JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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Joint Committee Q&As relating to the Securitisation Regulation (EU) 2017/2402

Purpose and status

This document contains answers to questions which fall outside the exclusive competence of either ESMA, EBA or EIOPA. The purpose of this document is to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of Regulation (EU) 2017/2402[1] (the "Securitisation Regulation" or "SECR"). It does this by providing responses to questions asked by the public, financial market participants, competent authorities and other stakeholders.

This document will be updated as appropriate. Additional questions on the Securitisation Regulation may be submitted to ESMA, EBA or EIOPA through the Q&A tools on their respective websites.

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[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 (OJ L 347, 28.12.2017, p. 35).

Heading of Q&A	Code	New or Modified
Use of estimated Energy Performance Certificate values	17	*New*

A summary of the underlying documentation that is essential for the understanding of a transaction

Date of first publication: 26 March 2021

Q1

Article 7(1)(b) of the Securitisation Regulation requires the originator, sponsor and SSPE of a securitisation to make available "[…] *all underlying documentation that is essential for the understanding of the transaction* […]". The penultimate subparagraph of Article 7(1) indicates that "[…] *the originator, sponsor and SSPE may provide a summary of the documentation concerned*". Does this mean that the originator, sponsor and SSPE have a choice between providing the full documentation or a summary thereof?

A1

No. The penultimate subparagraph of Article 7(1) of the SECR should be read in conjunction with the sixth subparagraph of Article 7(1) in respect of the reporting obligations in the first subparagraph of Article 7(1) of the SECR and, in particular, Article 7(1)(b) of the SECR:

Article 7(1) of the SECR, first subparagraph:

"*1. The originator, sponsor and SSPE of a securitisation shall […] make at least the following information available* […]:

[…]

(b) all underlying documentation that is essential for the understanding of the transaction [….]."

Article 7(1) of the SECR, sixth subparagraph:

"When complying with this paragraph, the originator, sponsor and SSPE of a securitisation shall comply with national and Union law governing the protection of confidentiality of information and the processing of personal data in order to avoid potential breaches of such law as well as any confidentiality obligation relating to customer, original lender or debtor information, unless such confidential information is anonymised or aggregated."

Article 7(1) of the SECR, penultimate subparagraph:

"In particular, with regard to the information referred to in point (b) of the first subparagraph, the originator, sponsor and SSPE may provide a summary of the documentation concerned."

In other words, the sixth subparagraph of Article 7(1) of the SECR requires an originator, sponsor and SSPE not to breach any national and Union law governing the protection of confidentiality of information and the processing of personal data when making available the information referred to in the first

subparagraph of Article 7(1) of the SECR, including the documentation in Article 7(1)(b) of the SECR. This means that, only where the disclosure of the full documentation required in Article 7(1)(b) of the SECR would result in such a breach, the reporting entity may instead provide a summary of the documentation concerned (or anonymise or aggregate any confidential information, as set out in the sixth subparagraph of Article 7(1) of the SECR). In all other cases, the documentation shall be provided in full.

Required level of completeness of the information described in points (b), (c) and (d) of the first subparagraph of Article 7(1) of the Securitisation Regulation

Date of first publication: 26 March 2021

Q2

(a) The second subparagraph of Article 7(1) of the Securitisation Regulation requires that the *"the information described in points (b), (c) and (d) of the first subparagraph shall be made available before pricing"*. What is the expected level of completeness of these documents?

(b) Where a document is provided before pricing in "*draft or initial form*", what is the scope for changes post-pricing?

A2

(a) The level of completeness of the information set out in the above-mentioned Article should be understood as being the same as described in Article 22(5) of the SECR, i.e. before pricing, the information described in points (b), (c) and (d) of the first subparagraph of Article 7(1) shall be made available "*at least in draft or initial form*".

(b) It is expected that only minor changes should be made post-pricing, including financial variables (e.g., interest rates, final issued amounts), time data (e.g., optional redemption dates), reference data (e.g., ISIN codes).

Underlying exposure documentation as part of Article 7(1)(b) of the Securitisation Regulation

Date of first publication: 26 March 2021

Q3

Article 7(1)(b) of the Securitisation Regulation requires that the originator, sponsor and SSPE of a securitisation make available "*all underlying documentation that is essential for the understanding of the transaction, including but not limited to, where applicable,*" the documents listed in sub-points (i)-(vi). Should this provision be understood as including an obligation to make available any underlying exposure-level documents (e.g., facility agreements, intercreditor agreements, mezzanine debt documents, hedging documents)?

