To: European Banking Authority

One Canada Square

Canary Wharf

London E14 5AA

Luxembourg, Jan. 14, 2015

Dear Sirs,

Re: EBA Discussion Paper on simple, standard and transparent securitisations (EBA/DP/2014/02)

We are grateful for the opportunity to comment on the discussion paper published by EBA. As general remark, we in principle agree on the reasons behind the quest for simple, standard and transparent transactions. Securitization techniques are not simple per se, a definition of *simplicity* has thus to refer to the avoidance of overly complex structures, unusual repayment profiles of the underlying assets, and originators pursuing an originate-to-distribute business model. With respect to *standardization*, no bank and no geographical market is similar to each other, therefore, measures such as imposing the same credit enhancement on any single ABS would not be viable. This is why we believe the containment of some risks (such those arising from the exposure to the originator and concentration of any kind) should be addressed across the board. Finally, we note that transparency (achieved, for instance, via disclosure of the loan by loan) does not per se guarantee a full understanding of an ABS structure: promoting agreed standards on how to report information on a transaction would be very effective and we thus welcome ESMA's efforts on this front.

The following pages report specific comments on sections of the consultation paper.

Yours sincerely,

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	Request For Comment	EIB Group's Responses
1.	Question 1:Do you agree with identified impediments to the securitisation market?	We broadly agree with the presented analysis, however we note: • EXTERNAL RATINGS: we believe that the ratings provided by the ECAI currently overestimate systemic/sovereign risks, as they are taken into account both via harsher credit assumptions and rating ceilings. External ratings were one of main causes of the market volatility and capital shortfalls generated during the credit crunch, and therefore the use of rating for the purpose of computing banks' capital should be reduced in order to limit the impact of unpredictable methodology changes. Nonetheless, external ratings still provide a valuable support to investment decisions, in terms of comfort on the soundness of the structure. Finally, a harmonization of the number of external ratings required should be performed between the CRA III and the CRR. • ELIGIBLE COUNTERPARTIES: we do not deem the market to be impaired by the absence of counterparties able to act as, for instance, swap providers. However, we note that in Europe the number of eligible counterparties is relatively limited due to rating and collateral posting requirements, which in turn adds to the concentration risk with respect to certain counterparties. • MARK TO MARKET: it would also be important to consider the impact of the accounting rules, i.e the need for mark-to-market accounting. We further note, in our role of guarantors and investors of ABS tranches, the following three impediments affecting the effectiveness of our role in the market: • RISK WEIGHTINGS OF ABS ACROSS REGULATED INVESTORS: we believe the current regulation creates disparities among investors. Insurers and banks may be financing the same type of assets bearing the same risks, therefore it is important to gauge whether capital requirement rules under CRD-IV and Solvency II are consistent and are providing a competitive "level playing field", so as not to influence the composition of the investor base. • INTERNAL RATINGS FOR CREDIT ENHANCEMENT PROVIDERS: notwithstanding the value that external ratings provide, we strongly support the initiatives aimed at reducing mechanistic reliance on rating agencies, increasing the depth of investor due diligence and increasing information disclosure on securitisations. We are of the opinion that a sophisticated provider of credit enhancement to securitisation tranches, such as the EIF, with rating models and information comparable to ECAIs and subject to supervisory approval, should be allowed to use its own internal credit rating in determining the capital requirement arising from externally rated and unrated guarantee exposures

