



EBA Consultation Paper Guidelines on the STS criteria for on-balance-sheet securitisation under Article 26a(2) of Regulation (EU) 2017/2402 of the European Parliament and the Council

This document provides the response of the Dutch Securitisation Association (“DSA”) on the EBA Consultation Paper dated 21 April 2023. 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 EBA Consultation Paper Guidelines on the STS criteria for on-balance-sheet securitisation (individual DSA members may submit their own responses).

Our comments

General comment

We notice that there are no grandfathering arrangements in place. This may imply that some existing STS transactions (both true sale and on balance sheet) may no longer qualify as STS, while they had claimed STS status in the past on the basis of good faith and the knowledge available at the time. In our view this is undesirable.

Requirements related to simplicity (Article 26b)

Requirements on the originator (Article 26b(1))

Q1. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, should additional interpretations of the term ‘no

less stringent policies' or 'comparable exposures' be provided and if yes, how are these terms understood in securitisation practice?

We do agree.

Origination as part of the core business activity of the originator (Article 26b (2))

Q2. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Exposures held on the balance sheet (Article 26b (3))

Q3. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We would like to see more clarity about different group structures, especially where non-EU entities may be involved

No double hedging (Article 26b(4))

Q4. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

It should be stated explicitly that assets that are included in (true sale) securitisations that are fully retained or where there is no credit risk transfer (only senior tranches sold), should not be regarded as "hedged" for the purpose of this Article.

Credit risk mitigation rules (Article 26b(5))

Q5. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Representations and warranties (Article 26b (6))

Q6. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We propose to distinguish between the date of inclusion and the cut-off date, since it looks like they are deemed to be the same, which is not in line with reality. What matters is the day the protection starts, so maybe the best solution is to replace "date of inclusion" by "date the protection starts".

Eligibility criteria, active portfolio management (Article 26b(7))

Q7. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b (8))

Q8. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

No resecuritisation (Article 26b(9))

Q9. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Underwriting standards, originator's expertise (Article 26b (10))

Q10. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11))

Q11. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

If the accounting principles include IFRS stage 2 assets, this may have a serious impact on transactions. Can you please clarify whether this is the case or not ?

At least one payment made (Article 26b (12))

Q12. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The definition "rental, principal, interest or any other payment specified in the contract" is very narrow. For the purpose of preventing fraud any payment between borrower and debtor should be sufficient.

Requirements related to standardisation (Article 26c)

Compliance with risk retention requirements (Article 26c(1))

Q13: Do you agree with the interpretation provided? Should additional aspects be clarified

We do agree.

Appropriate mitigation of interest and currency risks (Article 26c(2))

Q14: Do you agree with the interpretation provided? Should additional aspects be clarified? More specifically, is there a need to further clarify the term 'appropriate mitigation' of interest-rate and currency risks and further specify any mitigation measures? Please elaborate.

We do agree.

Referenced interest payments (Article 26c(3))

Q15: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Q16: On reference rates: Is the interpretation on this term deemed helpful for the interpretation of this requirement? Please provide more information on the referenced interest payments used in relation to the transaction in your entity's practice.

The interpretation is sufficiently helpful

Q17: On complex formulae or derivatives: Is the guidance provided sufficient to clarify the requirement or should the guidance be extended? In case of the latter, please provide suggestions on how to define complex formulae and derivatives.

The guidance provided is sufficient.

Requirements after enforcement notice (Article 26c(4))

Q18: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Allocation of losses and amortisation of tranches (Article 26c(5))

Q19: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Can you please clarify why 'significant losses' should be understood to refer to two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction.

Early amortisation provisions/triggers for termination of revolving period (Article 26c(6))

Q20: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Transaction documentation (Article 26c(7))

Q21: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Servicer's expertise and servicing requirements (Article 26c(8))

Q22: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Reference register (Article 26c(9))

Q23: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

"At all times" requires further specification. This cannot be a permanent 24/7 process.

Timely resolution of conflicts between investors (Article 26c(10))

Q24: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

It should be specified that this refers to external investors and not the originator as holder of the senior notes or retention.

Requirements relating to transparency (Article 26d)

Data on historical default and loss performance (Article 26d(1))

Q25: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Some additional clarification on (the similarity of) corporate/SME exposures might be welcome, since these are the assets mainly seen in OBS transactions.

Verification of a sample of the underlying exposures (Article 26d(2))

Q26: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The “check of the originator’s database or IT systems against the transaction documentation and the credit protection agreement” should be better explained. Is it necessary to check each and every loan agreement ?

Q27: In particular, do you agree with the interpretation of the scope of the verification, in particular with the specification on how the size of the representative sample should be determined? Should additional aspects/parameters for determining the sample be clarified? Please substantiate your reasoning.

We do agree.

Liability cashflow model (Article 26d(3))

Q28: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We would like to receive confirmation that it is appreciated that a model for a synthetic securitisation contains a limited number of cashflows as compared to a model for a cash transaction and as such is hard to qualify as a cash flow model.

Environmental performance and sustainability disclosures of the assets (Article 26d(4))

Q29: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We would like to receive clarification which Principal Adverse Impacts exactly are referenced. Can the draft RTS sustainability indicators for STS securitisations be used for this purpose ?

Compliance with disclosure requirements under Article 7 (Article 26d(5))

Q30: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Criteria specific for on-balance-sheet securitisation

Credit events covered under the credit protection agreement (Article 26e(1))

Q31: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Could you please clarify what will happen with a credit event that has been cured; will the exposure be allowed to stay in the pool, should it be removed, or are both situations possible.

Credit protection payments (Article 26e(2))

Q32: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Q33: Do you agree with the interpretation of the determination of interim credit protection payments? Do you agree with the interpretation of the criterion with respect to the 'higher of' condition? Should the interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

We do agree.

Debt workout and credit protection premiums (Article 26e(3))

Q34: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Third-party verification agent (Article 26e(4))

Q35: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The text about the sample seems to refer to the original pool cut; this does not give any insight in how the sampling in case of defaults should be handled.

Early termination events by originator (Article 26e(5))

Q36: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do not agree with the suggested calculation of the WAL to the extent that it excludes prepayment assumptions.

Q37: Do you consider necessary to provide interpretation of the term 'breach by the investor of any material obligation'? Please provide information on such material breaches applied in securitisation practice.

No, that is not considered necessary.

Early termination events by investor (Article 26e(6))

Q38: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, do you consider it necessary to provide interpretation of the term 'material breach' of contractual obligations by the originator? Please substantiate your reasoning.

We do agree.

Synthetic excess spread (Article 26e(7))

Q39: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Types of credit protection agreements (Article 26e(8))

Q40: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Specific type of credit protection agreement (Article 26e(9))

Q41: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

We do agree.

Requirements for recourse to high-quality collateral (Article 26e(10))

Q42: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

It would help if more guidance could be given how the credit quality step 3 mapping would be applied in case of a mix of long and short term and /or multiple CQS scores.

STS criteria not specified above (i.e. early termination event by investor (Article 26e(6)) etc.)

Q43: Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS requirements and their aspects that require such further specification. Please substantiate your reasoning.

We do agree.

Amending guidelines

Q44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.

The same comments apply for as for Q12 and Q29.

Q44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be clarified? Please substantiate your reasoning.

The same comments apply for as for Q12 and Q29.