FÉDÉRATION BANCAIRE FRANÇAISE

20 July 2018

FRENCH BANKING FEDERATION RESPONSE TO EBA CONSULTATION PAPER

On draft guidelines on the STS criteria for non-ABCP securitisation.

General comments

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The FBF welcomes the opportunity to share its comments on the EBA's consultative document on the draft guidelines on the STS criteria for non-ABCP securitisation.

The FBF reiterates its support to a stable and resilient global financial system, while facilitating economic growth. To this end, our answers to this consultation aim at developing financial markets in the European Union while keeping in mind investors' needs.

Detailed feedback on the draft RTS on STS Notification

Requirements related to simplicity

True sale, assignment or transfer with the same legal effect (Article 20(1), 20(2), 20(3), 20(4) and 20(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 paragraph 10, the inclusion of commingling risks and set-off risks goes beyond the requirements of the Securitisation Regulation. These risks are not always addressed in legal opinions. In our opinion the validity of the sale and the amount to be recovered are distinct issues. We suggest removing this requirement.

Like the requirement to address set-off and commingling risks in paragraph 10b, the requirement in paragraph 11b for legal opinions to confirm and provide evidence of material obstacles to perfection of the true sale on closing is also novel in the draft Guidelines and has no basis in the level 1 text. This is not typically included in securitisation legal opinions and there is no reason to include it now. It is and should be sufficient that the true sale opinion confirms the effectiveness of the true sale, regardless of the possible need for later perfection.

In paragraph 13, the requirement to make the legal opinion available to "third parties" is too broad. Originators usually do not make the legal opinion available to investors. We suggest rephrasing "Such legal opinion referred to in paragraphs 10 and 11 should be accessible and made available to ~~**third parties including**~~ third party certification agents and competent authorities."

Furthermore, when a prospectus is published, the assessment of the true sale and clawback risks are already addressed in the Risk Factors section of the prospectus. If this is deemed insufficient, then

the legal opinion should be included in the prospectus. For private securitisations, a summary of the legal opinion could be provided to the investors.

We would welcome clarification as to whether the "statement" mentioned in paragraph 13 must be part of the STS notification or not.

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?

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.

No, in our opinion the guidance provided is sufficient.

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 the 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?

Representations and warranties (Article 20(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.

It can happen that the underlying portfolio is composed of loans that have been purchased several years before the securitisation origination. In such a situation, it could be problematic to obtain from the original lender the representation that the loans are not encumbered. For example, the relationship between the original lender and the seller may have evolved and the original lender may not have a clear incentive to provide the representation.

Eligibility criteria for the underlying exposures/active portfolio management (Article 20(7))

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.

It would be useful to precise that the exercise of the clean-up call or a regulatory call is not active portfolio management.

It would be useful to have the possibility to sell defaulted loans as part of the recovery process and to precise that this is not regarded as active portfolio management.

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?

For revolving securitisations, it can happen that the criteria slightly evolve during the life of the securitisation. For example, a subsidiary can be added to the list of entities of a group from which the securitisation can purchase assets, or the purchase limit for one entity of the group can be modified. We would welcome additional comfort from the EBA guidelines in this respect.

Paragraph 19 (a) is problematic because we cannot be absolutely certain that the sale of underlying exposures for reasons other than those described in paragraph 18 should always be considered as active portfolio management.

It is common practice to return defaulted trade receivables to the seller to allow him to claim the reimbursement of the value added tax.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))

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.

In paragraph 22, we recommend removing "i.e. that relate to any obligations to make payments or provide security by the debtor, and, where applicable, guarantor" which could be confusing, all payment obligations may not be relevant to investors.

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?

It is important that minor differences among the loans do not prevent the compliance with the homogeneity criteria. For example:

- the presence/absence of a penalty fee in case of a prepayment of the loan, or
- the option to differ an instalment, or
- The periodicity of payments (monthly, quarterly, etc.)
- Etc. (non-exhaustive list)

Otherwise it would be difficult to constitute homogeneous portfolio.

Furthermore, it would be useful to specify that exposures in Certificates of Deposits for cash management purposes, or other cash equivalent investments, are not to be taken into account for the homogeneity criteria.

Underwriting standards, originator's expertise (Article 20(10))

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.

In paragraph 28 (a) the requirement to disclose material changes to the underwriting standards over a period of 5 years before the issuance of the securitisation is too long and would be cumbersome for the originators. In our experience, bank's underwriting standards evolve very regularly. We recommend a period of three years. Furthermore, there is an overlap between this requirement and the requirements of the Delegated Regulation on homogeneity of underlying exposures.

Regarding paragraph 28 (b), We recommend removing the requirement to disclose, after the issuance of the securitisation, all material changes to underwriting standards pursuant to which exposures have been originated in the context of "(i) substitution or repurchase of underlying exposures due to the breach of representation and warranties, (ii) replenishment of underlying exposures", as it would be cumbersome for the originators to monitor the evolution of underwriting standards during the lifetime of the securitisation.

We would like to point out that all securitisations do not have a prospectus or initial offering document. Also, we propose following amendment: "For the purposes of this paragraph, changes should be deemed material where they ***substantially*** modify the information on the underwriting standards originally disclosed in the prospectus or made available in the initial offering document".