		related to securitisation. • **REGULATORY TREATMENT OF GUARANTEES BY THE BENEFICIARY FINANCIAL INSTITUTION**: highly rated multilateral development banks should, under normal circumstances, enable financial institutions to apply a zero risk weighting to the portion of the assets covered by their guarantees (provided the guarantees comply with risk mitigation requirements). If this cannot happen due to regulatory uncertainty, the guarantees cannot deliver at their full potential in achieving public policy objectives. To this end, we would like to promote a regulation that avoids discretion in the treatment of credit risk mitigation techniques by Member States.
2.	Question 2:Should synthetic securitisations be excluded from the framework for simple standard and transparent securitisations(SSTS)? If not, under which conditions/criteria could they be considered simple standard and transparent?	By nature, synthetic securitizations have their reason of existing because of the credit risk mitigation that they provide to FIs and the consequent free-up of capital that can be allocated to new lending. Credit risk transfer is one of the priorities of the banking system. The vast majority of synthetic securitizations (unfunded transactions) do not use a SPV, and some of them feature attachment points as low as 0% in order to obtain capital relief. In fully unfunded structures, to the extent the underlying portfolio is simple, standard and transparent, it should be granted a favourable treatment. We find debatable the argument that a weakness of most synthetic securitization is the non-recourse to underlying assets by the investor. Recourse to the underlying obligor is only needed if the protection seller expects actual cash flows back from that obligor (as in a true sale securitisation). In a synthetic transaction the protection seller doesn't need direct recourse to the assets because payments are made by the protection seller on the basis of defaults of the underlying assets and for the loss incurred by the originator. It is actually a strength, not a weakness of synthetics, that there is no transfer of/recourse to the underlying assets because all the legal risks associated with the sale of the assets (e.g. clawback risk) are eliminated.
3.	Question 3:Do you believe the default definition proposed under Criterion 5 (ii) above is appropriate? Would the default definition as per Article 178 of the CRR be more appropriate?	We believe measures based on days past due are the most effective and objective.
4.	Question 4: Do you believe that, for the purposes of standardisation, there should be limits imposed	The definition and restrictions for SSTS are already well defined; therefore as long as the underlying assets comply with them there should not be any restriction on the jurisdiction of the assets. What can be considered is only accepting portfolios in a unique currency and originated in a single jurisdiction to comply with the principle of uniformity and consistency of the portfolios. No limitation on the jurisdiction of the SPV and their linkage with the originator residence should be considered, provided that the legal framework that applies has minimal uncertainty of how a securitisation will

	on the type of jurisdiction (such as EEA only, EEA and non-EEA G10 countries, etc): i) the underlying assets are originated and/or ii) governing the acquisition process of the SSPE of the underlying assets is regulated and/or iii) where the originator or intermediary (if applicable) is established and/or iv) where the issuer/sponsor is established?	be treated following certain events (e.g. originator's insolvency) and is comparable to the main securitisation markets. Jurisdictions where no securitization law is available, and that rely on foreign securitization laws, should not be penalised.
5.	Question 5: Does the distribution of voting rights to the most senior tranches in the securitisation conflict with any national provision? Would this distribution deter investors in non-senior tranches and obstacle the structuring of transactions?	This may enter in conflict with the "Ley 19/1992 Artículo séptimo" in Spain, which states that for proceeding to the modification of the deed of incorporation an unanimous consent of the note holders must be sought. In this particular case, it seems that the voting rights cannot be given to the senior note holders only. Apart from the conflict that it may have with particular jurisdictions, granting the voting rights to the senior note holders could have adverse consequences for the mezzanine or junior notes. We believe it is important to differentiate the concept of a SSTS and the concept of a highest rated senior note. AAA senior notes could come from the SSTS or from non-SSTS transactions. Following this reasoning, by granting voting rights to the seniors we would not be adding value to the concept of SSTS but to the particular senior tranche.
6.	Question 6:Do you believe that, for the purposes of transparency, a specific timing of the disclosure of underlying transaction documentation should be required? Should this documentation be disclosed prior to issuance?	On June 20, 2014, ESMA published a Regulatory Technical Standard that provides for disclosure and reporting requirements for all Structured Finance transactions in Europe. We understand that, following implementation of such regulation, ESMA will host a repository of transaction documents and investor reports comprising standardised information. We think this measure will be sufficient and will improve the securitisation market. Finally, we note that before the Issue date it is simply not possible to disclosure anything but the Prospectus. Presale reports are issued before closing precisely for this reason.
7.	Question 7:Do you agree	High quality is a concept that lies with a number of factors; primarily we believe it is important that concentration and

