

EBA/RTS/2018/01

31 July 2018

EBA Final Draft Regulatory Technical Standards

Specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6(7) of Regulation (EU) 2017/2402

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1. Executive Summary

Regulation (EU) [2017/2402]¹ (the ‘Securitisation Regulation’) sets out requirements concerning the retention of a material net economic interest and other requirements related to exposures to securitisations and mandates the EBA to prepare, in close cooperation with the European Securities and Market Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), draft Regulatory Technical Standards in this area. The Securitisation Regulation requires the EBA to submit the draft Regulatory Technical Standards to the Commission by 18 July 2018.

Main features of the RTS

The draft Regulatory Technical Standards, in accordance with Article 6(7) of the Securitisation Regulation, should specify in greater detail the risk retention requirement and, in particular, the matters listed in that paragraph (including the modalities of retaining risk, the measurement of the level of retention, the prohibition of hedging or selling the retained interest and the conditions for retention on a consolidated basis).

The EBA drafted the Regulatory Technical Standards with a view to ensuring that, to the extent feasible, the rules set out in Commission Delegated Regulation (EU) No 625/2014², which was developed under Regulation (EU) No 575/2013³, continue to apply. Considering, however, the scope of the new mandate, certain provisions in Commission Delegated Regulation (EU) No 625/2014 are not reflected in the new Regulatory Technical Standards. Such provisions, which were deemed to fall outside the realm of the new mandate, include Chapter IV (*Due diligence requirements for institutions becoming exposed to a securitisation position*), Article 21 (*Policies for credit granting*) and Article 23 (*Disclosure of materially relevant data*) of Commission Delegated Regulation (EU) No 625/2014. Generally, in respect of disclosure, only provisions relating to the initial disclosure of issues relating to risk retention were included in the new Regulatory Technical Standards, as the further specification of ongoing disclosure in terms of issues relating to risk retention is covered by the mandate set out in Article 7(3) of the Securitisation Regulation. Other provisions carried over from Commission Delegated Regulation (EU) No 625/2014 include guidance on the operation of Article 14 of Regulation (EU) No 575/2013 regarding the application of certain requirements on a consolidated basis.

Furthermore, the draft Regulatory Technical Standards contain provisions which are new compared to Commission Delegated Regulation (EU) No 625/2014. The main new provisions relate to the

¹ Regulation of the European Parliament and the Council [2017/2402] laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

² Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk.

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

circumstances when an entity shall be deemed not to have been established or to operate for the sole purpose of securitising exposures, the prohibition on adverse selection set out in Article 6(2) of the Securitisation Regulation and the change of the retainer.

Finally, certain provisions in the draft Regulatory Technical Standards, which were carried over from Commission Delegated Regulation (EU) No 625/2014, were subject to amendment, whether for the purposes of reflecting the new requirements set out in the Securitisation Regulation or for the sake of clarity.

The Regulatory Technical Standards have been drafted in such a way as to (i) ensure the alignment of interest (risks) and information between the securitisation sponsors, originators and original lenders and the investors buying the securitisation positions and (ii) facilitate the implementation of the risk retention requirements by the sponsor, originator or original lender.

Next steps

The final draft RTS will be submitted to the Commission for adoption. Following the submission, the RTS will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

2. Background and rationale

1. Securitisation markets were affected during the financial crisis by what are termed 'misaligned incentives' or 'conflicts of interest'. These terms refer to situations where certain participants in the securitisation chain have incentives to engage in behaviour which, while furthering their own interests, is not in the interests of, and may be detrimental to, other participants in the securitisation chain or the broader efficient functioning of the market. These misalignments and conflicts are generally thought to have contributed to the loss of investor confidence in securitisation products and are also seen as a barrier to the recovery of the market.
2. In order to address such concerns, Article 405 of Regulation (EU) No 575/2013 set out the requirement for an institution, other than when acting as an originator, a sponsor or an original lender, to be exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the institution that it will retain, on an ongoing basis, a material net economic interest which, in any event, shall not be less than 5 %. A material net economic interest could be retained under any of the options listed in that Article.
3. Article 410 of Regulation (EU) No 575/2013 mandated the EBA to develop draft regulatory technical standards to specify in greater detail, amongst other things, the retention requirement set out in Article 405 of that Regulation. Based on the draft submitted by the EBA, the Commission adopted Commission Delegated Regulation (EU) No 625/2014.
4. Following the adoption of Commission Delegated Regulation (EU) No 625/2014, the Securitisation Regulation was enacted. The latter Regulation lays down a general framework for securitisation. It defines securitisations and establishes due diligence, risk retention and transparency requirements for parties involved in securitisations, in addition to providing a framework for simple, transparent and standardised securitisation.
5. Article 6 of the Securitisation Regulation sets out the requirements for risk retention. Those requirements are broadly consistent with those set out initially by Article 405 of Regulation (EU) No 575/2013. In accordance with Regulation (EU) 2017/2401⁴, Part Five of Regulation (EU) No 575/2013, which included Article 405 of that Regulation, will be deleted and all references to Part Five of Regulation (EU) No 575/2013 shall, in that Regulation, be read as references to Chapter 2 of Regulation (EU) 2017/2401.
6. In accordance with Article 6(7) of the Securitisation Regulation, the EBA, in close cooperation with the European Securities and Market Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), is required to develop draft regulatory technical standards to specify in greater detail the risk retention requirement, in particular with regards to:

⁴ Regulation of the European Parliament and of the Council [2017/2401] amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

- (a) the modalities for retaining risk pursuant to paragraph 3 of Article 6 of the Securitisation Regulation, including the fulfilment through a synthetic or contingent form of retention;
 - (b) the measurement of the level of retention referred to in paragraph 1 of Article 6 of the Securitisation Regulation;
 - (c) the prohibition of hedging or selling the retained interest;
 - (d) the conditions for retention on a consolidated basis in accordance with paragraph 4 of Article 6 of the Securitisation Regulation;
 - (e) the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 6 of Article 6 of the Securitisation Regulation.
7. This report sets out the final draft Regulatory Technical Standards prepared by the EBA pursuant to the mandate set out in Article 6(7) of the Securitisation Regulation, which replaces the previous mandate set out in Article 410 of Regulation (EU) No 575/2013. To the extent relevant and appropriate, the proposal draws upon the existing provisions of Commission Delegated Regulation (EU) No 625/2014, which is going to be partially repealed and replaced with the enactment of the new Delegated Regulation and will only remain applicable to certain securitisations the securities of which were issued before 1 January 2019.

3. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../201.

of ...

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for originators, sponsors and original lenders relating to risk retention and partially repealing Commission Delegated Regulation (EU) No 625/2014

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/2402 of the European Parliament and of the Council⁵, and in particular the third subparagraph of Article 6(7) thereof,

Whereas:

- (1) The retention of a material net economic interest aims at aligning interests between the parties respectively transferring and assuming the credit risk of the securitised exposures. Where an entity exclusively securitises assets consisting of its own liabilities, alignment of interests is established automatically for that securitisation. Where it is clear that the credit risk remains with the originator, the retention of interest by the originator is unnecessary and would not improve on the pre-existing position.
- (2) It is appropriate to clarify when an exposure to a securitisation (securitisation position) is deemed to occur in relation to certain specific instances in which entities set out in Article 2(12) of Regulation (EU) 2017/2402, other than when acting as originator, sponsor or original lender, may become exposed to the credit risk of a securitisation position, including when such entities act as a counterparty to a derivative instrument with the securitisation transaction, as a hedge counterparty with the securitisation transaction, as a liquidity facility provider to the transaction and when such entities hold securitisation positions in the trading book in the context of market making activities.
- (3) In re-securitisation transactions credit risk transfer occurs at the level of the first securitisation of assets and at the second 'repackaged' level of the transaction. The two levels of the transaction, and the two corresponding instances of credit risk transfer, are independent with respect to the requirements set out in this Regulation. Institutional investors should verify compliance with the retention requirement at each level of the transaction to which they become directly exposed to transferred credit risk. Therefore, if an institutional investor becomes exposed only to the second 'repackaged' level of the transaction, compliance with the retention requirements needs to be verified by that institutional investor only in relation to the second level of the transaction. Within the same re-securitisation transaction, those institutional investors who only became exposed to the first level of securitisation of exposures should verify compliance with the retention requirements only in relation to the first level of securitisation in the transaction.

⁵ Regulation (EU) [XXX/201X] of the European Parliament and of the Council of [...] laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L [xxx], [date], p. [x]).

