

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

Theresa

* Surname

Westlake

* Email (this won't be published)

theresa.westlake@insightinvestment.com

* Organisation name

255 character(s) maximum

Insight Investment Management (Europe) Limited

* Organisation size

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

Transparency register number

255 character(s) maximum

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

283171720947-78

* Country of origin

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

- Afghanistan
- Djibouti
- Libya
- Saint Martin

- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- 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
- 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](#)

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Widening the investor base for securitisation products in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Widening the issuer base for securitisation products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Providing a clear legal framework for the EU securitisation market	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating the monitoring of possible risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing a high level of investor protection	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Emergence of an integrated EU securitisation market	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Generally speaking, we do not feel that the introduction of the SECR has improved access to credit for the real economy, particularly for SMEs. It has increased the administrative and operational burdens on originators, sponsors and institutional investors. Legal costs have similarly increased. The transparency and reporting requirements are unduly onerous for many private securitisations (which are often SME deals) and consequentially we feel this has restricted access to credit in the real economy.

In terms of widening the investor base and providing a clear framework, the reporting and transparency requirements for third countries (ie: if none of the originator, original lender and issuer are based in the Union) has resulted in restricted access to these markets and therefore reduced the investor base. This is further exacerbated by the acknowledged ambiguity surrounding the geographical scope of Article 5(1)(e).

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.

As noted above, the structuring, operational, administrative and legal costs for both public and private securitisations has increased for originators, issuer and institutional investors. This is particularly the case with respect to private transactions having to implement and comply with 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)?

5000 character(s) maximum

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

N/A not an issuer.

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:

5000 character(s) maximum

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

N/A

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:

5000 character(s) maximum

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

Investors receive sufficient information to fulfil their due diligence requirements. The broad exception to this is availability of certain ESG information (with some asset classes more affected than others (ie: CLOs)), although this is currently being rectified by the Sustainable Finance Disclosure Regulation (SFDR). However, the sufficiency of information and our ability to fulfil the due diligence requirements is not necessarily as a result of the SECR. Many asset classes had relatively standardised detailed reporting templates prior to the SECR coming into force (ie: for CLOs, CMBS, RMBS, auto loan securitisations) with the scope and content of the reports being very much investor led. Notwithstanding the SECR, Insight, as an investor, will request any additional information it needs in order to undertake the necessary credit analysis and legal review (ie: in addition to the standard report set out in the applicable ESMA template and other Article 7 obligations), and will not invest in a securitisation position if we are not in receipt of such information.

For private securitisations we actually find it preferable to receive information directly from the issuer / originator / sponsor (as applicable) and to be able to communicate directly with the applicable third parties (ie: request additional information not on ESMA templates, query information and to maintain a dialogue with applicable parties).

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:

5000 character(s) maximum

Please see answer to Question 2.4.

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:

5000 character(s) maximum

Broadly speaking, we do not feel the definition needs amending. However, this is caveated on the basis that in the event due diligence and disclosure requirements are reduced / amended for transactions falling within the definition of private securitisation, then we agree it should be adjusted at that juncture.

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

Whilst we consider the transparency and due diligence reporting regime generally proportionate for public transactions, we feel it disproportionate for most types of private transactions (ie: bi-lateral, warehouse or club deals).

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

Question 3.3:

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

- Yes

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

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

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

Please explain your answer to question 3.3:

5000 character(s) maximum

We believe that loan level data is important and often essential for most asset classes. There are however some asset classes (ie: trade receivables) where loan level data is not always available.

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

Loan-by-loan information is required for all maturities.

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

The underlying credit analysis undertaken is broadly the same, notwithstanding the tranche being invested in. A caveat to this is obviously the stress tests differ but on the whole the same level of credit analysis is undertaken, with the outcomes differing dependent on the tranche.

From the legal and structural perspective, investor protections, enforcement issues / considerations differ depending on the tranche being purchased, but the legal review and credit analysis is then tailored to such tranche and the specific issues and / or considerations addressed.

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

Please explain your answer to question 3.6:

5000 character(s) maximum

In broad terms, the due diligence performed is identical to a true-sale securitisation (although obviously the structures differ and that is taken into account upon any review).

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:

5000 character(s) maximum

The disclosures are sufficient for investors.

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

Please explain your answer to question 3.8:

5000 character(s) maximum

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

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:

5000 character(s) maximum

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?

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

Please explain your answer to question 4.1:

5000 character(s) maximum

The ambiguity around the geographical scope of the SECR's requirements is one of the biggest issues we have to contend with and a problem which has adversely affected our ability to invest in third country transactions. This in turn has reduced liquidity in the market and restricted the investor base.

