Comments on

EBA Draft Guidelines

on the STS criteria for non-ABCP securitisation

Frankfurt am Main, July 2018

Introduction:

We appreciate the opportunity to be able to comment on the draft Guidelines on the STS criteria for non-ABCP securitisations.

Non-ABCP securitisations play an important role in Germany, particularly in the financing of car sales. About 50 % of European Auto-ABS transactions come from Germany, adding European transactions of the European subsidiaries of the major German manufacturers, about two thirds of EU transactions are likely to be related to the German automotive industry.

In the following commentary, we are particularly interested in this market segment. In responding to the questions, below we have focused on the practice of securitisation autoloans and autoleasing transactions in particular.

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.

With regard to the disclosure of the legal opinion or the statements contained therein (paragraph 13), the term "third parties" should be specified in more detail. We assume that this means only supervision and third party verifier according to Article 28.

Q2: Do you agree with the clarification of the conditions to be applicable in case of use of methods of transfer of the underlying exposures to the SSPE other than the true sale or assignment? Should examples of such methods of such transfer be specified further?

No comment.

Q3: Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 20 (2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.

The legal opinion should refer exclusively 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 or set-off risks represent matters that 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 Art 20 (1) STS-Reg ('...transfer of the title...'). Therefore,'commingling risks and set-off risks' should be omitted from subparagraph 10 b.

Q4: With respect to the interpretation of the criterion in Article 20(5), should the severe deterioration in the seller credit quality standing, and the measures identifying such severe deterioration, be further specified in the guidelines? Do you believe that the interpretation should refer to the state of technical insolvency (i.e. state where based on the balance sheet considerations the seller reaches negative net asset value with its liabilities being greater than its assets, without taking into account cash flows or events of legal insolvency), and if yes, should it be specified whether it should or should not be considered as the trigger effecting perfection of transfer of underlying exposures to SSPE at a later stage?

No comment.

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.

We agree.

Q6: 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.

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

Supplementing the measures formulated in subparagraph 18 a that do not represent active portfolio management, the following constellation should also be admissible: 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 (both are commonly used market practices from originators/servicers to optimise recovery proceeds of defaulted receivables). As these receivables are no longer financed by ABS, in our opinion they do not represent an 'underlying exposure' in the meaning of Art 20(7) and can therefore also be removed from the definition of 'active portfolio management'. For this reason subparagraph 18 a

should be supplemented as follows: ‘or of defaulted and unfunded receivables with the intention to generate optimised returns from the recovery and liquidation measures;'.

For clarification, subparagraph 18 b 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[...]'.

It should also be clarified that under warehousing programs collections proceeds can be used to make further purchases during the revolving period. Furthermore, term take outs should be possible within the framework of such programmes.

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.

We agree.

Q9: Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?

No.

Q10: 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.

No comment.

Q11: Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

We agree. In principle, originator expertise and servicer expertise (Art 21 (8) STS-Reg) should be on the same level (see also Q25).

Q12: Should alternative interpretation of the "similar exposures" be provided, such as, for example, referencing the eligibility criteria (per Article 20(7)) that are applied to select the underlying exposures? Similar exposure under Article 20(10) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid / prepaid by the time of securitisation). Similar interpretation could be used for the term "exposures of a similar nature" under Article 20(10), and "substantially similar exposures" under Article 22(1). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations

which approach would be more appropriate in providing clear and objectively determined interpretation of the "similarity" of exposures.

The purpose of Article 20 (10) is to ensure that the underwriting standards for the securitised portfolio do not differ from those for similar exposures that are not securitised at the time of issuance. The purpose of this provision, which is also contained in a similar form in Article 9 (1) and Article 6 (2), is to exclude originate to distribute models. The investor should be given security in such a way that

- the historical data of comparable portfolios are also representative of the securitised portfolio,

- no specific negative selection is made and

- the originator and his management also have experience in origination and servicing of corresponding portfolios.

This idea is taken into account by demanding that the "underwriting standards... no less stringent" for the securitised portfolio and "for similar exposures that are not securitised".

