

Securitisation Legislative Tracker

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The Simmons & Simmons Securitisation Regulation Legislative Tracker

This Legislative Tracker provides you with an update on the EU's legislative proposals for a Regulation on the Securitisation Regulation, setting out:

- a high level background to, and summary of the main aims of, the Regulation
- a table of the key dates in the process of agreeing the Level 1 text (with links to the relevant documents)
- a table setting out what is currently known about the consultation process for Level 2 / Level 3 measures and
- an annex setting out what specific Level 2 / Level 3 measures ESMA/EBA must develop, the timing of ESMA/EBA's work (where known) and which ESMA/EBA document (discussion paper, consultation paper or Final Report) deals with each measure.

Background

In the wake of the US subprime crisis in 2007-08, competent authorities attempted to make securitisation transactions safer and less complex by incentivising stronger risk management. This took the form of encouraging higher capital requirements and mandatory risk retention requirements to ensure that securitised products were not subject to the same levels of speculation that occurred during the financial crisis.

However, since the financial crisis, European securitisation markets have remained subdued in contrast to their US equivalents. The Securitisation Regulation (the Regulation) was proposed as a means of diversifying funding sources and allocating risk more efficiently within the EU financial system by reviving its securitisation market. The Regulation is one of the building blocks of the European Commission's (Commission) Capital Markets Union initiative.

Summary

On 28 December 2017, *Regulation (EU) 2017/2402* laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised (STS) securitisation was published in the Official Journal. The Regulation entered into force on 17 January 2018 and will become effective from 01 January 2019.

The Regulation also repeals and replaces sector specific securitisation provisions in the UCITS Directive, Solvency II, AIFMD, the Credit Rating Agencies Regulation and EMIR. It was published alongside a regulation (the CRR Amendment Regulation) which amends the Capital Requirements Regulation (CRR).

The Regulation aims to:

- establish markets on a more sustainable basis, so that STS securitisation can act as an effective funding channel to the economy
- allow for efficient and effective risk transfers to a broad set of institutional investors as well as banks
- allow securitisation to function as an effective funding mechanism for some longer-term investors as well as banks
- protect investors and manage systemic risk by avoiding a recurrence of flawed "originate to distribute" models.



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Where are we in the process?

Table 1: Key stages in development of Level 1 text

Regulation

Level 1 Text	Date
Commission <i>proposal</i>	30 September 2015
Council <i>General Approach</i>	30 November 2015
European Parliament <i>draft report</i>	06 June 2016
European Parliament <i>amendments to draft report</i>	27 July 2016
European Parliament <i>amendments to draft report</i>	06 September 2016
European Parliament <i>report</i>	19 December 2016
<i>Political Agreement</i>	30 May 2017
<i>European Parliament adoption</i>	26 October 2017
<i>Council endorsement</i>	08 November 2017
<i>Publication in OJ</i>	28 December 2017
Entry into force	17 January 2018
Comes into effect	01 January 2019

Table 2: Development of Level 2 / Level 3 measures

EBA CP EBA/CP/2017/22 – Draft Regulatory Technical Standards on the requirements for originators, sponsors and original lenders relating to risk retention

Covers	Published	Closed	Submission to Commission
Risk retention requirement (Article 6 (7))	15 Dec 2017	15 March 2018	Issues in respect of Article 6(7) were included in the EBA's <i>Final Report</i> on draft regulatory technical standards submitted to the Commission on 31 July 2018.