- (4) Pursuant to Article 14(2) of Regulation (EU) No 575/2013, entities established in third countries which are included in the consolidation in accordance with Article 18 of Regulation (EU) No 575/2013, but do not directly fall within the scope of application of the additional risk weights, should, in limited circumstances, such as for exposures held in the trading book for the purpose of market-making activities, not be deemed to be in breach of Article 5 of Regulation (EU) 2017/2402. Institutions should not be considered to be in breach of that Article where any such exposures or positions in the trading book are not material and do not form a disproportionate share of the trading activities, provided that there is a thorough understanding of the exposures or positions, and that formal policies and procedures have been implemented which are appropriate and commensurate with that entity's and the group's overall risk profile.
- (5) As there may be multiple actors involved in a securitisation (such as originator, sponsor or original lender), and it is also possible there are multiple entities qualifying as originators, sponsors or original lenders, rules specifying in greater detail the application of the retention requirement should include rules for where there are multiple of those actors, which provide further details regarding the different retention options. Further, it is equally necessary to clarify topics which relate to the interaction of the various actors in a securitisation, which include how to measure the retention requirement at origination and on an on-going basis, and how to apply the exemptions to Article 6(1) of Regulation (EU) 2017/2402. Furthermore, it is also necessary to clarify how to determine whether an entity has been established or operates for the sole purpose of securitising exposures and thus cannot act as a retainer, as required by the last subparagraph of Article 6(1) of Regulation (EU) 2017/2402, so as to clarify the conditions under which an entity can be considered to be an originator.
- (6) Points (a) to (e) of Article 6(3) of Regulation (EU) 2017/2402 lay down various options pursuant to which the required retention of interest may be fulfilled. This Regulation further clarifies ways in which to comply with each of those options.
- (7) The retention of an interest could be achieved through a synthetic or contingent form of retention, provided that such methods fully comply with one of the options laid down in points (a) to (e) of Article 6(3) of Regulation (EU) 2017/2402, to which the synthetic or contingent form of retention can be equated, and provided that the use of such methods is disclosed in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation.
- (8) Hedging of the material net economic interest should be prohibited where it undermines the purpose of the retention requirement as it removes the exposure of the retainer to the credit risk of the retained securitisation positions or the retained exposures. Hedging should therefore only be allowed where it hedges the retainer against risks other than the credit risk of the retained securitisation positions or retained exposures but also where the hedging is undertaken prior to the securitisation as a legitimate and prudent element of credit granting or risk management and does not create a differentiation between the credit risk of the retained securitisation positions or securitised exposures and the securitisation positions or exposures transferred to investors for the benefit of the retainer. Further, there are securitisations where disclosure to investors in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation refers to a retained interest higher than the material net economic interest required to be retained on an ongoing basis pursuant to Article 6 of Regulation (EU) 2017/2402. In such cases, where compliance of such securitisations with the requirements of Article 6 of Regulation (EU) 2017/2402 and the requirements of this Regulation is ensured with regards to the 5% retention requirement and the retainer has only committed to retain the minimum material net economic interest of 5%, hedging should not be prohibited for any retained interest in excess of that percentage.
- (9) In order to ensure the ongoing retention of the material net economic interest, retainers should ensure that there is no embedded mechanism in the securitisation structure by which

the retained material net economic interest measured at origination would necessarily decline faster than the interest transferred. Similarly, the retained material net economic interest should not be prioritised in terms of cash flows to preferentially benefit from being repaid or amortised such that it would fall below 5 % of the ongoing nominal value of the tranches sold or exposures securitised. Moreover, the credit enhancement provided to the investor assuming exposure to a securitisation position should not decline disproportionately to the rate of repayment on the underlying exposures.

- (10) Initial disclosure to investors on the level of the retention commitment and of all materially relevant data, including on the credit quality and performance of the underlying exposures, is necessary for effective due diligence on the securitisation positions. Disclosed data should include details of the identity of the retainer, the retention option chosen, the retained material net economic interest upon securitisation and the commitment to retain a material net economic interest on an on-going basis. The initial disclosure of the identity of the retainer should be considered as evidence of the decision of the eligible retainers with regard to which entity will retain the material net economic interest in respect of the respective securitisation. Where exemptions provided for in paragraph 5 or 6 of Article 6 of Regulation (EU) 2017/2402 are applicable, for the respective securitisations there should be explicit disclosure of the fact that the retention requirement does not apply and of the reason for the disapplication of the retention requirement.
- (11) While recital 11 of Regulation (EU) 2017/2402 clarifies that the prohibition of Article 6(2) of that Regulation does not apply where the originators clearly communicate the ex ante higher than average credit risk profile of selected assets to the investors, potential investors and, upon request, competent authorities, where there is no such communication, rules should be established to clarify when that Article will be considered to have been breached. Further, given that, based on the same recital, Article 6(2) will be considered to be breached only where such breach is intentional, the rules for assessing whether that Article is breached should be based on whether it could reasonably have been expected that the performance of the assets would not be significantly different.
- (12) Where the comparison referred to in Article 6(2) of Regulation (EU) 2017/2402 is not possible because all of the comparable assets, (for example all non-performing mortgage loans), are transferred to the SSPE (and, in the example, no more non-performing mortgage loans are held on the balance sheet of the originator), such securitisation should be considered as meeting the requirements of Article 6, provided this is clearly communicated to the investors, as this would still allow investors' to carry out their risk assessment.
- (13) Where insolvency proceedings have been commenced in respect of the retainer or the retainer is, due to the transfer of a direct or indirect holding in the retainer or for legal reasons beyond its control and beyond the control of its shareholders, unable to continue acting as retainer, it should be possible for the remaining retained material net economic interest, instead, to be retained by another entity which should comply with all requirements of Article 6 of Regulation (EU) 2017/2402 and this Regulation as at the date when such entity becomes the retainer provided the intention of the change of retainer is to continue to ensure the quality of the securitisation transaction and its attractiveness to investors.
- (14) Under the previous regulatory regime, aspects of risk retention in securitisation were covered by Article 410 of Regulation (EU) 575/2013 and by extension, Commission Delegated Regulation (EU) No 625/2014⁶. As Regulation (EU) 575/2013 has now been amended with regard to these Articles by Regulation (EU) 2017/2401, and the requirements for risk retention are now set out in Article 6 of Regulation (EU) 2017/2402, Commission Delegated Regulation (EU) No 625/2014 should be accordingly repealed.

⁶ Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (OJ L 174, 13.06.2014, p. 16).

- (15) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (16) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁷,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

- (a) ‘contingent form of retention’ means the retention of a material net economic interest through the use of guarantees, letters of credit and other similar forms of credit support ensuring an immediate enforcement of the retention;
- (b) ‘excess spread’ means finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses;
- (c) ‘retainer’ means the entity acting as originator, sponsor or original lender which retains a material net economic interest in the securitisation in accordance with Articles 6(1) and 6(3) of Regulation (EU) 2017/2402;
- (d) ‘synthetic form of retention’ means the retention of a material net economic interest through the use of derivative instruments;
- (e) ‘vertical tranche’ means an exposure which exposes the holder to the credit risk of each issued tranche of a securitisation transaction on the same pro-rata basis.

Article 2

Particular cases of exposure to the credit risk of a securitisation position

1. Where an entity set out in Article 2(12) of Regulation (EU) 2017/2402 acts as a credit derivative counterparty or as a counterparty providing a hedge or as a liquidity facility provider with regard to a securitisation transaction, it shall be deemed to become exposed to the credit risk of a securitisation position when the derivative, the hedge or the liquidity facility assumes the credit risk of the securitised exposures or the securitisation positions.
2. For the purposes of Articles 5 and 6 of Regulation (EU) 2017/2402, where a liquidity facility complies with the conditions specified in point (b) of Article 248(1) of Regulation (EU) No 575/2013 for applying a conversion factor of 0 %, the liquidity

⁷ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

provider shall not be deemed to become exposed to the credit risk of a securitisation position.

3. In the context of a re-securitisation or a securitisation with multiple discrete underlying transactions, an entity set out in Article 2(12) of Regulation (EU) 2017/2402 shall be deemed to become exposed to the credit risk only of the individual securitisation position at the respective level at which it is assuming exposure.
4. Institutions shall not be deemed to be in breach of Article 5 of Regulation (EU) 2017/2402 in accordance with Article 14(2) of Regulation (EU) No 575/2013 on a consolidated basis provided that the following conditions are met:
 - (a) the entity which holds the securitisation positions is established in a third country and is included in the consolidated group in accordance with Article 18 of Regulation (EU) No 575/2013;
 - (b) the securitisation positions are held in the trading book of the entity referred to in point (a) for the purposes of market making activities;
 - (c) the securitisation positions are not material with respect to the overall risk profile of the trading book of the group referred to in point (a) and do not form a disproportionate share of the trading activities of the group.

Article 3

Retainers of a material net economic interest

1. The retained material net economic interest shall not be split amongst different types of retainers. The requirement to retain a material net economic interest shall be fulfilled in full by any of the following:
 - (a) the originator or multiple originators;
 - (b) the sponsor or multiple sponsors;
 - (c) the original lender or multiple original lenders.
2. Where the securitised exposures are created by multiple originators, the retention requirement shall be fulfilled by each originator on a pro rata basis, with reference to the securitised exposures for which it is the originator.
3. Where the securitised exposures are created by multiple original lenders, the retention requirement shall be fulfilled by each original lender on a pro rata basis, with reference to the securitised exposures for which it is the original lender.
4. By way of derogation from paragraphs 2 and 3, where the securitised exposures are created by multiple originators or multiple original lenders, the retention requirement may be fulfilled in full by a single originator or original lender provided that either of the following conditions is met:
 - (a) the originator or original lender has established and is managing the ABCP programme or other securitisation;
 - (b) the originator or original lender has established the ABCP programme or other securitisation and has contributed more than 50 % of the total securitised

exposures measured by nominal value at origination.