It makes sense, as laid down in the regulation, to go to the underwriting standards and not to the eligibility criteria. The eligibility criteria are always time-related, while the underwriting standards apply over a period of time.

Q13: 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.

With regard to the "best knowledge" requirement, public information should only be used if it has been recognized and processed by the originator. In our opinion, the general wording in the last half sentence of paragraph 44 ("including publicly available information") contradicts the idea of

paragraph 44. 41 ("not to be deemed unduly burdensome") and note 45 ("not require the originator … to take other steps in order to collect further information ... beyond the information referred to to in Recital 26"). The last half sentence in paragraph 44 should therefore be restricted or deleted accordingly.

Paragraph 50 reinterprets the legal text in such a way that it can no longer be fulfilled. The guidelines modify the text of the regulation to refer to "significantly higher than the average credit score or assesment of all comparable exposures held by the originator which are not securitised". In contrast, the regulation states "higher than for comparable exposures". The addition of "average" and "all" makes this - if this remains the case in the guidelines - a criterion that is virtually difficult to fulfil. It is also not logical from a mathematical point of view. Usually, the quality of comparable, unsecuritised receivables should not be determined by an average score but, as usual, by the range of credit ratings accepted as part of the credit risk strategy.

In our opinion the text of the regulation is sufficiently clear. Nor further explantation is needed.

Q14: Do you agree with the interpretation of the criterion with respect to exposures to a credit impaired debtor or guarantor?

With regard to the adverse credit history or negative credit history, it may be unclear in individual cases when such a history exists. This is important if there is no public debt register in the respective country in which all debtors with a negative credit history are listed and instead a non-public credit register is used which stores negative and positive information about the customer and which does not explicitly identify customers with a negative credit history. Paragraph 48 of the draft guidelines provides an example of when there is no adverse credit history. However, there are a number of cases in which it may be doubtful whether an adverse credit history exists or not. For example, what about a dunning notice issued one year before the loan is granted if there are no indications at the time the loan is granted that receivables are overdue? In the event that the borrower is not explicitly identified by the credit register, clear information would be required in order for an IT-based selection.

Q15: Do you agree with the interpretation of the requirement with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?

In the case of a guaranteed portfolio/asset, the property of non-impairment should apply to both the debtor and the guarantor (paragraph 43 "neither the debtor, nor the guarantor"). In our opinion, this is inappropriate and impractical from a credit perspective. Especially in the case of a "damaged" debtor, another guarantor is relevant as a risk carrier. This is then to be used as a basis. A portfolio or an individual asset should only be considered credit-impaired within the meaning of Art 20 (11) STS-Reg if both the debtor and guarantor are damaged (i.e. cumulatively). Paragraph 43 should therefore contain a corresponding clarification.

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 agree.

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.

The exception in the case of a guarantor for the residual value provides that this is an appropriate risk carrier in accordance with Art 201 (1) CRR or Art 249 CRR (new) (para. 55). For companies, this means that an external or (for IRB banks) internal rating must be available.

This regulation raises the question of to whom the admissibility of an internal rating applies. Paragraph 55 (last half sentence) only refers to the fact that "such third party is an eligible provider of unfunded credit protection in accordance with" (-> IRB approach). However, in our opinion it is not clear which party must comply with this IRB approach. Both in Level I and at the beginning of paragraph 55, "holders of securitisation positions" are mentioned. These could be investing banks. However, other investor groups that are not subject to the CRR could not meet this requirement. In practice, this means that only guarantors with external ratings are considered. This would have serious negative consequences for the securitisation of car and equipment leasing receivables with residual values. We therefore propose that paragraph55 be completely deleted.

