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Date: 04/12/2024 10:56:30

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.

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[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

* 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 (selected)
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

*First name

Peter

*Surname

Grijsen

*Email (this won't be published)

peter.grijsen@tsi-gmbh.de

*Organisation name

255 character(s) maximum

True Sale International GmbH

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees) (selected)
- 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.

168406021073-77

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

- 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)

- [x] 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)
- [ ] Other

* 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 foccussing on the securitisation markets in Germany and Europe.

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)

TSI representing over 70 market participiants active in the EU securisation markets.

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. **For 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		X				
2. Improving financing of the EU economy by creating a more balanced and stable funding structure of the EU economy				X		
3. Weakening the link between banks' deleveraging needs and credit tightening		X				
4. Reducing investor stigma towards EU securitisations		X				
5. Removing regulatory disadvantages for simple and transparent securitisation products					X	
6. Reducing/eliminating unduly high operational costs for issuers and investors					X	
7. Differentiating simple, transparent and standardised (STS) securitisation products from more opaque and complex ones		X				
7.1 Increasing the price difference between STS vs non-STS products		X				

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

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?

- [x] 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.

True Sale International GmbH (TSI) and the German Banking Industry Committee (GBIC) jointly comment on the EU COM's targeted consultation on the functioning of the EU securitisation framework. The comments of TSI and GBIC correspond to each other.

The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

True Sale International GmbH (TSI) is dedicated to support the development of the securitisation market in Germany and Europe, its regulation and the further development of its legal framework. Through training courses and specialist conferences, we contribute to the qualification of the participants and to an open exchange between market participants, supervisory authorities and science.

Homogeneity requirements can be hard to meet for SME exposures. For larger Mid Corporate exposures challenges can exist to meet the homogeneity criteria, please see our response to Q7.13. It would be helpful if in LCR there is no restriction on the WA Life of the tranche of <5Y. Removing this criterium would also allow to fund longer term projects. Finally, thin cap rulings in certain countries could indirectly impact the securitised SME exposures. This needs to be safeguarded that clients can never be impacted by being included in securitisation.

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.

For small and medium-sized enterprises, securitisations create a bridge to the capital market that would otherwise not have been available to them due to their comparatively low financing requirements. Thus, securitisations are a means of strengthening lending to SMEs.

On the one hand, this can be done indirectly by banks securitizing credit portfolios with SME debtors and risk sharing with third party, non-bank investors by means of securitisation. If a significant part of the credit risk is transferred to investors through securitisation, the banks can lower their capital requirements accordingly for the securitised pools; this gives them scope for granting further loans. On the other hand, securitisations can also be used indirectly to finance SME companies if banks or special purpose entities supported by banks (so-called conduits) purchase receivables from companies and provide financing. From such Trade receivables transactions, usually used by larger corporates with revenues > EUR Mio. 500, also SMEs as suppliers can benefit as they may receive more favourable terms of payment.   This is also the case for suppliers from automotive or equipment lease companies in case they securitise their loan/lease receivables. SMEs can be provided with financing directly be reducing the regulatory burdens and attached costs, as a consequence smaller transactions sizes can be offered and making trade receivables securitisation more attractive to SMEs.

Further, lowering the regulatory market entry barriers would allow smaller banks to enter the securitisation market and in turn this would lead to more capacity of securitising for SMEs or to increase the capacity for SME loans on a macro level, see also our responses to Q 9.2 & 9.3.

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.

This rule already applies. This article would not lead to any clarification.

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
- [x] 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
- (x) 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.

General comment

A comprehensive and uniform data collection would be necessary to obtain meaningful and informative

results. This is very time-consuming, and the 8-weeks consultation period is too short for this exercise. Another challenge is that a data collection is only related to already existing investors. However, the legal changes are also intended to achieve an expansion of the issuer and the investor base. The advantage of the legal amendments, in this respect, cannot be measured in terms of expenses only but also has to be considered as having an important impact for the development of a liquid securitisation market.
We obtained feedback from many parties involved in the securitisation process to answer this consultation. According to expert judgement, the current legal requirements for due diligence follow a 'one size fits all' approach. As a result, this leads to excessive requirements that are too detailed, undifferentiated and inflexible. They also duplicate existing legal requirements.

Data will be provided retrospectively.

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.

Data will be provided retrospectively.

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.

It is crucial that investors shall know and shall be in the position to recognise and evaluate the risks transferred to them by the securitised instrument. That’s why investors should be obliged to perform a due diligence and to monitor the invested positions on an ongoing basis.

But we consider the requirements to be overly detailed, lead to administrative costs that exceed even those of products with significantly higher risk profiles and therefore should be waived. Therefore, we propose a principle-based approach. The core of the provision would remain in place, so that the due diligence assessment includes both the underlying exposures and the specific, legal securitisation structure. Formulating the provision to align with a principle makes it possible to perform a due diligence assessment matched to the type, risk and asset class of the securitisation. Simply fulfilling requirements that have no added value for the assessment is thus no longer necessary, and transaction costs for the investment can be reduced.

Important: Our intention is not to weaken qualitative standards of investment decisions or to allow for blind investing. The requirements should be aligned with the standards in other asset classes. Having said this, it is important to compare related types of assets – e.g. AAA senior STS securitisations with other AAA-rated structured finance or collateral backed instruments or junior ranking non-investment grade rated more complex types of securitisations with high yield bonds or alternative assets. Depending on the relevant sources of risk, structure, asset type, seniority of tranche and other parameters, the content of such a due diligence will vary. Therefore, the obligation should be formulated in a qualitative way without prescribing specific aspects of the due diligence, see also questions 4.7.

The following articles of the SECR should be changed or deleted: 5(1) point c, 5(1) point d, 5(1) point e, 5(2), 5(3), 5(3) point c, 5(4) point a sentence 2, 5(4) points b and c, 5(4) point d. For further details please see our answer to 4.5.

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.

See also answer 4.4. In our view, to implement a principal-based approach for due diligence requirements, Article 5 should be revised. The very detailed one-fits-all-requirements should be deleted and replaced by principle-based wording. We propose the following amendments

• 5(1) (c) should be deleted: The originator, sponsor or original lender located in the EU is already subject to the obligation to retain risk retention pursuant to Article 6. It is not necessary to simultaneously burden investors with the obligation to monitor compliance with risk retention.

• 5(1) (d) should be changed - the reference to Article 6 should be deleted. Instead, reference could be made to “equivalent provisions”: The proposal still maintains a requirement to assess third country securitisations by requiring that risk retention be met, guaranteed by the wording “which, in any event, shall not be less than 5 percent”. The originator, sponsor or original lender located outside of the EU, however, is not subject to the requirements of the SECR. Linking to Article 6 therefore represents a significant obstacle for European

investors.
•5(1) (e) should be changed - reference to Article 7 should be replaced by more generalised wording. For example, the investor could be required to verify whether or not they possess sufficient information in order to carry out the required due diligence pursuant to Article 5(3): Verification remains necessary. However, the reference to transparency requirements pursuant to Article 7 makes it practically impossible to invest in third country securitisations. Originators, sponsors or original lenders located outside of the EU are not subject to the requirements of the SECR. European investors are therefore unable to fulfil these requirements and are thus excluded from the third country securitisation market.
• 5(2) should be changed: Investors do not need to obtain the information pursuant to 5(1) point a themselves when investing in ABCP but can delegate this to the sponsor. This should also be possible for the other criteria in 5(1). Furthermore, 5(2) should not only cover fully sponsored ABCP transaction, but also other transactions which are fully sponsored but not necessarily ABCPs are issued. From a risk perspective there is no difference weather ABCPs are used for refinancing other means.
• 5(3) should be changed - the individual assessment steps in Article 5(3) points a to c of the SECR should be deleted and replaced by principle-based wording: “Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due diligence assessment which enables it to assess the risks involved. This assessment must take the underlying exposures and the structural features of the securitisation into account”: This makes it possible to perform a due diligence assessment matched to the type, risk and asset class of the securitisation. Simply fulfilling requirements that have no added value for the assessment is thus no longer necessary, and transaction costs for the investment can be reduced.
• 5(3) (c) should be deleted: Currently the investor is required to assess the results of the external STS notification. The proposal relies more heavily on the originator and, if applicable, the STS verifier. However, it reduces duplications when verifying whether STS criteria have been met. This will result in a simplification of STS securitisations, which will increase the appeal of this product.
• 5(4) (a) sentence 2 should be deleted: We believe that a detailed list of what to include in the procedures is laborious and inexpedient. Investors are obligated to determine and indeed capable of determining procedures that consider the elements appropriate for their purposes. Given the various types of securitisation transactions and any potential new asset classes, there may be a variety of different features appropriate for evaluating the performance. As such, not all listed characteristics are relevant to every securitisation. The detailed list means that investors must check off each feature to be assessed and, to remain compliant, provide proof as to what extent the characteristic in question is relevant in each specific case.
• 5(4) (b) and (c) should be deleted in their entirety: Detailed provisions for stress tests are not necessary, as the fixed written procedures pursuant to Article 5(4) point a of the SECR already adequately specify how the risk assessment is to be carried out.
• 5(4) (d) should be changed – in a way that internal reporting to their management body or an entity designated by the management body, so that the management body or the entity designated by the management body is aware of the material risks arising: The delegation to an entity designated by the management body provides the management body greater flexibility without having any effect on the quality of the information processing.