A3

Article 7(1)(b) of the SECR requires that *all underlying documentation that is essential for the understanding of the transaction…*" be made available. A non-exhaustive list is subsequently provided in sub-points (i)-(vi) of that same sub-paragraph. This non-exhaustive list does not mention underlying exposure-level documents such as facility agreements, intercreditor agreements, mezzanine debt documents, hedging documents. Consequently, underlying exposure-level documents fall under the scope of Article 7(1)(b) of the SECR and must be made available as stipulated by Article 7 of the SECR only to the extent that underlying exposure-level documents are "*essential for the understanding of the transaction*".

Underlying exposure-level documents are often not "*essential for the understanding*" a securitisation. However, for example, in a CMBS transaction with only a few large underlying exposures, such documentation would most likely be "*essential for the understanding of the transaction*".

STS requirements - application of Article 21 (9) of the Securitisation Regulation on transaction documentation

Date of first publication: 26 March 2021

Q4

How and by whom compliance with Article 21(9) of the Securitisation Regulation should be met and documented using the transaction documentation and/or as part of the internal servicing procedures contained in the servicing agreement?

A4

As regards Article 21(9) of the SECR, the Commission Delegated Regulation (EU) 2020/1226 (hereafter, the "RTS on STS notification") requires the originators and sponsors to confirm compliance with it and to place the requested information under a specific item of the prospectus (item 2.2.2. of Annex 19 of the Commission Delegated Regulation (EU) 2019/980 which entered into force since 21 July 2019). Furthermore, Article 7 (1) (b) (iv) of the SECR requires the originator, sponsor and SSPE to make available to the holders of securitisation positions the servicing agreement. Therefore, the requested information regarding servicing procedures should be found in a publicly available document especially where this documentation explains how the servicing of delinquent and defaulted exposures are taken care of, so as to further facilitate investors' due diligence regarding compliance with Article 21(9) of the SECR.

Provision of STS+ certification by third party verifier agent (TPV)

Date of first publication: 26 March 2021

Q5

(a) **Is the provision of CRR- and LCR-Assessments – also known as "STS Plus or STS+ certification" – by a Third-Party Verifier (TPV) to be considered as provision of advice to the originator, sponsor or SSPE involved in the securitisation which the TPV assesses" (within in the meaning of Articles 28 (1) (c) of Securitisation Regulation)?**

(b) **Should TPVs notify their competent authority (CA) of the provision of "STS Plus or STS + assessments?**

(c) **Should the TPV providing "STS Plus or STS+ certification" services implement specific measures to better identifying, preventing and mitigating actual or potential conflicts arising from the provision of those services when notifying its CA?**

A5

(a) No. TPVs are entities with a limited range of business activities being its main activity to verify whether a securitisation transaction complies with the STS criteria applicable to non-ABCP or ABCP securitisations. To ensure TPV's independence vis-à-vis the originator, sponsor or SSPE, TPVs are prevented from providing any form of advisory, audit or equivalent services to any of the originator, sponsor or SSPE involved in the securitisation transaction, which the TPV assesses as set out in Article 28 (1) (c) SECR. The provision of other services is to be assessed in a case-by-case basis to avoid potential conflict of interest.

The Securitisation Regulation does not explicitly foresee the provision of "STS Plus or STS+ certifications" assessments. The provision of this service seems to also consist in assessing compliance with a certain set of statutory requirements similar to the verifications contained in Article 27 (2) of the SECR. In the case of "STS Plus or STS+ certifications", the TPV adds the respective CRR and LCR assessments on top of the verifications performed under Article 27 (2) of the SECR. Considering the ancillary nature of "STS Plus or STS+ certifications" assessments, the provision of these services should not be considered as the provision of advice to the originator, sponsor or SSPE involved in the securitisation which the TPV assesses according to Article 28 (1) (c) of the SECR.

(b) Yes. As set out in Article 28(2) of the SECR, Competent Authorities should be able to ascertain whether changes to the information provided by a TPV at the initial authorisation could affect the Competent Authority's initial assessment. As a result, the provision of "STS Plus or ST+ assessments" should be notified by the TPV to the Competent Authority as a change to the information provided under Article 28(1) of the SECR.