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 with the balanced approach to the determination of the expertise of the servicer.

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.

We do not support the suggestion to add additional constraints in the interpretation of "similar exposures".

No exposures in default and to credit-impaired debtors/guarantors (Article 20(11))

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.

Paragraph 50 is problematic, especially the words "significantly higher than the average credit score or assessment", because this could be interpreted as an obligation to exclude from the underlying portfolio the loans that individually have a higher than average probability of default. A securitisation's underlying loan portfolio is usually composed of a variety of loans, some being riskier than others.

We believe the intent of Article 20 (11) (c) of the STS Regulation is to exclude loans that are credit impaired, but not loans that are individually more risky than the average loan. We would suggest to exclude impaired, provisioned, doubtful, non-performing and defaulted loans, based on the bank's accounting data or internal rating. It is indeed common market practice to include all performing loans in the securitisation, some being riskier than others.

Another possibility would be to require that the average risk assessment of the securitised portfolio is not significantly higher than the average risk of the seller's global portfolio before securitisation, for the considered asset category.

There is also an important operational aspect: the rule must be simple enough for banks to be able to implement it with the data available in the bank's systems on a large number of loans.

In paragraph 47, regarding debtors that are flagged in a credit registry as having an adverse credit status at the time of the origination, we would recommend a tolerance of 3 months, for practical reasons, to take into account the time it takes to structure and originate a securitisation.

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

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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?

We agree with the interpretation.

At least one payment made (Article 20(12))

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.

Regarding revolving securitisations, it would be useful to specify that the exception mentioned in article 20(12) of the STS Regulation remains valid during the amortisation period.

No predominant dependence on the sale of assets (Article 20(13))

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.

In paragraph 53, we recommend following amendment: "guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by ~~an~~other third ~~party~~ ***parties***"

The condition described in paragraph 53 (c) is an additional requirement in comparison to level 1 text. Therefore, if EBA guidelines add requirements on this subject, we recommend aligning the minimum granularity at 50 exposures, rather than 500 in order to be consistent to CRR additional criterion on granularity (article 243). This would better reflect the current practice for securitisations of company car fleets, trucks or professional equipment.

In our opinion, the conditions described in paragraphs 53 (b) and (c) should apply only if the residual value of the underlying assets to be sold is > 5% of the initial value.

Paragraph 55 should be modified, because the requirement that the provider of the guarantee or repurchase obligation have a credit rating step 2 or better is too stringent. Indeed in our experience it is frequently the case that the protection provider has a credit rating below this level. Car dealers and car manufacturers, for example, can have a credit rating below the proposed level of step 2.

Furthermore, this would lead to a heterogeneous assessment of STS securitisations, because the STS qualification would depend of the bank's credit assessment of the protection provider.

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?

Regarding paragraph 53 (a), we recommend a residual value of 50% rather than the proposed 30%, because this reflects the reality of certain automobile loan securitisations. For example: securitisation of Car Personal Contract Purchase (PCP) transactions in the United Kingdom.

Requirements related to standardisation

Appropriate mitigation of interest-rate and currency risks (Article 21(2))

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.

In our opinion, the requirement described in paragraph 57 (e) to carry out a sensitivity analysis under extreme market scenarios goes beyond the requirement of Article 21(2) of the STS securitisation regulation and is overly complex and cumbersome, especially if it has to be carried out through the life of the transaction. It would be more realistic to ask for the sensitivity analysis to be carried out only at the origination date. This requirement would discourage the usage of derivatives which are currently the most appropriate hedging instrument. Furthermore, it would make it more difficult for institutional investors to carry out the due diligence with respect to STS compliance, as required in Article 5 (3) (c) of the STS regulation.

Paragraph 58 corresponds to risk mitigation through reserves of cash and credit claims. For avoidance of doubt, we suggest specifying that credit claims are permitted.

The terms "should **only be permitted** where either of the following conditions is met" are too restrictive because they would prevent originators from developing new hedging techniques.

The level 1 text gives great latitude regarding the methods used to cover interest rate and currency risk and requires to disclose these methods. The hedging with other assets than cash, such as overcollateralization, or the mutualisation of reserves among several transactions should not be proscribed.

We recommend to remove the requirement of paragraph 59 to disclose the measures of the mitigation of interest and currency risk on a continuous basis, which would be hard to do in practice.

Referenced interest payments (Article 21(3))

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.

Banks would like to stress that is highly important that the successors of EONIA, EURIBOR and LIBOR will be compliant with the STS criteria and that EBA ensures that the guidelines allow STS securitisations to reference these future successor benchmarks.

Requirements in case of enforcement or delivery of an acceleration notice (Article 21(4))

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.

Regarding paragraph 66, French banks would like to point out that trustees play a role in securitisation structured under English Law. In other jurisdictions, such as France, securitisations do not have a trustee but a securitisation manager ("société de gestion"). Furthermore, in some cases, the securitisation legal documentation leaves no leeway to the trustee or securitisation manager in this respect.