5. Where the securitised exposures have been sponsored by multiple sponsors, the retention requirement shall be fulfilled by either:
 - (a) the sponsor whose economic interest is most appropriately aligned with investors as agreed by the multiple sponsors on the basis of objective criteria including the fee structures, the involvement in the establishment and management of the ABCP programme or other securitisation and exposure to credit risk of the securitisations;
 - (b) by each sponsor proportionately to the number of sponsors.
6. For the purposes of Article 6 of Regulation (EU) 2017/2402, in assessing at origination of the relevant securitisation whether an entity has been established or operates for the sole purpose of securitising exposures, appropriate consideration shall be given to each of the following principles:
 - (a) the entity has a business strategy and the capacity to meet payment obligations consistent with a broader business enterprise and involving material support from capital, assets, fees or other income available to the entity, relying neither on the exposures being securitised by that entity, nor on any interests retained or proposed to be retained in accordance with this Regulation, as well as any corresponding income from such exposures and interests;
 - (b) the responsible decision makers have the required experience to enable the entity to pursue the established business strategy, as well as an adequate corporate governance arrangement.

Article 4

Fulfilment of the retention requirement through a synthetic or contingent form of retention

1. The retention requirement may be fulfilled in a manner equivalent to one of the options set out in Article 6(3) of Regulation (EU) 2017/2402 through a synthetic or contingent form of retention where each of the following conditions is met:
 - (a) the amount retained is at least equal to the requirement under the option to which the synthetic or contingent form of retention can be equated;
 - (b) the retainer has explicitly disclosed in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation that it will retain, on an ongoing basis, a material net economic interest in that manner, including details of the synthetic or contingent form of retention, the methodology used in its determination and its equivalence to one of those options.
2. Where an entity other than a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as client funds as referred to in

Article 16(9) of Directive 2014/65/EU of the European Parliament and of the Council⁸.

Article 5

Retention option (a): the retention of not less than 5% of the nominal value of each of the tranches sold or transferred to investors

1. A retention of not less than 5 % of the nominal value of each of the tranches sold or transferred to investors as referred to in point (a) of Article 6(3) of the Regulation (EU) 2017/2402 may also be achieved by any one of the following:
 - (a) retention of at least 5 % of the nominal value of each of the securitised exposures, provided that the credit risk of such exposures ranks *pari passu* with or is subordinated to the credit risk securitised for the same exposures. In the case of a revolving securitisation, as defined in Article 2(16) of Regulation (EU) 2017/2402, this may be achieved through retention of the originator's interest provided that such originator's interest was for at least 5% of the nominal value of the securitised exposures and ranked *pari passu* with or subordinated to the credit risk that has been securitised with respect to those same exposures;
 - (b) the provision, in the context of an ABCP programme, of a liquidity facility which may be treated as a senior securitisation position for the purposes of determining capital requirements in accordance with Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013, where the following conditions are fulfilled:
 - (i) the liquidity facility covers 100 % of the share of the credit risk of the securitised exposures that is being funded by the respective ABCP programme;
 - (ii) the liquidity facility covers the credit risk for as long as the retainer has to retain the material net economic interest by means of such liquidity facility for the relevant securitisation transaction;
 - (iii) the liquidity facility is provided by the originator, sponsor or original lender in the securitisation transaction;
 - (iv) the investors becoming exposed to such securitisation have been given access to appropriate information within the initial disclosure to enable them to verify that points (i), (ii) and (iii) are complied with;
 - (c) retention of a vertical tranche which has a pro-rata basis of not less than 5 % of the total nominal value of all the tranches sold or transferred to investors.

Article 6

Retention option (b): the retention of the originator's interest of not less than 5% of the nominal value of each of the securitised exposures

A retention as referred to in point (b) of Article 6(3) of Regulation (EU) 2017/2402 may be achieved by retaining at least 5 % of the nominal value of each of the securitised exposures, provided that the retained credit risk of such exposures ranks *pari passu* with or is subordinated to the credit risk securitised for the same exposures.

⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Article 7

Retention option (c): the retention of randomly selected exposures equivalent to not less than 5% of the nominal value of the securitised exposures

1. The pool of at least 100 potentially securitised exposures from which retained and securitised exposures are randomly selected, referred to in point (c) of Article 6(3) of Regulation (EU) 2017/2402, shall be sufficiently diverse to avoid any excessive concentration of the retained interest. When carrying out the selection of retained exposures, the retainer shall take appropriate quantitative and qualitative factors into account in order to ensure that the distinction between retained and securitised exposures is random. The retainer of randomly selected exposures, shall take into consideration, where appropriate, factors such as vintage, product, geography, origination date, maturity date, loan to value ratio, property type, industry sector, and outstanding loan balance when selecting exposures.
2. The retainer shall not, designate different individual exposures at different points in time, unless this is necessary to fulfil the retention requirement in relation to a securitisation in which the securitised exposures fluctuate over time, either due to new exposures being added to the securitisation or to changes in the level of the individual securitised exposures..

Article 8

Retention option (d): the retention of the first loss tranche

1. The retention of the first loss tranche in accordance with point (d) of Article 6(3) of Regulation (EU) 2017/2402 shall be fulfilled by either on-balance sheet or off-balance sheet positions and may also be fulfilled by any of the following:
 - (a) provision of a contingent form of retention as referred to in point (a) of Article 1 or of a liquidity facility in the context of an ABCP programme, which fulfils the following criteria:
 - (i) it covers at least 5 % of the nominal value of the securitised exposures;
 - (ii) it constitutes a first loss position in relation to the securitisation;
 - (iii) it covers the credit risk for the entire duration of the retention commitment;
 - (iv) it is provided by the originator, sponsor or original lender in the securitisation;
 - (v) the investors becoming exposed to such securitisation have been given access within the initial disclosure to appropriate information to enable them to verify that points (i), (ii), (iii) and (iv) are complied with;
 - (b) overcollateralisation, as referred to in Article 242(9) of Regulation (EU) No 575/2013, if that overcollateralisation acts as a 'first loss' retention of not less than 5 % of the nominal value of the securitised exposures.
 2. Where the first loss tranche exceeds 5 % of the nominal value of the securitised exposures, it shall be possible for the retainer to only retain a pro-rata portion of such first loss tranche, where this portion is equivalent to at least 5 % of the nominal value of the securitised exposures.
 3. For the fulfilment of the risk retention requirement at a securitisation scheme level, retainers shall not take into account the existence of underlying transactions in which
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the originators or original lenders retain a first loss exposure at the transaction-specific level.

Article 9

Retention option (e): the retention of a first loss exposure of not less than 5% of every securitised exposure

1. The retention of a first loss exposure at the level of every securitised exposure in accordance with point (e) of Article 6(3) of Regulation (EU) 2017/2402 shall be applied so that the credit risk retained is always subordinated to the credit risk that has been securitised in relation to those same exposures.
2. The retention referred to in paragraph 1 may be fulfilled by the sale at a discounted value of the underlying exposures by the originator or original lender, where each of the following conditions is satisfied:
 - (a) the amount of the discount is not less than 5 % of the nominal value of each exposure;
 - (b) the discounted sale amount must be refundable to the originator or original lender if, and only if, such discounted sale amount is not absorbed by losses related to the credit risk associated to the securitised exposures.

Article 10

Measurement of the level of retention

1. When measuring the level of retention of net economic interest, the following criteria shall be applied:
 - (a) origination shall be considered as the time at which the exposures were first securitised;
 - (b) the calculation of the level of retention shall be based on nominal values and the acquisition price of assets shall not be taken into account;
 - (c) 'excess spread' shall not be taken into account when measuring the retainer's net economic interest;
 - (d) the same retention option and methodology shall be used to calculate the net economic interest during the life of a securitisation transaction, unless exceptional circumstances require a change and that change is not used as a means to reduce the amount of the retained interest.
2. In addition to the criteria set out in paragraph 1, provided that there is no embedded mechanism by which the retained interest at origination would decline faster than the interest transferred, the fulfilment of the retention requirement shall not be deemed to have been affected by the amortisation of the retention via cash flow allocation or through the allocation of losses, which, in effect, reduce the level of retention over time. A retainer shall not be required to constantly replenish or readjust its retained interest to at least 5 % as losses are realised on its retained exposures or allocated to its retained positions.

Article 11

Measurement of retention for exposures in the form of drawn and undrawn amounts of credit facilities

The calculation of the net economic interest to be retained for credit facilities, including credit cards, shall be based only on amounts already drawn, realised or received and shall be adjusted in accordance with changes to those amounts.

Article 12

Prohibition of hedging or selling the retained interest

1. The obligation in the first subparagraph of Article 6(1) of Regulation (EU) 2017/2402 to retain on an ongoing basis a material net economic interest in the securitisation, shall be deemed to have been met only when, taking into account the economic substance of the transaction, both of the following conditions are met:
 - (a) the retained material net economic interest is not subject to any credit risk mitigation or hedging of either the retained securitisation positions or the retained exposures. Hedges of the net economic interest shall be permitted only where they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures;
 - (b) the retainer does not sell, transfer or otherwise surrender all or part of the rights, benefits or obligations arising from the retained net economic interest.
2. Retained exposures or securitisation positions may be used as collateral for secured funding purposes including where the relevant funding arrangements involve a sale, transfer or other surrender of all or part of the rights, benefits or obligations arising from the retained net economic interest, as long as such use does not transfer the exposure to the credit risk of these retained exposures or securitisation positions to a third party.
3. The prohibition of paragraph 1 shall not apply in the event of the insolvency of the retainer.

Article 13

Exemptions to Article 6(1) of Regulation (EU) 2017/2402

The transactions referred to in Article 6(6) of Regulation (EU) 2017/2402 shall include securitisation positions in the correlation trading portfolio which are reference instruments satisfying the criterion in Article 338(1)(b) of Regulation (EU) No 575/2013 or are eligible for inclusion in the correlation trading portfolio.

