Leaseurope

The Voice of Leasing and Automotive Rental in Europe

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SPECIALISED CONSUMER CREDIT PROVIDERS IN EUROPE

Brussels, 20 July 2018

Leaseurope & Eurofinas response to the EBA consultation paper on its Draft Guidelines on the STS criteria for ABCP securitisation

Eurofinas and Leaseurope, the voices of consumer credit and leasing providers at European level, welcome the opportunity to respond to the European Banking Authority (EBA) consultation on the STS criteria for ABCP securitisation.

General Comments:

Leaseurope and Eurofinas support the introduction of a new European label for high quality securitisations in Europe, the so-called Simple, Transparent and Standardised (STS) securitisations. We believe that the long-term impact of the new regime can be positive. We welcome the EBA's efforts to provide more clarity regarding the new securitisation framework in Europe. We think that overall the EBA Draft Guidelines adequately clarifies a number of aspects of the STS regulation published in the Official Journal (OJ) of the European Union on 12 December 2017. However, we are concerned with the EBA interpretation of "dependence on the sale of the asset" (see our response to question 12) and "transaction documentation" (see our response to question 25). In addition, we provide below some comments, clarifications and suggestions on certain aspects of the EBA Draft Guidelines.

Responses to the EBA Questions:

Transaction-level criteria

True sale, assignment or transfer with the same legal effect (Article 24(1), 24(2), 24(3), 24(4) and 24(5))

Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

In regard to the disclosure of the legal opinion and the statements contained therein (subparagraph 13), the term 'third parties' should be specified in more detail. In ABCP transactions, we consider third parties only those parties that are directly exposed to the risk linked to the pool of receivables (besides the regulatory authorities). By contrast, commercial paper investors and potential investors are protected by fully supported liquidity lines and therefore do not require additional information with respect to the true sale. Finally, we would like emphasise that thorough due diligence shall be performed at a reasonable cost within a reasonable timeframe.

Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 24 (2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.

The legal opinion should refer solely to the legally effective transfer of the assets. Only those risks that may impair the asset transfer should be addressed. These are essentially clawback risks and re-characterisation risks. By contrast, commingling risks and set-off risks are not directly related to the transfer of the assets but may exist independently from them. These matters are typically not components of a true sale opinion, nor are they addressed by Article 20 (1) or 24 (1) STS Regulation ('…transfer of the title…').

Therefore, commingling risks and set-off risks should be deleted from subparagraph 10 b.

Representations and warranties (Article 24(6))

Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Similarly to Q1, the assurances should be made only to those parties that are directly exposed to the underlying portfolio.

In subparagraph 16 the term 'investor' should therefore be replaced by '**parties directly holding a securitisation position at the level of the respective ABCP transaction**'.

Eligibility criteria for the underlying exposures/active portfolio management (Article 24(7))

Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the criterion of the active portfolio management? Should other techniques be included or excluded?

To complement the measures formulated in subparagraph 18.a. that do not represent active portfolio management, the following group should also be accepted: The seller of the receivable buys defaulted and no longer refinanced receivables back on a voluntary basis with the aim of maximising the returns in the liquidation process, for example by on-selling the respective receivables to a debt-collection agency or by re-leasing the underlying leasing object.

As these receivables are no longer financed by ABCP, we think they do not represent an 'underlying exposure' in the meaning of Article 24(7) and can therefore also be removed from the definition of 'active portfolio management'.

For this reason we propose the EBA to amend subparagraph 18.a. as follows:

[…] or of defaulted and unfunded receivables with the intention to generate optimised returns from the recovery and liquidation measures;

For clarification, subparagraph 18b should specify that, in addition to amortised receivables, defaulted receivables can also be replaced in the revolving phase.

Subparagraph 18 b should therefore be amended as follows:

[…] for amortised or defaulted and unfunded exposures […]

No exposures in default and to credit-impaired debtors/guarantors (Article 24(9))

Q8. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Regarding the 'best knowledge' requirement, public information should be used only when it has been recognised and processed by the originator. We think that the general formulation in the second half-sentence of subparagraph 29 ('including publicly available information') contradicts the idea expressed in subparagraph 26 ('not to be deemed unduly burdensome') as well as subparagraph 30 ('not require the originator... to take other steps in order to collect further information… beyond the information referred to in Recital 26').