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.

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

- (x) 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.

Yes, due diligence requirements should differ based on the underlying exposures and the structural features of the securitisation. However, this should not lead to a more detailed regulation. Rather, a principle-based approach should allow investors to apply a risk-adjusted investment decision within a reasonable period of time. The objective is to increase the number of investors and the demand from investors for securitisations.
The introduction of a principle-based approach instead of detailed specifications not tailored to suit the range of possible investments in securitisations facilitates a flexible procedure. This would reduce the costs for analyzing, investing, monitoring and trading securitisations for banks, insurances, asset managers and other investors within the EU without having a negative effect on the individual risk profile or overall financial stability.
The requirements should allow and demand from investors a risk adjusted due diligence depending on the asset type, the positioning in the capital structure but also this is a question from deal to deal. If due diligence requirements legally differ based on the different characteristics of a securitisation transaction, this would end in a further complexation of the regulation with even more detailed definitions of requirements and thereby a deepening of the already very prescriptive nature of the approach. A result would only be a further bureaucratization of the market. A “principle based approach” which demands under Article 5 a meaningful pre-investment due diligence and an ongoing monitoring along with again “principle based” requirements under Article 7 can create a more targeted, safer and more efficient framework which addresses requirements in a qualitative way. As an example under such a framework, due diligences could focus in a better way on the meaningful and relevant risk factors of transactions and thereby also provide a better transparency to auditors for example.

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.

In case of a switch to a “principle based” approach under question 4.3 this differentiation will not come at a cost. It will rather allow for an overall cost reduction for most – if not all - market participants. In case of a further fragmentation of the legal framework, the opposite will become true.

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.

We do not see any additional risks here. The requirements are legally binding (no "supervision elsewhere"). In addition, supervisors and auditors check compliance with legal requirements. This is really about reducing excessive regulation. For example: 1. The originator, sponsor or original lender located in the EU is already subject to the obligation to comply with risk retention pursuant to Article 6 of the SECR. It is not necessary to simultaneously burden all investors with the obligation to monitor compliance with risk retention. This is an unnecessary and duplicated burden, and there is no need to impose it on either investors already active on the market or potential investors. 2. STS-classification relies more heavily on the originator, and, if applicable, the STS verifier. In general, investors should be focused on an assessment proportionate to the risk profile.

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?

- (x) 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.

Decisions on the secondary market have to be made in a short period of time. The regulatory requirements must allow decisions to be made within a reasonable amount of time and in line with market practice for trading. Otherwise, the investor will not be able to become active on the market. The requirements are too complex, complexity costs money and requires additional yield compared with other potential investments. Practically seen the complexity of the necessary procedures slow the market down and thereby have other unintended side effects like reduced market/trading activity and ultimately liquidity. This should be adjusted trough a more principle-based approach, also in the documentation.

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?

- (x) 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.

It is standard market practice in ABS trading that BWIC lists (Bid-Wanted-In-Competition) are offered to a larger number of market makers (bank trading desks) at the same time. When a market maker receives a corresponding enquiry from an investor who intends to sell positions, he is asked to submit bids for 1 to approx. 20+ ABS securities at the same time without knowing whether he will win a single bid. Therefore, it has to be avoided that such secondary market investor is forced by regulation to ensure that the relevant documentation is available for all requested ABS securities, even if they do not purchase the securities in the end.

This shows the main difference between a traditional investor and a market maker: an investor can be almost 100% certain of being able to purchase the ABS securities after the documentation while a market maker is not. Hence, such time for documentation after the trade would significantly simplify the processes for liquidity providers (market makers).

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.

If due diligence requirements apply a principles-based approach, the investor will have sufficient flexibility to carry out the necessary steps for risk assessment in the event of re-securitisations. The experience gained before can reduce the effort required to fulfil the due diligence requirements.

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.

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, Banking regulation as a whole provides sufficient tools and provisions to ensure financial stability. It should be recognized that securitisations do contribute positively to financial markets stability. Transparency, performance, collateral and diversification of financing and investor base speaks for itself. The general due diligence obligation has already been introduced with CRD II/III, and European securitisations have evidenced a strong performance pre, during and post the global financial crisis.

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
- (selected) 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 referred Articles 32 and 33 SECR do not provide direct legislative power for national authorities to issue regulations for administrative sanctions in relation to “institutional investors” and to apply administrative sanctions based thereon.

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
- (x) 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.

It is difficult to quantify the costs directly associated with a task as there are usually different departments involved in the processes during a transaction and the costs cannot simply be broken down by task. E. g. an amendment of the transaction documents would at least involve the legal department, the credit department and the IT department. The question is what proportion of work is correctly attributable to a specific regulatory driven task. Nevertheless, we have approached market participants to make an educated /informed estimate of regulatory-driven costs. Since these costs are not easy to assess (s. above) but we understand that this is an important point in the European Commission's analysis of the consultation, this task will take time and therefore could not be finished by December 3, 2024. Therefore, we will continue to build up such cost estimation as precise as possible and will come back to you once it is finalized (before the end of the year).

Data will be provided retrospectively.

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.

1. Anecdotical evidence for a cash SRT securitisation:

As an example, we can report that the one-off IT costs for implementing the monthly loan-by-loan ESMA report from the originator's perspective for a cash securitisation in 2023 (car loans) are approximately €500K. Based on the experience gained from the first cash securitisation, the one-off IT costs for a second transaction (consumer loans) were reduced to €200K. This does not yet include the costs of other areas (e. g. Risk, ALM Treasury Finance) that are also involved in implementing the reporting requirements, but the figures are even more difficult to estimate.

Further costs incurred during ongoing operations for the preparation of monthly loan by loan reports. These

are influenced by the various existing IT systems, processes and controls at the originator level (different banks in a banking group).

2. Anecdotical evidence for a synthetic STS securitisation

This example shows more or less which costs may be incurred in a synthetic STS-transaction. The costs for filling the repository were not estimated. External one-off costs, e. g. for legal documentation, are estimated at €50K and to STS verification at €50K. Furthermore, there are additional internal costs. For each - STS verification, reporting to the ECB ("CASPER notification") and ESMA reports – reporting request too - also several hundreds of manhours are estimated. The internal costs in particular should not be underestimated. There are examples where the decision was made not to seek compliance with STS requirements because the expected benefits were outweighed by compliance costs, even though compliance with the STS requirements was technically possible.

Further data will be provided retrospectively.

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?

- (x) 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.

The answer compares securitisation with

1. Factoring
2. Credit Linked Notes (CLNs)
3. Other Structured or collateral backed instruments

and is based on estimates by market participants. A more detailed analysis will be provided by the end of the year (see Q5.1).

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.

The following must be taken into account when answering the question:

1. Information requirements:
Investors have different data / information requirements compared to supervisors:

• Investor purpose: Make an educated and well informed investment decision (should be the focus of Art. 7 disclosure for public securitisations)
• Supervisor purpose: Any supervisor for individual banks (SSM or NCA) can always access the same information which the respective bank has received for securitisation positions for the purpose of supervision of the respective bank. From a macroprudential perspective, we understand that the focus of supervisory authorities is on the level of market development and performance of transaction types, asset classes, countries and other potential risk parameters. Here the aggregation of transaction level information of all securitisations of the different market segments is probably the most important task. This should be the focus of Art. 7 disclosure for private and intra-group securitisations.

