Roadmap 2020 // Securitisations in CEE

Securitisations in Central and Eastern Europe were not particularly active before or after the financial crisis in 2008. Some local originators did recognise securitisation as a potentially useful balance sheet management tool and transactions have been occasionally executed in Austria, the Czech Republic, Hungary and Poland. The financial assets that are typically securitised on these markets are consumer loan receivables, lease receivables (including auto leases, leasing), NPLs and trade receivables. In other CEE jurisdictions, however, securitisations practically never kicked in.

The adoption of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 did not have much impact on the CEE securitisation markets so far. Still, the Regulation is rather new and its effects will only be seen in the coming years. Perhaps the intention of the Regulation to create a framework for simple, transparent and standardised securitisation will at some point be acknowledged in CEE, rousing securitisation from its current slumber. Before this happens, we have set out on a journey through the CEE to discover how some of the key features of securitisation are treated. The results of our inquiries are presented here.

QUESTION	Austria	Bulgaria	Croatia	Czech Republic	Hungary	Poland	Romania	Serbia	Slovenia
1. Is synthetic securitisation permitted in your country? Which form of securitisation was more popular in your country before the new EU regulation: synthetic securitisation or true-sale securitisation?	Synthetic securitisation is permitted in Austria. Many synthetic securitisations were for RWA reduction or to enable the sale of loan receivables in compliance with banking secrecy requirements.	There is no express local regulation on synthetic securitisation, so the EU laws – the STS Regulation and the laws to be issued on its basis – apply.	Relevant Croatian laws do not impose prohibitions regarding synthetic securitisation. Since securitisation remains rare in Croatia, it is not possible to conclusively assess whether synthetic or true sale securitisation would be more popular.	Synthetic securitisation is permitted in the Czech Republic, although it is very rare. True sale is more common. There have been only two or three synthetic securitisations on the Czech market.	Synthetic securitisation is permitted in Hungary. There is no information available regarding the form of securitisation due to the limited number of precedents.	Polish law does not explicitly envisage synthetic securitisation. True-sale securitisation was more popular before the new EU regulation for achieving bankruptcy remoteness.	Synthetic securitisation is permitted in Romania. However, although the legal framework was enacted in 2006, the Romanian securitisation market has been inactive.	The National Bank of Serbia's Decision on Capital Adequacy of Banks stipulates that until the adoption of a separate law to regulate securitisation, banks may not act as the originator, sponsor or original lender in securitisation arrangements.	Synthetic securitisation is not prohibited. There is no conclusive answer regarding the form of securitisation due to the limited number of precedents

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2. Has the new regulation led to changes in the national legislation? Is a national legislation or legislative initiative currently in progress or foreseeable in the framework of European regulation?	Other than an accompanying law which attributes the responsibility for enforcing the Regulation to the Austrian regulator, no changes in local legislation have occurred and no legislative initiative has been released for public consultation or effort made to promote securitisation in Austria.	In its programme for legislative initiatives for the second half of 2019, the Bulgarian Financial Supervision Commission has publicised its aim to propose amendments to the Bulgarian Special Investment Purposes Act with respect to securitisation.	Since the entry into force of the securitisation regulation, no new legislation regarding securitisation has been passed in Croatia. As securitisation has never been common in Croatia, such an initiative is hardly to be expected anytime soon.	No changes in local legislation have occurred as a result of the enactment of the new Regulation and there is no national legislation in progress or any legislative initiative as regards securitisation in the Czech Republic.	The Regulation led to the amendment of the Capital Markets Act, but no coherent regulation is available. The Hungarian National Bank launched a programme to increase the liquidity of the Hungarian bond market and securitised loan receivables fall under the scope of the programme.	Amendments to the financial market supervision act were enacted. The Polish regulator was given the right to audit and impose penalties which may be published on the regulator's website. No further major amendments or guidelines are planned or initiated so far.	No changes in local legislation have occurred as a result of the enactment of the new Regulation and currently there is no legislative initiative released for public consultation or any other effort to promote securitisation in Romania.	At present, securitisation is not regulated in Serbia. The draft Securitisation Act was published in January 2008[1], but never progressed to a formal bill and has been put on hold for more than a decade with no active initiatives or other signs of awakening so far.	Apart from an implementing act allocating supervisory responsibilities between various Slovenian authorities and setting out sanctions, no changes in local legislation have occurred. There is also no legislative or other initiative regarding the regulation of securitisation in Slovenia.

[1] The draft Securitisation Act is available on the NBS's website: http://www.nbs.rs/internet/english/20/nacrti/law_securitization.pdf.

