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Targeted consultation on the functioning of the EU securitisation framework

Fields marked with * are mandatory.

Introduction

In the wake of the global financial crisis engagement in the EU securitisation market has shrunk significantly both on the demand and the supply side. When soundly structured, securitisation can play a positive role in deepening capital markets and freeing up bank balance sheets. In particular, by transforming illiquid assets into tradable securities, securitisation can release bank capital for further lending. It is an important building block of the capital markets union (CMU) as it enables risk transfers to a broad set of institutional investors, allowing them indirectly to finance economic activities, and opens up new investment opportunities.

By enhancing legal clarity via codifying the sectoral rules governing the EU securitisation market in a single regulation, increasing market transparency and putting in place provisions that prevent the re-emergence of the harmful market practices that led to the global financial crisis, the EU aims to revive the EU securitisation market on a more sustainable basis. Furthermore, the introduction of a label for securitisations that are simple, transparent and standardised (STS) helps investors identify high-quality securitisation structures and thus contributes to overcome the stigma that had been attached to the securitisation market.

The EU securitisation framework is applicable since January 2019. The framework consists of the Securitisation Regulation 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 and in Solvency II.

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.

In its capital markets union (CMU) action plan published on 24 September 2020 the Commission has committed to review the current regulatory framework for securitisation to enhance banks' credit provision to EU companies, in particular SMEs, to scale-up the securitisation market in the EU. This commitment was echoed in the European Parliament’s own initiative report on the CMU, adopted in October 2020, and endorsed by the Council conclusions of December 2020 on the Commission’s CMU action plan.

This coincides with the Commission’s legal obligation under Article 46 of the Securitisation Regulation to submit a report on the functioning of the Regulation to the European Parliament and to the Council by 1 January 2022. Article 46 lists a number of topics that shall be covered. In addition, the report shall take into account the findings of the report on the functioning and implementation of the regulation by the Joint Committee of the European Supervisory Agencies (ESAs).

In order to deliver on the Commission's commitment in the CMU action plan and in order to prepare the mandated report, this targeted consultation seeks stakeholders' feedback on a broad range of issues. It covers the areas mandated by Article 46 of the Securitisation Regulation, namely

- the effects of the regulation (Section 1)
- private securitisations (Section 2)
- the need for an equivalence regime in the area of STS securitisations (Section 5)
- disclosure of information on environmental performance and sustainability (Section 6) and
- the need for establishing a system of limited licensed banks performing the functions of SSPEs – securitisation special purpose entities (Section 7)

In addition, the questionnaire seeks feedback on a number of additional issues that have been identified and raised by stakeholders and by the Joint Committee of the ESAs as having an impact on the functioning of the securitisation framework. This questionnaire will be followed by a call for advice to the Joint Committee of the ESAs on the appropriateness of the prudential treatment of securitisations.

In view of the technical nature of the issues, the questionnaire is targeted to market participants, including data repositories and rating agencies, industry associations and supervisors. While some questions are general, others are directed towards particular participants in the securitisation market, i.e. issuers or investors, or towards supervisors. Please note that not all questions are relevant for all stakeholders and that you are not expected to reply to every question.

The targeted consultation is available in English only and will be open for **8 weeks and will close on 17 September 2021**.

The consultation will be followed by a roundtable event for which a separate invitation will be issued in due time. The contact details provided in replying to this consultation will be used to send out the invitations to the roundtable.

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-review@ec.europa.eu.

More information on

- on this consultation
- on the consultation document
- securitisation
- on 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
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen

- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Jan-Peter

* Surname

Huelbert

* Email (this won't be published)

jan-peter.huelbert@tsi-gmbh.de

* Organisation name

255 character(s) maximum

True Sale International GmbH

* Organisation size

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

Transparency register number

255 character(s) maximum

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

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* Country of origin

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

- Afghanistan
- Djibouti
- Libya
- Saint Martin

○ Åland Islands	○ Dominica	○ Liechtenstein	○ Saint Pierre and Miquelon
○ Albania	○ Dominican Republic	○ Lithuania	○ Saint Vincent and the Grenadines
○ Algeria	○ Ecuador	○ Luxembourg	○ Samoa
○ American Samoa	○ Egypt	○ Macau	○ San Marino
○ Andorra	○ El Salvador	○ Madagascar	○ São Tomé and Príncipe
○ Angola	○ Equatorial Guinea	○ Malawi	○ Saudi Arabia
○ Anguilla	○ Eritrea	○ Malaysia	○ Senegal
○ Antarctica	○ Estonia	○ Maldives	○ Serbia
○ Antigua and Barbuda	○ Eswatini	○ Mali	○ Seychelles
○ Argentina	○ Ethiopia	○ Malta	○ Sierra Leone
○ Armenia	○ Falkland Islands	○ Marshall Islands	○ Singapore
○ Aruba	○ Faroe Islands	○ Martinique	○ Sint Maarten
○ Australia	○ Fiji	○ Mauritania	○ Slovakia
○ Austria	○ Finland	○ Mauritius	○ 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
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- 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
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable)

- [ ] Accounting
- [ ] Auditing
- [x] Banking
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Social entrepreneurship
- [ ] Other
- [ ] Not applicable

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') country of origin, organisation name and size, and its transparency register number, are 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 organisation 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 as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
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Consultation questions

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1. Effects of the Regulation

Question 1.1:

Has the Securitisation Regulation (SECR) been successful in 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
Improving access to credit for the real economy, in particular for SMEs	○	○	○	○	●	○
Widening the investor base for securitisation products in the EU	○	○	○	○	●	○
Widening the issuer base for securitisation products	○	○	○	○	●	○
Providing a clear legal framework for the EU securitisation market	○	○	●	○	○	○
Facilitating the monitoring of possible risks	○	●	○	○	○	○
Providing a high level of investor protection	○	●	○	○	○	○
Emergence of an integrated EU securitisation market	○	○	●	○	○	○

Question 1.2:

If you answered ‘somewhat disagree’ or ‘fully disagree’ to any of the objectives listed in the previous question, please specify the main obstacles you see to the achievement of that objective.

5000 character(s) maximum

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

"Improving access to credit for the real economy, in particular for SMEs": It does not appear that the SECR has boosted securitisations of SME (or other corporate) exposures and thus enabled banks to increase lending. Whilst low interest rates and the monetary policy from ECB have also contributed to this, the increased costs associated with the administrative burden imposed on banks by the SECR seem to impair securitisations, particularly in a low interest rate environment. The SECR has not encouraged more originators/issuers to enter the market nor have existing originators/issuers increased the issuance volume.
Investor: SMEs securitisations are very rare and almost never offered in the primary market. So it seems that securitisation market only plays a minor role in funding the SME sector.
“Widening the investor base for securitisation products in the EU”: Statistics on placed issuances speak for itself: According to the ESM, in 2008, the size of the European securitisation market, including the United Kingdom, was 75% that of the US. In 2020, it was just 6% (https://www.esm.europa.eu/blog/reviving-securitisation-europe-cmu). Reasons comprise also different legal frameworks across Europe, less favourable regulatory treatment (e.g. LCR) as well as the monetary policy from ECB, but the strong operational burden on investors due to the SECR relative to other financial instruments contribute to this development.
Investor: The high regulatory requirements for investing in securitisations limits the number and types of investors that can participate in this market. Calls for more disclosure and reporting, more supervision and more geographical reach of the European Securitisation Regulation make the securitisations less attractive for investors. It is our understanding that investor base is now smaller and relies to a larger extent on basically non-EU investors or investment companies. The high capital requirements for Securitisation under Solvency II (also compared to e.g. the capital charges for loan pools or Covered Bonds) limits the attractiveness for insurers.
“Widening the issuer base for securitisation products”: As stated above (investor base), public issuance is relatively low. For issuers, the strong SECR regulation reduces the relative attractiveness as well as cheap alternative funding sources and regulatory burden (risk weights in the CRR and Solvency II, LCR treatment). Especially private securitisations are essential for financing the real economy (over 50% trade receivables and nearly 30% auto loan/lease and equipment leases). Structures comprise ABCP as well as private non-ABCP securitisations and do have a relationship lending character. Transactions are revolving over a long time and can be adjusted upon mutual agreement in changing circumstances (such as implication due to the Corona pandemic). Larger deals can be syndicated among different sponsor banks. The SECR has negatively impacted this market segment, sometimes originators have to report data under two or more different ESMA templates for the very same receivables portfolio. Against this background, the disclosure requirements should be reconsidered carefully.
“Providing a clear legal framework for the EU securitisation market”: Whilst the SECR has indeed, for the first time, concentrated various, though not all, provisions on securitisations in one legislative framework, its provisions (and the accompanying changes to the CRR) have failed to increase legal certainty in respect of securitisations that are targeted at obtaining regulatory capital relief. In particular, there is still no mechanism of obtaining a binding regulatory assessment on the significant risk transfer and thus the intended regulatory capital effects before the signing of the relevant transaction. The same applies in respect of other regulatory aspects, such as risk retention in more complex transaction structures. This exposes, in particular, regulated originators to the risk of unnecessarily incurring significant transaction costs and has resulted in the inclusion of rather broad "SRT calls" in the transactions, which, in turn, create uncertainty to investors.

Question 1.3:

What has been the impact of the SECR on the cost of issuing / investing in securitisation products (both STS and non-STS)? Can you identify the biggest drivers of the cost change? Please be specific.

5000 character(s) maximum

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

In general, costs for non-STS transactions have increased significantly due a very strong increase of CRR risk weights and other costs related to (i) general compliance with the new regime and (ii) costs for reporting requirement under Article 7. For STS transactions, the increase in CRR risk weights has been moderate but compliance with STS rules have contributed significantly.

