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Targeted consultation on the functioning of the EU securitisation framework

Fields marked with * are mandatory.

Introduction

When soundly structured, securitisation can play a positive role for the economy as a tool for attracting new investor money, and a risk management tool transferring credit risk from banks (or non-bank lenders) to a broad set of EU or third country institutional investors, which in turn would benefit from greater exposure diversification. Securitisation can help deepen capital markets and provide greater financing opportunities. It should also free up the balance sheets of banks and non-bank lenders, thereby enabling them to provide additional lending to the real economy. Promoting sustainable growth of the EU securitisation market is a key initiative under the 2020 capital markets union action plan.

With future investment needs for the green and digital transition projected to grow, and in order to enhance the EU' s productivity, competitiveness, and resilience, optimal allocation of capital will become increasingly necessary. It is important to ensure that bank and non-bank lenders have at their disposal all the necessary tools, including securitisation, to fund strategic priorities, while safeguarding financial stability.

The overall size of the European securitisation market has decreased significantly since the 2008-2009 global financial crisis (GFC), from approximately EUR 2trn at its peak to EUR 1.2trn at the end of 2023. In the meantime, securitisation has recovered fully and even surpassed pre-GFC records in non-EU jurisdictions like the US where it increased from USD 11.3tn in 2008 to USD 13.7tn in 2021, and this despite the higher default rates of US-originated securitisations in the wake of the GFC.

In light of the above, the 2019 EU securitisation framework[1] was introduced with the core objective of reviving an EU securitisation market that helps finance the economy without creating risks to financial stability. In particular, the Securitisation Regulation introduced common rules on due diligence, risk retention and transparency, and created a category of simple, transparent and standardised (STS) securitisation products. While the 2019 framework and its subsequent amendments[2] improved transparency and standardisation in the securitisation market, stakeholder feedback gathered in preparation of the Commission Report on the functioning of the Securitisation Regulation, and subsequent stakeholder engagement[3], indicates that issuance and investment barriers remain high, impeding the EU economy from fully reaping the benefits that securitisation can offer. Originators and investors argue that issuance and investment barriers are partly driven by the conservativeness of specific aspects of the regulatory framework, such as transparency and due diligence requirements, as well as the capital and liquidity treatment of securitisations.

Against this background, the Eurogroup statement of 11 March 2024 invited the Commission to assess all the supply and demand factors hampering the development of the securitisation market in the EU, including the prudential treatment of securitisation for banks and insurance companies and the transparency and due diligence requirements

(while taking into account international standards). Similarly, the ECB Governing Council statement of 7 March 2024 suggested exploring the use of public guarantees and further standardisation. The European Council conclusions of 18 April 2024 reinforced this call to relaunch the European securitisation market, including through regulatory and prudential changes, using the available room for manoeuvre. The European Council conclusions of June 2024 called again on the Council and the Commission to accelerate work on all identified measures under the capital markets union.

Relaunching securitisation has been recommended in the reports from Christian Noyer, Enrico Letta and Mario Draghi as a means of strengthening the lending capacity of European banks, creating deeper capital markets, building the European savings and investments union and increasing the EU's competitiveness.

The political guidelines of re-elected Commission President Von der Leyen from July 2024 announced that the next Commission will develop the proposal in the Enrico Letta report and propose a European savings and investment union, including banking and capital markets.

This consultation seeks stakeholders' feedback on a broad range of issues, including:

- The effectiveness of the securitisation framework
- Scope of application of the Securitisation Regulation
- Due diligence requirements
- Transparency requirements and definition of public securitisation
- Supervision
- The STS standard
- Securitisation platform
- Prudential and liquidity treatment of securitisation for banks
- Prudential treatment of securitisation for insurers
- Prudential framework for IORPs and other pension funds

This consultation paper has benefited from technical exchanges at staff level with the European Banking Authority, the European Securities and Markets Authority, the European Insurance Occupational Pensions Authority and the European Central Bank.

In view of the technical nature of these issues, the questionnaire is targeted to market participants, including data repositories and rating agencies, industry associations, supervisors and research institutions. While some questions are general, others are directed towards specific participants in the securitisation market, i.e. issuers, investors, or supervisors. As not all questions are relevant for all stakeholders, respondents should not feel obliged to reply to every question.

Respondents are encouraged to provide explanations for each of their responses. Where possible, respondents are encouraged to provide quantitative data in their responses to justify and substantiate their reasoning.

The targeted consultation is available in English only and will be open for 8 weeks.

The responses to this consultation will feed into the review of the securitisation framework to be considered by the Commission in the next mandate.

[1] The framework consists of the Securitisation Regulation (SECR), which sets out a general framework for all securitisations in the EU and a specific framework for simple, transparent, and standardised (STS) securitisations, as well as prudential requirements for securitisation positions in the Capital Requirements Regulation (CRR) and in Solvency II Delegated Regulation, and liquidity requirements in the LCR Delegated Regulation.

[2] The framework was complemented on 6 April 2021 in the context of the efforts to help the post-COVID-19 economic recovery by extending the scope of the STS label to on-balance-sheet synthetic securitisations and by addressing regulatory obstacles to securitising non-performing exposures.

[3] This includes bilateral and group-based outreach to the population of stakeholders active in the EU securitisation market, including issuers, investors, sponsors, third-party verifiers, and all other established actors active throughout the securitisation market, data repositories, industry associations, competent authorities, and research institutions.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-securitisation-consultation@ec.europa.eu.

More information on

- this consultation
- the consultation document
- securitisation
- the protection of personal data regime for this consultation

About you

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*Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (•) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish

- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as
  - Academic/research institution
  - Business association
  - Company/business
  - Consumer organisation
  - EU citizen
  - Environmental organisation
  - Non-EU citizen
  - Non-governmental organisation (NGO)
  - Public authority
  - Trade union
  - Other

* First name

David

* Surname

Dwyer

* Email (this won't be published)

david.dwyer@structuredfinance.org

* Organisation name

255 character(s) maximum

Structured Finance Association

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia

- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

Denmark Liberia Saint Lucia

* Field of activity or sector (if applicable)

- [ ] Banking
- [ ] Insurance
- [ ] Pension fund
- [ ] Legal advisory
- [ ] Investment management (e.g. portfolio manager or manager of hedge funds, private equity funds, venture capital funds, money market funds)
- [x] Other

* Please specify your activity field(s) or sector(s)

Trade Association for the Structured Finance Industry

* Type of involvement in the securitisation market

Please select as many answers as you like

- [ ] Originator of traditional securitisations
- [ ] Originator of synthetic securitisations
- [ ] Sponsor
- [ ] Investor in traditional securitisations
- [ ] Investor in synthetic securitisations
- [ ] Arranger
- [ ] Legal adviser
- [ ] Third-party STS verifier
- [ ] Credit rating agency
- [ ] Market infrastructure (e.g. data repository, stock exchange)
- [ ] Supervisor
- [x] Other role in the securitisation market
- [ ] No role

* Please specify your role in the securitisation market

Trade Association for the Structured Finance Industry

If applicable, considering your role in the securitisation process, please provide the following information about the volume of securitisation activity of your organisation.

Note that this information will not be published.

Average annual volume of new securitisations that you originate or securitisation positions that you invest in (flow) in EUR

EUR

Average annual transaction number of new securitisations that you originate or securitisation positions that you invest in (flow)

Total stock of securitisation positions in EUR

EUR

Other relevant quantifiable measure of securitisation activity (please explain briefly)

SFA is a consensus-driven trade association with over 370 institutional members representing the entire value chain of the securitization market.

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**

  Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

- **Public**

  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the

organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

1. Effectiveness of the securitisation framework

The EU securitisation framework has been in application since January 2019. The framework consists of the Securitisation Regulation (SECR), which sets out a general framework for all securitisations in the EU, including increased transparency, due diligence, risk retention and other requirements, and a specific framework for simple, transparent, and standardised (STS) securitisations, as well as prudential requirements for securitisation positions in the Capital Requirements Regulation and in Solvency II Delegated Act, and liquidity requirements for credit institutions in the Liquidity Coverage Ratio (LCR) Delegated Act.

The framework was complemented on 6 April 2021 in the context of post-COVID-19 economic recovery efforts by extending the scope of the STS label to on-balance-sheet synthetic securitisations and by addressing regulatory obstacles to securitising non-performing exposures.

The general objective of the securitisation framework was the revival of a safe securitisation market that would improve the financing of the EU economy (see the impact assessment accompanying the proposal for a Securitisation Regulation. In the short run, it envisaged a weakening of the link between banks' deleveraging needs and credit tightening. In the long run, the aim was the creation of a more balanced and stable funding structure of the EU economy, for the overall benefit of households, SMEs, and larger corporations. Specific policy objectives included the destigmatisation of European securitisation in the wake of the global financial crisis, an appropriate risk-sensitive regulatory capital treatment, and the reduction/elimination of unduly high operational costs for issuers and investors. To achieve these specific policy objectives, two operational objectives were identified: differentiating STS securitisation products from more opaque and complex ones and supporting the standardisation of processes and practices in securitisation markets and tackling regulatory inconsistencies.

The 2022 review of the functioning of the SECR, which resulted in the publication of the Commission Report on the Functioning of the Securitisation Regulation in December 2022 (later referred to as 'the Commission 2022 report'), looked at the impact of the SECR on the functioning of the EU securitisation market. A majority agreed that the SECR provided a high level of investor protection, and it was generally acknowledged that the SECR had facilitated further integration of the EU securitisation market. At the same time, respondents underlined the need to improve certain parts of the framework, such as due diligence and transparency requirements, to increase proportionality and reduce compliance costs for market participants. Considering that the securitisation framework was amended in April 2021 in response to the unprecedented exogenous factors related to COVID-19, and that the complete application of the framework was yet to be fully realised at the time of writing of the Commission 2022 report, the Commission decided that more time was needed to fully assess the impact and effectiveness of the framework.

Looking to the post-2019 evolution of the EU securitisation market, it is appropriate to consider whether the original policy objectives have been achieved, in full or in part, before proceeding to examine the necessity of any future adjustments to the regulatory framework.

This section of the questionnaire looks into the impact of the securitisation framework on the market and the policy goals of the capital markets union, including improving access to finance and supporting the EU's competitiveness.

Question 1.1. Do you agree that the securitisation framework (including the Securitisation Regulation and relevant applicable provisions of the CRR, Solvency II and LCR) has been successful in, or has contributed to, achieving the following objectives:

	1 (fully agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (fully disagree)	Don't know - No opinion - Not applicable
1. Revival of a safer securitisation market	○	○	○	○	○	○
2. Improving financing of the EU economy by creating a more balanced and stable funding structure of the EU economy	○	○	○	○	○	○
3. Weakening the link between banks' deleveraging needs and credit tightening	○	○	○	○	○	○
4. Reducing investor stigma towards EU securitisations	○	○	○	○	○	○
5. Removing regulatory disadvantages for simple and transparent securitisation products	○	○	○	○	○	○
6. Reducing/eliminating unduly high operational costs for issuers and investors	○	○	○	○	○	○
7. Differentiating simple, transparent and standardised (STS) securitisation products from more opaque and complex ones	○	○	○	○	○	○
7.1 Increasing the price difference between STS vs non-STS products	○	○	○	○	○	○

7.2 Increasing the growth in issuance of STS vs non-STS products						
8. Supporting the standardisation of processes and practices in securitisation markets						
8.1 Increasing the degree of standardisation of marketing and reporting material						
8.2 Reducing operational costs linked to standardised securitisation products						
9. Tackling regulatory inconsistencies						

2. Impact on SMEs

Exposures to SMEs, in the form of direct lending, trade receivables, auto loans / leasing, mortgage lending, or other commercial credit, are categories of assets that can readily lend themselves to be securitised. Access to securitisation and its economic efficiency for originators can therefore have an impact on the availability of credit for SMEs and its cost. This section aims to gather insights into the impact of the securitisation framework on SME financing.

