



3 August 2016

CAPITAL MARKETS UNION: SECURITISATION

Introduction

BusinessEurope believes that the Commission proposals to revive securitisation are an important contribution to addressing the issues of access to finance as companies start to want to take forward their investment projects. The creation of a European framework for simple, transparent and standardized (STS) securitisation is not just of interest to the financial sector. Businesses' ability to access finance still varies considerably across Europe and securitisation will play an important role in allowing banks to free up their balance sheets and extend lending.

Retention rate

In order to effectively revive securitisation markets and free up banks' balance sheets, retention rules should not discourage institutions to issue securitisations. In our view, a retention rate of 5% would strike the right balance between encouraging the leverage of securitisations and maintaining appropriate "skin in game".

Prudential rules

BusinessEurope believes that capital treatment for STS securitisations will not do enough to encourage banks to issue STS securitisations or encourage important investors, such as pension funds and insurance companies (and also banks), to invest in these products. Capital charges and liquidity rules for banks will continue to discourage them to invest in STS securitisations. Solvency 2 basically prevents insurers from investing in securitisations so amendments must be implemented urgently in order for them to start investing again in STS securitisation, especially regarding so-called senior tranches.

The current rules do not ensure a level playing field between different types of fixed income instruments and should ensure that securitisation transactions are not put at a disadvantage to other investments or funding and capital relief tools. To this end, we welcome proposals to implement the regulatory capital calculation approaches set out in the Revised Basel Framework (Articles 254 to 268); and introduce a re-calibration for STS securitisations, consistent with the recommendation of the European Banking Authority (Articles 243, 260, 262, and 264). Having said this, further work needs to be done to correct the anomalies in the capital calibration formula which penalises high quality assets which will discourage investors.

Also to be welcomed are proposals to amend, at a later stage, the Liquidity Coverage Ratio Delegated Act in order to harmonise it with the Securitisation Regulation, specifically, "the eligibility criteria for securitisations as Level 2B assets in Article 13 of the Delegated Act will be amended to make it consistent with the general STS criteria as laid down in the Securitisation Regulation".



If the securitisation framework continues to rely on external ratings, capital treatment will also continue to discourage banks to issue STS securitisations. This will make securitisation especially unviable for small and medium-sized companies due to conservative risk estimates on unrated companies. In this context, we welcome the preservation of the use of Internal Assessment Approach methodologies by some banks for computing their capital charge although other banks may rely on another methodology.

Exclusions and limitations

BusinessEurope is concerned about proposals to limit recognition of Asset Backed Commercial Paper (ABCP) to underlying assets with maturity lower than two years as this could exclude a significant part of European programmes (mainly relating to the automobile industry). It would also have repercussions on the ability of European money market funds and insurance companies to play an active role in these markets. In this respect, we support the approach of the Council to extend the maturity. European ABCP conduits are funding the working capital of European companies and it is important that they place their commercial papers with European investors rather than with US investors. Given the liquidity crisis that happened in the summer of 2011, with US investors not willing to invest anymore in European names paper, it is important to avoid that the funding of the European economy depends too much on US investors.

We are also concerned about the exclusion of risk-sharing securitisations (also called balance sheet synthetic securitisations) as this could have negative consequences for lending to real economy firms, especially small and medium-sized companies but also larger companies and the provision of trade finance.

It is also important that the ability to originate securitisations is not limited to so-called CRR institutions. Real economy companies and leasing companies should also be able to securitise as is currently the case. We also suggest removing legal barriers that prevent asset managers to supply funding to EU businesses (especially through collateralised loan obligations) by including them in the sponsor definition.

BusinessEurope is also concerned about the new final sentence of Article 6 of the Council text which states that: "The originator, sponsor and SSPE involved in a securitisation considered STS shall be established within the Union". This is an unhelpful proposal which will discourage any non-EU originated securitisations from getting STS status and thus make them far less attractive to EU investors than EU originated securitisations as the capital charges would be higher. As non-EU headquartered banks would typically originate securitisations from entities in their home state rather than from any EU subsidiaries, it would make it very difficult for non-EU banks to get any benefit from the new EU securitisation regime, other than potentially some small benefit from EU subsidiaries having to hold less capital against any investments in EU originated securitisations with STS status. This will have a direct negative impact on the likely success of the STS proposals in diversifying funding sources and unlocking capital in the EU as the range of banks willing to originate securitisations of EU assets will be reduced. It will also likely have an indirect negative impact as an implication of restricting STS status to EU originated securitisations is that other jurisdictions may reciprocate with similar geographical restrictions, for example, such as the treatment of Central Counterparty Clearing Houses (CCPs) between the EU and the US. This may lead to fragmentation of the global securitisation market



along regional lines so that effectively only EU investors will be willing to invest in EU securitisations, and only US investors to invest in US securitisations, with no cross border investing taking place. This will significantly limit the investor base for any given STS securitisation and undermine market liquidity in an already relatively illiquid market. It is vital that Europe has access to a diverse funding and investor base outside of the EU provided those entities can comply with the criteria set out within the STS regulation. Minimising access to STS would thus not be appropriate if the EU is truly trying to create a Capital Markets Union and open Europe up to a wider and more diverse funding and investment base.

Compliance and certification

BusinessEurope agrees that investors should take full responsibility for the relevant credit analysis of their holding and that issuers are fully responsible for the facts that they disclose. However, in our view, market mechanisms for STS certification should be provided to assist with the compliance process and to provide for a single European point of interpretation and data repositories for relevant information. Uncertainty over the STS status will erode trust in the market. Therefore, originators should have the right to request a legally binding confirmation of conformity from a competent authority. Such a confirmation should not exempt the originator from its obligations; it is merely a safeguard for both originators and investors of sudden changes or incoherencies in the supervisory interpretation after the securitisation has been placed. Without this, securitisations may be re-qualified to being non-STS at a later stage which will be extremely harmful for the market. The same goes for lengthy and undefined procedures that may arise from competent authorities interpreting the STS criteria in different ways.

In addition to this, and again, without exempting originators and issuers from their obligations, we consider it is key to recognise third party agencies, independent certification agents under the supervision of the competent authority, that would be entitled to perform the certification of compliance with the STS requirements. This would help to create a “common language”, necessary for the revival of the market.

* * *