



## **Joint Consultation Paper STS Securitisations-related sustainability disclosures**

This document provides the response of the Dutch Securitisation Association (“DSA”) on the Joint Consultation Paper dated 2 May 2022. We welcome the opportunity to react 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 as well as finance companies, 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, BTL and Consumer ABS transactions, promoting 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 provide our comments, on behalf of all Dutch issuers joined in the DSA, on the Joint Consultation Paper STS Securitisations-related sustainability disclosures (individual DSA members may also provide their own comments).

### **Our general comment**

*The fact that Securitisation had been absent from the SFDR was seen by many market participants as a missed opportunity. Securitisation can be an important financing tool for the green transition and without an SFDR reporting option, securitisations would have been at risk of being excluded from many (green) investment portfolios. So an effort to standardise securitisation inputs for SFDR calculations is highly appreciated.*

*We also understand the intention to mirror the requirements of the SFDR RTS as much as possible. However, these requirements have been developed for less granular asset categories than securitisations.*

*So requirements that are manageable at the level of an individual corporation, project or real estate investment (or a pool of a few of those investments), create massive reporting problems for a pool of thousands of mortgage or auto loans. It is often simply not possible (operationally and legally, within the limitations of the GDPR) to approach someone with a 5 year old mortgage loan and force this person to provide data on GHG emissions, energy consumption, waste, resource consumption or biodiversity of his residence.*

*For new loan production it might become possible in the future to start collecting certain additional sustainability datapoints.*

*In their Report on Developing a Framework for Sustainable Securitisations, the EBA has indicated that a Use of Proceeds rather than a Collateral Based approach should be applicable for securitisations.*

*So in our view especially for the reporting on the Collateral, EPC based information should be sufficient while for the Use of Proceeds more detailed reporting may be considered over time.*

*This is all subject to the following specific comments:*

*First of all, ESG rules and regulations should be equally applicable to all financial instruments and there should be no bias created compared to other types of instruments (Loans, Covered Bonds, MTNs etc) by requiring more stringent disclosure for securitisations*

*Secondly, in the proposed draft RTS on several occasions the assumption is made that originators are subject to SFDR reporting and thus that additional reporting is 'to constitute a minimal burden on the originator'.*

*And although we fully agree with the statement that consistency between the different reporting obligations is important, the assumption that SFDR already applies to all originators is in our opinion not correct and should not be used as an argument.*

*Thirdly, appreciating that this is more a question that should be directed to those responsible for drafting the Annex I to the Commission Delegated Regulation (EU) 2021/2139, we wonder why paragraph 7.1 (new-build properties) is excluded from the GAR calculations, as in the Netherlands financing is provided in the form of residential mortgage loans to consumers during the construction period (that can extend to two years).*

*And finally, we would like to point to a potential misunderstanding about STS and sustainability, caused by the title of your Consultation Paper. Sustainability is not an STS requirement, sustainability disclosure is optional under the STS criteria and reporting Principal Adverse Impacts under the SFDR framework is equally important to STS and non-STs transactions (and finally though not directly related to this Consultation: STS should not be a requirement for an EU Green Bond).*

*We would appreciate if you could confirm this in any (final) RTS.*

*Our answers on your questions should be interpreted in light of these general comments,*

## **Our answers on the questions**

Question 1: Do you agree that it is preferable to make disclosures available in a stand-alone document based on the SFDR template and consider any potential related adjustments to ESMA's disclosure RTS at a later stage?

*Answer:*

*Yes, we do agree with providing this information in a stand-alone document. Given the lack of granular data (see our general comment), the number of fields at loan level that can be filled to a reasonable extent with anything else than ND, would be limited to ECP data (as already included in the ESMA templates). Any other fields may be filled for new loans over time, but not or only scarcely for legacy loans.*

*Where providing loan level data for securitisations is already creating an unlevel playing field with other asset backed products, this would be even more the case if additional sustainability data would be required..*

*If and when the green transition is advanced to a stage where sufficient green assets are available to create collateral based sustainable securitisations however, providing additional data in the ESMA templates would be appropriate.*

Question 2: Do you agree that originators should disclose information in the principal adverse sustainability impacts statement, about whether and, if so, how principal adverse impacts on sustainability factors are taken into account in the originator's credit granting criteria? Do you agree that the disclosed information should rely on and cross-reference existing disclosures?

