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AUTOBANKEN

Comité des Constructeurs Français d'Automobiles

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Position Paper on

the Proposal for a Regulation laying down common rules on securitization and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EC and Regulations (EC) No 1060/2009 and (EU) No 648/2012

and

the Proposal for a Regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

Key messages on STS securitisations

1. The European institutions' initiatives to foster a simple, transparent and standardised (STS) securitisation market are to be welcomed.

2. However, critical criteria for STS securitisations are too vague and do not take into account common market practices. On the other hand, extremely severe sanctions are envisaged in the case of non-compliance.

3. It is not a satisfactory option to delegate the determination of undefined legal terms to the supervisory authorities after the STS Regulation will have come into force, because this creates high level of legal uncertainty and can entail politically unintended consequences.

4. The procedure over determining non-compliance by the competent authorities creates a high level of legal uncertainty for originators. It will prevent the competent authority from confirming STS-compliance on the request of the originator before notification of STS-compliance to ESMA due to the risk of being overruled by the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA) after notification.

Our recommendations

1. A number of critical eligibility criteria need to be better defined.
2. In the absence of third party certification, the framework must confer a right on the originator to request from its competent authority a binding confirmation of conformity.
3. The attractiveness of STS securitisation should not be undermined by significantly higher capital requirements. Thus, capital requirements should not be increased for STS securitisations compared to the current situation.

A. General remarks

The Arbeitskreis der Banken und Leasinggesellschaften der Automobilwirtschaft e.V. (AKA), the Comité des Constructeurs Français d'Automobiles (CCFA), the Society of Motor Manufacturers & Traders (SMMT) and the Verband der Automobilindustrie e.V. (VDA) represent the leading companies of the automotive industry including their financial services companies – the so called Captives – in the UK, France and Germany.

Each year, more than 13 million new passenger cars are registered in the European Union. Approximately 60 % of the cars sold are either financed or leased. The Captives are an indispensable partner for motor vehicle manufacturers in the marketing of passenger and commercial vehicles.

Furthermore, the Captives are a major source of funding for the car industry in Europe providing financing and leasing to private and commercial customers and facilitating the sale of vehicles across the EU. The Captives rely heavily on the securitisation of auto loans and leases to fund themselves and thus to ensure the financing and leasing of motorcars produced by the car manufacturers. Securitisations will further increase in importance since they allow captives to diversify their refinancing: Auto ABS are an alternative funding source to customer deposits and corporate bonds. They offer good protection against market volatilities and contribute to achieve future economic growth.

Auto-ABS transactions are generally structured in a very simple, robust and transparent way. They are secured both by the sold receivables and by the related vehicles themselves. The high quality of securitisation transactions reflects the high quality of the standards applied to lending and loan processing.

Within the ABS segment Auto-ABS is the only meaningful asset class with a 68% market share in 2014. Investors particularly appreciate the low risk and high liquidity of public ABS. Auto-ABS have the lowest spread of all ABS segments due to the perception as simple, standardised, transparent high quality securitisations. Even during the financial crisis, European Auto ABS proved to be extremely crisis-resistant and did not cause investors to suffer any losses.

We appreciate the Commission´s political approach to focus on the development of transparent, simple and standardised securitisation to build a sustainable EU market for securitisation. However we are concerned that these political aims will not be met by the draft for an STS framework as proposed by the Commission. We are particularly concerned that the proposal may lead to the exclusion of a wide range of well-established and marketable ABS from the definition of STS, including ABS backed by auto loans as issued by captive finance companies.

Our main concern is the requirement for originators, sponsors and issuers to jointly certify that a securitisation meets the STS criteria. This places a substantial burden on issuers to verify their transactions against approximately fifty or more criteria, many of which are inherently uncertain and open to differing interpretations.

By contrast, the penalties for inaccurately describing a transaction as STS-compliant are extremely severe, including a fine of up to 10% of group worldwide turnover and potentially even criminal sanctions. Originators, issuers and sponsors face liability if competent authorities find that even one of the STS requirements in their transactions – or indeed, one requirement in one transaction within an ABCP programme – has not been satisfied. Without

clear, transparent and foreseeable eligibility criteria, captives would not be willing and able to market their ABSs as STS-compliant.

