

Single Rulebook Q&A

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Article	20, 22, 24
Paragraph	20 (8), (10), (11), (12), (13), 22 (1), 24 (9), (10), (11), (14), (15), (18)
Subparagraph	-
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Type of submitter	Other
Subject matter	Compliance of the securitisation of residual values through expectancy rights (“Anwartschaftsrechte”) with the STS criteria for non-ABCP securitisation and for ABCP securitisation
Question	Does a securitisation of residual values through expectancy rights qualify for STS in general in relation to non-ABCP securitisation and ABCP Securitisation (subject to compliance with all other STS criteria)?
Background on the question	I. Introduction Residual value is a common feature in European automotive and equipment finance. In automotive and equipment finance it is most common that the customer pays affordable monthly instalments but does not repay the full amount, thus leaving a balance due at maturity. In auto and equipment lease contracts, the lessee typically has to return the vehicle/equipment to the lessor at the end of the lease term. In case the actual value of the vehicle/equipment is lower than the initially expected value, there is a shortfall. The risk of this shortfall is the so called “residual

value risk". Residual value risks are usually mitigated in practice by strict and conservative residual value setting processes, repurchase agreements or guarantees provided by the seller or through credit enhancement so that sufficient protection for investors is in place. In Germany the residual value in a vehicle or equipment lease contract is usually monetised in the form of an expectancy right (Anwartschaftsrecht) which comes into existence if the vehicle/equipment is leased to a customer, the leasing cash flows are securitised, the vehicle/equipment is granted as collateral to the securitisation SPV by the lessor and the granting of the vehicle/equipment as collateral is automatically terminated upon the end of the lease agreement, following which the vehicle/equipment is automatically returned to the lessor. As a result of that collateral transfer of the ownership in the vehicle/equipment and in particular the automatic re-acquisition by the lessor, an expectancy right arises in favour of the lessor which the lessor may also finance by way of securitisation. For that purpose the expectancy right is sold and transferred to another securitisation SPV and such SPV will become owner of the vehicle/equipment once all lease instalments have been paid to the first SPV since the expectancy right will then convert into ownership in the vehicle/equipment by operation of law. The sale of the expectancy right is not a sale of a "receivable" or a "claim" but of chattel (in rem transfer). This structure is widely used in the German market because it is the only legally enforceable form of an insolvency proof transfer of the residual value. In practise, three transaction types are used for the securitisation of lease contracts: (1) securitisations involving the monetisation of the leasing cashflows only ("Leasing Cashflows Securitisations"), (2) securitisation involving the monetisation of both the leasing cashflows and the residual value component ("Combined Leasing Cashflows and Residual Value Securitisations"), and (3) securitisations involving the monetisation of the residual value component only ("Residual Value Securitisations"). Both "Combined Leasing Cashflows and Residual Value Securitisations" and "Residual Value Securitisations" will comply with the requirements of simple, transparent and standardised securitisations (STS) if (a) pursuant to Article 20 (13) 2nd paragraph of Regulation (EU) 2017/2402 (the "Securitisation Regulation") the residual value is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party and (b) pursuant to marginal number 50 of the Guidelines on the STS criteria for non-ABCP securitisation (the "EBA Guidelines") the seller or the third parties are not insolvent and there is no reason to believe that the entity would not be able to meet its obligations under the guarantee or the repurchase obligation. In this context marginal number 45 of the background and rationale of the EBA Guidelines explicitly confirms that Article 20 (13) of the Securitisation Regulation and marginal number 50 of the EBA Guidelines do not aim to exclude leasing transactions and interest-only residential mortgages from STS securitisation. More specifically, . Article 20 (13) 2nd paragraph of the Securitisation Regulation does not distinguish between "Combined Leasing

Cashflows and Residual Value Securitisations” on the one hand and “Residual Value Securitisations” on the other hand, and from a commercial perspective there is no reason why the latter should be excluded from STS securitisation. However, given that German law expectancy rights are rights in rem and thus, do not have an obligor, some uncertainty has arisen in the context of Residual Value Securitisations involving such expectancy rights by which such residual values from leasing transactions are securitised and the interpretation of certain further requirements for STS securitisations which refer to characteristics of obligors, such as Articles 20 (8), 20 (10), 20 (11), 20 (12) and Article 22 (1) of the Securitisation Regulation in respect of non-ABCP securitisation and Articles 24 (9), 24 (10), 24 (11), 24 (14), 24 (15), 24 (18) of the Securitisation Regulation in respect of ABCP securitisation. In the following sub-section II., the individual STS criteria referred to above are briefly described, the relevant characteristics of expectancy rights are highlighted and an explanation is provided how the relevant STS criteria is complied with. II. Reference to individual STS criteria Article 20 (8) / Article 24 (15) (Homogeneity): The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to obligors and, where applicable, guarantors. EBA's final draft regulatory standards on the homogeneity of the underlying exposures in securitisation (the "Homogeneity RTS") stipulate that the relevant homogeneity factor shall be taken into account. In the case of equipment leases and auto leases (see Article 1 (a) (iv) and (v) of the Homogeneity RTS), the homogeneity factor is either the type of obligor or the jurisdiction, i.e. all obligors have their residence in the same jurisdiction. The Homogeneity RTS, however, indicate that the current list of assets is not exhaustive and that there may well be assets that do not fall under the scope of the Homogeneity RTSs (see marginal number 52 of the background and rationale of the draft Homogeneity RTS). For such assets to be considered homogeneous, the following factors must be fulfilled: • the assets must form a single category of assets (this is the case as either (i) only expectancy rights or (ii) a combination of the leasing cashflows and expectancy rights arising from the same lease contracts are securitised); and • The assets must meet a homogeneity factor (the expectancy rights are based on the same jurisdiction); and • The assets must have the same risk profile and cash flow characteristics that allow investors to determine the risks on the basis of generally accepted methods and parameters (this is usually also fulfilled for expectancy rights). Article 20 (10) / 24 (18) (Underwriting): The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the

