Legislative procedures on simple, transparent and standardised securitisations and the Capital Requirements Regulation – 2015/0226 (COD) and 2015/0225 (COD)

Upcoming trilogue negotiations – Concerns of European automotive industry

The Verband der Automobilindustrie (VDA), the Comité des Constructeurs Français d'Automobiles (CCFA) and the Banken der Automobilwirtschaft (BDA) have continuously followed and commented the legislative work of the European Commission, the European Council and the European Parliament on the regulations proposed for simple, transparent and standardised securitisations (STS) as well as amending the Capital Requirements Regulation (CRR). After the Committee of economic and monetary affairs of the European Parliament has voted on both proposals by the end of last year we are following the trilogue negotiations. We are still concerned that some of the provisions proposed would significantly harm the European securitisation market. Our main points are:

1. The definition of the term "originator" will exclude all leasing companies from the securitisation market (Art. 2a par. 1 and 2 STS, Parliament).
   Delete Parliament's proposal.
2. The proposal to increase the risk retention from 5 % to 10 % will shrink the securitisation market (Art. 4 par. 1 STS, Parliament).
   Adopt Commission's proposal.
3. The proposal to delegate the interpretation of the STS-requirements to ESMA will cause legal uncertainty for market participants (Art. 7 par. 1b STS and Art. 8 par. 9b STS, Parliament).
   Delete Parliament's proposal.
4. The proposals for non-impaired exposures do not reflect market practice and will virtually exclude all Auto ABS (Art. 8 par. 7 STS, Commission, Council).
   Adopt Parliament's proposal with our amendments.
5. Without any legally binding confirmation of conformity no originator will notify a transaction as "STS" (Art. 14 STS, Commission, Council, Parliament).
   Adopt our proposal.
6. The aggregate exposure value to single obligors will exclude securitisations of wholesale transactions (Art. 243 par. 2 (b) CRR, Commission, Council, Parliament).
   Adopt Commission's proposal with our amendments.
7. A double-accounting of specific provisions and purchase price discounts will substantially increase the originator's capital requirements (Art. 244 par. 1 (b) CRR, Commission, Council, Parliament).
   Adopt Commission´s proposal with our amendments.
8. An increase of risk weights from 7 % to 10 % will shrink the securitisation market (Art. 260, 262 CRR, Commission, Council, Parliament).
   Adopt our proposal.

Please find the explanations to these main points below. Additionally we have attached a detailed assessment of the proposals and reports provided by the Commission, the Council and the Parliament including our favourable approaches and concrete amendments.

1. **Leasing companies and all other real economy companies will be excluded from the securitisation market and lose an important refinancing instrument**
   (*Art. 2a par. 1 and 2, Parliament*)

   Art. 2a par. 2 as proposed by the Parliament only permits credit institutions, insurance undertakings, investment firms or companies which qualify as financial institutions pursuant to the CRR to act as originators and securitise their assets. This would have a significant negative impact on the automotive industry as assets deriving from other business than lending or financial leasing, such as operate leasing or hire-purchase, would not be permitted to be securitised. Hence, leasing companies, which are currently highly active on the securitisation market, would be excluded from exactly that market.

   According to the requirements of the CRR the originator must hold a material net economic interest of 5% (risk retention, cf. Art. 405 CRR) which is part of the transaction and thus a "securitisation position". As a result each originator would also be an investor pursuant to the proposed Art. 2 par. 11 STS. However, according to the Article 2a par.1 as proposed by the Parliament only "institutional investors" can act as investors. Real economy companies, including leasing companies, do not fall under the scope of institutional investors, though. As a result they would be de facto banned from the securitisation market only because they comply with current provisions of the CRR, although they are considered as eligible investors in complex investments under European legislation.

   Delete Art. 2a par. 1 and 2 STS as proposed by the Parliament or amend the provision as proposed in our detailed assessment.

2. **An increase of the risk retention from 5% to 10% will substantially decrease the volume of securitisations in the EU.**
   (*Art. 4 par. 1, 1a, 2 and 6 STS, Parliament*)

   The current risk retention provisions together with the credit enhancement mechanisms in the transactions are sufficient to ensure a real economic interest of the originator in the assets securitised and to protect the investor widely from potential losses. If the Parliament´s proposal to enhance the retention to 10 % would enter into force, the amount of securitisable receivables would decrease. Such an amendment would contradict the goal to foster and promote the securitisation market in Europe.

   Moreover, such substantial increased retention by way of retaining the first loss would result in the originator to deduct such piece in its nominal amount from its regulatory capital, so that the originator would incur an additional capital charge from such transaction rather than freeing regulatory capital to that it could grant additional loans to the real economy.

   Adhere to Article 4 as originally proposed by the EU-Commission.

