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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 (https://ec.europa.eu/info/law/securitisation-regulation-2017-2402_en) 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 (https://ec.europa.eu/info/law/banking-prudential-requirements-regulation-eu-no-575-2013_en) and in Solvency II (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0035).

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 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0557).

In its capital markets union (CMU) action plan (https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan_en) 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 (https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2036(INI)&l=en), 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) (https://www.esma.europa.eu/press-news/esma-news/esas%E2%80%99-report-implementation-and-functioning-securitisation-regulation).

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 (https://esas-joint-committee.europa.eu/) 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 (mailto:fisma-securitisation-review@ec.europa.eu).

More information on

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

- on the consultation document (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-consultation-document_en)
- securitisation (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/securitisation_en)
- on the protection of personal data regime for this consultation (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-specific-privacy-statement_en)

About you

*Language of my contribution

English

*I am giving my contribution as

Business association

*First name

Rafael

*Surname

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*Email (this won't be published)

r.alarconabeti@leaseurope.org

*Organisation name

255 character(s) maximum

Leaseurope/Eurofinas

*Organisation size

Small (10 to 49 employees)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en). It's a voluntary database for organisations seeking to influence EU decision-making.

*Country of origin

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

Belgium

*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.

- ◉ **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-specific-privacy-statement_en)

Consultation questions

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.

5,000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Leaseurope & Eurofinas general comments
Securitisation is an important funding mechanism for Leaseurope & Eurofinas members providing access to a broad range of investors in order to free up capital and/or liquidity via publicly-listed securitisations or private bilateral transactions. It has a critical role in financing the real economy whether the asset classes reflect households financing cars to get to work or businesses investing in their growth.
The SECR has provided a very detailed and prescriptive regulatory framework for securitisation which is much more comprehensive and complex than for other fixed income sectors in the EU. This onerous approach to regulation of securitisation has impede the growth of the market by increasing compliance costs and complexity for sell-side and buy-side alike. The majority of the STS deals have been applied to existing transactions as the requirements remain burdensome both for issuers and investors.
Improving access to credit for the real economy, in particular for SMEs
Improving access to credit for the real economy depends on greater use of the securitisation markets, either by increasing the number of participants or increasing the extent to which those participants make use of the securitisation markets. The regulatory framework has discouraged both.
The regulatory framework has also discouraged the use of securitisation by existing market participants, mainly via non-SECR levers, such as capital charges for banks and insurers, and poor LCR treatment of securitisation exposures for banks.

Widening the issuer base for securitisation products
The issuer base for securitisation markets has also shrunk significantly since the financial crisis of 2008. This is partly explained by the onerous regulatory environment created by the SECR, lack of the right incentives within the bank capital regulation, the insurance capital regulation and the LCR treatment. The current availability of alternative cheap sources of funding such as ECB TLTROs and Asset Purchase Plans are also barriers to the development of the securitisation market in Europe.
Widening the investor base for securitisation products in the EU
Not only are new investors discouraged from entering the market, but also some existing investors have exited the market or reduced their allocation to the securitisation partly in response to both (i) the substantive outcomes of these new regulations; and (ii) and the prudential regulatory incentives mentioned above. We would also stress that the complexity of the regime has discouraged investors – and in particular small and mid-size investors – from entering the market, even where their sophistication would otherwise make securitisation investments appropriate. This concentrates the investor base even further.
The Basel context
The Basel Securitisation Framework is heavily influenced by the Global Financial Crisis and the role played by US sub-prime mortgage securitisations. Therefore, it establishes a highly conservative approach to securitisation. Yet securitisation in the EU has always performed strongly as credit losses have been minimal. In our opinion, the Basel Framework is too conservative for the needs of the EU.
In addition, the new output floor will have a negative effect on the originator bank as it will significantly increase the capital required to be held against any retained exposures after securitisation.
Market access
Another issue that needs to be addressed in the securitisation review is that of market access. Consideration will need to

