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EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

General affairs

Policy definition and coordination

**TARGETED CONSULTATION**

**ON THE FUNCTIONING OF THE EU SECURITISATION FRAMEWORK**

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply before 4 December 2024 to the online questionnaire available on the following webpage:

https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024\_en

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them with supporting data. Where appropriate, provide specific operational suggestions to questions raised. Replies limited to “yes” or “no” will not be sufficient for further analytical elaboration.

Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024\_en#consultation-outcome

**INTRODUCTION**

When soundly structured, securitisation can play a positive role for the economy as a tool for attracting new investor money, and a risk management tool transferring credit risk from banks (or non-bank lenders) to a broad set of EU or third country institutional investors, which in turn would benefit from greater exposure diversification. Securitisation can help deepen capital markets and provide greater financing opportunities. It should also free up the balance sheets of banks and non-bank lenders, thereby enabling them to provide additional lending to the real economy. Promoting sustainable growth of the EU securitisation market is a key initiative under the 2020 capital markets union action plan[[1]](#footnote-2) .

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

The overall size of the European securitisation market has decreased significantly since the 2008-2009 global financial crisis (GFC), from approximately EUR 2trn at its peak[[2]](#footnote-3) to EUR 1.2trn at the end of 2023[[3]](#footnote-4). In the meantime, securitisation has recovered fully and even surpassed pre-GFC records in non-EU jurisdictions like the US where it increased from USD 11.3tn in 2008 to USD 13.7tn in 2021,[[4]](#footnote-5) and this despite the higher default rates of US-originated securitisations in the wake of the GFC.

In light of the above, the 2019 EU securitisation framework[[5]](#footnote-6) was introduced with the core objective of reviving an EU securitisation market that helps finance the economy without creating risks to financial stability. In particular, the Securitisation Regulation introduced common rules on due diligence, risk retention and transparency, and created a category of simple, transparent and standardised (STS) securitisation products. While the 2019 framework and its subsequent amendments[[6]](#footnote-7) improved transparency and standardisation in the securitisation market, stakeholder feedback gathered in preparation of the Commission report on the functioning of the Securitisation Regulation[[7]](#footnote-8), and subsequent stakeholder engagement [[8]](#footnote-9), indicates that issuance and investment barriers remain high, impeding the EU economy from fully reaping the benefits that securitisation can offer. Originators and investors argue that issuance and investment barriers are partly driven by the conservativeness of specific aspects of the regulatory framework, such as transparency and due diligence requirements, as well as the capital and liquidity treatment of securitisations.

Against this background, the Eurogroup statement of 11 March 2024 invited the Commission to assess all the supply and demand factors hampering the development of the securitisation market in the EU, including the prudential treatment of securitisation for banks and insurance companies and the transparency and due diligence requirements (while taking into account international standards). Similarly, the ECB Governing Council statement of 7 March 2024 suggested exploring the use of public guarantees and further standardisation. The European Council conclusions of 18 April 2024 reinforced this call to relaunch the European securitisation market, including through regulatory and prudential changes, using the available room for manoeuvre. The European Council conclusions of June 2024 called again on the Council and the Commission to accelerate work on all identified measures under the capital markets union.

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

The political guidelines of re-elected Commission President Von der Leyen from July 2024[[9]](#footnote-10) announced that the next Commission will develop the proposal in the Enrico Letta report and propose a European savings and investment union, including banking and capital markets.

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

• The effectiveness of the securitisation framework

• Scope of application of the Securitisation Regulation

• Due diligence requirements

• Transparency requirements and definition of public securitisation

• Supervision

• The STS standard

• Securitisation Platform

• Prudential and liquidity treatment of securitisation for banks

• Prudential treatment of securitisation for insurers

• Prudential framework for IORPs and other pension funds

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

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

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

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

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

**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-](mailto:fisma-securitisation-consultation@ec.europa.eu) [consultation@ec.europa.eu](mailto:fisma-securitisation-consultation@ec.europa.eu).

More information on

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

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

[securitisation](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/securities-markets/securitisation_en)

 [the protection of personal data regime for this consultation](https://finance.ec.europa.eu/document/download/4d7578d8-d689-4803-b438-730acfe1d08c_en?filename=2024-eu-securitisation-framework-specific-privacy-statement_en.pdf)

## 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**

 Consumer organisation  EU citizen

 Environmental organisation  Non-EU citizen

 Non-governmental organisation (NGO)  Public authority

 Trade union  Other

**\*** First name

Michael

**\*** Surname

Widhalm

**\*** Email (this won't be published)

michael.widhalm@rbinternational.com

**\*** Country of origin

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

 Afghanistan  Djibouti  Libya  Saint Martin

 Åland Islands  Dominica  Liechtenstein  Saint Pierre and

Miquelon

 Albania  Dominican Republic

 Lithuania  Saint Vincent and the Grenadines

 Algeria  Ecuador  Luxembourg  Samoa

 American Samoa  Egypt  Macau  San Marino

 Andorra  El Salvador  Madagascar  São Tomé and

Príncipe

 Angola  Equatorial Guinea Malawi  Saudi Arabia  Anguilla  Eritrea  Malaysia  Senegal

 Antarctica  Estonia  Maldives  Serbia

 Antigua and Barbuda

 Eswatini  Mali  Seychelles

 Argentina  Ethiopia  Malta  Sierra Leone  Armenia  Falkland Islands  Marshall Islands  Singapore

 Aruba  Faroe Islands  Martinique  Sint Maarten  Australia  Fiji  Mauritania  Slovakia