In our opinion, it is not an appropriate solution to effectively delegate the definition of vague legal terms to supervisory authorities, because originators would only be able to assess after the regulation has come into force whether they can comply with the eligibility criteria. This would in turn impact originators' structuring decisions and make it impossible to prepare for the new requirements because originators will not know exactly how to implement the STS criteria.

Moreover, supervisory authorities could easily change their views and amend their guidelines whenever they deem necessary without any participation of the legislative and democratically mandated institutions. Originators that have already made substantial efforts to ensure that their securitisations comply with the requirements might find themselves in a position where a sudden and unexpected change in the interpretation deprives their securitisations of STS eligibility. The problem will be reinforced by the fact that the European Supervisory Authorities' guidance will not be binding with the result that interpretation by national competent authorities can differ from country to country in the European Union. This is likely to increase uncertainty and complexity if the issuer and the originator are located in different European countries.

We therefore recommend that the Regulation includes criteria which are simple, clear and self-explanatory as far as possible. Against this backdrop, we have made concrete proposals on how to adjust the text of the Regulation.

As we have repeatedly made clear in previous submissions, our strong preference is for STS certification by a single body so as to eliminate inconsistencies in interpretation of the STS criteria - we are not convinced that individual national competent authorities will be able to act in a uniform manner in a way that a single mandated body could.

However, since the Commission, for reasons we do not agree with, has chosen not to take this proposal forward, we are instead proposing as a compromise approach that originators and sponsors have the right to request their competent authority for a legally binding confirmation that the securitisation is conform to the criteria relating to simplicity and standardisation. We elaborate on this proposal below.

Notwithstanding that the main focus of this paper is on STS qualification, we think it is extremely important that "grandfathering" of existing transactions should be extended as much as possible. Auto Captives have many securitisations across Europe that may not qualify as STS and it would be extremely unfortunate if these were automatically deemed non-compliant with the general criteria that will apply to all transactions without sufficient time being given to prepare. Many of these transactions are private and bi-lateral revolving transactions that have been running for many years and play a vital role in funding particular geographic markets. The sudden disruption of these funding arrangements could, in the case of floorplan ABS, cause major damage to dealer networks in a given country. We also request that it should be clarified that the administrative sanctions and remedial measures in article 17 will not apply in respect of transactions that pre-date the coming into force of the Securitisation Regulation and related relevant RTS.

We hope that the framework for simple, transparent and standardised securitisations will establish a regulatory basis which takes the needs of market participants into account and will truly support the European market for securitisations.

B. Specific remarks

I. Eligibility criteria for STS-ABS transactions

a) Right to request a binding confirmation of conformity

There exist many competent authorities in the European Union for credit institutions, insurance undertakings and money market funds that can have different opinions on the STS-compliance of certain ABS. Against this backdrop, it is crucial that the competent authority of the originator or sponsor have the power to grant a confirmation of conformity on request to create the required legal certainty for originators. This confirmation would have to be binding across the EU; otherwise no authority could be expected to grant the requested confirmation given that it could be overruled by the Joint Committees of the European Supervisory Authorities.

Our proposal permits the originator or sponsor to file a letter of enquiry with their competent authority to obtain a binding confirmation of conformity relating to the criteria of simplicity and standardisation and empowers the competent authority to give such confirmation. The proposal contributes to better balance the responsibility of originators on the one hand and the need of a sufficient level of legal certainty on the other hand. The confirmation shall be legally binding across the European Union to warrant the necessary level of legal certainty for all market participants.

Article 14 should be supplemented by the following new paragraph 2:

"Originators or sponsors may file a letter of enquiry with their competent authority to obtain a binding confirmation of conformity based on the joint opinion of the originator, SSPE and, if relevant, the sponsor that the securitisation complies with the requirements relating to simplicity in Article 8 and to standardisation in Article 9. In the case of an ABCP programme sponsors may file a request with the competent authority to obtain a binding confirmation of conformity based on the opinion of the sponsor that the ABCP programme complies with the requirements of Article 12."

