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EBA/CP/2021/27

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30 June 2021

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# Consultation Paper

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## Draft Regulatory Technical Standards

specifying the requirements for originators, sponsors, original lenders and servicers relating to risk retention pursuant to Article 6(7) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 30 September 2021. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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Regulation (EU) 2017/2402 (the Securitisation Regulation), as amended by Regulation (EU) 2021/557, sets out requirements concerning the retention of a material net economic interest in securitisation 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 (RTS) in this area. The Securitisation Regulation requires the EBA to submit these draft RTS to the Commission by 10 October 2021.

These draft RTS, in accordance with Article 6(7) of the Securitisation Regulation, specify in greater detail the risk retention requirements and, in particular: i) requirements on the modalities of retaining risk, ii) the measurement of the level of retention, iii) the prohibition of hedging or selling the retained interest, iv) the conditions for retention on a consolidated basis, v) the conditions for exempting transactions based on a clear, transparent and accessible index, vi) the modalities of retaining risk in case of traditional securitisations of non-performing exposures, and vii) the impact of fees paid to the retainer on the effective material net economic interest.

These draft RTS have been drafted in such a way as to ensure the alignment of interest (risks) and information between the securitisation sponsors, originators, original lenders, and, in the case of traditional NPE securitisations, servicers, on one hand, and the investors buying the securitisation positions on the other hand. Furthermore it aims to facilitate the implementation of the risk retention requirements by the sponsor, originator, original lender and servicer.

These draft RTS carry over a substantial part of the provisions on risk retention set out in the previous RTS on risk retention adopted by the EBA in 2018 under the original Article 6(7) of the Securitisation Regulation, prior to the amendment made as part of the co-legislators response to the COVID-19 crisis under Regulation (EU) 2021/557, with some modifications. First, several additional provisions have been included in the draft RTS, addressing the extended mandate for the EBA on the risk retention under Article 6(7) following amendments to the Securitisation Regulation under Regulation (EU) 2021/557 and addressing specific issues relating to risk retention (modalities of risk retention in traditional NPE securitisations, impact of fees payable to retainers on the risk retention requirement, expertise of the servicer in NPE securitisations, clarification on synthetic excess spread, retention in resecuritisations and own issued debt instruments). Second, several modifications have been made to existing provisions for the sake of ensuring consistency with the mandate and providing further clarity on some specific aspects.

### 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.

### 3. Background and rationale

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1. These draft regulatory technical standards (draft RTS) have been developed in accordance with Article 6(7) of Regulation (EU) 2017/2402 (the Securitisation Regulation<sup>1</sup>) as amended by the Regulation (EU) 2021/557 of 31 March 2021<sup>2</sup> (Capital Markets Recovery Package (CMRP)), which requests the EBA to specify in greater detail the risk-retention requirements, in close cooperation with ESMA and EIOPA, in particular with regard to some specific areas such as the modalities of retaining risk, the measurement of the level of retention, the prohibition of hedging or selling the retained interest, the conditions for retention on a consolidated basis, the conditions for exempting transactions based on a clear, transparent and accessible index, the modalities of retaining risk in case of NPE securitisations, and the impact of fees paid to the retainer on the effective material net economic interest. The EBA is requested to submit these draft RTS to the Commission by 10 October 2021.

#### EBA mandate and content of the consultation paper

2. The CMRP amends the Securitisation Regulation, including the EBA mandate on RTS on risk retention requirements contained in Article 6(7) of that Regulation. The EBA had already adopted RTS on risk retention under the original Article 6(7) of the Securitisation Regulation on 31 July 2018 and transmitted it to the Commission for endorsement.<sup>3</sup> These draft RTS presented in this consultation paper include several modifications to RTS adopted by EBA in 2018:
  - (i) These draft RTS include additional provisions, addressing the amendments to the EBA mandate on risk retention under the CMRP. These additional provisions are focused on two specific aspects: first, the modalities of risk retention in traditional NPE securitisations, and the related issue of expertise of the servicer acting as a retainer in a traditional NPE securitisation, and second, the impact of fees payable to retainers on the risk retention requirement;
  - (ii) Additional provisions have been included for the purpose of addressing some specific issues relating to risk retention, in connection with matters such as the retention in resecuritisations or in securitisations of own issued debt instruments (e.g. covered bonds), and clarification on the treatment of synthetic excess

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<sup>1</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

<sup>2</sup> Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis

<sup>3</sup> <https://www.eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/rts-on-risk-retention>

spread, which were not reflected in the previous versions of these RTS, or for the sake of ensuring further clarity;

- (iii) Several amendments have been made with a view to ensure consistency of various provisions in these RTS with the EBA mandate in Article 6(7) of the Securitisation Regulation.

3. Similar to the original RTS on risk retention adopted in 2018, these draft RTS carry over a number of provisions from the currently applicable risk retention requirements set out in the Commission Delegated Regulation (EU) No 625/2014<sup>4</sup>, which is based on the RTS developed by the EBA under the Regulation (EU) No 575/2013<sup>5</sup>. Compared to the Delegated Regulation, certain provisions are not reflected in the present draft RTS that fall outside of the realm of the EBA mandate in Article 6(7) of the Securitisation Regulation, including due diligence requirements for institutions becoming exposed to a securitisation position, policies for credit granting, and disclosure of materially relevant data. Generally, in respect of disclosure, only provisions relating to initial disclosure relating to risk retention are included in this consultation paper, as further specification of ongoing disclosure in terms of issues in relation to risk retention is covered by the mandate set out in Article 7(3) of the Securitisation Regulation. Furthermore, this consultation paper contains provisions which are new compared to the Delegated Regulation. These relate 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 and the change of the retainer.
4. The stakeholders are invited to comment on the entire text of the present draft RTS on risk retention, including both the content pre- and post CMRP amendments to the Securitisation Regulation and the EBA mandate on the RTS under Article 6(7).