(c) The provision of "STS Plus or STS+" certification services should generally not require specific governance arrangements in addition to the general organisational requirements pursuant to Article 28 (1) of the SECR. However, the TPV should also confirm to its Competent Authority that the provision of these services does not fall within Article 28 (1) (c) of the SECR on the prohibition of the provision of advisory services, audit or equivalent services also in terms of the fees charged to the originators, sponsors and SSPE involved in the securitisation which the TPV assesses, which should be non-discretionary and cost-based fees.

Whether a "vendor financing" structure can be considered a synthetic securitisation

Date of first publication: 10 December 2021

Q6

Can ‘vendor financing’ constitute a synthetic securitisation?

A “vendor financing” structure can be described as follows:

A manufacturer sells its products to his own off takers but would like to see its invoices paid at short notice while his off takers need longer payments terms.

The manufacturer and a bank agree that the bank will provide financing to a selected group of these off takers under the condition that the manufacturer provides a 15% first risk guarantee to the bank.

The bank provides the loans directly to the off takers and the bank will take the loans in its lending book.

The definition of synthetic securitisation of Article 2(10) of the SECR states that ‘synthetic securitisation’ means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator.

In the structure as described above, the bank holds a pool of loans and partial transfer of credit risk is achieved via the guarantee provided by the manufacturer. The first 15% of losses on the pool will be reimbursed by the manufacturer to the bank. Losses above the 15% will be borne by the bank.

It is unclear whether this kind of structure can be classified as ‘synthetic securitisation under Article 2(10) of the SECR.

A6

The transaction described constitutes a securitisation within the meaning of Article 2(1) of the SECR because the credit risk associated with the pool of exposures held by the institution is tranched, the payments in the transaction are dependent upon the performance of the pool of exposures and because it does not meet the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013 applicable to specialised lending.

The transaction also constitutes a synthetic securitisation within the meaning of Article 2(10) of the SECR because the tranching is achieved by means of a guarantee under which the manufacturer has to reimburse the first 15% of losses on the pool to the institution and losses above the 15% are borne by the institution.

The inclusion of early amortisation provisions or trigger for termination of the revolving period in the transaction documentation

Date of first publication: xx 2023 ***New***

Q7

In the case of private STS non-ABCP securitisations, is it also required to include all the items mentioned under subparagraphs (a) to (d) of Article 21(6) SECR in the transaction documentation?

A7

Yes. Article 21(6) of SECR states that "*transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period […], including at least the following […]".* Therefore, all the information mentioned under subparagraphs (a) to (d) shall always be provided irrespective of whether the STS non-ABCP securitisation is public or private.

Existence of different classes of investors?

Date of first publication: xx 2023 ***New***

Q8

In the EBA Guidelines on the STS criteria for non-ABCP securitisation the following is stated:

"For the purposes of Article 21(10) of Regulation (EU) 2017/2402, provisions of the transaction documentation that 'facilitate the timely resolution of conflicts between different classes of investors', should include provisions with respect to all of the following:

a) the method for calling meetings or arranging conference calls;
b) the maximum timeframe for setting up a meeting or conference call;
c) the required quorum;
d) the minimum threshold of votes to validate such a decision, with clear differentiation between the minimum thresholds for each type of decision;
e) where applicable, a location for the meetings which should be in the Union."

In a transaction where there is one class of external investors (e.g., senior loan noteholders) and where there is the retention holder that holds a claim for repayment of a subordinated loan (e.g., the originator), should this be considered as two different classes of investors and should therefore the specific items in the EBA Guidelines all be included in the transaction documentation?

A8

In a transaction where there is one class of external investors (e.g., senior loan noteholders, bank X and bank Y) and where there is the retention holder that holds a subordinated loan (e.g., the originator), these should be considered as two different classes of investors and therefore the specific items in the guidelines should all be included in the transaction documentation.

Whether a step-up margin to be paid to investors could apply in the event the securitisation is no longer STS?

Date of first publication: xx 2023 ***New***

Q9

Is it allowed to include a step-up margin in an STS securitisation, whereby the interest rate paid to investors will increase in case the STS label is no longer applicable?

A9

The SECR does not preclude an STS securitisation from including a step-up margin whereby the interest rate paid to investors will increase in case the STS label is no longer applicable.

Do mortgages secured by non-owner occupied residential/and mixed-use real estate properties comply with the STS homogeneity criteria of SECR?

