

Luxembourg, 8 June 2009

To all securitisation vehicles

In case of discrepancies between the French and the English text,
the French text shall prevail

CIRCULAIRE BCL 2009/224

New statistical data collection for securitisation vehicles

Ladies and Gentlemen,

On 19 December 2008 the Governing Council of the European central bank (ECB) adopted regulation ECB/2008/30 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions. This regulation completes the existing framework of the ECB's statistical activities that are necessary to allow the European system of central banks (ESCB) to carry out its functions by defining the physical and moral persons subject to reporting obligations, the regime of confidentiality and the necessary execution and sanctioning provisions, according to article 5.4 of the statute of the European system of central banks and the European central bank.

In this context, it is worth mentioning that regulation ECB/2008/32 concerning the consolidated balance sheet of the monetary financial institutions sector as well as guideline ECB/2004/15 on the statistical reporting requirements of the ECB in the field of balance of payments and international investment position statistics, and the international reserves template already define a number of information requests of statistical nature that concern the sector of securitisation vehicles.

The complete set of the ECB's requirements in the field of statistical reporting of securitisation vehicles obeys three essential rules.

First of all, the ECB must receive comparable, reliable and up to date statistical information, collected in similar conditions throughout the whole euro area.

Furthermore, the obligations defined in the regulations must respect the principles of transparency and legal security. The regulations are therefore restrictive and apply directly within the whole euro area. They directly impose obligations to physical and moral persons and allow the ECB to impose sanctions on them if they do not fulfil the reporting requirements imposed on them by the ECB.

The statistical information subject to reporting according to the requirements of the ECB and the minimal norms to be respected are detailed within the aforementioned ECB guideline and regulations. According to articles 7 and 8 of Regulation ECB/2008/30 the National central banks (NCBs):

- shall define and implement the reporting arrangements to be followed by the actual reporting population in accordance with national characteristics
- shall exercise the right to verify or collect information which reporting agents are required to provide pursuant to the aforementioned ECB regulation,

On the basis of the aforementioned ECB guideline and regulations, the Banque centrale du Luxembourg (BCL) has developed a data collection system for securitisation vehicles that is detailed in the present circular.

1 Objectives

On the basis of guideline ECB/2004/15 as well as regulations ECB/2008/30 and ECB/2008/32 of the ECB, BCL has developed a data collection system that is supposed to obey the following objectives.

- complete coverage of the foreseeable requirements of the European central bank in the field of monetary and financial statistics.
- minimisation of the workload for reporting agents
- consistency with data collected for supervisory purpose.

This consistency, that is not possible for all the information which will be collected, allows the use of supervisory data within the compilation process of the data to be submitted to the ECB and contributes to the quality checking of the data that is collected.

- comparability with the standard ESA 95 (European System of national Accounts 1995). The compliance of the collected data with ESA 95 facilitates its use in the fields of national accounts and balance of payments and should allow to avoid additional inquiries.

2 Principal innovations

Compared to the current supervisory data collection, the innovations concern the reporting population as well as the detail of the data to be collected.

- An important innovation is the introduction of a new category of reporting agents, namely the securitisation vehicles that are not governed by the law of 22 March 2004 but that are instead governed by the law of 10 August 1915 concerning the commercial companies
- However, small size securitisation vehicles are exempted from the quarterly data collection provided that they submit quarterly information on their balance sheet to the BCL.

Indeed, the aforementioned ECB regulations foresee the possibility to exempt small size reporting agents from the reporting obligations. The exemptions are granted on the basis of the share of the total balance sheet of reporting agents in the aggregated balance sheet of all securitisation vehicles established in Luxembourg.

The exemptions will be granted as long as the coverage of the data collection will be superior to 95% of the aggregated balance sheet of all securitisation vehicles established in Luxembourg.

- The introduction of a new category of reporting agents also implicates the definition of new statistical returns that are addressed to all securitisation vehicles. Hence, securitisation vehicles must establish specific statistical returns in order to satisfy the information requests of the ECB.

The statistical reports differ from the supervisory reports since they foresee a triple breakdown of assets and liabilities according to:

- the country of residence of the counterpart
- the currency of assets and liabilities
- the economic sector of the counterparts
- the initial maturity the assets and liabilities

The nomenclature and the definitions allowing this triple breakdown of asset and liabilities are described in the document «Definitions and concepts for the statistical reporting of securitisation vehicles» as well as in the reporting instructions concerning the statistical reports for securitisation vehicles.