In addition, Article 16 should be supplemented by the following paragraph 4:

"The competent authority of the originator or sponsor is empowered to provide the confirmation requested under Article 14(2) that the securitisation complies with the requirements of Articles 8 and 9. In the case of an ABCP programme the competent authority of the sponsor is empowered to provide the confirmation requested under Article 14(2) that the ABCP programme complies with the requirements of Article 12. Such confirmation shall be legally binding across the European Union."

Finally, the second sentence of Article 21 par. 5 should be amended as follows.

"In case of disagreement between the competent authorities, the matter may be referred to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply ***except for matters where a binding confirmation by the competent authority referred to in paragraph 4 of Article 16 has already been given.****"*

b) Eligibility criteria relating to simplicity and standardisation

Article 8 par. 4 sentence 1: Homogenous in terms of asset type

"The securitisation is backed by a pool of underlying exposures that are homogeneous in terms of asset type."

While "asset type" is undefined, recital 18 lists "pools of auto loans and leases to borrowers or lessees" as one example of asset type. We agree with the interpretation suggested in the recital and propose that this is made conclusive. This is crucial since the EBA in its report of 7 July 2015 took a very restrictive view of "asset type", which would preclude issuers for mixing auto loans from private customers with SME customers, or loans for new vehicles with loans for used or ex-demo vehicles. Under the EBA's approach, balloon payments would have to be securitised separately to repayments during the life of the loan except where the balloon payment was only "minimally different" (which is not typically the case). We are not aware of any auto ABS transactions which would qualify under these criteria.

Against this background we welcome the explanation in recital 18. However, we are concerned that EBA could use its own interpretation of "homogenous in terms of asset type" in its guideline on the interpretation of the STS criteria. We are of the opinion that the Regulation should reflect established and successful market practice for auto ABS and that it should be sufficiently clear with regard to its interpretation.

Our proposal

We suggest clarifying the definition of "asset type" in Article 8 par.4:

"The securitisation is backed by a pool of underlying exposures which consist exclusively of one of the following asset types:

- *a) pools of residential loans;*
- *b) pools of commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations;*
- *c) pools of auto loans and leases to borrowers or lessees; or*
- *d) loans and pools of credit facilities to individuals for personal, family or household consumption purposes."*

Alternatively, the Regulation could refer to the asset types listed in (i)-(v) of Article 13(2)(g) of delegated act EU/2015/61 for consistency and clarity.

Article 8 par. 7(c): Non-credit impairment based on the indication of significantly increased risk

"The underlying exposures, at the time of transfer to the SSPE, shall not include exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best knowledge of the originator or original lender:

*c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction***"**

In our view, the language leaves too much room for interpretation between national competent authorities, creating a high level of uncertainty. In addition, the reference to the average debtor for this type of loans in the relevant jurisdiction is particularly problematic because it could entail that obligors are deemed to be of significantly higher risk in one European country with high credit standards, but not in another county with less strict credit standards.

The current established market practice is much more precise and objective. Effectively all loans that have been approved in the normal course of business and that have been selected randomly for securitisation are eligible provided that (i) at least one payment has been made and (ii) the selected loans are not delinquent and not in default at the time of selection for securitisation. These standards are already partly reflected in Articles 8 par. 6 and 8.

Our proposal

We propose to exclude loans that show evidence of impairment according to the applicable accounting practices requiring specific provisions for bad and doubtful debts. We propose as a back-stop to also exclude loans with the status of delinquency, which is an objective, prudent and easily determined measure already used in investor reports.

We propose to change Article 8 par.7(c) as follows:

"The underlying exposures, at the time of transfer to the SSPE, shall not include exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best knowledge of the originator or original lender : …

(c) ***show evidence of impairment according to the applicable accounting practices requiring the allowance of specific provisions or whose exposures to be transferred to the SSPE are delinquent indicating potentially significant risk of default.*"**

<u>Article 8 par. 9: Dependence on the sale of assets securing the underlying exposures</u>

This requires that the repayment of investors does not depend "substantially" on the sale of assets securing the underlying exposures. However, "substantially" is left undefined, raising the possibility that anything but a negligible residual value risk could make a transaction STS-ineligible.