	that granularity is a relevant factor determining the credit risk of the underlying? Does the threshold value proposed under Criterion B pose an obstacle to the structuring of securitisation transactions in any specific asset class? Would another threshold value be more appropriate?	low granularity are correctly addressed. We suggest concentration limits to be applicable to borrowers' groups, industries, geographic areas, maturity buckets: • The obligor group concentration for the largest obligor does not exceed [0.75%]; • As of the portfolio sale date, or during revolving, the Effective Number of the portfolio exceeds [250], and, according to the scheduled amortization of the assets, it is expected to remain above [150] for the weighted average life of the senior note; • No region accounts for more than [40%] of the portfolio; • No industry accounts for more than [25%] of the portfolio; • Not more than [20%] of the portfolio in the Real Estate and Construction (defined respectively by NACE Code 41, 42, 43 and 68);

8.	Question 8:Do you agree with the proposed criteria defining simple standard and transparent securitisations? Do you agree with the proposed credit risk criteria? Should any other criteria be considered?	We have the following comments on the criteria:
		• **Pillar I – Simple securitisations – General observations.** The criteria of this section should also address the following requirements:
		  o All properties pledged as collateral in secured loans or leased are fully built;
		  o All loans/leases are paid by direct debit;
		  o No loans/leases feature extendable maturity; inflation-linked payments; teaser rates;
		  o No loans/leases have a payment which is less frequent than semi-annual;
		  o No loans/leases are either syndicated or constitute a revolving facility;
		  o They are mainly amortising, i.e. interest only / bullet loans are limited to [20%];
		
		• **Pillar I – Simple securitisations – Criterion 4.** This criterion should also speak to the features of the originator:
		  o The originator's business model is not an originate-to-distribute model. The originator maintains on its books an exposure to assets similar to those securitised;
		  o The transaction's size represents less than [60%] of the originator's exposure to that asset class;
		  o The financial institutions which originated the assets are active and experienced SME lenders, as proved by the depth and breadth of the historical data they can provide. Material consistency of credit and collection policy shall have been in place during the historical data time span
		  o The securitised loans have been granted by the originator without relying on broker or external agents, unless the originator's standard underwriting criteria have been consistently applied to borrowers introduced by external agents.
		
		• **Pillar II – Standard securitisation – General observations:** The criteria of this section should also address the

		following requirements: o Commingling and set-off considerations are addressed in the structure as to insulate the risk of the seller/servicer's insolvency; o The cash reserve covers for the senior expenses and the interest payments for two payment dates, assuming the interest rate rises 5%. o The structure envisages excess spread trapping to cover defaulted assets, and cash trapping triggers that prevents funds from flowing to the junior retained tranche if the underlying assets' performance deteriorates. • Pillar II – Standard securitisation – Criterion 8. We note that requiring a hedge agreement in any transaction might deter many originators, due to the reluctance of swap providers to enter into back-to-back agreements with small/mid-size financial institutions. • Pillar II – Standard securitisation – Criterion 13. Please consider that in some jurisdictions (e.g. Spain), there are no representatives of the noteholders / trustees because the management company is required at law to ensure the protection of the noteholders. • Pillar III – Transparent securitisation – Criterion 15. Requiring compliance with the Prospectus Directive doesn't seem to be appropriate for non-listed / non-public transactions • Pillar III – Transparent securitisation – Criterion 20. Investors should also be able to access the internal ratings that the originators assign to the exposures, and to review the rating models. • Credit Risk Criteria – Criterion C (ii). This criterion does not seem appropriate since it limits the type of exposures which can be included in the portfolio. • Credit Risk Criteria – Criterion C (iii). If the rights ranking in priority are not sold in the context of the same securitization, the loan will be considered as unsecured, but shouldn't be excluded from the portfolio just because of this reason.
9.	Question 9:Do you envisage any potential adverse market consequences of introducing a qualifying securitisation framework for regulatory purposes?	Many definitions are spreading through the market, like: - eligible and non-eligible, for the purpose of ECB ABS Purchase Programme; - High quality liquid assets (HQLA) and non-HQLA for the purpose of LCR; - qualifying (SSTS) and non-qualifying (non-SSTS), for the purpose of regulatory treatment. This generates an unnecessary complex ABS classification matrix that will not help the market. We believe the first two classifications (valid only for cash ABS) should be matching, while the third one should refer to credit and structure only and work for both cash and synthetic transactions.