** Austria**  Finland  Mauritius  Slovenia

 Azerbaijan  France  Mayotte  Solomon Islands  Bahamas  French Guiana  Mexico  Somalia

 Bahrain  French Polynesia  Micronesia  South Africa

 Bangladesh  French Southern and Antarctic Lands

 Moldova  South Georgia and the South Sandwich Islands

 Barbados  Gabon  Monaco  South Korea  Belarus  Georgia  Mongolia  South Sudan  Belgium  Germany  Montenegro  Spain

 Belize  Ghana  Montserrat  Sri Lanka

 Benin  Gibraltar  Morocco  Sudan

 Bermuda  Greece  Mozambique  Suriname

 Bhutan  Greenland  Myanmar/Burma  Svalbard and

Jan Mayen



Bolivia Grenada Namibia Sweden

 Bonaire Saint Eustatius and Saba

 Bosnia and Herzegovina

 Guadeloupe  Nauru  Switzerland

 Guam  Nepal  Syria

 Botswana  Guatemala  Netherlands  Taiwan

 Bouvet Island  Guernsey  New Caledonia  Tajikistan  Brazil  Guinea  New Zealand  Tanzania

 British Indian Ocean Territory

 British Virgin Islands

 Guinea-Bissau  Nicaragua  Thailand

 Guyana  Niger  The Gambia

 Brunei  Haiti  Nigeria  Timor-Leste

 Bulgaria  Heard Island and  Niue  Togo

McDonald Islands

 Burkina Faso  Honduras  Norfolk Island  Tokelau

 Burundi  Hong Kong  Northern  Tonga

Mariana Islands

 Cambodia  Hungary  North Korea  Trinidad and

Tobago  Cameroon  Iceland  North Macedonia  Tunisia  Canada  India  Norway  Turkey

 Cape Verde  Indonesia  Oman  Turkmenistan  Cayman Islands  Iran  Pakistan  Turks and

Caicos Islands

 Central African Republic

 Iraq  Palau  Tuvalu

 Chad  Ireland  Palestine  Uganda

 Chile  Isle of Man  Panama  Ukraine

 China  Israel  Papua New Guinea

 United Arab Emirates

 Christmas Island  Italy  Paraguay  United Kingdom  Clipperton  Jamaica  Peru  United States

 Japan  Philippines

Cocos (Keeling) Islands

United States Minor Outlying Islands

 Colombia  Jersey  Pitcairn Islands  Uruguay

 Comoros  Jordan  Poland  US Virgin Islands  Congo  Kazakhstan  Portugal  Uzbekistan

 Cook Islands  Kenya  Puerto Rico  Vanuatu

 Costa Rica  Kiribati  Qatar  Vatican City  Côte d’Ivoire  Kosovo  Réunion  Venezuela  Croatia  Kuwait  Romania  Vietnam

 Cuba  Kyrgyzstan  Russia  Wallis and Futuna

 Curaçao  Laos  Rwanda  Western Sahara

 Cyprus  Latvia  Saint Barthélemy  Yemen

 Czechia  Lebanon  Saint Helena  Ascension and Tristan da Cunha

Zambia

 Democratic Republic of the Congo

 Lesotho  Saint Kitts and Nevis

 Zimbabwe

 Denmark  Liberia  Saint Lucia

**\*** Field of activity or sector (if applicable)  **Banking**

 Insurance

 Pension fund  Legal advisory

 Investment management (e.g. portfolio manager or manager of hedge funds, private equity funds, venture capital funds, money market funds)

 Other

**\*** Type of involvement in the securitisation market

Please select as many answers as you like

 Originator of traditional securitisations  Originator of synthetic securitisations  Sponsor

 Investor in traditional securitisations  Investor in synthetic securitisations  Arranger

 Legal adviser

 Third-party STS verifier  Credit rating agency

 Market infrastructure (e.g. data repository, stock exchange)  Supervisor

 Other role in the securitisation market  No role

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

**Note that this information will not be published.**

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

Invest: ~ 400m in 2024

Originate: ~ 3.6bl in 2024

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

Invest: 10 positions in 2024

Originate: 5 in 2024

Total stock of securitisation positions in EUR

EUR 14bl.

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

##### The Commission will publish all contributions to this public consultation. You can choose whether you

would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, ‘business association, ‘consumer association’, ‘EU citizen’) 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

 I agree with the [personal data protection provisions](https://finance.ec.europa.eu/document/download/4d7578d8-d689-4803-b438-730acfe1d08c_en?filename=2024-eu-securitisation-framework-specific-privacy-statement_en.pdf)

**CONSULTATION QUESTIONS**

**1. Effectiveness of the securitisation framework**

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

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

The general objective of the securitisation framework was the revival of a safe securitisation market that would improve the financing of the EU economy[[10]](#footnote-11). In the short run, it envisaged a weakening of the link between banks’ deleveraging needs and credit tightening. In the long run, the aim was the creation of a more balanced and stable funding structure of the EU economy, for the overall benefit of households, SMEs, and larger corporations. Specific policy objectives included the destigmatisation of European securitisation in the wake of the global financial crisis, an appropriate risk-sensitive regulatory capital treatment, and the reduction/elimination of unduly high operational costs for issuers and investors. To achieve these specific policy objectives, two operational objectives were identified: differentiating STS securitisation products from more opaque and complex ones and supporting the standardisation of processes and practices in securitisation markets and tackling regulatory inconsistencies.