#### New aspects of risk retention included in the new EBA mandate

5. As regards the new EBA mandate on risk retention in CMRP, it comprises in particular two different aspects:
  - (i) the specific risk retention “modalities” in the case of securitisations of non-performing exposures (NPE securitisations), both under the already existing requirements as per Article 6(3) of the Securitisation Regulation (insofar as applicable) and the ad hoc derogation as per new paragraph 3a, whereby the 5% retention amount should be calculated on the net value of securitised exposures that qualify as NPEs (*new point (f) in Article 6(7) of the Securitisation Regulation*);

<sup>4</sup> 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.

<sup>5</sup> 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.

- (ii) the “impact” of fees paid to the retainer on the “effective” material net economic interest referred to in Article 6(1) of the Securitisation Regulation (*new point (g) in Article 6(7) of the Securitisation Regulation*).

### NPE securitisations

6. In relation to NPE securitisations, this consultation paper specifies how to apply the risk retention options on traditional NPE securitisations, with reference to the net value of non-performing exposure. In addition, the draft RTS set out requirements for the servicer to be considered to have the necessary expertise to act as retainer in traditional NPE securitisations.
7. With respect to the servicer in traditional NPE securitisations, these RTS also specify criteria that the servicer should meet to be able to demonstrate that they have the required expertise in the servicing of non-performing exposures, as a precondition for the servicer to act as a retainer in the NPE securitisations. The criteria set out in these draft RTS are consistent with the criteria contained in the EBA Guidelines on STS criteria for non-ABCP securitisation, which specify in greater detail a similar requirement on the expertise of the servicer applied to STS securitisations as per Article 21(8) of the Securitisation Regulation.

### Impact of fees on the retained net economic interest

8. This consultation paper also specifies the requirements for the fees payable to the retainer to comply with the risk retention requirements. The scope of these requirements is not limited to NPE securitisations. While the wording “fees paid to the retainer” undoubtedly refers to the servicer acting also as retainer in NPE securitisations, the impact of fees payable to retainers in performing securitisations should be deemed as included as well, insofar as applicable.
9. The term “fees” is understood as referring to any remuneration payable to the retainer where the retainer acts in any additional capacity as service provider to the securitisation. For instance, that would be the case where the retainer is simultaneously the securitisation’s portfolio servicer, liquidity facility provider and/or derivative counterparty. The fees due towards these service providers are typically payable in the waterfall on a preferential basis ahead of the interest and amortisation payments due under the securitisation tranches.
10. The term “impact” is understood as referring to both the amount and structure of the fees payable to the retainer where such amount and/or structure of the fees would lead to undermining the “effectiveness” of the risk retention requirement. For these purposes, “effectiveness” is understood to refer to the integrity and soundness of the requirement over time. In other words, the fee structure or amount should not result in the requirement on alignment of interest eventually ceasing to be met at any time following the initial execution of the securitisation.
11. It should be noted that Recital (5) of these draft RTS provide that the retained material net economic interest should not be prioritised in terms of cash flows to preferentially benefit from being repaid or amortised. This is because fees are payments for services unrelated to

the amortisation payments on the securitisation to which the Recital alludes. Also, service providers are usually paid before the holders of the securitisation positions because the provision of those services is essential for the transaction to take place. Without prejudice to this general principle, the fees payable to the retainer in its role as the securitisation's service provider should not be set in an amount or structured in a way that undermines the retained material net economic interest. The draft RTS sets out conditions for the fees payable to the retainer to comply with this requirement.

#### Additional provisions addressing some specific issues related to risk retention

12. Additional provisions have been included for the purpose of addressing some specific issues relating to risk retention, which were not properly fleshed out in the previous versions of these RTS, or for the sake of ensuring further clarity:

- (i) Securitisation of own liabilities: previous recital has been amended and a corresponding operational article has been added, to specify in the rules text that in the transactions described by the recital the alignment of interests is established automatically, as the credit risk remains with the issuer of the securitisation, and the retention requirement should be considered fulfilled. This fact should also cover all own liabilities, such as covered bonds, that are not subject to the exception provided in Article 6(5) point (c) of the Securitisation Regulation.
- (ii) Resecuritisations: While the resecuritisations are generally banned by the Securitisation Regulation, competent authorities may authorise these transactions on a case by case basis. The draft RTS clarify how the risk retention requirement applies in relation to these transactions and make clear that risk retention must be met separately for each of the securitisation and re-securitisation transactions. Hence, the retention on the former should not be counted for the purposes of meeting the retention on the latter. Notwithstanding the above, these draft RTS recognise an exception to this requirement. For example, where the originator/retainer in the first securitisation securitises exposures or positions retained in excess of the minimum net economic interest and no other exposures or positions from third parties are added to the pool of the re-securitisation, the retention on the first transaction should be considered sufficient.
- (iii) Excess spread: The proposal in this consultation paper recognize the synthetic excess spread (SES) as a possible form of compliance with the risk retention requirement by the originator of a synthetic securitisation as long as it is subject to a capital requirement by the applicable prudential regulation. In the specific case of institutions, the CMRP introduced an amendment by which SES is considered an exposure to the securitisation subject to capital requirements in accordance with Article 248(1)(e) CRR, while the determination of the exposure value of the synthetic excess spread is expected to be specified in the separate

