

EBA Consultation on Draft Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation under Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557

- Response on behalf of TSI and its stakeholders -

True Sale International GmbH (TSI) and its stakeholders appreciate the opportunity of participating in the above-mentioned consultation. TSI emerged in 2004 from a banking initiative in Germany to promote the German and European securitisation market. Today, the topics of TSI cover broad areas of the asset-based finance market. Thus, TSI covers the different fields of securitisation, namely traditional (term) transactions, synthetic securitisations as well as ABCP and private non-ABCP transactions. Please visit our website (www.true-sale-international.com) for more information.

Q1: Do you agree with the proposed amendment to the asset category in Article 1 with respect to the addition of "credit facilities provided to enterprises, where the originator applies the same credit risk assessment approach as for individuals not covered under points (i), (ii) and (iv) to (viii)"? Please elaborate on the practical relevance.

No objections on this amendment.

Q2: Do you agree with the proposed amendment in Article 1 to the "type of obligor" for credit facilities, including loans and leases, provided to any type of enterprise or corporation?

No. On-balance-sheet transactions differ from traditional transactions by often involving multi-jurisdictional corporate portfolios that fall under the asset type of "credit facilities, including loans and leases, provided to any type of enterprise or corporation" according to Article 1 (a) (iv) of the Commission Delegated Regulation (EU) 2019/1851. Often, such portfolios can only be securitised in a synthetic on-balance sheet transaction, as for example client confidentiality obligations and the different governing laws of the underlying loan documentation and/or collateral and/or location of borrowers would result in a true sale transaction being too complex. At the same time, corporate loan portfolios consisting of (i) SME obligors, (ii) large corporate obligors or (iii) combinations of SME and large corporate obligors represent, with a share of more than 75% of the STS-notified synthetic on-balance-sheet securitisations closed between June 2021 and the end of September 2022, by far the most important segment of STS-notified on-balance-sheet securitisations.

Hence, the Homogeneity factor "type of obligor" according to Article 2 no. 3 (a) of the Commission Delegated Regulation (EU) 2019/1851 should allow for these mixed portfolios being STS-compliant in order to support the market of synthetic securitisation. In our view, the proposed split between SMEs and Large Corporates at a turnover of Mio. EUR 500 according to the CRR III definition of Large Corporates (the "CRR size differentiation") is in terms of securitisations an artificial one since it is not in accordance with market practice for corporate loans or the loan origination procedures of originators. There is no consistent differentiation according to firmly defined size classes across the market. The proposed CRR size differentiation as well as the requirement of "equal approaches" is therefore not

suitable for the derivation of homogeneity. Furthermore, there is no need in the market for a standardised benchmark for all portfolios since investors seek a homogenous risk profile within one transaction and either way perform a due diligence on each portfolio to analyse its specific risk profile.

The proposed CRR size differentiation has also the potential to increase the default risks in synthetic securitisations as the CRR size differentiation has a significant impact on the risk concentration of the portfolios: This is because the CRR size differentiation leads to smaller securitised portfolios at the level of the originator since SMEs and large corporate loans cannot be combined in one transaction anymore. This will lead to lower diversification of risk and to lower granularity, especially in the large corporate segment since the number of loans in this segment is substantially lower than in the SME sector. Therefore, synthetic on-balance-sheet securitisations involving large corporate loan portfolios could on the one hand end up being much more difficult to market to investors going forward and on the other hand might lead to a discrimination of smaller and medium-sized market participants (e. g. those who do not have sufficiently high asset holdings) which can possibly lead to purposefully different origination strategies.

In conclusion, these RTS will in our view have a detrimental impact on the European securitisation market, increases the default risks in on-balance-sheet transactions and might even stand in contradiction to the targets of the Capital Markets Union, in this case to facilitate cross border lending. The underwriting / loan origination standards for the securitised loans should serve as guidance for homogeneity factor.

In our view, there is already a precedent for a suitable definition of an homogeneity factor for the "type of obligor" in Article 2 no. 6 (a) of the Commission Delegated Regulation (EU) 2019/1851 for the asset type "other" regarding to Article 1 (a) (viii) of the Commission Delegated Regulation (EU) 2019/1851 which is more openly designed and could also be used in unchanged form for the asset type of corporate loans according to Article 1 (a) (iv) of the Commission Delegated Regulation (EU) 2019/1851.

Q3: Do you agree with the proposed amendment in Article 1 to the "type of obligor" for auto loans and leases?