be given to the fact that most publicly-placed EU securitisations will require access to investors in third countries such as the UK, US or those in the APAC region. The result is that public securitisations, even where the sell-side entities are entirely based in the EU, will often need to consider and (to some degree) comply with the requirements of those third countries.
Public and private transactions
Private securitisations have substantial societal benefits and should be encouraged where they can be done prudently, rather than being burdened by the need to comply with a level and type of regulation that is not always appropriate to the risks involved or the sophistication of the parties taking those risks. Therefore, as part of the Article 46 Review, we would urge the Commission to do what it can to facilitate these transactions so that they are available as a funding tool for issuers who do not have access to public markets.
Providing a high level of investor protection
The SECR regime provides a high level of investor protection for institutional investors, but we think that this level of protection is not appropriately calibrated in that it imposes costs that are disproportionate to the benefits of the protections conferred once account is taken of institutional investors' significantly greater potential to protect themselves via due diligence and independent credit analysis.

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.

5,000 character(s) maximum

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

The cost of issuing and investing in securitisations has gone up directly as a result of the SECR requirements. The SECR impose several cost components to the market participants (Investors, Sponsors, Originators) which can be broken down into compliance costs – e.g. HR expenses to obtain necessary expert /professional knowledge, ongoing reporting and data processing requirements with impact on IT cost. An additional cost relates to the need to obtain legal advice due to the very detailed and technical guidance provided by the SECR.

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)?

5,000 character(s) maximum

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

Private financing acts as the first step to facilitate future public issuance
Private financings are often undertaken in situations where financing through the public ABS market is not initially feasible, but this nonetheless constitutes a pipeline of transactions that will eventually become public securitisations. Most of the new originators that have entered the public ABS market in recent years were first privately financed through banks. The existence of a vibrant private securitisation market is both a precursor to a vibrant and diverse public securitisation market and an insurance policy against times when public market conditions may not be hospitable. However, we do not observe many new players entering the private securitisation market in Europe.

ABCPs
For SMEs most of the securitisation transactions have always been private transactions mainly in the form of ABCPs. SMEs public issuances are in most cases not suitable due to low volumes of receivables and high implementation costs. In general, market demand stays flat due to the SECR requirements and other comparable products being more attractive as easier and less costly to implement.

Furthermore and most important is the unwillingness of customers (mostly SMEs) to accept the level of complexity and costs attached to it (e.g. IT&HR for initial setup and ongoing reporting requirements via templates). Especially for a SME customer who wishes to set up its first securitisation transaction, the barriers to entry are high and there are other comparable products available which are quicker and easier to implement and do not require the extensive expert knowledge imposed by the SECR.

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?

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

Please explain your answer to question 2.3:

5,000 character(s) maximum

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

In our opinion, currently the information available to supervisors is extensive.

Question 2.4:

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

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

Please explain your answer to question 2.4:

5,000 character(s) maximum

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

Investors in private securitisations almost invariably obtain sufficient information to fulfil their due diligence requirements both regulatory due diligence and their own internal credit due diligence requirements.

Regarding ABCP and on-balance sheet structures a due diligence and credit review for a private securitisation is mandatory and provides the investor/sponsor with all necessary information directly. Typically, the rating process also requires extensive data sets and transparency on the seller and portfolio characteristic (e.g. SEC-IAA requirements).

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

Please explain your answer to question 2.5:

5,000 character(s) maximum

We do not believe it is helpful to prescribe standard templates as currently implemented under the SECR, especially in respect of private securitisations and ABCPs.

The Standard templates are not useful for private securitisations (including ABCP), as they are not providing any additional information compared to the usual DD and credit risk analysis carried out by sponsors/investors with the originator directly (private transactions) and the transparency based on the ongoing reporting with monthly investor reports.

Therefore we think that removing the templates for private transactions would allow to remove one burden/barrier for SMEs and not adversely impact Investors/Sponsors.

Question 2.6:

Does the definition of private securitisation need adjustments?

- (●) 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:

5,000 character(s) maximum

Whereas the definition of a private securitisation should be maintained, we suggest to introduce further definitions for special cases (i) a fully supported transaction (ABCP) and (ii) a closed-group transaction (On-balance-sheet) for which the requirements for data templates should be removed, as there is no added value to the existing credit procedures, direct relationship with the originator and ongoing monitoring based on agreed Investor Reports.

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:
5,000 character(s) maximum

There are some benefits, but we do not believe that the regimes are proportionate. The disproportionality is much more acute for private securitisations than for public securitisations, but it exists in both cases.