3. A delegation to ESMA to interpret the STS-Requirements will cause legal uncertainty for market participants

(*Art. 7 par. 1b STS and Art. 8 par. 9b STS, Parliament*)

Art. 7 par 1b and Art. 8 par. 9b authorise ESMA to specify guidelines and recommendations on the harmonised interpretation and application of requirements in general and for homogeneous assets in particular. A delegation of the determination of definitions is problematic as it causes problems after a regulation became already into effect. The legislative should specify clear regulatory provisions in which ESMA is allowed to act.

Delete Art. 7 par. 1b and 8 par. 9b, that have been proposed by the Parliament and keep the legislative power at the European institutions. If further specifications are required, use delegated acts.

4. Impractical non-impairment requirements will exclude all Auto-ABS

(*Art. 8 par. 7 (a) to (c) STS, Commission, Council, Parliament*)

Originators ensure at the time of selection of the assets that these assets are performing. However, they cannot know about prior agreements of debtors about debt dismissals or reschedules with other creditors as such information is not publicly available from any credit bureau or public debt register. External data is particularly in retail business only analysed at the time of origination. Taking into account the high granularity of Auto-ABS, the additional obligations of Art. 8 par. 7 (a) and (b) STS as proposed by the Commission and aggravated by the Council would not add any value to the selection, impossible to fulfil for the originator.

The terms “significantly higher” and “average debtor” pursuant to Art. 8 par. 7 (c) STS as proposed by The Commission, the Council and the Parliament are unclear, will entail different credit qualities of ABS pools in the EU and would impede the development of a single STS securitisation market. Both terms could be interpreted differently throughout the EU.

Adopt the Parliament’s proposal for Art. 8 par. 7 (a) and (b) STS with our amendments proposed in our detailed assessment. Amend Art. 8 par. 7 (c) STS as proposed in our detailed assessment.

5. Without any legally binding confirmation of conformity no originator will notify a transaction as “STS”

(*Art. 14 STS, Commission, Council, Parliament*).

The framework for simple, transparent and standardised securitisation will only have a supporting effect on the European securitisation market if all market participants have the same understanding what STS eligibility means. The criteria are not self-explanatory and might be subject of a differing interpretation by national authorities and the ESAs. An instrument to ensure a sufficient level of trust would be a legally binding confirmation that the respective securitisation is indeed STS – especially as in case of non-compliance with the criteria the regulator could impose high sanctions on the originator (10% of the annual turnover). The Council and the Parliament tried to implement the concept of an STS confirmation by introducing a new Art. 14 par. 1a. However, as proposed by Council and Parliament the third party will never bear any responsibility in case of a wrong

decision. The originator who depends on the STS confirmation and trusts the assessment of the third party will be penalised instead in case where a confirmed STS securitisation turns out to be STS ineligible. Such provision would miss its goal. No originator would ever notify its transactions as “STS”.

Introduce a right to request a <u>legally binding</u> confirmation from a competent authority or a third party as proposed in our detailed assessment.

6. The aggregate exposure value to single obligors will exclude securitisations of wholesale transactions

(Art: 243 par. 2 (b) CRR, Commission, Council, Parliament)

Car dealers have to finance the cars they exhibit in their showrooms. Depending on the brand and volume they are selling, the value of their outstanding debt may well exceed 1% of the overall exposure. The credit line or dealer floorplan is an essential precondition for the car dealers to run a profitable business. Therefore, a distinction should be made between retail and wholesale transactions. In our view the threshold for wholesale transactions need to be set at 8% to allow dealer groups to obtain funding through ABS.

Amend Art. 243 par. 2 (b) as proposed in our detailed assessment.

7. A double accounting of specific provisions and purchase price discounts will substantially increase the originator's capital requirements

(*Art. 244 par. 1 (b) CRR, Commission, Council, Parliament*)

In transactions 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. The same would apply for discounts on the purchase price of securitised exposures that are frequently made to provide additional credit enhancement to investors.

If in addition a risk weight of 1,250% would be allocated to retain securitisation positions (e.g. to comply with retention rules under Art. 405 CRR) this would result in a double-counting of the specific provisions and purchase price discounts and thereby substantially increase the originator's capital requirements unintentionally.

Amend Art. 244 par. 1 (b) as proposed in our detailed assessment.

8. An increase of risk weights from 7 % to 10 % will shrink the securitisation market

(*Art. 260, 262 CRR, Commission, Council, Parliament*).

A reduction of the floor risk weight to 10 % for qualifying securitisations in the IRB approach means an increase of the floor from 7% to 10% compared to the current situation. This sends the wrong signal and risks undermining the STS initiative. 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 of the risk weights from 7% to 10% is likely to result in increased financing costs for the industry, with a resultant effect on the real economy. Thus the 7% risk weight for qualifying securitisations should be maintained.

Amend Art. 260 and 262 CRR as proposed in our detailed assessment.

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