Yes. In general, the asset type "auto loans and leases" is not substantially affected by the proposed amendments of the Draft RTS.

Q4: Do you agree with the proposed amendment in Article 1 to the "type of obligor" for credit card receivables?

No objections on this amendment.

Q5: Do you see the need for the grandfathering provisions in Article 2 for the outstanding STS ABCP and STS non-ABCP securitisations? If yes, please elaborate.

Yes. Grandfathering provisions are crucial for running STS-notified ABCP and non-ABCP securitisations since otherwise they might lose the STS-status in some cases. This would bring uncertainty to investors and the market in a whole and could in some cases result in the early termination of, in particular private, transactions. Hence, the grandfathering provisions for STS ABCP and STS non-ABCP securitisations are very important, in particular for equipment lease auto lease and corporate loan securitisations involving both SME and

large corporates as lessees and obligors, respectively. Please also refer to our response to Q6.

Q6: Do you agree with the deferred application date in Article 2 for the outstanding STS on-balance-sheet securitisations?

No. The limited grandfathering involving a deferred application date after 1 year (as opposed to a full grandfathering) for running on-balance-sheet transactions bears significant risks and challenges. First, it is hard to amend eligibility criteria during the life of a running transaction given that this would require investor consent which is by no means certain given that such an amendment would not result in just a simple amendment of the eligibility criteria, but likely require the whole of the (adjusted) securitised portfolio to be re-tested and hence, impact the risk profile of the securitised portfolio and therefore of the entire transaction. Hence, it is almost impossible to adjust existing STS on-balance-sheet securitisations to the new RTS rules. Since the majority of STS on-balance-sheet securitisation are composed of corporate loans, the changes would be relevant to a substantial share of on-balance-sheet securitisations which would lose their STS-status. This would lead to a variety of uneconomic transactions since losing the STS-status would contradict investor objections and imposes additional capital requirements to originators. Therefore, the current grandfathering-rule might cause a wave of regulatory calls. This again would damage investors' confidence in the market of STS synthetic on-balance sheet securitisations, resulting almost certainly in a reduction of this so far successful market segment when actually an increase of the European securitisation markets is one of the objectives of the Capital Markets Union.

Second, it is not reasonable why for the different types of transactions different grandfathering rules should apply. This differentiation leads to different treatments of similar loan portfolios just because of the type of transaction (a corporate loan portfolio consisting of SMEs and Large Corporates within a traditional securitisation, or a synthetic securitisation structured under the previous Article 270 of the CRR would keep its STS status while a synthetic on-balance-sheet transaction would lose its STS status).

We believe that it would be justified and appropriate to provide that the amended rules apply to synthetic on-balance-sheet transactions which are entered into from the date the amended RTS enter into force, as it is not clear why on-balance-sheet transactions which, guided by the criteria applicable to ABCP and non-ABCP transactions in the absence of further specification, complied with the Level 1 text when they were executed, should lose their STS status.

In conclusion, for on-balance-sheet transactions the same grandfathering-provision should apply as for traditional transactions to avoid the termination of a multitude of existing STS-notified transactions and the subsequent market disruptions.

Q7: Are there any aspects that should be considered with regard to the homogeneity of the STS on-balance-sheet securitisations which are not specified in these RTS?

Yes. The RTS should allow for multi-national corporate loan on-balance-sheet securitisations with underlying loans to SMEs and Large Corporates, please refer to our response to Q2.

Q8: Are there any impediments or practical implications of the criteria as defined in these draft RTS for STS traditional securitisations?

Yes. The introduced turnover-benchmark between SME's and Large corporates contradicts market standards, please refer to our response to Q2.

Q9: Are there any important and severe unintended consequences of the application of the homogeneity criteria as specified in these RTS?

Yes. The suggested grandfathering rules might lead to the widespread exercise of Regulatory Calls for existing synthetic on-balance-sheet securitisations that have been notified as STS-compliant prior to the entry into force of this RTS as most of these will lose their STS status on the proposed application date of this RTS one year after its entry into force. Also, we expect that the application of the homogeneity criteria as specified in these RTS will result in a substantial reduction of the number of new STS synthetic on-balance-sheet securitisations as in particular smaller and medium-sized banks will, when attempting to structure multi-jurisdictional synthetic on-balance-sheet securitisations, have to choose between either SME or large corporate portfolios, making many of those securitisations no more economically attractive and thereby resulting in such securitisations to be either not executed at all or, in case of their execution, them ending up as non-STS securitisations. Please also refer to our response to Q2.