

Green STS securitisations moving forward with standardised sustainability disclosures

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On 8 July 2024, the European [Commission Delegated Regulation \(EU\) 2024/1700](#)¹ entered into force, providing long-awaited regulatory technical standards (**RTS**) as mandated under Articles 22(6) and 26d(6) of the EU Securitisation Regulation (**EUSR**). The goal of the RTS is to provide an alternative for originators of Simple, Transparent and Standardised Securitisations (**STS securitisations**) in relation to disclosure of specific information regarding the consideration of principal adverse impacts (**PAIs**) on sustainability factors for non-ABCP traditional STS securitisations and on-balance sheet-STS securitisations where the underlying exposures are residential loans and auto loans and leases.

Background

On 2 May 2022, the Joint Committee of the European Supervisory Authorities (**ESAs**) published a joint consultation paper (**Consultation**) seeking input on draft RTS on the content, methodologies, and presentation of information about the PAIs on sustainability factors of the assets financed by the underlying exposures of STS securitisations. Please see the relevant announcement [here](#) and our previous article, “Step forward for green securitisations with standardised STS-related environmental disclosures” on the draft RTS [here](#). The final draft RTS were adopted on 18 June 2024 and entered into force on 8 July 2024.

The Consultation gauged the appetite for the extension of these optional PAIs to STS securitisations with other underlying exposures, including commercial real estate, SME loans, non-SME corporate debt, and trade receivables on an ‘opt-in basis’ but it was determined not to include these for the time being. These would have expanded PAIs to areas outside the scope of the EUSR but which might nevertheless have proved useful for market participants wanting standardisation of environmental information.

How do the RTS interact with other ESG regulations?

The RTS draw upon, and ensure as much consistency as possible with, the ESAs’ work in respect of sustainability-related disclosures in financial services under the Sustainable Finance Disclosure Regulation² (**SFDR**). As market participants will know, the SFDR imposes mandatory ESG disclosure obligations on financial market participants, including asset managers and financial advisers.

Securitisations do not constitute a “financial product” under the rules of the SFDR and therefore the SFDR does not apply to securitisation transactions. Although originators of STS securitisations with

residential loans or auto loans and leases as the underlying exposures were initially required to report on available environmental performance information of these underlying exposures prior to the Capital Markets Recovery Package³, Articles 22(4) and 26d(4) now offer the possibility to derogate from this disclosure and follow the RTS instead. As the ESAs have drafted the RTS to align with the SFDR as much as possible, some originators may find that the RTS suit their asset manager investors better.

It will remain possible for originators in STS securitisations to comply only with the initial disclosure requirements relating to environmental performance set out in first sentence of Article 22(4) and Article 26d(4) of the EUSR.

What impact do the RTS have?

As with the SFDR, the RTS are not intended to create a labelling regime and nor is it intended to create a framework for “sustainable securitisation”, i.e. to develop indicators, definitions or thresholds for when and how the originator(s) of a securitisation may characterise or market a securitisation as “sustainable”, socially or environmentally. This was further confirmed in the EBA's 2 March 2022 [report](#), where the EBA ultimately does not currently recommend a specific framework for sustainable securitisation. This should not be a surprise.

The key aim of the RTS is to provide more consistent information to assist investors with their due diligence on a product in a world where investors increasingly have to comply with their own ESG reporting requirements and need to be able to analyse the ESG aspects of their investments. By strongly aligning disclosures under the EUSR's STS regime with the SFDR, the ESAs seek to create efficiencies in reporting (at least for residential loans and automotive loan and leases). This, along with the fact that the RTS is entirely optional, is a welcome initiative as one of the problems plaguing the ESG market has been a lack of clarity around methodologies and characterisation of principal adverse impacts (**PAI**) indicators. The RTS is the ESA's response to this by enabling originators to disclose PAIs of STS Securitisations using reporting which closely aligns to the SFDR and disclosure of such PAIs might also help their investors to fulfill their own ESG reporting requirements.

For STS securitisations, which already are subject to heavy reporting obligations, this might be seen as yet another administrative burden. However, as we have seen in the securitisation market and capital markets generally, investors are seeking ESG information from originators about products. It may be that standardisation will help to facilitate due diligence as well as contributing to the combatting of greenwashing and bolster confidence in STS securitisations which have strong environmental credentials, such as ESG RMBS or potential electric vehicle securitisations in the future. Furthermore, given the optional nature of the RTS, it is open to market participants not to align to this form of disclosure, albeit the market may require originators to disclose such information in the near future.

How do the RTS operate?

