
EBA/CP/2021/45

20 December 2021

Consultation Paper

Draft Regulatory Technical Standards specifying and, where relevant, calibrating the performance-related triggers pursuant to Article 26c(5) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.3.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 28.02.2022. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Regulation (EU) 2017/2402 (the Securitisation Regulation) as amended by Regulation (EU) 2021/557, which was published in the Official Journal of the European Union on the 6th of April 2021, sets out that STS on-balance-sheet securitisations should feature a sequential amortisation system to be eligible for the STS label.

However, by way of derogation, an STS on-balance-sheet securitisation with non-sequential amortisation system could be eligible for the STS label provided that the transaction includes performance-related triggers to switch from a non-sequential to a sequential amortisation system. Pursuant to Article 26c(5) of the amended Securitisation Regulation, the EBA has to develop regulatory technical standards i) to specify the minimum performance-related triggers for STS synthetic securitisation transactions; and (ii) “where relevant”, to calibrate them. The Securitisation Regulation requires the EBA to submit the draft RTS to the Commission no later than 30 June 2021.

Main features of the RTS

The draft RTS further 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).

With regard to the calibration of these triggers, it should be noted that the mandate in Article 26c(5) is qualified by “where relevant”, which should be understood as giving the EBA the power to decide not to set the level of a given trigger, if it considers inappropriate to do so taking into account all the relevant circumstances.

Consequently, the draft RTS set out that the level of the triggers under point (a) and (c) should be determined by the parties to the securitisation, as they are transaction specific and depend on the assessment made by the parties of the riskiness of the underlying exposures at inception. However, it seems prudent to establish a level for the additional back-ward looking trigger under point (b) that ensures for all STS on-balance-sheet securitisations featuring a non-sequential amortisation that under no circumstances the credit enhancement of the retained senior tranche falls below a certain threshold, in comparison with that at origination, as a result of the amortisation of the protected tranches.

The stakeholders are invited to comment on the entire text of the present draft RTS and on the targeted questions put forward.

Next steps

The final draft RTS will be submitted to the Commission for adoption. Following the submission, the RTS will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

3. Background and rationale

1. The draft regulatory technical standards (draft RTS) have been developed in accordance with Article 26c(5) of Regulation (EU) 2017/2402 (the Securitisation Regulation¹) as amended by the Regulation (EU) 2021/557 of 31 March 2021² (as part of the Capital Markets Recovery Package (CMRP)), which requests the EBA to develop regulatory technical standards i) to specify the minimum performance-related triggers for simple, transparent and standardised on-balance-sheet securitisations; and (ii) “where relevant”, to calibrate them. The EBA is requested to submit those draft RTS to the Commission by 30 June 2021.
2. The CMRP amends the Securitisation Regulation in several aspects, including creating a specific framework for simple, transparent and standardised (STS) on-balance-sheet securitisation to ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis.
3. With the purpose of standardisation, the amended Securitisation Regulation sets out that sequential amortisation shall be applied to all tranches of STS on-balance-sheet securitisations. However, as a derogation, as Recital 17 of Regulation (EU) 2021/557 states, ‘STS on-balance-sheet securitisation might feature non-sequential amortisation in order to avoid disproportionate costs for protecting the underlying exposures and the evolution of the portfolio. Certain performance-related triggers should determine the application of sequential amortisation in order to ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction, thereby ensuring that significant risk transfer is not undermined’.
4. Article 26c(5) of the amended Securitisation Regulation sets out the minimum performance-related triggers that transactions which feature non-sequential priority of payments shall include, and mandates the EBA to develop draft regulatory technical standards on the specification, and where relevant, on the calibration of the performance-related triggers.
5. Point (a) of Article 26c(5) provides for two mandatory backward-looking triggers and gives transaction parties the option of choosing between the two of them to structure the amortisation profile of the securitisation. These triggers are either an “increase in the cumulative amount of defaulted exposures” or “the increase in the cumulative losses”. In both cases, they should not be “greater than a given percentage of the outstanding amount of the underlying exposures below a pre-determined threshold”. Therefore, as the triggers are already set out in Level 1, the mandatory backward-looking triggers in point (a) need not be created ex novo by the RTS. However, the RTS

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 648/2012

² 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

may “specify” these triggers in further detail in as much the EBA deems necessary or appropriate to meet its mandate.