The 2022 review of the functioning of the SECR, which resulted in the publication of the Commission report on the Functioning of the Securitisation Regulation in December 2022 (later referred to as ‘the Commission 2022 report’),[[11]](#footnote-12) looked at the impact of the SECR on the functioning of the EU securitisation market. A majority agreed that the SECR provided a high level of investor protection, and it was generally acknowledged that the SECR had facilitated further integration of the EU securitisation market. At the same time, respondents underlined the need to improve certain parts of the framework, such as due diligence and transparency requirements, to increase proportionality and reduce compliance costs for market participants. Considering that the securitisation framework was amended in April 2021 in response to the unprecedented exogenous factors related to COVID-19, and that the complete application of the framework was yet to be fully realised at the time of writing of the Commission 2022 report, the Commission decided that more time was needed to fully assess the impact and effectiveness of the framework.

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

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

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Fully agree | Somewhat agree | Neutral | Somewhat disagree | Fully disagree | No opinion |
| 1. Revival of a safer securitisation market |  |  | **X** |  |  |  |
| 2. Improving financing of the EU economy by creating a more balanced and stable funding structure of the EU economy |  |  |  | **X** |  |  |
| 3. Weakening the link between banks’ deleveraging needs and credit tightening |  |  | **X** |  |  |  |
| 4. Reducing investor stigma towards EU securitisations |  |  |  | **X** |  |  |
| 5. Removing regulatory disadvantages for simple and transparent securitisation products |  |  |  |  | **X** |  |
| 6. Reducing/eliminating unduly high operational costs for issuers and investors |  |  |  |  | **X** |  |
| 7. Differentiating simple, transparent and standardised (STS) securitisation products from more opaque and complex ones |  |  | **X** |  |  |  |
| 7.1 Increasing the price difference between STS vs non-STS products |  |  | **X** |  |  |  |
| 7.2 Increasing the growth in issuance of STS vs non-STS products |  | **X** |  |  |  |  |
| 8. Supporting the standardisation of processes and practices in securitisation markets |  |  | **X** |  |  |  |
| 8.1 Increasing the degree of standardisation of marketing and reporting material |  |  | **X** |  |  |  |
| 8.2 Reducing operational costs linked to standardised securitisation products |  |  |  |  | **X** |  |
| 9. Tackling regulatory inconsistencies |  |  |  |  | **X** |  |

**2. Impact on SMEs**

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

Questions to stakeholders:

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

**• Yes**

Please explain.

Yes, regularly on many different occasions. The institutions had issues with regards to the sizes of the portfolios and the relative high burden to implement transactions for smaller portfolios/issuers which is particularly an issue in the fragmented market of CEE/SEE. This makes it relatively expensive for smaller players to get funding and tap the market.

**2.2. How can securitization support access to finance for SMEs?**

As outlined above there can be a lot done to promote this. Form starting with regards to the reporting requirements, lower costs in general for setting up the structure to more beneficial RWA treatment for the Senior Tranches also under the SEC-SA. Some banks mainly operate in CEE/SEE/smaller markets where these issues have been preventing a market to develop.

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

This can also be done indirectly by institutions securitizing/risk sharing part of their credit portfolios to third parties by means of securitisation. If a significant part of the credit risk is transferred to investors through securitisation, the institutions can substantially lower their capital requirements for the securitised part; this gives them scope for granting further loans. Securitisations can also be used directly to finance companies if banks or special purpose entities supported by banks (so-called conduits) purchase receivables from companies and thus provide the seller of the receivables with direct liquidity.

Further, lowering the regulatory market entry barriers would allow smaller banks to enter the securitisation market and in turn this would lead to more capacity for securitising SMEs and/or to increase the capacity/demand for SME loans on a macro level

**3. Scope of application of the Securitisation Regulation**

**Jurisdictional scope**

In 2021, the Joint Committee (“JC”) of the ESAs published an Opinion to the European Commission on the Jurisdictional Scope of Application of the SECR12. The opinion was divided in two parts: (1) the application to third country-based entities of Article 5 to 7 and 9 of the SECR, and (2) the application of the SECR to investment fund managers. Both issues were subsequently clarified by the Commission in the 2022 report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation. Despite these clarifications, some market participants point out that the SECR does not clearly set out its jurisdictional scope, creating considerable legal uncertainty in cases where not all parties to the securitisation are located in the EU.

Questions to stakeholders:

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

• No opinion

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

• No opinion

**Legal definitions**

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

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

Questions to stakeholders:

Definition of a securitisation

**3.3. Do you think the definition of a securitisation transaction in Article 2 of SECR should be changed? You may select more than one option.**

• No, it should not be changed;

Please explain and specify, if necessary, how the definition should be expanded or narrowed in your view.

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

• No

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

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

Please explain, including if the definition should be expanded to any other market participants.

**3.7. If you answered yes to question 3.6., are any specific adaptions or safeguards necessary in the Alternative Investment Firms Directive (AIFMD[[12]](#footnote-13)), taking into account the originate-to-distribute prohibition in the AIFMD, to enable AIFMs to fulfil the functions of a sponsor in a securitisation transaction, as stipulated in the SECR? You may select more than one option.**

* Minimum capital requirements under the AIFMD should be adapted to enable AIFMs, in particular to fulfil the risk retention requirement under SECR

**4. Due diligence requirements**

A thorough due diligence process is key to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments[[13]](#footnote-14). Article 5 of the Securitisation Regulation imposes due diligence requirements on EU investors both prior to investing and while holding the securitisation position.