From the originator's perspective: Due to the new regulation, the costs of issuing ABS transactions have increased. The main cost driver are (i) increased transparency and reporting requirements (e.g. revised /more complex templates and formats for Loan Level Information, upload of redacted transaction documentation, STS notification, etc.), (ii) IT implementation costs, additional external counterparties for STS verification, the Liability Cash-Flow Model and the Pool Audit.

One investor has provided feedback that his costs have remained unchanged and there was no need to increase employees or subscribe to additional tools. From another investor we have received feedback that the investment and monitoring process has not changed in terms of available information and analysis, but time and efforts have increased for documentation of compliance with the new regulation.
Feedback from Lease Receivables Originator: Our exposures fall into the asset type according to Art. 1 (a) (iv) of the Commission Delegated Regulation (EU) 2019/1851 on Homogeneity (i.e. credit facilities, including loans and leases, provided to any type of enterprise or corporation).
With regard to its single country securitisations in Germany, we derive the homogeneity from Art. 2 (3) (b) (ii) of the Commission Delegated Regulation (EU) 2019/1851 on Homogeneity of the underlying exposures, i.e. jurisdiction, whereby the pool shall consist of underlying exposures relating to lessees with residence in one jurisdiction (Germany) only.
Due to the limited size of the individual portfolios in each country, we would like to introduce multi-country securitisations and sell lease portfolios of more jurisdictions in one transaction. In this context, another homogeneity factor than Art. 2 (3) (b) (ii) (same jurisdiction) needs to be used. Nevertheless the alternative, the homogeneity factor according to Art. 2 (3) (a) can either not be used due to the fact that the underlying portfolio consists of SME and non-SME clients. In consequence, we currently cannot obtain the essential STS status for a multi-country securitisation.
Therefore, receivables of SME and non-SME clients should be recognised as homogenous in one transaction.
Appraisal: It seems to be inconsistent that SME and non-SME clients can be mixed in a single country transaction [Art. 2 (3) (b) (ii)], but not in a multi-country transaction [Art. 2 (3) (a)] in order to derive the homogeneity. Thus, the homogeneity of a multi-country portfolio should rather be determined by other factors such as a uniform/consistent credit & collection policy or whether the global portfolio is steered on a central basis by using a global and consistent risk management approach. There is no evidence that a "mixed" portfolio (SME & non-SME clients) would lead to an increased risk if assets have been originated in more than one country.
Consequences: The current design of Art. 2 (3) (a) prevents us to mix SME and non-SME receivables in a multi-country transaction and hence we cannot receive STS status which is essential for an efficient securitisation transaction. In a consequence, this fact limits the refinancing channels and hence the potential for granting liquidity to the real economy. We kindly request to broaden the criteria of Art. 2 (3) (a) in order to ensure that multi-country transactions including SME and non-SME clients can also obtain STS status.

2. Private securitisations

The legal framework acknowledges the bilateral and bespoke nature of so-called private securitisations and does not require them to disclose detailed information about the transaction to potential investors in the same way that it does for public securitisations. However, this needs to be balanced against the need to ensure adequate supervision of private transactions, which requires access to sufficient information on the part of supervisors. As a result, the current legal framework requires private securitisations to fill in the same data templates as public securitisations.

Question 2.1:

Are you issuing more private securitisations since the entering into application of the EU securitisation framework?

- ○ Yes, significantly
- ○ Yes, slightly
- ● No change
- ○ No, it has decreased
- ○ Don't know / no opinion / not applicable

Question 2.2:

What are the reasons for this development (please explain your answer)?

5000 character(s) maximum

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

There are underlying reasons justifying both types of transactions: If there is a relatively modest volume of assets which need financing and there is a small group of investors standing ready to provide such financing then from a cost and efficiency perspective it seems advisable (lower pricing and all-in costs) to do a private securitisation. There are no costs for preparing a Prospectus and there is no need to search for investors. One the other hand, if the volume of assets is rather high and there is no fixed group of investors, it may make sense (lower pricing and all-in costs) to distribute the notes to investors (which usually requires the originator to retain lead managers). In addition, many of private transactions are ABCP conduit transactions and a substantial asset class of such ABCP conduit transactions are trade receivables. Trade receivables are short-term assets. Accordingly, financing by way of short-term paper (ABCPs) is the usual way to finance such trade receivables. Given the relatively short duration of the ABCP it is not suitable to list such paper on a stock exchange, hence such transactions remain private as well.

We wish to stress that our stakeholders do not object to providing sensibly calibrated, useful and practical information in a flexible and cost-effective way. Indeed, to mitigate potential supervisor concerns, TSI together with AFME and the European DataWarehouse have for some months been working together with their members to gather high level information on the private cash securitisation market (ABCP and ABCP-like transactions, not synthetics) with a view to publishing such data on a regular (quarterly) basis in the near future. We hope in due course this will be a helpful contribution to the discussion.

Statistics from STS Verification International GmbH (SVI) as third party verification agent have shown that for trade receivable ABCP transactions notified STS in 2019, 100% have been in place before 2019 and (94% for notifications in 2020). In other asset classes in ABCP the values were 100% and 91% respectively. For private non-ABCP transactions notified in 2019, 91% have started before 2019, and 97% of deals notified in 2020 have started before 2019. This strongly indicates that the high number of private STS notifications in 2020 was not due to a shift from public to private because basically all transactions have started before 2019. Background is the fact that for existing transactions, the new and increased CRR risk weights were applicable only in 2020.

Another important aspect is that for many issuers, private transactions serve to prepare a later public issuance, especially for first time issuers as well as smaller issuers who need to ramp-up the asset volumes for a term takeout. The same level of reporting requirements against smaller transaction volumes explains the relative disadvantage and need for relaxation of disclosure requirements.

Market participants perceive that existing prudential reporting requirements (especially COREP, table C14) should be considered more carefully for prudential supervision rather than further expanding SECR Article 7 reporting for supervisory purposes

Question 2.3:

Do the current rules enable supervisors to get the necessary information to carry out their supervisory duties for the private securitisation market?

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

Please explain your answer to question 2.3:

5000 character(s) maximum

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

Supervisory authorities have the same access to the same information as in public securitisations. In addition, we refer to the existing COREP reporting which basically provides a similar transaction level information which could be shared among supervisors.

Question 2.4:

Do investors in private securitisations get sufficient information to fulfil their due diligence requirements?

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

Please explain your answer to question 2.4:

5000 character(s) maximum

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

Investors generally have access to the same level of information as in public transactions.
Since securitisations shall not be marketed to retail investors and in private securitisations investors are typically more closely involved in the set-up of the transaction and the details of the transaction features (such that, irrespective of their due diligence obligations in Art. 5(3) SECR, they have much better access to information), the information obligations under the SECR for private securitisations appear to be too farfetched.

Investor: Yes. However, we did not observe any larger changes before vs after SECR. ESMA templates for private transaction are usually made available indirectly through reporting websites, however the typical information provided in every deal is already sufficient.

Question 2.5:

Do you find useful to have information provided in standard templates, as it is currently necessary according to the transparency requirements of Article 7 and the associated regulatory and implementing technical standards?

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

Please explain your answer to question 2.5:

5000 character(s) maximum

Generally, standardisation, especially when co-developed between industry and regulatory policymakers in a manner that promotes pragmatic solutions and non-burdensome administrative approaches, can yield cost efficiencies for financial services firms (buy and sell side), improve the effectiveness of supervision and reduce fragmentation and thus deliver on CMU's aims.
However, as also recommended by the CMU High Level Forum, the differences between private and public transactions should also allow to differentiate reporting standards accordingly. Considering the importance of private securitisations for financing the real economy, as stated above, a relaxation of disclosure requirements should take place as well as the harmonisation of private non-ABCP and ABCP reporting requirements (see comment on syndicated transactions above).

An investor has expressed its opinion that it finds standard templates more useful, especially if provided through a securitisation repository. This is an aspect particularly relevant for public transactions, as well for private transactions with a larger number of investors. With this regard, please consider our view in 2.6. below for differentiating between public and private transactions.

Question 2.6:

Does the definition of private securitisation need adjustments?

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

If you answered ***Yes*** to question 2.6, please explain why and how the definition of private securitisations should be adjusted:

5000 character(s) maximum

As explained above, direct and immediate funding of the real economy (i.e. securitisations, in which not financial intermediaries, but real economy companies, such as manufacturers, are the originators) take place primarily in the form of private securitisations. The public markets require minimum transaction sizes of several hundred million Euros, public ratings, and more. Originators are often themselves publicly traded companies with the resources for requisite financial reporting. These are conditions a lot of small and medium sized companies cannot meet, hence they use the private market where the investors are mostly also sponsors of the securitisation and also are mostly banks with a wider business relationship, in particular a lending relationship, to the originator. These non-securitisation related relationships furthermore usually pre-date the securitisation.

To summarise the overall goal: We all agree on the importance of securitisation for financing the real economy, particularly for corporates and SMEs. If we also agree on the different nature of private transactions (smaller in size, banks as sponsors, bilateral or syndicated with limited number of parties, often multi-years revolving, relationship banking character, very high level of involvement of sponsors/banks in the structuring process), the conclusion should be to adjust the rules and regulations for this segment and treat it different to public ABS (much bigger in size, more institutional investors, broadly placed to many investors, more static or short revolving periods, no relationship banking character, low level or no of involvement of investors in the structuring process).

Broadly speaking, private securitisations require less rules and a higher level of flexibility in order to significantly reduce costs for originators and sponsors/banks. Therefore, the question of adjusting the definition of private securitisations should be considered together with the question about how private securitisations should be treated differently.