6. Points (b) and (c) Article 26c(5), however, refer generically to “one additional backward-looking trigger” and “one forward-looking trigger” and, accordingly, these triggers need to be created ex novo and defined in detail by the RTS as additional triggers.
7. With regard to the calibration of these triggers, it should be noted that the mandate in Article 26c(5) is qualified by “*where relevant*”, which should be understood as giving the EBA the power to decide not to set the level of a given trigger, if it considers inappropriate to do so taking into account all the relevant circumstances.
8. Accordingly, the EBA deems appropriate that these draft RTS further specify the triggers under point (a), set out the triggers under points (b) and (c), and only calibrates the trigger under point (b). The level of the triggers under points (a) and (c) shall be determined by the parties to the securitisation, as the trigger under point (a) is transaction specific and depends on the assessment made by the parties of the riskiness of the underlying exposures at inception, and in the case of the trigger under point (c) also the relevant threshold would very much depend on the starting point of the risk distribution at inception (i.e. the same percentage of migration to higher risk buckets of a portfolio with very low risk at inception in comparison with that of a portfolio with medium or high risk would not have the same effect in the trigger).
9. However, it seems prudent and appropriate for standardisation to establish a level for the additional backward looking trigger under point (b) that ensures for all STS on-balance-sheet securitisations featuring a non-sequential amortisation that under no circumstances the credit enhancement of the retained senior tranche falls below a certain threshold, in comparison with that at origination, as a result of the amortisation of the protected tranches.
10. Regarding the triggers under point (a), it is appropriate to specify the point in time to which the outstanding amount refers to. As this trigger is a backward-looking trigger (to note that the trigger under point (b) is referred to as ‘additional backward-looking trigger’ while the trigger under point (c) is referred to as ‘forward looking trigger’ only) there is the need to specify that the outstanding amount is the outstanding amount at the origination. This way the “increase in the cumulative amount of defaulted exposures” or “the increase in the cumulative losses” shall refer to that point in time.
11. Regarding point (b) on an additional backward-looking trigger, two possible triggers were considered the most meaningful. The draft RTS includes the preferred option and the alternative option in the corresponding article and the consultation asks for specific feedback on it.
12. The preferred option under point (b) on an additional backward-looking trigger targets the detachment point of the ‘most senior protected tranche (MSPT)’ and sets out that the amortisation will switch to sequential at any point in time when that detachment point is lower than [50% - 75%] of the detachment point at inception. As the detachment point of the MSPT reflects the credit enhancement received by the more senior tranches retained by the originator, this trigger ensures

that this credit enhancement is still sufficient to cover the case where significant losses may occur at the end of the transaction, thus fulfilling the objective of the mandate. The trigger is neutral regarding the structure of the transaction as it covers all possible combinations of mezzanine and first loss tranches (protected or retained). It focuses on the combined credit enhancement provided to the senior tranche retained and to possible, although not common, upper mezzanine tranches retained by the originator.