While due diligence is an integral part of the risk assessment process, feedback gathered by Commission services since the entry into force of the Securitisation Regulation in 2019 suggests that due diligence requirements under Article 5 might be disproportionate. Stakeholders highlight that the legal text is mostly interpreted in a way that (1) subjects all institutional investors to the same due diligence requirements regardless of the type of securitisation that they invest in, and (2) applies stricter and more prescriptive due diligence requirements than those that apply to other financial instruments with similar risk characteristics. As a result, smaller players might not be able to enter the securitisation market, because they lack the resources and/or necessary infrastructure to comply with the due diligence requirements. Due diligence requirements that do not properly take account of the mitigated agency and operational risk characteristics of STS transactions might also be hampering the growth of the STS market.

Questions to stakeholders:

**4.1. Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the due diligence requirements under Article 5. Please differentiate between costs that are only due to Article 5 and the costs that you would incur during your regular due diligence process regardless of Article 5. Please compare the total due diligence costs for securitisations with the total due diligence costs of other instruments with similar risk characteristics.**

Cash Transactions:

These costs are hard to predict, because its not only the costs for personal but also costs for front office and back-office systems. I would guess, that’s at least 350k – 400k p.a. This would only be true for our true sale transactions (SRT excluded).

SRT Transactions:

SRT would be ~ another 500k.

The bank is not a huge securitization investor and you would always have to take these costs in relation to the portfolio size.

If you compare it with its nearest similar instrument – which are Covered Bonds – then the effort for Covered Bonds would be neglible compared to Securitizations.

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

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

• Option 1: The requirements should be made more principles‑based, proportionate, and less complex

Due diligence requirements prior to holding a securitisation position

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

• Yes

**Please explain your answer to question 4.4:**

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

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

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

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

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

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

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

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

• 5(1) point e should be changed - reference to Article 7 should be replaced by more generalised wording. For example, the investor could be required to verify whether or not they possess sufficient information in order to carry out the required due diligence pursuant to Article 5(3): Verification remains necessary. However, the reference to transparency requirements pursuant to Article 7 makes it practically impossible to invest in third country securitisations. Originators, sponsors or original lenders located outside of the EU are not subject to the requirements of the SECR. European investors are therefore unable to fulfil these requirements and are thus excluded from the non-EU securitisation markets.

• 5(2) should be changed: Investors do not need to obtain the information pursuant to 5(1) point themselves when investing in ABCP but can delegate this to the sponsor. This should also be possible for the other criteria in 5(1). Furthermore, 5(2) should not only cover fully sponsored ABCP transaction, but also other transactions which are fully sponsored but not necessarily ABCPs are issued. From a risk perspective there is no difference weather ABCPs are used for refinancing other means.

• 5(3) should be changed - the individual assessment steps in Article 5(3) points a to c of the SECR should be deleted and replaced by principle-based wording: “Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due diligence assessment which enables it to assess the risks involved. This assessment “must take the underlying exposures and the structural features of the securitisation into account”: This makes it possible to perform a due diligence assessment matched to the type, risk and asset class of the securitisation. Simply fulfilling requirements that have no added value for the assessment is thus no longer necessary, and transaction costs for the investment can be reduced.

• 5(3) point c should be deleted: Currently the investor is required to assess the results of the external STS notification. The proposal relies more heavily on the originator and, if applicable, the STS verifier. However, it reduces duplications when verifying whether STS criteria have been met. This will result in a simplification of STS securitisations, which will increase the appeal of this product.

• 5(4) point a sentence 2 should be deleted: We believe that a detailed list of what to include in the procedures is laborious and inexpedient. Investors are obligated to determine and indeed capable of determining procedures that consider the elements appropriate for their purposes. Given the various types of securitisation transactions and any potential new asset classes, there may be a variety of different features appropriate for evaluating the performance. As such, not all listed characteristics are relevant to every securitisation. The detailed list means that investors must check off each feature to be assessed and, to remain compliant, provide proof as to what extent the characteristic in question is relevant in each specific case.

• 5(4) points b and c should be deleted in their entirety: Detailed provisions for stress tests are not necessary, as the fixed written procedures pursuant to Article 5(4) point a of the SECR already adequately specify how the risk assessment is to be carried out.

• 5(4) point d change – in a way that internal reporting to their management body or an entity designated by the management body, so that they are aware of the material risks arising: The delegation to an entity designated by the management body provides the management body greater flexibility without having any effect on the quality of the information processing.

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

Potentially the costs could go down by 50%. Also, it would lower the entry hurdles for new market participants, which would perhaps be even the bigger benefit.

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

• Yes

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

• Due diligence requirements should differ based on the risk of the position (e.g. senior vs non-senior).

• Due diligence requirements should differ based on the risk of the underlying assets

• Due diligence requirements should differ based on the STS status of the securitisation (STS vs non-STS)

• Due diligence requirements should be significantly lower for externally rated tranches.

• other

Please explain your answer.

It should make a substantial difference if you invest in Aaa/AAA rated position compared to invest into a B transaction. Of course, this has an effect on the depth of analysis perceived adequate. In order to get the market going we will need a lot of providers for the most Senior parts of the capital structures, which would (depending on the underlying assets/structure) be between 90-60% of a transaction.

So- yes, due diligence requirements should differ based on the underlying exposures and the structural features of the securitisation. However, this should not lead to a more detailed regulation. Rather, a principle-based approach should allow investors to apply a risk-adjusted investment decision within a reasonable period of time. The objective is to increase the number of investors and the demand from investors for securitisations. The introduction of a principle-based approach instead of detailed specifications not tailored to suit the range of possible investments in securitisations facilitates a flexible procedure. This would reduce the costs for analyzing, investing, monitoring and trading securitisations for banks, insurances, asset managers and other investors within the EU without having a negative effect on the individual risk profile or overall financial stability.

