**CONSULTATION PAPER ON DRAFT RTS ON THE HOMOGENEITY OF THE UNDERLYING EXPOSURES IN SECURITISATION**

**OVERVIEW OF QUESTIONS FOR CONSULTATION**

**Q1: Do you agree with the focus of the RTS, general approach and underlying assumptions on which the RTS are based? Does the proposed approach provide sufficient clarity and certainty on the interpretation and application of the criterion of homogeneity?**

We agree, in general, with the general approach and focus of the RTS, but with the caveats and clarification that we explain below and that are developed in detail in our answers to the questions:

1. We understand that it would be necessary to clarify the requirement that the underlying exposures have been underwritten according to similar underwriting standard, methods and criteria in order to consider some situations that are currently occurring in practice and will continue to occur all across Europe, and that, in our opinion, shall not prejudice the criterion of homogeneity regarding the risk profile of the assets, as it may be:
* **Mergers or acquisitions of credit institutions**: the current situation after the mergers of credit institutions in Europe that had different policies of credit granting; the RTS criteria shall consider these situations that may derive in a credit institution owning a big portfolio but that cannot be securitized in full as derives from different legacy or former credit institutions; or
* **Different servicing procedures**: the existence of different servicing procedures that can be followed by the same entity depending on the existence of mortgage guarantees or not in the portfolio, or considering certain local specific regulation, for example.
1. We consider that the risk factors should be reported just as complementary information for investors considering their competence to take decisions, but they should not be considered as one of the criteria for the determination of homogeneity for STS. In that sense, our proposal is to delete paragraph (d) of Article 1, or to include those just as disclosure or reporting obligations, so investors may consider those when investing in STS securities.

Even if risk factors are maintained for these disclosure purposes, we understand that point (d) of Article 1 should need deeper clarification and detail: It seems that the proposed text implies that a “relevant factor” is any that has explanatory power over the risk and future performance of the assets. However at the same time the wording can be interpreted to convey that all there is required is to find at least one explanatory or “relevant” risk factor under which all exposures can be considered homogenous (even if there existed another possibly explanatory factor under which such exposures where not homogeneous). See Question 2 for further details.

1. On the other hand, we understand that it would be clearer if the RTS expressly establish that the asset categories are not sealed departments, in such a way that it becomes clear, for example:
* if the same portfolio of SMEs or corporates can also include mortgage-backed assets, with another type of guarantees or without any guarantee; or
* if in the same portfolio you can include real estate leasing operations with other leasing operations.

All the above combinations are common in the current market and they do not entail the breach of the homogeneity requirement in our opinion.

**Q2: Do you agree with the assessment of the homogeneity of underlying exposures based on criteria specified under (a) to (d)? Should other criteria be added or should any of the criteria be disregarded?**

We consider that ECB eligibility criteria based exclusively on the asset categories (without further consideration of the risk factors) have worked well in the market and we believe that the ECB criteria could be applied.

As an alternative, only points (a), (b) and (c) of Article 1 should be considered as conditions of homogeneity.

As we have commented previously in our answer to Q1, we consider that the risk factors (point (d)) should not be a condition to determine homogeneity, without prejudice to the obligation to make the pertinent notifications or disclosure to investors in order to carry out their own risk assessment of the assets.

It seems with the current wording that the use of any one of the risk factors is discretional on the part of the originator to justify homogeneity. This could lead to usage of a different subset of factors for two particular transactions within the same asset category. Considering that the originator decides which risk factor is relevant in a portfolio of assets and that, as is noted in paragraph 32, it is “*expected that a justification (by the originator or sponsor) should be given with respect to the relevancy of a certain subset of risk factors in determining homogeneity for a particular transaction*” and also considering the subsequent due diligence of investors with the information received to assess said homogeneity, we conclude that these risk factors could be eliminated as a criterion of determination of homogeneity.

According to the above, the considered risk factors for each portfolio would be specified in the relevant STS notification according to the template (in line with the list of risk factors proposed but considering our comments in the following answers).

Thus we considered that it should be presumed by default that within a given asset class all particular transactions are by definition homogenous, leaving the originator the possibility to introduce a caveat to this general principle in certain cases where by its own judgement it might not be justified, but otherwise leaving investors the responsibility to determine, if based on the information provided with respect to “diversity” a certain pool of assets should not be considered homogenous and thus to disregard any STS declaration that might have been provided by the originator/sponsor. This could be interpreted to follow from article 5.3.c) which determines that "*institutional investors may rely to an appropriate extent on the STS notification pursuant to Article 27(1) and on the information disclosed by the originator, sponsor and SSPE on the compliance with STS requirements, without solely or mechanistically relying on that notification or information”*.