EBA RTS on this topic following the mandate under the new paragraph 4 of that Article. It should also be noted that under the retention requirements of Article 6(1) of the Securitisation Regulation it is strictly necessary that any form of retention is measured at origination and retained on an ongoing basis thereafter. Accordingly, for the purposes of the retention requirements only those parts of the exposure value of the SES may be taken into account in the measurement of the net economic interest that are continuously available to cover losses from the day of compliance with the retention requirement until the very end of the transaction. Furthermore, an alignment of interests between the originator and the investors requires that the originator takes part in the performance of a pool of securitised exposures. By definition, SES relates to the capacity of absorbing losses but not to the opportunity of absorbing gains as well. The originator's participation in the performance may therefore be only one-sided and in this case not adequate to achieve an alignment of interests. If e.g. the originator had committed to pay out an amount equal to the synthetic excess spread either to cover losses or otherwise to distribute it to investors, SES should not be accepted as an eligible form of retention since from the originator's point of view the amount designated by the originator as SES would be lost irrespective of the losses incurred on the securitised exposures and economically would therefore not be distinguishable from a premium.

#### Modifications to some risk retention requirements from the new previous EBA RTS on risk retention

13. Several amendments have been made to the previous EBA RTS on risk retention adopted by EBA in 2018, with a view to ensure consistency of the provisions with the EBA mandate set out in Article 6(7) of the Securitisation Regulation, to address some specific issues with respect to risk retention requirements or to provide further clarity on specific requirements. These include the following changes:

- (i) Particular cases of exposure to the credit risk of a securitisation position by credit derivative counterparties and liquidity facility providers under previous Article 2, and conditions that holdings of securitisation positions by subsidiaries in third countries had to meet under previous Article 2 to be considered as not in breach of Article 5 of the Securitisation Regulation have been deleted to more closely align the provisions of the RTS with the mandate on the RTS.
- (ii) Initial disclosure of the level of the commitment to retain a material net economic interest in the securitisation (previous Article 15): as these provisions overlap with the ESMA's RTS on disclosure under Article 7 of the Securitisation Regulation, both the Article and the corresponding Recital have been deleted. However, the obligation has been kept on the retainer to make and disclose a commitment to investors to maintain a material net economic interest in the securitisation on an on-going basis, as this obligation is not captured by ESMA disclosure RTS.

(iii) Cherry picking: Asset selection requirements in Article 6(2) of the Securitisation Regulation are an integral part of the risk retention framework. If originators were able to cherry pick assets to securitise portfolios of worse credit quality without the investors' or potential investors' knowledge, the purpose and effectiveness of risk retention to align the interests of originators and investors would be severely undermined. In that scenario, while the originator would be using the securitisation to offload risky assets, investors would be misled to rely on the originator's retaining a slice of the risk as evidence of a proper alignment of interests. The draft RTS provide useful clarity on the provision on ban on cherry picking, in particular on the comparable assets, and focus of the assessment of the competent authority. The draft RTS do not deal with the exception from the ban on cherry picking (allowed to be applied when any higher credit-risk profile of the assets transferred to the SSPE is clearly communicated to the investors or potential investors) as provided in Recital 11 of the Securitisation Regulation, which is left outside of the scope of the draft RTS.

## 4. Draft regulatory technical standards/

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

of XXX

**on 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**

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 Council<sup>6</sup>, and in particular Article 6(7), third subparagraph thereof,

Whereas:

- (1) The purpose of the requirement to retain a material net economic interest is to align the interests between two sets of parties in a securitisation: the sell-side parties that transfer the credit risk of the securitised exposures, and the investors that assume the credit risk. The retention requirement is essential to ensuring that the sell-side parties retain an on-going stake in the securitisation's performance ("skin in the game") and, thus, preventing the reoccurrence of the "originate to distribute" model.
- (2) Points (a) to (e) of Article 6(3) of Regulation (EU) 2017/2402 lay down various options pursuant to which the retention requirement may be fulfilled. This Regulation should clarify how to comply with each of those options and, in particular, it should also set out how the retention options apply to NPE securitisations, having regard to the distinctive features of these transactions. The alternative options for retaining a net economic interest pursuant to point (a) of Article 6(3) of Regulation (EU) 2017/2402 as set out in this Regulation should not be excluded from the application of the net value approach to the securitised exposures that qualify as non-performing exposures.
- (3) This Regulation should also further specify how to meet the retention requirement through a synthetic or contingent form of retention. To that end, it should be clarified how a synthetic or contingent form of retention would comply with points (a) to (e) of Article 6(3) of Regulation (EU) 2017/2402 and, thus, be deemed as

<sup>6</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2, (OJ L [xxx], [date], p. [x]).

equivalent to retaining a net economic interest in the securitisation pursuant to these points. The use of a synthetic or contingent form of retention should be disclosed in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation.