Article 14

Retention on a consolidated basis

A mixed financial holding company established in the Union within the meaning of Directive 2002/87/EC, a parent institution or a financial holding company established in the Union satisfying, in accordance with Article 6(4) of Regulation (EU) 2017/2402, the retention requirement on the basis of its consolidated situation shall, in the case the retainer

is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of supervision on a consolidated basis assumes exposure to the securitisation so as to ensure the ongoing fulfilment of the requirement.

Article 15

Initial disclosure of the level of the commitment to maintain a material net economic interest

1. The retainer shall disclose to investors within the final offering document, prospectus, transaction summary or overview of the main features of the securitisation at least the following information regarding the level of its commitment to maintain a net economic interest in the securitisation:
 - (a) confirmation of the retainer's identity, of whether it retains as originator, sponsor or original lender and, where the retainer is the originator, of how it meets the requirements set out in the second subparagraph of Article 6(1) of Regulation (EU) 2017/2402 taking into account the principles set out in Article 3(6);
 - (b) which of the modalities provided for in points (a), (b), (c), (d) or (e) of Article 6(3) of Regulation (EU) 2017/2402 has been applied to retain a material net economic interest;
 - (c) confirmation of the level of retention at origination and of the commitment to retain on an on-going basis, which shall relate only to the continuation of fulfilment of the original obligation and shall not require data on the current nominal or market value, or on any impairments or write-downs on the retained interest.
2. Where the exemptions referred to in paragraph 5 or 6 of Article 6 of Regulation (EU) 2017/2402 apply to a securitisation transaction, the originator, sponsor or original lender shall disclose within the final offering document, prospectus, transaction summary or overview of the main features of the securitisation information on the applicable exemption to investors.
3. The disclosure referred to in paragraphs 1 and 2 shall be appropriately documented within the final offering document, prospectus, transaction summary or overview of the main features of the securitisation and made publicly available, except in bilateral or private transactions where private disclosure is considered by the parties to be sufficient. The inclusion of a statement on the retention commitment in the prospectus for the securities issued under the securitisation programme shall be considered an appropriate means of fulfilling the requirement.

Article 16

Assets transferred to the SSPE

1. For the purposes of Article 6(2) of Regulation (EU) 2017/2402 assets held on the balance sheet of the originator shall be deemed to be comparable to the assets to be transferred to the SSPE where, at the time of the selection of the assets, both of the following conditions are met:
 - (a) the most relevant factors determining the expected performance of the assets are similar;

- (b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the time period set out in that Article, their performance would not be significantly different.
2. For the purpose of Article 6(2) of Regulation (EU) 2017/2402, and where no communication to investors or potential investors has taken place, as referred to in recital No 11 of that Regulation, the assessment of the intent of the originator shall take into account the actions the originator has taken to comply with that Article. These shall include any policies and procedures that the originator has put in place and applies internally in order to ensure that the securitised assets would reasonably have been expected not to lead to higher losses than the losses on comparable assets held on its balance sheet.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

From the date of entry into force of this Regulation, Commission Delegated Regulation (EU) No 625/2014 shall be repealed.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President
[Position]]

4. Accompanying documents

4.1 Draft cost-benefit analysis / impact assessment

Problem identification

1. The financial crisis has shown that, in securitisation transactions, the following problems could materialise:
 - (a) originators, sponsors or original lenders may have had little incentive to adequately screen the credit risk characteristics of the exposures they intended to securitise, given that the credit risk of the securitised exposures was transferred to securitisation investors and credit enhancement providers; and
 - (b) some securitisation transactions proved to be particularly opaque concerning the information on the credit risk features of the securitised exposures. Such information was not sufficiently available and accessible to investors.
2. Misaligned incentives and the lack of information and transparency in some securitisation transactions contributed to excessive risk-taking in parts of the securitisation industry and to a broad lack of confidence in securitisation transactions. These outcomes not only led to losses and to the drying up of liquidity and funding in the securitisation markets, but also contributed to the overall freezing of the interbank markets.
3. Articles 405-409 of Regulation (EU) No 575/2013 established requirements on both investor institutions and sponsor or originator institutions engaging in securitisation transactions. An institution becoming exposed to the credit risk of a securitisation was required to ensure that the originator, sponsor or original lender retained a material net economic interest in the securitisation transaction, according to specific criteria, and was under an obligation to apply due diligence before entering the transaction and thereafter. Sponsor and originator institutions were required to apply the same sound credit-granting criteria to the loans they intended to securitise as they did to loans not to be securitised and to disclose to investors all relevant information on the retention of net economic interest in the transaction, as well as on the risk characteristics of the securitised exposures. Additional risk-weights were established for those institutions assuming exposure to a securitisation that did not comply with the mentioned requirements and for originators, sponsors or original lenders that did not comply with their disclosure requirements.
4. These provisions addressed the fundamental problem of the possible misalignment of interests and incentives in securitisation transactions between the investors, on the one hand, and the originator, sponsor or original lender, on the other. Diverging interests among the parties of a

financial contract can lead to moral hazard behaviour when certain information on relevant features of the contract is only available to one party, but not to other parties (i.e., there is an asymmetry of information). Moral hazard occurs when the party that has more or better information takes on excessive risk knowing that the other party in the transaction will bear the costs of those risks without being equally informed about such risks.

5. By ensuring more aligned interests (through the retention requirements and the criteria for credit granting) and by increasing transparency, availability and the use of information (disclosure and due diligence requirements), Articles 405-409 of Regulation (EU) No 575/2013 aimed at restoring confidence in securitisation markets and contributed to the realisation of the general regulatory objective of enhanced financial stability.
6. Article 410 of Regulation (EU) No 575/2013 mandated the EBA to develop draft regulatory technical standards to specify in greater detail, amongst other things, the retention requirement set out in Article 405. Based on the draft submitted by the EBA, the Commission adopted Commission Delegated Regulation (EU) No 625/2014.
7. Following the adoption of Commission Delegated Regulation (EU) No 625/2014, the Securitisation Regulation was enacted. The Securitisation Regulation lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation. The Securitisation Regulation defines securitisation and establishes due diligence, risk retention and transparency requirements for parties involved in securitisations and, furthermore, provides a framework for simple, transparent and standardised securitisation.

Problem definition and objectives of the RTS

8. Article 6 of the Securitisation Regulation sets out the requirements for risk retention. Those requirements are broadly consistent with those set out in Article 405 of Regulation (EU) No 575/2013, however the mandate for the RTS is narrower than the mandate in Article 410 of Regulation (EU) No 575/2013.
9. Thus, pursuant to Article 6 of the Securitisation Regulation, the EBA is mandated to develop draft regulatory technical standards to specify in greater detail the risk retention requirement, in particular with regard to:
 - (a) the modalities for retaining risk pursuant to paragraph 3 of Article 6 of the Securitisation Regulation, including the fulfilment through a synthetic or contingent form of retention;
 - (b) the measurement of the level of retention referred to in paragraph 1 of Article 6 of the Securitisation Regulation;
 - (c) the prohibition of hedging or selling the retained interest;

- (d) the conditions for retention on a consolidated basis in accordance with paragraph 4 of Article 6 of the Securitisation Regulation; and
- (e) the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 6 of Article 6 of the Securitisation Regulation.

10. Taking into account the ambit of the mandate in the Securitisation Regulation and the existing Commission Delegated Regulation (EU) No 625/2014, the proposed technical standards should ensure that, unless deviations appear to be necessary in light of the new provisions of the Securitisation Regulation, necessary clarifications or in order to remedy specific issues, the existing rules should be carried over into the new technical standards.

Cost-Benefit Analysis

11. Taking into account the foregoing, the new technical standards have largely replicated many of the existing provisions in Commission Delegated Regulation (EU) No 625/2014. However, taking into account the scope of the mandate set out for EBA in Article 6 of the Securitisation Regulation, as well as the mandates set out in that Regulation for ESMA, a number of provisions in Commission Delegated Regulation (EU) No 625/2014 were not reflected in the new technical standards. Such provisions include Chapter IV (*Due diligence requirements for institutions becoming exposed to a securitisation position*, see Article 5 of the Securitisation Regulation), Article 21 (*Policies for credit granting*, see Article 9 of the Securitisation Regulation) and Article 23 (*Disclosure of materially relevant data*, see Article 7 of the Securitisation Regulation) of Commission Delegated Regulation (EU) No 625/2014.

12. In addition, the new technical standards aim to clarify certain matters which were not sufficiently addressed in the existing Commission Delegated Regulation (EU) No 625/2014, as well as to deal with certain new provisions in the Securitisation Regulation. The provisions in the Regulatory Technical Standards which are new compared to Commission Delegated Regulation (EU) No 625/2014 relate, in particular, to the circumstances when an entity shall be deemed not to have been established or to operate for the sole purpose of securitising exposures, the prohibition on adverse selection set out in Article 6(2) of the Securitisation Regulation, the change of the retainer in exceptional circumstances and provisions in respect of securitisations the securities of which were issued before 1 January 2019.

13. Against this background, the proposed technical standards are not expected to involve any material costs for supervisors and institutions or to have a material impact on transactions that are currently being structured or carried out within the most relevant segments of active securitisation markets, given the following considerations:

- (a) most of the provisions proposed in the draft technical standards have already been implemented (at least in part) pursuant to Commission Delegated Regulation (EU) No 625/2014; and



- (b) the changes brought about by the new technical standards are either meant to address discrete issues in the market or to reflect the changes brought about by the Securitisation Regulation which, in the area of risk retention, do not constitute a major overhaul of the pre-existing regulatory framework.