Question 2.1. Have you come across any impediments to securitise SME loans or to invest in SME loan securitisations?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 2.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 2.2. How can securitisation support access to finance for SMEs?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• In the U.S., securitisation markets have been critical sources of financing to SME borrowers. Banks and non-bank financial institutions (NBFI) originate exposures via asset-based lending, working capital lines, small business loans, leases, invoice factoring, etc., and rely on securitisation markets to package those exposures and sell them to investors, freeing up capital and liquidity for further lending.
• By connecting SME borrowers with investors, securitisation has expanded the availability of credit outside of traditional bank financing, particularly as the incremental costs of banks holding exposures on-balance sheet in the U.S. have increased due to various post-crisis reforms (e.g, higher capital requirements, restrictions on leveraged lending).
• Securitisation also provides substantial benefits to lenders and investors via improved liquidity, risk diversification, and more efficient capital allocation, increasing the availability of credit for SME borrowers and reducing financing costs overall.
• Nevertheless, securitisations of SME portfolios in the U.S. are less common relative to other asset classes due to the challenges associated with underwriting a substantial pool of private companies, particularly if the loans are not homogenous and not substantial enough to justify the costs of conducting diligence on each individual name. Securitisations of SME portfolios tend to be more common where the loan pools are comprised of quasi-retail, small business exposures where the loans are often documented on standard terms and come with personal guarantees, in which case they can be treated similarly to a homogenous pool of consumer loans.

3. Scope of application of the Securitisation Regulation

Jurisdictional scope

In 2021, the Joint Committee ("JC") of the ESAs published an Opinion to the European Commission on the Jurisdictional Scope of Application of the SECR. The opinion was divided in two parts:

1. the application to third country-based entities of Article 5 to 7 and 9 of the SECR
2. the application of the SECR to investment fund managers

Both issues were subsequently clarified by the Commission in the 2022 report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation. Despite these clarifications, some market participants point out that the SECR does not clearly set out its jurisdictional scope, creating considerable legal uncertainty in cases where not all parties to the securitisation are located in the EU.

Question 3.1. In your opinion, should the current jurisdictional scope of application of the SECR be set out more clearly in the legislation?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3.2. If you answered yes to question 3.1, do you think it would be useful to include a specific article that states that SECR applies to any securitisation where at least one party (sell-side or buy-side) is based or authorised in the EU, and to clarify that the EU-based or EU-authorised entity (ies) shall be in charge of fulfilling the relevant provisions in the SECR?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Legal definitions

The SECR defines the key concepts in the securitisation market to appropriately delineate the legal scope of the Regulation. The definitions seek to align as far as possible with pre-existing legal concepts in EU legislation (i.e. existing definitions in the CRR), and with international standards.

Certain stakeholders have raised concerns that the legal definitions result in a potentially too broad or too narrow scope of application. For instance, a too broad scope might impose an undue regulatory burden in terms of higher standards for disclosure, due diligence, etc. Conversely, too narrow a scope may pose risks to financial stability, resulting from the non-application of the safeguards in the securitisation framework to certain transactions or vehicles that could be considered securitisations from an economic perspective. For example, the categorisation of a given transaction under the definition of a “securitisation transaction” might be contested on the basis of whether a transaction involves tranching of credit risk, considering the economic purpose of the transaction. In addition, the definition of a sponsor is limited to credit institutions, whether located in the Union or not, and to EU investment firms, which could limit the ability of the market to structure securitisation in an economically efficient way by limiting the pool of eligible sponsors.

Definition of a securitisation

Question 3.3. Do you think the definition of a securitisation transaction in Article 2 of SECR should be changed?

You may select more than one option.

Please select as many answers as you like

- ☐ Yes, the definition should be expanded to include transactions or vehicles that could be considered securitisations from an economic perspective
- ☐ Yes, the definition should be narrowed to exclude certain transactions or introduce specific exceptions
- ☐ No, it should not be changed
- ☐ Don’t know / no opinion / not applicable

Please explain your answer to question 3.3, and specify, if necessary, how the definition should be expanded or narrowed in your view:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3.4. Should the definition of a securitisation exclude transactions or vehicles that are derisked (e.g. by providing junior equity tranche) by an EU-level or national institution (e.g. a promotional bank) with a view to crowding-in private investors towards public policy objectives?

- Yes
- No
- Don't know / no opinion / not applicable

Question 3.5. If you answered yes to question 3.4., what criteria should be used to define such transactions?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Definition of a sponsor

Question 3.6. Should the definition of a sponsor be expanded to include alternative investment firm managers established in the EU?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.6, including if the definition should be expanded to any other market participants:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3.7. If you answered yes to question 3.6., are any specific adaptions or safeguards necessary in the Alternative Investment Firms Directive (AIFMD), taking into account the originate-to-distribute prohibition in the AIFMD, to enable AIFMs to fulfil the functions of a sponsor in a securitisation transaction, as stipulated in the SECR?

You may select more than one option.

Please select as many answers as you like

- ☐ An AIFM should not sponsor loans originated by the AIFs it manages
- ☐ AIFs should not invest in securitisations sponsored by its AIFM
- ☐ Minimum capital requirements under the AIFMD should be adapted to enable AIFMs, in particular to fulfil the risk retention requirement under SECR
- ☐ Other safeguards
- ☐ No safeguards are needed

Please explain your answer to question 3.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4. Due diligence requirements

A thorough due diligence process is key to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments (this principle is well recognised by the International Organisation of Securities Commission (IOSCO) in their report on the subprime crisis, as well as their report on good practices in relation to investment managers´ due diligence when investing in structured finance instruments). Article 5 of the Securitisation Regulation imposes due diligence requirements on EU investors both prior to investing and while holding the securitisation position.

While due diligence is an integral part of the risk assessment process, feedback gathered by Commission services since the entry into force of the Securitisation Regulation in 2019 suggests that due diligence requirements under Article 5 might be disproportionate. Stakeholders highlight that the legal text is mostly interpreted in a way that

1. subjects all institutional investors to the same due diligence requirements regardless of the type of securitisation that they invest in

2. and applies stricter and more prescriptive due diligence requirements than those that apply to other financial instruments with similar risk characteristics

As a result, smaller players might not be able to enter the securitisation market, because they lack the resources and/or necessary infrastructure to comply with the due diligence requirements. Due diligence requirements that do not properly take account of the mitigated agency and operational risk characteristics of STS transactions might also be hampering the growth of the STS market.

Question 4.1. Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the due diligence requirements under Article 5.

Please differentiate between costs that are only due to Article 5 and the costs that you would incur during your regular due diligence process regardless of Article 5.

Please compare the total due diligence costs for securitisations with the total due diligence costs of other instruments with similar risk characteristics.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- The precise costs of complying with the due diligence requirements of Article 5 are difficult to quantify. The requirement for U.S. (i.e., third country) sponsors and originators to provide the information necessary for E.U. investors to discharge their obligations under Article 5 would necessitate costly adjustments to operational procedures and reporting systems, which is especially problematic when added onto existing due diligence requirements imposed on such originators under U.S. law.
- In addition, much of the information required under the Article 7 data templates, which were designed primarily for credit originated within the E.U., is simply not relevant to non-E.U. securitisations. For example, reporting templates will oftentimes use terms or otherwise cross-reference specific provisions of E.U. law, such as the E.U. standards for determining credit impaired obligors. Rather than complying with such onerous requirements, many U.S. sponsors and originators have elected not to include E.U. banks and investors in their deals, placing them at a competitive disadvantage.
- Additionally, the information supplied to U.S. investors participating in E.U. deals is highly standardized and, as reported by our members, not generally useful to conducting a thorough due diligence exercise.

Question 4.2. If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 5 of SECR.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.3. Please select your preferred option to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments:

- (●) Option 1: The requirements should be made more principles-based, proportionate, and less complex
- ( ) Option 2: The requirements should be made more detailed and prescriptive for legal certainty
- ( ) Option 3: There is no need to change the text of the due diligence requirements
- ( ) Don't know / no opinion / not applicable

Due diligence requirements prior to holding a securitisation position

Question 4.4. Should the text of Article 5(3) be simplified to mandate investors to assess at minimum the risk characteristics and the structural features of the securitisation?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Please explain your answer to question 4.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To elaborate on the answer in 4.3:

- A particular pain point for U.S. sponsors and originators of securitisations is that they are required to provide information in a standardised format to E.U. investors that will allow them to comply with prescriptive due diligence requirements (e.g., ESMA reports), creating unnecessary compliance costs.
- U.S. domiciled asset managers who are regulated as fiduciaries to their clients already have to abide by onerous due diligence requirements whenever investing on behalf of E.U.-domiciled persons or funds, in particular UCITS funds. When they do not meet all of the reporting required by the E.U. rules, they are required to sell any securitised assets, negatively effecting E.U. investors' returns. As SEC-regulated fiduciaries, these asset managers already have the highest duty of care under U.S. law, and forcing them to avoid some safe assets because the E.U. due diligence requirements can't be complied with (especially in respect of reporting requirements) is harmful to these E.U. investors.

Question 4.5. If you answered yes to question 4.4., please specify how this could be implemented:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• We recommend that third-country securitisations, as a matter of practice, should be treated in all instances as private securitisations, and any information mandated to be provided to investors should be based on a simple template that captures high-level information (e.g., size, tenor) rather than detailed information about each underlying asset.

Question 4.6. Taking into account your answer to 4.4, what would you estimate to be the impact (in percent or EUR) of such a modification in Article 5(3) on your one-off and annual recurring costs for complying with the due diligence requirements under Article 5?

Please explain:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• The potential impact is difficult to quantify, as the largest impact arises from the opportunity costs associated with E.U. investors and banks being excluded from U.S. deals and U.S. investors declining to participate in E.U. deals.