The requirements should allow and demand from investors a risk adjusted due diligence depending on the asset type, the positioning in the capital structure but also this is a question from deal to deal. If due diligence requirements legally differ based on the different characteristics of a securitisation transaction, this would end in a further complexation of the regulation with even more detailed definitions of requirements and thereby a deepening of the already very prescriptive nature of the approach. A result would only be a further bureaucratization of the market. A “principle based approach” which demands under Article 5 a meaningful pre-investment due diligence and an ongoing monitoring along with again “principle based” requirements under Article 7 can create a more targeted, safer and more efficient framework which addresses requirements in a qualitative way. As an example under such a framework, due diligences could focus in a better way on the meaningful and relevant risk factors of transactions and thereby also provide a better transparency to auditors for example.

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

Please explain your answer.

Potentially the costs could go down by 50%. Also, it would lower the entry hurdles for new market participants, which would perhaps be even the bigger benefit.

In case of a switch to a “principle based” approach – as outlined under question 4.3 - this differentiation will not come at a cost. It will rather allow for reduced costs in certain less risky situations which currently tend to be treated in the same way as risky positions. In case of a further fragmentation of the legal framework the opposite will become true.

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

• Yes (i) risk retention requirements,

• Yes (ii) credit granting criteria requirements,

• Yes (iii) disclosure requirements,

• Yes (iv) STS requirements, where the transaction is notified as STS

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

We would appreciate to see the risk-retention to stay. Alignment of interest is a key in an investors investment decisions.

Furthermore we do not see any additional risks here. The requirements are legally binding (no “supervision elsewhere”). In addition, supervisors and auditors check compliance with legal requirements. This is really about reducing excessive regulation.

For example: 1. The originator, sponsor or original lender located in the EU is already subject to the obligation to comply with risk retention pursuant to Article 6 of the SECR. It is not necessary to simultaneously burden all investors with the obligation to monitor compliance with risk retention. This is an unnecessary and duplicated burden, and there is no need to impose it on either investors already active on the market or potential investors.

2. STS-classification relies more heavily on the originator, and, if applicable, the STS verifier. In general, investors should be focused on an assessment proportionate to the risk profile.

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

Please explain.

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

• Yes

Please explain

**Yes** with regards to timing, as this slows of course down the process how quick a transaction could be bought on the secondary market. At the bank this would take ~ 5 business days for a secondary to be bought. In our opinion, this is also the reason for the slow/weaker secondary market.

The regulatory requirements must allow decisions to be made within a reasonable amount of time and in line with market practice for trading. Otherwise, the investor will not be able to become active on the market. The requirements are too complex, complexity costs money and requires additional yield compared with other potential investments. This should be adjusted trough a more principle-based approach, also in the documentation.

**No** in a sense, that investors already now acting in the secondary will in 99% the cases also be active in the primary market and therefore have set up all necessary processes.

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

• No

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

• Don’t know / no opinion / not applicable

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

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

• Yes

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

Usually, there are always (more or less) changes in transactions. One would have to look at the materially change of economic consequences, which will still then be somewhat ambiguous.

If due diligence requirements apply a principles-based approach, the investor will have sufficient flexibility to carry out the necessary steps for risk assessment as the experience gained in a previous transaction can reduce the effort required to fulfil the due diligence requirements.

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

• No

Please explain your answer.

In principal the regulator should of course have a look at this processes, but there should also be an alignment in Europe, what – also risk adjusted – best practice means. There is a big knowledge gap on the side of regulators in this respect in some countries. Of course, infringement of gross negligence is not tolerable.

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

Why not refer to the principle of a prudent business-man, which should prevent taking unnecessary risks. If we look also historically at the European (cash) Securitization market, one can see, that the performance was by no means as bad as in the US. It is positive, that the worst things have forbidden (e.g. re-securitization) but all this strict requirements were never justified for the “normal” stuff - if you look at the pure performance.

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

For the bank as an institution this will have not a big impact, as the istitution already took a huge effort to implement all of this. But as outlined above, the more bigger impact would be to lower the entry barriers for a lot of players which never came back to the market after 2008 – or were not in even then. I want to emphasize, that there is a “surviver bias” in the European market, where only a couple of institutional buyers - which took the money and effort - are left.

In that regard the regulation of the past years was very successful in crowding-out investors and originators out of the securitization market, which is evident also if you look at the numbers.

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

Delegation of due diligence

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

• No

Please explain your answer.

If you chose an external provider in a severe and diligent process this should be no problem.

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

• the party to which the institutional investor has delegated the due diligence obligations

**5. Transparency requirements and definition of public securitisation**

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

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

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

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

Feedback gathered during the preparation of the Commission’s report on the functioning of the Securitisation Regulation showed wide support for amending the definition of private securitisations to focus on truly bespoke transactions, while at the same time reducing the mandatory transparency requirements for these types of transactions. The Joint Committee report[[14]](#footnote-15) also favoured amending the definition of private securitisations to make it more precise and to exempt from all transparency requirements a sub-set of transactions that are private in nature. At the same time, the Commission report also highlighted that a better definition of private securitisation would be difficult to find. For this reason, it is worth considering whether amending (i.e. widening) the definition of public securitisations would be useful instead. This would have the dual benefit of (i) reducing the reporting burden for truly private transactions should transparency requirements be simultaneously amended, and (ii) ensuring that transactions that are public in nature but currently considered private because they do not have a prospectus (such as CLOs), would be categorised as public, thereby entailing direct reporting to repositories, and enhancing market transparency.