In paragraph 69, we recommend suppressing the words "a seller's default" in the following sentence: "The objective of the requirement in Article 21(4) of Regulation (EU) 2017/2402 is to prohibit non-sequential payments of principal in a situation of ~~a seller's default or~~ an acceleration event." The reason being that in the case of a seller's default, usually a securitisation will not be accelerated but will start amortising. Pro-rata amortization is permitted and used in practice.

Non-sequential priority of payments (Article 21(5))

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.

Regarding paragraph 71, banks would like to have the possibility, if the credit quality of the underlying exposures improves again after having deteriorated, to switch back from the sequential priority of payments to a pro-rata amortisation. It would be useful to indicate this possibility in the STS guidelines.

Early amortisation provisions/triggers for termination of the revolving period (Article 21(6))

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.

In practice, an insolvency event of the servicer does not automatically entail the replacement of the servicer, and such replacement is not required by the Securitisation Regulation. We recommend following amendment of paragraph 72: "an insolvency-related event with respect to the servicer should trigger ~~**both (i) the replacement of the servicer in order to ensure continuation of the servicing, and (ii)**~~ the termination of the revolving period."

Transaction documentation (Article 21(7))

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.

We question the added value of paragraph 76, because securitisation originators must already comply with Article 7 "Transparency requirements for originators, sponsors and SSPEs" of the STS regulation.

Originators should not be required to disclose side letters with the detail of the fees paid to the paying agent, the custodian, the rating agencies and the servicer when they pertain to small amounts, because that would be of limited interest for the investor.

We do not agree with the phrase "should be disclosed to all parties" of paragraph 76 and with paragraph 77, for two reasons. Firstly, the transmission of documentation should only occur upon request of the investors, and should remain at transaction level and

Expertise of the servicer (Article 21(8))

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.

In our opinion, paragraph 78 (a) could be simplified. The requirement "the existence of well documented and adequate policies, procedures and risk management controls in this regard has been assessed and confirmed by the competent authority;" is superfluous for banks in the EU. The fact that they comply with the prudential regulation and that they are supervised by competent authorities or the Single Supervisory Mechanism should suffice. If a bank does not comply with prudential regulatory regulation or does not have adequate risk management procedures, the national competent authorities (NCA) will pronounce sanctions or prevent the bank from pursuing its activity. The requirement should be that the bank complies with the EU prudential regulation and the NCA authorises the bank to pursue its activity.

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?

Remedies and actions related to delinquency and default of debtor (Article 21(9))

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.

Resolution of conflicts between different classes of investors (Article 21(10))

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.

We believe the requirement in paragraph 80 (d), to include provisions for a location for meetings, could in some cases be problematic.

Regarding paragraph 80 (e), the documentation should provide for a maximum time for the organization of a meeting rather than the maximum time for the resolution of the conflict, as it is difficult to guarantee in advance how much time it will take to resolve a conflict.

Requirements related to transparency

Data on historical default and loss performance (Article 22(1))

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.

For the definition of "substantially similar exposures", paragraph 82 refers to paragraph 49 which itself refers to article 16(2) of the draft RTS on risk retention requirements. We fear that this could be too restrictive with respect to the operational constraints of securitisation originators, because this would entail the requirement to apply the exact same eligibility criteria for the historical performance data disclosure and the securitisation. This could be difficult to achieve in practice, because the historical data and the actual underlying portfolio are often not extracted from the same systems and databases.

We therefore recommend a more flexible approach, which is to define "comparable exposures" as exposures of the same asset category, as defined in article 2 of the draft RTS on homogeneity of the underlying exposures in STS securitisations, and that are not credit impaired.

Verification of a sample of the underlying exposures (Article 22(2))

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.

It would be useful to specify that the sample verification mentioned in Article 22(2) of the Regulation should not be required in the case of a reissuance under the same securitisation. For example, some master trusts reissue securities every month. For such transactions, we recommend a yearly audit.

Furthermore, the requirement of paragraph 85 (a) goes beyond the requirement of Article 22(2) of the STS Securitisation Regulation. Our understanding of Article 22(2) is that the sample verifications aims at testing data quality only and not compliance with eligibility criteria.

Currently, originators undergo two levels of audit:

1. An audit of a sample of the underlying portfolio, to check the data quality, and

2. An audit of the stratification tables which allows to verify the compliance with the eligibility criteria.

In practice, because of incompressible delays, the sample verification is not carried out on exactly the same data as the data of the final portfolio that will be disclosed to the investors. In other words: the portfolio inevitably evolves slightly between the date when the sample audit is carried out and the closing date.

For these reasons, we recommend to remove 85(a) and remove the reference to any formal offering document. We suggest to rewrite paragraph 85 as follows: "For the purposes of Article 22(2) of Regulation (EU) 2017/2402 the verification, based on a representative sample, that the data disclosed to investors in respect of the underlying exposures is accurate should apply a confidence level of at least 95%."

Liability cash flow model (Article 22(3))

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.

Environmental performance of assets (Article 22(4))

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.

Yes we agree.

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.

Compliance with transparency requirements (Article 22(5))

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.

Non-specified Articles of the Regulation (EU) 2017/2402

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.