Question 4.7. Should due diligence requirements differ based on the different characteristics of a securitisation transaction?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 4.8. If you answered yes to question 4.7., please select one or more of the following options to differentiate due diligence requirements:

Please select as many answers as you like

- [x] Due diligence requirements should differ based on the risk of the position (e.g. senior vs non-senior)
- [x] Due diligence requirements should differ based on the risk of the underlying assets

- [x] Due diligence requirements should differ based on the STS status of the securitisation (STS vs non-STS)
- [x] Other

Please explain your answer to question 4.8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To elaborate on the answer in 4.7:

- Yes, at a minimum, due diligence requirements should be tailored to the specific transaction. Consistent with our answer in 4.3, we recommend that the due diligence requirements be principles-based rather than prescribing the specific information that an investor must receive, as regulators and legislators cannot possibly legislate for every field of information that an investor might need in order to conduct due diligence in the specific circumstances of every transaction.
- Regulators and legislators should not impose their judgment in such a way as to override that of investors, as that will lead to market inefficiencies and unnecessary costs. In the disclosure-based regime that underpins the U.S. market, for example, the role of the investors is to take calculated risks, as the penalties for conducting insufficient due diligence will arise from the poor performance of the investment itself.
- Furthermore, the investors, rather than the regulators, will be incentivized to conduct their own due diligence and understand the structure of the securitisation; it is not the job of the regulators to tell them how to assess those risks. Instead, the framework should be adjusted to foster investor choice, permitting investors to tailor their own due diligence exercise depending on their own underwriting criteria and risk assessments.

Question 4.9. Taking into account your answers to 4.7 and 4.8, what would you estimate to be the impact (in percent or EUR) of differentiating due diligence requirements on your one-off and annual recurring costs for complying with the due diligence requirements under Article 5?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.10. For EU investors investing in securitisations where the originator, sponsor or original lender is established in the Union and is the responsible entity for complying with those requirements, should certain due diligence verification requirements be removed as the compliance with these requirements is already subject to supervision elsewhere?

This could apply to the requirements for investors to check whether the originator, sponsor or original lender complied with:

	Yes	No	Don't know / No opinion / Not relevant
(i) risk retention requirements	○	○	○
(ii) credit granting criteria requirements	○	○	○
(iii) disclosure requirements	○	○	○
(iv) STS requirements, where the transaction is notified as STS	○	○	○

Please explain if you see any risks arising from the removal of these requirements, and if so, how they should be mitigated:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.11. Taking into account your answers to Q.4.10, what would you estimate to be the impact (in percent or EUR) of removing those obligations on your one-off and recurring costs for complying with the due diligence requirements?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.12. Do the due diligence requirements under Article 5 disincentivise investing into securitisations on the secondary market?

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Please explain your answer to question 4.12:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• Yes, as noted in our responses above, subjecting non-E.U. sponsors and originators to the requirements under Article 5 significantly disincentivizes them from including E.U. investors in their deals. Moreover, complying with the Article 5 requirements timeframes is simply too time-consuming to be consistent with the timeline for a typical secondary market trade.

Question 4.13. If you answered yes to question 4.12., should investors be provided with a defined period of time after the investment to document compliance with the verification requirements as part of the due diligence requirements under Article 5?

- ( ) Yes
- (•) No
- ( ) Don't know / no opinion / not applicable

Question 4.14. If you answered yes to question 4.13., how many days should be given to investors to demonstrate compliance with their verification requirements as part of the due diligence requirements under Article 5?

- ( ) 0 – 15 days
- ( ) 15 – 29 days
- ( ) 29 – 45 days
- ( ) Don't know / no opinion / not applicable

Question 4.15. If you answered yes to question 4.13., what type of transactions should this rule apply to?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.16. Do the due diligence requirements under Article 5 disincentivise investing into repeat securitisation issuances?

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Question 4.17. If you answered yes to question 4.16., how should repeat or similar transactions be identified in the legal text and how should the respective due diligence requirements be amended?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• In our view, the issue is less that repeat or similar transactions are subject to lower due diligence requirements, but rather that reporting requirements are overly prescriptive and not proportional, raising costs with very little benefit to investors.

Question 4.18. Should Article 32(1) be amended to require Member States to lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures in case institutional investors fail to meet the requirements provided for in Article 5?

- ( ) Yes
- (•) No
- ( ) Don't know / no opinion / not applicable

Please explain your answer to question 4.18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• Please see our response to 4.8 above. Imposing additional sanctions on institutional investors for failing to meet the requirements of Article 5 will only further deter cross-border investments in both E.U. and U.S. deals.

Question 4.19. Taking into account the answers to the questions above on due diligence requirements, do you think any safeguards should be introduced in Article 5 to prevent the build-up of financial stability risks?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• No. Preventing the build-up of financial stability risks should not be the individual responsibility of any single investor, who will oftentimes not have enough exposure to have any meaningful visibility into overall systemic risks.

• In the U.S., for example, the federal banking agencies (and in particular, the Federal Reserve) and other designated regulatory bodies such as the Financial Stability Oversight Committee (FSOC) are tasked with promoting financial stability and maintaining the safety and soundness of the banking system. The monitoring of financial stability risks should be the job of a prudential regulator or supervisor.

Question 4.20. Taking into account your answers to the previous questions in this section, by how much would these changes impact the volume of securitisations that you invest in?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.21. If you are a supervisor, how would the changes to the due diligence requirements suggested in the previous questions affect your supervisory costs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Delegation of due diligence

Question 4.22. Should the National Competent Authorities (NCAs) continue to have the possibility to apply administrative sanctions under Article 32 and 33 of SECR in case of infringements of the requirements of Article 5 SECR to either the institutional investor or the party to which the institutional investor has delegated the due diligence obligations?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Please explain your answer to question 4.22:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• The premise of the question is incorrect. NCAs have never had the ability to impose administrative sanctions under Articles 32 and 33 of SECR. Any failure to comply with these requirements is dealt with under the sectoral legislation applicable to the specific investor. This is appropriate and should not be changed. Please also see our responses to 4.8 and 4.18 above.

Question 4.23. If you answered no to question 4.22, which party should be subject to administrative sanctions in case of infringement of the due diligence requirements?

- ○ the institutional investor
- ○ the party to which the institutional investor has delegated the due diligence obligations
- ○ don't know / no opinion / not applicable

5. Transparency requirements and definition of public securitisation

Public interventions after the GFC significantly improved the level of transparency in the EU securitisation market starting with the introduction of loan level templates by the European Central Bank. The current transparency regime enshrined in Article 7 of the SECR aims to ensure that investors in a securitisation have all the necessary information for their due diligence needs. In addition, National Competent Authorities (NCAs) should have access to sufficient information to properly supervise the participants in the securitisation market.

However, the application of some legal provisions of the transparency regime have nonetheless shown some gaps and inefficiencies. For instance, the disclosure requirements are seen by stakeholders as overly prescriptive and insufficiently adapted to the actual needs of investors into the various types of securitisations. This limits the usefulness of certain disclosures, i.e. investors/NCAs may not use all the information disclosed under Article 7, because it might not be tailored to their specific information needs.

Under the SECR, public securitisations are those that require publishing a prospectus, and yet this captures only a subset of what the market would consider as public securitisations from an economic perspective. Consequently, only a subset of the 'truly' public market is obliged to report to securitisation repositories. However, a separate significant part of the market, in particular many collateralised loan obligations (CLOs), is public in nature but is not classified as such under the SECR and therefore it does not report to the securitisation repositories ("SRs"). This curtails supervisors' ability to adequately analyse and supervise cross-border markets and might limit overall market transparency.

On the other hand, bespoke transactions or intra-group securitisations (i.e. ones without an external investor) might be subject to unduly high transparency requirements because they have to report using the same disclosure templates as public transactions, which might not be fit for purpose.

Feedback gathered during the preparation of the Commission's report on the functioning of the Securitisation Regulation showed wide support for amending the definition of private securitisations to focus on truly bespoke transactions, while at the same time reducing the mandatory transparency requirements for these types of transactions. The Joint Committee report also favoured amending the definition of private securitisations to make it more precise and to exempt from all transparency requirements a sub-set of transactions that are private in nature. At the same time, the Commission report also highlighted that a better definition of private securitisation would be difficult to find. For this reason, it is worth considering whether amending (i.e. widening) the definition of public securitisations would be useful instead. This would have the dual benefit of:

1. reducing the reporting burden for truly private transactions should transparency requirements be simultaneously amended
2. and ensuring that transactions that are public in nature but currently considered private because they do not have a prospectus (such as CLOs), would be categorised as public, thereby entailing direct reporting to repositories, and enhancing market transparency.

Question 5.1. Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the transparency regime under Article 7.

Please differentiate between costs that are only due to Article 7 and costs that you would incur during your regular course of business regardless of Article 7.

Please compare the total transparency costs for securitisations with the total transparency costs of other instruments with similar risk characteristics.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- In the case of U.S. securitisations, the precise costs of complying with the transparency requirements of Article 7 are difficult to quantify as U.S. issuers, originators and sponsors will often elect not to include E.U. banks or investors in their deals as the costs of conforming their operational and reporting systems to comply with E.U. reporting templates are simply too onerous, placing E.U. entities at a significant competitive disadvantage. For large warehouse and asset-backed facilities, for example, an E.U. bank will oftentimes not be the largest lender in the syndicate, and large U.S. originators and sponsors will simply elect to not include E.U. banks so as to avoid the technical challenges associated with complying with Article 7. The same dynamic holds true with respect to E.U. investors in ABS issuances.
- U.S. issuers, originators and sponsors are already subject to extensive disclosure requirements under general U.S. securities laws as well as securitisation-specific reporting requirements under Regulation AB of the Securities & Exchange Commission ("SEC"), under which sponsors are required to provide copious amounts of asset-level reporting and other data which are both technically and substantively different from the Article 7 reporting requirements. Such sponsors are simply not accustomed to the technical standards and reporting templates required under the SECR.
- The issue is exacerbated by the fact that the extraterritorial application of Article 7's transparency requirements indirectly apply beyond the E.U.'s territory due to Article 5(1)(e) of SECR. That extraterritoriality, combined with the disclosure requirements being drafted in ways that only really work for E.U. securitisations, means that non-E.U. securitisations (i.e., third-country deals) struggle to comply. It is worth remembering that these deals are often already subject to similar or equivalent home country standards. Many U.S. sponsors and originators have therefore elected to simply exclude E.U. investors from their deals.
- Additionally, our members, which include some of the largest U.S. institutional investors in cross-border ABS deals, have reported that they are bombarded with information that is confusing and not particularly useful when investing in E.U. securitisations. In our view, the Article 7 transparency regime must be made more proportional and principles-based in a manner that better serves the needs of investors.

Question 5.2. If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 7 of SECR.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.3. How do the disclosure costs that you provided in Question 5.1. compare with the disclosure costs for other instruments with similar risk characteristics?

- Significantly higher (more than 50% higher)
- Moderately higher (from 10% to 49% higher)
- Similar
- Moderately lower (from 10% to 49% lower)
- Significantly lower (more than 50% lower)
- Don’t know / no opinion / not applicable

Please explain your answer to question 5.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.4. Is the information that investors need to carry out their due diligence under Article 5 different from the information that supervisors need?

- (•) Significantly different
- Moderately different
- Similar
- Don’t know / no opinion / not applicable

Please explain your answer to question 5.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• In the U.S., compliance with U.S. disclosure requirements for ABS issuances remains the responsibility of the issuers (who can face securities liability to investors) and market regulators such as the SEC, who are tasked with ensuring that sponsors comply with the disclosure requirements of Regulation AB.