In order to capture the differences described above, a set of different criteria should be considered:

"private securitisations without third-party investor" for those where the sponsor(s) is (are) the only investor (s), i.e. securitisations without a third-party investor who needs protection from potential information asymmetry between, inter alia, sponsor and investor. This is also reflected in Article 5 of the Securitisation Regulation, which is based on the notion of an "institutional investor, other than the originator, sponsor or original lender" as the party with special due diligence requirements. Any "bilateral" securitisation would, by definition, fall into this category (since if there is only one investor, he would need to be the sponsor), but also many co-purchase (i.e. syndicated) securitisations involving a small number of co-sponsors should be captured.

Another criterion should be "private securitisations, which are fully supported", which would cover all ABCP-transactions where the ABCP-investor does benefit from the sponsor-bank support.

Both of these categories seem compatible with the ideas of the JCESA §44 Report. For both categories it is conceivable, as suggested by the JCESA §44 Report, to not require any reporting according to §7 SECR, but certainly not more than portfolio reporting and no loan-by-loan reporting irrespective of the asset class. This would lead to a harmonization of private non-ABCP and ABCP securitisations

3. Transparency and Due diligence

The transparency regime in the SECR requires that the originator, sponsor and SSPE of a securitisation make a range of information available to the holders of the position, to competent authorities and, upon request, to potential investors. The information is provided via templates and is intended to enhance the transparency of the securitisation market as well as to facilitate investors' due diligence and the supervision of the market. The following questions aim to find out whether the information that is currently provided to investors is appropriate, sufficient and proportionate for their due diligence purposes and whether any improvements can be made.

Question 3.1:

Do you consider the current due diligence and transparency regime proportionate?

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

Please explain your answer to question 3.1:

5000 character(s) maximum

Lease Receivables Originator: “We operate our own Luxemburg based private securitisation SSPE. This SSPE issues notes, which are purchased by external investors (conduits). However, we would also like to have the option to purchase a note of the SSPE. This would enable us to provide liquidity to the transaction from other sources in the event of distortions on the ABCP market. This would contribute to market stability even in stressed market situations. The following provisions prevent us to support the private ABCP securitisation business and further public non-ABCP securitisation business:
Purchasing only a pari passu Note of the SSPE vehicle, which primary has been set up for ABCP purposes, falls under the securitisation type ”non-ABCP” according to SECR Art 2, Nr.8, which defines ”…‘ABCP transaction’ means a securitisation within an ABCP programme;..”. As a result of the transparency requirements SECR (EU) 2017/2402, Art .7, No.1 and on the basis of the disclosure templates, RTS and ITS issued by ESMA in accordance with Art.7, No. 4., the originator has to perform both, non-ABCP and ABCP reporting for one securitisation. In cases of STS securitisations, the originator has furthermore to provide two different STS reporting forms and to request two different STS certifications. The impact for the technical implementation and the regular effort for the additional full non-ABCP reporting do not seem appropriate. In addition to that the full non-ABCP reporting is supposed to provide information for the investor, in this case for the originator himself.
Appraisal: Originators can thus act as investors for their own private ABCP securitisation only at considerable additional costs and effort, since they do not refinance this investment through commercial paper like the conduits. Despite the relief according to SECR (EU) 2017/2402, Art.7, No 1c and Art.2, third subparagraph for the reporting of private securitisations without the obligation to prepare a prospectus in accordance with (EU) 2003/71, the effort for the development of two different reporting forms with different level of detail is inappropriate. The disclosure templates Annex 8, underlying exposure on a loan level basis and Annex 12, the investor report, have to be delivered in addition to the aggregated reporting for the private ABCP securitisation and furthermore a separate STS Certification and STS reporting. (support for warehousing!)

Consequences: The conclusion is that investments in an own private ABCP securitisation are made more difficult due to the technical implementation efforts, the high additional costs and the quarterly processing of the additional reporting. As a result, private ABCP securitisations could be subject to market fluctuation and hence not be resilient enough for possible market instabilities. As it is common practice to first purchase the underlying exposure into a private ABCP securitisation in order to later convert them into a public non-ABCP securitisation, this also has an impact on the non-ABCP market, as less volume is available.
In a consequence, this fact limits the securitisation refinancing possibilities and hence the potential for granting liquidity to the real economy. We kindly ask you to consider an extension of the SECR EU 2017 /2402 or a further exemption in SECR EU 2107/2402 Article 2, No.1 to enable originators to invest in their own private ABCP securitisation without any additional reporting burden. This will result in a higher stability of the ABCP market as well as more business opportunities for future non-ABCP transactions.”

Investor: No. While the due diligence and transparency regime is adequate for securitisations, it is not proportionate when compared to other fixed income asset classes and clearly puts securitisations on disadvantage. There are less requirements for investing in riskier asset classes.

The regulatory framework for securitisation and for other comparable instruments (loan pools, covered bonds, etc.) is inconsistent. There is less information available on cover pools and investments in unrated and unlisted loan pools are not penalized as hard as when investing in a public securitisation.

Question 3.2:

What information do investors need? How do investors carry out due diligence before taking up a securitisation position?

5000 character(s) maximum

Investor: We are happy with the information we receive. We evaluate the portfolio with custom metrics, analyse originator/sponsor, run stress tests with cashflow scenarios etc.

Question 3.3:

Is loan-by-loan information disclosure useful for all asset classes?

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

If ***Yes***, please specify (multiple choice accepted):

- [x] Auto-loans/leases
- [ ] Trade receivables
- [x] Residential mortgages (RMBS)
- [x] SME loans
- [x] Corporate loanse
- [x] Leases
- [x] Consumer loans
- [x] Credit-card receivables
- [ ] Other

Please explain your answer to question 3.3:

5000 character(s) maximum

Generally, loan-by-loan disclosure makes little sense for portfolios which revolve quickly (and hence the loan-by-loan information becomes outdated quickly), such as trade receivables and potentially credit card receivables. This becomes especially evident in the example of trade receivables: They are very short in term, mostly 45 days or less. They do not bear interest. The originators are not in the business of creating and managing credit risk. The originators make products or provide services and the credit risk associated with the trade receivables is ancillary to their core activity and ordinary course of business, hence there is no bank-like credit analysis or credit rating by the originator for these receivables (which is not to say that there is no analysis at all). Oftentimes they are insured by a trade credit insurer. The obligors are often small or medium sized companies and therefore, particularly in Europe, without public rating.
More generally speaking: While public investors might deem loan-by-loan information for public credit card receivable securitisations useful, sponsor/banks might come to a different conclusion and should have the choice in private transactions (see differentiation explained in 2.6 above). As a result, the requirement for loan-by-loan information should be driven by the type of transaction (public versus private as described

under 2.6 above, with private transactions: smaller in size, banks as sponsors, bilateral or syndicated with limited number of parties, often multi-years revolving, relationship banking character, very high level of involvement of sponsors/banks in the structuring process, versus public transactions: much bigger in size, more institutional investors, broadly placed to many investors, more static or short revolving periods, no relationship banking character, low level or no of involvement of investors in the structuring process) and not by the asset class.
Furthermore, originators received feedback from Credit Rating Agencies that the investor report would be much more important than the loan level data for monitoring purposes, however access to loan level data should be possible in general and for the initial due diligence and credit analysis especially.

Question 3.4:

Is loan-by-loan information disclosure useful for all maturities?

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

Please explain your answer to question 3.4:

5000 character(s) maximum

See above, the driver for loan-by-loan information should be public/private as defined in 2.6 above.
Investor: No. Not useful for short-dated portfolios e.g. trade receivables backing ABCPs.

Question 3.5:

Does the level of due diligence and, consequently, the type of information needed depend on the tranche the investor is investing in?

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

Please explain your answer to question 3.5:

5000 character(s) maximum

Investor: Yes. The information requirements increase with the risk of the tranche.
However, investors are fully aware of tranche specific risks also in absence of public ratings, do already receive and consider all required information and no further due diligence obligations or information requirements should be made.

Question 3.6:

Does the level of due diligence and, consequently, the type of information needed depend on whether the securitisation is a synthetic or a true-sale one?

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

Please explain your answer to question 3.6:

5000 character(s) maximum

True sale and synthetic transactions do have some different aspects of analysis for investors (e.g. true sale opinions, SRT rules, call rights). But the main driver for due diligence and information requirements is the tranche, and no further due diligence obligations or information requirements should be made.

Question 3.7:

Are disclosures under Article 7 sufficient for investors?

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

Please explain your answer to question 3.7:

5000 character(s) maximum

Investor feedback

Question 3.8:

Do you find that there are any unnecessary elements in the information that is disclosed?

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

Please explain your answer to question 3.8:

5000 character(s) maximum

Investor feedback: Yes, the loan level data for high granular portfolios.
For private securitisations please refer to 2.6 and 3.3 above.

Question 3.9:

Can you identify data fields in the current disclosure templates that are not useful? Please explain your answer.

5000 character(s) maximum

AUTL57 - The Energy Performance Certificate Value is not uniformly defined within the EU and therefore impossible to use for comparisons or evaluations. Some EU countries don't use Energy Performance Certificate for vehicles at all or are likely discontinue using the certificates. Furthermore, this information is not available at a single source/database for all vehicles. Hence, it would only be possible to provide this information for self-produced vehicles (only for new vehicles, not for trucks/busses, etc.) but definitely not for vehicles produced by other brands (from a Captive perspective). An alternative could be the CO2 emissions in g per km.AUTL58 - see AUTL 57.