time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay. The expectancy rights are rights in rem and not claims against individual borrowers, which are typically covered by the originator's underwriting standards. Since the value of all expectancy rights of the originator are calculated by using a common and consistent calculation methodology (resulting in the purchase price payable to the originator under the repurchase agreement), these calculation standards are equivalent to the underwriting standards. In addition, the same calculation methodology is typically applied for both securitised and non-securitised expectancy rights. The originator will need to demonstrate its expertise in (i) the forecast of residual values (based on parameters like model/type of equipment, age of vehicle/equipment, mileage/operating hours, etc.), (ii) the setting of residual values for the underlying exposures (including a description of the interaction between manufacturer, dealer and finance company = originator, any deviations from the residual value policy and which party/parties carry the residual value risk), and (iii) the on-going monitoring of residual values. Article 20 (11) / 24 (9) (Credit-impaired debtor or guarantor): The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge: (a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt- restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if: (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring; (b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised. For expectancy rights, there is no debtor or guarantor who could be credit-impaired. According to marginal number 39 of the background and rationale of the EBA Guidelines for non-

ABCP securitisation, the purpose of Article 20 (11) of the Securitisation Regulation is to ensure that STS transactions are not exposed to credit-impaired debtors or guarantors. The same applies according to marginal number 33 of the background and rationale of the EBA Guidelines for ABCP securitisation in relation to Article 24 (9) of the Securitisation Regulation. As explained above, expectancy rights as rights in rem, i.e. a right to an object (=vehicle or equipment) do not have a debtor. Instead, the transaction relies on the creditworthiness of the seller or the third parties that are undertaking a repurchase obligation or are providing a guarantee. Such parties should not be, as required by marginal number 50 of the EBA Guidelines, insolvent and there should be no reason to believe that the entity would not be able to meet its obligations under the guarantee or the repurchase obligation. Additional comfort for a situation, where the parties that have entered into the repurchase obligation or have provided a guarantee should not be in a position to fulfill these obligations, is provided to investors through disclosure of a general description of the residual value policy (see above under Article 20 (10) / 24 (18) (Underwriting)). Article 20 (12) / 24 (10) (at least 1 payment made): The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits. Again, there is no debtor in the case of expectancy rights. With regard to this criterion, the lessees and the underlying lease contract (where the leasing cashflows are securitised through another ABS transaction, see above under I.) should be taken into account, as no payments are made under the expectancy rights. Reference can be made to the representations and warranties provided by the originator under the other ABS transaction regarding the requirement that at least 1 payment having been made under the lease contract. Article 22 (1) / 24 (14) (historical performance data) The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years. There will be no historical default and loss data on the performance of the expectancy rights. Any risk arising from a shortfall in case the actual value of the returned vehicle/equipment being lower than the final payment is mitigated by a residual value guarantee or a repurchase obligation of the seller of the expectancy rights. In addition, and as equivalent to the performance data, the originator will make available (if deemed to be confidential information by the originator, restricted to parties that have entered into appropriate confidentiality agreements) data that will allow investors to assess the risk related to the development of the value of the returned vehicle/equipment. These data shall cover a period of at least five years. III. Conclusion Based on the considerations above, we are convinced that a securitisation of residual

values by means of expectancy rights in the context of Residual Value Securitisations does qualify for STS in general in relation to non-ABCP securitisation and ABCP securitisation (subject to compliance with all other STS criteria not covered in this document).

EBA answer

Whether securitisations backed only by residual values may qualify as STS securitisations depends on those transactions' meeting all the STS requirements, including in particular the requirement referred to below.

As detailed in the EBA Guidelines (GL) on STS criteria for ABCP ([EBA GL/2018/08](#)) and non ABCP securitisations ([EBA GL/2018/09](#)), the objective of the criterion referred to in Articles 20(13) and 24(11) of Regulation EU 2017/2402 is "to ensure that the repayment of the principal balance of exposures at the contract maturity is not intended to be predominantly reliant on the sale of assets securing the underlying exposures, unless the value of the assets is guaranteed or fully mitigated by a repurchase obligation".

The EBA GLs explain in detail that the term 'predominant dependence' on the sale of the assets securing the underlying exposures refers to three aspects:

- "1. the principal balance at contract maturity of underlying exposures that depend on the sale of assets securing those underlying exposures to repay the balance;
2. the distribution of maturities of such exposures across the life of the transaction, which aims to reduce the risk of correlated defaults due to idiosyncratic shocks; and
3. the granularity of the pool of exposures, which aims to promote sufficient distribution in sale dates and other characteristics that may affect the sale of the underlying exposures".

Taking the above into account:

1. in the case of a securitisation of leasing contracts that include the residual value and where, at contract maturity, the principal balance that depends on the sale of the assets securing those underlying exposures, exceeds 50% of the total initial exposure value of all securitisation positions or
2. in the case of securitisation of residual values only, if all the above three aspects laid out in the EBA GLs are not verified and the residual value risk is not mitigated by a financial guarantee that covers the value of the asset or by a repurchase obligation of the seller,

the securitisation does not satisfy the criterion of "no predominant

	dependence on the sale of the asset” and, thus, cannot be treated as a Simple, Transparent and Standardised securitisation.
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2019_5016

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