• Requiring individual investors to monitor or ensure that the lender is, for example, originating credit

exposures on the basis of “sound and well-defined criteria” is inappropriate, as the risks ultimately faced by investors (e.g., the performance of the ABS) are narrower than the risks that should concern supervisors (e. g., market integrity, systemic risks). Such monitoring should be the primary responsibility of regulators in contexts other than through the regulation of securitisations, such as the Capital Requirements Regulation (CRR).

Question 5.5. To ensure that investors and supervisors have sufficient access to information under Article 7, please select your preferred option below:

- Option 1:
  - Streamline the current disclosure templates for public securitisations
  - Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public)
- Option 2:
  - Remove the distinction between public and private securitisations.
  - Introduce principles-based disclosure for investors without a prescribed template
  - Replace the current disclosure templates with a simplified prescribed template that fits the needs of competent authorities, with a reduced scope/reduced number of fields than the current templates
- Option 3:

  No change to the existing regime under Article 7.

Question 5.6. If you are a supervisor, what impact (in percent or EUR) would you anticipate Option 1 would have on your supervisory costs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.7. Assuming that transparency requirements are amended as suggested in Option 1, by how much would the volume of securitisations that you issue, or invest in, change?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.8. What impact (in percent or EUR) would you anticipate Option 1 would have on your one-off and annual recurring costs for complying with the transparency requirements in Article 7? Please explain your answer.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.9. Do you see any concerns, impediments, or unintended consequences from requiring private securitisations to report to securitisation repositories?

- (•) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain your answer to question 5.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• Requiring private securitisations to report to securities repositories may further deter U.S. sponsors, originators and issuers for opening up their deals to E.U. investors and lenders, as the requirement to upload securitisations into central repositories could be resource-intensive (particularly if such repository imposes certain reporting, completeness and consistency requirements). Additionally, the existence of such a securitisation repository could introduce new operational risks, including the risk of cybersecurity breaches.
• We note that securitisations that are registered under the U.S. securities laws are not subject to a requirement to report to centralized securitisation repositories, and that existing reporting obligations have worked relatively well to date.
• To the extent a securitisation repository is deemed necessary, we would recommend that the system be well-designed such that it is easy for sponsors and issuers of private securitisations to upload their deals without additional onerous reporting templates and other requirements. Should such reporting templates be required, we would also recommend that any deals originated from outside the E.U. (i.e., third-country deals) be subject to a simple, secure uploading platform.

Question 5.10. Under Option 1, should the current definition of a public securitisation be expanded to a securitisation fulfilling any of the following criteria?

1. **a prospectus has been drawn up in compliance with the EU Prospectus Regulation**
2. **or notes were admitted a trading venue**
3. **or it was marketed (to a broad range/audience of investors) and the relevant terms and conditions are non-negotiable among the parties**

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not applicable

Please explain your answer to question 5.10:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• We do not have a particular view as to whether the definition of public securitisations should be expanded in the specific manners described. However, as noted in our response to 4.5 above, we strongly recommend that the definition of public securitisations should not include third country transactions as a matter of practice. Instead, third country transactions should be treated as private securitisations exempt from prescriptive reporting standards or requirements to report to a central repository, among others. Imposing reporting and technical disclosure standards that apply to public securitisations to third country transactions will only further disadvantage E.U. investors, for reasons stated elsewhere in our response to this consultation.
• Additionally, the registration, disclosure and periodic reporting requirements of Regulation AB under the U.S. securities laws do not apply to privately placed deals originated out of the E.U., even when the ABS

is offered to U.S. institutional investors. To ensure a level playing field, we would recommend that deals originated within the U.S. be afforded the same treatment when made available to E.U. investors under E.U. law.

Question 5.11. If you answered yes to question 5.10., what criteria should be used to assess point (3) in the definition above (i.e. a securitisation marketed (to a broad range/audience of investors) and the relevant terms and conditions are non-negotiable among the parties)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.12. If the definition of a public securitisation is expanded (for example, to encompass securitisations fulfilling the criteria set out in question 5.10), what share of your existing private transactions would now fall under this newly-expanded public definition?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.13. Under Option 1, what would you estimate to be the impact (in percent or EUR) of changing the definition of public securitisation on your one-off and annual recurring costs for complying with Article 7?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.14. Assuming that transparency requirements are amended as suggested in Option 2, by how much would the volume of securitisations that you issue, or invest in, change?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.15. What impact (in percent or EUR) would you anticipate Option 2 would have on one-off and annual recurring costs for complying with the transparency requirements in Article 7? Please explain your answer.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.16. Under Option 2, what should be included in the principle-based disclosure requirements for investors to reduce compliance costs while ensuring access to information?

How should investors access this information?

Please explain your answer, listing all relevant information that you think investors need to do proper due diligence that could be common across all securitisations.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.17. Under Option 2, should intra-group transactions, and securitisations below a certain threshold, be excluded from the reporting requirements in Article 7?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not applicable

Please explain your answer to question 5.17, and, if you answered yes, please specify how should intragroup transactions be defined and how should the threshold be determined:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.18. Under Option 2, what would be the impact (in percent or EUR) on your one-off and annual recurring costs for complying with the transparency requirements of excluding intra-group transactions and securitisations below a certain threshold from the reporting requirements in Article 7? Please explain your answer.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.19. Should the text of Article 7 of the SECR explicitly provide flexibility for reporting on the underlying assets at aggregated level?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not applicable

Question 5.20. If you answered yes to question 5.19., which categories of transactions should be allowed to provide reporting only at aggregated level?

You may select more than one option.

Please select as many answers as you like

- [x] Granular portfolios of credit card receivables
- [x] Granular portfolios of trade receivables
- [x] Other
- [ ] Don't know / no opinion / not applicable

If you answered "other" to question 5.20, please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- In the United States, which remains the largest securitisation market in the world, there is no general regulatory mandate for issuers and sponsors to provide loan-by-loan reporting. Rather, only securitisations backed by certain asset classes (residential mortgages, commercial mortgages) are require to provide loan-level data in ongoing reports. Additionally, private placements of ABS offered only to qualified institutional buyers (QIBs) are not registered in reliance on Rule 144A and not subject to any asset-level data reporting requirements. Most deals in the U.S. therefore are not subject to any asset-level reporting requirements.
- Additionally, collateralized borrowings from the discount windows at the Federal Reserve Banks (serving as lenders of last resort) or other emergency facilities, such as the Term Asset-Backed Securities Loan Facility (TALF), impose specific eligibility criteria but have not historically required loan-level reporting.
- Any granular asset class that reflects a large, homogenous pool of exposures should be eligible for reporting at the aggregate level. For example, auto loan and lease portfolios, consumer loans and even some small business loans should be eligible for this treatment.

Question 5.21. If you are a supervisor, what impact (in percent or EUR) would you anticipate Option 2 would have on your supervisory costs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

6. Supervision

Securitisation entails many actors, in some cases also based in different jurisdictions. This can result in several national competent authorities being involved in the supervision of one transaction. Market participants cite that differences in the supervisory approaches of Member States create uncertainty. This has been raised in the Joint Committee of the ESAs' report on the implementation and functioning of the securitisation framework and in the Commission 2022 securitisation review report. Diverging supervisory practices create resource and cost inefficiencies due to the multiplication of common functions across many Member States. Divergence and ensuing legal uncertainty can create an unlevel playing field and are detrimental to the growth of the securitisation market and its proper functioning. In addition, fragmented responsibility and access to data can create loopholes and potentially lead to the emergence of risks. For these reasons, it is important to consider how to streamline and improve supervision in the EU to ensure consistency, better coordination, and a proportionate approach to avoiding divergent practices. This could be achieved through a more efficient and effective use of the existing powers which are allocated to the ESAs and competent authorities.

Ideas for improvement include the creation of supervisory hubs, building on the model of the SSM securitisation hub. In the case of cross-border transactions, a lead coordinator could be appointed under the joint oversight of the ESAs. NCAs' participation could be mandatory, requiring all or some NCAs to participate based on a set of relevant criteria. Alternatively, participation could also be voluntary so only interested NCAs join the new supervisory structure. This would, however, limit the degree of supervisory convergence that can be achieved. This section seeks to gather feedback in relation to these ideas.

Question 6.1. Have you identified any divergencies or concerns with the supervision, based on the current supervisory set up?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.1 and give specific examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.2. Would you see merit in streamlining supervision to ensure more coordination and supervisory convergence?

- Yes
- No
- Don't know / no opinion / not applicable

Question 6.3. If you answered yes to question 6.2., what should be the scope of coordinated supervision?

STS securitisations only

- All securitisations
- Other
- Don’t know / no opinion / not applicable

If you responded "other" to question 6.3, please specify to what you refer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.4. If you answered yes to question 6.2., what should be the supervisory tasks of coordinated supervision?

- Compliance with Securitisation Regulation as a whole
- Compliance only with STS criteria
- Compliance with Securitisation Regulation and prudential requirements for securitisation
- Other
- Don’t know / no opinion / not applicable

If you responded "other" to question 6.4, please specify to what you refer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.5. If you answered yes to question 6.2., which model would you prefer?

- Setting up supervisory hubs
- Having one national authority as lead coordinator in the case of one issuance involving multiple supervisors
- Another arrangement

Please explain your answer to question 6.5. If you selected “Another arrangement”, please specify:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If you responded "another arrangement" to question 6.5, please specify to what you refer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.6. If you answered yes to question 6.2, would you require participation by all NCAs or only some?

- All
- Some
- Don’t know / no opinion / not applicable

Question 6.7. If you answered “Some” to question 6.6., based on what criteria would you select NCAs? Please specify.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.8. If you are a supervisor, how would the changes to supervision suggested in the previous questions affect your supervisory costs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

7. STS standard

The STS standard identifies criteria for simplicity, standardisation and transparency designed to address those aspects of the securitisation practice that had proven problematic during the global financial crisis. It aims to address and mitigate major drivers of operational and agency risks arising in securitisation, by enabling investors to differentiate STS-designated products from more opaque and complex ones.

In recognition of their less complex structure, STS positions entail lower capital requirements than non-STS in the banking and insurance prudential regulations. It was expected that the introduction of the STS standard in the EU would have a significant positive impact on the scaling up of the EU securitisation market, by incentivising standardisation of the securitisation transactions across the EU and attracting new issuers and investors to the market. Stakeholders have flagged some of the STS criteria as burdensome to comply with or otherwise constraining further development of the STS market. Such criteria include the homogeneity of underlying assets, the collateral requirement for on-balance-sheet securitisations, the ban on including exposures to credit impaired obligors, the information to be provided prior to pricing and/or closing, and others.

In order to protect the integrity of the STS standard, it is important to ensure that a transaction that is notified as STS really complies with the criteria. Third-party verifiers (TPVs) are a voluntary, but important link in the chain of verifying that a securitisation complies with the STS criteria, alongside originators, sponsors, national competent authorities and investors. However, in the current text of the SECR, TPVs are authorised at national level but are not supervised after authorisation, and they do not lift the ultimate responsibility from the originator and sponsor for ensuring compliance with the STS criteria.