This could exclude retail auto loans and leases in jurisdictions such as France, Italy, Spain and Switzerland, where it is common to give consumers a choice between refinancing, paying a balloon payment and acquiring the vehicle, or returning the vehicle and being released from the balloon payment. In the latter case, the issuer acquires any residual value risk. In the UK, consumer credit legislation grants consumers the right to terminate a hire purchase or conditional sale agreement by returning the vehicle, provided they have paid at least half the total price.

In order not to exclude such jurisdictions from the STS framework, residual value must be considered in the transaction as a whole rather than on a loan-by-loan level. This reflects the fact that residual value risk is mitigated in practice by entering into repurchase agreements, for example, or through credit enhancement.

The requirement in Article 13 par. 3 of the delegated act is clearer and easier to interpret

saying “The repayment of the securitisation positions shall not have been structured to depend, predominantly, on the sale of assets securing the underlying exposures. We therefore propose that the Regulation adopts the wording in Article 13 par. 3 of delegated regulation 2015/61 on the liquidity coverage requirement.

In addition, it should be clarified that residual values that are fully backed by repurchase obligations or guarantees are not dependent on the sale of assets securing the underlying exposures. In such cases the risk that the sales price of the asset is less than the calculated value of the asset, the so-called residual value risk, is fully borne by the party that has assumed the repurchase obligation or residual guarantee. There is no market risk any longer, because the repayment is in such cases dependent on the credit quality of the party that has assumed the repurchase obligation or guarantee.

Our proposal

Article 8 par. 9 should be amended as follows:

“The repayment of the holders of the securitisation positions shall not ***have been structured*** *to depend,* ***predominantly****, on the sale of assets securing the underlying exposures.* ***Underlying exposures that are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party do not depend on the sale of assets securing the underlying exposures.*** *This shall not prevent such assets from being subsequently rolled-over or refinanced.*

Article 9 par. 6 (b) STS-D: Ensuring that a default or insolvency of the servicer does not result in a termination of servicing

To relieve the assessment it should be added that a replacement clause which enables the replacement of the servicer in case of default or insolvency usually fulfils the requirement to ensure that a default or insolvency of the servicer does not result in a termination of the servicing. It should be abstained from further specific requirements because there are no comparable requirements for covered bonds. However, the impact of a default or insolvency of the administrator of the underlying exposures is the same irrespective of a securitisation or a covered bond because it makes no difference whether the administrator of the underlying exposures of a securitisation or a covered gets into default or insolvency. This applies a fortiori in those cases where the servicer is a credit institution.

Our proposal

The following sentence should be added at the end of Article 9 par. 6 STS-D for clarification purposes:

“**For the purpose of Article 9 par. 6 (b), a replacement clause which enables the replacement of the servicer in case of default or insolvency can be deemed appropriate to fulfil the requirement to ensure that a default or insolvency of the servicer does not result in a termination of the servicing.**”

Article 9 par. 7: Definitions, remedies and actions relating to delinquency and default of debtors

"The transaction documentation shall include definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies in clear and consistent terms."

As well as requiring the disclosure of commercially sensitive policies as a matter of course, this would deny servicers the flexibility to update their policies and procedures in light of evolving market and regulatory conditions. It is unrealistic for the transaction documents to be amended each time a policy must be updated. In any event, the Regulation requires the servicer to have experience in servicing the underlying exposures and should therefore permit the servicer a degree of discretion.