10.	Question 10: How should capital requirements reflect the partition between qualifying and non-qualifying?	Capital treatment for SSTS should get closer to the capital treatment of the underlying assets before being securitized. This will make a huge difference and a clear incentive. To achieve that, the current RW and Caps applying to the different tranches (via the different approaches) would need to be recalibrated. According to the capital calculation methods provided in the proposed hierarchy (IRBA, ERBA, SSFA standardized), SSFA should be recalibrated to return the same capital charge when comparing the tranches of SSTS and the underlying portfolio. According to the principles stated in the consultative paper, a qualifying securitisation would meet stringent requirements. This should be understood as an easing factor regarding capital adequacy. Following this rationale: 1. the Basel scaling factor used for IRBA and Kirb could be waived in the case of qualifying tranches; 2. the IRBA should adjust on the basis of the under- or over - collateralisation; 3. sophisticated investors should be allowed to use the IRBA with proxy Kirb coupled with a more conservative calibration of the formula (this is allowed in other jurisdictions); 4. a simplified formula based approach (Simplified SFA) parametrised for the Standardised approach should rank after the IRBA; 5. the ERBA approach should rank at the bottom of the hierarchy for non-high quality securitization and should be excluded for high quality securitization.
11.	Question 11: What is a reasonable calibration across tranches and credit quality steps for qualifying securitisations? Would re-allocating across tranches the overall capital applicable to a given transaction by reducing the requirement for the more junior tranche and increasing it for the more senior tranches other than the most senior tranche be a feasible solution?	Regarding the statement that Senior tranches should attract higher RW's: the figures and tables on which the paper relies demonstrate that EU securitisations performed fairly better than their US equivalents. Several studies published since the credit crunch point out numerous reasons for the differences, such as underlying tenors, asset selection and structuring features. For all these reasons and given that the calibration took US scenarios into account, we consider the "proxy" RW's to be unreasonable. These should be more adjusted to the EU reality, where in fact much less defaults on the underlying assets were observed and most rating movement driven by methodology/sovereign rating changes. In addition, the major ECAIs have already calibrated their ratings assumptions (more difficult for a securitization to attract a AAA rating). To some extent, there will be some over-penalization of the senior tranches.
12.	Question 12: Considering that rating ceilings affect securitisations from certain	Assuming that the rating agencies are not going to eliminate their rating ceilings due to country (and counterparty) ceilings, it would be helpful if they could publish the 3 layers ratings proposed below for a given SSTS transactions, so the capital charges will be applicable according to this uncapped rating.

	countries, how should the calibration of capital requirements on qualifying and non-qualifying securitisations be undertaken, while also addressing this issue?	We would welcome the introduction of 3 ratings layers: 1. Capped rating 2. Uncapped but penalized with systemic risk factors (dependent on country specific factors) 3. Uncapped ratings

EIB Group's Additional Comments
• **p. 19, 2nd bullet:** this is not entirely correct, as Asset Coverage Tests in covered bonds aim at verifying that the programme maintains the correct overcollateralization level, i.e. the risk of the underlying pool is tranched. • **p.19, 3rd bullet:** please, consider that most of continental jurisdictions have dedicated and highly regulated statutory securitisation schemes. • Whilst we recognize that Covered Bonds and Securitisations possess distinct structural features, in comparison we consider the resulting capital charges to be more penalizing for the securitisations market. An exercise to reduce such misalignment would be welcome.