Some indications suggest that the STS label has been successful – the label is used by the market and recognised by investors. Moreover, some transactions appear to be structured almost exclusively to be STS-compliant, such as prime Residential mortgage-backed securities (RMBSs) and auto-loans asset backed securities (ABSs). On the other hand, the size of the securitisation market in general has not shown significant recovery since the introduction of the STS label, and STS-compliant transactions amount to less than half of the public securitisation market, which in itself represents a declining portion of the overall securitisation market. This section seeks stakeholders' feedback on the use of the STS label, including how to increase its attractiveness for both originators and investors.

Question 7.1. Do you think that the STS label in its current form has the potential to significantly scale up the EU securitisation market?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 7.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.2. Which of the below factors, if any, do you consider as holding back the expansion of the STS standard in the EU?

You may select more than one option.

Please select as many answers as you like

- ☐ Overly restrictive and costly STS criteria
- ☐ Low returns
- ☐ High capital charges
- ☐ LCR treatment
- ☐ Other
- ☐ Don’t know / no opinion / not applicable

Please explain your answer to question 7.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.3. How can the attractiveness of the EU STS standard be increased, for EU and non-EU investors?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

STS criteria

Question 7.4. In the case of an unfunded credit protection agreement[*] where the protection provider provides no collateral to cover his potential future liabilities, should such an agreement be eligible for the STS label, to facilitate on-balance-sheet STS securitisations?

* According to Article 26e(8)(c) eligible credit protection for STS on-balance-sheet securitisation should be “secured by collateral meeting the requirements laid down in paragraphs 9 and 10 of this Article.

- Yes
- No
- Don’t know / no opinion / not applicable

Question 7.5. If you answered yes to question 7.4., what safeguards should be put in place to prevent the build-up of financial stability risks arising from the provision of unfunded credit protection?

- The protection provider should meet a minimum credit rating requirement.
- The provision of unfunded credit protection by the protection provider should not exceed a certain threshold out of their entire business activity.
- Other
- Don’t know / no opinion / not applicable

Please explain your answer to question 7.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.6. What would be the implications for EU financial stability of allowing unfunded credit protection to be eligible for the STS label and the associated preferential capital treatment?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.7. How would allowing unfunded credit protection to be eligible for the STS label and the associated preferential capital treatment impact EU insurers' business model of providing credit protection via synthetic securitisation (for example, would EU insurers account such transactions as assets or as liabilities)?

Please explain your answer.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.8. If you are an originator, what impact on the volume of on-balance-sheet securitisations that you issue do you expect to see if unfunded credit protection becomes eligible for the STS label and the associated preferential capital treatment?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.9. If you answered no to question 7.4., do you see merit in expanding the list of eligible high-quality collateral instruments in Article 26e (10) to facilitate on-balance-sheet STS securitisations?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 7.10. If you answered yes to question 7.9., which high-quality collateral instruments should be added to the list?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.11. What would be the implications for EU financial stability of extending the list of high-quality collateral arrangements under Article 26e (10)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.12. Do the homogeneity requirements for STS transactions represent an undue burden for the securitisation of corporate loans, including SMEs?

Please explain your answer.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.13. Should the STS criteria (for traditional, asset backed commercial paper (ABCP) or on-balance-sheet securitisation) be further simplified or amended?

Please explain your answer and provide suggestions.

- Yes
- No
- Don’t know / no opinion / not applicable

Please provide a justification for your answer to question 7.13:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Third-Party Verifiers (TPVs)

Question 7.14. On a scale of 1 to 5 (1 being the least valuable), please rate the added value of TPVs in the STS securitisation market.

- 1 - Very low added value
- 2 - Low added value
- 3 - Medium added value
- 4 - High added value
- 5 - Very high added value
- Don’t know / no opinion / not applicable

Please provide a justification for your answer to question 7.14:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.15. If you answered yes to question 4.10.(iv), should the TPVs be supervised to ensure that the integrity of the STS standard is upheld?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 7.15, including where necessary whether TPVs should be supervised at EU level:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.16. To what extent would supervision of TPVs increase the cost of issuing an STS securitisation?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 7.16, and if available, estimate the total costs in EUR:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

8. Securitisation platform

One issue which is mentioned in the public debate is the possibility of setting up a securitisation platform, with various ideas being put forward on the possible characteristics and functions of such a platform. One of the proposals (see Noyer report, developing European capital markets to finance the future: Proposals for a savings and investments union), inspired by the US model, envisages the use of public guarantees both at national and EU-level to scale up the market

and create a new common ‘safe asset’ across the EU. Other suggested designs are more circumspect (for example see TSI report, the challenge of financing the transformation for companies and banks in Germany – securitisation as an instrument for linking bank loans and capital markets) and entail the pooling of resources and information to reduce issuance costs and encourage standardisation.

In its statement of 7 March 2024, the ECB Governing Council highlighted the need to explore ‘whether public guarantees and further standardisation through pan-EU issuances could support targeted segments of securitisation, such as green securitisations to support the climate transition’.

Question 8.1. Would the establishment of a pan-European securitisation platform be useful to increase the use and attractiveness of securitisation in the EU?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not applicable

Question 8.2. If you answered yes to question 8.1., which of the following objectives should be main objective(s) of the platform?

You may select more than one option

Please select as many answers as you like

- ☐ Create an EU safe asset
- ☐ Foster standardisation (in the underlying assets and in securitisation structures, including contractual standardisation)
- ☐ Enhance transparency and due diligence processes in the securitisation market
- ☐ Promote better integration of cross-border securitisation transactions by offering standardised legal frameworks
- ☐ Lower funding costs for the real economy
- ☐ Lower issuance costs
- ☐ Support the funding of strategic objectives (e.g. twin transition, defense, etc.)
- ☐ Other

Please explain how the platform could be designed to achieve the objectives that you selected in your answer to question 8.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.3. If you answered yes to question 8.1., how would access to a pan-European securitisation platform increase the use and attractiveness of securitisation in the EU?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.4. Should the platform target specific asset classes?

- Yes
- No
- Don't know / no opinion / not applicable

Question 8.5. If you answered yes to question 8.4., which asset classes should the platform target?

- SME loans
- Green loans (i.e. green renovation, green mobility)
- Mortgages
- Corporate loans
- Other
- Don't know / no opinion / not applicable

Please provide a justification for your answer to question 8.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.6. Are guarantees necessary?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Question 8.7. If you answered yes to question 8.6., please explain who (private or public) would provide it and how you would design such a guarantee

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.8. What do you view as the main challenges associated with the introduction of such a platform in the EU, and how could these be managed?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.9. What key considerations need to be taken in designing a pan-European securitisation platform, for such a platform to be usable and attractive for originators and/or investors?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• In the U.S., the government-sponsored enterprises (GSEs) have facilitated the standardization of the mortgage market by issuing large volumes of mortgage-backed securities (MBS) and guaranteeing their performance to investors, providing significant liquidity to the U.S. mortgage market. The success of the U. S. GSEs is principally due to the fact that they are public-private partnerships operating under specialized federal charters that are implicitly backed by the federal government. Indeed, as was highlighted in the Noyer report, issuances of Agency MBS as a percentage of the outstanding ABS market have continued to increase even after the GSEs were placed into conservatorship during the 2008 financial crisis.

• However, the assumption that standardization will lead to additional volume is not necessarily true. For example, the Common Securitization Solution (CSS), a joint venture between Fannie Mae and Freddie

Mac that led to the Uniform MBS in 2019, has deepened liquidity in the Agency MBS market but has not had the same effect on private-label MBS and ABS issuances on other asset classes. Overall, CSS has been a costly exercise with questionable benefit. Moreover, excessive standardization promoted by the public sector may not always be a good thing as they can distort markets in unintended ways, evidenced by the bifurcated nature of the U.S. MBS market between private-label and Agency MBS.

- Additionally, the model within which the GSEs operate has led to some significant unintended consequences. For one, the GSEs have suffered from moral hazard incentives owing to their implicit backing by the federal government, leading to excessive risk-taking and under-capitalization that ultimately necessitated their placement into conservatorship once the housing market began to experience stress. Secondly, the GSEs were designed by Congress to operate essentially as monolines, and subsequently built up excessive concentrations of risk in the residential mortgage market that further contributed to the crash in the housing markets. Thirdly, the GSEs' essential role in intermediating and providing liquidity to the mortgage market has made them systemically important. Lastly, the GSEs have grown to such an extent that they are now subject to a myriad of special interests that have made it challenging to reform their business models.
- The broad take-away is that it is not clear that the existence of the GSEs is net-socially beneficial, and the fact that the GSEs remain in conservatorship more than fifteen years after the 2008 crisis suggests that the problems with their business models have not yet been solved. Furthermore, if the E.U. were to develop a pan-European securitisation platform on par with the GSEs, the cross-border exposures arising from any implicit/explicit guarantee of such a platform's liabilities could be extremely substantial.
- Explicit (or implicit) government guarantees increase the amount of capital that can be invested in securitisations by minimizing credit risk for investors, and thereby lowering borrowing costs. As discussed in our response to Section 8.1 above, however, any government guarantees will result in a pricing advantage for ABS issuances covered by such guarantees, resulting in market distortions. Additionally, guarantees can result in unintended concentrations of risk and, given the role such platform might play in providing credit to certain markets, result in additional systemic risks and necessitate further government interventions.
- In the U.S., government-backed guarantees are not, in our view, strictly necessary as fully private markets continue to operate with a great deal of liquidity.
- Additionally, the costs of a potential guarantee, particularly if made available to non-E.U. investors, could be substantial.

Question 8.10. Besides the creation of a securitisation platform, do you see other initiatives that could further increase the level of standardisation and convergence for EU securitisations, in a way that increases securitisation volumes but also benefits the deepening and integration of the market?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

9. Prudential and liquidity risk treatment of securitisation for banks

Banks are central players in the EU securitisation market. On the issuer side, securitisation is a useful tool in banks' toolkit for diversifying funding sources, and for balance sheet and credit risk management purposes. On the demand side, while banks hold significant exposures towards EU securitisation transactions and in particular to senior tranches, most are in the form of retained securitisations, including asset-backed securities (ABS) that are used as collateral for central bank operations to obtain liquidity. Exposures to other banks' securitisations are overall limited. The high percentage of retained securitisations limits the depth and liquidity of the securitisation market in the EU.

The prudential treatment of securitisation is set out in Regulation (EU) No 575/2013 (Capital Requirements Regulation - CRR). It specifies requirements for the prudential treatment of securitisation exposures by banks, acting as originators, investors and sponsors in securitisation. The main features of the prudential treatment are defined in the Part Three, Title II, Chapter 5 of the CRR, which sets out the regulatory capital calculation approaches, a specific risk-sensitive treatment for STS securitisations and additional criteria for the STS securitisations to be eligible for that treatment, the framework for the significant risk transfer (SRT), specific treatment for securitisation of non-performing exposures and other specific requirements. Besides, the prudential treatment under the CRR, the liquidity risk treatment of the securitisation exposures under the LCR Delegated Regulation (Delegated Regulation (EU) 2015/61 on liquidity coverage requirements for credit institutions) is also relevant for banks.