2. the different market segments (see Appendix I):
a. For Public ABS, investors typically use the transaction documents and stratification tables to make their investment decision, especially for highly granular portfolios, rather than the regulatory disclosure templates, as these are not structured clearly enough for such a decision. Some investors in Public ABS do use loan level data for the monitoring of transactions and in case of extraordinary events, or at least they want to have the possibility to access loan level data for these purposes. The information needs of supervisors may not be exactly the same as for investors here, but supervisors should be able to retrieve all the information they need from data available in Public ABS. Hence, we would vote for “Moderately different” for Public ABS.

b. For the private market segments ABCP/ Private non-ABCP and synthetic on-balance-sheet transactions, investors are usually involved in the structuring process for much longer and more intensively than for public ABS. Hence, they receive the information they request (which are much more detailed, extensive, confidential and tailormade than in public ABS) long before the disclosure templates are produced. Therefore, the purpose of the disclosure templates for such transactions cannot be to educate the investor. Supervisory needs remain the same, but can be satisfied with aggregated data (transaction level) which should be the focus of reporting. We therefore vote for “Significantly different” for Private transactions.

c. It is crucial to reconsider and revise the purpose of disclosure requirements under Article 7. For public securitisation with bookbuilding distribution, it is market practice to inform a large number of investors at the same time with standardized templates. However, for private and intra-group securitisations, the purpose of high-level information for supervisory authorities and, at an aggregated (non-transaction) level, for the broader market and public should be key. In this latter segment, financing banks and other investors do receive and analyze far more and tailored information than can ever be prescribed in Article 7 templates. Regarding the supervisory purposes, templates from ESMA and ECB should be harmonized and simplified

(please see the joint response from GBIC & TSI to the ESMA Consultation Paper on the securitisation disclosure templates under Article 7 of the Securitisation Regulation: https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/ESMA_CP1_SECR__TSI_GBIC.pdf).

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

- [x] 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.

Similar to the issues related to Art. 5 (Investor Due Diligence), it is not possible to specify the concrete impact of changes to Art. 7 templates on transaction volumes.

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?

- (selected) 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.

There are certain arguments against such mandatory reporting for private transactions:

- Such a requirement could make securitisation deals more costly, which runs counter to the overall goal

of the consultation to reduce regulatory driven costs.
- As private investors are typically already involved in the structuring process of a private transaction, no additional investor protection is achieved at this point.

Therefore, mandatory reporting to securitisation repositories should only be introduced under the following prerequisites:

- Only aggregated data on transaction level with very limited data fields in an appropriate template should be reported to the securitisation repositories to provide a market overview. Loan level data is neither necessary nor helpful for this purpose as a look at the European Benchmark Exercise (EBE) shows (see https://www.sts-verification-international.com/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/EBE_2023-H2_Report_2024-09-25_final.pdf for the latest report), where 12 banks in Europe report aggregated data for the purpose of reporting market developments. The template used for the EBE can also serve as an orientation/a guide to what such a template should look like for private transactions.
- The data reported for private transactions must remain confidential at the securitisation repositories. Only supervisory authorities should have access to individual transactions. Data confidentiality: A securitisation repository is highly regulated and supervised by ESMA. It has the capacity, expertise and experience to treat private information confidential.
- Technical format: It is crucial to report in a csv format (instead of XML) to ensure efficiency and reduce costs.
- Submission to the securitisation repositories should be free of charge.

Aggregation of data: When such reporting is implemented, securitisation repositories must be mandated to validate, analyze and aggregate the data received. Such aggregated data must be published in a way that no conclusions can be drawn on individual originators, sponsors or investors. If more than one securitisation repository receives private data, the mandate for aggregation and publication should be assumed by ESMA.

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.

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.

This is difficult to estimate but originators indicate that such amendments could negatively affect more than 10% of their private transactions when they become public as public transactions are more costly and would therefore become unattractive.

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.

Trade Receivables are usually not securitised in public deals. Credit Cards are highly granular portfolios where LLD is not required for a risk assessment by investors or for supervisory needs. Hence, an introduction of a portfolio-level template is recommended since the current loan level data template is not fit for purpose. As we recommend aggregate templates for private securitisations, this would also cover the asset class Trade Receivables.

In addition, all private transaction, regardless of the asset class and according to Option 1 of Q 5.5, should be reported on aggregated level. For the reasoning please see our answer to question Q5.4.

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?

- (x) 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.

The supervision that is partly silo-based and fragmented. An efficient securitisation market requires a consistent supervision. An example would be the reporting overlaps between the ECB and ESMA reporting for significant institutes and also the overlaps to the reporting to NCAs in terms of reporting platforms (e. g. CASPER For ECB and STS REG for ESMA) and of templates.

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

- (x) 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
- (x) 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
- (selected) 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
- (selected) 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.

We cannot commit to one model. Important: The supervision should be set up considering the following points:
- competence bundled
- clear responsibilities
- efficient processes

From an issuer perspective, ideally there is only one regulatory counterparty, that is knowledgeable and is able to monitor practices across the Eurozone and can apply a consistent treatment across jurisdictions and asset classes. Currently, the supervisory role is fragmented between regulators (ESMA, NCB, SSM) where ideally, an issuer should only face one counterparty. This also ensure consistency in the interpretation.

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.

See explanation to question 6.5.

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.

All relevant NCAs should be included. An example would be the pricing hub under the ECB ABSPP where the German/French NCAs build a “Center of competence".

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.

The introduction of the requirements for STS securitisations in Chapter 4 of the European Securitisation Regulation successfully met its objective, that is establishing a universal quality standard for the securitisation market. The associated capital relief for regulated investors when investing in qualified transactions is logical and appropriate. Nonetheless, the practical implementation of numerous transactions has already shown that there is a need to revise the rules to ensure that high-quality transactions that currently do not qualify can, in the future, justifiably be assigned the STS label, in turn strengthening the market for securitisation transactions.

This is because the variety of STS requirements lead to limited advantage for investors to select STS (e. g. haircuts, capital weights, reliance on label / no simplification of the process, etc.). Certain originators need the label their transactions as STS anyways, due to the strict capital treatment of non-STS transactions.

Bottom line, the implementation of STS has contributed to a functioning EU securitisation market and is market standard in major market segments. In order to scale up the market, improvements of the STS regulation are recommended (see the questions below).

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

- [x] Overly restrictive and costly STS criteria
- [ ] Low returns
- [x] High capital charges
- [x] 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.

The question itself is misleading. It implies that STS has not been implemented sufficiently in practice. The opposite is true: In all three major market segments (public, synthetic, ABCP/private), the share of STS transaction in % of all transactions has been growing continuously, as can be shown by different data sources. The evaluation of STS notifications in a research paper from the responsible supervisory authority does come to a different, but incorrect conclusion. At the same time, STS as a standard has not lead to market growth, due to the points highlighted in our answer above: restrictive and costly criteria, high capital charges of all (STS and non-STS) securitisations and less favorable LCR treatment.

Some of the STS criteria are opposed to their own simple and transparent principles. For selected STS criteria, the wording leaves too much room for interpretation, and sometimes gives the impression that some aspects and/or effects of individual provisions have not been thought through to their logical conclusion. Some criteria, on the other hand, have such strong unintended effects that they discourage market participants, complicate processes or increase costs unnecessarily. The objective should be to reconcile selected STS criteria with market practice and create a simplified set of rules.

We recommend a review of the LCR treatment of both ABS bonds as well as ABCP, as these are less favorable compared to other instruments, despite the strong regulation and excellent performance of European securitisations.

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.

Please refer to our answers in Q7.1, Q7.2 and Q7.12 and Q7.13

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.

- (x) 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.

- [x] 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.

The safeguard should refer to the counterparty risk, hence to the credit rating of the protection provider. This would be the same risk as for a liquidity provider.

In addition, letters of credit should be added in Article 26e (10) point b of the SECR as an alternative to collateral in the form of cash held with a third-party credit institution.

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.

Highly regulated, well capitalised and well diversified (re)insurance companies acting as credit protection providers do not provide collateral as part of their normal course of business. In the post-GFC environment, prudent (re)insurers do not, in the normal course of their business, use their liquid assets as collateral against insurance contracts or guarantees. They use them to pay claims. Thus, prudent (re)insurers will not make an exception for STS.

From originating banks’ perspective, until highly regulated, well capitalised and well diversified (re)insurers are allowed to provide credit protection to synthetic securitisations with the STS label, the choice of risk-takers is restricted. Increasing the choice of available risk-takers enables banks:

- to reduce their costs on synthetic STS transactions;
- to have access to high quality regulated counterparties with ‘permanent’ capital, i.e., that will be present in the market during periods of financial stress (unlike credit hedge funds currently present in the STS market with leveraged collateral) and are not sensitive to the same factors of systemic risk;
- to increase capital velocity which benefits directly the European economy;
- to increase their volumes of STS transaction and thus more risks would be transferred away from the European banking system.

Last but not least, access to (re)insurers would generate more level playing field between SA banks and IRB banks.

To conclude, financial stability would be improved for originating banks wanting to issue with the ‘STS’ label.

From the (re)insurers’ perspective, enabling them to participate in the synthetic ‘STS’ market on an uncollateralised basis would:

- immediately increase investment opportunities located in Europe;
- give them access to risks from generally higher credit quality securitised assets;

• strengthen quantitatively and qualitatively over the long term the diversification of their credit insurance portfolios.

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.

The issuance volume would increase, as the investor base would expand.

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?

- [x] 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.