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3. How do insolvency laws affect securitisation? Should there be a "true sale" of financial assets to insulate them from the financial risk of the originator or an affiliate?	No true sale is required to achieve regulatory capital relief; it can also be achieved via a synthetic securitisation. In case of a true sale, financial assets are isolated from the financial risks of the originator. If the originator is insolvent, however, the liquidator may challenge fraudulent, undervalued and preferential transactions within a certain period of time.	Under the general civil laws of Bulgaria, the true sale of an asset will remove the asset from the transferor's insolvency estate, but undervalued and preferential transactions may be challenged under the local insolvency avoidance rules.	A true sale of assets and their removal from the originator's balance sheet are required to insulate them from the financial risk of the originator. If the originator is insolvent, however, the bankruptcy administrator may challenge fraudulent, undervalued and preferential transactions within a certain period of time.	In case of a true sale, the financial assets are insulated from the financial risk of the originator. If the originator is insolvent, however, the insolvency administrator may challenge the true sale in a certain period of time in case the sale could be considered as an act without proper consideration or an act which is preferential to some creditors.	In case of a true sale, financial assets are insulated from the financial risk of the originator. If the originator is insolvent, however, the liquidator may challenge fraudulent, undervalued and preferential transactions within a certain period of time.	Securitisation is usually structured as a true sale in order to achieve bankruptcy remoteness. To limit the insolvency risks, receivables are sold at market value. A properly structured true sale should situate the assets outside the originator's bankruptcy estate.	Under Romanian law, the administrators, liquidators or creditors may not, under the originator's bankruptcy or judicial reorganisation proceedings, file a claim for the annulment of an assignment of receivables performed for securitisation purposes. There should be a true sale of financial assets to insulate them from the financial risk of the originator or an affiliate.	A true sale of receivables so that they are no longer assets of the originator would be required to insulate them from the financial risk of the originator. The Insolvency Act in Serbia, however, provides for various grounds on which the insolvency administrator may challenge pre-insolvency voidable preference transactions.	In case of a true sale, the assigned financial assets do not form part of the originator's bankruptcy estate. However, in case of the originator's insolvency, any fraudulent, undervalued and preferential transactions which occurred within 12 months prior to the opening of bankruptcy proceedings may be subject to clawback.

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4. What are the required or desirable aspects of a special purpose entity (SPE), such as one or two independent directors, no operations or debt not related to the securitisations, characteristics of the entity's bylaws, legal form, etc.?	Austrian law does not provide for any specific rules regarding the legal form of an SPE. However, to achieve isolation from the assets of the originator in a true-sale transaction, limited liability companies are usually used for the purpose of an SPE.[2]	Bulgarian law does not impose a specific legal form for an SPE. However, limited liability companies would typically be used for this purpose.	Croatian law does not provide for any specific rules regarding the legal form of an SPE. However, we have only seen limited liability companies used for this purpose. The SPE may only perform securitisation that is set up within the meaning of the CRR (and now STS Regulation), i.e. a tranched transaction.	Requirements on securitisation vehicle (SPE) are stipulated in the Regulation. Apart from that, there are no other requirements or conditions in respect of securitisation vehicles, though Czech companies are not usually used. Usually a Luxembourg-based SPE would be used as the securitisation vehicle.	The SPE must be a limited liability company and may perform only securitisation activity. It may not hold shares in another entity or acquire securities issued by another SPE and may get financings up to 10 % of its assets. Restrictions are applicable regarding the directors ensuring independency from the originator (e.g. the originator's employee may not be the director of the SPE).	Limited liability companies and closed-end alternative investment funds are usually used as an SPE. The latter is strictly regulated, whereas there are no specific requirements in relation to the former[3]. Such entities are managed by companies providing professional corporate and management services.	The SPE may either be incorporated or unincorporated (fund or joint stock company), must only engage in the issuing of securitised financial instruments based on a receivables portfolio, must be authorised by the Romanian Financial Supervisory Authority to issue securitised financial instruments and must be managed by a special management company.	An SPE would be required, with all faculties needed to insulate the originator from the entity's insolvency and the investors from the originator's insolvency. Common SPE separation techniques are in principle also possible in Serbia, e.g. separate officers and staff, no commingling of assets, infrastructure, or records, etc.	There are no specific rules regarding the legal form of an SPE in Slovenia. In principle, to achieve bankruptcy remoteness the SPE must have no organisational ties with the originator; its sole purpose should be to perform activities necessary for the purchase of receivables and issuance of securities, etc.

[2] Austrian law provides for an exemption from licensing requirements (factoring business) and banking secrecy rules if the SPE fulfils certain criteria. The business activities of an SPE need to be strictly limited to (i) issuing debt securities, (ii) taking out loans, (iii) entering into collateral transactions, and (iv) ancillary transactions related to its business activity. Furthermore, the securitisation must be set up as a securitisation within the meaning of the CRR (and now Regulation), i.e. a tranched transaction.

[3] If the originator is a Polish bank, there are some legal requirements, e.g. it cannot be linked to the originator by means of equity or organisation and its activities must be limited to securitisation and connected services (this rule also applies to entities incorporated outside of Poland).

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5. Are there any securitisation specific disclosure laws or regulations?	Certain statistical data concerning the securitisation need to be reported to the Austrian Central Bank. Otherwise, the disclosure/information obligations of the CRR and the Regulation as well as corresponding guidelines (e.g. by the ECB) apply.	The disclosure/information obligations of the CRR and the Regulation as well as corresponding guidelines (e.g. by the ECB) apply.	There are no securitisation-specific disclosure laws or regulations in Croatia. General disclosure rules set out in the Capital Markets Act as well as in the Banking Act and subordinate legislation issued by the Croatian National Bank would have to be observed.	Publicity formalities are required and follow mainly from the EU regulations.	Certain data concerning the issuance and SPEs must be disclosed to the Hungarian National Bank. The SPE must disclose the performance of the underlying assets on its website.	There are no securitisation-specific disclosure laws or regulations in Poland. The Polish definition of "public offering" is different from that under the EU law and thus a securitisation instrument offered publicly abroad may be subject to the Polish regulations if also offered in Poland.	Publicity formalities are required. Securitised financial instruments are issued via a public offering based on a prospectus with the minimum disclosure requirements. Ad hoc and periodic reporting specific to issuers of financial instruments are also mandatory for the issuers. Also, all securitisations must be reported to the National Bank of Romania for statistical purposes.	There are no securitisation-specific disclosure laws or regulations. General disclosure rules set out in the Capital Markets Act as well as in the Banking Act and subordinate legislation issued by the National Bank of Serbia would have to be observed.	There are no securitisation-specific disclosure regulations in Slovenia (disclosure/information obligations of the CRR and STS Regulation apply).