In their advice from December 2022, the European Supervisory Authorities (ESAs) concluded that the prudential and the liquidity treatment of securitisation is not the key obstacle to the revival of the securitisation market, and that the subdued status of the securitisation market is rather the result of a series of factors, including the interplay between low supply and low demand. At the same time, the ESAs also recognised in their report that it is possible to increase the risk sensitivity of the prudential framework. Many stakeholders consider the prudential and liquidity treatment as having a decisive impact on the attractiveness of the securitisation instrument for banks and in addition point out in particular to a relative disadvantage of the prudential treatment for some types of securitisations in comparison with other financial instruments.

Question 9.1. What concrete prudential provisions in the CRR have the strongest influence on the banks' issuance of and demand for those types of traditional, i.e. true sale, securitisation which involve the senior tranche being sold to external investors and not retained by the originator?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.2. Please explain how possible changes in the prudential treatment would change the volume of the securitisation that you issue, or invest in (for the latter, split the rationale and volumes for different tranches):

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.3. Based on your answer to 9.1, please explain how possible changes in the prudential treatment could support the supply for and demand of SME and corporate exposure-based securitisation transactions:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.4. Does the prudential treatment of securitisation in the CRR appropriately reflect the different roles a bank can play in the securitisation chain, concretely the roles of originator (limb 'a' and limb 'b' of the definition of the originator in the Securitisation Regulation[*]), servicer and investor?

*** According to Article 3(2) of the Securitisation Regulation, an originator can be an entity that has originated the exposures that are securitised (letter (a)), or has purchased a third party's exposures on its own account and then securitises them (letter (b))**

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.5. If you answered no to question 9.4., please explain and provide suggestions for targeted amendments to more appropriately reflect the different roles of banks as originator, investor, and servicer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.6. Have you identified any areas of technical inconsistencies or ambiguities in the prudential treatment of securitisation in the CRR (other than the 'quick fixes' identified by the ESAs in the report JC/2022/66) that could benefit from further clarification?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.7. If you answered yes to question 9.6., please explain and provide suggestions for possible clarifications:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.8. Are there national legislations or supervisory practices which in your view unduly restrict banks in their potential role as investor, originator, servicer or sponsor of securitisation transactions?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.9. If you answered yes to question 9.8., please explain and provide examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.10. How do banks use the capital and funding released through securitisation?

Please explain your answer and if possible, quantify how much of the released capital and funding is used for further lending to the EU economy.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Risk weight floors

The risk weight floors, the p-factor and the requirement of risk weighting at 1250% for the securitisation positions up to KIRB/KSA are key measures, ensuring the non-neutrality of the securitisation capital framework.

The main objective of non-neutrality is to protect against certain structural risks, including agency and model risks, that are more prevalent for securitisations than for other financial assets and give rise to some degree of uncertainty in the calculation of capital requirements for securitisations, even after all appropriate risk drivers have been taken into account. To capture those risks adequately, the CRR sets out a 15% risk-weight floor for non-STS securitisation positions and a 10% risk-weight floor for STS securitisation positions (positions in resecuritisations – generally not admitted under the EU securitisation framework – when allowed by supervisors, are subject to a more conservative 100% risk-weight floor), irrespective of the approach for calculation of capital requirements and the role of the bank in the securitisation (originator or investor with respect to the securitisation position).

ESAs contend that originators, unlike the investors, are subject to reduced model and agency risk in relation to their own originated securitisation. The ESAs found that the current risk-weight floors on retained tranches are unjustifiably high and operate to dissuade banks from originating a larger volume of SRT trades. Accordingly, the ESAs recommend lowering the risk weight floors for originators being the original lenders[*] (in STS deals, under SEC-IRBA, from 10% to 7%, and under non-STS for all approaches, from 15% to 12%), subject to safeguards. These safeguards would seek to ensure an adequate reduction in the credit risk of the underlying exposures retained by the originator and prevent undercapitalisation of the underlying risk of the respective securitisation positions retained by the originator (criteria in relation to the thickness of the sold non-senior tranches, amortisation structure, granularity and, for synthetic securitisations only, counterparty credit risk).

While the safeguards aim to ensure the resilience of the transactions, they have been conceived for future issuances, rather than for existing trades (indeed only a minority of the existing transactions would pass the criteria). The criterion on the thickness of the non-senior tranche has been perceived by various stakeholders as particularly conservative and prescriptive.

* For instance, only originators involved in the origination of the underlying exposures as referred to in point (3)(a) of Article 2 of the Securitisation Regulation. This would exclude any originator that “purchases a third party’s exposures on its own account and then securitises them”, according to point (b) of the same Article, to avoid that credit institutions would expand beyond core businesses just for the purpose of securitising the respective exposures in order to benefit from the reduction in the risk weight floor.

Question 9.11. Do you agree that securitisation entails a higher structural model risk compared to other financial assets (loans, leases, mortgages) due to, for example, the inherent tranching?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.11:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.12. Do you consider that scope and the size of the reduction of the risk weight floors, as proposed by the ESAs, is proportionate and adequate to reflect the limited model and agency risks of originators and improve the risk sensitivity in the securitisation framework, taking into account the capital requirements for other financial instruments?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 9.13. If you answered no to question 9.12., should the scope and size of the reduction of the risk weight floors be amended?

For example, should it be extended to investors in a targeted manner (such as, for example, to investors in STS securitisations and under SEC-IRBA approaches only, to prevent discrepancies with the prudential treatment of covered bonds under the SA approach)?

Or, on the contrary, should the scope be reduced to only include originators who are servicing the underlying exposures?

Please justify your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.14. Do you consider that the ESAs' proposed accompanying safeguard, with respect to the thickness of the sold non-senior tranches, is proportionate and adequate in terms of ensuring the resilience of the transactions?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.15. If you answered no to question 9.14., please provide and explain alternative proposals to ensure a sufficient thickness of the sold non-senior tranches to justify a possible reduction of the risk-weight floor in an efficient and prudent manner.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.16. Do you consider that the other three safeguards as proposed by the ESAs (amortisation structure, granularity and, for synthetic securitisations only, counterparty credit risk) are proportionate and adequate in terms of ensuring the resilience of the transactions?

- Yes
- No

Don’t know / no opinion / not applicable

Question 9.17. If you answered no to question 9.16., please provide and explain alternative proposals for safeguards that would effectively ensure the resilience of the transaction and would justify the reduction of risk-weight floors.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.18. If you answered no to question 9.16., as an alternative, instead of these three safeguards, taking into account the need to ensure simplicity, would it be preferable to limit the reduction of the risk weight floor to STS transactions only? Please explain.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.19. What would be the expected impact of a possible reduction of the risk weight floor on EU securitisation activity?

Please explain any possible impact on different types of securitisations (traditional securitisation, synthetic securitisation), from both supply and demand sides.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The (p) factor

The (p) factor is the main parameter of non-neutrality in the securitisation framework. Besides incorporating the capital non-neutrality, it also serves as a smoothing parameter to mitigate the so-called 'cliff effects' that arise when small changes in input parameters under the current risk weight functions result in comparably large changes in risk weights (the lower the (p) factor, the higher the cliff effect). The (p) factor aims to capture the structural risks of securitisation[*] in particular agency and model risks, and to some extent correlation (risk of correlated defaults, particularly present in non-granular pools). A p-factor of "1" means that for the whole securitisation structure (i.e., all the tranches) there is 100% more capital required (doubling the capital required) compared to the requirement that applies to the underlying portfolio of assets.

In their 2022 advice, the ESAs did not support the reduction of the (p) factor. In particular, they considered that lowering the (p) factor, without making other changes to the risk-weight function underpinning the SEC-IRBA and the SEC-SA formulae, might increase the risk of cliff effects and of undercapitalisation of the mezzanine (non-senior) tranches. Overall, the reduction of the (p) factor seems to have the most significant impact on the capital treatment of the mezzanine tranches, where more bank investments may not be desirable, and a less significant impact on the capital treatment of senior tranches, where the risk weight floor has a more significant impact.

The issue is whether the (p) factor could potentially be reduced, in a targeted manner and on a limited basis only (equivalent to, for example, a [x%] reduction, compared to the existing treatment), to improve the coherence between the actual risks and the capital treatment, while avoiding the unwarranted risk of increased cliff effects and undercapitalisation of the mezzanine tranches in particular. Possible targeted reductions could focus on originators, STS transactions, or senior tranches.

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* Under SEC-SA, there is a fixed (p) factor of 1 (for non-STS securitisations) and 0.5 (for STS securitisations). Under the SEC-IRBA, banks may calculate their own supervisory parameter based on four risk factors, i.e., the framework (correlation effect), the granularity of the securitised pool for wholesale, the capital charge for the underlying exposures, the average loss given default of the securitised pool, plus one non-risk parameter (tranche maturity MT, capped at 5 years), which is subject to a floor of 0.30. There is no (p) factor in SEC-ERBA where the capital requirements are set out in the look-up tables, to ensure consistency compared with the capital requirements with SEC-SA.

Question 9.20. Do you consider that the current levels of the (p) factor adequately address structural risks embedded in securitisation, such as model risk, agency risk and to some extent correlation, as well as the cliff effects?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.21. If you answered no to question 9.20., please provide the justification, and provide quantitative and qualitative data, for whether and how the (p) factor overestimates the risks and inappropriately mitigates the cliff-effects, for specific types of securitisation exposures.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.22. Do you consider that potential targeted and limited reductions to the (p) factor may increase securitisation issuance and investment in the EU, while at the same time keeping the capitalisation of the securitisation tranches at a sufficiently prudent level?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.22:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.23. If you answered yes to question 9.22., what criteria should be considered when considering such targeted and limited reductions?

You may select more than one option.

Please select as many answers as you like

- Exposures held by originators versus investors
- Exposures in STS versus non-STS securitisations (beyond the differentiation already provided for in Article 260 and in Article 262 CRR)
- Exposures in senior versus non-senior tranches
- Exposures calculated under different capital approaches
- Other criteria
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.24. As regards your answer to 9.22., please provide quantitative and qualitative data on the likely impact of possible targeted and limited reductions to the (p) factor as investigated above, in particular how such targeted reductions would avoid cliff effects and undercapitalisation of mezzanine tranches and, how they would not create incentives for banks to invest in mezzanine tranches.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.25. As regards your answer to 9.22, please provide the data on how they would have a positive impact on the issuance of securitisation, the investments in securitisation, and the placement of securitisation issuances with external investors, for different types of securitisations (traditional securitisation, synthetic securitisation).

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.26. Do you consider that the current approach to non-neutrality of capital requirements as one of core elements of the securitisation prudential framework, leads to undue overcapitalisation (or undercapitalisation) of the securitisation exposures, in particular when compared to the realised losses and distribution of the losses across the capital structure (different tranches of securitisation) over a full economic cycle?

Yes

No

Don’t know / no opinion / not applicable

Please explain your answer to question 9.26:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.27. If you answered yes to question 9.26, please justify your reasoning and provide quantitative and qualitative data to show the extent of the undue non-neutrality (overcapitalisation or undercapitalisation), in particular when compared to the realised losses and distribution of the losses across the capital structure, taking into consideration the need to cover a full economic cycle.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.28. Based on your answer to 9.26., do you consider that alternative designs of the risk weight functions, such as an inverted S-curve, or introducing a scaling parameter to scale the KA[*] downwards, within the current halfpipe design, as investigated in the Section 3.3.2 of the EBA Report , have potential to achieve more proportionate levels of capital non-neutrality and capital distribution across tranches, address the potential cliff effects more appropriately and achieve prudential objectives?