Our proposal

We recommend that this requirement is either deleted or modified to ensure that the servicer retains flexibility over its policies and processes. At least, the following sentence should be inserted after sentence 1 for clarification:

"**Changes of such terms and processes can be made provided that those changes will not materially adversely affect the repayment of the securitisation positions."**

II. Eligibility criteria for STS-ABCP transactions

We are not experts on bank multi-seller conduits, nor are we experts on ABCP. However, a large part of the European automotive industry is dependent on the funding that multi-seller conduits provide and whose funding relies in turn on conduits being able to sell ABCP to investors. We understand from conversations with our relationship banks that there are a number of potentially problematic ABCP criteria but we would like to focus on Article 12 par. 2 and Article 13 par. 8.

Article 12 par.2: maximum residual maturity of the underlying exposures

Article 12 par. 2 stipulates that the underlying exposures shall have a remaining weighted average life of no more than two years and none shall have a residual maturity of longer than three years.

Such a requirement will exclude virtually all auto loans from STS ABCP programmes because the legal maturity is typically 6 years. At a minimum, if this criterion is not modified or withdrawn, it will at least lead to significantly higher financing costs by ABCPs or could even lead to a situation where sponsors exclude auto loans from ABCP programmes.

Moreover, in an ABCP programme, the bank sponsor provides full liquidity support and takes any risks arising from maturity transformation, not the CP investor. The sponsor is in a position to absorb any liquidity risk due to being a prudentially-regulated bank, as required in the programme-level criteria.

Against this backdrop we strongly urge the Commission to drop the requirement that none of the underlying exposures shall have a residual maturity of longer than three years. In addition, it should be clarified that the remaining weighted average life is predicted based on the results

of the cash flow model. Such amendment is particularly justified in circumstances where the programme benefits from full bank liquidity support, because there is no maturity transformation risk for the investor in such a case.

Our proposal

Should this provision not be removed, we propose the following amendments as an alternative:

"Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type and shall have a remaining ***expected*** *weighted average life of no more than* ***four*** *years ~~and none shall have a residual maturity of longer than three years~~."*

Article 13 par. 8: Transparency requirements at ABCP programme level

As drafted, this would make all originators in an ABCP programme jointly responsible for the publication of loan-level information, documents and notifications to ABCP holders. Investors would be presented with potentially thousands of data points on a monthly basis as well as dozens of transaction documents which they are unlikely to have the time or resources to properly review. This level of disclosure is not proportionate given that ABCP investors typically hold ABCP as a short-term investment which is traded frequently. Disclosure of loan level information should be for the benefit of the conduit bank, which guarantees the ABCP.

In addition, a current advantage of private or bilateral transactions is the increased level of protection for private information. The proposal would require originators, sponsors and issuers to share a vast array of commercially sensitive information (for example, internal policies and procedures on origination and recovery as well as the commercial terms agreed with each bank), which could be accessed not only by investors but by competitors within the same ABCP programme. This is completely unacceptable to captive finance companies in respect of dealer floorplan loans.

Our proposal

We request that Article 13(8) is replaced with a new Article 12(8), specifying that the transparency requirements apply at a transaction-level (rather than at the ABCP programme level).

12. 8. The originator, sponsor and SSPE shall be jointly responsible for compliance at ABCP ***transaction*** level with Article 5 of this Regulation and shall make all information required by Article 5(1) (a) available to potential investors ***holding securitisation positions*** before pricing. The originator, sponsor and SSPE shall make the information required by Article 5 (1) (b) to (e) available before pricing at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to ***holders of securitisation positions*** at the latest 15 days after closing of the transaction.

III. Transparency Requirements

Article 5 par.2: Exceptions to Article 5 par. 1 (a) with regard to the transparency requirements

An exception with regard to the transparency requirements should be envisaged for where publication would breach Union or national law governing the protection of confidentiality, data protection or would result in a violation of the banking secrecy. Otherwise it may in some cases be impossible to fulfil the transparency requirements.

Our proposal

The following sentence should be added:

"The obligation set out in paragraph 1(a) to make available information shall not apply to the extent that such publication would breach Union or national law governing the protection of confidentiality of information sources or the processing of personal data or would result in a violation of the banking secrecy protecting the confidentiality of customer information."

IV. Draft proposal for a regulation amending regulation (EU) No 575/2013 (CRR)

Article 243 (2) (b) CRR: Granularity criterion

"(b) at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 1% of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in point (39) of Article 4(1), shall be considered as exposures to a single obligor."