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted 3 months and ended on 15 March 2018. The EBA received 12 responses and a public hearing was held on 19 February 2018. The Banking Stakeholders Group ('BSG') issued no opinion. All public responses are published on EBA's website.

This report presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them, if deemed necessary.

In certain cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments and the EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

This report presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

Summary of key issues and the EBA's response

Overall, the respondents welcomed EBA's general approach to the draft RTS and the intention to retain the wording of the existing RTS into the new standards as far as possible. According to the industry, in order to ensure sufficient continuity is maintained, changes to the draft RTS should be limited to those necessary to address new provisions or considerations under the recast requirements, or to remedy specific issues.

The industry respondents welcomed further clarification and guidance on key aspects and new provisions of the Securitisation Regulation, but requested further clarification, re-wording adjustments and/or relaxation of the requirements, in particular relating to:

- a. The sole purpose test (Article 3(6)) for the assessment if an entity shall be deemed not to have been established or to operate for the sole purpose of securitising exposures and, therefore, may constitute an originator;
- b. The prohibition on hedging or selling the retained interest (Article 12). To date, interpretation on this prohibition has been focussed on the key principle that the credit risk of the retained position must remain with the retainer and respondents requested that this principle is maintained in the draft RTS;
- c. Assets transferred to the SSPE (Article 16). In general, the provisions of Article 16 were deemed adequate subject to some amendment to increase disclosure and reduce written



communication to competent authorities, investors and potential investors and respondents saw no need to further specify the meaning of 'significantly lower performance' for the purpose of Article 6(2) of the Securitisation Regulation; and

- d. Change of retainer (Article 17). Concerns were raised on the mandatory application of Article 17 as the imposition of a retention obligation on another eligible retainer during the life of the transaction is regarded to be highly problematic and in contradiction with the prohibition of hedging or selling the retained interest in Article 12 of the technical standard.

Some stakeholders also flagged a number of additional issues as follows:

- a. Consolidated application: based on the amendments to Article 14 of the CRR, the direct risk retention requirements under Article 6 of the Securitisation Regulation will apply in respect of EU regulated banks and relevant investment firms on a consolidated basis. In effect, this will require a third country consolidated entity acting as originator, sponsor or original lender in respect of a local securitisation transaction to comply with the EU retention requirements, while this requirements would not apply to domestic (non-EU) entities operating in that country;
- b. Grandfathering: some respondents underlined that basing the grandfathering provisions in the Securitisation Regulation on the timing of the new liabilities issued than on the date of establishment of the relevant securitisation, gives rise to uncertainty with the compliance in particular for programme wide transactions; and
- c. Jurisdictional scope of the direct application requirements: in particular whether they will apply to EU established entities only or also to EU regulated entities generally or other entities.

EBA agrees that it is important to maintain the current regime where possible to ensure consistency and continuity given the significant overlap in the key aspects of the requirements between the existing and new regime on risk retention and where possible, to avoid undue disruption to the market and any unnecessary complexity.

The additional issues raised by the stakeholders are important and their clarification would be beneficial to the market. However, they are deemed to be outside the scope of the mandate and were not taken on board while finalising the draft RTS.