- (4) The exposure value of synthetic excess spread should be recognised as a possible form of compliance with the risk retention requirement by the originator of a synthetic securitisation as long as it is subject to a capital requirement according to the applicable prudential regulation and should be taken into account in the measurement of the material net economic interest at origination up to the amount of the exposure value that is continuously available from the date of compliance with the retention requirement until the end of the maturity of a synthetic securitisation for covering losses incurred on the securitised exposures. The latter condition ensures that also in the case of synthetic excess spread the net economic interest is measured at origination and retained on an ongoing basis thereafter in each calculation date as required by Article 6(1) of Regulation (EU) 2017/2402 and that the entire amount of the synthetic excess spread recognised as net economic interest is fully available for covering losses on the securitised exposures at any point in time during the maturity of a synthetic securitisation where such losses may occur. This way of taking into account the synthetic excess spread in the measurement of the net economic interest ensures an alignment of interest throughout the entire maturity of a transaction. For institutions, the determination of the exposure value of the synthetic excess spread is expected to be further specified in the EBA regulatory technical standards in accordance with the mandate under Article 248 of Regulation (EU) 575/2013 as amended by Regulation (EU) 2021/558.
- (5) Article 6(1) of Regulation (EU) 2017/2402 prohibits selling or hedging the retained economic interest as doing so would remove the retainer's exposure to the credit risk of the retained securitisation positions or exposures and undermine the purpose of this requirement. Therefore, hedging should only be allowed where it hedges the retainer against risks other than the credit risk of the retained securitisation positions or exposures. Hedging should also be allowed where it is undertaken prior to the securitisation as a legitimate and prudent element of credit granting or risk management and does not create a differentiation for the retainer's benefit between the credit risk of the retained securitisation positions or exposures and the securitisation positions or exposures transferred to investors. Furthermore, in securitisations where the retainer commits to retaining more than the minimum material net economic interest of 5%, hedging should not be prohibited for any retained interest in excess of that percentage, provided that these circumstances are disclosed in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation.
- (6) 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 transferred to investors or the exposures securitised, or the 5 % net value in the case of non-performing exposures of traditional NPE securitisations. 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. This should not prevent the retainer from being remunerated on a priority basis for services rendered to the securitisation's special purpose entity, provided that the remuneration's amount is set on an arm's length basis and the structure of such remuneration does not undermine the retention requirement.

- (7) Without prejudice to the exception laid out in point (c) of Article 6(5) of Regulation (EU) 2017/2402, the retention requirement should be deemed as duly complied with in securitisations backed by exposures of such nature that the credit risk is fully retained by the relevant sell-side party. For instance, where the issuer of a securitisation securitises a pool of exposures exclusively comprising the issuer's own covered bonds or similar own debt instruments, the issuer of the securitisation has full alignment of interest as principal obligor of the covered bonds or other debt instruments and, as a result, should not be obliged to take any further action to comply with the risk retention requirement.
- (8) Insofar as Article 8 of Regulation (EU) 2017/2402 provides for exceptions from the ban on resecuritisations, it is appropriate to set out rules on the manner for these transactions to comply with the retention requirement. As a general rule, the first securitisation(s) of exposures and the second 'repackaged' level of the transaction should be treated as separate for the purposes of meeting the risk retention requirement and, accordingly, there should be an obligation to retain a material net economic interest at each of those levels. The same requirement should apply to transactions with multiple underlying securitisations, such as ABCP programmes. Without prejudice to the foregoing, where the securitisation's originator/retainer securitises exposures or positions that it had retained in excess of the minimum retention requirement at the first level of a securitisation, that originator should be under no obligation to retain an additional interest at the level of the resecuritisation, provided that no other exposures or positions from third parties are added to the resecuritisation's underlying pool. In these cases, the resecuritisation should merely be regarded as a second leg of the same transaction that would make no significant changes on the economic basis of the securitisation and, thus, the original retention at the level of the securitisation should suffice to meet the purpose of this Regulation. Lastly, the mere retranching of a securitisation position into contiguous tranches by the securitisation's originator should not be deemed as a resecuritisation for the purposes of the retention requirement.
- (9) Asset selection requirements in Article 6(2) of Regulation (EU) 2017/2402 are an integral part of the risk retention framework. If originators were able to cherry pick assets to securitise portfolios of worse credit quality in particular without the investors' or potential investors' knowledge, the purpose and effectiveness of risk retention to align the interests of originators and investors would be severely undermined. In that scenario, while the originator would be using the securitisation to offload risky assets, investors would be misled to rely on the originator's retaining a slice of the risk as evidence of a proper alignment of interests. This Regulation should provide for criteria that originators may rely on to establish compliance with Article 6(2) of Regulation (EU) 2017/2402. Furthermore and for the purposes of that Article, this Regulation should also provide for criteria on the determination of "comparable assets". Where the comparison referred to in that Article 6(2) is not possible because all the comparable assets are transferred to the SSPE, such securitisation should be considered as meeting the requirements of

Article 6(2), provided this is disclosed in the final offering document, prospectus, transaction summary or overview of the main features of the securitisation.