Compared to other financial products the transparency regime is not viewed as proportionate such reporting is only required for securitisations transactions. For private SEC transactions, the participants obtain the required information on the originator/seller & portfolio directly. Detailed set of requirements implies the deployment of specific and complex internal processes focused on Art. 5 compliance/documentation in addition to already existing and proven due diligence processes.

Question 3.2:

What information do investors need? How do investors carry out due diligence before taking up a securitisation position?
5,000 character(s) maximum

The information investors need usually includes information on historical defaults and recoveries (vintage or dynamic data), dynamic delinquency data and, where relevant, prepayment data, particularly for granular portfolios. If the transaction is exposed to residual value risk then residual value performance data may also be useful (failing which investors can make very conservative assumptions). The historical performance data should ideally cover one full economic cycle, failing which several years are needed so that investors have a solid basis for modelling past and future performance.

ABCP investors investing in fully supported ABCP undertake credit analysis of and rely on the sponsor bank providing the liquidity line and while they have interest in the broad types of underlying assets funded via the ABCP programme they have little interest in them beyond that. This is a similar approach to the credit analysis of a covered bond.

Question 3.3:

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

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

Question 3.4:

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

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

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:
5,000 character(s) maximum

It is fundamental that the type of information needed by investors derives logically from the quantum of risk they take.

Every investor should have access to the same set of information to analyse the risks of an investment. A more junior a note, bears a higher risk to be exposed to potential portfolio losses. Senior notes benefit from protection supplied by subordinated notes. This additional structural protection may justify a less detailed level of due-diligence.

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?

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

Question 3.7:

Are disclosures under Article 7 sufficient for investors?

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

Please explain your answer to question 3.7:
5,000 character(s) maximum

We believe that Article 7 disclosures are overly prescriptive and not fit for purpose in most cases. It is simply not the correct disclosure relevant to the particular investor in the particular case. Sometimes different information is required and sometimes it is required in a different format. Investors will have their own credit models and internal risk/approval processes and they will want to ensure they are receiving the information required by those models/processes in order to conduct their initial and ongoing diligence. If they do not receive the correct information they simply will not invest.

Question 3.8:

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

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

Question 3.9:

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

5,000 character(s) maximum

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?

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

Please explain your answer to question 3.10:

5,000 character(s) maximum

As set out above, the information required by investors is highly specific to their particular approach to credit analysis, to the particular transaction and to the seniority of the position they are taking. There is also an important distinction to be made between private and public deals. As previously stated, we strongly believe it was never intended that private deals should be subject to templated disclosure.

4. Jurisdictional scope

The Joint Committee of the ESAs issued an opinion to the Commission on the jurisdictional scope of the Securitisation Regulation (https://www.eiopa.europa.eu/sites/default/files/publications/opinions/jc_2021_16_-_esas_opinion_on_jurisdictional_scope_of_application_of_the_securitisation_regulation.pdf), 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?

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

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

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

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

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

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

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

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
- Don’t know / no opinion / not applicable

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 (https://ec.europa.eu/info/law/alternative-investment-fund-managers-aifm-directive-2011-61-eu_en) provides for a lighter regime for AIFMs whose AIFs under management fall below certain defined thresholds)

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

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?

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

If you answered ***Yes***, please provide a brief explanation how was your company affected:
5,000 character(s) maximum

Our companies have been affected by transactions which formerly had STS status ceasing to have that status as a result of Brexit. A number of EU banks have exposures to such transactions and have consequently suffered increased capital charges since 1 January 2021.

Question 5.2:

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

- (●) 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?
5,000 character(s) maximum

As a matter of principle, it makes sense to allow EU investors to be subject to the same prudential treatment whether they invest in STS securitisations where the sell-side entities are EU-based or based in third countries. This reduces concentration risk and gives EU investors greater choice. It would also help grow use of the label and lead to increased liquidity.

In addition to removing the jurisdictional barriers (allowing entities from any country to qualify by complying with EU STS criteria), an equivalence regime could be established for transactions originated in third countries that have STS-type regimes. Such an equivalence approach could help identify securitisations where the slightly better prudential treatment of STS would be appropriate but which may not strictly meet all the STS criteria. This is a significant issue because of the EU-specific nature of some of the STS criteria.