A more detailed presentation of the comments received and of the EBA response is included in the table set out below.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Grandfathering	Some respondents underlined that basing grandfathering on the timing of the issuance of new liabilities rather than on the date of establishment of the relevant securitisation, according to Article 43 of the Securitisation Regulation, gives rise to uncertainty and requested to change this.	The draft RTS do not cover the issue of transitional arrangements that are established in Article 43 of the Securitisation Regulation. Furthermore, this change would be inconsistent with Article 290 of the TFEU on delegated acts (including RTS), which allows Level 2 legislation only to 'supplement or to amend non-essential elements' of Level 1 legislative acts.	No change
Consolidated level of application of the retention requirement	The majority of respondents considered it essential to ensure that Article 14 of Regulation (EU) No 575/2013 implies that only the investor due diligence obligations (including the indirect retention requirements) will apply to EU regulated banks on a consolidated basis. To this aim, a number of respondents urged to directly amend Article 14 of Regulation (EU) No 575/2013 so to ensure that non-EU based entities/activities of EU banks do not have to comply with the EU regime on risk retention and transparency requirements, in addition to the applicable local rules. These respondents highlighted in particular that the application of risk retention and transparency requirements on a consolidated basis would determine an uneven	The EBA agrees that difficulties arise for EU subsidiaries engaging in local securitisation activities in third countries, in particular with regard to the compliance with the new EU transparency and risk retention rules introduced in the Securitisation Regulation which may in some cases conflict with third country rules. The EBA does not believe that it was the policy intention to produce undue administrative burden for these entities/activities via the EU rules on compliance with risk retention/transparency provisions on a consolidated basis and acknowledges that it would be particularly burdensome to comply at the same time with EU transparency requirements	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>playing field for non-EU based entities/activities of EU banks.</p> <p>Two respondents did not see any need to provide in the RTS any additional guidance on the operation of Article 14 of the CRR.</p>	<p>and direct risk retention obligations and the corresponding rules in the third countries.</p> <p>The EBA considers this a Level 1 issue and outside the scope of the draft RTS.</p> <p>The EBA is engaging with the Commission and the co-legislators to raise awareness on the issue and provide the necessary support to assess the impact of Article 14 as it stands and to provide possible solutions to clarify and rectify this issue.</p>	
<p>Scope of application, jurisdictional scope</p>	<p>Some respondents called attention for the need to provide clarity on the jurisdictional scope of the new 'direct' obligation of originators, sponsors or original lenders to comply with the risk retention requirements.</p> <p>It was added that the draft technical standards do not clarify whether Article 6 of the Securitisation Regulation should apply in respect of originators, sponsors and original lenders established in the EU only, and invited EBA to clarify this.</p>	<p>The scope of application and jurisdictional scope of the 'direct' retention obligation relates to a general interpretation issue of the Securitisation Regulation and is outside the scope of the draft RTS.</p> <p>The EBA agrees however that a 'direct' obligation should apply only to originators, sponsors and original lenders established in the EU as suggested by the Commission in the explanatory memorandum.</p>	<p>No change</p>
<p>Level 1 definitions</p>	<p>One respondent said that the Securitisation Regulation uses the term of "holders of a securitisation position" and they would welcome guidance on when an entity could be deemed to be a "holder of a securitisation position".</p> <p>Other respondents suggested EBA to add a specification defining which entity should be qualified as originator under the Securitisation</p>	<p>Article 2(19) of the Securitisation Regulation defines "securitisation position" as "an exposure to a securitisation" therefore the EBA sees no need of further specification.</p> <p>Regarding the definition of "originator" in the Securitisation Regulation, its Article 2(3) establishes the definition of "originator" that is applied throughout the Regulation. Therefore, EBA sees no</p>	<p>No change</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Regulation. Furthermore, they judged it very helpful if EBA could add a clarification on the interaction between the qualification as originator in Regulation (EU) No 575/2013 and the Securitisation Regulation.</p>	<p>need to further specify this definition. Concerning the interaction between the two mentioned Regulations, EBA is of the view that Article 1(1) of Regulation 2017/2401 provides a cross-reference to Article 2(3) of the Securitisation Regulation, which establishes the same definition of “originator” as the one given in in Regulation (EU) No 575/2013, since the slight deviation in wording (“for its own account” vs. “on its own account”) does not alter the intended meaning. The amended originator definition in accordance with subparagraph 2 of Article 6(1) of the Securitisation Regulation applies however only in the context of the application of Article 6 of the Securitisation Regulation and has therefore also no impact on the use of the term “originator” under the requirements of the CRR.</p>	
L-shaped retention option	<p>Some respondents said in keeping with the current technical standards, the proposals do not provide for the use of the so-called L-shaped retention option (involving retention through a first loss tranche in part and a vertical slice in part). The respondents claimed that additional flexibility for this retention option would be helpful and would create greater alignment with the US retention rules.</p> <p>One respondent proposed the possibility to allow a combination of two retention options for the fulfillment of the retention requirement, for instance retaining a 1% first loss tranche and a 4% retention of randomly selected exposures.</p>	<p>The proposed combination of the retention options is not in line with Article 6(3) of the Securitisation Regulation as the wording and the “or” connection between points (a) to (e) of that paragraph make it clear that only one of the options has to be selected to comply with the retention requirement and that the options may not be combined.</p> <p>Furthermore, the EBA report on securitisation risk retention, due diligence and disclosure published in December 2014 advises against the introduction of an L-shape retention option.</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Change of retention options	<p>One respondent pointed out that Article 10(1)(d) of the draft technical standards indicates that the retention option should not change during the life of the securitisation transaction, but that in certain scenarios involving exceptional circumstances and where the change is not used as a means to reduce the amount of the retained interest, the retention option might be changed.</p> <p>The respondent claimed that it would be helpful that the circumstances in which a change may be made could be broadened to also allow for changes where the transaction is fully retained and the change is not used as a means to reduce the amount of the retained interest.</p> <p>For example, from the start of 2019 a securitisation is done for funding purposes at the outset through full retention of the transaction and use of certain positions as collateral in central bank liquidity operations and a first loss tranche is held, but later it becomes desirable to seek significant risk transfer in respect of the transaction, meaning that it is preferable to retain a vertical slice.</p>	<p>The proposed change of the retention options is not in line with Article 6(1) of the Securitisation Regulation, which requires that the material net economic interest is ‘measured at the origination’ based on the selected retention option and retained ‘on an ongoing basis’ thereafter.</p> <p>Furthermore, in EBA’s view, the implementation of the new Securitisation Regulation does not constitute an exceptional or unexpected circumstance to justify a change of the retention option. The example provided appears to be more a need of a changed business strategy to optimise the economic benefit of the retainer, rather than an exceptional circumstance.</p>	No change
Applicability of risk retention requirements to NPL securitisations	<p>One respondent said that a literal interpretation - and also a purpose oriented interpretation - of the rules on risk retention is that they should not apply to securitisations of non performing exposures.</p>	<p>The EBA is aware that in the case of NPL securitisations the applicability of the regulatory framework for securitisations may pose some (un)intended hurdles to the market of NPL securitisation as the regulations did not always take into account the specificities and differences</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>The respondent argued that the definition of a “securitisation” in the CRR makes reference to “[...] a transaction or scheme whereby [...] payments [...] are dependent upon the performance of the exposures or pool of exposures” and clearly, securitisations carried out on non-performing exposures cannot (by definition) be said to depend on the performance of the underlying exposures, but rather on the effectiveness of the recovery and work out activities of the holder of the assets and its services providers, which is a totally different concept.</p>	<p>between securitisations of non-performing and performing exposures.</p> <p>However, it is clear that the payments in a securitisation of non-performing exposures are dependent on the future performance of the exposures and the credit risk (including loss given default/recovery) associated with the exposures.</p>	
<p>Responses to questions in Consultation Paper EBA/CP/2017/22</p>			
<p>Question 1: Do you have any general comments on the draft technical standards?</p>			
<p>Continuity in the application of the provisions currently in place</p>	<p>Many respondents underlined a strong support to the EBA’s proposed general approach of ensuring that the current risk retention technical standards are carried over in the new standards. It was said that continuity is essential for compliance feasibility in the context of transactions where both the current technical standards and the new standards will be relevant.</p> <p>The respondents commented that in order to ensure that a sufficient continuity is maintained,</p>	<p>EBA agrees that it is important to maintain the current regime where possible to ensure consistency and continuity given the significant overlap in the key aspects of the requirements between the existing and the new regime on risk retention and, where possible, to avoid any undue disruption to the market and any unnecessary complexity while finalising the draft RTS.</p> <p>In some instances, where no new policy considerations of the Securitisation Regulation apply, the draft RTS wording has been reverted to the</p>	<p>Minor changes in wording of some provisions of the RTS</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>changes to the current technical standards should be limited to those necessary to address new provisions.</p>	<p>wording of the existing RTS to avoid any undue confusion.</p>	
<p>Prohibition of hedging or selling the retained interest</p>	<p>One respondent argued that the rationale for the inclusion of Article 12(2) is not entirely clear. The respondent argued that the technical standards should include guidance on matters relating to interests retained in accordance with the Securitisation Regulation only and not any “excess” interests which may (voluntarily) be retained over and above the regulatory requirements on a contractual or other basis. The respondent added that in general the excess interest will not be covered by the retention commitment statement provided by the retainer and so will not be retained in accordance with the Securitisation Regulation.</p>	<p>While the EBA still considers the guidance referred to in the comment as helpful with regard to the objective of ensuring a harmonised interpretation of the retention requirements the EBA agrees that such clarification does not have to be included in Article 12 of the RTS. Instead, a corresponding clarification has now been added in Recital 8 of the RTS,</p>	<p>Article 12(2) of the CP has been deleted and clarification has been moved to Recital 8</p>
<p>Retention option (c)</p>	<p>Some respondents said that in Article 7(1) it would be preferable to have just a high-level guidance instead of the list of factors that can be applied when identifying the initial portfolio of assets, i.e. the portfolio from which the retained assets should be selected.</p> <p>The same respondents added that regarding Article 7(2) it would be appropriate to adopt a static nature of the retained portfolio, except in the context of revolving securitisations.</p>	<p>The EBA agrees that the suggested changes could lead to confusion and problems to meet the ‘randomly’ selected exposure requirements.</p> <p>Taking into account industry comments to limit changes to those necessary to address new provisions or changes in policy only, the EBA will keep the key wording components of the existing RTS in order to not create undue confusion or complexity.</p>	<p>The wording has been aligned with the previous wording of the existing Commission Delegated Regulation (EU) No 625/2014.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Other respondents said that the wording of Article 7(2) could be improved because Article 12(2) does not refer to an addition to the securitised exposures but just to a derogation to the prohibition of hedging or selling the retained interest.</p>		
<p>Retainer agreement and backstop originator obligation</p>	<p>Some respondents requested more guidance in relation to Article 6(1) of the Securitisation Regulation ‘where the originator, sponsor or original lender have not agreed between them who will retain’. This concept of agreement among retainers is a new one, as is the concept of a backstop originator obligation for retention compliance. Clarification in the technical standards is requested that the backstop obligation will only extend to originator entities that are directly involved in the securitisation.</p> <p>The technical standards should also clarify that confirmation is required only that where an entity provides a retention commitment statement this shall be deemed to reflect the agreement between all relevant retainers as referred to in Article 6(1) of the Securitisation Regulation, so that no express written agreement between those parties is required, and that any failure on the part of the relevant retainer to retain the required interest on an ongoing basis for any reason post-closing will not give rise to an obligation for any other originator, sponsor or original lender involved in the securitisation to retain.</p>	<p>The EBA agrees that only originators (being asset originators and purchasers) that are directly involved in the securitisation are within the scope of Article 6(1) of the Securitisation Regulation when assessing ‘where the originator, sponsor or original lender have not agreed between them who will retain’.</p> <p>As regards the second point, EBA agrees that confirmation and disclosure by the entity that provides the retention commitment is sufficient and that no express written agreement between all relevant retainers is necessary and that failure on the part of the relevant retainer to retain on an ongoing basis the required interest for any reason post-closing does not give rise to an obligation for any other originator, sponsor, or original lender entity involved in the securitisation to retain.</p>	<p>Wording amended in Recital 10.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Retention in a scenario involving multiple originators or original lenders	<p>A few respondents argued there is a need to clarify Article 3(4)(b): when considering if the relevant originator has contributed more than 50% to the total assets, rather than referring to “exposure value” here, reference should be made to the “nominal value” of the assets. This is to ensure simplicity and avoid confusion as nominal value is a more straightforward concept compared to exposure value.</p>	<p>While the measurement based on the ‘exposure value’ might be more risk sensitive, the EBA agrees that a measurement based on the ‘nominal value’ will increase the transparency and simplicity of the measurement, in particular for entities that are not subject to the requirements of the CRR.</p> <p>Taking into account industry comments the EBA has changed the measurement basis to ‘nominal’ value to not create more complexity and make the requirement more workable for originators other than institutions.</p>	<p>Change of reference to ‘nominal value’ in Article 3(4)(b) of the RTS</p>
Measurement of the level of retention	<p>Two respondents pointed out that Article 10 of the draft technical standards indicates that the calculation of the level of retention shall be based on nominal values and the acquisition price of the assets shall not be taken into account. However, issues arise in the context of transactions involving assets acquired by the relevant originator at a material discount (e.g. non-performing loans). Therefore, one respondent said, the reference for non performing exposures to “nominal value” without any additional specification or guidance on the meaning of such a term may lead to the unwanted effect of requiring the relevant risk retainer to retain more than the required 5% in the</p>	<p>EBA acknowledges that for retention options based on the nominal values of the securitised exposures, the retention requirement, when compared to market values, is substantially higher for securitisation exposures sold at material discounts to the nominal value. For this reason, Article 6(3) of the Securitisation Regulation provides for five different retention options including retention options based on the nominal value of the tranches sold or transferred to investors where the lowered purchase price is taken into account. Furthermore, EBA believes that the term ‘nominal value’ of securitised exposures does not need further clarifications.</p>	<p>No change</p>



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	<p>context of securitisations carried out on non performing exposures, due to the gap between the nominal value of the securitised exposures and their sale price. To avoid such effect, the respondent suggested that the draft RTS should include specific guidance on the meaning of “nominal value” for non performing securitised exposures.</p> <p>Other respondents proposed to include the fixed excess spread in synthetic securitisation transactions under Article 6(3)(d) of the Securitisation Regulation.</p>	<p>Concerning the proposal to include the excess spread in synthetic securitisation transactions, no change was made, due to the uncertainty in determining the amount of excess spread and the fact that excess spread does not represent a tranche. The proposal is therefore against the Level 1 text and consequently Article 10(1)(c) of the draft RTS states that excess spread shall not be taken into account when measuring the retainer’s net economic interest.</p>	
<p>Transactions based on a clear, transparent and accessible index</p>	<p>One respondent pointed out that a further specification of Article 6(6) of the Securitisation Regulation is missing.</p>	<p>Article 13 of the draft RTS clarifies the exemptions to Article 6(1) mentioned in Article 6(6) of the Securitisation Regulation. The EBA does therefore not see the need to further specify the conditions in particular as the text is unchanged compared to the text in the existing RTS.</p>	<p>No change</p>
<p>Sole purpose test</p>	<p>Two respondents suggest that the “sole purpose” test should be principles-based and not prescriptive. This would allow for the three conditions of Article 3(6) to be given different weighting depending on the structure and type of securitisation. According to the respondents it would be desirable if the introductory wording of the provision is clarified so that it cannot be interpreted to mean that each of the conditions must be fully satisfied in all circumstances, but that instead, each of the principles should be taken into account when assessing whether the "sole purpose</p>	<p>The ‘sole purpose’ test was introduced in the Securitisation Regulation in order to ensure that point (b) of the ‘originator’ definition in Article 2(3) of the STS Regulation was further narrowed down and defined in further detail to reduce the potential misuse of the retention requirements via legal definition loopholes and to ensure a better alignment of interests between the originator and investors.</p> <p>The EBA agrees that the test should be more principles-based based, however each of the principles outlined should be considered. The EBA has</p>	<p>Minor changes in the wording of Article 3(6) of the RTS</p>