13. The alternative option under point (b) on an additional backward-looking trigger targets the thickness of the protected tranche or tranches. When at any point in time the protection payments and amortisation represent more than a certain percentage [25% -50%] of the nominal amount of the protected tranche or tranches at origination, the amortisation will switch to sequential. This trigger shows a clear alignment with Recital 17 of the Regulation (EU) 2021/557 ('to ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction'). However, this trigger is not neutral with regard to the structure of the tranching in the securitisation. For example, the trigger would kick in later if a transaction features a protected mezzanine tranche and a first loss retained, than in the case where the first loss is also protected, although the same credit enhancement is provided at origination in both cases to the senior tranche retained and to possible, although not common, upper mezzanine tranches retained by the originator. Therefore, the exposure to back-loaded losses of the senior tranche retained would be higher in the first case for a given percentage of the trigger, and the probability of hindering significant risk transfer higher as well.
14. Regarding point (c) on one forward-looking trigger, the RTS establish a trigger that targets the comparison between the risk profile of the securitised exposures at origination and the corresponding one at any point in time afterwards. When the risk profile of the underlying exposures worsens above a certain level the trigger will be activated and the amortisation will switch to sequential from that moment on. The measure of the risk profile should depend on the type of originator and the characteristics of the underlying exposures.
15. In the case where the originator estimates a PD for all exposures of the underlying portfolio of a securitisation in accordance with the requirements of Regulation (EU) No 575/2013 (CRR), the trigger considers the increase in the exposure-weighted average PD of the underlying portfolio compared to the corresponding value at the time of origination greater than a given percentage.
16. In the rest of cases, the trigger considers the increase in the proportion of 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) compared to the corresponding proportion at the time of origination greater than a given percentage. The RTS define 'credit risk bucket' and determine how this definition applies when the underlying exposures correspond to any of the possibilities of the IRB Approach of the CRR, and the originator is an institution under the CRR, and when the differentiation in terms of credit risk of exposures has been made in accordance with the applicable accounting framework. The RTS also set out the way of calculation of the increase in the proportion of the outstanding amount of underlying exposures assigned to higher 'credit risk buckets' in the case of mixed pools comprising underlying exposures under different risk allocation methodologies.

17. Given the nature of backward-looking triggers, the switch to sequential amortisation should be permanent, as those triggers take into account, directly or indirectly, the effect of cumulative losses or defaults. However, these RTS establish that an STS on-balance-sheet securitisation that - as a consequence of the activation of a forward-looking performance-related trigger included in the contractual documentation of the transaction – has at a certain point in time switched from non-sequential to sequential amortisation, should only revert to non-sequential amortisation as long as the improvement in the expected performance of the securitised exposures remains below the trigger level over a minimum time span.
18. The stakeholders are invited to comment on the entire text of the present draft RTS on performance-related triggers.

4. Draft regulatory technical standards/

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 specifying and, where relevant, calibrating the performance-related triggers pursuant to Article 26c(5)

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 Council³, and in particular of Article 26c (5) sixth subparagraph thereof,

Whereas:

- (1) The third subparagraph of Article 26c (5) of Regulation (EU) 2017/2402 lays down which triggers the performance-related triggers have to include as a minimum that revert the amortisation system of the tranches from non-sequential to sequential payments in order of seniority in relation to STS on-balance-sheet securitisations which feature non-sequential priority of payments. This Regulation when providing specification of, and where relevant, calibration of those performance-related triggers takes into account that each trigger causes individually the amortisation to revert to a sequential payment in order of seniority, irrespective of whether the other triggers apply.
- (2) This Regulation should not calibrate the two triggers provided under Article 26c(5) third subparagraph point (a) of Regulation (EU) 2017/2402 as there is no one-size-fits-all calibration. Instead, transaction parties should set appropriate individual thresholds for the respective transaction. For the triggers under Article 26c(5) points (b) and (c), this Regulation provides specifications, and calibration for the trigger under point (b).
- (3) Article 26c(5), third subparagraph of Regulation (EU) 2017/2402 provides the parties with the possibility to use additional performance-related triggers to the minimum ones. As a result, this Regulation should specify minimum performance-related triggers that are precise and limit optionality in order to achieve a higher level of standardisation.

³ 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).