It is important that any equivalence regime the EU puts in place should ensure that other jurisdictions are granted equivalence on a principles basis (e.g. are a reasonable implementation of the Basel STC principles) rather than a strict, overly legalistic and literal assessment of whether the other jurisdiction has exactly the same requirements as the EU. Obviously, any equivalence regime would have to provide the slightly better prudential treatment of EU STS transactions for it to have any benefit for EU investors and issuers.

Please explain your answer to question 5.2:
5,000 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;
- ◉ 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:
5,000 character(s) maximum

See answer to question 5.2.

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?

5,000 character(s) maximum

See answer to question 5.2.

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 (https://ec.europa.eu/info/publications/200722-proposal-capital-markets-recovery_en) 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

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
- ◉ 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?

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

Describe the use you have made of it?
5,000 character(s) maximum

Question 6.4:

Do you think it is more useful to publish information on environmental performance or on adverse impact and why?
5,000 character(s) maximum

Leaseurope & Eurofinas strongly support the environmental and sustainability agenda but would caution against creation of an overly regulated landscape mandating the use of prescribed disclosures for all types of assets, structures and investors without allowing for a possibility to opt out of the regime.

We think that it would be more useful to publish information on environmental performance where such information is available and relevant, it is valuable to investors to understand the strategic business management and increase the credibility of the originator.

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 (https://ec.europa.eu/info/publications/210706-sustainable-finance-strategy_en#green-bonds), 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:
5,000 character(s) maximum

We do not feel that a separate sustainable securitisation standard should be required, the regulation should focus on refining and clarifying the existing standards based on the feedback from their application (the EU Taxonomy, for example, has already been designed to align with the EU environmental objectives and net zero carbon commitments).

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?
5,000 character(s) maximum

8. Supervision

The Joint Committee of the ESAs' report on the implementation and functioning of the securitisation framework (https://www.esma.europa.eu/press-news/esma-news/esas%E2%80%99-report-implementation-and-functioning-securitisation-regulation) 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?

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

Question 8.2:

Have you observed any divergences in supervisory practices for securitisation?

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

Question 8.3:

If you answered ***Yes*** to question 8.2, please explain your answer:
5,000 character(s) maximum

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

B) risk retention requirements (Art 6)

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

C) transparency requirements (Art 7)

- Yes

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

D) credit granting standards (Art 9)
- Yes
- No
- Don’t know / no opinion / not applicable

E) private securitisations
- Yes
- No
- Don’t know / no opinion / not applicable

F) STS requirements (Articles 18 – 26e)
- Yes
- No
- Don’t know / no opinion / not applicable

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

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

i. 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)

ii. 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
- 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:
5,000 character(s) maximum

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We do not believe the current levels of the (p) factor are proportionate.  They are much higher than the (p) factor in the US, creating a competitive edge for the US over Europe.
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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:
5,000 character(s) maximum

As suggested by the High Level Forum on CMU, we recommend recalibrating the RWAs requirements. Given the high quality of the underlying assets and structures in the EU STS compliant transactions, we think that there should be a capital benefit from reduced RWA requirements which would allow a more competitive pricing and thus more attractive position in the overall market especially to offer a more attractive pricing for SMEs.

Those adjustments are especially relevant in the High Investment Grade rating buckets (AAA-A) for senior positions in the standard asset classes such as consumer loans, trade receivables, auto loan and lease or equipment lease transactions which are usually structured to those rating levels.

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:
5,000 character(s) maximum

We support AFME proposals for reviewing the calibration of the CRR.

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 (https://www.eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/guidelines-on-the-determination-of-the-weighted-average-maturity-of-contractual-payments-due-under-the-tranche-of-a-securitisation-transaction) 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
- ○ Don’t know / no opinion / not applicable

Please explain your answer to question 10.1:
5,000 character(s) maximum

We recommend adjusting the maturity calculation to accept a WAL and/or WAM methodology as well independent from the approach.

Question 10.2:

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

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

Please explain your answer to question 10.2:
5,000 character(s) maximum

See 10.1.

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 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0061), 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?