It should be allowed, under Article 26e (10) (b) of the SECR, to provide cash collateral also in the form of a guarantee or letter of credit given by a qualifying third-party credit institution or by the originator. In our understanding of the term ‚cash on deposit', the reference to collateral in the form of "cash held with" a third-party credit institution in Article 26e (10) (b) of the SECR must be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.

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.

Please see point 5 under Q 7.13.

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.

1. Clarification that securitisations can qualify for the STS label even if no SSPE is involved because a direct investment via the bank balance and not via an SSPE does not, per se, have the effect of increasing the risk of the transaction, as long as all other applicable STS criteria are fulfilled. This clarification would enable private securitisations with one bank investor, which are structured in this way, to reach STS compliance and therefore provide competitive funding to the real economy that would otherwise not be available or only available to the respective originators through other funding instruments that do not offer the same benefits that a securitisation with a non-SSPE structure can provide.
2. Article 22(1)/Article 24(14)/Article 26d(1) of the SECR: the originator should have the right to choose the type of historical performance data specific to the business and transaction type in order to provide targeted information to the investor. An example would be the provision of rating migration matrices only (and no other loss data) for on-balance-sheet securitisations which would fully meet the market standard and the investors’ expectations for this type of transactions. Further, at least for transactions where the default risk is externally covered (e. g. CRR conform credit insurance) it should be left to the originators in the sense of a principal based approach, how many additional historical data is needed.
3. Article 24(15) 2nd and 3rd Subparagraph of the SECR: the strict criteria that limit the residual maturity are not suitable and should be removed to avoid discrimination against longer term financing contracts. In particular, the current limits prevent the securitisation of receivables that are financing the dual transition to more digitalised and sustainable, such as solar loans & leases through the private ABCP markets. The argument of a mismatch of asset vs liability maturities is not valid given that ABCP transactions are fully-supported by bank liquidity facilities.
4. The criterion in Article 21(6) SECR (amortization trigger) should be waived, at the very least for private transactions, as these transactions are characterised by fluctuating portfolio sizes which make this requirement redundant.
5. Article 20 (8), 24 (15) and 26b (8) of the SECR in connection with the RTS on homogeneity: There should be the possibility of securitisation of cross-border portfolios with SMEs and other types of enterprises. As a supplement, a clarification could be added stating that the originator must have suitable and homogeneous risk measurement procedures/internal rating systems in place to appropriately evaluate the quality of cross-border portfolios consisting of SMEs and other businesses in a consistent way. The current homogeneity requirements for this sort of corporate loan securitisations (which are very common for on-balance-sheet securitisations) are still not fully clear on this point, despite more than 2 years of discussion between market participants and the regulators in the preparation of the current RTS on homogeneity, see also Q 7.12]
6. Article 243 (1) (b) and (2) (a) of the CRR (single obligor limit): From a risk perspective, the type of refinancing is irrelevant provided that the portfolio is sufficiently protected through appropriate credit enhancement. The 2% debtor limit should be removed or at least increased if linked to an external public

ECAI rating of the debtor. It should be at least clarified that non-ABCP securitisations are also excluded from the rule regarding maximum aggregate exposure if they are fully covered by eligible credit protection (i.e. credit insurance).For ABCP it is also a significant administrative effort and complex to calculate debtor group sizes / percentages across all transaction in an ABCP conduit because typically each transaction provides for specific credit enhancements or structures. Identical identifiers of debtors across different transactions are difficult to implement and maintain. The 2% debtor limit on ABCP programme level should be removed. For on-balance-sheet securitisations involving specialised lending exposures such as project finance /renewables loans, aircraft or shipping loans the 2% single obligor limit is very difficult to comply with, thereby preventing banks that are active in these important market segments to use these loan portfolios for SRT transactions.
7. Article 26b (8) of the SECR: Wording should be added to confirm that also undrawn or partially drawn credit facilities fulfill the “defined periodic payment streams” requirement, provided that other payments (e.g. commitment fees) are payable on a periodic basis.

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
- (selected) 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.

The TPVs (i) ensure appropriate interpretation and consistent application of the STS criteria including the relevant RTS/ITS and guidelines, (ii) implicitly reduce liability risk for the other transaction parties (in particular the originator and sponsors), (iii) are available to discuss interpretation issues with the transaction parties on both a general and deal-specific basis and (i) act as first point of contact for questions and coordinated approach to the competent supervisory authorities, both on an informal and a formal basis (e.g. by submitting questions into the official Q&A process with the European Supervisory Authorities).

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
- (selected) 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.

The two TPVs that are currently active in the EU have been authorised and are supervised by the respective National Competent Authority (BaFin for SVI and AMF for PCS). In our view this has proven to be an effective supervision that could be further intensified by a regular exchange between the above-mentioned National Competent Authorities (with such exchange being moderated by ESMA at EU level on an optional basis).

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.

To a large extent. Should the supervision of TPVs be complemented by supervisory fees charged by the supervisor to the TPVs, the cost of issuing an STS securitisation that involves the STS verification by a TPV could significantly increase the cost of issuing an STS securitisation. This is because TPVs are required to charge cost-based fees (see Article 28 (1) (a) of the Securitisation Regulation) and hence tend to operate on a break-even basis, any supervisory fees that would be charged on the TPVs would have to be passed on to the transaction parties (originator, sponsor) in the form of an increase in the verification fees. This would be detrimental to the attractiveness of European securitisations in general as it would increase the upfront and on-going costs of STS securitisations.

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
- (x) 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.)
- [x] 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.

It is of utmost importance to rapidly implement the long list of proposed changes first, including reduction of risk weights for banks and insurers, LCR treatment and changes to Art. 5 towards a more proportionate Due Diligence, Art. 7 in favor of disclosure requirements which are fit for purpose and meaningful STS-strengthening criteria.

Create an EU safe asset: Senior notes in established asset classes, like Auto ABS and RMBS do already

constitute a safe investment product and should be treated as such.
Foster standardisation: Standardisation in underlying asset classes would require a harmonisation in the domains of civil law, accounting, IT, operational procedures (origination, underwriting, servicing) and the product characteristics itself. This can and should not be the focus of a capital markets union with focus on “markets”.
Enhance transparency and due diligence processes: Generally, transparency and due diligence rules need to be enhanced, however this does not require a platform.
Cross-border securitisation: In public true sale securitisations with retail borrowers like Auto ABS and RMBS, investors do prefer to decide on country risk allocation themselves and not to buy blended pan European pools.
For corporate and SME pools, synthetic SRT securitisations consists already of pan European pools as of now. In this respect, we only suggest that homogeneity criteria for STS should be adjusted (see Q. 7.12).

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?

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

We doubt that a pan-European securitisation platform would increase the use and attractiveness of securitisation in the EU at this point of time, as we mainly expect massive new regulations and legal changes to have a high risk of material, more negative impact on EU securitisation markets than a positive impact. Extended uncertainty over years could drive retail and corporate lending even further into the unregulated shadow banking space.

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

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

No legal changes or new legislation is required regarding guarantees. At the same time, well established programs from EIF/EIB should be maintained because there is clear evidence of the positive impact from EIF /EIB securitisations. They support the development of securitisation markets in various larger and especially smaller EU countries with focus on e. g. SME lending.

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?

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

In addition to the challenges described under 8.2, the implementation of state guarantees on national and EU levels would not only take far too much time but also, create political uncertainty due to joint liability of member states and furthermore increase public debt, The replacement of a market solution by state driven structures, we do not consider necessary. Finally, introducing such a platform in the EU would completely jeopardise the concept of interest alignment which has been successfully implemented with risk retention rules since CRD III in the EU.

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?

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

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?

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

In the longer term and in the context of harmonisation of certain areas of Civil law in Europe (e.g. contract, insolvency, accounting, company legal framework), such harmonisation has the potential to positively impact the securitisation markets.

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?

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

Generally, an originating bank does not sell their senior tranches to external investors unless it primarily wants to reduce its balance sheet or gain funding. If, in addition, a true sale transaction aims to achieve a Significant Risk Transfer (SRT), this is usually done by selling the mezzanine tranche.
From a macro perspective, there are at least two prudential provisions that have a significant impact on the issuance of and demand for traditional, i.e. true sale, securitisations:
1. Supply-side: Risk weight floors for senior tranches
2. Demand-side: Their treatment under the Liquidity Coverage Ratio (LCR).

Regarding 1: A lowering of the risk weight floor for banks would make it more viable for them to engage in traditional, i.e. true sale, securitisations. The issuance of those types of securitisations would increase.
Regarding 2: From (bank) investor perspective, the regulatory treatment of such investments for LCR purposes is the most important factor affecting the demand for traditional, i.e. true sale, securitisations, in particular senior tranches. This would expand the potential investor base.

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.