- (4) Since it is unclear to which moment the outstanding amount refers to and from which moment the increase either of the cumulative amount of defaults or losses should be calculated in the two triggers as referred to in Article 26c(5) third subparagraph, point (a) of Regulation (EU) 2017/2402, it is necessary to specify that the outstanding amount should refer to that at origination, and the increase either of the cumulative amount of defaults or losses should be calculated from that moment.
- (5) The additional backward-looking trigger as referred to in Article 26c(5) third subparagraph, point (b) of Regulation (EU) 2017/2402 should be a trigger that can be applied to all types of transactions and that leads to consistent results irrespective of the structure of an STS on-balance-sheet securitisation. The trigger should look at the credit enhancement provided by the most senior protected tranche to more senior tranches retained by the originator throughout the life of the transaction, not allowing non-sequential amortisation anymore when the detachment point of the most senior protected tranche decreases below a certain percentage of the initial one. Such trigger will ensure the objective referred to in Recital 17 of Regulation (EU) 2021/557 that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction.

[Alternative trigger: The additional backward-looking trigger as referred to in Article 26c(5) third subparagraph, point (b) of Regulation (EU) 2017/2402 should look at the outstanding amount of the protected tranche(s) throughout the life of the transaction, not allowing non-sequential amortisation anymore when the interim and final credit protection payments absorbed by the protected tranche(s) exceed a certain percentage of the nominal amount at origination minus the amortisation amounts allocated to them, since credit protection payments defined in the contractual documentation reflect the losses of the underlying portfolio allocated to the protected tranche(s) as laid down in Article 26e(2) to (4) of that Regulation. Such trigger will ensure the objective referred to in Recital 17 of Regulation (EU) 2021/557 that tranches providing credit protection have not already been amortised when significant losses occur at the end of the maturity of the transaction.]

- (6) The forward-looking trigger should ensure the application of the sequential amortisation when the average credit quality of the underlying portfolio is deteriorating over time. In this regard, the limitation of available triggers to two forward looking triggers that can be applied to all types of STS on-balance-sheet securitisations is appropriate in order to contribute to the simplicity and standardisation of those securitisations. For the purposes of the forward-looking trigger, the development of the credit quality of the underlying portfolio since origination should be measured in terms of the migration of exposures towards higher credit risk buckets or in terms of a change of the exposure-weighted average PD of the underlying portfolio.
- (7) Where the originator estimates a PD for all exposures of the underlying portfolio of a securitisation in accordance with the requirements of Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013⁴, the increase in the exposure-weighted average PD of the underlying portfolio since the date of origination should be used as forward-looking trigger. 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 575/2013 to the underlying exposures of an STS on-balance-sheet securitisation and the trigger based on the assignment of exposures to credit risk

⁴ 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).

buckets is applied, such assignment should be based on the assignment of exposures to rating grades or pools as applied within those rating systems used under the IRB Approach. Where originators do not apply the IRB Approach to the underlying exposures, the trigger based on the assignment of exposures to credit risk buckets should be applied as forward-looking trigger and such assignment should in this case 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.

- (8) While in relation to the backward-looking triggers, the effects of the switch to sequential amortisation should be permanent, given the nature of backwards-looking triggers and as those triggers take into account, directly or indirectly, the effect of cumulative losses or defaults, in the case of forward-looking triggers that rely on the expected future behaviour of the securitised exposures, the trigger may fall below the threshold level after the change of the amortisation system. In such a case, in the interest of simplicity and standardisation, the amortisation should remain sequential until there is enough evidence on the robustness of the improvement of the expected performance of the underlying portfolio.
- (9) 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 accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council,⁵,

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.
- (2) ‘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 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).

Article 2
Backward-looking triggers

For the purposes of the backward-looking triggers as set out in Article 26c (5) third subparagraph, point (a) of Regulation (EU) 2017/2402, the outstanding amount of the underlying portfolio shall refer to the outstanding amount at the time of origination, and the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses shall be calculated from that moment.

Question for consultation

Q1. Do you agree with the specification made in Article 2?