Questions to stakeholders:

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

Hard to estimate – annual costs should be 500k. As also said earlier in the consultation paper this number has to be set in relation to the size of your portfolio/the amount of activities in the securitization market.

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

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

The costs for Securitizations are by no means comparable with other collateralized products. (e.g. Covered Bonds) This is a direct consequence of the existing transparency requirements, which result in much higher cost in relation to other products with similar risk profiles.

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

As outlined in some paragraphs above the costs are hard to estimate once you took the effort in setting everything up.

Minimum at least 500k for the process per bank we would estimate. Plus costs to adopt the IT systems.

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

• Significantly higher (more than 50% higher)

Please explain your answer.

For covered bonds we would just have a general limit, where we can trade in minutes. For e.g. CLOs/ABS we have a 30 pages application. Absolute minimum time: 5 business days.

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

• Significantly different

Please explain your answer.

How would the bank know which information our supervisors need? If they come to us, we present our processes and how we analyze a transaction. We never did experience the other way round, that a supervisor told us – have you considered this or that in analyzing a transaction.

In our view the following must be taken into account when answering the question:

1. Information requirements:

Investors have different data / information requirements compared to supervisors:

• Investor purpose: Make an educated and well informed investment decision (should be the focus of Art. 7 disclosure for public securitisations)

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

2. the different market segments:

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

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

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

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

• Option 1:

▪ Streamline the current disclosure templates[[15]](#footnote-16) for public securitisations

▪ Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public).

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

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

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

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

• Yes

Please explain your answer.

Of course, that would add to the effort and costs which will eventually make the entry hurdles and costs high.

Only aggregated data on transaction level should be reported to the securitisation repositories such that a market overview can be reached. Loan level data is not necessary nor helpful for this purpose.

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

**(1) a prospectus has been drawn up in compliance with the EU Prospectus Regulation; or**

**(2) notes were admitted a trading venue; or**

**(3) it was marketed (to a broad range/audience of investors) and the relevant terms and conditions are non-negotiable among the parties?**

• Yes

Please explain your answer.

With such targeted amendment of the definition of public securitisation, CLOs could also be defined as public. Then Transparency requirements would be more homogenous throughout public and private transactions because CLOs are the only “private” deals where usually loan-level data is available and required by investors. Further, CLOs are similar to public transactions rated by rating agencies and publicly announced, e. g. on Bloomberg and widely traded in the secondary market – compared to other securitization products.

Hence, additional possible criteria to distinguish between public and private transactions could be a public rating or an Bloomberg announcement. Private transactions should then be completely switched to reporting requirements on an aggregated data basis.

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

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

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

As outlined in some paragraphs above the costs are hard to estimate once you took the effort in setting everything up. Perhaps 30%.

Please explain your answer.

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

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

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

How should investors access this information?

The bank as an investor never relys or use the information from the data templates or data repository. We do use the information directly provided in Investor Reports and/or information/systems processed provided by third party providers.

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

* Current Subordination
* Default Rates
* Underlying Exposures
* Amortization Profile
* Certain Trigger Levels (OC, IC, etc.)

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

• Don’t know / no opinion / not applicable

Please explain your answer. If you answered yes, how should intragroup transactions be defined and how should the threshold be determined?

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

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

• Yes

**5.20. If you answered yes to question 5.19., which categories of transactions should be allowed to provide reporting only at aggregated level? You may select more than one option.**

• Granular portfolios of credit card receivables

• Granular portfolios of trade receivables

• Other

If you chose “other”, please explain.

Could be any asset class if they are very diversified. For example, a typical car leasing transaction would have 30-40k underlying assets.

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

30% improvement

**6. Supervision**

Securitisation entails many actors, in some cases also based in different jurisdictions. This can result in several national competent authorities being involved in the supervision of one transaction. Market participants cite that differences in the supervisory approaches of Member States create uncertainty. This has been raised in the Joint Committee of the ESAs’ report on the implementation and functioning of the securitisation framework[[16]](#footnote-17) and in the Commission 2022 securitisation review report. Diverging supervisory practices create resource and cost inefficiencies due to the multiplication of common functions across many Member States. Divergence and ensuing legal uncertainty can create an unlevel playing field and are detrimental to the growth of the securitisation market and its proper functioning. In addition, fragmented responsibility and access to data can create loopholes and potentially lead to the emergence of risks. For these reasons, it is important to consider how to streamline and improve supervision in the EU to ensure consistency, better coordination, and a proportionate approach to avoiding divergent practices. This could be achieved through a more efficient and effective use of the existing powers which are allocated to the ESAs and competent authorities.

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

Questions to stakeholders:

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

• Yes

Please explain and give specific examples.

1. We did see very different interpretations on certain SRT features (e.g. how to set the call date)
2. Austria is the only country in Europe - to our knowledge - with a securitization market, where many Securitizations (e.g. leasing transactions) are not ECB eligible. This has to do with certain interpretation of laws by the regulator, which are – in the view of many market participants – not justified. We would suggest to review this ruling on the side of the regulator.

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

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

• Yes

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

• All securitisations.

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

• Compliance with Securitisation Regulation and prudential requirements for securitization.

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

• Setting up supervisory hubs

Please explain your answer

To enhance knowledge on the side of the regulator and team up with e.g. Germany would make sense.