Date of first publication: xx 2023 ***New***

Q10

(a) **Can mortgages that are secured by non-owner occupied residential real estate (RRE) and mortgages that are secured by mixed-use real estate properties considered to be both residential mortgages and thus can a combination of these two types considered to be homogeneous in accordance with Article 1(a)(i) of** Commission Delegated Regulation (EU) 2019/1851[2] **(the 'RTS on homogeneity')?**
(b) **Could alternatively buy-to-let mortgages, in this case consisting of both mortgages that are secured by non-owner occupied residential and mortgages that are secured by mixed-use real estate properties, be considered as an asset type within the meaning of Article 1(a)(viii) of the RTS on homogeneity?**

A10

(a) No. As clarified in Recital (2) of the RTS on homogeneity, a pool of underlying exposures is homogenous provided that it contains exposures of a single asset type. Distinct asset types should be identified so that exposures may be assigned accordingly. Therefore, the RTS on homogeneity prevents the possibility for a securitisation transaction featuring underlying exposures which inherently contain a different risk-profile, as in the case of mixed-use real estate properties, to be considered 'homogenous. Hence the combination of mortgages that are secured by non-owner occupied residential real estate properties and mortgages that are secured by mixed-use real estate properties cannot be considered as meeting the asset type criteria as referred to in Article1(a)(i) of the RTS on homogeneity.

[2] Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1).

(b) Buy-to-let mortgages consisting of both mortgages secured by non-owner occupied residential and mortgages secured by mixed-use real estate properties cannot be considered as "*other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type* […]" within the meaning of Article 1(a)(viii) of the RTS on homogeneity, due to the fact that the mortgage loans secured by residential real estate and commercial real estate properties are already covered as "asset type" by Article 1(a)(i) and (ii) of the RTS on homogeneity. Otherwise, this would lead to portfolios of buy-to-let mortgage loans that are secured by many different types of underlying collateral, which will negatively affect (i) the homogeneity of portfolio of underlying exposures as a whole and (ii) the simplicity of the transaction.

The application of the homogeneity criteria to branches

Date of first publication: xx 2023 ***New***

Q11

Considering the homogeneity factor in a transaction is "jurisdiction", is it allowed under Article 2(4)(b) on the RTS on homogeneity to view obligors that are branches of a legal entity in a Rome I Country* (e.g., a Dutch branch of an Italian entity) as an obligor with residence in the same jurisdiction as, for example, a legal entity in that jurisdiction (e.g., a Dutch private limited company (besloten vennootschap))?

*** Any Member State to which Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)[3] applies.**

A11

No. Article 2(4)(b) of the RTS on homogeneity refers to obligors with residence in the same jurisdiction. Therefore, as branches do not have a separate legal personality from that of the entity of which they form part, it is not possible to consider a branch of a legal entity in a Rome I Country as an obligor with residence in the same jurisdiction as a legal entity in that jurisdiction (in the example of the Q, a Dutch branch of an Italian entity could not be seen as an obligor with residence in the Netherlands – the obligor would be the Italian entity with residence in Italy) .

Furthermore, from a practical perspective, the risk profile of the obligor (which, as indicated above, is the legal entity and not the branch) will be of importance to investors when determining the risk profile of the STS transaction. For investors it may be difficult to assess the risk profile, in case the investors have to assess obligors that may reside in many different countries. This contradicts the concept of homogeneity as well as simplicity.

[3] OJ L 177, 4.7.2008, p. 6

Replacement of the liquidity providers

Date of first publication: xx 2023 ***New***

Q12

According to Article 21(7)(c) of SECR, the transaction documentation shall clearly specify provisions that ensure the replacement of, amongst others, liquidity providers in the case of their default, insolvency, and other specified events, where applicable. In the case of a securitisation where there is a Reserves Funding Provider or Subordinated Loan Provider that fulfils a role as a liquidity provider, the role of these parties is to make available the relevant reserve advances, including a liquidity reserve advance to provide the issuer with additional liquidity in order to make interest payments on the notes.

For these transactions, it is being argued that there is no back-up party in place because additional reserves will be funded when the rating of the Reserves Funding Provider or Subordinated Loan Provider respectively is downgraded. The funding of these reserves will occur before a potential default of the Reserves Funding Provider or Subordinated Loan Provider and therefore it is argued that a back-up party would not be necessary.

A12

Article 21(7)(c) of SECR states that the transaction documentation shall include "*provisions that ensure the replacement of liquidity providers in case of their default, insolvency or other specified events, where applicable*".

Although there is no formal definition of a liquidity provider in SECR, parties fulfilling a role as liquidity provider (even if partially and/or named differently) qualify as liquidity provider.