Article 3
Additional backward-looking trigger

The additional backward-looking trigger referred to in Article 26c (5) subparagraph three, point (b) of Regulation (EU) 2017/2402 shall be the decrease, at any point in time after origination, of 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 below [50% - 75%] of the detachment point of the most senior protected tranche at origination.

[Alternative option: The additional backward-looking trigger referred to in Article 26c (5) subparagraph three, point (b) of Regulation (EU) 2017/2402 shall be the increase, at any point in time after origination of the sum of all interim and final credit protection payments made by the investor(s) under the credit protection agreement(s) of the protected tranche(s) above [25%-50%] of the sum of the nominal amount of these protected tranche(s) at origination minus the corresponding amortisation of the protected tranche(s).]

Questions for consultation

Q2. Do you agree with the aim of Article 3 with regard to ensuring that the credit enhancement of the senior tranche does not fall below a certain threshold because of the non-sequential amortisation?

Q3. Do you agree with the trigger set out in the Article or would you prefer the alternative option in order to meet the aim of this additional backward-looking trigger? Please justify your answer, providing, if possible, evidence of the outcome of both triggers based upon your past experience.

Q4. Which level of the trigger would you consider more appropriate and why?

Article 4
Forward-looking trigger

1. Where the originator estimates a PD for all exposures of the underlying portfolio of a securitisation in accordance with the requirements of Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, the forward-looking trigger in accordance with Article 26c (5), subparagraph three, point (c) of Regulation (EU) 2017/2402 shall be that the increase in the exposure-weighted average PD of the underlying portfolio compared to the corresponding value at the time of origination is greater than a given percentage as set out in paragraph 3.
2. In all other cases, the forward-looking trigger shall be that the increase in the ratio of:
 - (a) the outstanding amount of underlying exposures assigned to higher credit risk buckets to
 - (b) the outstanding amount of the underlying portfolio
 (higher credit risk bucket ratio) compared to the corresponding proportion at the time of origination is greater than a given percentage as set out in paragraph 4.
3. For the purposes of determining the exposure-weighted PD of the underlying portfolio referred to in paragraph 1, the PD estimates applied to individual underlying exposures shall be weighted by the respective exposure value of the respective underlying exposures as determined in accordance with Article 166 of Regulation (EU) No 575/2013.
4. For the purposes of determining the increase in the higher credit risk bucket ratio referred to in paragraph 2 the differentiation between individual credit risk buckets shall be based on the following:
 - (a) 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 other than retail exposures using own PD estimates, the rating grades as referred to in point (b) of Article 170(1) of that Regulation;
 - (b) 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;
 - (c) where the originator applies the IRB Approach in accordance with Chapter 3 of Title II of Part Three 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;
 - (d) 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.

5. For the purposes of determining the outstanding amount of underlying exposures assigned to higher credit risk buckets as set out in paragraph 4 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.
6. Where the increase in the exposure-weighted average PD, or in the higher credit risk bucket ratio, of the underlying portfolio compared to the corresponding value at the time of origination falls below the percentage set out in accordance with paragraph 1 or 2 any time after the trigger has changed the amortisation system to sequential, the amortisation system should remain sequential until the increase in the exposure-weighted average PD, or in the higher credit risk bucket ratio, of the underlying portfolio compared to the corresponding value at the time of origination remains below that percentage for at least four consecutive quarters.

Questions for consultation

Q5. Do you agree with the specification of the forward-looking trigger in Article 4? In your view, will the possibility of switching back to non-sequential, as set out in paragraph 6, be detrimental for the simplicity of the specific transaction and the objective of standardisation of STS on-balance-sheet securitisations?

Q6. According to market practice, is it common that performance-related triggers can change several times the amortisation system of the tranches throughout the life of a synthetic securitisation? If so in your view, please provide concrete examples of triggers, distinguishing between backward-looking and forward-looking triggers.

Q7. Do you agree that the information that the originator shall provide under Articles 7 and 26d of the Securitisation Regulation includes the information needed by the investor providing protection to understand and verify the functioning of the performance-related triggers in an STS on-balance-sheet securitisation?