We believe that the 1 % threshold is appropriate for retail transactions. However, the language with respect to the group of connected clients should be changed slightly so that this applies "according to the best knowledge" of the originator.

With respect to wholesale transactions such as the securitisation of receivables from car dealers, the 1% threshold is set too low and will prevent these types of securitisations from ever meeting the STS criteria. Therefore, if dealer floorplan is not to be completely excluded from STS, a significantly higher threshold will be needed. In our view the threshold needs to be set at 5% to allow significant dealer groups to obtain funding through ABS and this could be implemented as either a single threshold or in combination with other thresholds to further ensure the granularity of the overall pool of loans. This is something that the Captives have a great deal of experience with and we would urge further detailed discussion on this point.

Our proposal

We propose the following amendment:

"(b) at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 1% of the exposure values of the aggregate

outstanding exposure values of the pool of underlying exposures ***in retail transactions. In wholesale transactions, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 5% of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures.*** *For the purposes of this calculation, loans or leases* ***made to the best knowledge of the originator*** *to a group of connected clients, as referred to in point (39) of Article 4 (1), shall be considered as exposures to a single obligor.*"

Article 243 par. 2 (c) CRR-D: Maximum risk weights of the underlying exposures under the Standardised Approach

"(c) at the time of their inclusion in the securitisation, the underlying exposures meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than:

(iv) for any other exposures, 100% on an individual exposure basis."

We have reason to believe that the said provision might entail that it will be obligatory for originators to nominate ECAIs. Our fear is based on the rationale of EBA as expressed in its report of July 2015 stating that:

"*When determining the risk weights of exposures for assessing compliance with this criterion, all available credit assessments of ECAIs and export credit agencies may be considered according to the provisions of Part 3 Title II Chapter 2 of the CRR based on the assumption that all corresponding ECAIs and export credit agencies have been nominated for the relevant class of items.*"[1]

Although originators often use the assessments of ECAIs in the credit process as additional piece of information it cannot be expected that originators have nominated ECAIs. This would entail that the external ratings would have to be used continuously and worldwide for all group companies of the supervised group according to Article 138 sentence 4 of the CRR that does not allow a selective use of external ratings. Hence, the requirements of the CRR to use the assessments of ECAIs are often not implemented and thus no ECAI is often nominated by the originators for corporate exposures. However, it seems that the expectation of EBA is that ECAIs have to be nominated by originators whose ratings have to be used to determine the standardised risk weight according to the standardised approach.

The obligation to use the assessment of ECAIs would contradict the political aim to reduce reliance on external ratings and thus the assessment of ECAIs. It would increase again the dependencies on external ratings

If originators were forced by a later guideline of the European Supervisory Authorities to provide investors with such external ratings based on the nomination of external rating agencies then this would mean to force originators to use external ratings continuously throughout the group worldwide also for those corporate exposures that are not intended to be securitised although they are used for the time being only on the case by case basis, because also originators that use the credit standardised approach have application scorecards or internal rating

[1] EBA Report on qualifying securitization – Response to the Commission´s call for advice of January 2014 on long-term financing, published on 7th July 2015: http://www.eba.europa.eu/-/eba-issues-advice-on-securitisation

procedures in place that are validated regularly to assess the credit quality of the corporates. An obligation to use external ratings on a continuous basis including the permanent updates would raise the costs for originators significantly and deteriorate the deal economics dramatically because they have to pay additionally for such external ratings for the securitised and non-securitised portfolios.

This criterion is very problematic and could preclude the securitisation of corporate exposures including SME corporate exposures as STS securitisation and should not be adopted. The securitisation of corporate exposures as to Auto-ABS including that of corporate SMEs is notably of major significance and importance in the leasing business.

Our proposal warrants that originators will not be obliged to deliver external ratings that they do not use. This is to avoid an increasing dependency from rating agencies and additional undue costs for originators.

