

---

## Deutscher Industrie- und Handelskammertag

---

### **Reply of the Association of German Chambers of Commerce and Industry to the EBA Discussion Paper on simple, standard and transparent securitisations (EBA/DP/2014/02)**

As umbrella organisation of the 80 German Chambers of Commerce and Industry, the Association of German Chambers of Commerce and Industry (DIHK) represents the interests of 3.6 million companies in Germany from all industries and size classes.

The DIHK strongly supports the aim of defining simple, standard and transparent securitisations and to provide partial relief from increased regulatory requirements for securitisations that meet these criteria. Following the recent financial and economic crisis, securitisations have been subjected to a generalized public mistrust, and regulatory requirements have been strongly increased. However, even during the crisis, problems emanated from specific market segments such as securitized US sub-prime mortgages, while many types of securitisations used in Europe have shown good and resilient performance. It is therefore crucial to provide for an adequate level of differentiation in regulating securitisation to prevent harm for its many useful applications in company financing.

This is particularly true for the European economy with its high traditional dependence on bank financing. European companies, and in particular small and medium-sized enterprises (SMEs), rely on bank loans as their primary means to obtain external finance. Moreover, given high fixed costs for capital markets instruments, bank loans will also retain this crucial role in the future. The particular advantage of securitisation lies in its ability to link bank financing and capital markets in a form that is compatible with these well-established structures of corporate finance in Europe. A good framework for high-quality securitisations can therefore be an important contribution to the European Commission's project of a genuine capital markets union.

However, concerning term transactions, the present proposal still needs some adjustments to reflect successful market practice and to allow for a successful practical implementation. In general, it is important that all requirements are formulated clearly and in a way that can be satisfied by market actors. In this respect, for example, demands to exclude borrowers with adverse credit history still cause considerable uncertainty and may require information that is not available during the ordinary course of business. This applies even more strongly where the primary transaction results from the sale of goods, and the financing is offered only as part of the terms of the sale, as e.g. in many auto

sale transactions. Moreover, generally excluding borrowers with adverse credit histories even when their present quality as a debtor is good could unnecessarily prevent the recovery of SMEs after a period of economic downturn. The framework should also reflect more closely the intense deliberations with stakeholders that occurred during the drafting of the Delegated Acts on the Liquidity Coverage Ratio and on the implementing rules for Solvency II.

Moreover, the framework presented by EBA in its current form seems unduly limited to certain originators and uses of securitization, while excluding other, similarly important forms that also do not carry impediments to financial stability.

The focus of the proposed framework is clearly on true-sale securitisation transactions originated by banks for the purposes of improving refinancing. However, refinancing through securitisation is not limited to banks, but also of considerable importance to many corporates via the use of Asset-Backed Commercial Paper (ABCP). ABCP provide an important channel to refinance e.g. trade and leasing receivables and should be included in the EBA framework.

When defining high-quality criteria for ABCP, the specifics of this type of transaction need to be adequately reflected. On the one hand, a typical ABCP transaction is guaranteed by a sponsoring bank through a standing liquidity facility, which makes the sponsor's credit rating a crucial factor in determining investment risk. On the other hand, the individual receivables underlying the ABCP originate directly from a companies' day-to-day business, and disclosure of too many transaction details for each underlying claim can reveal sensitive information on day-to-day company policy, e.g. relating to prices and payment terms. Therefore, criteria for ABCP should allow for some confidentiality about individual receivables while ensuring full transparency about the sponsoring bank. Finally, since the underlying transactions in ABCP result from ordinary course of business, companies should not be penalised for successfully exporting to destinations outside the EEA and exposures up to a certain threshold should be allowed to come from debtors outside the EEA.

At the same time, for banks, the primary objective for using securitization is often not refinancing, but regulatory capital relief to allow for new lending. Due to its relatively high costs per transaction, true-sale securitisation is often less suitable for this end than a transfer of the relevant credit risk to third parties through so-called synthetic securitisation. In a climate where the considerable heightening of own funds requirements threatens to impinge on company financing in Europe, we believe that this instrument should remain available and that synthetic securitisations should not be excluded from the EBA framework in their entirety. Furthermore, synthetic securitisations have the added benefit of maintaining the initial relationships between bank and debtor. This is often crucial for acceptance on the part of debtors, especially among small and medium-sized enterprises, and

Berlin, 14. Januar 2015

also helps to strengthen a close contact between banks and companies that increases financial resilience in times of crisis. However, we also acknowledge that synthetic securitisations carry some disadvantages from a regulatory point of view, as the transactions would be affected by an insolvency of the originating bank and thus do not completely shield buyers from systemic risks in the banking sector. Therefore, stringent conditions should be attached to the classification of synthetic securitisations as high-quality. Experiences in Germany, e.g. with the PROMISE and PROVIDE programs initiated by the KfW bank, demonstrate that a high degree of standardisation is possible for synthetic securitisations.

In summary, the DIHK considers that a well-defined framework should include quality criteria for true-sale term transactions (such as for SME loans and auto finance), for synthetic securitisations (especially concerning SME loans) and for the securitization of trade and leasing receivables. Moreover, the framework should be designed as an open structure so that a later addition of criteria for additional forms of securitization, such as commercial real estate financing and infrastructure financing, remains possible.

*In case of questions, please contact Dr. Tim Gemkow ([gemkow.tim@dihk.de](mailto:gemkow.tim@dihk.de))*