- (10) Where insolvency proceedings have been commenced in respect of the retainer or the retainer is unable to continue acting in that capacity for reasons beyond its control or the control of its shareholders, it should be possible for the remaining retained material net economic interest to be retained by another legal entity complying with Article 6 of Regulation (EU) 2017/2402 and this Regulation.
- (11) Subparagraph 4 of Article 6(1) of Regulation (EU) 2017/2402 provides that only servicers that can demonstrate expertise in the servicing of non-performing exposures may act as retainers in a traditional NPE securitisation. It is, therefore, appropriate to set out in this Regulation the criteria that servicers should meet to be able to demonstrate that they have the required expertise in servicing non-performing exposures.
- (12) Commission Delegated Regulation (EU) No 625/2014<sup>7</sup> is supplementing risk retention provisions in Regulation (EU) 575/2013, in particular Article 405 of that Regulation, which have been amended by Regulation (EU) 2017/2401 and superseded by Article 6 of Regulation (EU) 2017/2402. Commission Delegated Regulation (EU) No 625/2014 should now be repealed as its provisions are no longer relevant, subject to the transitional provision laid out in Article 43(6) of Regulation (EU) 2017/2402.
- (13) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (14) 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 Council<sup>8</sup>,

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) ‘synthetic form of retention’ means the retention of a material net economic interest through the use of derivative instruments;

<sup>7</sup> 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).

<sup>8</sup> 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).

*Article 2*  
*Retainers of a material net economic interest*

1. The requirement that the retained material net economic interest shall not be split amongst different types of retainers under Article 6(1) of Regulation (EU) 2017/2402 shall mean that it 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;
  - (d) the servicer or servicers in a traditional NPE securitisation, provided that they meet the requirement on expertise set out in Article 19.
2. Where multiple originators fulfil the retention requirement, it shall be fulfilled by each originator on a pro rata basis by reference to the securitised exposures for which it is the originator.
3. Where multiple original lenders fulfil the retention requirement, it shall be fulfilled by each original lender on a pro rata basis by reference to the securitised exposures for which it is the original lender.
4. By way of derogation from paragraphs 2 and 3, 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 multiple sponsors fulfil the retention requirement, it shall be fulfilled by either:
  - (a) the sponsor whose economic interest is most closely aligned with the investor's interest as agreed by the multiple sponsors on the basis of objective criteria including, inter alia, the transaction's fee structure, the sponsor's involvement in the establishment and management of the ABCP programme or other securitisation and the exposure to the credit risk of the securitisations;
  - (b) each sponsor proportionately to the number of sponsors.
6. Where multiple servicers fulfil the retention requirement, it shall be fulfilled by either:
  - (a) the servicer with the predominant economic interest in the successful workout of the exposures of the traditional NPE securitisations, as agreed by the multiple servicers on the basis of objective criteria including, inter alia, the transaction's fee structure and the servicer's available resources and expertise to manage the exposures' workout process;

- (b) each servicer proportionately to the number of servicers.
7. For the purposes of assessing whether an entity has been established or operates for the sole purpose of securitising exposures as referred to in the first subparagraph of Article 6(1) of Regulation (EU) 2017/2402, the following shall be taken into account:
- (a) the entity has a strategy and the capacity to meet payment obligations consistent with a broader business model that involves material support from capital, assets, fees or other sources of income, by virtue of which the entity does not rely on the exposures to be securitised, on any interests retained or proposed to be retained in accordance with this Regulation or on any corresponding income from such exposures and interests as its sole or predominant source of revenue;
  - (b) the responsible decision makers have the necessary experience to enable the entity to pursue the established business strategy, as well as adequate corporate governance arrangements.

### *Article 3*

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

1. The fulfilment of the retention requirement 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, shall meet each of the following conditions:
  - (a) the amount retained is at least equal to the amount required under the relevant option to which the synthetic or contingent form of retention corresponds to;
  - (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 the securitisation through a synthetic or contingent form. The disclosure referred to in this point shall provide all the necessary details on the applicable synthetic or contingent form of retention, including, in particular, the methodology used in its determination and an explanation on which of the options of Article 6(3) of Regulation (EU) 2017/2402 the retention is equivalent to.
2. Where an entity other than a credit institution as defined in Article 4(1) point (1) of Regulation (EU) No 575/2013 retains an economic interest through a synthetic or contingent form of retention, the retained interest shall be fully collateralised in cash and held under arrangements as referred to in Article 16(9) of Directive 2014/65/EU<sup>9</sup>.

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<sup>9</sup> 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 4

##### *The retention of not less than 5% of the nominal value of each of the tranches sold or transferred to investors*

The retention of not less than 5 % of the nominal value of each of the tranches sold or transferred as referred to in Article 6(3)(a) of the Regulation (EU) 2017/2402 may be complied with through any of the following methods:

- (a) The retention of not less than 5 % of the nominal value of each of the securitised exposures, provided that the retained credit risk ranks pari passu with or is subordinated to the credit risk securitised in relation to the same exposures;
- (b) The provision, in the context of an ABCP programme, of a liquidity facility, where the following conditions are met:
  - (i) the liquidity facility covers 100 % of the share of the credit risk of the securitised exposures of the relevant securitisation transaction 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 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) The retention of an exposure which exposes its holder to the credit risk of each issued tranche of a securitisation transaction on a pro-rata basis (vertical tranche) of not less than 5 % of the total nominal value of each of the issued tranches.

#### Article 5

##### *The retention of the originator's interest in a revolving securitisation or securitisation of revolving exposures*

The retention of the originator's interest of not less than 5% of the nominal value of each of the securitised exposures as referred to in point (b) of Article 6(3) of Regulation (EU) 2017/2402 shall only be considered fulfilled, where the retained credit risk of such exposures ranks pari passu with or is subordinated to the credit risk securitised in relation to the same exposures.