ESMA CP ESMA 33-128-107 – Draft technical standards on disclosure requirements, operational standards, and access conditions under the Securitisation Regulation

Covers	Published	Closed	Submission to Commission
Information and standardised templates to be made available for underlying exposures and in investor reports (Articles 7(3) and (4))	19 Dec 2017	19 March 2018	Issues in respect of Article 7(3) and (4) were included in ESMA's <i>Final Report</i> on draft technical standards submitted to the Commission on 22 August 2018.
Operational standards for collection and comparison of data by repositories, as well as procedures to verify information. Content and immediacy of access for user access conditions. (Article 17 (2) and (3) and Article 10(7)(a))	19 Dec 2017	19 March 2018	N/A

ESMA CP ESMA33-128-109 – Draft technical standards on the application for registration as a securitisation repository under the Securitisation Regulation

Covers	Published	Closed	Submission to Commission
Information on application procedures for repositories to be registered by ESMA and format of the application (Article 10(7) (b)-(c) and 10 (8))	23 March 2018	23 May 2018	Issues in respect of Article 10(7) and (8) were included in ESMA's <i>Final Report</i> on draft technical standards submitted to the Commission on 12 November 2018.

ESMA CP ESMA33-128-212 – Technical advice to the Commission on fees for securitisation repositories under the Securitisation Regulation

Covers	Published	Closed	Submission to Commission
Formulating a Delegated Act on fees for securitisation repositories (Article 16(2))	23 March 2018	23 May 2018	N/A

EBA CP EBA/CP/2018/05 – Draft Guidelines on the STS criteria for non-ABCP securitisation

Covers	Published	Closed	Submission to Commission
Harmonised interpretation and application of the criteria on STS applicable to non-ABCP securitisation (Article 19(2))	20 April 2018	20 July 2018	Issues in respect of Article 19(2) were included in the EBA's Final Report on Guidelines published on 12 December 2018.

EBA CP EBA/CP/2018/04 – Draft Guidelines on the STS criteria for ABCP securitisation

Covers	Published	Closed	Submission to Commission
Harmonised interpretation and application of the criteria on STS applicable to non-ABCP securitisation (Article 23(3))	20 April 2018	20 July 2018	Issues in respect of Article 23(3) were included in the EBA's Final Report on Guidelines published on 12 December 2018.

EBA CP EBA/CP/2017/21 – Draft Regulatory Technical Standards on the homogeneity of the underlying exposures in securitisation under [the Securitisation Regulation]

Covers	Published	Closed	Submission to Commission
<p>Specify which underlying exposures referred to in Article 20(8) are deemed to be homogeneous</p> <p>(Article 20(14))</p> <p>Specify which underlying exposures referred to in Article 24(15) are deemed to be homogeneous</p> <p>(Article 24(21))</p>	20 April 2018	20 July 2018	<p>Issues in respect of Article 20(14) and Article 24(21) were included in ESMA's <i>Final Report</i> on draft technical standards submitted to the Commission on 31 July 2018.</p>

ESMA CP ESMA33-128-33 – Draft technical standards on content and format of the STS notification under the Securitisation Regulation

Covers	Published	Closed	Submission to Commission
<p>Information the originators and sponsors are required to provide in order to comply with STS notification requirements</p> <p>(Article 27(6))</p> <p>Format of the STS notification template</p> <p>(Article 27(7))</p>	19 Dec 2017	19 March 2018	<p>Issues in respect of Article 27(6) and (7) were included in ESMA's <i>Final Report</i> on draft technical standards submitted to the Commission on 16 July 2018.</p>

ESMA CP ESMA33-128-108 – Draft technical standards on third-party firms providing STS verification services under the Securitisation Regulation

Covers	Published	Closed	Submission to Commission
Information to be provided by a third-party firm seeking to register with a competent authority, in order for that firm to be able to provide services relating to verifying a securitisation's compliance with STS criteria (Article 28(4))	19 Dec 2017	19 March 2018	Issues in respect of Article 28(4) were included in ESMA's <i>Final Report</i> on draft technical standards submitted to the Commission on 16 July 2018.

ANNEX

1. Level 2 Measures

The Securitisation Regulation contains a number of areas in which ESMA and/or the EBA are mandated to develop Level 2 measures.