Finally, it would be important that competence is bundled there is a clear responsibility and the process is efficient.

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

• Some

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

Knowledge – our NCA has limited experience (also because our market is small) with regards to securitizations. I would choose it based on the knowledge of the regulator and/or geographic aspects. E.g. Vienna could be the hub for eastern Europe, if knowledge is built up.

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

**7. STS standard**

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

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

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

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

Questions to stakeholders:

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

• No

Please explain.

Due to the burdensome number of STS-criteria to be fulfilled and the constraining effect on some of these criteria the STS label has not had the desired effect of scaling up the securitisation market.

As mentioned previously, not as a single measurement, but one as part of a package of different measures to promote the securitization market. STS is one building block which can help.

The introduction of the requirements for STS securitisations in Chapter 4 of the European Securitisation Regulation nevertheless successfully met its objective, that is establishing a universal quality standard for the securitisation market.

This standard now has passed its initial phase and its time to adopt and back out the discovered weaknesses.

**7.2. Which of the below factors, if any, do you consider as holding back the expansion of the STS standard in the EU? You may select more than one option.**

• Overly restrictive and costly STS criteria

• Low returns

• High capital charges

• LCR treatment

Please explain.

For restrictive STS criteria please see our answer under 7.1. The capital charges for transactions fulfilling all STS criteria are especially for low RW assets with 10% RW floor on the senior tranche still too high to be attractive for originators in terms of cost of capital. We refer to the arguments in the Paris Europlace paper from September 2024 (How can securitisations contribute to the financing of the EU agenda, chapter 2)

The label can be made available for new asset classes and easier to achieve. Also, the big issue is most of the time not the monetary costs, but the costs in effort.

Low returns are a relative. Important is the return on RWA. Lower capital charges would help a lot. One could also think of reducing the RWAs for the low-risk traches. (AAA, AA, A)

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

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

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

The label can be available for new asset classes and easier to get. At the end of the day the economics have to be improved, this is the ultimate leverage for investors.

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

STS criteria

**7.4. In the case of an unfunded credit protection agreement[[17]](#footnote-18) agreement where the protection provider provides no collateral to cover his potential future liabilities, should such an agreement be eligible for the STS label, to facilitate on‑balance‑sheet STS securitisations?**

• Yes

We refer and are fully agreeing to the following Paris Europlace response to the EC Consultation

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

• Other

Please explain.

Counterparty risk: Credit rating of protection provider. Same as liquidity provider.

In addition, letters of credit could be added in Article 26e (10) point b of the SECR as an alternative to collateral in the form of cash held with a third-party credit institution. Please also refer to the Paris Europlace response to the EC Consultation.

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

The allowance of unfunded credit protection to be eligible for STS would considerably increase STS issuances and thus the intended effect of scaling up the EU securitisation market thanks to the widening of the available investor base for STS transactions.

It would further make banks more efficient, reduce risks in banks, free RWA’s, which can then again be invested in the economy.

Collateralization didn’t help against failure in financial crisis, because insurers have a long-term view rather than a market to market view. Risk diversification due to more eligible unfunded protection provider would support EU financial stability.

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

Please explain your answer.

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

This would further promote SRT transactions and the issued volumes. Perhaps a plus of 30% in issuance volumes seems reasonable. Some banks even though expect a doubling of SRT transactions issuance per year if unfunded credit protection becomes eligible for STS.

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

• Yes

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

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

It will have no negative effect for the EU financial stability if it would be allowed - under Article 26e (10) (b) of the SECR - to provide cash collateral also in the form of a guarantee or letter of credit given by a qualifying third-party credit institution or by the originator. In our understanding of the term ‚cash on deposit‘, the reference to collateral in the form of "cash held with" a third-party credit institution in Article 26e (10) (b) of the SECR must be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.

**7.12. Do the homogeneity requirements for STS transactions represent an undue burden for the securitisation of corporate loans, including SMEs? Please explain your answer.**

Yes. Especially for smaller banks in AUT and CEE markets the available volume of loans to be securitised after applying the restrictive homogeneity requirements for STS transactions falls quickly below the minimum amount needed to execute an economic feasible transaction given the high absolute amount of fixed cost of setting-up and running the transaction, as well as investor’s minimum targeted investment amount.

5. Article 20 (8), 24 (15) and 26b (8) of the SECR in connection with the RTS on homogeneity: There should be the possibility of securitisation of cross-border portfolios with SMEs and other types of enterprises. As a supplement, a clarification could be added stating that the originator must have suitable and homogeneous risk measurement procedures/internal rating systems in place to appropriately evaluate the quality of cross-border portfolios consisting of SMEs and other businesses in a consistent way. The current homogeneity requirements for this sort of corporate loan securitisations (which are very common for on-balance-sheet securitisations) are still not fully clear on this point, despite more than 2 years of discussion between market participants and the regulators in the preparation of the current RTS on homogenity

**7.13. Should the STS criteria (for traditional, asset backed commercial paper (ABCP) or on-balance sheet securitisation) be further simplified or amended? Please explain your answer and provide suggestions.**

• Yes

Please explain.