#### Article 6

##### *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, as referred to in point (c) of Article 6(3)

of Regulation (EU) 2017/2402, shall be sufficiently diverse to avoid an excessive concentration of the retained interest.

2. When carrying out the selection of retained exposures, the retainer shall take into account appropriate quantitative and qualitative factors 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.
3. The retainer shall not designate different individual exposures at different points in time, except where this may be 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.
4. Where the retainer is the securitisation's servicer, the selection conducted in accordance with this Article shall not lead to a deterioration in the servicing standards applied by the retainer on the transferred exposures relative to the retained exposures.

*Article 7*  
*The retention of the first loss tranche*

1. The retention of the first loss tranche in accordance with Article 6(3)(d) of Regulation (EU) 2017/2402 may be fulfilled by holding either on-balance sheet or off-balance sheet positions and by any of the following methods:
  - (a) provision of a contingent form of retention or of a liquidity facility in the context of an ABCP programme, provided that each of these methods meets all of 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 retainer;
    - (v) the investors have been given access within the initial disclosure to appropriate information to enable them to verify that points (i) to (iv) are complied with;
  - (b) overcollateralisation, as referred to in point (9) of Article 242 of Regulation (EU) No 575/2013, if that overcollateralisation operates as a 'first loss' position 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, provided that this portion is equivalent to at least 5 % of the nominal value of the securitised exposures.

### Article 8

*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 as referred to in point (e) of Article 6(3) of Regulation (EU) 2017/2402 shall only be considered to be fulfilled, where the retained credit risk is subordinated to the credit risk securitised in relation to the same exposures.
2. By way of derogation from paragraph 1, the retention may also 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 9

*Application of the retention options on traditional NPE securitisations*

1. In case of NPE securitisations in accordance with Article 6(3a) of Regulation (EU) 2017/2402, Articles 4 to 8 shall be applied to the share of non-performing exposures in the pool of underlying exposures of a securitisation considering any reference in relation to the nominal value of the securitised exposures or to the nominal value of the issued tranches as a reference to the net value of the non-performing exposures.
2. Where Article 6 is applied, the net value of the retained non-performing exposures shall be computed using the same amount of the non-refundable purchase price discount that would be applied had the retained non-performing exposures been securitised.
3. Where the non-refundable purchase price discount has been agreed at the level of the pool of underlying non-performing exposures as referred to in Article 6(3a) second subparagraph of Regulation (EU) 2017/2402, the net value of individual securitised non-performing exposures shall be calculated by applying a corresponding share of the non-refundable purchase price discount to each of the non-performing securitised exposures in proportion to their nominal value.
4. Where the non-refundable purchase price discount includes the difference between the nominal amount of one tranche or several tranches of an NPE securitisation underwritten by the originator for subsequent sale and the price at which this tranche or these tranches are first sold to unrelated third parties as referred to in Article 6(3a) second subparagraph of Regulation (EU) 2017/2402, that difference shall be taken into account in the calculation of the net value of individual securitised non-performing exposures by applying a corresponding share of the difference to each of the non-performing securitised exposures in proportion to their nominal value.

#### Question 1 for consultation:

Do you agree with the provisions in this Article with respect to the application of the retention options on the NPE securitisations, and the “net value” regime of the NPE securitisations? Are the retention options specified under Articles 4 to 8 sufficiently clear

using the net value regime? Are there any other aspects of NPE securitisation and the net value regime that should be clarified in the RTS?

*Article 10*  
*Measurement of the level of retention*

1. When measuring the level of retention of the net economic interest, the following criteria shall be applied:
  - (a) the origination shall be considered as the time at which the exposures' were first securitised, such as the date of the issuance of securities, or the date of the signature of the credit protection agreement or the date of the agreement on a refundable purchase price discount;
  - (b) where the calculation of the level of retention is based on nominal values, it shall not take into account the acquisition price of assets;
  - (c) the finance charge collections and other fee income received in respect of the securitised exposures in a traditional securitisation net of costs and expenses (traditional excess spread) shall not be taken into account when measuring the retainer's net economic interest;
  - (d) where the originator acts as the securitisation's retainer and applies the retention option in accordance with Article 6(3)(d) of Regulation (EU) 2017/2402, and where the exposure value of the 'synthetic excess spread' is subject to capital requirements in accordance with the prudential regulation applicable to the originator, it shall take the exposure value of the 'synthetic excess spread' into account when measuring the material net economic interest in accordance with Article 7 up to the amount of the exposure value that is continuously available from the date of the compliance with the risk retention requirement until the end of the maturity of a synthetic securitisation for covering losses incurred on the securitised exposures;
  - (e) the retention option and methodology used to calculate the net economic interest shall not be changed 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. The 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.

**Question 2 for consultation:**

Do you agree with the provisions with respect to the synthetic excess spread? Are there any aspects relating to the synthetic excess spread being considered in the measurement of the material net economic interest that should be clarified in these RTS, taking into account that separate RTS will be developed that will determine the exposure value of the synthetic excess spread?

### *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 where, 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 relevant, funding arrangements that involve a sale, transfer or other surrender of all or part of the rights, benefits or obligations arising from the retained net economic interest, provided that such use as collateral does not transfer the exposure to the credit risk of these retained exposures or securitisation positions to a third party.
3. The condition of paragraph 1(b) shall not apply in the event of the insolvency of the retainer.

### *Article 13*

#### *Exemptions in accordance with Article 6(6) 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 point (b) of paragraph (1) of Article 338 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 as defined in point (15) of Article 2 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 an exposure to the securitisation so as to ensure the ongoing fulfilment of the requirement.