3 The securitisation vehicles

3.1 Definitions

According to article of regulation ECB/2008/30 «securitisation vehicle» means an undertaking which is constituted pursuant to national or Community law under one of the following:

- contract law as a common fund managed by management companies
- trust law
- company law as a public or private limited company and
- other similar mechanism

and whose principal activity meets both of the following criteria:

- it intends to carry out, or carries out, one or more securitisation transactions and is insulated from the risk of bankruptcy or any other default of the originator

- it issues, or intends to issue, securities, securitisation fund units, other debt instruments and/or financial derivatives and/or legally or economically owns, or may own, assets underlying the issue of securities, securitisation fund units, other debt instruments and/or financial derivatives that are offered for sale to the public or sold on the basis of private placements

In the same context, «securitisation» means a transaction or scheme whereby an asset or pool of assets is transferred to an entity that is separate from the originator and is created for or serves the purpose of the securitisation and/or the credit risk of an asset or pool of assets, or part thereof, is transferred to the investors in the securities, securitisation fund units, other debt instruments and/or financial derivatives issued by an entity that is separate from the originator and is created for or serves the purpose of the securitisation, and:

- in case of transfer of credit risk, the transfer is achieved by:
 - the economic transfer of the assets being securitised to an entity separate from the originator created for or serving the purpose of the securitisation. This is accomplished by the transfer of ownership of the securitised assets from the originator or through sub-participation, or
 - the use of credit derivatives, guarantees or any similar mechanismand
- where such securities, securitisation fund units, debt instruments and/or financial derivatives are issued, they do not represent the originator's payment obligations

Finally, «originator» means the transferor of the assets, or a pool of assets, and/or the credit risk of the asset or pool of assets to the securitisation structure.

3.2 List of securitisation vehicles

The ECB establishes and updates, for statistical purpose, a list of securitisation vehicles that form the reference reporting population. For this purpose, Luxembourgish securitisation vehicles provide the BCL with the requested information according to ECB guideline ECB/2008/31 of 19 December 2008 amending ECB/2007/9 concerning monetary financial and financial market statistics. The BCL will transmit this information to the ECB who shall establish the complete list of securitisation vehicles for the whole euro area and make this list and its updates available in an appropriate form, including by electronic means, via the Internet or, at the request of the reporting agents.

4 Collect of statistical data

The collect of statistical data that applies to all securitisation vehicles is limited to statistical purpose and relies mainly on the requests formulated in the aforementioned ECB regulations.

4.1 Regulation ECB/2008/30 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions

According to regulation ECB/2008/30, the BCL will provide the ECB with quarterly information on:

- assets and liabilities of securitisation vehicles
- transactions made by securitisation vehicles on their assets and liabilities

4.1.1 Reporting of stocks

As far as concerns information on stocks, the ECB regulation foresees that a quarterly data request is addressed to securitisation vehicles.

As indicated above, the BCL has opted for a single report for all securitisation vehicles regardless of the existence of a supervisory data collection for the securitisation vehicles that are subject to the supervision of the CSSF.

Report S 2.14 «Quarterly statistical balance sheet of securitisation vehicles», allows the collect of all the necessary information on assets and liabilities of securitisation vehicles.

4.1.2 Reporting of transactions

As far as concerns information on transactions, the ECB regulation foresees that a quarterly data request is addressed to securitisation vehicles.

As indicated above, the BCL has opted for a single report for all securitisation vehicles regardless of the existence of a supervisory data collection for the securitisation vehicles that are subject to the supervision of the CSSF.

Report S 2.15 «Information on transactions made by securitisation vehicles», allows the collect of all the necessary information on transactions made by securitisation vehicles on their assets and liabilities.

4.2 Statistical data collection of the BCL

With a view to fulfil the statistical data collection by the ECB, securitisation vehicles must periodically report specific information to the BCL.