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	<p>test" is satisfied such that each relevant structure is analysed in a more tailored and befitting manner. For consistency, the corresponding disclosure obligation proposed within Article 15(1)(a) should also be amended.</p> <p>Other respondents asked for the clarification of the meaning of "business strategy" and "broader business enterprise" in a way to avoid a lack of certainty that the conditions have been met. Yet other respondents voiced their views that the term "broader business enterprise" should include enterprises only active in financial business.</p>	<p>taken into account some of the drafting suggestions provided.</p> <p>Regarding the comments related to the clarification of the terms "business strategy" and "broader business enterprise" EBA does not see the need to further specify those terms in light of the fact that the test has been changed to a more principles-based approach.</p>	
<p>Question 2. Considering the mandate granted to ESMA in Article 7(3) of the Securitisation 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?</p>	<p>The majority of respondents agrees that Article 7 points (a) and (e) of the first subparagraph of paragraph 1 of the Securitisation Regulation provide for disclosures related to risk retention on</p>	<p>EBA agrees that initial disclosure, on all the relevant risk retention requirements including Article 10(1)(d) and Article 17 of the draft RTS, to investors are</p>	<p>Amended reference to disclosure-relevant documents in Recital 7 and</p>



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<p>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</p>	<p>an ongoing basis in the context of the investor reporting obligations.</p> <p>However, the mandate of ESMA to develop draft technical standards specifying this information does not extend to the initial disclosures or to so-called ‘exceptional circumstances’ disclosures of risk retention, hence Article 15 of the RTS is deemed appropriate by a majority of respondents.</p> <p>Furthermore, the majority of respondents argues that the proposed clarification via the final offering document or prospectus will risk creating confusion as not all securitisations will involve an offering document (e.g. warehouse transactions, certain synthetics and underlying transactions in ABCP programmes) and requests deletion of the wording on such disclosure in Article 15, Recital (7) and Article 4(1)(b).</p>	<p>necessary for effective due diligence on the securitisation positions and agrees that Article 15 of the draft RTS should be maintained.</p> <p>Taking into account industry comments and acknowledging the substantial increase in overall disclosure and transparency requirements through the Securitisation Regulation compared to the current CRR, the EBA will keep the principle of the disclosure requirements as drafted in the existing RTS.</p> <p>To address the concerns in terms of a limited reference to the “final offering document or prospectus” such reference has now been replaced by a reference to “final offering document, prospectus, transaction summary or overview of the main features of the securitisation” in Recital 7 and Articles 4(1)(b) and 15 of the draft RTS.</p>	<p>Articles 4(1)(b) and 15 of the RTS</p>



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<p>form of credit facilities) are needed?</p>	<p>Article 11 of the RTS provides guidance on how to measure the retention for exposures in the form of the undrawn amounts of credit facilities, using the same wording as in the previous Commission Delegated Regulation (EU) No 625/2014. The majority of the respondents finds this clarification was useful in the past and that it is still necessary. In addition, its removal could generate confusion by suggesting that those rules are no longer applicable.</p>	<p>Article 11 of the draft RTS enhance the risk retention rules by clarifying the measurement of retention for exposures in the form of undrawn amounts of credit facilities, as requested by market participants in the past.</p> <p>Carrying forward, this rule reinforces the risk-retention provision, specifically in reference to the measurement of the level of retention referred to in point (b) of the first subparagraph of Article 6(7) paragraph 7 of the Securitisation Regulation.</p> <p>In order to clarify the object of the clarification included in Article 11 further, the wording of the title of that Article has been slightly amended.</p>	<p>Changed wording of the title of Article 11</p>
<p>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?</p>	<p>The majority of respondents considered the confirmation that the retainer may use the retained interest as collateral for secured funding purposes very useful – of course on the condition that the</p>	<p>Several comments by participants on the consultation document highlighted that the interaction of Article 12(3) with other provisions provided for in the draft</p>	<p>Clarified Article 12(1) and changed wording of the previous Article</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>exposure to the credit risk of the relevant interest is not transferred (this condition being typical of a full recourse arrangement of the financing). Two of these respondents considered in particular the provision to function in general across a wide range of possible financing scenarios, given its principles-based nature. Concerns were raised with respect to the interaction of Article 12(3) with the provisions of Article 12(1) and of Article 17 of the draft RTS.</p> <p>More in detail, two respondents were concerned that the permission of using the retained interest as collateral envisaged in Article 12(3) could de facto not be applicable given the new wording of Article 12(1) of the draft RTS in comparison with the wording of Article 12(1) of the current RTS. In these respondents' views, in particular, the explicit ban of selling, transferring or surrendering the retained net economic interest is incompatible with its use as collateral. In order to avoid this problem, these respondents suggest to delete the above ban from Article 12(1) or, alternatively, explicitly clarify that Article 12(3) applies notwithstanding Article 12(1).</p> <p>One respondent highlighted that on practical terms, in a scenario of default by the retainer, the securities provided with respect to the retained interest would be available for enforcement to meet the loan liabilities, thereby enabling the lender to have recourse to such interest. On this point, two respondents highlighted that the current wording of the RTS does not explicitly exclude that - following the transfer of the securities</p>	<p>RTS could potentially determine a certain level of inconsistency and dysfunctionality.</p> <p>In particular, with regard to the prohibition on hedging or selling the retained interest in Article 12(1), the EBA agrees to maintain the principle that the credit risk exposure of the retained position must remain with the retainer. However, EBA will not delete the additional sentence introduced in the consultation paper, which requires that "The retainer shall not sell, transfer or otherwise surrender all of part of the rights, benefits or obligations arising from the retained net economic interest." A specific carve-out for secured funding purposes has been introduced in Article 12(3).</p> <p>Regarding the interaction between Article 12(1) and Article 17 of the draft RTS, please refer to the EBA analysis to question 6.</p>	<p>12(3), which translates into Article 12(2) of the updated RTS post consultation.</p>



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	<p>representing the retained interest from the defaulted retainer – prospective or new investors are in any case subject to compliance obligations also after the retained interest is transferred to another entity. These respondents consider crucial a clarification on this point.</p> <p>One respondent raised the concern that the combined reading of Articles 12(3) and 17 de facto prevents the retainer to use the retained interest as collateral. Another respondent highlighted that the wording of Article 12(1) of the draft RTS, by stating that the credit risk of the collateral may not be transferred to a third party, effectively prevents a retainer from entering into precisely the type of repo/stock lending or secured funding transaction the RTS intends to permit (using the retained part as collateral).</p>		
<p>Question 5. Do you believe that the provisions of Article 16 of the draft technical standards relations to assets transferred to the SSPE are adequate?</p>	<p>The vast majority of respondents explicitly assessed the provisions of Article 16 of the RTS in general as an adequate complement of the Securitisation Regulation.</p>	<p>The EBA considers the substance of Article 16 of the draft RTS as robust and coherent with the Securitisation Regulation.</p>	<p>Moved previous Article 16(1) to Recital 11 and changed wording of previous Article 16</p>



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	<p>Several amendments were however suggested in order to: i) improve the consistency between the RTS and the provisions of the Securitisation Regulation; ii) streamline the process for the originator to demonstrate to the competent authority that the lower performance is not imputable to the (not communicated) adverse selection of assets; iii) exclude NPLs from the comparability test and iv) clarify the wording of Article 16(3).</p> <p>Two respondents suggested removing the reference to the sponsor in Article 16(1) and in Recital 11, in accordance with Article 6(2) of the Securitisation Regulation that only refers to originators. This issue was also raised by another respondent, which called the EBA to clarify in the RTS whether it is its intention to extend the provision of Article 6(2) of the Securitisation Regulation also to sponsors.</p> <p>Several respondents suggested amendments to the wording of Article 16(3) with the aim of clarifying its provisions. One respondent suggested to better order the provisions provided for in the Article, in order to clarify that in cases where no communication on adverse selection is made, the originator is given the possibility to demonstrate that the lower performance of the transferred assets is not a direct consequence of an intentional selection action. One respondent suggested to replace the wording “proves” in Article 16(3) with “represents”, since a proof is very difficult to</p>	<p>In order to streamline the draft RTS, the EBA decided to amend Article 16 in a number of ways:</p> <ul style="list-style-type: none"> a) Remove the reference to the sponsor, thus improving the consistency between the RTS and the provisions of the Securitisation Regulation; b) Reword paragraph 3, indicating that only in cases where the competent authority finds evidence suggesting contravention of the prohibition in Article 6(2) of the Securitisation Regulation and no communication on adverse selection is made, the originator is requested to demonstrate that the lower performance of the transferred assets is not a direct consequence of an the originator’s intent; and c) In Recital 11 to explicitly exempt NPLs and cases where there are no comparable assets left on the balance sheet from the comparability test provided under Article 16 	<p>(2) and 16(3) which translate into Article 16(1) and 16(2) of the updated RTS post consultation.</p>