*Answer:*

*Yes, we do agree under the condition that existing disclosures can be used and no additional requirements are imposed. This will enhance transparency, although we wonder whether PAIs play a role in the actual, granting of residential mortgage loans.*

Question 3: Do you agree that originators should disclose information about whether, and if so how, PAI indicators on sustainability factors are considered in the selection of underlying exposures to be added/repurchased to/from the pool at the time of marketing or during the lifetime of the securitisation? Do you agree with the level of information required?

*Answer:*

*While we agree (Question 2) that this information is provided by the Originator, the relevance of providing this information for a Use of Proceeds based securitisation seems doubtful.*

*If it nevertheless would be imposed, for private transactions an exception would be required, since references to a final offering document (point 17 c) are not available.*

*And for transactions where sustainability factors are not actively considered, the disclosure requirements should be kept at a minimum.*

Question 4: Do you agree with the approach taken in the draft RTS which aims for full consistency with the draft SFDR RTS?

*Answer:*

*We do not agree. As we have stated in our general remarks, the SFDR STS is designed for "sizeable" assets like corporations and investment projects and*

*not for granular asset pools. For granular pools the level of detailed information required under the SFDR RTS is not appropriate.*

*We also would like to note that not all originators might be subject to SFDR reporting and the proposed reporting requirements under the RTS would indeed be additional.*

*Since all originators will be subject to the Taxonomy Regulation, full consistency with the Taxonomy would be more appropriate.*

Question 5: Do you agree with the inclusion of the new mandatory non-green asset ratio indicator for all asset classes covered by the RTS?

*Answer:*

*First of all we doubt whether the inclusion of 2 ratio's, one SFDR based and one Taxonomy based, will help transparency.*

*We also see major practical problems with the measurement of the (non-) green asset ratio..*

*An industry wide initiative by the Energy Efficient Mortgages NL hub (EEM NL) to determine the inputs for this ratio for Dutch mortgage loans has revealed a long list of interpretation issues for points 7.2-7.6 of Annex I to the Taxonomy, which also will be relevant for other jurisdictions and asset classes.*

*Just to name a few:*

- In the Dutch market mortgage lending takes place during the construction phase and we thus wonder if paragraph 7.1 should also be included*
- Guidance on what determines a home improvement or major renovation is missing*
- Transition from EPBD III to EPBD IV changes the definitions*
- What is the starting point of measuring a 30% improvement ?*
- Is just the loan part financing the improvement considered "green" or can all loans parts be considered "green" in case of a sustainable home improvement ?*

Question 6: Do you agree with the proposed PAI indicators for residential real estate?

*Answer:*

*For the (non-)GAR we refer to our answer on Question 5.*

*The Dutch securitisation industry has also taken a deep dive in the definition of the exposure to energy inefficient real estate assets. Again many practical problems were encountered, like:*

- the limited (in time) availability of legacy EPC's*
- EPC's availability for apartment blocks, but not for apartments (individual units).*
- Differences between an EPC at the time the building license is granted and at the time of completion of the construction*

*We do not agree with the additional environmental indicators for existing loans, since these data have not been collected in the past and reporting cannot (legally) be imposed retroactively (even if the data could be constructed). So anything on top of the ECP's will be hard to provide. We also*

*see significant problems in using the definitions of the 5 indicators, since the indicators have been originally defined for large projects, factories etc., so we would strongly recommend to redefine them for retail assets (as an example Waste: is a garbage bin with 2 compartments in a 40 square meter apartment sufficient to qualify as “equipped with facilities for waste sorting”?)*

Question 7: Do you propose to add any additional specific indicators for this asset class?