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

Please explain your answer to question 11.1 (a):
5,000 character(s) maximum

STS securitisations should be upgraded to level 2A for LCR purposes. Not only has STS securitisation not been adequately recognised in the LCR rules but in some ways the transposition of the STS framework into the LCR rules actually made things worse by failing to carry over previous references to the Standardised Approach limiting LCR eligibility to AAA ratings when previously CQS 1 allowed ratings from AAA to AA, as well as by excluding non-STS securitisations completely.

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.

5,000 character(s) maximum

The existing LCR rules already make provision to mitigate concentration risk by limiting shares and haircuts. These are already set very conservatively for STS securitisations.

Question 11.2 (a):

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

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

Please explain your answer to question 11.2 (a):

5,000 character(s) maximum

ABCPs are high quality short-term instruments which liquidate into cash over a short timeframe, usually 1-3 months. Therefore in principle we believe they should qualify for the LCR and if they are STS ABCP they should qualify as Level 2A assets not Level 2B.
The ABCP market remained intact during the Covid-19 crises with no severe impact on the external placement activities and credit performance of underlying assets. As a general rule ABCPs as a short term instrument are held to maturity and not actively traded and liquidity flows back as the paper are repaid at maturity.

Further, we would like to point out, that the current LCR regime applies conservative outflow assumptions on Liquidity Facilities (LF) provided to SEC counterparties assuming a 100% outflow within next 30 days.

Based on those outflow assumptions a disadvantage is always attached to the SEC product as under the current LCR regime, LFs have a higher impact on LCR Targets of the initiation compared to LFs extended to Corporates or FIs and as such result typically in higher pricing of such facilities.

A more conservative outflow assumption for LFs that are provided for 3rd party SEC may be warranted but require more detailed analysis.

Therefore we welcome if this is reconsidered, at least for LFs for (sponsored) ABCP Programs for which the sponsor institutions has historic data at hand that can prove the resilience of the external placement performance (and asset performance of the underlying transactions) even under stressed environments.

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.
5,000 character(s) maximum

12. SRT tests

The recent EBA report on significant risk transfer (SRT) (https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20calls%20on%20the%20EU%20Commission%20to%20harmonise%20practices%20and%20processes%20for%20significant%20risk%20transfer%20assessments%20in%20securitisation/962027/EBA%20Report%20on%20SRT.pdf?retry=1) 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
- Don’t know / no opinion / not applicable

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?

5,000 character(s) maximum

13. SRT assessment process

Section 5 of the EBA report on SRT (https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20calls%20on%20the%20EU%20Commission%20to%20harmonise%20practices%20and%20processes%20for%20significant%20risk%20transfer%20assessments%20in%20securitisation/962027/EBA%20Report%20on%20SRT.pdf?retry=1) 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?

5,000 character(s) maximum

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?

5,000 character(s) maximum

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

Question 13.4:

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

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

14. SRT Amendments to CRR

Section 6 of the EBA report on SRT (https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20calls%20on%20the%20EU%20Commission%20to%20harmonise%20practices%20and%20processes%20for%20significant%20risk%20transfer%20assessments%20in%20securitisation/962027/EBA%20Report%20on%20SRT.pdf?retry=1) 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
- No
- Don’t know / no opinion / not applicable

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)?

- (●) 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?

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

Please explain your answer to question 15.2:

5,000 character(s) maximum

We observe there is little appetite currently from insurers to increase their investments in securitisation. However, this is because of the harsh and distorted calibrations prescribed by the standard approach under Solvency II rather than because of any fundamental failings in the quality and appropriateness of securitisation as an investable proposition for insurers.

We think that if the miscalibrations of Solvency II are corrected, there would be greater investment by insurers. Essentially, investment in securitisation by insurers has never recovered from the stigma of securitisation following the financial crisis which has been reinforced by the Solvency II standard approach.

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:

5,000 character(s) maximum

The standard approach under Solvency II for senior tranches has improved and is not the most critical issue.

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:

5,000 character(s) maximum

The standard approach under Solvency II is not proportionate for non-senior tranches.

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
- ○ 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:

5,000 character(s) maximum

Question 15.6:

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

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

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:
5,000 character(s) maximum

Yes but with a more balanced and proportionate calibration and avoiding cliff effects.

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**.

Useful links

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

More on securitisation (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/securitisation_en) (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) (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) (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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