

## EBA finds Italian waiver for STS on-balance-sheet securitisation justified

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On 27 June 2024 the European Banking Authority (EBA) published an Opinion (the “**Opinion**”) addressed to CONSOB, the Italian Securities Commission, in response to the Authority’s notification of its decision to grant the permission referred to in Article 26e(10) of the Securitisation Regulation (Regulation (EU) 2017/2402), which specifies the eligibility criteria for high-quality collateral for on-balance-sheet securitisations to qualify as Simple, Transparent, and Standardised (STS).

The EBA has assessed the evidence provided by the CONSOB, namely the current classification of Italian credit institutions and the composition of the Italian synthetic securitisation market. On the basis of the evidence provided, the EBA is of the opinion that due to the objective impediments related to the credit quality step (CQS) assigned to Italy, the use of a partial waiver to allow collateral in the form of cash on deposit with the originator, or one of its affiliates, qualifying for CQS 3 is justified.

In particular, Article 26e(10) first subparagraph of the Securitisation Regulation requires that the credit protection referred to in Article 26e(8) point (c) of that Regulation meets the condition that the originator as protection buyer and the investor as protection seller should have recourse to high quality collateral in order to qualify as STS on-balance-sheet securitisation. By way of derogation from that provision and under the conditions set out in Article 26e (10) second subparagraph of that Regulation, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies as a minimum for credit quality step (CQS) 2. In accordance with Article 26e(10), third subparagraph of the Securitisation Regulation, under certain conditions the competent authorities may, after consulting the EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for credit quality step 3.

In light of the above, on 17 November 2023, the CONSOB, acting in its capacity of competent authority designated in Italy pursuant to Article 29(5) of the Securitisation Regulation, consulted the EBA on its intention to exercise the discretion set forth in Article 26e(10) third subparagraph of that Regulation.

In positively assessing the evidence provided by the Consob, the EBA noted that the waiver is aimed at allowing the originators to retain the collateral on their own balance sheet instead of having to deposit the collateral with a third party. According to the CONSOB, the alternatives

of providing high quality collateral in the form of (i) government bonds with a residual maturity of 3 months, or (ii) cash held at a third-party bank with a CQS of at least 3, are burdensome and complex for the Italian credit institutions due to the involvement of a third-party and complex documentation and make the transaction less cost efficient.

Furthermore, for cash held with a third-party bank, the originator will experience a reduced capital efficiency of the transaction due to the counterparty risk of the depository bank holding the cash collateral. Therefore, Italian credit institutions would be impaired with respect to foreign counterparties with negative results on their business capacity and risk management measures. This may negatively affect the market efficiency in terms of costs, volumes, and market continuity.

Following the adoption of the waiver, the CONSOB intends to review on a regular basis whether the conditions under Article 26e are still met as concerns the objective impediments due to the rating of the sovereign debt acting as a ceiling to the maximum rating that the Italian banks can achieve. 15. Should the Consob verify that in the future the objective impediments related to the credit quality step assigned to Italy do not exist anymore, appropriate measures should be taken in order to exclude the admissibility of collateral in the form of cash on deposit with the originator qualifying for CQS 3.

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