Prior to the implementation of the SECR there was frustration in the market that the US and EU risk retention regimes didn't align, so this has now been compounded with the implementation of the SECR and the differing reporting, transparency and other regulatory requirements.

In our experience market participants are broadly fine with agreeing to comply with the SECR risk retention regime. However, the issues mainly revolve around the Article 7 requirements, especially if that jurisdiction or asset class has its own governing body (which has adopted a form of report) or a standardised detailed report exists for that asset class (for example, the US CRE CLO market has its own comprehensive form of investor report). Third country issuers / originators are not willing, or are unable, to provide two or more forms of investor reports to comply with the terms of the SECR along with their own jurisdiction's requirements. We feel this clarification would be most helpful and would improve access to and liquidity in the market.

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

Where non-EU entities are involved, we don't feel that additional requirements for those entities should be introduced to facilitate the supervision of the transaction. In our view such steps would further restrict access to credit in the real economy, especially for SMEs. It could also restrict the issuer and investor base.

Q u e s t i o n

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

Please explain your answer to question 4.3 A):

5000 character(s) maximum

We don't believe it necessary or desirable that only entities established in the EU be eligible (or solely responsible) to fulfil the risk retention requirements under Article 6. This would restrict access to credit in the real economy, especially for SMEs. It could also restrict the investor base so would be a detrimental and, in our view, unnecessary intervention by the Commission.

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

Please explain your answer to question 4.3 B):

5000 character(s) maximum

We feel this would be a detrimental and unnecessary intervention by the Commission. It would restrict access to credit in the real economy and affect the issuer base.

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

As above, in our view it would be a detrimental and unnecessary intervention by the Commission. It would restrict access to credit in the real economy and affect the issuer base.

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

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

Article 5(1)(e) needs to be clarified to restrict the verification requirement relating to Article 7 to securitisations with an originator, sponsor or SSPE in the Union.

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

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

Please explain your answer to question 4.5:

5000 character(s) maximum

It would be helpful to clarify that the intention of the SECR is that non-EU AIFMs should comply with the due diligence obligations set out in Article 17 of the AIFMD and Article 5 of the SEC with respect to only those AIFs that they manage or market in the Union, as opposed to the current drafting which inadvertently specifies that it applies to all AIFs (ie: not only those they manage or market in the Union).

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
- Don't know / no opinion / not applicable

Please explain your answer to question 4.6:

5000 character(s) maximum

It would be helpful to clarify that sub-threshold AIFMs fall within the definition of institutional investor therefore requiring them to comply with the due diligence requirements under Article 5 of the SECR. However, in practical terms this may be a moot point and will not affect the outcome of those AIFMs because they would fall under the definition of institutional investor by virtue of their marketing and / or managing in the Union.

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:

5000 character(s) maximum

We feel that the lack of recognition of non-EU STS securitisations has inevitably affected liquidity and access to the markets. This is most notable with respect to insurance institutional investors and other institutional investors that are affected by the regulatory capital treatment afforded to STS designated securitisations.

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?

5000 character(s) maximum

Please explain your answer to question 5.2:

5000 character(s) maximum

We would welcome non-EU entities being permitted to issue an STS securitisation. This would assist in improving access to credit, increase liquidity in the markets along with widening the investor base for securitisation products.

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:

5000 character(s) maximum

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

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

Across the breadth of securitised instruments the level of sustainability disclosures is inadequate. This includes auto loans and mortgages. ICMA has established a working group to develop KPIs for the key securitised asset classes that investors require to meet EU and client requirements.

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?

5000 character(s) maximum

We do not currently use environmental performance data for securitised assets. There is no data available in a format we can use proactively and efficiently. We believe that more structured data would improve our analysis.

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

Both are relevant. Investors consider a broad range of sustainability issues as potentially material. This includes impact and environmental performance as well as social and governance factors.

The right environmental performance indicators will also include adverse impact, so too with other sustainability metrics that they can be structured to focus on adverse impacts.

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

Please describe:

1000 character(s) maximum

We have invested in impact-labelled securitisations. Our assessment of these instruments is there is not a significant difference from conventional SPVs. The sustainability qualities are therefore very limited and not substantive compared with use of proceeds impact bonds where there is often a clear project with demonstrable impact.

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

The challenges of environmental securitisation are not reflected in the EUGB framework. For example, is not possible to know how for many securitisations the bonds will deliver the outcomes expected, and the

reporting requirements are not practical for issuers. Given there is no direct control over the assets (mortgages, autos) it is hard to know precisely what green impact there has been.

An alternative is to encourage originators to produce scenarios to estimate the impact of SPVs, and have the methodology open to review and third-party approval.

Currently the EUGB is not suitable for securitisations and will need to change to attract issuers and investors.