Our proposal

Article 243 par. 2 (c) should be supplemented by the following sentence:

"the risk weights under the Standardised Approach for exposures to corporates (including corporate SMEs) according to Article 112 (g) may be determined without the use of an ECAI if the originator has not nominated an ECAI for this exposure class according to Article 138;"

Article 254 par. 3 CRR-D: Option to use the SEC-SA instead of the SEC-ERBA

The option was introduced to enable credit institutions to benefit from lower risk weights for certain kinds of securitisations. Those securitisation can particularly benefit from lower risk weights whose standardised risk weights under the Standardised Approach are low and the risks in terms of expected and unexpected losses are high. In contrast, due to the high quality of Auto-ABS and low loss levels as to the underlying exposures the risk weights under the SEC-SA would be extremely high both for STS- and non-STS-securitisations. Hence, it is in most cases no option to use the SEC-SA to lower the risk weights.

Our proposal:

"Institutions using the SEC-ERBA may apply the ratings before any sovereign rating cap for European securitisations and European counterparties involved in such securitisation structure for the determination of risk weights of securitisation positions."

In addition, we propose to amend Regulation (EC) No 1060/2009 on credit rating agencies as follows:

Article 10 par. 3: Disclosure and presentation of credit ratings for structured finance instruments should be supplemented by the following sentence:

"In addition, a credit rating agency shall disclose the credit rating for structured finance instruments before any sovereign rating cap as well."

Article 260 CRR-D: Treatment of STS securitisations under the SEC-IRBA

"Under the SEC-IRBA, the risk weight for position in an STS securitisation shall be calculated in accordance with Article 259, subject to the following modifications:
risk weight floor for senior securitisation positions = 10%"

We welcome the reduction of risk weightings for qualifying securitisations compared to the securitisation framework to be implemented by 1 January 2018. However, we note that even a reduction of the floor risk weight from 15% to 10% for qualifying securitisations in the IRB approach means an increase of the floor from 7% to 10% compared to the current situation.

We believe that this sends the wrong signal and risks undermining the STS initiative. In addition, it should be noted that the increase of the floor capital requirement was intended to address model risks and structural risks, yet these risks are significantly reduced in the case of STS securitisations.

An increase is the risk weighting from 7% to 10% is likely to result in increased financing costs for the industry, with a resultant effect on the real economy. We urge the Commission to maintain the 7% risk weight for qualifying securitisations.

Our proposal

"Under the SEC-IRBA, the risk weight for position in an STS securitisation shall be calculated in accordance with Article 259, subject to the following modifications:
*risk weight floor for senior securitisation positions = **7%**"*

Article 262 CRR-D: Treatment of STS securitisations under SEC-ERBA

The risk weights of table 4 should be reduced significantly to avoid that the capital requirements increase significantly in the SEC-ERBA compared to the current capital requirements even it is a STS-securitisation. This applies especially for non-senior tranches.

In addition, it is proposed that the risk weights for STS-securitisation positions should generally be calculated on the basis of the weighted–average maturity of the contractual payments due under the respective tranche of the securitization instead of the final legal maturity of the tranche. This would be justified in particular given the better predictability of simple, transparent and standardised securitisations (as to our general comments on the determination of the tranche maturity see Article 257 below). It would reduce the impact on the risk weights by the maturity factor. This is important for low risk medium term securitisations that cannot benefit from lower risk weights in the SEC-SA. In addition, it should be kept in mind, that the capital requirements under the SEC-SA are not dependent on any maturity. Otherwise the risk weights for junior bonds in medium term securitisations such as Auto-ABS would significantly increase and would be even for STS-securitisation often five times higher than currently.

Our proposal

Article 262 should be supplemented by the following paragraph 4:

"By derogation from paragraph 2 of Article 257, institutions may use the weighted–average maturity of the contractual payments due under the respective tranche of the securitisation in accordance with point (a) of paragraph 1 of Article 257 to determine its maturity (MT)."

V. Implementation of the Securitisation Framework of Basel Committee of December 2014 into CRR-D

Article 244 par. 1 (b) CRR-D: Application of the 1,250% risk weight

"(b) the originator institution applies a 1,250 % risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with Article 36 (1) (k)."

