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EACB position on the EC proposal for a securitisation Regulation and a proposal to amend the CRR regarding the capital treatment of securitisations

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 30 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,200 locally operating banks and 67,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 205 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 81 million members and 805,000 employees and have a total average market share of about 20%.

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Introduction- Key points

The members of the European Association of co-operative Banks (EACB) share the view that a functioning securitisation market – supplementing bank loans as a main financing instrument – is essential to support growth, and for providing sufficient credit to companies, particularly to small and medium-sized enterprises (SMEs).

Securitisation is indeed a very important element, also from our perspective as cooperative banks, as it fills a "middle ground" between direct bank lending and pure capital markets funding. That is, allowing smaller banks (for instance within cooperative networks) to finance their lending to SMEs and individuals through an access to the capital markets that makes it possible to generate high-rated securities backed by such kind of retail lending. It also allows to better diversify risks and unlock capital in order to improve local lenders' ability to continue financing and boosting economic growth in their regions.

In this context the members of EACB welcomes the Commission's proposal to create a securitization framework as an important step in the context of the Capital Markets Union project (CMU). However, we consider that a few further improvements would be desirable in order to enhance the effectiveness of this initiative and to support particularly smaller regional and/or decentralised banking groups in their core activities.

Please find our very target comments below.

Specific Remarks

1. **The future treatment of synthetic securitisations with regard to STS**

Securitisation transactions could basically evolve into an important instrument for the credit portfolio management of cooperative banks to address regional concentration issues (see for example (SREP- Supervisory Review and Evaluation) and to back sustainable SME client relationships. But as, cooperative banks in many member states generally preclude any true sale of performing SME loans, only synthetic transactions may be used. Indeed, especially institutions with a strong focus on SME financing maintain close business relationships with their SME-clients. These relationships would be severely stressed in case of a true-sale, as these clients typically would regard a true sale of their loans to some third party as breach of trust. In general, many SME-financing institutions prefer synthetic protection to their loan portfolios for capital relief, risk management, and to create room for new loan business with their clients.

At the same time, synthetic securitisation transactions may well be structured to ensure simplicity, transparency and standardisation provide value to the real economy. Moreover, synthetic transactions do not have speculative purpose just because they are synthetic - and counterparty risks may be eliminated.

If synthetic securitisations are generally excluded from STS, the securitisation market will not be able to substantially support European SME-Financing.

Having said that, we are pleased to see that the draft ECON report shows some signs to include synthetic balance sheet transactions into STS. EBA Mandate to develop STS criteria for synthetic securitisations will allow commercial banks to release capital to be invested in new business with corporate and SME customers STS (Article 29 (3) lit.b and c - Amendment. 106 and 107) should remain in the final version of the report.

2. **20% risk retention**

The amendment in the ECON-draft STS (Art. 4 (Amendment 40 and 42-48)) concerning retention levels has brought a rise to the level of risk retention from 5% to 20% which will essentially minimise the capital relief effect. We understand that high level of risk retention could potentially generate a high level of confidence to potential investors with regard to a risk of moral hazard (demand side). However, the supply of transactions may be reduced heavily under this retention rule, especially if risk transfer (and not just funding) is intended by the originator.

Additionally, a higher risk retention may eventually get into conflict with the current regulatory requirement of "significant risk transfer". Indeed, securitisations may only support the real economy if they lead to reduced capital requirements at the financial institutions involved - which (under the current regulation, CRR) is not possible if risk retention is extensive (i.e. no significant risk transfer).

Moreover, no quantitative element calls into question current practice and the rise to a level of 20% is not justified by concrete elements.

Therefore, we would propose to follow the Commission´s proposal of 5% retained interest also in line with EBA´s recommendations.

3. Risk weights consistent with underlying risks:

Both the Commission's proposal and the draft report propose to double (STS) or even triple (Non-STS) risk-weights for securitisations in comparison to the current status. This makes securitisation too costly for banks and will be a disincentive for the use of this instrument.