The transaction documents shall always include a provision that ensures the replacement of a party that (partially) fulfils the role as a liquidity provider in case of their default, insolvency or other specified events, where applicable. If such provision is not included in the transaction documentation, the transaction is not compliant with Article 21(7)(c) of SECR.

The fact that funding of liquidity reserves will occur before a potential default or the insolvency of a party acting as liquidity provider (e.g., if a downgrade has taken place) is not a reason to not ensure the replacement of this party in case of its default or insolvency.

Because the Reserves Funding Provider is a liquidity provider, the transaction documents shall include the provision that ensures the replacement of the Reserves Funding Provider in case of their default, insolvency or other specified events, where applicable. If this provision is not included in the transaction documentation, the transaction will not be compliant with Article 21(7)(c) of SECR.

Project finance loan receivables

Date of first publication: xx 2023 ***New***

Q13

Which reporting templates should apply to a securitisation backed by project finance loan receivables?

A13

Project finance transactions meeting the definition of securitisation pursuant to Article 2(1) SECR for which the exposures do not possess all the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013[4] should be reported pursuant to Article 7 of SECR and Commission Delegated Regulation (EU) 2020/1224[5] (disclosure RTS). In particular, reporting entities should use the "esoteric template" set out in Annex IX of that RTS.

Securitisation exposures backed by several collaterals

Date of first publication: xx 2023 ***New***

Q14

(a) What annexes need to be used to report a mortgage securities portfolio backed by collateral of several types (commercial, residential, industrial ...), would the Property Type (RREC9 and CREC12) be a proper delimiter?

(b) Could an exposure be reported in several annexes based on the Property Type? If an exposure has as collateral a Residential House, a Pub and a personal guarantee, should the exposure be reported in Annexes 2, 3 and 9?

A14

(a) As stipulated under Article 2(2) of the disclosure RTS , "*where a non-ABCP securitisation includes more than one of the types of collateral listed in paragraph 1, the reporting entity for that securitisation shall make available the information specified in the applicable Annex for each collateral type*". Therefore, in the case of a mixed portfolio, a transaction is to be reported according to the various applicable templates listed in Article 2(1) of the disclosure RTS using the applicable property type set out in Annexes II or III

(b) Yes. Similarly, an exposure should be reported using the relevant property type related Annexe(s) (in the example in the Q, these would be Annexes II, III and IX of the disclosure RTS).

[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 amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1).

[5] Commission Delegated Regulation (EU) 2020/1224of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (OJ L 289, 3.9.2020, p. 1)

The application of EMIR to Securitisation transactions

Date of first publication: xx 2023 *New*

Q15

Are securitisation transactions covered by the EMIR regulation?

A15

EMIR applies to financial and, where so provided, to non-financial counterparties and as such includes SSPEs. EMIR applies to these counterparties with respect to their derivative transactions. This includes OTC derivative transactions associated to securitisations.

Article 42 of the SECR has amended EMIR with the aim to ensure a level playing field between the regime for covered bonds and the one for securitisations with respect to the clearing obligations and the risk mitigation techniques for non-centrally cleared OTC derivatives. Notably, this has led the ESAs to develop the draft RTSs specifying the criteria for establishing which arrangements adequately mitigate counterparty credit risk associated with securitisations (Commission Delegated Regulation (EU) 2020/447[6]) and bilateral margining (Commission Delegated Regulation (EU) 2020/448[7]).

Institutional investors' reporting obligations

Date of first publication: xx 2023 *New*

Q16

Are investors subject to any reporting obligations under the SECR?

A16

An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, is not subject to any reporting obligations under SECR. However, such an investor shall comply with the due-diligence requirements set out in Article 5 of SECR as applicable prior to and whilst holding a securitisation position.

[6] Commission Delegated Regulation (EU) 2020/447 of 16 December 2019 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178 (OJ L 94, 27.3.2020, p. 5).

[7] Commission Delegated Regulation (EU) 2020/448 of 17 December 2019 amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes (OJ L 94, 27.3.2020, p. 8).

Use of estimated Energy Performance Certificate values

Date of first publication: xx 2023 ***New***

Q17

Is the usage of estimated Energy Performance Certificate values allowed if exact information is not available from any publicly accessible sources? Specifically, and in particular for the building stock across countries.

A17

The only Energy Performance Certificate value of the collateral that is allowed under the applicable reporting templates set out in the disclosure RTS (e.g., Annex 2 - RREC 10) is the actual value at the time of origination. Therefore, estimated data are not allowed.