



February 2020

Securitisation Regulation Update: Recent Regulatory Technical Standards on STS Notification Requirements

Following on from our previous [article on the Regulatory Technical Standards on homogeneity under the Securitisation Regulation](#), we discuss the finalised [Regulatory Technical Standards \(Notification RTS\)](#) specifying the information to be provided in accordance with the notification requirement under Article 27(1) of the [Securitisation Regulation](#) (Regulation 2017/2402) (the **Securitisation Regulation**) relating to Simple, Transparent and Standardised securitisations (**STS**). The Notification RTS were published by the European Commission on 12 November 2019.

The Securitisation Regulation provides that where a securitisation meets the requirements to be designated as STS, a notification must be made to the European Securities and Markets Authority (**ESMA**) and the relevant national competent authority of STS eligibility (i.e. for an originator or sponsor in Ireland, the Central Bank of Ireland (the **CBI**)). Following completion of the notification, ESMA is then responsible for maintaining the register of STS securitisations. It is the joint responsibility of the originator and the sponsor to submit the STS notification to ESMA. The requirements of the Notification RTS apply to both ABCP and long term (non-ABCP) STS securitisations.

In order to allow competent authorities such as the CBI to perform their duties and allow both investors and potential investors to perform their due diligence, sufficiently detailed information relevant to the STS notification is necessary to determine whether the STS criteria are satisfied. For instance, the rationale for selecting a particular homogeneity factor and for excluding others should be included in the relevant notification to inform the assessment of the criteria applicable to homogeneity. For certain STS criteria, simple confirmation of compliance will be sufficient, while other criteria require more detailed information. It is necessary therefore to

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distinguish requirements for which a concise confirmation is sufficient from those for which a more sophisticated explanation is necessary.

The information to be provided as part of the notification also varies by transaction type. The Notification RTS, together with their associated annexes, provide specific templates for notification of non-asset-backed commercial paper (**Non-ABCP**) securitisations (Annex I), single transaction asset-backed commercial paper (**ABCP Transaction**) securitisations (Annex II) and asset-backed commercial paper programme (**ABCP Programme**) securitisations (Annex III). The annexes are therefore instructive as to the relative information required in the notification depending on whether it concerns either a Non-ABCP, ABCP Transaction or ABCP Programme STS arrangement.

The Notification RTS state that in respect of 'private securitisations' (Securitisations where no prospectus must be drawn up in accordance with Regulation (EU) 2017/1129 (the **Prospectus Delegated Regulation**)), originators and sponsors must notify ESMA via two STS templates: a fully completed STS notification and an anonymised STS notification. The anonymised notification will be published on ESMA's website whereas the non-anonymised STS notification will remain confidential on ESMA's secure register accessible only to national competent authorities. Originators and sponsors are required to inform their respective competent authorities about the full contents of STS notifications for private securitisations in accordance with Article 27(1) of the Securitisation Regulation.

In the case of non-private securitisations, as well as the notification itself following the applicable template in Annex I, II or III of the Notification RTS, the originator and sponsor are required to submit the following additional documents to ESMA and their respective national competent authority or authorities:

- ▣ a prospectus drawn up pursuant to the Prospectus Delegated Regulation;
- ▣ any other underlying documentation (**STS Underlying Documentation**) referred to in Article 7(1)(b) of Regulation (EU) 2017/2402 (the **STS Framework Regulation**); and
- ▣ any other document with information relevant to the STS notification,

in each case with cross-references to their respective provisions in the notification.

Examples of STS Underlying Documentation specified in the STS Framework Regulation include the asset, mortgage or receivables sale agreement in a traditional structure, financial derivative contracts, credit enhancement and liquidity support arrangements, servicing and cash administration agreements as well as security and trust instruments.

The Notification RTS are currently under a three month extendable period of review by the Council and Parliament. Absent any objection, the Notification RTS will be published in the Official Journal of the European Union (the **Official Journal**) at the end of the scrutiny period. They will enter into force on the twentieth day following the day of their publication in the Official Journal.

Although the Notification RTS do not yet take effect, originators and sponsors may now make the STS notification to ESMA and their national competent authorities under the reassurance that that

the Notification RTS (i) provide a precise list of the information required by ESMA and (ii) are in final form.

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