EBA/Op/2024/03

7 June 2024

Opinion of the European Banking Authority on Consob decision to grant the permission referred to in Article 26e(10) of Regulation (EU) No 2017/2402

Introduction and legal basis

1. The EBA competence to deliver an opinion is based on Article 29(1) point (a) of Regulation (EU) No 1093/2010[1] (hereafter, the 'EBA Regulation'), as a response to consultation requests received from competent authorities pursuant to Article 26e(10) of Regulation (EU) No 2017/2402[2] (hereafter, the 'Securitisation Regulation').

2. As part of the Capital Markets Recovery Package, the Securitisation Regulation has set out the regulatory framework for on-balance-sheet securitisations and the criteria for simplicity, transparency, standardisation as well as specific criteria for the credit protection agreement, the third-party verification agent and the synthetic excess spread (hereafter, the 'STS'). In particular, Article 26e(10) first subparagraph of the Securitisation Regulation requires that the credit protection referred to in Article 26e(8) point (c) of that Regulation meets the condition that the originator as protection buyer and the investor as protection seller should have recourse to high quality collateral in order to qualify as STS on-balance-sheet securitisation. By way of derogation from that provision and under the conditions set out in Article 26e (10) second subparagraph of that Regulation, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies as a minimum for credit quality step (CQS) 2.

[1] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

[2] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (*OJ L 347, 28.12.2017, p. 35–80)*

3. In accordance with Article 26e(10), third subparagraph of the Securitisation Regulation, under certain conditions the competent authorities may, after consulting the EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for credit quality step 3.

4. On 17 November 2023, the Consob, acting in its capacity of competent authority designated in Italy pursuant to Article 29(5) of the Securitisation Regulation, consulted the EBA on its intention to exercise the discretion set forth in Article 26e(10) third subparagraph of that Regulation.

5. The EBA competence to deliver this opinion is based on Article 29(1), point (a) of the EBA Regulation and Article 26e(10) third subparagraph of the Securitisation Regulation. The opinion has been drafted on the basis that the information provided is correct and that the national framework is aligned with the applicable EU law.

6. In accordance with Article 41(1) of the EBA Regulation, the Board of Supervisors has delegated to SCRePol the adoption of opinions pursuant to Article 29(1) point (a) of the EBA Regulation in response to the consultations received from competent authorities pursuant to Article 26e(10) of the Securitisation Regulation. In accordance with Article 3 of the Decision of the EBA adopted on 25 July 2022 (EBA/DC/462), SCRePol has adopted this opinion.

General comments

Having given consideration to:

i. *the evidence provided by the Consob on the current classification of Italian credit institutions in relation to the CQS assigned on the basis of external credit ratings, whereby none of the Italian credit institutions currently classify as CQS1, and only one credit institution incorporated in Italy that belongs to a French banking group qualifies for CQS 2;*

ii. *the evidence provided by the Consob on the current composition of the Italian synthetic securitisation market;*

the EBA is of the opinion that the Consob has provided sufficient evidence to the objective impediments in Italy stemming from the application of the minimum CQS 2 requirement specified in Article 26e(10), second subparagraph of the Securitisation Regulation. This has the potential to result in prudential concerns and may generally impact the well-functioning of the securitisation market. The EBA is therefore of the opinion that the exercise of the discretion is adequately justified.

Specific comments

EBA assessment of the objective impediments related to the credit quality step assigned to Italy.

7. The EBA assesses the objective impediments related to the CQS assigned to the jurisdiction of the Competent Authority that is notifying its intention to exercise the discretion referred to in Article 26e(10) of the Securitisation Regulation taking into consideration the following:

    a. the number of credit institutions to which a CQS 1 or CQS 2 is being assigned by any of the External Rating Agencies registered/certified with ESMA (including small Rating Agencies)

    b. an assessment of the expected impact of the discretion within that jurisdiction

    c. other general considerations, where appropriate.

8. Based on evidence provided by the Consob, currently none of the Credit Rating Agencies assign to the Italian sovereign debt a long-term rating that could qualify for CQS1 or CQS 2. Table 1 below shows the Italian sovereign debt long-term rating assigned by each Credit Rating Agency.

Table 1: Italian sovereign debt long-term rating

Agency	Rating	Credit quality step
Moody's	Baa3	3
S&P	BBB	3
Fitch	BBB	3
Scope	BBB	3
DBRS	BBB	3

9. As regards the credit rating of Italian credit institutions, out of 23 credit institutions with available long-term credit ratings, none of them has an external credit rating qualifying for CQS 1, while only Banca Nationale del Lavoro S.p.A. (BNL) has an external long-term credit rating qualifying for CQS 2 (see table 2 below). It is to be noted that BNL which qualifies for CQS 2 is part of the French banking group BNP Paribas, while generally the credit rating of Italian banks/groups is capped by the country ceiling of Italian sovereign debt rating (i.e. BBB according to S&P, Fitch and DBRS and Baa3 for Moody's which corresponds to CQS 3).

