



NEWS FLASH

## New reporting obligations for Luxembourg securitisation vehicles

Recognising the close links between the securitisation activities of financial vehicles corporations engaged in securitisation transactions (**FVCs**) and monetary financial institutions, the European Central Bank (**ECB**) has adopted on December 19, 2008 Regulation (EC) No 24/2009 concerning statistics on the assets and liabilities of FVCs (the **ECB Regulation**). The ECB Regulation is directly applicable and applies to Luxembourg FVCs, notably (i) securitisation vehicles, subject to the Luxembourg law of March 22, 2004 on securitisation (the **2004 Law**) and (ii) securitisation vehicles established as ordinary commercial companies (often referred to as *sociétés de participations financières* or Soparfis) outside of the scope of the 2004 Law.

The Luxembourg Central Bank (*Banque Centrale de Luxembourg*) has adopted on June 8, 2009 circular BCL 2009/224 on new statistical data collection for securitisation vehicles in order to specify the modalities of application of the ECB Regulation in Luxembourg.

### Definitions of FVC and securitisation

“**FVC**” means an undertaking which is constituted pursuant to national or European law under one of the following: (i) contract law as a common fund managed by management companies, (ii) trust law, (iii) company law as a public or private limited company or (iv) any other similar mechanism; and whose principal activity meets both of the following criteria:

- (a) 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;
- (b) 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.

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Monetary financial institutions (within the meaning of Regulation (EC) No 25/2009) (**MFIs**) and investment funds (within the meaning of Regulation (EC) No 958/2007 of the ECB of July 27, 2007 concerning statistics on the assets and liabilities of investment funds) are excluded from the definition of FVC.

“**Securitisation**” is defined as 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 whereby 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:

- (a) in case of transfer of credit risk, the transfer is achieved by:
  - (i) 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
  - (ii) the use of credit derivatives, guarantees or any similar mechanism; and
- (b) where such securities, securitisation fund units, debt instruments and/or financial derivatives are issued, they do not represent the originator’s payment obligations.

## List of FVCs

FVCs resident in the territory of a participating Member State shall form the reference reporting population for the purpose of the ECB Regulation. Each National Central Bank (**NCB**), in case of Luxembourg, the Luxembourg Central Bank (*Banque Centrale de Luxembourg*), must establish and maintain a list of FVCs resident in its territory and transmit this information to the ECB on a regular basis.

Each FVC must inform the relevant NCB of its existence within one week from the date on which it has taken up business.

## Quarterly statistical reporting requirements

The FVCs shall provide to the relevant NCB, data on end-of-quarter outstanding amounts, financial transactions and write-offs/write-downs on their assets and liabilities on a quarterly basis, in accordance with Annexes I and II of the ECB Regulation. NCBs may grant derogations to certain requirements in the circumstances specified in the ECB Regulation, notably:

- (a) 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, the NCBs may grant FVCs derogations from reporting data on these loans in certain circumstances;
- (b) the NCBs may exempt FVCs from the reporting requirements set out in Annex I of the ECB Regulation apart from the obligation to report, on a quarterly basis, end-of-quarter outstanding amount data on total assets, provided that the FVCs that contribute to the quarterly aggregated assets/liabilities account for at least 95 % of the total of FVCs’ assets in terms of outstanding amounts, in each participating Member State;
- (c) to the extent that certain data referred to in the ECB Regulation can be derived, according to certain minimum statistical standards from other statistical, public or supervisory data sources, the NCBs may, after consulting the ECB, fully or partially exempt reporting agents from the requirements set out in Annex I of the ECB Regulation.

## Submission of information and timing

The information/reports shall be submitted by the FVCs or their agents to the relevant NCBs.

An FVC that has taken up business on or prior to March 24, 2009 should have informed the relevant NCB of its existence by the end of March 2009, irrespective of whether it expects to be subject to regular reporting under the ECB Regulation.

An FVC that has taken up business after March 24, 2009 shall inform the relevant NCB of its existence within one week from the date on which it has taken up business.

FVCs that take up business after December 31, 2009 shall, when reporting data for the first time, report data on a quarterly basis as far back as the original securitisation transaction. The first reporting in accordance with the statistical reporting requirements to which the FVC is subject shall begin with quarterly data from December 2009.

## Penalties

The ECB's sanction regime laid down in Regulation (EC) No 2533/98 of November 23, 1998 concerning the collection of statistical information by the ECB will apply to FVCs. The ECB may impose fines of up to EUR 200,000 for certain infringements.

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