The second half-sentence in subparagraph 29 should therefore be amended accordingly or deleted.

Q10. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?

In a guaranteed portfolio/asset, the requirement of non-impairment should apply not just to the debtor but also to the guarantor (subparagraph 28 'neither the debtor, nor the guarantor'). We think this is excessive and has no practical relevance from a lending perspective. In particular, for an 'impaired' debtor, a further guarantor is relevant as a risk bearer. The focus must then be on that guarantor. A portfolio or individual asset should be deemed credit-impaired in the meaning of Art. 24 (9) STS Regulation only if both the debtor and the guarantor are impaired (i.e. cumulatively).

The originator should therefore not have to perform a review of the credit history or current credit status. Subparagraph 28 should therefore contain a clarification accordingly.

No predominant dependence on the sale of assets (Article 24(11))

Q12. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

The exemption is only applicable where a guarantor secures the residual value requires the guarantor to be a suitable risk bearer in accordance with Art 201 (1) CRR and Art 249 CRR (new) (subparagraph 41). For companies this means there must be an external or internal rating.

This provision raises the question of to whom the admissibility of an external rating applies. Subparagraph 41 (second-half sentence) only states that a guarantor is subject to a certain IRB credit risk under the IRB approach ("…such third party is an eligible provider of unfunded credit protection in accordance with…"). However, we think it is unclear which party must fulfil this IRB approach. Both level 1 and the beginning of subparagraph 41 refer to 'holders of securitisation positions'. This could be both the sponsoring bank, one or more swap parties and banks investing in the ABCP.

It would be more appropriate to only refer to the sponsoring bank because that is the entity providing the full support. If instead this were to apply to further additional parties, the results would not be consistent. As such, it would not be so relevant to require the guarantor companies to always have an external rating. This would have a negative impact for the securitisation of auto and equipment leasing receivables with residual values.

To solve this issue, we would propose to either delete the entire subparagraph 41 or amend the requirements so that they would only have to be met by the sponsoring bank, and as an additional conformity criterion (besides an external or internal rating) allow the inclusion of the guarantor in the IAA rating of the sponsor.

We would like to draw your attention to the fact that according to Article 265 (2) (m) CRR (new), the IAA approach provides for all potential risks to be taken into account. Thus, a residual value guarantor may also be considered in the risk assessment under the IAA approach. In this cases, the guarantor should not be subject to the additional requirement to demonstrate an external or internal rating.

Appropriate mitigation of interest-rate and currency risks (Article 24(12))

Q14. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Article 24 (12) of the STS Regulation requires a reasonable mitigation of the interest and currency risks of a transaction. The requirements in subparagraph 44.a. of the Draft Guidelines could be interpreted so that the following tried and tested and simple method does not meet the STS requirements: The seller of the receivables is liable for the interest and currency risks of the receivables to be sold.

We therefore suggest to amend subparagraph 44.a. as follows:

'[…] for the avoidance of doubt, a guarantee (or equivalent) by the seller for any interest rate and currency risk is deemed to fulfil this requirement'.

Remedies and actions related to delinquency and default of debtor (Article 24(13))

Q15. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

We welcome a reporting obligation in the event of a change in the waterfall. However, we think that subparagraph 49 could be enhanced. In ABCP transactions/programmes there are usually two waterfalls: one at transaction level and another at programme level. Accordingly, there are two different securitisation positions. While a change in the transaction waterfall, for example, can be crucial for the parties who are directly involved (and thus have a duty to report), this cannot lead to any significant change in the repayment probability at programme level (because of the full support, among other things).

We therefore recommend to include a clarification in subparagraph 49 that parties holding a direct securitisation position and investors are to be informed accordingly – depending on the material impacts. The current wording suggests that both parties are always to be informed.