Looking at each of these in turn:

- A. Risk Retention (**Article 6**)
- B. Disclosure Requirements (**Article 7**)
- C. Application Procedures for Repositories (**Article 10**)
- D. Fees for Securitisation Repositories (**Article 16**)
- E. STS Homogeneity Criteria (**Articles 20 and 24**)
- F. Information in the STS notification (**Article 27**)
- G. Third Party Authorisation (**Article 28**)

A. Risk Retention (Article 6)

(i) What does Level 1 say?

Article 6 of the Regulation states that:

1. The originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %. That interest shall be measured at the origination and shall be determined by the notional value for off-balance-sheet items. Where the originator, sponsor or original lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit-risk mitigation or hedging.

For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures.

[...]

3. Only the following shall qualify as a retention of a material net economic interest of not less than 5 % within the meaning of paragraph 1:
 - (a) the retention of not less than 5 % of the nominal value of each of the tranches sold or transferred to investors;
 - (b) in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of not less than 5 % of the nominal value of each of the securitised exposures;
 - (c) the retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such non-securitised exposures would

otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;

- (d) the retention of the first loss tranche and, where such retention does not amount to 5 % of the nominal value of the securitised exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures; or
 - (e) the retention of a first loss exposure of not less than 5 % of every securitised exposure in the securitisation.
4. Where a mixed financial holding company established in the Union within the meaning of Directive 2002/87/EC of the European Parliament and of the Council , a parent institution or a financial holding company established in the Union, or one of its subsidiaries within the meaning of Regulation (EU) No 575/2013, as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirements referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related parent institution, financial holding company, or mixed financial holding company established in the Union.
- The first subparagraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures comply with the requirements set out in Article 79 of Directive 2013/36/EU of the European Parliament and of the Council (2) and deliver the information needed to satisfy the requirements provided for in Article 5 of this Regulation, in a timely manner, to the originator or sponsor and to the Union parent credit institution, financial holding company or mixed financial holding company established in the Union.
6. Paragraph 1 shall not apply to transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions.

(ii) What is the EBA's mandate?

Article 6(7) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail the risk-retention requirement, including the requirements laid down in Article 6(7) (a), (b), (c), (d) and (e).

(iii) Timing

The EBA was required to submit **draft RTS** required under article 6(7) to the Commission by 18 July 2018.

The EBA consulted on these measures under **EBA/CP/2017/22** published on 15 December 2017.

The EBA published a **Final Report** on draft RTS submitted to the Commission on 31 July 2018.

B. Disclosure Requirements (Article 7)

(i) What does Level 1 say?

Article 7 of the Regulation states that:

1. The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2 of this Article, make at least the following information available to holders of a securitisation position, to the competent authorities referred to in Article 29 and, upon request, to potential investors:
 - (a) information on the underlying exposures on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis;
[...]
 - (e) quarterly investor reports, or, in the case of ABCP, monthly investor reports, containing the following:
 - (i) all materially relevant data on the credit quality and performance of underlying exposures;
 - (ii) information on events which trigger changes in the priority of payments or the replacement of any counterparties, and, in the case of a securitisation which is not an ABCP transaction, data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation;
 - (iii) information about the risk retained, including information on which of the modalities provided for in Article 6(3) has been applied, in accordance with Article 6.

(ii) What is ESMA's mandate?

Article 7(3) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying the information that the originator, sponsor and SSPE shall provide in order to comply with their obligations under 1 (a) and (e) taking into account the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor.

Article 7(4) of the Regulation empowers the Commission to adopt implementing technical standards (ITS) providing standardised templates for the above.

(iii) Timing

ESMA was required to submit **draft RTS and ITS** required under article 7(3) and (4) respectively to the Commission by 18 January 2019. ESMA consulted on these measures under **ESMA 33-128-107** published on 19 December 2017.

ESMA published a **Final Report** on draft technical standards submitted to the Commission on 22 August 2018.

C. Operational Standards and Access conditions (Articles 17 and 10)

(i) What does Level 1 say?