The RTS apply only to STS non-ABCP traditional securitisations and on-balance sheet-securitisations where the underlying exposures are residential loans or auto loans and leases. As with the draft SFDR RTS⁴, the RTS, where utilised by an originator, requires the use of all mandatory indicators and in

addition, at least one of the additional social or governance indicators and at least one of the additional environmental indicators.

The PAI templates are similar to those required by the SFDR RTS. In addition, certain information to be provided is as specified by the Annex of the SFDR RTS. Unlike for real estate, the draft SFDR RTS do not contain any specific environment-related indicators arising in relation to auto loans and leases. Therefore, indicators have been derived from other sources, principally from the disclosure requirements applicable to credit institutions under the delegated regulation⁵ of the EU Taxonomy Regulation.

Key requirements of the RTS include:

- Information is required 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. The information must be available in a searchable electronic format.
- Originators shall publish the statement on PAIs on sustainability factors in the format set out in Tables 1, 2 and 3 of the Annex.
- A summary section is required in Table 1 that cannot be more than two sides of A4 paper.
- An explanation is required as to how PAIs are considered in the selection of exposures. 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.
- For the description of PAIs in Table 1 of the Annex, originators must provide all of the following information:
 1. available information on the indicators related to principal adverse impacts on sustainability factors as set out in Table 1 of the Annex;
 2. available information on one or more additional climate and other environment-related indicators, as set out in Table 2 of the Annex;
 3. 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; and
 4. 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 the RTS, 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.

EBA Guidelines

On 27 May 2024 the EBA published the [Final Report on Guidelines on the STS criteria for on-balance-sheet securitisation and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation \(Final Guidelines\)](#). It is worth noting that the Final Guidelines confirm that the requirements in Articles 22(4) and 26d(4) of the EUSR to environmental information

apply to the extent that information on the energy performance certificates is available. Also, where an originator opts to provide PAIs, this is only required where the information is available to the originator and where the respective information is captured in its internal database or IT systems. Where any such information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.

What impact do the RTS have for UK securitisations?

The United Kingdom on-shored the EUSR with effect from 1 January 2021 with minimum changes (**UKSR**)⁶. The requirements relating to residential and automotive securitisations seeking STS treatment under the EUSR noted above apply through the UKSR. However, the RTS does not form part of this onboarding in respect of the UKSR. The UKSR has been replaced with effect from 1 November 2024 with a new securitisation framework which will replicate the current UKSR requirements on environmental disclosures. The regulators determined that, at this time, there was no need to include any additional climate-related requirements. It seems likely that, in order for UK companies to comply with their reporting requirements under the UK sustainability disclosure requirements in due course, more disclosure will be sought from the securitisation industry, consistent with investor needs.

Conclusion

The importance of ESG in securitisation, and how to incorporate it within current and proposed frameworks, is clearly a focus for regulatory bodies, though increased reporting has not been a priority to date for investors. The European Securities and Markets Authority has been consulting on the disclosure templates under the EUSR; it is possible that it might take the opportunity, in addition to considering streamlining the disclosure templates, to consider where additional data fields might be warranted, such as in relation to additional climate-related data. On 9 October 2024, the European Commission launched its Targeted consultation on the functioning of the EU securitisation framework, with one specific question focusing on the green transition but it remains to be seen to what impact the outcomes of this will have on revisions to the text of the EUSR.

The ESAs are no doubt cognisant of the existing reporting requirements to which securitisations are subject and lack of availability of data in relation to underlying assets. This may be a reason by the RTS do not impose compulsory requirements. Nevertheless, originators might feel an obligation to comply (whether for reputational, regulatory or market reasons); this will necessitate additional processes and costs in order to ensure compliance. Originators will need to determine to what extent this is optimal for both them and their investors but it may be that additional standardisation for disclosure in the market might assist in increasing market share for a product that has some way to go in meeting its full potential in contributing to the ESG agenda.

For further reading please see:

This article is for guidance only and is a non-exhaustive summary only of certain aspects of the points discussed and should not be relied on as legal advice in relation to a particular transaction or situation.

Please contact your normal contact at Hogan Lovells if you require assistance or advice in connection with any of the above.

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References

1 Commission Delegated Regulation (EU) 2024/1700 of March 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

2 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019

3 The Capital Markets Recovery Package was a set of legislative measures approved by the by the European Parliament on 25 March 2021.

4 Commission Delegated Regulation EU (2022/1288) of 6 April 2022

5 Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation

6 The Securitisation (Amendment) (EU Exit) Regulations 2019