Data on historical default and loss performance (Article 24(14))

Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

We welcome the EBA clarification in subparagraph 51 stating that mandatory disclosure should be required only for investors that are directly exposed to the transaction portfolio and that otherwise relevant confidentiality aspects may be observed. However, we highlight that for certain asset classes, the only available data refer to static and dynamic historical default and loss performance. Due to the short-term nature of the receivables, a static depiction is neither possible nor helpful. Subparagraph 51 therefore should not be interpreted in a way that static and dynamic data have to be always submitted, but that depending on availability at least one of these methods may be chosen. We would welcome the EBA to provide clarification on this issue.

It is also unclear in what intervals the comparison of revolving portfolios with substantially similar portfolios has to be made. Article 24 (14) STS Regulation reads ‘before pricing’. In ABCP programmes the cost of funds is usually passed on to the sellers in monthly intervals. It would therefore require a significant effort to compare receivables sold with similar exposures in monthly intervals. We therefore suggest adding a clarification in the wording so that in ABCP programmes the expression ‘before pricing’ refers exclusively to the first pricing of a transaction, that is, the initial sale of the receivables.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 24(15))

Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

For the purposes of Article 24(15) of Regulation (EU) 2017/2402, exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 24(10) of Regulation (EU) 2017/2402, exposures related to credit cards facilities, exposures with higher final instalments ("balloon-payments"), residual values and exposures with instalments consisting of interests only (including interest only mortgages), should also be considered to have defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments.

Underwriting standards, seller's expertise (Article 24(18))

Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

The materiality definition and subparagraph 70.b. ('where they modify the information on the underwriting standards originally disclosed in the prospectus or made available in the initial offering document') is usually not applicable to ABCP transactions because the underwriting standards of transactions are not included in prospectuses or offering documents. To provide more clarification we propose that the wording refers to 'transaction documentation'.

Transaction documentation (Article 24(20))

Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

It is unclear how transaction documentation should be disclosed to commercial paper investors (subparagraph 77). Anonymised, aggregated and summarised transaction documentation does not provide commercial paper investors with any benefits or additional insights. The monthly investor reports give them sufficient information on the securitised transaction portfolios. Moreover, they mostly rely on the full support of the liquidity line. We think that the requirement for 'documentation that is essential for the understanding of the transaction' under Art 7 (1) (b) STS Regulation is covered from the point of view of the commercial paper investors. However, Article 24 (20) STS Regulation defines only the content but not the addressees of the transaction documentation. Therefore we think that subparagraph 77 should be deleted.

Finally, we would argue that the transaction documentation to contain evidence of the sponsor's solvency and liquidity requested by subparagraph 78 (referring to Article 24 (20) (d) STS Regulation), should be requested in the documentation provided to the investor instead.

Programme-level criteria

Temporary non-compliance (Article 26(1))

Q26. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

We agree with the method to be used for calculating temporary non-compliance (subparagraph 79). Regarding the definition of 'temporary' (subparagraph 80), the three-month period should begin from notification of non-compliance and not from the first occurrence of the non-compliance. The conditions for remedial action in Art 36 (6) 3 STS Regulation provide for the same periods and mechanisms. Here we assume that the period applies to each matter individually and may also be renewed as soon as the matter appears a second time.

Q27. Do you agree that the external verification should only cover the criteria referenced in paragraphs (9), (10) and (11) of Article 24, or should it cover all criteria mentioned in Article 24? Do you agree with the approach on determining the frequency of the external verification?

We understand that according to Article 26 (1) STS Regulation, the external verification should occur only if temporary non-compliance with paragraphs 24 (9-11) STS Regulation has been reported ('for the purpose of the second subparagraph …"). It should then refer only to the transactions in question. This means that external verification may be dispensed with if all conditions at transaction level are complied with (and also if the programme has not reported STS status). We are unable to identify this from the guidelines presented and request clarification.