Regarding the second question, we do not think it is convenient to add additional factors.

**Q3: Are there any impediments or practical implications of the criteria as defined? Are there any important and severe unintended consequences of the application of the criteria?**

Regarding the first question, and distinguishing for each of the four conditions:

1. In addition to what was advanced in Q1, the condition that the underlying exposures have been underwritten according to similar underwriting standards, method and criteria, without qualifying or making any type of exception to this matter, could generate problems in relation to the following transactions:
2. **Multi-originator transactions**: those in which there are multi originators or a single originator whose exposures come from different entities previously merged with the originator (very usual today, considering the banking concentration process suffered in Europe in recent years).
3. **Change of underwriting standards through the years:** those in which there are exposures originated over a long period of time (more than a year), during which, due to regulatory or practical issues based on the evolution and sophistication of the markets (for example), the underwriting standards during said period have been modified or updated.
4. Regarding the criterion that “the underlying exposures have been serviced according to uniform servicing procedures”, it should be considered that, depending on the guarantees of the exposures (although they belong to the same category of assets), the servicing criteria may vary in transactions whose exposures are considered homogeneous to date (for example, the servicing is very different in mortgage loans and non-mortgage loans, taking into account the mortgage execution procedures, even if both loans belong to the same category of assets- for example, loans to SMEs-).
5. Regarding the current asset classification, we will develop this matter in Q6, expressly referred to the “list of asset categories”.
6. Regarding the risk factor, we refer to our answer to Q2. We believe that the current approach limits the possibilities of achieving objective homogeneity or sufficiently profitable volumes for the originators in the issuance of homogeneous securitisations.

Regarding the second question, it seems to us that the application of the criteria as it is proposed in the current wording could have the following serious consequences:

1. The requirement of homogeneity could be achieve in very few occasions.
2. Given the level of discretion on the part of the originator as regards the consideration of the relevancy of risk factors underpinning homogeneity for particular transactions, we think this will create several problems:
* Originators acting in a conservative manner may decide to consider relevant the whole list of factors, with the result that certain transactions will be much more reduced in size, therefore more concentrated, or which may not be economical to structure discouraging certain originators from using the securitization mechanism altogether.
* Originators acting in bad faith: they may try to game the system, which coupled with the previous paragraph will bring about an adverse selection mechanism to this space.
* Originators having different criteria from each other.

Additionally, investors may try to challenge the representation given by the originator on homogeneity merely on ex post performance thus introducing an undesired level of conflict in the market.

**Q4: Do you agree that when considering the relevance of the risk factors, the asset category, type of securitisation (non-ABPC or ABCP), and specific characteristics of the pool of exposures, should be taken into account? Should other elements be considered as important determinants of the relevance of the individual risk factors?**

Please see our previous comments.

**Q5: Do you agree that the same set of criteria should be applied to non-ABCP and ABCP securitisation? Or do you instead consider that additional differentiation should be made between criteria applicable to non-ABCP and ABCP securitisation, and if so, which criteria?**

We understand that the same criteria can be applied, without prejudice to the abovementioned regarding the risk factors.

**Q6: Do you agree with providing a list of asset categories in the RTS? Do you agree with the asset categories listed? Should other asset categories be included or some categories be merged? For example, should separate asset categories of project finance, object finance, commodities finance, leasing receivables, dealer floor plan finance, corporate trade receivables, retail trade receivables, credit facilities to SMEs and credit facilities to corporates, be included? Please substantiate your reasoning.**

We agree with providing a list of asset categories.

Regarding the list included in Article 2, in line with paragraph 23, we have the following comments:

* In relation to the category of “residential loans”, it could be made explicit that these are loans granted to individuals.
* To expressly clarify that the credit facilities provided to SME and Corporates could include loans and credit lines.
* Additionally, in relation to the credit facilities to micro-, small-, and medium enterprises and corporates:
1. Regarding the inclusion of SMEs and corporates, we consider correct that both types of debtors are linked within the same category, without prejudice to the disaggregation of this information in the corresponding notification templates.
2. On the other hand, we consider that credit lines, loans and leases to self-employed individuals should be included in the category of credit facilities to micro-, small- and medium-sized enterprises and corporates, as these exposures are part of the SMEs category according to the definition of the ECB and it is usual in the market to include these transactions within securitization vehicles.