* KA factor as specified in paragraph 2 of Article 261 of the CRR, for the purpose of calculation of the capital charge under the standardised approach (SEC-SA).

Yes

No

Don’t know / no opinion / not applicable

Please explain your answer to question 9.28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.29. If you answered yes to question 9.28, please specify the impact of such alternative design compared to the existing risk weight functions and explain an appropriate calibration of such alternative designs and possible safeguards for the measures to achieve prudential objectives.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Significant risk transfer (SRT)

The concept of significant risk transfer (‘SRT’), i.e. transfer of a sufficient quantum of credit risk from the bank’s balance sheet to a third party, is a crucial regulatory and supervisory concept in the EU securitisation framework. It is a precondition for a bank originator to benefit from capital relief from securitisation, and therefore one of the critical considerations for a bank originator when structuring a securitisation transaction. Achieving SRT requires complying with various quantitative and qualitative tests that are defined in high level terms in the CRR. The current framework provides for two ‘mechanical’ tests (the ‘mezzanine’ and ‘first loss’ tests), which the competent authority supplements with a case-by-case assessment, as to whether the originator has transferred an amount of credit risk which is ‘commensurate’ to the capital relief. The ‘permission-based’ approach is an alternative to the existing mechanical tests and may ensure that a commensurate transfer of risks is achieved. The originator has an interest in receiving the assessment of compliance with those tests by the Competent Authorities for reasons of legal certainty, and the Competent Authorities’ decision on SRT is consequential for the economic viability and ultimate structure of a securitisation executed with a capital relief intent.

In its report published in 2020, the EBA identified a series of structural limitations of the existing SRT regulatory framework in the CRR and it proposed a set of recommendations to enhance the efficiency and robustness of the SRT framework and strengthen the consistency in the SRT outcomes (in particular in three areas: in relation to the SRT tests, the process applied by the competent authorities to assess the SRT, and the structural features of securitisation transactions which may affect the effectiveness of the risk transfer).

As one of the recommendations, the EBA recommends replacing the mechanical tests with a single comprehensive test based on the principle-based approach (PBA) test which aims to make the SRT framework less complex and more flexible. Under the PBA test, the SRT can be achieved in case at least 50% of the unexpected losses (UL) are transferred to third parties. The EBA also provides recommendations with respect to the allocation of the lifetime expected losses (LTEL) and unexpected losses to the tranches for the purposes of the PBA test. Those recommendations have received only limited support from stakeholders, given the alleged conservativeness of the proposals as regards the suggested back-loading of UL in a stressed scenario.

Recently, improvements have been achieved in both the convergence of assessment and the process of the SRT assessments. The recent market data confirm a considerable increase of SRT securitisation transactions. Generally, the SRT market continues to grow as these transactions allow banks, that operate in an environment with capital pressure, to benefit from a capital relief. Synthetic transactions continue to dominate the SRT segment, with a share of more than 85% in the overall notional.

Question 9.30. Do you agree with the conditions to be met for SRT tests as framed in the CRR (i.e. the mechanical tests - first loss and mezzanine tests, and the supervisory competence to assess the commensurateness of the risk transfer, as set out in Articles 244 and 245 of the CRR)?

Are the SRT conditions effective in ensuring a robustness and consistency of the 'significant risk transfer' from an economic perspective?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.30:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.31. If you answered no to question 9.30, do you consider that the robustness and efficiency of the SRT framework could be enhanced by replacing the current mechanical tests with the PBA test?

The PBA test could be based on the recommendations in the EBA Report, while the recommendations on the allocation of losses to the tranches could be reconsidered.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.32. Do you consider the process of the SRT supervisory assessments to be efficient and adequate?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.32:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.33. If you answered no to question 9.32., please provide justifications and suggestions how the SRT assessment process could be improved further.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.34. Should the process of the SRT supervisory assessments be further specified at the EU level (e.g., in Guidelines, based on a clear mandate in Level 1), or should it be rather left entirely to the competent authorities to set out their own process?

- Yes
- No
-

Don’t know / no opinion / not applicable

Please explain your answer to question 9.34:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.35. If you answered yes to question 9.34., please provide suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.36. If you are a supervisor, how would a change in the SRT regulatory framework (in particular on the SRT tests and the process of SRT supervisory assessments) impact your supervisory costs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Transitional measure in Article 465(13) of the CRR

The transitional measure in Article 465(13) of the CRR as amended by Regulation (EU) 2024/1623 aims to mitigate possible unintended consequences of the introduction of the output floor on the calculation of capital requirements for securitisation exposures. It introduces a targeted relief for exposures risk-weighted under the SEC-IRBA and internal assessment approach (IAA) by halving the (p) factor in the calculation of the output floor for those IRB securitisation positions (i.e. the (p) factor is halved to 0.25 for the STS securitisation positions eligible for the preferential capital treatment under the CRR, and to 0.5 for all other securitisation positions). The introduction of this targeted relief acknowledges the fact that the (p) factor levels embedded in the securitisation standardised approach formula

(SEC-SA) when used in the context of the output floor would produce unduly punitive results for securitisations structured based on the SEC-IRBA by banks using internal models. The transitional measure will be in application from 1 January 2025 until 31 December 2032.

Question 9.37. Do you consider that the transitional measure will remain necessary and should be maintained, in case of introduction of other changes to the prudential framework?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 9.38. If you answered yes to question 9.37., please explain why and whether there are any alternative measures that could be more appropriate to achieve the original objective of the transitional measure.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.39. If you answered yes to question 9.37, do you consider that a potential targeted and limited reduction of the p-factor might affect the effectiveness of the transitional measure under the output floor?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Liquidity risk treatment in the LCR Delegated Regulation

The liquidity coverage ratio (LCR), transposed in the LCR Delegated Regulation (Delegated Regulation (EU) 2015/61 on liquidity coverage requirements for credit institutions), seeks to ensure that banks maintain a liquidity buffer to meet net outflows under severe idiosyncratic and market wide stress conditions. The LCR Delegated Regulation allows senior tranches of STS traditional securitisations to be included as level 2B high quality liquid assets (HQLA), capped at 15% of the liquidity buffer. Non-senior tranches of STS traditional securitisation, non-STS traditional securitisations, synthetic securitisation and resecuritisations are ineligible for inclusion in the HQLA.

In terms of eligible asset classes, in addition to securitisations with underlying mortgages (RMBS) in line with the Basel Standards, the EU transposition allows inclusion of securitisations with underlying auto-loans, consumer-loans and SME-loans, subject to different haircuts, credit quality steps (CQSs) and other requirements (in addition, as clarified by Q&A 2019_4786, securitisations, including NPL securitisations, that are explicitly guaranteed by the central government of a Member State can qualify as level 1 liquid assets in the LCR in accordance with Article 10(1)(c)(i) of the LCR Delegated Regulation). This expansion of eligible securities in the EU was motivated by the expectation that it would increase diversification of banks' liquid assets.

Some consider that the liquidity treatment of securitisations in the LCR Delegated Regulation has a major impact on banks' investments in STS securitisations and issuance thereof and have advocated for the relaxation of eligibility conditions for securitisations in the LCR.

Currently, banks make only negligible use of the capacity of their liquidity buffers to invest in securitisations as level 2B HQLA, with the share of securitisations in banks' liquid assets ranging from 0.2% to 0.7%. This may suggest that most banks do not consider securitisations to be effectively liquid and marketable during stress. It also shows a minimal impact of securitisations on the liquid assets' diversification in the LCR buffers – the diversification being one of the primary motivations for the expansion of eligible securitisations in the EU beyond Basel.

On a more technical aspect, several stakeholders propose to introduce an amendment to the LCR Delegated Regulation, with the aim to reflect the increased granularity of CQSs under the amended CRR and the related amendment to the Implementing Regulation on the mapping of credit assessments for securitisation positions by external credit assessment institutions' (ECAIs) (Implementing Regulation (EU) 2016/1801 as per Commission Implementing Regulation (EU) 2022/2365). They recommend modifying the reference from CQS 1, to CQS 1 to 4, in the Article 13(2) of the LCR Delegated Regulation regarding the long-term rating. In the absence of the updated reference, the STS securitisation tranches with ratings between AA+ and Aa- would unintentionally not be eligible as Level 2B securitisations and the eligibility would be limited to tranches with AAA rating.

Question 9.40. Does the liquidity risk treatment of the securitisation exposures under the LCR Delegated Regulation have a significant impact on banks' securitisation issuance and investment activities and on the liquidity of the securitisation market in the EU?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.41. As regard to your answer to 9.40., please explain the impact on banks' issuance of securitisation, investment in securitisation, and relative importance of the liquidity treatment under the LCR in the activity of the primary and secondary securitisation markets.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.42. Do you consider that the existing liquidity risk treatment of securitisation, in particular in terms of credit quality steps (CQSs) and haircuts applied to securitisations eligible for Level 2B HQLA, are adequately reflecting the liquidity and stress performance of securitisations, across the full economic cycle, including in crisis conditions, and in comparison, with the treatment of other comparable financial instruments?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 9.43. If you answered no to question 9.42., please justify your reasoning, providing quantitative and qualitative data on the impact, and provide suggestions for what you would consider as appropriate and justified treatment in terms of CQSs, haircuts and other relevant requirements, without endangering financial stability.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.44. With a change in the CQSs, haircuts and other relevant eligibility conditions to the Level 2B liquidity buffer, by how much would the volume of securitisations that you invest in, change?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.45. Have the senior tranches of the STS traditional securitisations reached a sufficient level of market liquidity and stress resilience based on historical data covering a full economic cycle, including crisis conditions, and are there any additional solid arguments that could justify their potential upgrade from the Level 2B to Level 2A HQLA?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 9.45:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.46. If you answered yes to question 9.45., please provide arguments and data, that could justify the potential upgrade from Level 2B to Level 2A HQLA.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.47. Considering your answer to 9.46, with an upgrade of securitisations from Level 2B to Level 2A HQLA, by how much would the volume of securitisations that you invest in, change?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9.48. Are there any impediments in the current liquidity framework that prevent or discourage banks from making a better use of their liquidity buffer capacity and from increasing their investments in securitisation exposures?

- Yes
- No
- Don't know / no opinion / not applicable

Question 9.49. If you answered yes to question 9.48, please specify what are the impediments and provide suggestions for targeted amendments to make the liquidity treatment more proportionate, without endangering financial stability.

Provide estimates of the potential additional volumes of securitisations that could be included in banks' liquidity buffers.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

10. Prudential treatment of securitisation for insurers

Insurance companies allocate 0.33% of their investment assets to securitisation positions (see Joint Committee advice on the review of the securitisation prudential framework (Insurance) - JC-2022/67). The Commission would like to know whether Solvency II standard formula capital requirements as currently applicable, also taking into account the forthcoming amendments to the Solvency II Directive that were approved by co-legislators, or other factors cause limited demand by insurance companies.