*Answer:*

*To the extent that additional indicators would be more suitable for retail assets, it would be welcomed, but the same could be achieved by changing the definitions/descriptions of the proposed indicators.*

*We also would like to point to the fact that it will be very difficult to develop indicators that can be applied equally in all European jurisdictions since local regulations can differ significantly.*

Question 8: Do you agree with aligning the PAI indicators for motor vehicles with the screening criteria for motor vehicles established in the Taxonomy Regulation?

*Answer:*

*We see comparable issues as discussed for retail mortgage loans under Questions 5 and 6.*

Question 9: Do you agree with expanding the indicators to potentially cover these additional aspects at a later stage?

*Answer:*

*The same comments as for Questions 5, 6 and 8 apply.*

Question 10: Do you agree with applying the mandatory indicators for social and employee, respect for human rights, anti-corruption and anti-bribery matters to the manufacturer of the vehicle?

*Answer:*

*Applying these to the loan originator or SSPE would not make sense, but we wonder how an independent loan originator would be able to collect this information for all the brands and models he is financing.*

*Another question is how these indicators should be applied for second hand cars: based on the situation at the time of manufacturing the second hand car or based on the current social environment at the manufacturer.*

*In all these situations a loan/lease originator would be relying entirely on the information provided by other parties in the value chain (such as the manufacturers of the vehicles) and therefore cannot and should not be held liable for the accuracy and completeness of this information.*

Question 11: Do you propose to add any additional specific indicators for this asset class?

*Answer:*

*No, this seems to be more than sufficient.*

Question 12: Would you agree with using the SFDR real estate PAI indicators for commercial real estate securitisation?

*Answer:*

*Since the indicators in the RTS seem to be designed for commercial real estate rather than retail real estate, we would be inclined to agree.*

*We have not looked into the practical implications in detail; further guidance on certain definitions may be required.*

Question 13: Would you consider it useful to provide originators of securitisations consisting of corporate debt including trade receivables a template to disclose standardised information on principal adverse impacts on sustainability factors?

*Answer:*

*That would be useful indeed.*

Question 14: Would you agree with applying the draft SFDR RTS PAI indicators to exposures to corporates?

*Answer:*

*We do agree that the general criteria for investments in investee companies should apply for corporates as well.*

Question 15: Would you agree with applying the proposed application of the same draft SFDR RTS PAIs focusing on the seller in the case of securitisation consisting of trade receivables?

*Answer:*

*We do agree that in case of full recourse to the seller indeed the PAIs of the seller should be applied.*

Question 16: Would you agree with adopting the proposed proportionate approach to SME loan?

*Answer:*

*We do appreciate that a proportionate approach is taken, but still see data availability and definition issues (like determining the enterprise value of an SME and the GHG emissions of an SME).*

Question 17: Would you propose to add any additional specific indicators for these three types of securitisation?

*Answer:*

*No.*

Question 18: Would you agree that there are no appropriate PAI indicators for securitisations backed by consumer loans or by credit card debt? If not, which PAI indicators would you propose for these loan types?

*Answer:*

*We could imagine that certain social criteria w.r.t. underwriting standards would apply to the Originators of those assets.*

Question 19: Do you consider that it would be useful to develop standardised PAI indicators on sustainability factors for other types of securitisation?

*Answer:*

*We notice that ABCP is absent from the proposals. Investors in ABCP would look through to the sponsor, so we could imagine that the indicators applicable to the sponsors would be applicable to the ABCP, more or less comparable to what applies to a Covered Bond.*

*We also would like to emphasize (again) the difference between private and public securitisations. Private securitisations would typically provide transaction specific data as agreed between the originator and the investor, so standardised templates, be it for general loan level data or for sustainability data, would not be relevant for most private transactions.*

*But this is a discussion between the industry and the regulators that goes beyond the specific purpose of this consultation.*