In any sense, in case of SME and corporates transactions, the homogeneity criteria should be the business purpose of the facilities, no matter the type of transaction (mortgage guarantee, leasing on equipment and property leasing) as the risk factor in corporate transactions respond more to economic criteria that affect the business sector in general than to the asset type.

* In relation to the asset category “auto loans and leases”, paragraph 23.e. refers to “*loans and leases secured by automobile vehicles*”. We understand that such category refers to loans and leases for financing or referred to vehicles but the loans are not necessary secured in all cases by the vehicles.
* The following additional categories could be incorporated:
1. Commodities.
2. The project finance category could be a specific category, as its structure is considerably different from the other assets.
* In any case, it shall be clear that it will be possible that new asset categories would arise in the future if the market practice allows it.

**Q7: Do you agree with the definitions of the asset categories provided? For example, do you consider that the asset category of credit facilities to SMEs and corporates should be further specified and for the SMEs should refer to the definition provided in the Commission Recommendation 2003/361/EC, or should other reference be used (for example to Art. 501 of the CRR)? Please substantiate your reasoning.**

We agree with the definitions of the asset categories provided but considering our comments included in Q6.

**Q8: Do you agree with the approach to determination of the homogeneity based on the risk factors, and the distinction between the concept of risk factors to be considered for each asset category, and relevant risk factors to be applied for a particular pool of underlying exposures, as proposed? Are there any impediments or practical implications of the risk factors as defined? Are there any important and severe unintended consequences of the application of the risk factors?**

In general, we refer to previous answers, in particular to the answers to Q1, Q2 and Q3.

However, in case the current approach remains, we believe that, regarding the risk g) (“type of repayment or amortization”) it should be allowed to have several types of amortization within a same securitization vehicle, without affecting the homogeneity.

In any case, if appropriate, it could be set some type of percentage to the risk factors (for example, to the types of repayment or amortization). We refer to our answer in Q14.

**Q9: Do you agree with the distribution of the risk factors that need to be considered for each asset category, as proposed? What other risk factors should be included for consideration for which asset category?**

Please see our answer to Q8.

**Q10: Do you agree with the definition of the risk factor related to the governing law, which refers to the governing law for the contractual arrangements with respect to the origination and transfer to SSPE of the underlying exposures, and with respect to the realisation and enforcement of the credit claims? Do you consider the risk factor of the governing law should be further specified, or further limited (e.g. to the realisation and enforcement of the financial collateral arrangements securing the repayment of the credit claims)?**

Regarding the first question, yes, we agree. However, given the requirements of Articles 20 and 24 in Regulation EU 2017/2402 regarding true sale, the absence of clawback provisions and enforceability there should be assumed that any securitization complying with these simplicity provisions should be *de facto* considered homogenous.

Regarding the second question, we do not consider it necessary.

**Q11: Do you consider prepayment characteristics as a relevant risk factor for determining the homogeneity? If yes, based on which concrete aspect of the prepayment characteristics of the underlying exposures should the distinction be made, and for which asset categories this risk factor should be considered and should be most relevant?**

No, we do not. We consider that prepayment is very difficult to foresee specially in the case of floating rate loans.

**Q12: Do you consider seniority on the liquidation of the property or collateral a relevant risk factor for determining the homogeneity? If yes, do you consider the distinction between the credit claims with higher ranking liens on the property or collateral, and credit claims with no higher ranking liens on a different property or different collateral, as appropriate for the purpose of determination of homogeneity?**

No, we do not, even if they are very reasonable risk factors to use from an analytical perspective they should not be used for the purpose of compliance with the homogeneity requirement given by this regulation as has been argued previously in our comments.

Nevertheless, if the rank of the guarantee is finally considered as relevant risk factor in determining homogeneity, we understand this should not be affected by the fact that the first and subsequent ranks are in favour of the same originator and that in the execution of the guarantee the interests of the securitization vehicle are considered.

**Q13: Do you agree with the approach to determining the homogeneity for the underlying exposures that all do not fall under any of the asset categories specified in the Article 3?**

We refer to our previous answers.