Question 10.1. Is there an interest from (re)insurance undertakings to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 10.2. If you answered yes to question 10.1., please specify the segments of securitisations in which (re)insurers would be willing to invest more (in terms of seniority, true sale or synthetic nature, type of underlying assets, etc.) and describe the potential for increase in the share of securitisation investments in (re)insurers’ balance sheet.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.3. Is there anything which in your view prevents an increase in investments in securitisation by (re)insurance undertakings?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.3. If you mention prudential rules as part of your answer, please provide an estimate of the impact on the level of investments in securitisation, of the reduction of capital requirements for securitisation investments by a given percentage, e.g. 5% or 10%:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.4. Is Solvency II providing disincentives to investments in securitisation for insurers which use an internal model?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.4, being specific in your reply:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.5. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the senior tranches of STS securitisations proportionate and commensurate with their risk?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.5, being specific in your reply, and, where relevant, provide a comparison, including, where appropriate, with internal models and their relative impact on the share of securitisation investments.

If you consider calibrations inappropriate, please indicate what you would consider as ‘appropriate’ calibrations, as well as any data/evidence of historical spread behaviours that would justify your proposal:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.6. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the non-senior tranches of STS securitisations proportionate and commensurate with their risk?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.6, being specific in your reply, and, here relevant, provide a comparison, including, where appropriate, internal models and their relative impact on the share of securitisation investments.

If you consider calibrations inappropriate, please indicate what you would consider as ‘appropriate’ calibrations, as well as any data/evidence of historical spread behaviours that would justify your proposal:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.7. Is it desirable that Solvency II standard formula capital requirements for spread risk differentiate between mezzanine and junior tranches of STS securitisations?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.8. If you answered yes to question 10.7., please provide suggestions for calibrations of capital requirements for such mezzanine and junior tranches, including the data/evidence of historical spread behaviors backing such suggestions.

Please indicate how you would define the mezzanine tranche as well as the assumption (e.g. of thickness of the tranche) underlying your proposed calibration.

Please also indicate whether and why such introduction of a mezzanine calibration would be needed in Solvency II, even if no dedicated treatment for mezzanine tranches is introduced in EU banking regulation (CRR).

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.9. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for non-STS securitisations proportionate and commensurate with their risk, taking into account?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.9, being specific in your reply, and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.10. Is there a specific sub-segment of non-STS securitisation for which evidence would justify lower capital requirements than what is currently applicable?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 10.11. If you answered yes to question 10.10., please specify the sub-segment of non-STS securitisations that you have in mind as well as its related capital requirement, including any evidence/data of historical spreads supporting your proposal:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.12. Is it desirable that Solvency II standard formula capital requirements for spread risk differentiate between senior and non-senior tranches of non-STS securitisations?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 10.12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.13. If you answered yes to question 10.12., please provide suggestions for calibrations of capital requirements for such senior and non-senior tranches, including the data/evidence backing such suggestions. Please also indicate whether you target a specific segment of non-STS securitisation.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

11. Prudential framework for institutions for occupational retirement provision (IORPs) and other pension funds

This section aims to gather information on both IORPs and 'non-IORPs' (i.e. nationally regulated pension funds that are not regulated by the IORP II Directive). Information on non-IORPs is particularly encouraged for Member States with limited or no IORPs activity. When providing information also on non-IORPs, please clearly indicate whether the information provided refers to IORPs, non-IORPs, or both.

Question 11.1. For the purpose of this section, please indicate whether you are an IORP, a non-IORP or another type of stakeholder.

- IORP
- Nationally regulated pension fund not regulated by IORP II
- Other
- Don't know / no opinion / not applicable

Please elaborate on your answer to question 11.1 in case you are not an IORP:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11.2. Is there an interest from IORPs and/or non-IORPs to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)?

- Yes
- No
- Don’t know / no opinion / not applicable

Question 11.3. Please clarify whether your answer to question 11.2. concerns your own situation, or whether it is an assessment of a given national market (in which you operate for instance).

If you answered yes to question 11.2., please specify the segments of securitisations in which IORPs and/or non-IORPs would be willing to invest more (in terms of seniority, type of underlying assets, etc.) and describe the potential for increase in the share of securitisation investments in their balance sheet.

In addition, if your reply concerns or encompasses non-IORPs, please indicate:

1. **the number of non-IORP in your jurisdiction**
2. **the amount of assets under management**
3. **and the type of pension business concerned, for which investment in securitisation would be interesting**

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11.4. Does the IORP II Directive contain provisions which in your view restrict IORPs' ability to invest in securitisation?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.4.:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11.5. Are there national legislations or supervisory practices which in your view unduly restrict IORPs' and non-IORPs' ability to invest in securitisation?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.5., as well as whether it applies to IORPs, non-IORPs, or both. Please be specific in particular where you refer to non-IORPs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11.6. Are there wider structural barriers preventing IORPs and non-IORPs from participating in this market?

- Yes

- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 11.6., as well as whether it applies to IORPs, non-IORPs, or both.

Please be specific in particular where you refer to non-IORPs:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11.7. If you answered yes to question 11.6., please explain how these barriers should be tackled.

Please explain your answer, as well as whether it applies to IORPs, non-IORPs, or both.

Please be specific in particular where you refer to non-IORPs.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

12. Additional questions

This section includes some general questions on the functioning of the securitisation market and on wider aspects that may affect the securitisation activity and various segments of the securitisation market in the EU.

Question 12.1. What segments of the securitisation market have the strongest potential to contribute to the CMU objectives, and that should be the focus of any potential regulatory review?

You may select more than one option.

Please select as many answers as you like

- [ ] Traditional placed securitisation
- [x] Synthetic securitisation
- [x] SRT securitisation
- [ ] ABCP securitisation
- [x] STS securitisation
- [ ] Non-STS securitisation
- [ ] Securitisation of SME and corporate exposures
- [ ] Securitisation of mortgages
- [ ] Securitisation of other asset classes
- [ ] Other

Please explain your answer to question 12.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• We believe that expanding the definition of STS securitisations to include unfunded synthetic securitisations, particularly from regulated and diversified insurers, will help promote the CMU objectives, including encouraging more long-term financing from institutional investors. Reinsurers have demonstrated consistent market participation through economic cycles, including through the COVID-19 downturn, and unfunded synthetic securitisations provide for a simpler structure and faster execution for reinsurers to participate in STS transactions, which expands their investor base and results in lower transaction costs.

• Additionally, we recommend that the risk weight floor for retained senior tranches in synthetic securitisations be decreased, as the fixed nature of the floor is not commensurate with the risks of the senior exposures.

Question 12.2. What are the principal reasons for the slow growth of the placed traditional securitisation (where the senior tranche is not retained, but placed with the market)?

Why do banks choose not to issue traditional securitisation for both funding and capital relief?

You may select more than one option.

Please select as many answers as you like

- [ ] Interest rate environment
- [ ]

- [ ] Low returns
- [ ] Operational costs
- [ ] High capital charges
- [ ] Difficulty in placing senior tranches
- [ ] Significant Risk Transfer process

Preference for alternative instruments for funding

- [ ] Prefer to retain to keep the client relationships
- [ ] Prefer to retain to keep the revenue from the underlying assets
- [ ] Prefer to retain to access central bank liquidity
- [ ] Other

Please explain your answer to question 12.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.3. Please specify which regulatory and non-regulatory measures have the strongest potential to stimulate the issuance of placed traditional securitisation.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.4. What are the main obstacles for cross-border securitisations (i. e. securitisations where the underlying exposures, or the entities involved in the securitisation, come from various EU Member States)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.5. What measures could be taken to stimulate cross-border securitisation in the EU?

Please substantiate your answer for traditional and synthetic securitisation respectively.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.6. Securitisation activity is heavily concentrated in a few Member States – primarily Italy, France, Germany, Netherlands and Spain. What are the main obstacles to increasing securitisation activity in other Member States?

What measures could make securitisation more attractive in those Member States?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.7. Does the EU securitisation framework impact the international competitiveness of EU issuers, sponsors and investors?

- (•) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain your answer to question 12.7, and where possible elaborate on the difference in regulatory costs stemming from the prudential, due diligence and transparency requirements in non-EU jurisdictions, in comparison to the EU securitisation framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Please refer to our responses in Sections 4 and 5 above. The application of the E.U. due diligence and transparency requirements to third country securitisations under Article 5(1)(e), particularly those originating from within the United States, are particularly disadvantageous to E.U. investors and banks, including in ordinary lending transactions such as asset-backed lending facilities, which are often excluded from those deals as U.S. sponsors and originators elect to forego their involvement as opposed to complying with onerous E.U. reporting forms and templates. As many of these E.U. investors and banks provide other services to clients globally, the inability to participate or even be invited to deals impacts those relationships and hurts their competitiveness more broadly. We have observed, for example, that securitisations originated from outside of the E.U. will often include offshore investors from jurisdictions such as the United Kingdom, Japan and United States, but E.U. investors will be conspicuously absent for the reasons cited above.
- Excluding such third country securitisations from Articles 5 and 7 of the securitisation framework would significantly broaden access to non-E.U. transactions for E.U. investors and banks.

Question 12.8. How could securitisation for green transition financing be further improved?

What initiative could be taken in the industry or in the regulatory field?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Green transition financing is one area securitisation should be well-placed to support. There are a number of challenges to this, which others will be better placed to comment on than we will. One area where we can perhaps offer a helpful perspective is designing a general securitisation regulatory framework that at least does not make green transition financing more difficult. The SECR rules around securitisation – and especially the disclosure rules – are designed around the idea that only certain predetermined asset classes are likely to be securitised. Any asset class not catered for in the existing disclosure templates is forced to comply with the "esoteric" template in Annex IX, which is ill-suited to many new assets the market might otherwise be more inclined to finance using securitisation.
- As noted above, the disclosure rules for privately placed securitisations in the United States do not impose prescriptive reporting requirements, and the level of disclosure is often commercially negotiated between the issuer and the relevant investor(s). For securitisations that are subject to Regulation AB, issuers and sponsors are required to disclose material information on asset classes that are not currently subject to loan-level reporting under Schedule AL (e.g., solar leases), but no templates are prescribed by law. This allows for more flexibility in the use of securitisation as a financing tool, leaving room for market innovation in the way it's used, including the financing of new asset classes. If the E.U. wants to encourage the use of securitisation to fund the green transition, it could do worse than replacing prescriptive templates with principles-based disclosure obligations when it comes to new asset classes.

Question 12.9. Are there any other relevant issues (outside of those addressed in the specific sections of the consultation paper above) that affect securitisation issuance and investments that you consider should be addressed?

- Yes
- No
- Don't know / no opinion / not applicable

Question 12.10. If you answered yes to question 12.9., please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on this consultation (https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024_en)

Consultation document (https://finance.ec.europa.eu/document/download/fb451cdc-4e5b-4d74-9411-cb8bd0789090_en?filename=2024-eu-securitisation-framework-consultation-document_en.pdf)

More on securitisation (https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-market/securities-markets/securitisation_en)

Specific privacy statement (https://finance.ec.europa.eu/document/download/4d7578d8-d689-4803-b438-730acfe1d08c_en?filename=2024-eu-securitisation-framework-specific-privacy-statement_en.pdf)

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