Q8. Since, as a first step before specifying the triggers above, the EBA reassessed the triggers included in recommendation 2 on Amortisation Structure of the EBA 2020 Report on significant risk transfer in securitisation (see Section 5.2), and some elements from them were taken on board in the draft RTS, stakeholders are also invited to comment on the suitability of other triggers included in that recommendation for the purpose of these draft RTS.

Q9. Do you have any other comments on these draft RTS?

Article 5

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

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

1. Article 26c(5) of Regulation (EU) 2017/2402 (the Securitisation Regulation), as amended by the Regulation (EU) 2021/557 of 31 March 2021 (the Regulation amending the Securitisation Regulation), establishes, as part of the requirements relating to standardisation, that STS on-balance-sheet securitisations should feature a sequential amortisation system of the tranches. However, by way of derogation, a non-sequential amortisation system could be permitted provided that the transaction includes a minimum set of performance related triggers to switch from a non-sequential to a sequential amortisation system.
2. This minimum set of performance related triggers should include: two mandatory backward-looking triggers, specified in point (a) of Article 26c(5) of the amended Securitisation Regulation, giving the transaction parties the option of choosing between the two of them, and one additional backward-looking trigger and a forward-looking trigger that are not specified in the Article.
3. Pursuant to subparagraph 4 of Article 26c(5) of the amended Securitisation Regulation, the EBA has to develop regulatory technical standards i) to specify the minimum triggers for STS synthetic securitisation transactions; and (ii) “where relevant”, to calibrate them.
4. The EBA should submit those draft RTS to the Commission by 30 June 2021. The current draft RTS are the EBA’s response to this mandate.
5. As per Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any RTS developed by the EBA shall be accompanied by an Impact Assessment (IA) annex that analyses ‘the potential related costs and benefits’ before submission to the Commission. Such an annex shall provide the reader with an overview of the findings as regards the identification of the problem, the options identified to remove the problem and their potential impacts.
6. For the purposes of the IA section of the Consultation Paper, the EBA prepared the IA with a cost-benefit analysis of the policy options included in the regulatory technical standards described in this Consultation Paper. Given the nature of the study, the IA is high level and qualitative in nature and includes some quantitative analysis when possible.

A. Problem identification

7. The Regulation amending the Securitisation Regulation is part of a wider package (the CMRP) to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation, with the aim

that institutions employ their capital where it is most needed while ensuring that institutions act prudently, thus fostering economic recovery in the aftermath of the COVID-19 crisis.

8. With that purpose, the Regulation amending the Securitisation Regulation sets out criteria for simple, transparent and standardised (STS) on-balance-sheet securitisations, the senior tranche of which receives preferential capital treatment under the CRR as part of the CMRP. STS on-balance-sheet securitisations are synthetic securitisations meeting those criteria, which justify that preferential treatment along with some additional criteria specified in the CRR. The object of the credit risk transfer should be exposures originated or purchased by a Union regulated originator within its core lending business activity and held on its balance sheet, thus excluding arbitrage securitisations from the scope of the STS label.
9. By achieving significant risk transfer, credit institutions can free up capital that can be used to increase lending, which can help support the economic recovery. Due to the preferential treatment of the senior tranche of STS on-balance sheet securitisations, this effect would be higher in the case of synthetic securitisations qualifying as STS.
10. As in the case of traditional STS securitisations, the criteria for STS on-balance-sheet securitisations establish a more risk-sensitive prudential framework, which relies on qualitative criteria that ensure simplicity, transparency and standardisation.
11. Among the criteria relating to standardisation, there is the requirement of sequential amortisation and a limited derogation under specific conditions.

