FÉDÉRATION
BANCAIRE
FRANÇAISE

European Banking Authority

CONSULTATION PAPER ON DRAFT RTS ON PERFORMANCE-RELATED TRIGGERS

End of consultation period: february, the 28th 2022

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.

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).

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

General comment

- Taking into consideration that the backward-looking trigger 26c 5 a) is already mainly ,if not exactly, covered by the EBA report article 57, b, backward-looking triggers, iii:while the CMRP requires that three triggers should be used "as a minimum", including "one backward-looking trigger" and "one forward looking trigger", and while the EBA had defined, in its report on SRT, 3 other backward-looking triggers (article 57, b, backward-looking triggers, i and ii and iv) and 4 forward-looking triggers (article 57, b, forward-looking triggers), the draft RTS under consultation only specifies one single backward-looking trigger and one single forward-looking trigger. In other words, transactions would have to use the mandatory trigger specified in the CRR and the two others specified in the EBA RTS because these would be the only ones available.
    - Clarification is needed as to whether originators could use other triggers, such as the ones defined in the EBA report on SRT.
    - three triggers seem at odds with the mandate given by the CMRP. At the very least, it entails excessive rigidity. As developed in our response, some triggers defined by the EBA in their report on SRT seem more relevant than the ones specified in this draft RTS.
    - Clarification is also sought as to whether existing STS on-balance sheet transactions that would not comply with the RTS, once finalized, would benefit from a grand-fathering regime.
- In our view, the amortization regime should go back to non-sequential if ,after the breach of any of the triggers, it turns back into compliance. The question is raised in the consultation paper only with regards to the forward-looking trigger, while it would also make sense with the backward-looking one.

Article 2 Backward-looking triggers

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

Yes, those specifications are welcome.

Article 3 Additional backward-looking trigger

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?

This trigger is simple and easy to implement.
Although not raised in the consultation paper, we find it important to recall that the effect of the trigger should not be permanent, i.e. the amortization profile should go back to non-sequential once the transaction complies with the trigger again (sequential amortization mechanically increases the credit enhancement of the senior tranche so the transaction would eventually come back in compliance).

Note that this trigger is not listed in the EBA report on SRT. Any of the 3 other Backward-looking triggers listed in the EBA report on SRT (in addition to the compulsory trigger 26 c (5) a) should be an eligible trigger.

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.

The problem is that the interim credit protection payment under STS rules is overestimated (this is a real issue on STS rules). The calibration of the two alternatives do not seem aligned. In any case, banks should have the choice between the two alternatives; if not, the first solution would be preferred.

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

It is very difficult to assess what level should be considered as the most appropriate. 50% seems acceptable.

Article 4 Forward-looking trigger

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?

Although listed in the EBA report, we believe this trigger based on the increase in the exposure-weighted average PD of the underlying portfolio is not the most adequate. At least, it would raise serious practical difficulties, notably in the context of the IRB Repair Program and CRR3. Portfolio granularity seems both more objective and more important to investors.

For the avoidance of the doubt, the already defaulted asset(s) from the underlying portfolio should not be included in the calculation of the forward-looking trigger since they are already included in the backward-looking triggers.

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.

As a general rule, if after the breach of a trigger it turns back into compliance, then the amortisation rule can turn back to non-sequential. This does not make the transaction more complex as each trigger is tested prior to each amortization date.
As an example, one or more sequential amortization period(s) may suffice to cure a trigger breach, by deleveraging the tranching. Another possible way to cure a breach would be via a downward revision of credit losses following the completion of the originator workout process.

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?

According to market practice, all the triggers have always been duly communicated to the investors through the bespoke investor reporting (i.e. outside the ESMA template that are provided in any case and that include a trigger section).

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.

At the time of the EBA report was published, the market participants understood that all the triggers mentioned in EBA report on SRT (article 57, recommendation 2 a) and b)) were eligible.

As a consequence, it's our strong expectation that they will be all eligible in the final draft RTS for the purpose of the article 26c)5, b) backward-looking and c) forward-looking.

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

It should be clear that this RTS should not apply to STS transactions that have been issued prior to the implementation of the RTS as those transactions may have rating backward looking trigger according to 26.c.5 (b) and forward-looking trigger according to 26.c.5 (c) different from what is proposed in the RTS but in compliance with the triggers proposed in EBA report on SRT.

We expect a grand-fathering article to be included in the final draft.