### *Article 15*

#### *Requirements on the allocation of cash flows and losses to the retained interest and on fees payable to the retainer*

1. There shall be no arrangements or embedded mechanisms in the securitisation by virtue of which the retained interest at origination would decline faster than the interest transferred. The retained interest shall not be prioritised in the allocation of cash flows to preferentially benefit from being repaid or amortised ahead of the transferred interest. The amortisation of the retained interest via cash flow allocation or through the allocation of losses that, in effect, reduce the level of retention over time shall not be deemed as a breach of the criteria set out in this paragraph.
2. Arrangements on fees payable to the retainer on a priority basis to remunerate that retainer for services of any kind provided to the securitisation shall only be deemed as complying with the previous paragraph where all of the following conditions are met:
  - (a) the amount of the fees is set on an arm's length basis having regard to comparable transactions in the market. In the absence of comparable transactions in the relevant market, the set amount may be deemed compliant by reference to fees payable in similar transactions in other markets or by using appropriate valuation metrics, taking into account the type of securitisation and the service being provided; and
  - (b) the fees are structured as a genuine consideration for the provision of the relevant service and do not create an undue preferential claim in the securitisation cash flows that effectively declines the retained interest faster than the transferred interest.

The condition in this point shall not be considered to be met, where the fees are guaranteed or payable up-front in any form, in full or in part, and where the effective retention amount after deducting such fees is lower than the minimum net economic interest required under the respective retention option in accordance with Article 6(1) of Regulation (EU) 2017/2402.

3. The fees payable to the retainer may fluctuate over time by reference to the performance of the securitised assets or relevant market benchmarks, provided that the criteria laid out in paragraph 1 are complied with.

#### **Question 3 for consultation:**

Do you agree with the provisions set out in this Article on fees payable to the retainer?

### Article 16

#### *Fulfilment of the retention requirement in securitisations of own issued debt instruments*

Where a securitisation is backed by a pool of underlying exposures comprised exclusively of own debt instruments issued by the issuer or multiple issuers of the securitisation, the retention requirement in Article 6(1) of Regulation (EU) 2017/2402 shall be considered as complied with. The debt instruments referred to in this Article shall include covered bonds as defined in Article 3(1) of Directive (EU) 2019/2162.

#### **Question 4 for consultation:**

Do you agree with the provisions with respect to securitisations of own issued debt instruments?

### Article 17

#### *Retention requirement in resecuritisations*

1. In the context of a resecuritisation as far as permitted in accordance with Article 8 of Regulation (EU) 2017/2402, a retainer shall retain the material net economic interest in relation to each of the respective transaction levels.
2. By derogation from paragraph 1, the originator of a resecuritisation shall not be obliged to retain a material net economic interest also at the transaction level of the resecuritisation where the following conditions are met:
  - (c) the originator of the resecuritisation is also the originator and the retainer of the underlying securitisation;
  - (d) the resecuritisation is backed by a pool of exposures comprising solely exposures or positions retained by the originator in the securitisation in excess of the required minimum net economic interest;
  - (e) there is no maturity mismatch between the underlying securitisation positions or exposures and the resecuritisation.
3. The retranching of an issued tranche into contiguous tranches by the securitisation's originator shall not be deemed as a resecuritisation for the purposes of this Article.

#### **Question 5 for consultation:**

Do you agree with the provisions with respect to resecuritisations?

### Article 18

#### *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 as 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 expected performance of both the assets to be further held on the balance sheet and the assets to be transferred is determined by similar relevant factors;
  - (b) as a result of the similarity referred to in point (a) and on the basis of indications such as past performance or applicable models, it can be reasonably expected that the performance of the assets to be further held on the balance sheet would not be significantly better over the time period referred to in Article 6(2) of Regulation (EU) 2017/2402 than the performance of the assets to be transferred.
2. The assessment whether the originator has complied with Article 6(2) of Regulation (EU) 2017/2402 shall take into account the actions the originator has taken to comply with that Article. In particular, these shall include any internal policies, procedures and controls put in place by the originator to prevent the systematic or intentional selection for securitisation purposes of assets of a worse average credit quality than comparable assets retained on its balance sheet.
  3. Article 6(2) of Regulation (EU) 2017/2402 shall be deemed complied with where, after the securitisation, there are no exposures left on the originator's balance sheet that are comparable to the securitised exposures and where the fact that no comparable assets remain on the balance sheet of the originator is being clearly communicated to investors.

#### **Question 6 for consultation:**

Do you agree with the provisions in this Article with respect to assets transferred to SSPE? Are there any additional aspects that should be further specified in these RTS, taking into account that no clarification is provided with respect to Recital 11 of the Securitisation Regulation (for example, do you see any specific implications for the securitisations of NPE securitisations and how these should be tackled)?