Accordingly, we request subparagraph 83 to be deleted. We consider this to be justified also because the investor in a fully supported ABCP programme does not experience any significantly increased risk to their securitisation position from temporary non-compliance with paragraphs 24 (9-11 Reg). If, on the other hand, regular verification of all transactions were to take place, this would create high cost burdens for the selling companies without generating any significant added value for commercial paper investors.

Alternatively, subparagraph 83.b. should at least be amended as the 75% requirement is fulfilled already after a very short number of months. If subparagraph 83.b. remains unchanged, the wording should therefore be supplemented as follows: 'only for transactions which allow for receivables with an original term of more than two years: when 75% […]'

Where temporary non-compliance is reported, only the relevant transactions should therefore be subjected to (one-off) external verification – as described above (subparagraph 84).

Expertise of the servicer (Article 26(8))

Q36. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

We agree with the EBA that the seller and the servicer expertise should be measured by the same standards.

Regarding the documentation of 'policies, procedures and risk management controls' required under Art 26 (8) STS Regulation, we think that there it is needed to have a third party verifying compliance for non-regulated entities. This would result in higher costs for the selling entities without adding relevant value to commercial paper investors. The full support already provides them with significant protection. Only the sponsor has a financial interest in having relevant mechanisms in place. We therefore think that it is reasonable to require the sponsor to verify this as part of their due diligence. Whether the sponsor does this themselves or commissions third parties to do it should be at their discretion. Subparagraph 102.b. should therefore be expanded to specify that the proof can be provided by a third party or by the sponsor.

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About us

The membership of our two Federations covers institutions specialised in one or more of the following activities:

Lending to consumers, for instance via personal loans, credit cards or lease/hire purchase agreements; leasing to businesses of all asset types, including machinery and industrial equipment, ICT and others assets; motor finance, granted to individuals or businesses, either in the form of loans or leases.

The consumer credit, asset finance and leasing markets have developed to respond to business investment and consumption needs as well as to accompany the development of local industrial production and distribution. The types of institutions represented by the Federations include specialised banks, bank-owned subsidiaries, the financing arms of manufacturers as well as other, independently-owned institutions.

Specialised financial services providers across the European Union (EU)/European Economic Area (EEA) encompass a diversity of organisations of different legal nature (i.e. credit institutions, financial institutions) and with various operational characteristics (independent companies, subsidiaries of banks, captive finance companies of manufacturers). All share a very high degree of specialisation and have a very limited mix of business activities compared to traditional mainstream banking organisations.

In 2016, the leasing firms represented through **Leaseurope's membership helped European businesses invest in assets worth more than 334 billion EUR**, reaching 779 billion EUR of outstandings at the end of the year[1]. Leasing is used by more European SMEs than any individual category of traditional bank lending taken altogether (around 40% of all European SMEs make us of leasing which is more than any other individual form of lending)[2] and is also extremely popular amongst larger corporates[3]. It is also extremely useful to support the public sector (e.g. leasing to schools, hospitals, etc.).

In 2016, consumer credit providers that are members of **Eurofinas helped support European consumption by making more than 457 billion EUR goods, services, home improvements and private vehicles available to individuals**, reaching 1.024 trillion EUR of outstandings at the end of the year[4]. Consumer lending is procyclical and is highly positively correlated with households' disposable income[5]. By providing access to finance to individuals and households, consumer credit supports the social and economic well-being of millions of consumers across Europe.

Eurofinas and Leaseurope are entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56 and 430010622057-05

[1] Leaseurope 2016 Annual Statistical Enquiry
[2] Oxford Economics, *The Use of Leasing Amongst European SMEs,* 2015; Eurostat, *Access to Finance Statistics,* 2011; International Finance Corporation *Leasing in Development: Guidelines for Emerging Economies,* 2009; European Investment Fund *The importance of leasing for SME finance, 2012*; and UEAPME, *UEAPME Newsflash,* 2012
[3] European Central Bank, *Survey on the Access to Finance of Small and Medium-Sized Enterprises in the Euro Area* , April 2013
[4] Eurofinas 2016 Annual Statistical Enquiry
[5] Eurofinas, *Consumer Credit, Helping European Households Finance their Tomorrow,* 2015