Question 3.10:

Can the disclosure regime be simplified without endangering the objective of protecting EU institutional investors and of facilitating supervision of the market in the public interest?

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

Please explain your answer to question 3.10:

5000 character(s) maximum

Loan-by-loan information requirements should not apply at all for private securitisations, and templates for ABCP and private non-ABCP should be harmonised, especially when the same transaction is considered, see 2.6 and 3.3 above.

4. Jurisdictional scope

The Joint Committee of the ESAs issued an opinion to the Commission on the jurisdictional scope of the Securitisation Regulation, identifying some elements of the legal text that require clarification. This section of the questionnaire seek feedback on the issues identified by the Joint Committee.

Question 4.1:

Have you experienced problems related to a lack of clarity of the Securitisation Regulation pertaining to its jurisdictional scope?

- (x) Yes
- ( )

No

Don’t know / no opinion / not applicable

Please explain your answer to question 4.1:

5000 character(s) maximum

All those cases have been identified in the ESA's opinion, i.e. the scope of due diligence requirements under Article 5 (1) (e) in the case of a non-EU securitisation.

Investor: Yes. EU regulated investors should face minimal regulatory hurdles to invest in securitisations from non-EU jurisdictions. The US, Japan and Australian investors are flexible in accessing other securitisation markets, that cannot be said for European investors. This puts European Asset Managers or investors that compete on global level in a disadvantage, we don’t have simple access to non-EU markets while our competitors can enter our market more easily.

Question 4.2:

Where non-EU entities are involved, should additional requirements (such as EU establishment/presence) for those entities be introduced to facilitate the supervision of the transaction?

Yes

No

Don’t know / no opinion / not applicable

Please explain your answer to question 4.2:

5000 character(s) maximum

The Securitisation Regulation should be open for investments by EU entities in securitisations of non-EU originators, provided that the relevant transaction complies with the SECR rules. If such requirements are complied with, we do not see a need to put additional burden on non-EU originators.

The indirect coverage through the investor due diligence requirement set out in Art. 5(1)(d) is sufficient. This will in any case result in embedding contractual obligations in the transaction documentation (regarding retention and disclosure), on which basis the undertaking entity will incur liability if it does not comply therewith. It does not appear necessary to, on top of this, also include the relevant entity in the scope of regulatory supervision / administrative sanctions.

Investor: Additional requirements or costs are not helpful. EU regulated investors should be allowed or face minimal regulatory hurdles to invest in securitisations from non-EU jurisdictions.

Question 4.3

In transactions where at least one, but not all sell-side entities (original lender, originator, sponsor or SSPE), is established in the EU:

A) Should only entities established in the EU be eligible (or solely responsible) to fulfil the risk retention requirement under Article 6?

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

Please explain your answer to question 4.3 A):

5000 character(s) maximum

As regards self-retention, if there is only one sell-side entity established in the EU it would not be appropriate to require that such entity fulfils the retention requirement for the other, non-EU originators (or sponsors) as well. Such a requirement would lead to an increase of the self-retention piece, thereby potentially putting at risk true sale requirements by the insolvency law of the member states for the EU originators (i.e. in Germany).

As regards the reporting requirements, it makes more sense to require the EU originator (or sponsor) to fulfil those as he has a closer link to the EU regulators and the true sale analysis is not impaired.

The indirect coverage through the investor due diligence requirement set out in Art. 5(1)(d) is sufficient. This will in any case result in embedding contractual obligations in the transaction documentation (regarding retention and disclosure), on which basis the undertaking entity will incur liability if it does not comply therewith. It does not appear necessary to, on top of this, also include the relevant entity in the scope of regulatory supervision / administrative sanctions.

Investor: From a purely economic view the risk retention should not discriminate according to nationality. This discrimination does not make any sense at all.

B) Should the main obligation of making disclosures under Article 7 be carried out by one of the sell-side parties in the EU? In this case, should the sell-side party(ies) located in a third country be subject to explicit obligations under the securitisation contractual arrangements to provide the necessary information and documents to the party responsible for making disclosures?

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

Please explain your answer to question 4.3 B):

5000 character(s) maximum

Please see above
This would be too restrictive in scenarios where only one of the parties to which the disclosure obligation relates is located in the EU and then, in fact, only this entity would be subject to the disclosure obligation even where this entity would not be best placed to do so. As long as the disclosure is made, the flexibility following from Art. 7(2) SECR should be retained.

Investor: No. We have no preference which party is obliged to make the necessary disclosures.

C) Should the party or parties located in the EU be solely responsible for ensuring that the "exposures to be securitised" apply the same credit-granting criteria and are subject to the same processes for approving and renewing credits as non-securitised exposures in accordance with Article 9?

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

Please explain your answer to question 4.3 C):

5000 character(s) maximum

We do not see any reason for this obligation being fulfilled at the level of the relevant originator, even if such originator is located outside the EU.

This would not be feasible where the relevant entities located in the EU cannot influence such processes (e. g., where an EU entity qualifies as sponsor or an originator but is not the original lender). Again, the non-EU entities involved could be bound by contractual undertakings and this should suffice.

We have no preference which party is responsible for ensuring the criteria.

D) Should a reference to sponsors located in a third country be included in the due diligence requirements Article 5(1)(b) of the SECR? How could their adequate supervision be ensured?

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

Please explain your answer to question 4.3 D):

5000 character(s) maximum

We do not fully understand this question, please specify.

Question 4.4:

Should the current verification duty for institutional investors laid out in Article 5(1)(e) of the SECR be revised to add more flexibility the framework?

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

Please explain your answer to question 4.4:

5000 character(s) maximum

Please see above.

Art. 5(1)(e) of the SECR in fact requires an institutional investor that invests in a securitisation position after the original issuance (which may be a long time after the closing of the securitisation transaction) to conduct a historical due diligence on the publications for such entire term – and this is not limited to the content of the publications as they were actually made, but would even require an analysis as to whether those have been correctly made and in the relevant intervals. In particular, the former is far too cumbersome and costly. This responsibility should remain with the entities that are subject to the disclosure requirements and should not be extended to the buy-side.

If you answered ***Yes*** to question 4.4, how can it be ensured that the ultimate objective of protecting EU institutional investors remains intact?

5000 character(s) maximum

The disclosure obligation on the sell-side is sufficient. This is also in line with the general regulatory approach on disclosure obligations – these are typically not mirrored on the part of the investors.

Question 4.5:

Should the SECR and the Alternative Investment Fund Managers Directive (AIFMD) be amended to clarify that non-EU AIFMs should comply with the due diligence obligations set out in Article 17 of the AIFMD and Article 5 of the SECR with respect to those AIFs that they manage and/or market in the Union?

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

Please explain your answer to question 4.5:

5000 character(s) maximum

Question 4.6:

Should the SECR be amended to clarify that sub-thresholds AIFMs fall within the definition of institutional investor thereby requiring them to comply with the due diligence requirements under Article 5 of the SECR?

(The Alternative Investment Funds Managers Directive provides for a lighter regime for AIFMs whose AIFs under management fall below certain defined thresholds)

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

Please explain your answer to question 4.6:

5000 character(s) maximum

5. Equivalence

The SECR does not include an equivalence regime and Article 18 of SECR requires that originators, sponsors and SSPE of an STS securitisations are established in the EU. The Commission is tasked to investigate whether an equivalence regime for STS securitisations should be introduced.

Question 5.1:

Has the lack of recognition of non-EU STS securitisation impacted your company?

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

If you answered ***Yes***, please provide a brief explanation how was your company affected:

5000 character(s) maximum

Yes, it has. It causes higher reporting efforts from an originator perspective. It prohibits a level playing field for investors given the fact that a given transaction can be treated as being STS-eligible on the one hand side (e.g. in the UK) but being not STS-eligible on the other hand side (e.g. in the EU) or vice versa. This again leads to different requirements on the required regulatory capital, which in turn leads to different pricing requirements from EU/Non-EU investors. In addition, capital requirements for securitisation positions that the bank holds from entities of our group based in UK increased.

Question 5.2:

Should non-EU entities be allowed to issue an STS securitisation?

- (x)

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

If you answered ***Yes***, how should the second sub-paragraph of Article 18 (that requires that the originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the Union) be revised?

5000 character(s) maximum

Non-EU entities should be eligible to issue STS securitisations. This is particularly relevant for traditional securitisations since these allow EU regulated investors to obtain a regulatory capital benefit from investing in STS securitisation positions. Most of the STS criteria are embedded in the contractual arrangements anyway (and as regards those that are of a regulatory nature, even those could, for non-EU entities, be included in the documentation as contractual undertakings). Therefore, from an investors perspective, the restrictions are not necessary and do not enhance the quality of the securitisation.

Investor: Yes. There is no economic reason why STS transactions cannot be issued by non-EU entities. Yes, Article 18 should be changed accordingly.

Please explain your answer to question 5.2:

5000 character(s) maximum

Question 5.3:

Should securitisations issued by non-EU entities be able to acquire the STS label under EU law?

- Yes, in case the securitisation is issued in a jurisdiction that has a regime declared to be equivalent to the EU STS regime;
- (selected) Yes, in another way, for example by other mechanisms used in financial services legislation like recognition or endorsement;
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 5.3:

5000 character(s) maximum

See the response to item 5.2. In addition to the equivalence or recognition of a foreign regime, it should also be possible for a securitisation issued by a non-EU issuer to obtain the STS label as long as compliance with the STS criteria of the SECR is ensured through appropriate contractual undertakings.