**Q14: Do you believe that materiality thresholds should be introduced with respect to the risk factors i.e. that it should be possible to consider as homogeneous also those pools which, while fully compliant with requirements under Article 1 (a), (b) and (c), are composed to a significant percentage (e.g. min 95% of the nominal value of the underlying exposures at origination), by underlying exposures which share the relevant risk factors (e.g. by 95% of general residential mortgages with properties located in one jurisdiction and 5% of income producing residential mortgages located in that and other jurisdictions)? Please provide the reasoning for possible introduction of such materiality thresholds.**

We would propose disclosure of the level of diversity within certain pool characteristics or fields, we would not go that far as establishing hard fixed limits on the degree of “diversity” that should be acceptable. This should fall to the investor to consider and adopt whether according to its risk analysis, appetite and management, the portfolio is excessively diverse as to be considered heterogeneous, and thus failing to comply with the simplicity requirement.

Notwithstanding the above, in case of maintaining the current focus on the risk factors, we consider that it would be positive give certain level of flexibility to the homogeneity compliance of 5% to 10% of the portfolio.

**Q15: Alternatively, do you see merit in introducing synergies with IRB modelling, enabling the IRB banks to rely on risk management factors validated for modelling purposes, when assessing the similarity of the underwriting standards, or assessing relevant risk factors? Please provide the reasoning and examples for possible introduction of such synergies.**

It should not be an indispensable requirement for homogeneity that for entities with IRB modelling all underlying assets have a PD determined under IRB methodology.

In favor of this proposal we point out the merit of its consistency with the originator’s internal risk analysis, however internal consistency would be attained at the expense of external inconsistency (ie. identical transactions originated by different originators applying different models could lead to different homogeneity considerations). In the end we argue as before, that burden of compliance should fall on investors, and as in addition, there are bank and non-bank investors, we would rather prefer no references at all to any banking regulations.

**Q16. Which option from the two (the existing proposal as described in this consultation paper, and the alternative option as described in this box) is considered more appropriate and provides more clarity and certainty on the determination of homogeneity? Please substantiate your reasoning.**

Without prejudice to our answer to the first question in relation to our suggested changes to the existing proposal, if left with only one of two choices, we would prefer the existing proposal over the second alternative.

The second alternative proposal is in fact the same as the original inasmuch as it completely places on the originator the burden of determining compliance and relies on its subjective judgement and discretion this time not with respect to the result of the originating process but *ex ante* when determining and applying its underwriting procedures. This might lead to further discretion on the application of the homogeneity judgement by the originator and more difficulty on the part of investors in verifying such claim. It might also lead to further and unintended consequences on the credit markets and the economy as given such regulatory requirements certain “non-typical” might be crowded out from the market. On the other hand and given that this level of strictness in assessing risk factors at the underwriting stage is probably not an extended practice by originators (think of cross selling strategies, commercial campaigns and multitude of other motivations apart from risk), it would be very difficult for them to be able justify homogeneity on these grounds, especially with respect to back-book portfolios.

**Q17: Please provide an assessment of the impact of the two proposed options, on your existing securitisation practices and if possible, provide examples of impact on existing transactions.**

Please see our previous comments.

Taking into account all the doubts we have expressed regarding the scope of this regulation, we believe that, if it does not change and no flexibility in line with the proposals we have made is introduced, the regulation could have very negative consequences for the sector, In Spain specifically, it would mean almost none of the current transactions including exposures granted to companies and self-employed individuals with professional purposes could be considered eligible as STS.

**Q18. Alternatively, do you believe that a hybrid option, combining the existing proposal and the alternative proposal, would be most appropriate? The hybrid option could envisage that all the risk factors would need to be taken into account in the underwriting, and for those risk factors that are not taken into account in the underwriting, (i) either adequate justification would need to be provided that it is not required for the purpose of the homogeneity, (ii) or if the justification cannot be provided, the risk factor would still need to be taken into account when determining the exposures in the pool (on the top of the requirements related to underwriting, servicing, and asset category). Or, should other hybrid option be envisaged? Please substantiate your reasoning.**

Any hybrid solution will imply additional complexities that, as indicated, are not desirable.

**Q19. What are the advantages, disadvantages and unintended consequences of this alternative option, in particular compared to the existing proposal?**

Please see our answer to Q16. In comparison with the original proposal, the alternative is prone to further discretion and subjectivity on the part of the originator (which the originator may take advantage of or on the other hand be excessively conservative with), and on the part of the investor its due diligence would be made much more difficult as the underwriting process to a certain an extent (for commercial and other reasons) can be considered a black box.

**Q20. Are there any impediments or practical implications of this alternative option as defined? Are there any important and severe unintended consequences of the application of this option?**

Please see our answer to Q16.