Table 2: Italian banks with long-term credit rating and corresponding credit quality step

Banca	Best LT rating	Credit quality step
Banca Akros SpA	BBB (DBRS) 3	3
Banca Carige SpA	BBB (DBRS)	5
Banca IFIS S.p.A.	Baa3 (Moody's)	3
Banca Monte dei Paschi di Siena SpA	B+ (Fitch)	5
Banca Nazionale del Lavoro SpA	A (high) (DBRS)	2

Banca Popolare dell'Alto Adige Volksbank SpA	Ba3 (Moody's)	4
Banca Popolare dell'Emilia Romagna S.C.	Ba3 (Moody's)	4
Banca Popolare di Sondrio SpA	BBB (low) (DBRS)	3
Banca Sella SpA	BBB (low) (DBRS)	3
Banco BPM SpA	BBB (DBRS)	3
BFF Bank SpA	Ba2 (Moody's)	4
Cassa Centrale Raiffeisen SpA	Baa2 (Moody's)	3
Dexia Crediop SpA	BBB (S&P)	3
FCA Bank SpA	BBB (S&P)	3
Fideuram – Intesa Sanpaolo Private BankingSpA	BBB (S&P)	3
FinecoBank SpA	BBB (S&P)	3
Iccrea Banca SpA	BB (DBRS)	4
Intesa Sanpaolo SpA	BBB (S&P)	3
Istituto per il Credito Sportivo	BBB (DBRS)	3
Mediobanca SpA	BBB (S&P)	3
MedioCredito Centrale SpA	BBB- (S&P)	3
Mediocredito Trentino-Alto Adige SpA	Ba1 (Moody's)	4
UniCredit SpA	BBB (S&P)	3

10. According to the data above provided by the Consob, should the discretion not be exercised, Banca Nazionale del Lavoro SpA or one of its affiliates would represent the only Italian based legal entity eligible to retain collateral in the form of cash for the securitisation where it acts as originator.

11. For completeness, further information was provided by Consob with regard to third-country branches operating in Italy (see table 3 below) with an external credit rating.

Table3: Third-country branches operating in Italy with an external credit rating

Banca	Best LT Rating	Credit quality step
Barclays Bank Ireland PLC (Milan Branch)	A (S&P)	2
BNP Paribas SA (Milan Branch)	A+ (S&P)	2
BNP Paribas Securities Services (Milan Branch)	A+ (S&P)	2
Deutsche Bank AG (Milan Branch)	A- (S&P)	2
Dexia Crediop SpA	BBB (S&P)	3
FCA Bank SpA	BBB (S&P)	3

12. It is to be noted that the objective to exercise the waiver is to allow the originator to retain the collateral on its own balance sheet instead of having to deposit the collateral with a third party. According to the Consob, the alternatives of providing high collateral in the form of (i) government bonds with a residual maturity of 3 months, or (ii) cash held at a third-party bank with a CQS of at least 3, are burdensome and complex for the Italian credit institutions due the

involvement of a third-party and complex documentation and make the transaction less cost efficient. Furthermore, for cash held with a third-party bank, the originator will experience a reduced capital efficiency of the transaction due to the counterparty risk of the depository bank holding the cash collateral. Therefore, Italian credit institutions would be impaired with respect to foreign counterparties with negative results on their business capacity and risk management measures. This may negatively affect the market efficiency in terms of costs, volumes, and market continuity.

13. Finally, as concerns the Italian synthetic securitisation market, according to data provided by the Consob (as of June 2023), the non-STS securitisations amount to €92.5bn whilst there are no STS securitisations. Based on the data, it is evident that the impediments linked to credit quality step assigned to the Member State have systematically impacted the Italian synthetic securitisation market. In this respect, it is to be noted that should the waiver be exercised, it would contribute to the development of the synthetic STS market, which has proven to be a strong vehicle for the financing of the real economy. While the outstanding transactions would not benefit given that they would need to be restructured to be STS and this would entail a higher cost that the benefit that could be achieved, the new transactions could benefit and the Italian originators would be incentivised to structure on-balance-sheet securitisations that would be STS compliant.

Review of the permission's continued relevance

14. Following the adoption of the waiver, the Consob intends to review on a regular basis whether the conditions under Article 26e are still met as concerns the objective impediments due to the rating of the sovereign debt acting as a ceiling to the maximum rating that the Italian banks can achieve.

15. Should the Consob verify that in the future the objective impediments related to the credit quality step assigned to Italy do not exist anymore, appropriate measures should be taken in order to exclude the admissibility of collateral in the form of cash on deposit with the originator qualifying for CQS 3.

16. This opinion will be published on the EBA's website.

Done at Paris, 7 June 2024

[Signed   [Signed]

[Isabelle Vaillant]   [Gerry Cross]

Co-Chairs of SCRePol on behalf and under the responsibility of the Board of Supervisors