B. Policy objectives

12. The objective of the RTS is i) to specify the minimum performance-related triggers for simple, transparent and standardised on-balance-sheet securitisations; and (ii) “where relevant”, to calibrate them.
13. The EBA interprets the mandate in the sense that:
 - i. Regarding the backward-looking triggers under point (a) of Article 26c(5) of the amended Securitisation Regulation, the RTS may “specify” these triggers in further detail in as much the EBA deems necessary or appropriate to meet its mandate.
 - ii. Regarding the triggers under points (b) and (c), as Article 26c(5) of the amended Securitisation Regulation refers generically to them as “one additional backward-looking trigger” and “one forward-looking trigger”, these triggers need to be created ex novo and defined in detail by the RTS as additional triggers.
 - iii. With regard to the calibration of these triggers, it should be noted that the mandate in article 26c(5) of the amended Securitisation Regulation is qualified by “*where relevant*”, which should be understood as giving the EBA the power to decide not to set the level of a given trigger, if it considers inappropriate to do so taking into account all the relevant circumstances.

14. The RTS include only one trigger under point (b), which targets that the credit enhancement received from the senior tranche does not fall below a certain threshold. Two possible triggers were considered the most meaningful. The draft RTS includes the preferred option and the alternative option in the corresponding article and the consultation asks for specific feedback on it.
15. The RTS include only one trigger under point (c), the RTS establish a trigger that targets the comparison between the risk profile of the securitised exposures at origination and the corresponding one at any point in time afterwards. When the risk profile of the underlying exposures worsens above a certain level the trigger will be activated
16. The EBA considers that limiting the options within the minimum performance related triggers is prudent and appropriate for standardisation. The Level 1 requirements already provide an option for the trigger under point (a). Therefore, providing a set of optional triggers for the additional backward-looking trigger under point (b) and for the forward-looking trigger under point (c) would be detrimental to the purpose of standardisation. On the contrary, providing only one trigger under points (b) and (c), which is meaningful and applicable to any type of transaction, would help the standardisation of the STS product. This is without prejudice to the right of the parties to include other performance related triggers, on top of the minimum ones set out in the Level 1 and in these RTS, if they consider it necessary.
17. The EBA deems appropriate that these draft RTS only calibrate the trigger under point (b). The level of the triggers under point (a) and (c) shall be determined by the parties to the securitisation, as the trigger under point (a) is transaction-specific and depends on the assessment made by the parties of the riskiness of the underlying exposures at inception, and in the case of the trigger under point (c) also the relevant threshold would very much depend on the starting point of the risk distribution at inception (i.e. the same percentage of migration to higher credit risk buckets of a portfolio with very low risk at inception in comparison with that of a portfolio with medium or high risk at inception would not have the same effect in terms of the activation of the trigger).
18. Finally, the EBA considers that, given the nature of backward-looking triggers, the switch to sequential amortisation should be permanent, as those triggers take into account, directly or indirectly, the effect of cumulative losses or defaults. However, when as a consequence of the activation of the forward-looking performance-related trigger, a securitisation has at a certain point in time switched from non-sequential to sequential amortisation, it should only revert to non-sequential amortisation as long as the improvement in the expected performance of the securitised exposures remain below the trigger level over a minimum time span.
19. The analysis carried out, however, has highlighted that the reversion to non-sequential amortisation due to the improvement of the level of the forward-looking trigger could have the effect of reducing the overall transactions' standardisation level in the market, thus potentially contradicting one of the criteria for the STS on-balance-sheet securitisation label. Furthermore, allowing the reversion to non-sequential amortisation without any restrictions could inevitably make the assessment of transactions' risk profile by investors and supervisors more difficult, increasing the level of complexity of on-balance-sheet securitisations

benefitting from the STS label. As a consequence of the above, the EBA has decided that switching from non-sequential to sequential amortisation should be subject to specific conditions that ensure that the robustness of the improvement of the expected performance of the underlying portfolio remains over time.