#### *Article 19*

##### *Expertise requirement on the servicer of a traditional NPE securitisation*

1. The servicer shall be deemed to have expertise in servicing non-performing exposures in accordance with subparagraph 4 of Article 6(1) of Regulation (EU) 2017/2402 where:
  - (a) the members of the management body of the servicer and the senior staff, other than the members of the management body, responsible for servicing non-performing exposures have adequate knowledge and skills in the servicing of such exposures;
  - (b) the business of the servicer, or of its consolidated group for accounting or prudential purposes, has included the servicing of non-performing exposures for at least five years prior to the date of the securitisation; or
  - (c) all of the following points are complied with:

- (i) at least two of the members of its management body have relevant professional experience in the servicing of non-performing exposures, on a personal level, of at least five years;
  - (ii) senior staff, other than the members of the management body, who are responsible for managing the entity's servicing of non-performing exposures have relevant professional experience in the servicing of such exposures, on a personal level, of at least five years;
  - (iii) the servicing function of the servicer is backed up by a back-up servicer compliant with point (b).
2. For the purpose of demonstrating the number of years of professional experience, the relevant expertise shall be disclosed in sufficient detail, in accordance with the applicable confidentiality requirements, to permit investors to carry out their due diligence obligations under Article 5 of Regulation (EU) 2017/2402.

**Question 7 for consultation:**

Do you agree with the provisions set out in this Article with respect to expertise of the servicer of a traditional NPE securitisation?

**Question 8 for consultation:**

Do you have any comments on the remaining Articles of these draft RTS?

*Article 20  
Repeal*

With effect from entry into force of this Regulation, Commission Delegated Regulation (EU) No 625/2014 shall be repealed without prejudice to Article 43(6) of Regulation (EU) 2017/2402.

*Article 21  
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*.

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



Done at Brussels,

*For the Commission*  
The President

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

#### A. Problem identification

1. The financial crisis has shown that, in securitisation transactions, the following problems have materialised: (i) 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 (ii) 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. 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.
2. Article 6 of the Securitisation Regulation, as amended by the Regulation (EU) 2021/557, sets out risk retention requirements on originators, sponsor or originator lenders in securitisation transactions. These provisions address 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.
3. The Securitisation Regulation replaces the risk retention requirements previously set out in Regulation (EU) No 575/2013, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Delegated Regulation (EU) No 231/2013. Article 410 of Regulation (EU) No 575/2013 mandated the EBA to develop draft regulatory technical standards to specify in greater detail the retention requirement applicable to institutions set out in Article 405 of that Regulation. Based on the draft RTS submitted by the EBA, the Commission adopted Commission Delegated Regulation (EU) No 625/2014. Following the adoption of Commission Delegated Regulation (EU) No 625/2014, the Securitisation Regulation was enacted. The Securitisation Regulation mandated the EBA to develop RTS on risk retention applicable not only to institutions but to all parties within the scope of application of the Securitisation Regulation, which the EBA submitted to the Commission in 2018. The Securitisation Regulation has been recently amended by the Regulation (EU) 2021/557, which has extended the scope of the EBA mandate on the RTS on risk retention.

## B. Objectives of the RTS

4. The draft RTS have been developed in accordance with Article 6(7) of the Securitisation Regulation, as amended by the Regulation (EU) 2021/557, which requires the EBA to develop draft RTS 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;
  - (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;
  - (f) the modalities of retaining risk pursuant to paragraph 3 and 3a in the case of NPE securitisation; and
  - (g) the impact of fees paid to the retainer on the effective material net economic interest within the meaning of paragraph 1.

## C. Cost-Benefit Analysis

5. The present draft RTS largely replicate many of the existing provisions in Commission Delegated Regulation (EU) No 625/2014 and the EBA RTS on risk retention adopted in 2018, while a number of the provisions proposed in the draft RTS have already been implemented (at least in part) pursuant to the Commission Delegated Regulation (EU) No 625/2014. These replicated requirements are therefore not expected to involve 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.
6. With respect to the new requirements proposed in the draft RTS, the following can be expected:
  - a) Some additional requirements, in particular with some aspects of NPE securitisations, provide additional clarity on the risk retention in case of portfolios of non-performing exposures and may therefore help contribute positively to structuring securitisations on the non-performing exposures.
  - b) Other additional requirements may however pose challenges to the market and are expected to require a significant effort by the supervisors to be implemented correctly

(such as requirements on the fees paid to the retainer, the net value regime for NPE securitisations, the experience of the servicer, and the adverse selection of assets).

## 5.2 Overview of questions for consultation

**Question 1:**

Do you agree with the provisions in this Article with respect to the application of the retention options on the NPE securitisations, and the “net value” regime of the NPE securitisations? Are the retention options specified under Articles 4 to 8 sufficiently clear using the net value regime? Are there any other aspects of NPE securitisation and the net value regime that should be clarified in the RTS?

**Question 2:**

Do you agree with the provisions with respect to the synthetic excess spread? Are there any aspects relating to the synthetic excess spread being considered in the measurement of the material net economic interest that should be clarified in these RTS, taking into account that separate RTS will be developed that will determine the exposure value of the synthetic excess spread?

**Question 3:**

Do you agree with the provisions set out in this Article on fees payable to the retainer?

**Question 4:**

Do you agree with the provisions with respect to securitisations of own issued debt instruments?

**Question 5:**

Do you agree with the provisions with respect to resecuritisations?

**Question 6:**

Do you agree with the provisions in this Article with respect to assets transferred to SSPE? Are there any additional aspects that should be further specified in these RTS, taking into account that no clarification is provided with respect to Recital 11 of the Securitisation Regulation (for example, do you see any specific implications for the securitisations of NPE securitisations and how these should be tackled)?

**Question 7:**

Do you agree with the provisions set out in this Article with respect to expertise of the servicer of a traditional NPE securitisation?

**Question 8:**

Do you have any comments on the remaining Articles of these draft RTS?