Par. 37 of the Securitisation Framework of the Basel Committee from December last year stipulates that "originator banks can offset 1,250% risk-weighted securitisation exposures by reducing the securitisation exposure amount by the amount of their specific provisions on underlying assets of that transaction and non-refundable purchase price discounts on such underlying assets." The new Article 248 CRR-D is not catered for first loss securitisation positions of originator banks from traditional securitisations comprising the cash reserve and additional underlying exposures for the purpose of overcollaterisation to be considered according to Article 244 par. 1 (b) CRR-D. In cases where a significant risk transfer has been recognised but where the SSPE has still to be included in commercial consolidation according to IFRS 10, the specific provisions from the underlying securitised exposures cannot be released and are still available on the group level to absorb the losses. Thus, it shall be further possible to deduct such specific provisions from the first loss position. Otherwise, the capital requirements for originators would rise strongly.

Our proposal

Article 244 par. 1 (b) CRR-D should be supplemented by the following sentence:

"***Originator banks can offset securitisation positions according to number b) of sentence 1 by reducing the amount of the securitisation position by the amount of their specific provisions on underlying assets of that transaction and non-refundable purchase price discounts on such underlying assets***."

Article 257 par. 2 CRR-D: Determination of tranche maturity

"(2) By derogation from paragraph 1, institution shall use the final legal maturity of the tranche in accordance with point (b) of paragraph 1 where the contractual payments due under the tranche are conditional or dependent upon the actual performance of the underlying exposures."

Aricle 257 par. 1 (a) CRR-D determines that the the tranche maturity can be measured on the basis of the weighted-average maturity of the contractual payments due under the tranche. We fully agree that this is the right approch to measure the tranche maturity. Unfortunately, paragraph 2 of Article 257 CRR-D stipulates that the final legal maturity of the tranche shall be used in accordance with point (b) of paragraph 1 where the contractual payments due under the tranche are conditional or depenent upon the actual performance of the underlying exposures.

However, it is the typical nature of securitisation tranches that they are conditional with regard to the rank of the payment stream in the waterfall and depend upon the actual performance of the underlyimg exposures. Thus, if the conditions in paragraph 2 are not amended, the tranche

maturity will have to be calculated for all kinds of securitisation positions that are not guaranteed by a third party on the basis of the final legal maturity. This would be overly conservative and not justified from a risk perspective.

As a consequence, the capital requirements for medium term ABS, such as Auto-ABS for instance, would significantly increase under the SEC-ERBA. This applies notably for non-senior securitisation positions with a significant increase in risk weights in case of the required application of the final legal maturity. This applies both for non-STS and STS-securitisations.

In contrast, the risk weights for long term securitisations will not increase due to the cap of five years according to Article 257 par. 3 CRR-D and the fact that even the weighted-average maturity is in such cases often around 5 years or even more. However, the credit quality of a securitisation position with a shorter weighted-average maturity can be assessed with a higher degree of certainty and means less risk than a securitisation position with a weighted-average maturity of five years or more. Such differences should be reflected appropriately in the risk weight of the securitisation position.

At least for senior bonds and such junior bonds that directly rank after the senior bond and whose credit quality is supported by a first loss position and a mezzanine securitisation position the calculation of the tranche maturity should be based on the weighted-average maturity of the contractual payments. Eventually, the calculation of the tranche maturity in the SEC-ERBA should be based on the residual maturity, because the degree of uncertainty in the assessment of a securitisatio position decreases with decreasing residual maturity.

Our proposal

Article 257 par. 2 CRR-D should be amended as follows:

"(2) By derogation from paragraph 1, institution shall only use the final **residual** legal maturity of **the first loss position and the mezzanine** tranche **that directly ranks senior to the first loss position** to determine its maturity (MT) in accordance with point (b) of paragraph 1 where the contractual payments due under the tranche are conditional or dependent upon the actual performance of the underlying exposures."

Berlin/Cologne/London/Paris, 5 November 2015

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