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

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?

- 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:

5000 character(s) maximum

Different jurisdictions interpret the SECR differently which results in a natural divergence.

Q u e s t i o n

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

It would be helpful if the Joint Committee developed guidance in the form of guidelines for the Article 5 due diligence requirements. However, if guidelines are to be developed, it's imperative that such guidelines are flexible and take into account factors such as (i) the underlying asset class (ie: whether it is a more standardised asset class (such as RMBS) or an esoteric securitisation position), (ii) the liquidity of the notes being purchased, (iii) the tranche of notes being purchased, (iv) the amount of notes being purchased, and (v) the jurisdictions involved. Additionally, it would be unhelpful and adversely affect access to the market / liquidity, if the guidelines introduce additional cost, burden, complexity and / or ambiguity.

We don't feel regulatory technical standards (RTS) are needed and / or be appropriate in this context.

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

We don't feel it necessary to have additional guidance on the risk retention requirements. We feel that the current RTS, along with the Q&As issued from time to time, are sufficient and the market has adapted to and generally understands the requirements. There is broad market consensus. This is not an area we often see market divergence or ambiguity which is unable to be addressed in Q&As.

C) transparency requirements (Art 7)

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

Please explain your answer to question 8.4 C):

5000 character(s) maximum

In broad terms we feel that the EMSA templates and Q&As issued from time to time are sufficient, self-explanatory and that the market is now accustomed to the Article 7 requirements. We don't often come across issues with the interpretation of the EMSA templates and transparency requirements. The only exception to this, which incidentally is one of the biggest issues we come across which does adversely affect market access and liquidity, is the ambiguity surrounding the jurisdictional scope of the Article 7 requirements (which is discussed further below). It would be helpful to have more clarification in this context.

D) credit granting standards (Art 9)

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

Please explain your answer to question 8.4 D):

5000 character(s) maximum

We don't often come across issues with the interpretation of the credit granting standards so don't feel additional guidance is required.

E) private securitisations

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

Please explain your answer to question 8.4 E):

5000 character(s) maximum

In our experience we have found the market is generally comfortable with what constitutes a private securitisation and the accompanying obligations for a private securitisation under the SECR.

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

No, we don't feel the need for additional guidelines or RTS for STS securitisations. We feel the market is now sufficiently comfortable with the STS requirements.

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

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

Please explain your answer to question 8.6. In particular, if you answered **No**, how could they be improved?

5000 character(s) maximum

N/A

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

Please explain your answer to question 8.7. In particular, if you answered **No**, how could they be improved?

5000 character(s) maximum

N/A

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
- 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

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

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

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
- Don't know / no opinion / not applicable

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

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?

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

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?

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

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

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
- 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?

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

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

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](#) 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:

5000 character(s) maximum

- When Solvency II came into force, it introduced capital requirements which were extremely onerous for insurers, particularly those reporting under the standard formula. These capital requirements were inconsistent with the underlying economic risk.
- Whilst some changes were previously made to alleviate the capital charges for certain securitisations, these were relatively unsuccessful for 3 reasons:
 1. Capital charges were still too high (compared to economic risk/return) even for the highest quality positions
 2. The initial and ongoing analysis requirements were extremely onerous and manual
 3. There was considerable subjectivity in assessing which category a securitisation fell into
- 2019 Securitisation Regulation brought in STS (Simple, Transparent, Standardised), which had some immediate benefits:
 - o Capital requirements for the highest quality positions (Senior STS) were much more closely aligned with equivalently-rated corporate bonds
 - o It removed the requirement for onerous due diligence and subjective judgement by investment manager, as compliant securities were included on a public database
 - o This has been helpful, however, Senior STS issuance has been limited (due to COVID and government support); and
 - o STS requirements (and hence capital charges) do not necessarily align closely with economic risk
- Ongoing issues:
 - o UK positions which were previously STS compliant are no longer compliant for EU clients, post-Brexit. The PRA has its own similar regulation for UK positions held by UK insurers. Some form of 'equivalence' is required
 - o Non-Senior STS and particularly non-STS positions are still treated quite harshly compared to equivalently-rated corporate bonds. This means that investment in non-STS is still limited for standard formula insurers

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

See answer 15.2 above.

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

See answer to 15.2 above.

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:

5000 character(s) maximum

See answer to 15.2 above.

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

Please explain your answer to question 15.6:

5000 character(s) maximum

Credit Ratings are likely a better way to determine risk.

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

Credit Ratings are likely a better way to determine risk.

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 \(https://ec.europa.eu/info/publications/finance-consultations-2021-eu-securitisation-framework_en\)](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)

Contact

fisma-securitisation-review@ec.europa.eu