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	<p>provide. On this latter argument, two other respondents suggested some rewording of Article 16(3) aimed at obliging the originator to prove that it has established and applied the required policies not on a continuous basis but only after an explicit and written request by the competent authority. One respondent also suggested replacing in Article 16(3) the wording “...to have satisfied the intention....” with the wording “...to have triggered the intention....”</p> <p>Two respondents suggested to explicitly exempt NPLs from the comparability test provided under Article 16, in accordance with Recital 11 of the Securitisation Regulation.</p> <p>Two respondents suggested to include in the provisions of the RTS the last sentence of Recital 11, in order to increase the legal certainty that where no comparable assets are left on the balance sheet, the prohibition set out in Article 6(2) of the STS Regulation does not apply.</p>		
<p>Interaction between Article 16 of the draft RTS with Article 6(2) of the Securitisation Regulation.</p>	<p>One respondent, while considering the possibility of well communicated adverse selection as a positive development compared to the RTS currently in force, was concerned that the provisions of Article 16 of the draft RTS could be rendered ineffective by the provisions of Article 6(2) of the Securitisation Regulation, requiring the competent authority to impose sanctions in cases where the significantly lower performance of securitised assets is a</p>	<p>The EBA does not consider that the provisions of Article 16 could be made ineffective by those of Article 6(2) of the Securitisation Regulation. However, for the sake of clarity, the EBA decided to address this point by amending the wording of Article 16(3) of the draft RTS.</p>	<p>Changed wording of previous Article 16(3) which translate into Article 16(2) of the RTS post consultation.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	consequence of the intent of the originator (and the adverse selection is intentional by definition).		
<p>Question 6. Do you consider that the provisions of Article 17 of the draft technical standards relating to a change of retainer are adequate?</p>	<p>The majority of respondents raised concerns with respect to the mandatory nature of Article 17 of the draft RTS and to the interaction between the mandatory application of Article 17 of the draft RTS with the prohibition of selling the material net economic interest set out in Article 12 of the draft RTS and with the retention requirements set out in Article 6 of the Securitisation Regulation. Only a minority of respondents considered the provisions of Article 17 adequate.</p> <p>Many respondents suggested making Article 17 less prescriptive/mandatory, therefore accommodating also circumstances where there is no entity available to retain the material net economic interest or the entity available is not able to comply with all the conditions for constituting the retainer. These respondents doubted that the wording of the Article with reference to the trigger of the change of retainer (transfer in the holding of a retainer or legal reasons beyond its control) cover the full set</p>	<p>Taking into account the Level 1 text that does not include any direct reference to the case of a change of the retainer but generally requires retention on an ongoing basis by a retainer throughout the maturity of a securitisation, the objective of Article 17 is not identifying situations in which, for whatever reason, the change of the retainer may occur but rather to allow for a change of the retainer only in a very limited number of exceptional circumstances, where the retainer is unable to continue performing this role, and the remaining material net economic interest is therefore retained by another entity, so that the alignment of interest is further ensured. .</p> <p>Moreover, Article 17 has always to be read in conjunction with the prohibition of selling the retained interest contained in Article 12(1). For this reason the change of the retainer cannot be based on a voluntary decision – which would fall within the prohibition of Article 12 – but has to be the necessary and unavoidable consequence due to the transfer of</p>	<p>Change wording and moved previous Article 17 to Recital 13 of the RTS post consultation.</p> <p>Introduced new Article 12(3) of the RTS post consultation.</p>



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	<p>of situations in which a retention may need to be transferred (for instance insolvency/bankruptcy of the retainer), highlighting in particular that the likelihood of the provision coming into play seems low.</p> <p>Two respondents required a clarification of the interaction between Article 17 and the prohibition on hedging or selling the retained interest set out in Article 12 of the draft RTS and suggested a new wording of Article 17 stating that a change in the retainer in accordance with the Article would not be deemed to be in breach of the prohibition of Article 12.</p> <p>Some respondents also suggested to modify the wording of Article 17 of the draft RTS by specifically stating that in the event of the insolvency of the retainer and a subsequent transfer of the remaining retained material net economic interest to another entity, the requirements in Article 6 of the Securitisation Regulation are deemed to be satisfied regardless of the nature of that entity.</p>	<p>a direct or indirect holding in the retainer or for legal reasons beyond the control of the retainer itself and of its shareholders.</p> <p>As the above principles were not clear to the majority of respondents to the consultation, the EBA decided to amend the wording of Article 17 in order to: i) further clarify its objective and ii) clarify its interaction with Article 12(1) of the RTS and with Article 6 of the Securitisation Regulation more explicit.</p>	
<p>Reorganisation of corporate groups</p>	<p>Two respondents suggested to make it clearer how Article 17 applies to the reorganisation of corporate groups of the retainer, taking into account that the alignment of interests underpinning the risk retention will continue to be guaranteed whenever the corporate process ensures, notwithstanding a transfer, “legal” continuity in the relevant contractual and business relationships.</p>	<p>Article 14 of the draft RTS provides further specification on retention on a consolidated basis and the EBA is of the view that the provision is clear.</p> <p>Furthermore a corporate restructuring is in the view of the EBA not an ‘exceptional circumstance’ as mentioned in Article 17 of the draft RTS.</p>	<p>No change</p>



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<p>Question 7. Should the draft technical standards contain any additional guidance on the operation of Article 14 of Regulation (EU) No 575/2013?</p>	<p>One respondent suggested amending the reference to Article 407 CRR in Article 14(2) CRR, since Article 407 CRR will be repealed.</p>	<p>There is no need to amend the reference to Article 407 CRR in Article 14(2) of Regulation (EU) No 575/2013, as the Article 1(11) of Regulation 2017/2401 states that Part Five of Regulation (EU) No 575/2013 (comprising Articles 404 to 410) “is deleted and all references to Part Five shall be read as references to Chapter 2 of Regulation (EU) 2017/2402”.</p>	<p>No change</p>
<p>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?</p>			



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Retention in the case of revolving securitisations	<p>Responses to this question are split between supporters and opponents to maintaining in the RTS a wording similar to that set out in Article 5(1)(a) of Commission Delegated Regulation (EU) No 625/2014.</p> <p>A few respondents questioned why the same wording under Article 6(3) retention option (b) of the Securitisation Regulation of not less than 5% of the nominal value of each of the securitised exposures is also applied under the clarifications of the retention option of Article 5(1)(a) of the RTS of not less than 5% of the nominal value of the tranches and why the wording relating the case of a revolving securitisation in the existing RTS was deleted in the consultation paper.</p> <p>Three respondents openly supported or stated they see no harm in maintaining the wording of Article 5(1)(a) of Commission Delegated Regulation (EU) No 625/2014. Two of these respondents highlighted the need to secure consistency and continuity between the current RTS and the draft RTS, as not all of the existing legacy arrangement might be covered by the clarification on revolving securitisations provided for in the Securitisation Regulation.</p> <p>On the opposite side, three respondents highlighted their contrariety to maintaining in the RTS the wording of the current RTS on revolving</p>	<p>Retention option (b) in the Securitisation Regulation includes ‘revolving securitisations’ and securitisations of revolving exposures, while the CRR only included the latter. In order to ensure a possibility to comply with the retention rules by Mastertrust securitisation structures as well as for some other securitisations structures, ‘revolving securitisation’ was introduced in the existing RTS via retention option (a).</p> <p>With the introduction of ‘revolving securitisation’ in retention option (b) of Article 6(3) of the Securitisation Regulation, the EBA proposed to delete that part in the clarification of retention option (a) of that paragraph in the RTS in order to avoid an overlap.</p> <p>Taking into account industry comments to limit changes to those necessary to address new provisions or changes in policy the EBA will keep the wording of the existing RTS in order to not create any undue confusion or complexity for the ‘revolving’ securitisation transactions that are currently using that specific requirements.</p>	<p>The wording in Article 5(1) has been aligned with the previous wording of the existing Commission Delegated Regulation (EU) No 625/2014</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>securitisation, as the latter wording is considered not sufficiently clear.</p>		
<p>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 Securitisation Regulation and, if so, what would you propose?</p>	<p>Many responses to this question showed a small appetite for an additional guidance specifying what constitutes a significantly lower performance for the purposes of Article 6(2) of the Securitisation Regulation.</p>	<p>In response to the comments, the EBA decided not to provide any additional guidance specifying what constitutes a significantly lower performance for the purposes of Article 6(2) of the Securitisation Regulation.</p>	<p>No change</p>
<p>Possible additional guidance on what constitutes a significantly lower performance for the purposes of Article 6(2) of the Securitisation Regulation</p>	<p>Amongst the respondents who are against the additional guidance, some emphasised that the issue is not the definition of a significantly lower performance, but rather a proper and rigorous process of selecting the assets to be transferred to the SSPE; others highlighted that the real focus for sanctioning purposes is the bad intent of the originator and not the significantly lower performance of the assets transferred to the SSPE compared to the ones held on the balance sheet; the remaining respondents highlighted the level of complexity in the feasibility of such guidance to corroborate their contrariety.</p>		



Comments

Summary of responses received

EBA analysis

**Amendments to
the proposals**

One respondent considered additional guidance useful both for guiding the selection of assets and for sanctioning purposes; the latter point (sanctioning purposes) was also shared by another respondent.