An endorsement mechanism would be preferable and allow ESMA and/or the ECB to take a proactive role when compared to a blanket equivalence mechanism administered by the European Commission.
Recognition or endorsement (i.e., voluntary submission into one or more EU-27 jurisdictions) would be preferable than using the European Commission's equivalence mechanism i.e., where there is no actual submission to a jurisdiction of the EU-27. In the case of recognition or endorsement coupled with a submission in the jurisdiction (concepts from the AIFMD's national private placement regime could serve as a conceptual base) by entities from a third-country jurisdiction, one of the EU NCAs plus ultimately EU-level authorities would be mandated to supervise and enforce compliance.
Recognition or endorsement is equally desirable and necessary as it would on the one hand provide EU-domiciled investors with more choice while on the other hand preserve the European value of the STS label, incentivise investment into EU STS issuances (thus improving parties to the issuances with greater demand and liquidity for "their" EU STS issuances) and improve supervision of compliance efforts on an intra-EU basis.
The introduction of an ESMA and ECB-administered recognition mechanism would serve to advance CMU's aims within and across the EU (and in a manner that is less reliant on other financial centres) while still promoting the development internationally of robust securitisation frameworks where EU STS standards represent a core element of well-functioning markets globally.
By contrast, in the case of the European Commission providing an equivalence determination for that third country, the EU authorities and NCAs would have to rely on the relevant third-country authorities to supervise and enforce compliance on the basis of supervisory cooperation arrangements. Equivalence is also a unilateral process and does not necessarily mean automatic reciprocal recognition. Without equivalence determinations being subject to mutual recognitions, this means that a third-country issuance could be seen by the EU to be STS eligible, but an EU STS issuance in that third-country might not be, thereby creating an imbalance of more available third-country STS competing with EU STS without increasing the demand for EU STS issuances – something which goes to the very core of CMU and STS ensuring securitisation issuances are a sustainable on-going driver of the economic recovery (now as impacted by COVID-19's economic impact).
As in the UK Call for Evidence on the UK Securitisation Regulation, we would consider that, as a minimum, any consideration of whether a non-EU issuance might be able to acquire a STS label under the EU regime, should be whether that third-country jurisdiction has implemented the BCBS-IOSCO STC criteria and has an equivalent supervisory and enforcement approach (including as to cross-border supervisory cooperation) to that of the EU and the Consolidated SECR, as amended including following the outcome of this review process.
In any event any amendments to the SECR should promptly consider to deliver the resolving of ambiguities around the geographical scope of the SECR's requirements as suggested in the ESA's Opinion to the European Commission on the Jurisdictional Scope of Application of the Securitisation Regulation dated 25 March 2021.]]

Investor: Yes, in another way. It should NOT be necessary that the jurisdiction that has a regime declared to be equivalent to the EU STS. It should be sufficient that the individual securitisation meets the STS requirements, also as verified by an STS verification agent.

Question 5.4:

Which considerations could be relevant to introducing any of the above mechanisms (e.g. equivalence/recognition/endorsement/other) and which could be the conditions attached to such mechanisms?

5000 character(s) maximum

See the responses to items 5.2 and 5.3.

6. Sustainability disclosure

SECR requires that where the underlying loans are residential mortgages or auto loans/leases the available information related to the environmental performance” of the underlying assets is published for STS securitisation. This obligation was amended with the capital markets recovery package by including a derogation, whereby originators may, instead, choose to publish “the available information related to the principal adverse impacts of the assets financed by underlying exposures on sustainability factors”. The Commission is asked to investigate whether the requirements in Articles 22(4) [term STS] and 26d(4) [on-balance-sheet STS] about publishing the available information related to the environmental performance of the assets should be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with a view to mainstreaming environmental, social and governance disclosure.

Question 6.1:

Are there sufficiently clear parameters to assess the environmental performance of assets other than auto loans or mortgages?

- ○ Yes, for all asset classes
- ● Yes, but only for some asset classes
- ○ No
- ○ Don’t know / no opinion / not applicable

Please specify:

1000 character(s) maximum

This needs to be assessed on an asset-class by asset-class basis and may also vary from asset to asset within the same asset class.

Investor: Yes, for SME loans and corporate loans. We believe the ESG fact sheets provided by ELFA do a very good job here and could provide some inspiration what sort of parameters to use: https://elfainvestors.com/publications/elfa-diligence/?pubinitiatives=esg

Here again securitisation are required to provide more information than covered bonds or loan pools (= other asset based financings).

Question 6.2:

Should publishing information on the environmental performance of the assets financed by residential loans and auto loans and leases be mandatory?

- ○ Yes, the information is currently available
- ○ Yes, but with a transitional period to ensure the availability of information
- ○ Yes, with a grandfathering arrangement for existing deals

- [x] No
- [ ] Don’t know / no opinion / not applicable

Question 6.3:

As an investor, do you find the information on environmental performance of assets valuable?

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

Describe the use you have made of it?

5000 character(s) maximum

Considerations to 6.2: From an originator perspective, clear and consistent parameters for describing environmental performance that are aligned to future disclosure requirements of investors do not exist for all asset classes, including auto loans and mortgages. Any inclusion of additional appropriate and reasonable parameters to assess environmental performance into SECR would in general be welcomed.
However, such requirements can only be introduced, if the information is available or can be made available. If the information can be made available, the cost for obtaining this information must be reasonable. Otherwise, additional costs imposed on the product will affect the SEC market even more negatively – especially given that there are no such requirements for other products.
To be even more clear, we would like to give you an example concerning auto loans and leases, where information cannot be obtained in some cases and thus the introduction of a mandatory requirement would be harmful to the securitisation: the Energy Performance Certificate Value is not uniformly defined and currently not available in all jurisdictions of the EU. The Energy Performance Certificate Value is defined differently in almost every single European member state. In Germany, the indication of the CO2 efficiency class will be omitted and will no longer be available. As an alternative, it would be possible to provide information on the CO2 emissions in g per km, for a manufacturer’s or manufacturing group’s own vehicles. However, it is not possible to provide this kind of information for vehicles of other brands as it is not publicly available. Currently, there is no reliable source that provides this kind of information on an individual vehicle basis, i.e. based on the Vehicle Identification Number. As long as there is no single source of truth, it will not be possible to report reliable and robust environmental information on all vehicles.

We believe that it would not be justified to treat securitisations more adverse than other products. Please see below under section 6.6.

An investor has expressed its view in favour of mandatory reporting subject to grandfathering rules and availability of information.

Question 6.4:

Do you think it is more useful to publish information on environmental performance or on adverse impact and why?

5000 character(s) maximum

Information on environmental performance (as may be available) is more useful than information on adverse impact because it provides more information and allows us to judge ourselves what is adverse and what is not.

Question 6.5 (a):

Do you agree that these asset specific disclosures should become part of a general sustainability disclosures regime as EBA is developing?

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

Question 6.5 (b):

Should ESG disclosures be mandatory for (multiple choice accepted):

- ☑ securitisation that complies with the EU green bond standard
- ☐ RMBS
- ☐ auto loans/leases ABS

Question 6.6:

Have you issued or invested in a green or sustainable securitisation? If yes, how was the green/sustainability dimension reflected in the securitisation? (multiple choice accepted)

- ☐ Green or sustainable underlying assets
- ☐ Use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied
- ☐ Green/sustainable collateral AND use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied
- ☐ Other

Question 6.7:

According to the Commission proposal for a European green bond standard, a securitisation bond may qualify as EU green bond if the proceeds of the securitisation are used by the issuing special purpose vehicle to purchase the underlying portfolio of Taxonomy-aligned assets. Is there a need to adjust this EuGB approach to better accommodate sustainable securitisations or is there a need for a separate sustainable securitisation standard?

- ◉ Yes

No
Don’t know / no opinion / not applicable

If so, what should be the requirements for a securitisation standard? Please explain your answer:

5000 character(s) maximum

We believe that there are two main considerations which will need to be harmonised in order the establish an ESG standard for securitisations:

First, securitisations should not be treated adversely to other asset classes such as corporate bonds and covered bonds. We believe that there is no indication that securitisations are more prejudicial to ESG goals than such other product types. This also means that the EuGB is also a good basis for securitisations. A specific ESG framework for securitisations is not recommended and the approach of the EuGB to include securitisations in the same standard as other product types should be pursued.

However, securitisations are structurally particular and will not be easy to make the EuGB "fit" for securitisations. Thus, it would be rather recommendable to consider this specifics in the securitisation regulation than in the EuGB itself.

As regards the particularities of securitisations, we believe that there are three different factors which can make a securitisation sustainable:

First, the assets which are acquired by the SPV can themselves be ESG compliant. As an example, student loans may be securitised, and student loans may be regarded by the Taxonomy as complying with a social goal.

Second, the collateral which is financed with the loans which are the securitised assets can be ESG compliant. As an example, the SPV may acquire auto loans which are granted to the debtors in order to acquire "green" vehicles (e.g. electric or hybrid vehicles).

Third, the originator uses the proceeds of the securitisation (forwarded to the originator by the SPV by way of purchase price for the securitised assets) for an ESG goal.

We believe that in all three scenarios the securitisation should qualify as ESG compliant under the EuGB standard and that none of them should be excluded.

As a consequence, and considering the Use-of-Proceeds approach (UoP) proposed by EU COM, the UoP should not be limited to the issuing SPV but under certain conditions, a look-through approach to the originator should be allowed. Otherwise, no harmonised EuGB across all instruments can be achieved and the UoP principle proposed by EU COM would instead be “transformed” into an asset approach for securitisations. Conditions for a look-through to the originators could be a combination of (i) the originator is also the seller, (ii) in case that a bank is the originator, the green asset ratio is not positively affected by the securitisation and (iii) the portion of taxonomy-compliant assets in the securitised pool is at least as high as in the overall book of the originator in the respective asset class.

