying exposures on sustainability factors, it is necessary to distinguish between, on the one hand, indicators of adverse impacts that, based on the materiality of their exposures, always lead to principal adverse impacts, and, on the other hand, additional indicators of adverse impacts that the originators consider as particularly relevant.
- (3) Since information may not always be readily available for all of the sustainability indicators, originators should only be required to report on at least one additional indicator of principal adverse impacts relating to the climate or other environmental-related sustainability factors, and on at least one additional indicator of principal adverse impacts on social- or governance-related sustainability factors.
- (4) For all indicators, considering that information on principal adverse impacts may not be readily available, originators should be allowed to use data they obtained either directly from obligors or from external experts, or to use assumptions that they deem reasonable. Originators should, however, provide a detailed explanation of how they used their best efforts to obtain information on principal adverse impacts from such obligors, external experts, or by making reasonable assumption.

¹ OJ L 347, 28.12.2017, p.35, ELI: <http://data.europa.eu/eli/reg/2017/2402/oj>.

- (5) According to Article 7(2), third subparagraph of Regulation (EU) 2017/2402 *juncto* Article 7(1), point (a), of that Regulation, information relating to securitisations where a prospectus is to be drawn up is to be made available by means of a securitisation repository registered with ESMA. To facilitate the tracking of the information on principal adverse impacts made available via that securitisation repository, originators should use an item code that is consistent with the codes set out in Table 3 of Annex I to Commission Delegated Regulation (EU) 2020/1224².
- (6) Both Article 22(4), second subparagraph, and Article 26d(4), second subparagraph, of Regulation (EU) 2017/2402 refer to available information on the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors. To facilitate a comprehensive view by originators of the obligations to disclose such information and to ensure coherence between the rules and standardised templates for disclosures of such principal adverse impacts on sustainability factors concerning, on the one hand, non-ABCP traditional STS securitisations and, on the other hand, on-balance-sheet STS securitisations, it is appropriate to include the regulatory technical standards, which should enter into force at the same time, in a single Regulation.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- (8) The Joint Committee of the European Supervisory Authorities referred to in Article 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³, in Article 54 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁴ and in Article 54 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵ 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, the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010, and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

² Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (OJ L 289, 3.9.2020, p. 1, ELI: http://data.europa.eu/eli/reg_del/2020/1224/oj).

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, ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>).

⁴ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, ELI: <http://data.europa.eu/eli/reg/2010/1094/oj>).

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, ELI: <http://data.europa.eu/eli/reg/2010/1095/oj>).

HAS ADOPTED THIS REGULATION:

Article 1

General principles for the presentation of information

1. Originators shall provide the information required by this Regulation by using templates, definitions and formulas laid down in the Annex and in a manner that is prominent, simple, concise, comprehensible, fair, clear, and not misleading.
2. Originators shall make the information required by this Regulation available in a searchable electronic format.
3. Originators shall make the information required by this Regulation available in accordance with the conditions set out in Article 7(1), point (a), of Regulation (EU) 2017/2402.
4. Originators that use the option to disclose the information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors, rather than the available information related to the environmental performance of the assets financed by residential loans or auto loans or leases, shall use the 'No Data Options' ('ND') in fields RREC10 and RREC11 in Annex II to Delegated Regulation (EU) 2020/1224⁶ and in fields AUTL57 and AUTL58 in Annex V to that Regulation.

Article 2

Statement on principal adverse impacts on sustainability factors of the assets financed by underlying exposures of the securitisation

1. Originators shall publish the statement on principal adverse impacts on sustainability factors in the format set out in Tables 1, 2 and 3 of the Annex.
2. In the summary section in Table 1 of the Annex, originators shall include all of the following information:
 - (a) the unique identifier of the securitisation;
 - (b) where available, the international securities identification numbers (ISIN codes) of each of the tranches or bonds in the securitisation;
 - (c) the fact that principal adverse impacts on sustainability factors are considered;
 - (d) the reference period of the statement on principal adverse impacts on sustainability factors;
 - (e) for each asset type in the securitisation pool, the total current principal balance of the underlying exposures;
 - (f) a summary of the principal adverse impacts on sustainability factors of the assets financed by underlying exposures.

⁶ Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (OJ L 289, 3.9.2020, p. 1, ELI: http://data.europa.eu/eli/reg_del/2020/1224/oj).

The summary section shall be of a maximum length of two sides of A4-sized paper when printed.

3. In the section ‘Explanation of how principal adverse impacts on sustainability factors of the assets financed by underlying exposures of the securitisation are considered in the selection of underlying exposures to be added to the pool at the time of offering or during the lifetime of the securitisation’ in Table 1 of the Annex, originators shall include all of the following information:
 - (a) a description of any criteria or numerical thresholds applicable to the composition of the pool of underlying exposures in the securitisation relating to the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures in the pool;
 - (b) a description of any tests, events, and triggers relating to those principal adverse impacts;
 - (c) clear references to the relevant pages and sections in the final offering document or, where relevant, the prospectus, and the closing transaction documents where those thresholds, tests, events, or triggers are described;
 - (d) a concise explanation of whether and, if so, how, principal adverse impacts on sustainability factors are taken into account in the originator’s credit granting criteria;
 - (e) clear references and hyperlinks to any available public disclosures in which the criteria referred to in point (a) are described.

Where information relating to any of the indicators of principal adverse impacts on sustainability factors as set out in the Annex is not readily available, originators shall include in that section details of the best efforts used to obtain that information from obligors, external experts, or by making reasonable assumptions.

4. For the purposes of the concise explanation referred to in paragraph 3, point (d), originators may also provide references to relevant business conduct codes and internationally recognised standards for due diligence and reporting to which they adhered.
5. In the section ‘Description of principal adverse impacts on sustainability factors of the assets financed by the underlying exposures of the securitisation’ in Table 1 of the Annex, originators shall describe the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures of the securitisation, and provide all of the following information:
 - (a) available information on the indicators related to principal adverse impacts on sustainability factors as set out in Table 1 of the Annex;
 - (b) available information on one or more additional climate and other environment-related indicators, as set out in Table 2 of the Annex;
 - (c) available information on one or more additional indicators for social and employee matters, respect for human rights, and anti-corruption and anti-bribery matters as set out in Table 3 of the Annex;
 - (d) available information on any other indicators used to identify and assess additional principal adverse impacts on a sustainability factor as set out in Table 1 of the Annex.

Where the originator has provided at least one previous statement on principal adverse impacts on sustainability factors in accordance with this Article, the originator shall provide a

historical comparison between the current period reported on and every previous period reported on up to the last four previous periods.

6. Where the statement on principal adverse impacts on sustainability factors is made available by means of a securitisation repository, the item code 1 of Table 3 of Annex I to Delegated Regulation (EU) 2020/1224 shall be used.
7. An originator that identifies factual errors in any information that it has made available pursuant to paragraphs 1 to 6 shall correct those errors and publish a corrected statement on principal adverse impacts on sustainability factors without undue delay.

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, 5.3.2024

For the Commission
The President
Ursula VON DER LEYEN