TSI Opinion

European Commission's Green Paper on the Capital Markets Union

Frankfurt am Main, May 2015

TSI, an association that has long been advocating a high quality securitisation market, is supportive of the European Commission's objective of establishing a capital markets union. We see the capital markets union project as a major step towards the completion of the single European market and towards the integration of business financing in Europe.

An integrated European capital market will create new investment options for insurance companies and pension funds, and will also be a move towards opening up new sources of funding and providing capital relief for the European banking system. The real economy in Europe would benefit from fresh financing stimuli.

We also welcome the fact that the Commission's endeavours take account of the marked differences between the financial markets in Europe and in the USA and, by giving first priority to securitisation, the private placement of loans and the creation of credit funds, of the important role of banks as the primary source of funding in the European economy. Easing the transfers of loans and receivables will advance the intelligent interlinking of bank finance and capital markets.

We believe that this approach shows due regard for investor behaviour in Europe, the predominant role of banks and insurance companies and corporate financing preferences.

In our opinion, however, the capital markets union project can only succeed if fresh consideration is given to fundamental strategies that are already being pursued or are already in place.

Many economic sectors use securitisation as a means of raising funds. The core concept is that loans and receivables are transferred in tranches from an originator to an investor, with payments depending on the performance of the underlying portfolio.

Unlike other forms of asset based finance, which, in essence, are also based on credit transfer and structuring components, the term securitisation has fallen into disrepute on account of the experience with subprime securitisations in the United States. Many of the subsequent regulations have focused, regardless of the type of risk characteristics in question, on the term securitisation – in other words on the packaging – more than on the contents. This has led to a number of special rulings. In the transferral of credit risks, however, the risk characteristics of the underlying and its servicing are largely independent of the packaging. At first glance, therefore, there is much to be said for the Commission's approach of setting standards for high quality securitisations.

On closer scrutiny, however, more far-reaching questions arise with regard to the level playing field. Regulation should address risks adequately. In order to avoid regulatory arbitrage, similar risks should be subject to similar regulation. In recent years securitisation market representatives have therefore repeatedly called for a level playing field to be established between similar types of financing instruments with similar values.

Regulatory measures generate costs for originators and investors, and hence the regulatory costs connected with due diligence, reporting, transparency and regulatory capital for different financing instruments should be broadly in line with their risk content.

We consider that there is still great deal to be done in this respect if the desired capital markets union is to become a reality. Action is needed both with regard to comparable traditional financing instruments such as the level playing field between covered bonds and securitisations and with regard to new, alternative ways of transferring loans and receivables, as discussed in the context of the CMU.

What must naturally be avoided is the creation of a level playing field that extends the current over-strict rules for securitisations to other asset based finance such as project and infrastructure financing. Efforts have been made by the German supervisory authorities, in particular, to subject this type of financing, which is important for the capital markets union, to the securitisation framework. If this view is implemented throughout Europe, regulated investors, such as insurance companies, pension funds and banks, would be able to invest only to a very limited extent or not at all in infrastructure and other special financing forms, particularly as according to the present definitions, products of this kind would in all probability not qualify as SST securitisations. We would like to refer at this juncture to the opinion of the German banking sector, to which TSI made a substantial contribution.

Further information is available via the following LINKS:

» Bafin
» German Banking Industry Committee

The Commission's initiative will, in our view, therefore only be successful if the key instruments behind the priorities for early action are regulated consistently across the board. Consistency with each other as well as with other, comparable capital market instruments is vital. Indeed, we consider this the basic criterion for success.

In addition to supervisory regulation, however consideration must be given to other factors that should be set in train as part of the early actions. All types of asset based finance involve issues relating to civil and insolvency law as well as to tax law, which are currently dealt with at the nationally divergent level and imply inherent inefficiencies from the perspective of an EU capital market. Against that backdrop, European covered bond legislation would undoubtedly be welcome. However, in the medium term consideration should likewise be given to establishing a European securitisation law.

For instance, under German law, transactions with underlyings that do not comply clearly with the term of bank credit pursuant to German supervisory law are subject to trade tax. As this tax governs the interest expense incurred by the SPV, in the case of German assets with German issuers such transactions are uneconomical, which makes it necessary to resort to non-German issuers. Rules of this kind give rise to uncertainties and to residual risk.

Possible approaches that could be taken up in a European legal framework are already in existence. Individual countries such as Luxembourg already have a corresponding legal framework.

Summary

The success of the CMU project depends on there being a broad regulatory level playing field for the key asset based capital market instruments, including covered bonds.

Efforts should also be made to ensure that there is a sound, cross-European framework in the field of civil, commercial and tax law for asset based capital market instruments which are essentially based on the transfer of loan, trade and leasing receivables.

TSI – What we do

Securitisation in Germany and TSI – the two belong together. True Sale International GmbH (TSI) was set up in 2004 as an initiative of the German securitisation industry with the aim of promoting the German securitisation market.

Nowadays TSI Partners come from all areas of the German securitisation market – banks, consulting firms and service providers, law firms, rating agencies and business associations. They all have substantial expertise and experience in connection with the securitisation market and share a common interest in developing this market further. TSI Partners derive particular benefit from TSI's lobbying work and its PR activities.

Furthermore TSI's concern has always been to establish a brand for German securitization which is founded on clearly defined rules for transparency, disclosure, lending and loan processing. Detailed guidelines and samples for investor reporting ensure high transparency for investors and the Originator guarantees, by means of a declaration of undertaking, the application of clear rules for lending and loan processing as well as for sales and back office incentive systems. The offering circular, the declaration of undertaking and all investor reports are publicly available on the TSI website, thus ensuring free access to relevant information.

CERTIFIED BY TSI CERTIFIED BY TSI
DEUTSCHER VERBRIEFUNGSSTANDARD

Another objective has always been to give banks an opportunity to securitise loans under German law on the basis of a standardised procedure agreed with all market participants. And finally the goal is to create a platform for the German securitization industry and its concerns and to bridge the gap to politics and industry.

Events and Congress of TSI

Events of TSI provide opportunities for specialists in the fields of economics and politics to discuss current topics relating to the credit and securitisation markets. The TSI Congress in Berlin is the annual meeting place for securitisation experts and specialists from the credit and loan portfolio management, risk management, law, trade and treasury departments at banks, experts from law firms, auditing companies, rating agencies, service providers, consulting companies and investors from Germany and other countries. Many representatives of German business and politics and academics working in this field take advantage of the TSI Congress to exchange professional views and experience. As a venue, Berlin is at the pulse of German politics and encourages an exchange between the financial market and the world of politics.