If the measures suggested in this response are implemented, growth would initially be driven by banks, as cross-border flows increase. This will require adjustments to risk weight floors and improved treatment under the Liquidity Coverage Ratio (LCR). Subsequent growth is likely to come from insurance companies, provided there are enhancements in Solvency II treatment and other matching rule improvements. These key players will need to re-establish investment teams with the necessary expertise. Once a large market develops, pension funds are expected to increase their allocation to this asset class.

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.

Supply of SME and corporate exposure-based securitisation could be supported by lowering the barriers to market entry by measures suggested in this response. This would help especially regional and smaller banks to participate in the securitisation market that provide large shares of SME/corporate financing in the

EU. Reducing the burden of regulatory requirements with respect to, for instance, internal processes, SRT, disclosure, and compliance to STS leading to high upfront costs for those banks would increase the supply for SME and corporate exposure-based securitisation transactions. For the demand-side effects please refer to the response in Question 9.2.

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))

- (selected) 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?

- (selected) 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.

The regulations in Article 243 of the CRR stipulate additional requirements for STS securitisations in addition to those listed in the European Securitisation Regulation. In order to use privileged STS risk weights, a banking investor or sponsor must verify whether these additional requirements have been met. Bank investors and sponsors must rely on information from originators to meet these requirements. These can only be obtained with great effort, and in some cases not at all. STS privileges are not effective anymore or transactions become too costly and, as a result, are not entered into.

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:

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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.

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

A strong economy requires a robust financial sector, for which well-capitalised banks with high capital ratios are essential. In addition to the capital ratio, listed banks must pursue a clear dividend strategy, as this is an important part of their longer-term attractiveness from an equity investor’s perspective (shareholder value)

and thus also of their ability to finance the real economy. A direct one-to-one allocation of released capital funds to the expansion of financing, dividends and/or share buybacks, etc. is hardly possible.

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.

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* 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.

During the 2008 financial crisis, European securitisations were unjustly discredited. This is clearly demonstrated by the very low default rates before, during and after the crisis (see Appendix II).

These data reflect the fact that even at the time, lending standards in Europe were stricter than those in the US. In addition, the Guidelines on loan origination have been in force in Europe since 2021. They have ensured standardised, high-quality loan procedures throughout Europe. Banks' and investors' losses during the financial crisis were largely caused by the combination of high losses in US portfolios and the leverage of US securitisations from re-securitisations and arbitrage synthetic securitisations,
both of which have since been subject to de facto bans.

The excessive risk weights which were implemented with the new regulation are based on the significantly higher losses in the US in connection with model risks in securitisation. However, these risks were directly addressed in the new regulation by
(i) transparency,
(ii) risk retention,
(iii) DD obligations and
(iv) interest alignment through liability obligations in the regulation.

The high losses in the US were also significantly increased by leverage (re-securitisation), which had been banned already with CRD II and III.

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.

The introduction of floors for senior risk weights is generally appropriate when using the formula -based approaches from the Basel framework. However, the floor levels currently specified in the CRR – particularly for low-risk benchmark portfolios with excellent credit – are far too high. In addition, set floor levels create undesirable cliff effects.
Introduction of risk-sensitive senior floors in the formula-based approaches. Differentiation of floors for STS and non-STS transactions could be implemented via
Senior RW Floor = 7 % × K(pool) × 12.5 for STS transactions or
Senior RW Floor = 12 % × K(pool) × 12.5 for non-STS transactions
whereby
K(pool) = K(IRB) and/or K(pool) = K(A) pursuant to Article 255 of the CRR.

The proposed floor structure delivers risk-appropriate floor levels, as it changes according to the benchmark portfolio risk (K(IRB) and/or K(A)). Example: the proposed amendment with a unified proportionality factor (10%) delivers the current STS floor (10%) for SME portfolios with a medium KSA risk weight of 100% and K (A) = 0.08 (see Duponcheele et al. (2024) “Rethinking the Securitisation Risk Weight Floor”). The proposal does not create additional cliff effects.
ESA’s proposal to reduce the Senior RW-floor for originators only, does not take into account that the risk of senior tranches is identical to retained tranches (by originators) and tranches held by investors.

We want to highlight that such risk-sensitive floors are calibrated on generic transactions with ideal typical thicknesses of tranches. Adjustments of the thickness of tranches could lead to very low risk weight floors. Also, for low-risk portfolios like RMBS, risk weight floors can go down to about 2%. We emphasize that the above described approach is an appropriate workaround for the time being. However, we want to mention that introducing some well- considered lower boundaries for such floors, which are at least as low as they before the Basel adjustments after the Financial crisis were made, might make sense before.

Also, in the SEC-ERBA, a risk weight of 7% should apply again for STS Triple-A externally rated senior tranches as it was the case before 2018. The increase of the risk weight floor from 7% to 10% for STS Triple-A externally rated senior tranches with the amendments of the CRR as part of the securitisation package was not justified for European senior securitisation tranches by empirical evidence. For instance, there has to our knowledge never been a loss for Triple-A-rated Auto-ABS. The risk weight of 7% should also apply to other externally triple-A rated capital market instruments with a comparably low risk level.

A sufficient condition for the lasting revival of the securitisation market in the EU is a fundamental revision at the Basel level of the regulatory requirements for capital adequacy of financial instruments, so that a global level playing field can be established relative to other collateralised financial instruments.

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.

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

As a practical matter this requirement is unnecessary, for example: All SRT securitisations in the market have protected tranches which detach above KIRB/KSA, because otherwise the resulting risk-weight of the senior tranche would be significantly above the floor anyway. Including additional conditions along these lines therefore simply complicates the framework without having any real impact on the outcome.

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
- [x] 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.

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

See our response to Q 9.13: The current securitisation framework is overly conservative, so the question is not what alternative safeguards could be proposed to ensure resilience of transactions in order to justify a reduced risk-weight floor, but rather what is the correct risk-weight floor to apply given the actual level of risk and observed performance of securitisations under the existing framework for many years now. As explained above, we consider that the workaround for the lower risk-weight floor is justified without the need for additional safeguards.

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.

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

Reference to STS (instead ESA proposed safeguards) would be more transparent and understandable for market participants. But, if STS would be a requirement for reduced senior risk weights, it should be the case for originators and investors.

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.

We cannot make a serious assessment of the impact on securitisation activity in the EU. However, the revision of the securitisation framework must ensure that the instrument can be used when the need arises. And the need results from the expected investment volume to implement the transformation. The measures must be suitable for both the demand side and the supply side and also for existing and new participants in the market. The measures proposed here in this response are therefore helpful because they would make securitisation more attractive for banks as originators and investors.

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.

The current p-factor provides for a 100% overcapitalisation. When looking at the default rates of securitisation in Europe (see Appendix II), the agency or model risks do not play a role from an empirical perspective. Defaults of securitisation portfolio are in line with the credit risk which is securitised. Furthermore, the concern related to the cliff effect related to the reduction in the p-factor does not take into consideration the material inflation in RWA for securitised portfolio since the 2008 financial crisis (and expected to further increase due to CRR III) which is only magnified by the high p-factor. The reduced p-factor simply looks to bring back the RWA inflation to more manageable levels. Hence, such an enormous overcapitalisation is simply not justified. Furthermore, we noted a proposal set out by the UK PRA to reduced p-factor (CP13/24). Hence, we propose adjusting the p-factor as follows.

Overcapitalisation is currently expressed by the determination of the p-factor. P-factor determination is different in the SEC-IRBA and the SEC-SA.
SEC-IRBA: Determine permissible p-factor values using a 0.2 (STS) or 0.3 (non-STS) floor, and a 0.5 (STS) or 0.75 (non-STS) cap:
STS (Article 260 CRR):
$p = \min\{0.50 ; \max\{0.2 ; 0.5\times(A + B\times(1/N) + C\times K(IRB) + D\times LGD + E\times M(T))\}\}$
Non-STS (Art. 259 CRR):
$p = \min\{0.75 ; \max\{0.3 ; (A + B\times(1/N) + C\times K(IRB) + D\times LGD + E\times M(T)\}\}$

SEC-SA: Halve the current p-factor as listed in Article 261 and 262 of the CRR (change p-factor for STS from 0.5 to 0.25 and p-factor for non-STS from 1 to 0.5) .Alternatively, in order to avoid increasing cliff effects associated with the lowering of the p-factor (pertaining to risk weights), the total overcapitalisation could, alternatively, be lowered by scaling the capital input (KA). This means that the parameter KA when calculating KSSFA(KA) (Article 261 of the CRR) would be replaced by the expression (SF × K(A)), in which SF represents the scale factor. In this case, we propose the parameterisation
STS: p = 1 und SF = 0.58
Non-STS: p = 1 und SF = 0.65
for the SEC-SA.

This parametrisation, when compared to the current provisions, still results in significant, yet appreciably lower overcapitalisation of approximately 15 percent (STS) and approximately 30 percent (non-STS).