Therefore, we would propose lowering IRB (*CRR Art. 259 (1) & 260*) , ERB (*CRR Art. 261 (2) and (3) and Art. 262 (2) and (3)*) and SEC-SA (*CRR Art. 263 (1) and 264*) floors risk-weights for STS transactions to the current levels:

	STS	Non-STS
IRB	7 %	10 %
ERB (5 years)	7 %	10 %
SEC-SA	7 %	10 %

4. Hierarchy of approaches

The exclusion of SEC-ERBA from STS would probably make ABCP transactions too expensive to be continued as most banks sponsoring these transactions currently use the IAA to assess the credit risk. The close connection of IAA to external ratings would drive STS-ABCP transactions into SEC-SA (which is notably non risk-sensitive)- just for formal reasons.

We do not consider that there is no material economic reason to exclude SEC-ERBA from STS.

5. Leverage ratio:

To revive the securitisation market via STS initiative it is necessary to –as a first step- encourage banks to use Simple and transparent securitisation and second address the growing shadow banking activities which are putting new, unknown and untested risks on insurance and pensions' balance-sheet. European banks have currently no incentive to use STS securitisation: the risk factors, the increased cost of RWAs, the self-certification issue or sanctions are in fact forcing banks to look for other ways to fund SMEs and the economy. In addition, in most instances, the underlying assets remain consolidated on the bank's balance sheet (even in the case of true sale). Against this background and taking into account that STS securitisations will be a well-defined bank funding tool solution with strong safeguard and personal liabilities, we propose that Banks should be allowed to deduct any STS securitisation tranches sold from the total balance-sheet size used for the computation of their Total Exposure. Failing this, STS securitisations will lack the incentives to be a success and therefore would not play their part in the long-term funding of the economy. In addition, failing to do this would not allow that stability of the European financial system is maintained by not containing shadow banking activities. Considering that the purpose of STS securitisations is to create non-systemic funding tools (they are "life capsules" of their own) they should be given a privileged treatment to ensure their success and hence not be caught into the Leverage Ratio.

With this in mind we would propose to add a new paragraph 15 to Article 429 of CRR as follows:

"15. Institutions that have securitized assets, and for which the Securitisation SSPE is (a) part of the regulatory scope of consolidation used for the risk-based framework and (b) satisfies the STS criteria, may deduct from their total exposure the total amount of liabilities issued by such Securitisation SSPEs and not retained by such institution irrespective of the significant risk transfer defined in article 244."

This is also in line with amendment 20 of the ECON draft report regarding the capital treatment of securitisations.

6. More flexibility in the definition of "homogeneity" for portfolios

The stringent requirements of minimum percentage of SME exposures and tight concentration limits for obligors (*CRR Art. 270 (1) lit. c, CRR Art. 243 b*) reduce ability of medium sized banking groups in smaller countries to create portfolios of sufficient volume.

Therefore, we consider that it would be appropriate to follow the below approach:

- Loans to corporates should be equally eligible.
- Minimum level of loans to SMEs should be lowered to 40% of the total pool.
- Adjust concentration limit for single obligors to 2 %.

7. Self-certification and penalties

The current draft entails the risk that the large number of more than 80 (STS-) criteria will be interpreted by around 70 supervising entities, which results in high uncertainty for originators and investors – and even worse - threatened with excessive penalties unprecedented in the capital markets; this will probably lead to a situation where a large number of market participants will abstain from engaging in securitisations.

Therefore we consider that it is of utmost importance to ensure clarity for both originators and investors by strengthening the role of ESMA in determining a uniform interpretation of the STS-criteria and provisions (STS Art. 14). At the same time, we would advise against excessive penalties in particular for the case of minor negligence (STS Art. 17 (2)).

8. Third party guarantee provider

Cash funded guarantees provided by institutional investors play an important role for banks. These guarantees allow banks to transfer risk to investors minimizing counterparty credit risk (cash or sovereign bond collateral).

For this reason we support amendment 39 in the ECON draft report regarding the capital treatment of securitisations.

9. Grand- fathering

Reliance and trust in existing regulations are an important factor for banks when conducting transactions. The proposed grandfathering until December 2019 should avoid effects in RWA calculations and provide sufficient confidence to execute transaction currently in the pipeline. However, in case of a delayed finalisation and consequently delayed implementation of these Regulations we would argue for a grandfathering of 3 years after entry into force of this regulation. For that reason we support amendment 5 in the ECON draft report regarding the capital treatment of securitisations in Recital 12 of CRR.

Contact:

The EACB trusts that its comments will be taken into account.

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