7. A system of limited-licensed banks to perform the functions of SSPEs

SECR has tasked the Commission to investigate if there is there a need to complement the framework on securitisation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

Question 7.1:

Would developing a system of limited-licensed banks to perform the functions of SSPEs bring added value to the securitisation framework?

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

Question 7.2:

If you answered ***Yes*** to question 7.1, please specify what elements should such a system include?

5000 character(s) maximum

We believe that the current market practice of insolvency remote SSPEs does work very well. No benefit would arise and no risks exist related the SSPE role that would be mitigated by introducing a limited-licensed banks regime. The only and severe negative impact would be additional costs to issuers for no benefit. We acknowledge that different SSPE regimes have developed across Europe, and in case harmonisation is envisaged, we propose to establish a truly harmonised, general insolvency law in all EU member states for SSPEs.
Neither from a market economics nor from a regulatory perspective, there is a need or an added value for policymakers to establish a regime for (A) a system of “limited licensed banks” (i.e., credit institutions) (LLBs) to perform the functions of SSPEs or (B) for these to have the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors. The latter would also cause issues for forfaiting business and other commercial activity.
SSPEs are in addition to the compliance obligations that apply to them under (i) the Consolidated SECR subject to compliance obligations as a matter of (ii) the FVC Regulation; (iii) EMIR and/or SFTR; (iv) general corporate law and corporate governance plus reporting obligations; and (v) through the existing SECR a bespoke supervisory and insolvency regime to SSPEs.
These regulatory requirements are in addition to a range of documentation standards and control mechanisms that have been established as good market practice ranging from regulatory reporting, investor disclosure but also to the insolvency remoteness of the SSPE, reducing cash from being trapped in SSPEs and thus ensuring that even if the originator of the underlying cash-flow generating assets becomes subject to insolvency (or analogous) proceedings, those cash-flow generating assets are not subject to severe clawback provisions by the originator’s insolvency administrator.
Any such policy move in this area would have serious adverse knock-on effects to liquidity generation, deal creation as well reduce the attraction of the EU-27 as a market for issuances. Moreover, any such move would discriminate securitisation issuances when compared to covered bonds for example.
Lastly, why we do see the sense of the above-mentioned policy proposal as a means to alleviate adverse levels of institutional interconnectedness and thus concentration risk exposures that could impinge on

financial stability, would not be solved by replacing SSPEs with LLBs. We would point out that there has not to date been a potential nor actual SSPE market failure. As a result, we are of the view, as shared by a number of commentators, that a move from SSPEs to LLBs would infringe parties' freedom of where to structure, privity of contract as well as come at cost of significant market disruption and create an uncompetitive system.

8. Supervision

The Joint Committee of the ESAs' report on the implementation and functioning of the securitisation framework noted some possible shortcomings in the supervision of the market. This section seeks to gather additional feedback in the areas identified by the Joint Committee.

Question 8.1:

Are emerging supervisory practices for securitisation adequate?

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

Question 8.2:

Have you observed any divergences in supervisory practices for securitisation?

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

Question 8.3:

If you answered ***Yes*** to question 8.2, please explain your answer:

5000 character(s) maximum

Investor: Yes. There are divergences on an international level. Broadly speaking non-EU regulators accept the regulatory framework and dominant practices of another country. This is not the case in the EU. Certain Member States, including notably Ireland have goldplated the SECR's application in respect of persons related to a SECR securitisation issuance through a Statutory Instrument i.e., a legislative instrument (the Irish Securitisation Regulations) and guidance from the Irish NCA, the Central Bank of Ireland (CBI). Mainly this concerns notification requirements on compliance of various entities and their compliance with the SECR. While this may be something that the JC might want to base a pan-EU regime, through rulemaking instruments (RTS) or non-rulemaking instruments (guidelines) as discussed in the next section, this is still goldplating. The notification requirements under the Irish Securitisation Regulations apply to all securitisations (both public and private) where there has been a first issue of securities following 1 January 2019. Under these rules:

- the notification must be made within 15 working days after the first issue of securities;
- the notification must include:

o the ISIN (International Securities Identification Number) of the securitisation;

o whether the notifying party is an originator, sponsor or SSPE;

o where the originator, sponsor and SSPE have been allowed to designate one of their number to comply with the reporting obligation, that entity's name and address;

o whether the notifying party is a corporate or non-corporate entity; and

o the name, registered office, corporate status, and LEI (Legal Entity Identifier) of the notifying party and, to the extent that they are not the notifying party, the originator, sponsor and SSPE.

In respect of private securitisations, while the above notification obligation under the Irish Securitisation Regulations applies equally to them, the CBI has yet to confirm whether it will expect to receive a transaction summary or an overview of the main features of the securitisation, and it has not yet confirmed how that (and other required information) is to be made available to it.

Lastly, the Irish Securitisation Regulations also have wide-reaching enforcement powers (including beyond Arts. 32 to and including 37 of the Consolidated SECR) that are made available to the CBI and any appointed officer. This includes powers to regulated financial services firms and equally in relation to non-(CBI) regulated financial services providers.

As discussed in the sections above and below, the JC may wish to consider publishing guidelines provided they are pragmatic and ensure a harmonised application of the SECR and supervision of compliance efforts.

Question 8.4

Should the Joint Committee develop detailed guidance (guidelines or regulatory technical standards) for competent authorities on the supervision of any of the following areas:

A) the due diligence requirements for institutional investors (Art 5)

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

Please explain your answer to question 8.4 A):

5000 character(s) maximum

There are no material legal concerns on how NCAs supervise firms’ compliance with this requirement. If guidelines are to be issued these should focus on promoting harmonised standards of supervision by NCA teams (including where they work as colleges) as opposed to new burdensome requirements for transaction related parties and/or noteholders.

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

B) risk retention requirements (Art 6)

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

Please explain your answer to question 8.4 B):

5000 character(s) maximum

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

C) transparency requirements (Art 7)

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

Please explain your answer to question 8.4 C):

5000 character(s) maximum

There are no material legal concerns on how NCAs supervise firms’ compliance with this requirement. If guidelines are to be issued these should focus on promoting harmonised standards of supervision by NCA teams (including where they work as colleges) as opposed to new burdensome requirements for transaction related parties and/or noteholders.

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

D) credit granting standards (Art 9)

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

Please explain your answer to question 8.4 D):

5000 character(s) maximum

There are ample Level 2 and 3 legislative legal rulemaking instruments, notably the EBA’s Guidelines on Loan Origination and Monitoring that deal with credit granting standards and how to supervise these.

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

E) private securitisations

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

Please explain your answer to question 8.4 E):

5000 character(s) maximum

There are no material legal concerns on how NCAs supervise firms’ compliance with this requirement. If guidelines are to be issued these should focus on promoting harmonised standards of supervision by NCA teams (including where they work as colleges) as opposed to new burdensome requirements for transaction related parties and/or noteholders. Please see comments in section 2. above regarding improving clarity around private and public securitisations.

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

F) STS requirements (Articles 18 – 26e)

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

Please explain your answer to question 8.4 F):

5000 character(s) maximum

There are no material legal concerns on how NCAs supervise firms’ compliance with this requirement. If guidelines are to be issued these should focus on promoting harmonised standards of supervision by NCA teams (including where they work as colleges) as opposed to new burdensome requirements for transaction related parties and/or noteholders.

Investor: No. we believe supervision is sufficient and does not require additional regulatory technical standards to work.

Question 8.5:

Are any additional measures necessary to make sure that competent authorities are sufficiently equipped to supervise the market?

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

Please explain your answer to question 8.5:

5000 character(s) maximum

Areas for improvement would be required both in terms of improving supervisory capabilities and resources available to NCAs as well as degree of inter-authority (NCA plus EU level) cooperation and supervisory convergence.

Question 8.6:

[if you are a supervisor] Do supervisors consider the disclosure requirements (both the content and format) for public securitisations sufficiently useful?

- ○ Yes
- ○ No

- [ ] Don’t know / no opinion / not applicable

Question 8.7:

Do supervisors consider the disclosure requirements (both the content and format) for private securitisations sufficiently useful? If not, how could they be improved?

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

9. Assessment of non-neutrality correction factors impact

The current regulatory capital framework for securitisations is built on non-neutrality correction factors to capture the agency and model risks prevalent in securitisations. These include

1. the (p) factor, a capital surcharge on the tranches relative to the underlying pool’s capital set at a minimum of 0.3 (30% capital surcharge) for SEC-IRBA (Article 259(1) of the CRR) and at 1 for SEC-SA (Article 261(1) of the CRR) (100% capital surcharge)
2. the capital floors, whereby the lowest risk weight that may be assigned to the senior securitisation tranche may not be less than 15% (10% in the case of a simple, transparent and standardised -“STS”- securitisation)

Question 9.1 (a):

In your view, is the capital impact of the current levels of the (p) factor proportionate, having regard to the relative riskiness of each of the tranches in the waterfall, and adequate to capture securitisations’ agency and modelling risks?

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

Question 9.1 (b):

If you would favour reassessing the current (p) factor levels, please explain why and what alternative levels for (p) you would suggest instead:

5000 character(s) maximum

Investor: Capital Charges for Securitisations are too high. They are unreasonably high when compared to corporates and other asset classes (e.g. Covered Bonds or loan pools). The historical default experience for European securitisation is very good. The European capital market has lost more money with the European Sovereign defaults, defaults of certain Sub-Sovereigns and Financial Institutions than with all European Securitisations (which did not have a sub-prime sector). In addition, various measures have been implemented in the past inter alia by the Securitisation Regulation (e.g. risk retention requirements, transparency requirements including the mandatory publication of Cashflow models for STS, due diligence requirements) to mitigate agency and modelling risks.