The proposed amendments lower the total overcapitalisation, which cannot be justified by either the empirical performance of the securitisations or by persistently high model and agency risks. In addition, the recommendation for the SEC-SA pertaining to scaling capital input reduces the cliff effects embedded in the mathematical structure of the model. This adjustment can be achieved by amending the CRR, after which relief would occur directly after the amendment takes effect.

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?

- (x) 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.

A reduction in general overcapitalisation would be justifiable (see Q 9.21) and would increase supply and demand for securitisations. However, the trade-off between overcapitalisation (p-factor) and cliff effect inherent in the current model-based approaches sets narrow limits in terms of adequately reducing overcapitalisation by reducing the p-factor alone. One supportive measure for reducing overcapitalisation without exacerbating cliff effects would be to scale the K-values.

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

- [x] Exposures held by originators versus investors
- [x] Exposures in STS versus non-STS securitisations (beyond the differentiation already provided for in Article 260 and in Article 262 CRR)
- [x] Exposures in senior versus non-senior tranches
- [x] 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.

The measures suggested in response to Q 9.21 would generally make risk weights more proportional to the underlying risk of the pool. The proposed changes to the p-factor are already differentiated between STS and non-STS. However, this differentiation aligns with the policy objective of steering the market towards greater adoption of STS. For this reason, the proposal recommends a risk weight of 7% for STS pools and 12% for non-STS pools.

Introducing further criteria for targeted and limited reductions is unlikely to enhance economic efficiency. Instead, it would create greater distortions in the allocation of risks with unforeseeable and possibly negative consequences for financial market stability. Additionally, all methods—SEC-IRBA, SEC-SA, SEC-ERBA, and IAA—should maintain a level playing field on this issue as well.

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.

For clarification: There would be no positive effects for auto ABS, Unlike the SEC-IRBA for auto ABS, the SEC-SA leads to inappropriately high capital requirements. This is the reason why the SEC-ERBA has to be applied instead of the SEC-SA. The SEC-SA does not work for low risk portfolios with high risk weights in the credit standardised approach that do not consider the risk-reducing effect of collaterals such as vehicles. It should be possible to overcome this problem if the risk-reducing collateralisation effects based on the standard LGD parameters of the IRBA Foundations Approach were to be taken into account in the SEC-SA, as proposed for the CRSA by the industry as part of the consultation on CRR III.

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?

- (x) 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.

The current approach to non-neutrality of capital requirements leads to undue overcapitalisation of securitisation exposures indicated by long historical data, covering the Global Financial Crisis, the European Sovereign Crisis and the Covid stress period (Data will be provided retrospectively).

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.

See response to Q 9.26.

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).

- (x) 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.

We are referring to our proposal to scale the K-values which is the measure which should be focused on first as it is easily to implement.

In particular, using an inverted S-curve as a basis for the model-based approaches could provide significantly greater flexibility in the calibration of the risk weight, lead to a higher risk adequacy of the risk weight and thereby reduce or completely avoid cliff effects. Nevertheless, this is not in the scope of targeted short-term amendments as asked for in this consultation and is something to consider after making founded analysis and simulation, e.g. on Basel-level.

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.

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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.

- They are too extensive.
- CRR requirements are appropriate, however subsequent level 2, EBA and ECB requirements pose significant burden regarding a timely and proportionate SRT assessment process.

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.

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

The PBA test does partly not work, i. e. for Auto-ABS. This is the reason why full deduction method in Art. 244 (1) (b) CRR is still required.

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.

Article 244 f. of the CRR calls for transfer of significant credit risk (SRT) to third parties. The process of supervisory confirmation for a SRT generally takes three months. This process can vary from bank to bank and from country to country, and the duration of the process and its results can therefore be different even under similar circumstances. There are, in some cases, high levels of uncertainty regarding the expected result of a SRT process.

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.

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

To ensure that SRT transactions can, in the future, be brought onto the market faster, supervisors and industry should agree on unified guidelines for the SRT process for standardised transaction structures. These guidelines could increase the reliability of the process and planning for all parties. Repeat transactions could run through a fast-track process. The methods used by the relevant supervisory authorities should become more transparent overall. The current joint project between the SSM and a special securitisation working group from the European Banking Federation is a suitable means for developing this fast-track process. However, it is important to ensure that the suitability criteria for the process are not, due to an excess of supervisory caution, defined so narrowly that it is, in practice, unusable.

Shorter issuance process with increased reliability and predictable results from the SRT process would remove additional hurdles faced by banks. This would result in more effective outplacing of risks associated with granting credit to non-bank investors, in particular when outplacing the mezzanine tranches of synthetic on-balance-sheet securitisations. This would free up lending capacities. Strengthening the sales side would stimulate demand from non-bank investors. The expected result is additional increases in market volumes and increased efficiencies when transferring risks from bank balance sheets to existing non-bank investors and those just entering the market. The amendments represent a further contribution to the broader banking economy and could become effective in the medium-term, particularly for new issuers. Implementation of these measures is at least partially reliant on supervisors. In principle, however, the measures could be implemented in the short-term.

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
- (x) 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.

Yes/no answers to either-or questions are difficult, so we have organised our perspective as follows: We opt for further specification at the EU level but with the strong prerequisite that the process must be clear with a tight mandate otherwise it will lead to extensive Level 2 regulation.

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

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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?

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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?

- (selected) 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.

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

Article 465(13) of the CRR currently allows for temporary (until the end of 2032) halving of the p-factor for those banks bound to the output floor (application of SEC-IRBA or IAA). The p-factor amount for the applicable SEC-SA when determining the output floor is listed as:

STS-securitisations: p = 0.25 in Article 262 of the CRR
Non-STS securitisations: p = 0.5 in Article 261 of the CRR

The time limits in Article 465(13) of the CRR should be deleted. In addition, there should be no set numerical requirements for p-factor values. Instead, the text should read "Halve the values listed in Article 261 and 262 of the CRR".

The technical justifications in favour of temporarily halving the p-factor used to calculate the output floor apply permanently. In addition, unified and permanent provisions lower the complexity within the framework and avoid future burdens. Declining to provide a set numerical requirement reduces the need to revise future p-factor amendments in Articles 261 and 262 of the CRR.

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?

- (selected) 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.

Please see our response to Question 9.21, above. If these amendments were introduced, then the transitional measures may no longer be necessary. However, please also note our responses to Questions 9.37 and 9.38.

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.

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

Pursuant to current CRR provisions and the delegated regulation on LCR (Articles 12 and 13), specific senior tranches in STS securitisations can qualify as level 2B liquid assets. The ability of securitisations to qualify in the LCR should be amended as follows:

- Senior STS securitisations: HQLA Level 2A
- Senior non-STS securitisations: HQLA Level 2B

In addition, the haircuts should be adjusted to a level equivalent to those of e. g. corporate bonds. There are also detailed requirements for ABS transactions pertaining to the originator and the homogeneity that prevent ABS transactions from qualifying as
HQLAs. Here, too, there is a need to examine whether these requirements might, in detail, decrease liquidity and are not, as suspected by supervisors, per se a criterion for lower liquidity.

Further, new investors can only be won via banks that can accept new issuances on their books and offer and place them on the market. Demand from institutional investors must be stimulated by strengthening the supply side after the long-term crowding out by the ECB. Beyond measures for reducing high implementation costs and disproportionately high capital requirements, securitisation positions will become more appealing to investors if they qualify, appropriately, as HQLAs and if risk-appropriate haircuts are applied. This will increase market liquidity, in particular for Public ABS. First, this will strengthen the role of securitisations in protecting liquidity positions for lending banks, in turn contributing to the stability of the financial market. Second, full outplacement of the tranches (full stack) of Public ABS leads to capital relief, thus increasing banks’ ability to grant loans. Third, strengthening the sales side will, over time, stimulate the buy side. This paves the way for new non-bank investors to enter the market – provided regulatory incentives are in place for creating such capacities – who will take on systematic risks from bank-based business financing.
The proposed amendment can be implemented by amending the CRR and the delegated regulation (EU) 2015/61.12 Over the medium-term, this will lead to an increase in the market volume of Public ABS, similar to the market dynamic expected for synthetic on-balance-sheet securitisations after they are granted STS-capability as part of the Capital Market Relief Package.

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.

In terms of CQSs, the LCR Delegated Regulation should be amended on a priority basis by changing the reference from CQS 1 to CQS 1-4 in Article 13 (2) of the LCR Delegated Regulation. This would allow not only AAA rated securitisation tranches, but also securitisation tranches with a rating from AAA to AA- to qualify as Level 2B HQLA. Such amendment would mirror the recommendation of the Joint Committee of the ESAs given in the Joint Committee Advice on the Review of the Securitisation Framework (Banking) dated 12 December 2022 (see Recommendation 8 on p.93-94).

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.