Article 17 of the Regulation states that:

1. Without prejudice to Article 7(2), a securitisation repository shall collect and maintain details of the securitisation. It shall provide direct and immediate access free of charge to all of the following entities to enable them to fulfil their respective responsibilities, mandates and obligations:

- (a) ESMA;
- (b) the EBA;
- (c) EIOPA;
- (d) the ESRB;
- (e) the relevant members of the European System of Central Banks (ESCB), including the European Central Bank (ECB) in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013;
- (f) the relevant authorities whose respective supervisory responsibilities and mandates cover transactions, markets, participants and assets which fall within the scope of this Regulation;
- (g) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council;
- (h) the Single Resolution
- (i) the authorities referred to in Article 29;
- (j) investors and potential investors.

Article 10(7)(a) of the Regulation states that:

7. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:
 - (a) the procedures referred to in paragraph 2 of this Article which are to be applied by securitisation repositories in order to verify the completeness and consistency of the information made available to them under Article 7(1);

(ii) What is ESMA's mandate?

Article 17(2) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying operational standards to enable both the “timely, structured and comprehensive” collection of data by securitisation repositories, as well as the “timely, structured and comprehensive” aggregation and comparison of data across securitisation repositories. In addition, the draft RTS sets out proposals for securitisation repository procedures to verify the completeness and consistency of reported information

Article 17(3) of the Regulation empowers the Commission to adopt implementing technical standards (ITS) providing standardised templates for the above.

Article 10(7)(a) empowers the Commission to adopt RTS specifying the procedures that should be applied by a securitisation repository to verify the completeness and consistency of the information made available to it under the Securitisation Regulation's transparency requirements set out in Article 7(1).

(iii) Timing

ESMA was required to submit **draft RTS and ITS** required under article 17(2) and (3) respectively to the Commission by 18 January 2019.

ESMA was required to submit **draft RTS** required under article 10(7) (a) to the Commission by 18 January 2019.

ESMA consulted on these measures under **ESMA 33-128-107** published on 19 December 2017, where it ESMA joined the mandates for technical standards set out in Articles 10 and 17.

ESMA published a **Final Report** on draft technical standards submitted to the Commission on 22 August 2018.

D. Application Procedures for Securitisation Repositories

(i) What does Level 1 say?

Article 10 of the Regulation states that:

1. A securitisation repository shall register with ESMA for the purposes of Article 5 under the conditions and the procedure set out in this Article.

[...]

5. A securitisation repository shall submit to ESMA either of the following:
 - (a) an application for registration;
 - (b) an application for an extension of registration for the purposes of Article 7 of this Regulation in the case of a trade repository already registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 or under Chapter III of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

(ii) What is ESMA's mandate?

Article 10(7) (b)-(c) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail the application procedures for repositories to be registered by ESMA, while also taking into account whether a securitisation repository is already registered as a trade repository for the purposes of EMIR and/or SFTR.

Article 10(8) of the Regulation empowers the Commission to adopt implementing technical standards (ITS) providing the format for the above.

(iii) Timing

ESMA was required to submit **draft RTS and ITS** required under Article 10 to the Commission by 18 January 2019.

ESMA consulted on these measures under **ESMA33-128-109** published on 23 March 2018.

ESMA published a **Final Report** on draft technical standards submitted to the Commission on 12 November 2018.

E. Fees for Securitisation Repositories

(i) What does Level 1 say?

Article 16 of the Regulation states that:

1. ESMA shall charge the securitisation repositories fees in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article.

[...]

(ii) What is ESMA's mandate?

Article 16(2) of the Regulation empowers the Commission to adopt a delegated act specifying in greater detail the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

(iii) Timing

ESMA consulted on these measures under **ESMA33-128-212** published on 23 March 2018.

F. STS Homogeneity Criteria

(i) What does Level 1 say?

Article 20 of the Regulation states that:

[...]

8. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal, or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

The underlying exposures shall not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.

[...]

Article 24 of the Regulation states that:

[...]

15. ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit- risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds, that are not listed on a trading venue.

[...]

(ii) What is the EBA's mandate?