It is not clear how non-neutrality arguments have been integrated into the SEC-ERBA and how this compares to SEC-IRBA and SEC-SA. A clear reduction of (p) would be appropriate in all approaches. For the SEC-ERBA, this should also be achieved via reduced risk weights.

Since there is no rationale for the calibration of (p) available to us, it is not possible for us to reassess the current levels with reasonable outcomes. However, we would like to point out that there have been significant regulatory and supervisory activities in the recent years in order to identify and address risks stemming from the application of internal models (e.g. ECB's Targeted Review of Internal Models (TRIM), IRB Repair Program, new EBA GL on the Definition of Default, SREP assessment with additional capital requirements (P2R) to capture risks that might be underestimated due to model deficiencies). Furthermore, there will be an output floor according to the Finalisation of Basel III (BCBS 424 and CCR3) that is limiting the RWA relief resulting from the application of internal models (incl. IRBA and SEC-IRBA) in order to account for model deficiencies. Hence, from this holistic perspective, there is a case for a recalibration of the (p) factor levels in order to ensure that there is no double counting of the same risk.

Investor: Capital charges should more be in line with corporates when the securitisation is based on a corporate pool or it should be in line with covered bonds (when securitisation is based on granular mortgage or consumer loan pools).

Question 9.2:

Are current capital floor levels for the most senior tranches of STS and non-STS securitisations proportionate and adequate, taking into account the capital requirements of comparable capital instruments?

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

Please explain your answer to question 9.2:

5000 character(s) maximum

Since there is no rationale for the calibration of the risk weight floors available to us, it is not possible for us to reassess the current levels with reasonable outcomes. However, from a methodological perspective, there might be a case for reassessing the minimum risk weights for the SEC-IRBA in light of e.g. the recent initiatives to strengthen the reliability of IRB models (see above) to the extent that the minimum risk weights were increased to capture model risks and deficiencies.

Investor: Capital charges should more be in line with corporates when the securitisation is based on a corporate pool or it should be in line with covered bonds (when securitisation is based on granular mortgage or consumer loan pools). The riskiness of an investment is not really correlated with the STS-Label.

Question 9.3:

Are there any alternative methods to the (p) factors and the capital floors to capture agency and modelling risk of securitisations that could be regarded as more proportionate?

Please provide evidence to support your responses to the above questions:

5000 character(s) maximum

There is evidence that the historical performance of European ABS has been outstanding all the times. However, this is not sufficiently reflected in the capital requirements for European securitisations. Thus, the actual risk, in particular, of STS-securitisation positions should be taken into account based on the observed actual defaults and losses of securitisation positions that include agency and model risk. Such validation approach can be used for rated securitisation positions and as a benchmark for a commensurate calibration of the other approaches.

10. Maturity

With reference to question 9, the level of the maturity of the tranche has an important impact on the calculation of the (p) factor in SEC-IRBA, the look-up table of SEC-ERBA, and indirectly in the calibration of the (p) factor in SEC-SA in order to keep the relative capital charges under the hierarchy of approaches. EBA Guidelines on the determination of the weighted average maturity of the contractual payments due under the tranche have provided a methodology to calculate the maturity of a tranche in a more accurate way, helping to mitigate that impact.

Question 10.1:

Do you think that the impact of the maturity of the tranche is adequate under the current framework?

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

Please explain your answer to question 10.1:

5000 character(s) maximum

Question 10.2:

Is there an alternative way of considering the maturity of the tranche within the securitisation framework?

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

Please explain your answer to question 10.2:

5000 character(s) maximum

No final opinion. In principle yes, if the maturity calculation is based on the WAM and if the calculation could be based more on market practice instead of very conservative assumptions in terms of prepayments. However, only the SEC-IRBA and the SEC-ERBA, but not the SEC-SA, have to use and calculate the maturity.

11. Treatment of STS securitisations and asset-backed commercial papers (ABCPs) for the liquidity coverage ratio (LCR)

STS securitisations currently qualify as level 2B assets under the LCR Delegated Act, subject to certain additional requirements laid out therein. If STS securitisations were reclassified as level 2A, up to 40% of a credit institution's liquidity buffer could be made up of STS securitisations.

ABCPs may qualify as STS securitisations but do not meet the necessary requirements to qualify as liquid assets for LCR-purposes.

Question 11.1 (a):

Should STS securitisations be upgraded to level 2A for LCR purposes?

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

Please explain your answer to question 11.1 (a):

5000 character(s) maximum

Asset backed securities, such as Auto ABS for instance, are highly liquid. The issue volume is often €500 million and more. They are traded on the stock exchange and can be liquidated most of the times. Quotes are provided by market makers to maintain market liquidity. Typically, however, investors hold the acquired asset-backed securities until final maturity, so that liquidity is shown by the acquisition of new issues by investors in the market instead of the turnover. At least, senior auto asset backed securities with the highest credit rating and an issue volume of at least € 500 million are just as liquid as covered bonds. This should also apply for other asset classes if the issuance volume is high, as stated, if the securities are traded on the stock exchange and if there are quotes provided by market maker. Therefore, in our opinion, there are convincing reasons to classify such ABS as Level 2A high liquid assets. To give you an example for the high liquidity of our Auto ABS. Even in times of maximum uncertainty and stress at the beginning of the COVID 19 pandemic, it was possible to place Auto ABS on the market at good conditions.

Investor: Yes, assuming that an LCR categorisation results in more liquid tranches attracting more interest from banks as investors.

Question 11.1 (b):

If you answered 'yes' to question 11.1(a), should specific conditions apply to STS securitisations as Level 2A assets to mitigate a potential concentration risk of this type of assets in the liquidity buffer.

Please support your arguments with evidence on the liquidity performance of STS securitisations or parts of the market thereof, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

5000 character(s) maximum

Question 11.2 (a):

Should ABCPs qualify as level 2B assets for LCR purposes?

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

Please explain your answer to question 11.2 (a):

5000 character(s) maximum

Based on the short term nature, the high quality of EU ABCPs based on underlying assets performance and inherent credit protection we deem it adequate for ABCP to qualify as level 2B and STS ABCP as level 2A. Further, the ABCP market stayed intact during the Covid-19 crises with no severe impact on the external placement activities. As a general rule ABCPs as a short term instrument are held to maturity and covert to cash based on the agreed tenor (commonly up to 60 days); they are typically not actively traded.

The decline in the total ABCP volume as a result of the financial market crisis could be reversed in 2013 at the latest. Similar to the US market, the EU ABCP market has also developed fundamentally since the financial market crisis: The significant decline up to 2013 was mainly due to the withdrawal of the SIV / Repo / Arbitrage programs. Before the crisis, these products made the above-average growth of the ABCP market possible, e.g. through money market funding of (including sub-prime) securities. However, these products have given way to classic working capital products such as trade receivables and loan / leasing receivables to refinance real economy assets esp. for Corporates and SMEs. In this respect, the financial market crisis resulted in a (healthy) correction on the "asset side". This means that fully supported programs based purely on corporate customer requirements are significantly less affected and were able to continue to issue ABCPs. Since then, the European ABCP market has grown again with stable proportions of ABCP funding. This was also the case in the Corona year 2020.

In 2020 there were outflows in all investment products. Thus the short-term and temporary market development was not a specific ABCP issue. A significant difference to the 2008 financial crisis. In 2020, customers / depositors had a cash-is-king approach that had a short-term effect on all market participants. Accordingly, the more conservative outflow assumptions based on the LCR regime (for details see below) cannot be empirically maintained. In addition, a slight decrease in outstanding ABCPs can also be easily explained by a minor decline in the volume of receivables sold and fully reflects economic development. Lower sales lead to less working capital funding requirements and thus a reduced market volume. But is not a result of a weak investor market. Practical examples were the value chains:

• Automobile production is decreasing

• Suppliers reduce sales
• Shipping with less transportation of the items

In some cases, the decision of sponsor banks to revert to Liquidity Line funding or other funding sources instead of external ABCP placement has less to do with a 'market failure' / that no / fewer ABCPs could have sold, but was more a purely economic decision with regard to the pricing of ABCP vs. internal / other funding sources.

Further, as indicated before we would like to point out, that the current LCR regime applies the most conservative outflow assumptions on Liquidity Facilities provided to SEC counterparties with assuming a 100% outflow within next 30 days. This concept should be reconsidered, at least for Liquidity Facilities for ABCP Programs for which the Sponsor Bank has historic data at hand that can prove the resilience of the external placement performance even under stressed market environments. Based on such outflow assumptions a structural disadvantage is always attached to the SEC product as under the current LCR regime liquidity facilities have a higher impact on LCR Targets of an Institution compared to LFs granted to Corporates or FIs and as such result in higher treasury pricing of such facilities:

Current "outflow factors" of securitisations in the LCR are significantly higher compared to Corporates / FIs - the LCR regime determines outflow capitalization rates as follows:
10% for general working capital facilities for corporates (Paragraph 4)
40% for credit and liquidity facilities for credit institutions (Paragraph 8 (a))
100% for liquidity facilities that the institution has granted [...] to SSPEs (para. 8 (b))

Given the market development in recent years, a level playing field with other products (corporate bonds / sovereigns / covered bonds) must be created.

Question 11.2 (b):

Should specific conditions apply to ABCPs as level 2B assets for LCR purposes. Please support your arguments with evidence on the liquidity performance of ABCPs, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

5000 character(s) maximum

Yes, such ABCP should be issued by ABCP programmes with fully supported liquidity lines provided by the sponsor bank. Please refer to 11.2.a for further arguments.