Individual changes, such as adjustments to CQS and haircuts, are unlikely to lead to changes in supply of and demand for securitisations. However, if such adjustments are combined with changes in due diligence requirements, risk weight floors and regulatory treatment, then investments by bank treasuries as part of their liquidity management could increase significantly. Greater market liquidity contributes to financial market stability.

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?

- (x) 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.

See Q9.43. Further data will be provided retrospectively.

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.

See Q9.43. Further data will be provided retrospectively.

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?

- (x) 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.

Specific impediments of the current LCR Delegated Regulation (and the respective targeted amendments to make the liquidity treatment more proportionate, without endangering financial stability) include the following:
The homogeneity requirements in Article 13 (2) (g) of the LCR Delegated Regulation are overly prescriptive (examples being the requirement that residential loans secured with a first-ranking mortgage must be granted to individuals for the acquisition of their main residence, the LTV and loan-to-income requirement and the minimum 80% SME requirement in Article 13 (2) (g) (i) and (iii) of the LCR Delegated Regulation) and not consistent with the homogeneity requirements under the STS criteria. Instead, the homogeneity requirements in Article 13 (2) (g) of the LCR Delegated Regulation should be aligned with the homogeneity requirements under Article 20 (8) and 20 (14) of the Securitisation Regulation in combination with the RTS on homogeneity.
The requirement in Article 13 (13) of the LCR Delegated Regulation that the originator "shall be an institution as defined in Article 4(3) of Regulation (EU) No 575/2013 or an undertaking whose principal activity is to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU" is too focused on financial institutions and other regulated entities and discriminates non-bank lenders and operating leasing companies. Instead, there should be no restrictions on the type of and the level of regulation of the originator, i.e. Article 13 (13) of the LCR Delegated Regulation should be deleted.

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)?

- (x) 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.

Insurers and pension funds are together the largest investor group in Europe, approximately 12% of European standard formula insurers have investments in securitisation, with around 60% investing below 1% of their total assets and overall only 0.33% (See EIOPA joint committee advice on the review of the securitisation prudential framework 2022). On the asset side, insurers generally focus on high rating quality and liquidity and rather give preference to senior tranches that transfer only a small amount of risk from bank portfolios and rather service refinancing purposes.

On the liability side of their balance sheet insurers are providing credit insurance to unfunded securitisation tranches and investment volume is constantly rising according to yearly market surveys of IACPM. Sizes offered by insurers to the unfunded securitisation markets being larger than executions imply excess demand of insurers to volume provided by banks. Due to not being regulatory considered for STS participation, insurers are exempt from the growth of the STS market segment. On the liability side, insurers usually can invest more broadly regarding seniority as a pure hold to maturity approach allows neglecting mark to market volatility as long as there is no additional provisioning.

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

- (x) 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.

On the asset side, pursuant to Solvency II, insurers must retain capital to cover their investments, in particular for market and credit risks. Insurers that do not have their own model for doing so must make use of the standard formula approach. The calculation based on the spread module as part of market risks leads to unusually high capital burdens for securitisation positions which do not hold up in comparison with the actual performance of the securities. These capital requirements appear moderately inflated for securitisations conforming with the STS standard, and cannot continue, particularly when compared to other collateralised instruments. Capital requirements for non-STS senior tranches seem exorbitantly high, with a factor of up to 12.5 relative to STS senior tranches. This also applies for the ratio non-STS to STS in non-senior tranches. Insurance Europe responded in 2022 to the EIOPA consultation paper on the advice on the review of the securitisation prudential framework in Solvency II:

- Current calibration of capital requirements for securitisations are too high, notably in comparison with equally
rated corporate or other collateralised instruments
- A fundamental aspect of insurers' asset/liability management (ALM) is a hold to maturity approach that needs to be reflected in standard formula capital requirements.
-There is inconsistency in the treatment between a whole mortgage loans pool and residential mortgage-backed
securities (RMBS). The latter are heavily penalised in terms of capital.
-The mandatory "due diligence" actions that issuers and investors are required to undertake
are disproportionate and excessive.

On the liability side, provisions in the European Securitisation Regulation do not currently allow insurers to participate as protection providers in the form of a guarantee for non-funded and unprotected synthetic STS securitisations, as the protection provider must, in order to do so, qualify for a 0% risk weight pursuant to Article 26e(8) point a of the SECR. Insurers that, as a matter of routine, offer non-funded insurance contracts without collateral for assuming risks on the liabilities side of their balance sheet are therefore
de facto excluded as protection providers for STS transactions, as private insurers with a risk weight of 0%, as required by the European Securitisation Regulation, do not exist. Insurers guarantee solvency using an insurance model based on the law of large numbers, by diversifying their risks and by keeping adequate own funds on the books.

Article 26e(8) point c of the SECR should therefore be amended to release insurers from the obligation to put up collateral or provide capital coverage. In addition, letters of credit should be added in Article 26e(10) point b of the SECR as an alternative to collateral in the form of cash held with a third-party credit institution.

The requirement of credit protection is a serious problem for insurers, as liquid funds are kept on insurances' books to cover any potential damage payments and therefore have higher opportunity costs. The funded or protected assumption of risks via securitisations therefore results, in comparison to other hedging transactions, in significantly higher hedging costs.

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.

There is no clear disincentive to investment in securitisation. Nevertheless internal models are likely be anchored at punitive
Solvency II standard formula risk charge levels, but for sure internal models on the asset side will usually be based on critical past experience. Especially within securitisation this past experience is heavily dominated by spread volatility and rating migration experience partially including defaults stemming from the global financial crisis. A key learning regarding securitisation positions was, that rating agencies had been underjudging accumulation risks stemming from structures specifically correlation risks. There also has been a separation of performance by region as well as asset class (e.g.: EBA Report on Qualifying Securitisations 2014). Performance of European securitisations was significantly better than the performance of U.S. securitisations and many asset classes driving defaults of securitisation tranches are not anymore or to a very minor extent securitised or regulatory banned from markets (resecuritisations). Thus, using historical performance (e.g. rating migration matrices) in model building, including today no more existing and bad performing market segments (as resecuritisations), is broadly leading to miscalibration and overstating risks of the today existing market. At the same time rating agencies have been altering their modelling making migration history from the GCS less meaningful for usage in today modelling.

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.

Public available calibration work last has been performed by a study from Risk Control / AFME in 2022 "Perraudin, William and Yixin Qiu (2022), "ABS and Covered Bond Risk and Solvency II Capital Charges", March, Risk Control / AFME report, March".

For STS:

- Although there is some evidence showing that excellent rated senior STS tranches should have even lower capital charges than the covered bond segment, we are proposing a realistic calibration for senior STS being equal to the capital charges for other collateralised instruments following Perraudin and Qiu (2022). With worsening rating classes, being less relevant for investment of insurers, capital charges for securitisations might slightly increase in comparison to covered bonds. As a result, at least for excellent rating classes Senior STS capital charge would be 0.7% per year of duration for the first 5 years alike covered bond charges. To obtain the non-senior STS capital charges, we propose to multiply the just derived Senior STS capital charge by 150%, following the same logic. For the first 5 years, the new non-senior STS CQS 0 charge-per-year-of-duration results in 1.05%, compared to the new Senior STS value of 0.7%.

For Non-STS:

- Starting from the above derived STS capital charges, we multiply by 130%. The final logic would imply that a Senior Non-STS charge is above the Senior STS charge and below the Non-senior STS charge. (Arguments are lower expected recovery rates for non-senior compared to senior tranches). For the first 5 years, the new Senior Non-STS CQS 0 charge-per-year-of-duration is app 0.91%, compared to the new Senior STS of 0.7%.
- To obtain the non-senior non-STS capital charges, we multiply the new Senior Non-STS heatmap by a ratio of 150%. For the first 5 years, the new non-senior non-STS CQS 0 charge-per-year-of-duration is 1.42%, compared to the new Senior Non-STS value of 0.91%.

A further consideration is that in a held to maturity approach there is no spread risk but only a default risk. Insurers should therefore be given the option that for held-to-maturity ABS tranches that are designated accordingly, only the default risk, not the spread risk, is to be backed.

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
- (selected) 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.

The calibration of capital requirements for senior STS tranches within the standard formula is least deviating from appropriate calibrations compared to non-senior or non-STS tranches. Nevertheless, it is usually seen as a calibration anchor and thus should also be based closely to empirical evidence. Public available calibration exercise last has been performed by a study from Risk Control / AFME in 2022 “Perraudin, William and Yixin Qiu (2022), “ABS and Covered Bond Risk and Solvency II Capital Charges”. Resulting in the findings, that today’s Solvency II calibration for securitisation do not hold a comparison with capital requirements for covered bonds or loans with like to like rating but worse historical market risk performance for the latter.