Article 20(14) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail which underlying exposures referred to in paragraph 8 are deemed to be homogeneous.

Article 24(21) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail which underlying exposures referred to in paragraph 15 are deemed to be homogeneous.

(iii) Timing

ESMA was required to submit **draft RTS** required under Articles 20 and 24 to the Commission by 18 July 2018.

ESMA consulted on these measures under **EBA/CP/2017/21** published on 19 December 2017.

ESMA published a **Final Report** on draft RTS submitted to the Commission on 31 July 2018.

G. Information on the STS notification

(i) What does Level 1 say?

Article 27 of the Regulation states that:

1. Originators and sponsors shall jointly notify ESMA by means of the template referred to in paragraph 7 of this Article where a securitisation meets the requirements of Articles 19 to 22 or Articles 23 to 26 ('STS notification'). In the case of an ABCP programme, only the sponsor shall be responsible for the notification of that programme and, within that programme, of the ABCP transactions complying with Article 24.

The STS notification shall include an explanation by the originator and sponsor of how each of the STS criteria set out in Articles 20 to 22 or Articles 24 to 26 has been complied with.

ESMA shall publish the STS notification on its official website pursuant to paragraph 5. Originators and sponsors of a securitisation shall inform their competent authorities of the STS notification and designate amongst themselves one entity to be the first contact point for investors and competent authorities.

(ii) What is ESMA's mandate?

Article 27(6) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail the information that the originator, sponsor and SSPE are required to provide in order to comply with the obligations referred to in paragraph 1.

Article 27(7) of the Regulation empowers the Commission to adopt implementing technical standards (ITS) establishing the templates to be used for the above.

(iii) Timing

ESMA was required to submit **draft RTS and ITS** required under Article 27 to the Commission by 18 July 2018.

ESMA consulted on these measures under **ESMA33-128-33** published on 19 December 2017.

ESMA published a **Final Report** on draft technical standards submitted to the Commission on 16 July 2018.

H. Information on the STS notification

(i) What does Level 1 say?

Article 28 of the Regulation states that:

1. A third party referred to in Article 27(2) shall be authorised by the competent authority to assess the compliance of securitisations with the STS criteria provided for in Articles 19 to 22 or Articles 23 to 26. The competent authority shall grant the authorisation if the following conditions are met:
 - (a) the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party assesses without differentiating fees depending on, or correlated to, the results of its assessment;
 - (b) the third party is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC nor a credit rating agency as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009, and the performance of the third party's other activities does not compromise the independence or integrity of its assessment;
 - (c) the third party shall not provide any form of advisory, audit or equivalent service to the originator, sponsor or SSPE involved in the securitisations which the third party assesses;
 - (d) the members of the management body of the third party have professional qualifications, knowledge and experience that are adequate for the task of the third party and they are of good repute and integrity;
 - (e) the management body of the third party includes at least one third, but no fewer than two, independent directors;
 - (f) the third party takes all necessary steps to ensure that the verification of STS compliance is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party. To that end, the third party shall establish, maintain, enforce and document an effective internal control system governing the implementation of policies and

procedures to identify and prevent potential conflicts of interest. Potential or existing conflicts of interest which have been identified shall be eliminated or mitigated and disclosed without delay. The third party shall establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them; and

- (g) the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess STS compliance.

The competent authority shall withdraw the authorisation when it considers the third party to be materially non-compliant with the first subparagraph.

(ii) What is ESMA's mandate?

Article 28(4) of the Regulation empowers the Commission to adopt regulatory technical standards (RTS) specifying in greater detail the information to be provided to the competent authorities in the application for the authorisation of a third party in order for that firm to be able to provide services relating to verifying a securitisation's compliance with STS criteria.

(iii) Timing

ESMA was required to submit **draft RTS** required under Article 28 to the Commission by 18 July 2018.

ESMA consulted on these measures under **ESMA33-128-108** published on 19 December 2017.

ESMA published a **Final Report** on draft RTS submitted to the Commission on 16 July 2018.