This information comprises:

- S 2.14 «Quarterly statistical balance sheet of securitisation vehicles»
- S 2.15 «Information on transactions made by securitisation vehicles»

These documents are published and may be downloaded from the BCL's website under the following addresses:

<http://www.bcl.lu/fr/reporting/index.html>

<http://www.bcl.lu/en/reporting/index.html>

4.3 Entities subject to the BCL's statistical reporting

4.3.1 Reporting population

The reference reporting population is composed by all resident securitisation vehicles that are governed by laws:

- 22 March 2004
- 10 August 1915

Whereas the law of 22 March 2004 refers to the securitisation vehicles that issue securities on an ongoing basis and that are subsequently subject to the supervision of the CSSF, the law of 10 August 1915 concerns the other securitisation vehicles.

The effective reporting population is composed by the reference reporting population, except the securitisation vehicles that benefit from a total exemption (see also 4.3.2). The effective reporting population is subject to the reporting obligations presented under point 4.2.

If a securitisation vehicle does not have legal personality under the Luxembourg law, the persons legally entitled to represent the securitisation vehicle, or in the absence of formalised representation, persons that under the applicable national laws are liable for acts of the securitisation vehicle, shall be responsible for reporting the information foreseen by the present circular.

4.3.2 Derogations

The BCL may grant the following derogations to the reporting obligations foreseen under point 4.2:

- the BCL may grant securitisation vehicles a derogation to their reporting obligations for loans originated by euro area MFIs and broken down by maturity, sector and residency of debtors, and where the MFIs continue to service the securitised loans within the meaning of Regulation ECB/2008/32.
- the BCL may grant securitisation vehicles a derogation to their reporting obligations set out in the annexes, apart from the obligation to report, on a quarterly basis, end-of-quarter outstanding amount data on total assets, provided that the securitisation vehicles that contribute to the quarterly aggregated assets/liabilities account for at least 95 % of the aggregated assets of all Luxembourg securitisation vehicles. The BCL shall

check the fulfilment of this condition in good time in order to grant or withdraw, if necessary, any derogation with effect from the start of each calendar year.

- to the extent that the data referred to under point 4.2 can be derived, according to minimum statistical standards as specified in the reporting instructions, from other statistical, public or supervisory data sources, the BCL may, after consulting the ECB, fully or partially exempt reporting agents from the reporting requirements set out under point 4.2

The securitisation vehicles may choose, with the BCL's prior consent, not to use the derogations referred to above and to fulfil the full reporting requirements foreseen under point 4.2.

The securitisation vehicles that benefit from a derogation shall report their annual financial statements to the BCL, if this is not available from public sources, within six months following the end of the reference period or at the earliest point in time thereafter, in accordance with the applicable national legal practices in Luxembourg.

The BCL shall notify those securitisation vehicles which are subject to this reporting requirement.

4.3.3 List of entities subject to the statistical reporting requirements of the BCL

The BCL shall notify those securitisation vehicles which are subject to the complete reporting requirement by mail.

In this context, the BCL will individually contact each securitisation vehicle that will be subject to reporting obligations in order to define a common approach regarding the execution of its reporting obligation in the light of the derogations mentioned under the point 4.3.2.

5 Quality of the data transmitted

We should like to stress the importance of the quality of the data transmitted to the BCL and the necessity to submit the data to the verification rules detailed in the technical documentation. Only a rigorous control undertaken during data production will allow to respect the quality requirements as well as the reporting delays. This point is all the more important since the data collected will be checked by the ECB before aggregating it with the data of the other Member states. Any error or important negligence will have harmful repercussions on the reputation of the whole community of the Luxembourg monetary financial institutions.

6 Respect of the reporting deadlines

The BCL establishes and publishes on its website a list of the exact reporting dates at which the quarterly statistical returns must be submitted to BCL.

Securitisation vehicles are informed that BCL must transmit quarterly statistics within 28 working days following the end of the period which data relates to. Therefore, it is absolutely necessary that reporting agents scrupulously respect the reporting deadlines defined in the present circular in order to allow the BCL to respect its engagements in the framework of the ESCB.

7 Setting up of the new data collection

The transmission of this information is mandatory from December 2009 onwards. The first reporting in accordance with the statistical reporting requirements to which the securitisation vehicles is subject pursuant to the present circular shall begin with quarterly data from December 2009. When reporting data for the first time, only outstanding amounts shall be reported.

Report S 2.14 «Quarterly statistical balance sheet of securitisation vehicles» must be submitted no later than 5 February 2010.

Yours sincerely

BANQUE CENTRALE DU LUXEMBOURG
La direction

Pierre BECK

Serge KOLB

Yves MERSCH