Insurance Europe is generally criticizing not taking the usual buy and hold approach into account insurers would perform to their less liquid assets for matching duration of their liabilities. Capital requirements should then instead of market price volatility rather focus solely on loss expectation stemming from default.

Based on studies of the market risk behaviour of securitisations, the following simple step by step amendments to current capital requirements from the spread module appear appropriate:

- recalibrating the spread module for senior STS to match the calibration for covered bonds
- calibrate the senior non-STS capital requirements to be a 1.3 factor of capital requirements for senior STS
- calibrate the non-senior tranche capital requirements to be a 1.5 factor of capital requirements for senior tranches.

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.

The answer to question 10.7 is 'No' as it would add unnecessary complexity for standard (re)insurers. In any case, there would not be enough trading data to calibrate.

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.

Solvency II risk charges are too high in comparison to competing asset classes as corporate- or covered-bonds. Although a simple standardisation via STS seems to be rather welcomed by investors, due to a lack of dramatical differences in between STS and non-STS no investor or regulator seems to be able to by way of proper argument or empirically justify the dramatic increase in risk charges for non-STS in comparison to STS. For senior tranches, where structuring reallocates away first losses, risk charges are obviously too high in comparison to risk charges for the assets of their underlying portfolios. From a logical ratio, a senior tranche risk charge should never be above the pool average risk charge. For junior tranches risk charges remain too high when looking at empirical evidence from historical data taking into consideration that volatile securitisation positions from the time of financial crisis are regulatory prohibited (resecuritisations) or not broadly existent anymore.
Insurance Europe (in a 2018 response to EC proposal to amend Solvency II capital Requirements) points out that for a European “AA” rated 5Y securitisation default experience from the global financial crisis and thereafter from 2008 to 2013 accumulated to 0.29%, but compare to a Solvency II risk charge of 6% when STS, (climbing to 67% when non-STS!).

Empirical evidence from market price volatility as shown by Risk Control / AFME in 2022 “Perraudin, William and Yixin Qiu (2022), “ABS and Covered Bond Risk and Solvency II Capital Charges” would orientate appropriate risk charges rather at 2%.

A general argument brought by Insurance Europe is that Solvency II risk charges should for hold to maturity insurance investors not orientate on market price volatility but rather loss expectations from default.

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.

The level of granularity N in a tranched pool could play a discriminatory role. This is due to increasing correlation risk for low granularity pools (N below 100) and impact to the pool LGD for very low granularity pools. The effect is demonstrated for credit losses in Duponcheele et al. (2013) “Granularity, Heterogeneity and Securitisation Capital,” BNP Paribas mimeo / Risk Control report, September.

Please note that the granularity effect is normally reflected via the rating methodology, but in a way that is not unified, and not under the control of regulators. In SEC-IRBA (and soon SEC-SA for the UK).

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?

- (x) 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.

See for empirical calibration evidence for example “Risk Control / AFME in 2022 “Perraudin, William and Yixin Qiu (2022), “ABS and Covered Bond Risk and Solvency II Capital Charges”.

See also answers provided within points:
10.5; 10.6 and 10.9.

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
- (x) 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.

A review of national laws and rules across EU-27 member states has not been possible within the short timeframe of the consultation. However, we cannot rule out that there might be obstacles in certain member states. Therefore we propose to the commission to invite all member states to review their national legislations with focus on potential improvements in the context of securitisations subsequently to the legislative proposals on EU level.

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

- [x] Traditional placed securitisation
- [x] Non-STS securitisation
- [x] Synthetic securitisation
- [x] Securitisation of SME and corporate exposures
- [x]
- [x]

SRT securitisation
☑ ABCP securitisation
☑ STS securitisation

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.

There is not the one segment which could contribute most to the CMU objectives. Jointly, all types of securitisation (Public ABS, CLOs, synthetic, Private Non-ABCP and ABCP) have the potential to contribute to the CMU. Public ABS, CLOs and ABCP transactions are mainly done for the financing purposes of the originator, considering parameters like funding costs, funding diversification, usage of own credit limits with investors, asset encumbrance and capital ratios. Also, the interest rate and liquidity environment of financial markets do play a role. Synthetic transactions are done with the goal of a capital relief and risk sharing with non-bank investors, allowing banks to give out more loans or. Therefore, the regulatory review should definitely be approached holistically. Most of the proposals are agnostic of the market segment (especially risk weights and due diligence requirements), on the other hand some proposals have to reflect the fundamental differences in how transactions are arranged and executed (especially transparency requirements should differentiate between public and private).

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
☑

☑ 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

Significant Risk Transfer process

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.

The answers to the above chapters imply the selected options: Operational costs are high due to high unneeded requirements especially in terms of due diligence and transparency. The capital requirements are not justified with regards to the risk structure of securitisations. Also, barriers for investors have to be lowered (see also Q 12.7 below). Alternative funding through other instruments or central bank liquidity are therefore often more economically attractive.

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.

There is not the "one" measure which would stimulate the issuance of securitisation. It is the sum of minor or major adjustments that are needed to revive the securitisation market (placed traditional securitisation) in Europe. The different steps to make are well covered within this consultation paper. We are referring to the following topics (not in order of priority):

- Capital requirements (see chapter 9 and 10)
- Due diligence requirements (see chapter 4)
- Transparency requirements (see chapter 5)
- SRT (see chapter 9)
- Supervision (see chapter 6)
- LCR (see chapter 9)

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.

Cross border securitisations should not be regarded as a key objective on a standalone basis. In consumer securitisations (residential mortgages, auto loans/leases, unsecured consumer, credit cards), main risk drivers are mainly domestic (GDP, unemployment rates) and investors prefer to do country risk allocation themselves and consequently, they prefer domestic pools rather than blended, pan-European pools. Also from an originator perspective, they would require extremely long implementation periods from an IT, accounting and other operational perspectives; For corporate and SME securitisations, the preference for synthetic balance sheet transactions does work reasonably well and securitising pan European pools does not require any legal changes in insolvency law or similar regimes. However, for synthetic securitisations, it is still not possible to reach the STS status when securitising SME- and large corporate loans from different jurisdictions – which is very common für synthetic transactions. We see no risk-related reason why this

should not be possible and STS criteria should be adjusted with this respect. Improving the regulation does mean reducing costs for transactions and making smaller transactions sizes possible. This will be beneficial also for domestic banks without a network across several countries.

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.

See answer to question 12.4 above, cross border securitisations should not be regarded as a major objective for public cash securitisations. For synthetic corporate and SME loan securitisations, STS criteria should be adjusted.

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.

Certainly, the public ABS markets (mainly auto ABS/RMBS/CLOs) are currently dominated by larger countries, however certain other countries do already have public transactions (Austria, Belgium, Poland, Sweden). More importantly, private securitisations (especially synthetic balance sheet securitisations, private non-ABCP and ABCP) are more diverse. Private transactions with EIF involvement also comprise countries like Hungary, Rumania, Czech Republic, and private synthetic SRT and ABCP transactions comprise ca. 80% corporate and SME pools, including corporate debtors across Europe and also smaller EU countries (no more specific data available).

Market barriers are too high because of the overly restrictive regulatory framework. Setting up a first transaction and preparing IT systems to meet the regulatory requirements is a costly process, especially for smaller banks. Hence, in “smaller” EU countries, costs for banks to join the securitisation market are simply too high. Our proposals reduce costs and make securitisations in smaller countries more attractive.

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

- (selected) 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.

The due diligence requirements impose real disadvantages on European investors as they have to request a lot more information from non-EU originators when they want to invest in a non-EU transaction. Non-EU investors do not have such requirements and just need to ask for the information they need for their investment decision. Therefore, EU-investors are discriminated. The same applies to the overly prescriptive disclosure requirements, which are even dysfunctional for private securitisations.

The other way round, expenses for non-EU investors into EU transactions are higher than for investing in non-EU transactions. Hence, the EU is crowding out international investors.

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.

The green transition requires huge investment amounts in Europe to be financed. With ca. 70-80 % of debt financing in the EU being provided by banks, these need to be enabled to accompany the credit growth, here securitisation is the most important instrument to connect bank and non-bank FI based credit lending with capital markets. Therefore, the impact on the green transition is indirectly through the overall financial sector and no particular focus should be set on green securitisations. We therefore strongly recommend implementing the proposed changes, see above. On the other hand side, we recommend not to introduce any further labels or standards with respect to ESG or sustainability. While agreeing on the purpose of such ideas, we strongly believe that these goals should be achieved with measures on the underlying asset level and its financing through banks, non-bank FIs or promotional banks, as the case may be, and not through specific types of refinancing instruments.

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
- (selected) 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

803722a3-26a0-4d56-9ce7-87dc2efecd3c/GBIC_TSI_Appendices.pdf

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)

Contact

fisma-securitisation-consultation@ec.europa.eu