12. SRT tests

The recent EBA report on significant risk transfer (SRT) recommended improving the current SRT tests, the specification of the test on the commensurate transfer of risk (CRT test) and the implementation of a new principle-based approach test (PBA test).

The allocation of the lifetime expected losses (LTEL) and the unexpected losses (UL) of the underlying portfolio plays a fundamental role in those tests. In synthetic securitisations in particular, the consideration of optional calls and the application of Article 252 of the CRR on maturity mismatches affect the outcome of the tests. Optional calls shorten the expected life of the deal, reduce the LTEL as a result, and favour the allocation of the UL to the tranches that provide credit enhancement, while, at the same time, such calls may trigger the application of Art. 252 on maturity mismatches, thus increasing the capital charge on the tranches retained by the originator.

Question 12.1:

Do you agree with the allocation of the LTEL and UL to the tranches for the purposes of the SRT, CRT and PBA tests, as recommended in the EBA report?

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

Please explain your answer to question 12.1:

5000 character(s) maximum

Some originators use the full deduction method pursuant to point b) of Article 244(1) of the CRR, which means that the originator institution applies a 1,250% risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with point (k) of Article 36(1). It is important that this method continues to be available, especially if the originating credit institution uses the standardised approach for credit risk to avoid complicated SRT, CRT and PBA tests.

Question 12.2:

What are your views on the application of Art. 252 of the CRR on maturity mismatches when a time call, or similar optional feature, is expected to happen during the life of the transaction?

5000 character(s) maximum

13. SRT assessment process

Section 5 of the EBA report on SRT laid out a series of recommendations on a suggested process for assessing SRT and standard documentation to be submitted to the originator’s competent authority.

Question 13.1:

What are your views on the EBA-recommended process for the assessment of SRT as fully set out in Section 5 of the EBA report on SRT?

5000 character(s) maximum

General: Since the meeting of the SRT test is crucial for securitisations intended to free regulatory capital, establishing a formal and binding process for SRT notifications and explicit feedback (including a binding deadline for such feedback) by the competent authority would be helpful. However, this will only serve to

avoid wasting time and costs if such feedback is not provided after the closing of the transaction but already pre-closing. If the feedback is only provided post-closing, this will leave originators with the risk of being required to approach investors for amendments to the transaction (which will be particularly difficult in the case of public securitisations) or to embed and exercise broad SRT calls under the transaction which leaves the originators with the SRT risk (EBA Report Nr. 63 (d)) and the investors with the risk of the call being exercised. Being required to rely on an SRT call is also not preferably since the unwinding of the transaction as a result of the exercise of such call involves additional costs to the originator. Since, as is true for most capital market-driven transactions, the exact transaction details will only be final shortly before the signing, the notification and feedback process should have different interactive stages such that the CA can ask questions and will be provided with the final transaction information shortly before signing and then able to provide the feedback (in particular, approval) in time before the signing. A similar process is in place for the approval of prospectuses so there should be no reason why such process should not be practicable.
The proposed distinction between a "provisional non-objection" (which would then probably be issued prior to the signing of the transaction) and a "final decision" within approx. one month after signing does not solve that issue as long as the provisional decision is not binding.
Based on the above consideration it appears questionable whether a distinction between a fast-track review process and a longer review process is really suitable.
Generally, the provisions of section 5 of the EBA report leave the CAs too much room to delay the process (e.g. by "stopping the clock"). This is contrary to the much needed legal certainty for regulated entities both on the sell-side and the buy-side.
The criteria for transactions qualifying for the fast-track assessment are too narrow:

- The mere fact that a transaction is a first-time transaction of the relevant originator should not justify a carve-out from the fast-track assessment; typically, in such scenarios the originators are advised by an experienced investment bank such that it cannot generally be suspected that higher scrutiny on the part of the CA will be required.

- Transactions should not fall outside the fast-track process merely because of their size (as per notional value). Mere size does not prompt concerns as to compliance with SRT requirements.

The assessment term of three months for the fast-track review is too long since major structural features may still be decided upon (and negotiated with investors) within such three months period. The mere possibility of CAs to commit to a shorter fast-track process does not mitigate this – this will probably not happen.
The envisaged freeze period would mean (if the transaction is on a three months assessment track) that the transaction documents would have to be largely final (in particular regarding "the economics of the transaction" – which would include the interest/margin on the securitisation positions) one month prior to signing/closing. That is not realistic.

Question 13.2:

Do you agree with the standardised list of documents that the EBA report on SRT recommended for submission to the competent authority for SRT assessment purposes?

5000 character(s) maximum

No. For the SRT assessment it should not be necessary to submit the public offering document in draft form since many pieces of information included therein are not SRT-related. In addition, the information on investors with close links to the originator does not seem to be primarily SRT-related (this may be relevant for a reg cap relief on a consolidated basis, but should not be relevant on a non-consolidated basis).

Question 13.3:

Once it has been established that the regulatory quantitative and qualitative criteria are met and transactions are in line with standard market practices, should a systematic ex-ante review be necessary?

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

Please explain your answer to question 13.3:

5000 character(s) maximum

See the general considerations under question 13.1 above.
A complete waiver could bear the risk that transactions are classified by the originator as "transactions in line with standard market practices" when the relevant conditions are not met. A compromise could be that a systematic review is still required also for transactions that are in line with standard market practices but not by the CA but by independent auditors.

Question 13.4:

Should the ex-ante assessment by the Competent Authority be limited to complex transactions?

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

Please explain your answer to question 13.4:

5000 character(s) maximum

There are pros and cons. A binding ex-ante assessment by a CA prior to signing would help both the originator and investors to achieve legal certainty, whereas not requiring this for non-complex transactions would reduce administrative costs.

14. SRT Amendments to CRR

Section 6 of the EBA report on SRT recommended a set of amendments of the CRR to simplify and improve the current SRT tests.

Question 14.1:

Do you agree with the recommendations on amendments of the CRR as fully laid out in Section 6 of the EBA report on SRT?

- Yes

- [x] No
- [ ] Don’t know / no opinion / not applicable

Please explain your answer to question 14.1:

5000 character(s) maximum

We have the following comment on the recommendation in paragraph 217 with regard to the full deduction method: Originators using the full deduction method pursuant to point b) of Article 244 (1) CRR still have to fulfil all the requirements of Article 244 (4) CRR, because it is stated in paragraph of Article 244 CRR that in addition to the requirements set out in paragraphs 1, 2 and 3, all of the following conditions listed in paragraph 4 shall be met. Thus, there is no need for an amendment of the rule text in this regard.
It is important, in any event, to avoid additional requirements which could implicitly, through supervisory requirements, force institutions using the full deduction method to prove a significant and commensurate risk transfer along the lines of point a) of Article 244(1) of the CRR using tests such as the SRT, CRT and PBA tests proposed by the EBA. A simple but conservative method of obtaining capital relief should continue to be available without creating additional hurdles. However, we have no objections to introducing a notification requirement for credit institutions using the full deduction method. But this notification requirement should be kept as streamlined as possible and be fit for purpose.

15. Solvency II

Insurance companies allocate only a small portion of their investments to securitisation positions. The Commission would like to know whether Solvency II standard formula capital requirements or other factors cause limited demand by insurance companies.

Question 15.1:

Is there an appetite from insurers 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 15.2:

Is there anything preventing an increase in investments in securitisation by insurance companies?

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

Please explain your answer to question 15.2:

5000 character(s) maximum

Solvency II capital requirements are much too high. The capital treatment and stress (test) assumptions are especially prohibitive factors for further ABS portfolio growth. However, if the share of investments from insurance companies could be increased by 5% points of the managed asset portfolio in the EU, then around €500 billion in additional investment in securitisation could be mobilised. This presupposes that the prohibitive capital requirements are lowered significantly to the level applying to banks. Different capital requirements are only justified if the risks are also different. But this is not the case here.

Question 15.3:

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, taking into account the capital requirements for assets with similar risk characteristics?

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

Please be 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

We are of the opinion that it is not appropriate to set aside capital to cover a spread risk that does not exist if the securitisation position is held until maturity.

Solvency II requires capital to be set aside to cover spread risk. This implies that price losses will have to be realised in the event of extreme market stress for these securities. Due to the amortisation profile, however, the securities are usually held until maturity (buy-and-hold approach). Thus, like positions in the banking book, only default risk and not spread risk should be backed with capital. The CRR for credit institutions differentiates here between the banking and trading book and only requires capital backing for spread risk in the trading book.

But the capital requirements for spread risk are generally too high. Having said this, we see some potential for a general recalibration using more recent data since the introduction of the STS regime.

Question 15.4:

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, taking into account the capital requirements for assets with similar risk characteristics?

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

Please be 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

Investor: No. Capital Charges are still too high. Also, as insurers are typically long-term investors it is not clear, why spread risk should be penalized.

Question 15.5:

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 the capital requirements for assets with similar risk characteristics?

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

Please be 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

Investor: No. Capital Charges are still too high.

Question 15.6:

Should Solvency II standard formula capital requirements for spread risk differentiate between mezzanine and junior tranches of STS securitisations?

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

Please explain your answer to question 15.6:

5000 character(s) maximum

Question 15.7:

Should Solvency II standard formula capital requirements for spread risk differentiate between senior and non-senior tranches of non-STS securitisations?

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

Please explain your answer to question 15.7:

5000 character(s) maximum

Additional information

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

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

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2021-eu-securitisation-framework_en)

Consultation document (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-consultation-document_

More on securitisation (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/securitisation_en)

Specific privacy statement (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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