Nor does the subparagraph have any reference to Regulation (EU) 575/2013 with regard to the requirements for the obligor or guarantor. In this respect, the interpretation of the guidelines does not seem to us to be covered by thesSecuritisation regulation. Instead, in our opinion, the non-impairment requirements of paragraph 11 are to be applied for a systematic interpretation of the law in accordance with the purpose of the non-impairment requirement. A market price risk is converted into a credit risk for a person or company entering into a repurchase obligation. It is incomprehensible why there should suddenly be different requirements for the creditworthiness of the obligor. We therefore propose that the reference to Regulation (EU) 575/2013 should be deleted and that it should be clarified that the obligated parties may neither be defaulted nor credit-impaired within the meaning of paragraph 11.

Q18: Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?

No comment.

Q19: 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 21 (2) of the Securitisation Regulation requires an appropriate reduction of the interest and currency risks of a transaction. The requirements in paragraph 58 a. of the RTS draft could be understood as meaning that the following proven 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 sold. Therefore, paragraph 58a should be amended as follows: "[...] for the avoidance of doubt, a guarantee (or equivalent) by the originator for any interest rate and currency risk is deemed to fufill this requirement if the corresponding credit worthiness and a rating trigger are given or the risks are appropriately reduced through the use of instruments customary in the market.

Q20: 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.

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.

As different forms of sequential waterfalls exist, they should be specified.

Q22: 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 in general. It might be further clearified that (i) not all of these items a/b/c need to be included (typically less but more meaningful triggers are more effective and reduce complexity) and (ii) other type of triggers might be used as well (paragraph 71 includes a non-exhaustive and non-binding list).

Q23: 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 respect to termination of revolving period. However the (immediate or quick) replacement of the servicer should not be mandatory for the following reason: In case of an originator (=servicer) insolvency of granular portfolios like auto receivables, in most jurisdictions (e.g. Germany) the most likely outcome is that the insolvency administrator commits to continue servicing of the securitised receivables in the same way as non-securitised receivables. He is able to give this commitment especially in case of large originators with public and political awareness and consequences (existing employes can remain employed for 1-2 years, restructuring can be achieved, etc.), and the performance of such servicing can be expected to be at least as good as a replacement servicer. Especially as the transaction documentation always provides for the right to

(i) notify debtors and (ii) replace the servicer immediately allowing to achieve the commitment of the insolvency administrator, there is no need for a mandatory and immediate replacement.

Q24: 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.

No comment.

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.

As stated under Q11, originator and servicer expertise should be judged according to the same standards. This is fulfilled.

Q26: Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

No comment.

Q27: 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.

Q28: 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.

No comment.

Q29: 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 ask you to take into account that only dynamic loss and default data is available for certain asset classes (in particular for the securitisation of short-term receivables). Due to the short-term nature of the receivables, a static presentation is neither possible nor helpful. Accordingly, a text paragraph should be included, according to which static and dynamic data are not always mandatory, but - depending on availability - at least one of these methods.

Q30: 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.

With respect to paragraph 85 a. we propose to apply the confidence level of at least 95% also for sample size used for the verification of eligibility requirements. With respect to paragraph 85 b. it should be clarified that not all data in the offering document but only material parameters shall be verified, this is consistent with paragraph 86. It should also be allowed as alternative to have verified the data disclosed in the offering document by recalculation of such data (especially stratification tables and amortisation schedules) based on the data tape containing all receivables (and not the sample), in which case no confidence level applies.

In addition to the confidence level for 85a. and 85b. ("at least 95%"), the expected/acceptable error should be stated, we propose "maximum 5%".

Q31: 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.

Cash flow models might have very specific features depending on the purpose of using a model. Combining a lot of such features would lead to overly complex models, increasing the risk of mistakes when investors utilise the model. Hence the focus of the modell should be modelling the cash flows from securitised receivables in base case scenarios and different prepayment scenarios as well as other structural features (e.g. senior expenses, interest rate swaps). This does allow the investor to use the modell for pricing and to have the input data for their own stress case modelling. As a more generic clearification, "the purpose of the modell shall not be to modell rating agency scenarios".

Q32: 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.

No comment.

Q33: Please provide further details and suggestions what type of information is available for residential loans and auto loans and leases, that could be provided under this requirement.

No comment.

Q34: 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.

No comment.

Q35: Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.

No comment.

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.

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.