C. Cost-benefit analysis

20. Taking into account the foregoing, the proposed technical standards are expected to provide enough benefits for institutions and supervisors that more than offset the additional costs connected with their implementation.
21. The specification of a requirement linked to the standardisation in the STS label, provides clarity both to the parties to the securitisations and to supervisors, which is an important element for the issuance of new deals.
22. From the perspective of the parties to the securitisation, as the triggers specified in the RTS ensure that the transaction will revert to sequential amortisation when the performance of the underlying exposures makes it necessary, those triggers will help reduce the costs of the protection purchased until that moment, making the transaction more efficient. And, on the other hand, those triggers will ensure that the tranches providing protection are thick enough when the performance of the underlying portfolio deteriorates, absorbing the losses and the risks they are meant to.
23. From the perspective of supervisors, these triggers will help ensure that the transfer of risk is significant throughout the life of the transaction under different scenarios, and that the capital relief achieved by the originator is commensurate, as some of the minimum triggers can be included in the model used for the SRT assessment.

5.2 Triggers referred to in Recommendation 2 of the EBA Report on significant risk transfer in securitisations⁶

Backward-looking triggers:

- i. cumulative losses at a point in time higher than a given percentage of the lifetime expected losses (LTELs) at inception;
- ii. cumulative non-matured defaults higher than a given percentage of the sum of the outstanding nominal amount of the tranche by which the risk is transferred and the tranches that are subordinated to it;
- iii. increase in the cumulative amount of defaulted exposures/losses greater than a given percentage of the outstanding amount of the underlying portfolio;
- iv. weighted average credit quality in the portfolio decreasing below a given pre-specified level and/or the concentration of exposures in high credit risk (PD) buckets increasing above a pre-specified level.

⁶ EBA Report on significant risk transfer in securitisations

Forward-looking triggers:

- i. increase in the weighted average 1-year PD of the underlying portfolio (as determined in accordance with internal ratings based (IRB) requirements) greater than a given percentage;
- ii. increase in the 1-year expected losses (ELs) of the underlying portfolio (as determined in accordance with IRB requirements) greater than a given percentage;
- iii. increase in the cumulative amount of underlying exposures for which the credit risk has increased significantly since initial recognition (for example international financial reporting standards (IFRS) 9 stage 2) greater than a given percentage of the outstanding amount of the underlying portfolio;
- iv. granularity of the portfolio falling below a given pre-specified level.

5.3 Overview of questions for consultation

Q1. Do you agree with the specification made in Article 2?

Q2. Do you agree with the aim of Article 3 with regard to ensuring that the credit enhancement of the senior tranche does not fall below a certain threshold because of the non-sequential amortisation?

Q3. Do you agree with the trigger set out in the Article or would you prefer the alternative option in order to meet the aim of this additional backward-looking trigger? Please justify your answer, providing, if possible, evidence of the outcome of both triggers based upon your past experience.

Q4. Which level of the trigger would you consider more appropriate and why?

Q5. Do you agree with the specification of the forward-looking trigger in Article 4? In your view, will the possibility of switching back to non-sequential, as set out in paragraph 6, be detrimental for the simplicity of the specific transaction and the objective of standardisation of STS on-balance-sheet securitisations?

Q6. According to market practice, is it common that performance-related triggers can change several times the amortisation system of the tranches throughout the life of a synthetic securitisation? If so in your view, please provide concrete examples of triggers, distinguishing between backward-looking and forward-looking triggers.

Q7. Do you agree that the information that the originator shall provide under Articles 7 and 26d of the Securitisation Regulation includes the information needed by the investor providing protection to understand and verify the functioning of the performance-related triggers in an STS on-balance-sheet securitisation?

Q8. Since as a first step before specifying the triggers above, the EBA reassessed the triggers included in recommendation 2 on Amortization Structure of the EBA 2020 Report on significant risk transfer in securitisation (see Section 5.2), and some elements from them were taken on board in the draft RTS, stakeholders are also invited to comment on the suitability of other triggers included in that recommendation for the purpose of these draft RTS.

Q9. Do you have any other comments on these draft RTS?