



EBA Consultation Paper on the Draft Regulatory Technical Standards on specifying the requirements for originators, sponsors and original lenders relating to risk retention

This document provides the response of the Dutch Securitisation Association ("DSA") on the EBA Consultation Paper dated 15 December 2017.

We welcome the opportunity to commend on this Consultation Paper.

DSA Background

The Dutch Securitisation Association was established in 2012 as representative body of the Dutch securitisation industry. Our membership includes issuers of securitisations both from the insurance and banking industry, and we are operating in close cooperation with the Dutch investor community.

Our purpose is to create a healthy and well-functioning Dutch securitisation market. We try to achieve this i.a. by providing a standard for documentation and reporting of Dutch RMBS and Consumer ABS transactions, promoting (in close cooperation with PCS) further standardisation and improvements in transparency, and active involvement in consultations about future regulation of the securitisation market.

Against this background, we would like to commend, on behalf of all Dutch issuers joined in the DSA, on the EBA Consultation Paper on the draft RTS on risk retention (individual DSA members may also provide their own comments).

Our comments

Question 1: Do you have any general comments on the draft technical standards?

We are missing further specification of Art.6(6), transactions based on an index.

Furthermore, we would like to comment on two articles not covered in the Questions:

-Art. 3(6) on entities not established with the sole purpose of securitising exposures: for clarity, a "broader business enterprise" should include enterprises only active in financial business.

-Art. 15(1)(b) on the choice of modalities (a)-(e): would it be possible for a retainer to change the modality during the life of a transaction ?

Question 2: Considering the mandate granted to ESMA in Article [7(3)] of the STS Regulation, do you believe that these technical standards should include disclosure-related provisions relevant to risk retention and, if so, do you agree with the scope of the obligations set out in the draft technical standards?

For initial disclosure Art. 15 has the right scope. For ongoing disclosure we will have to rely on the ESMA consultation.

Question 3: Do you believe that the provisions in Article 11 of the draft technical standards (relating to the measurement of retention for the undrawn amounts in exposures in the form of credit facilities) are needed?

There are no changes from the current wording of Art. 11 in Reg 625/2014. For the sake of clarity, the provisions should stay in.

Question 4: Do you consider the provisions of Article 12(3) of the draft technical standards to be useful and how would you see such a transaction working in practice, including following a default by the retainer under the secured funding arrangements?

There are no changes from the current wording in Reg 625/2014 (Art 12(2)).

In practice, the secured lender would not be in a different position with regard to the security unless the default of the retainer was correlated with a decline in quality of the exposures supporting the retained position.

Question 5: Do you believe that the provisions of Article 16 of the draft technical standards relating to assets transferred to the SSPE are adequate?

Yes, however the wording "proves" in Art. 16(3) to be replaced by "represents", since prove is very difficult to provide.

Question 6: Do you consider that the provisions of Article 17 of the draft technical standards relating to a change of retainer are adequate?

Yes.

Question 7: Should the draft technical standards contain any additional guidance on the operation of Article 14 of Regulation (EU) No 575/2013?

The reference to Art. 407 in Art. 14(2) has to be amended, since Art. 407 will be repealed.

Question 8: Do you consider that wording similar to that which is set out in Article 5(1)(a) of Commission Delegated Regulation (EU) No 625/2014 relating to revolving securitisations should be maintained in these technical standards?

No, since this wording seems to create confusion between "revolving securitisation" and "securitisation of revolving exposures".

Question 9: Do you consider that guidance is required on what constitutes a significantly lower performance for the purposes of Article [6(2)] of the STS Regulation and, if so, what would you propose?

No, since the real question is about the perceived "bad intent" of the originator and not the extent of the difference in performance.