1. Clarification that securitisations can qualify for the STS label even if no SSPE is involved because a direct investment via the bank balance and not via an SSPE does not, per se, have the effect of increasing the risk of the transaction, as long as all other applicable STS criteria are fulfilled. This clarification would enable private securitisations with one bank investor, which are structured in this way, to reach STS compliance and therefore provide competitive funding to the real economy.
2. Article 22(1)/Article 24(14)/Article 26d(1) of the SECR: the originator should have the right to choose the type of historical performance data specific to the business and transaction type in order to provide targeted information to the investor. An example would be the provision of rating migration matrices only (and no other loss data) for on-balance-sheet securitisations which would fully meet the market standard and the investors’ expectations for this type of transactions. Further, at least for transactions where the default risk is externally covered (e. g. CRR conform credit insurance) it should be left to the originators in the sense of a principal based approach, how many additional historical data is needed.
3. Article 24(15) 2nd and 3rd Subparagraph of the SECR: the strict criteria that limit the residual maturity are not suitable and should be removed to avoid discrimination against longer term financing contracts. In particular, the current limits prevent the securitisation of receivables that are financing the dual transition to more digitalised and sustainable, such as solar loans & leases through the private ABCP markets. The argument of a mismatch of asset vs liability maturities is not valid given that ABCP transactions are fully-supported by bank liquidity facilities.
4. The criterion in Article 21(6) SECR (amortization trigger) should be waived, at the very least for private transactions, as these transactions are characterised by fluctuating portfolio sizes which make this requirement redundant.
5. Article 243 (1) (b) and (2) (a) of the CRR (single obligor limit): From a risk perspective, the type of refinancing is irrelevant provided that the portfolio is sufficiently protected through appropriate credit enhancement. The 2% debtor limit should be removed or at least increased if linked to an external public ECAI rating of the debtor. It should be at least clarified that non-ABCP securitisations are also excluded from the rule regarding maximum aggregate exposure if they are fully covered by eligible credit protection (i.e. credit insurance). For on-balance-sheet securitisations involving specialised lending exposures such as project finance/renewables loans, aircraft or shipping loans the 2% single obligor limit is very difficult to comply with, thereby preventing banks that are active in these important market segments to use these loan portfolios for SRT transactions.
6. Article 26b (8) of the SECR: Wording should be added to confirm that also undrawn or partially drawn credit facilities fulfill the “defined periodic payment streams” requirement, provided that other payments (e.g. commitment fees) are payable on a periodic basis.

Third-Party Verifiers (TPVs)

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

3 – Medium added value

Please explain.

Its good to have the label confirmed and a second party to have a look and check all complicated points. But in principal, it should be relatively easy for Originators to also do this checks and do it by their own. In the banks view, only a few institutions do this without a verification agent.

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

• No

Please explain your answer to the above, including where necessary whether TPVs should be supervised at EU level.

Perhaps a supervision “light” could make sense – we assume there is anyhow an existing supervision. Additional costs on all sides should be avoided.

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

• To a moderate extent

Please explain your answer, and if available, estimate the total costs in EUR.

A verification would for typical Auto ABS (~ 500m issuance) would cost 25-30K per transaction. Compared to the overall costs limited. Still if you would also like to roll out STS also to smaller originators and transactions, these costs will come more important, as it would decrease the efficiency further. Perhaps it would be a good idea if you want to promote STS further to lower the costs dramatically (by making it more easy to comply with the requirements), so the incentive for originators and investors is clearly given to try to go with STS.

**8. Securitisation platform**

One issue which is mentioned in the public debate is the possibility of setting up a securitisation platform, with various ideas being put forward on the possible characteristics and functions of such a platform. One of the proposals (see Noyer report[[18]](#footnote-19)), inspired by the US model, envisages the use of public guarantees both at national and EU-level to scale up the market and create a new common ‘safe asset’ across the EU. Other suggested designs are more circumspect (for example see TSI report[[19]](#footnote-20)) and entail the pooling of resources and information to reduce issuance costs and encourage standardisation.

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

Questions to stakeholders:

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

• No

**8.2. If you answered yes to question 8.1., which of the following objectives should be main objective(s) of the platform? You may select more than one option**

• other

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

For the time being we think, this is by far not the most important topic we have.

All of the above would make sense. It would be very important, that such a platform happens quickly. The bank position is, that we can not afford another 10y for this to come. It should have clear rules and also the possibility to have multi- country assets mingled in one transaction.

It is of utmost importance to implement the long list of proposed changes (risk weights banks and insurers, LCR, changes to Art. 5, 7, STS) first. Such changes will need some time to be implemented and more time to positively impact the market growth. New issuers and new investors will be attracted by the proposed changes to enter into the securitisation market only over time, this might take 3-5 years. Hence, the impact and effectiveness of the changes shall be awaited first.

Idea: And important idea here would be also to create an electronic European asset register. This would help the fungibility of assets enormously and reduce a lot of legal costs! This could promote the securitization big time!

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

This would help to create a real securitization market and have all benefits already outlined above. Also, the stigmatization of Securitization has to end, knowledge has to be promoted and attractive investment opportunities have to be created.

**8.4. Should the platform target specific asset classes?**

• No

**8.5. If you answered yes to question 8.4., which asset classes should the platform target? Please provide a justification.**

• SME loans

• Green loans (i.e. green renovation, green mobility)

• Mortgages

• Corporate loans

• Other

**8.6. Are guarantees necessary?**

• No

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

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

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

The main challenge will remain the fragmentation of the different jurisdictions in Europe. A European asset register could help a lot to mitigate these fragmentation.

The replacement of a market solution by state driven structures, we do not consider necessary. Finally, introducing such a platform in the EU would completely jeopardise the concept of interest alignment which has been successfully implemented with risk retention rules since CRD III in the EU.

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

Easy access, transparent, high liquidity, transparent pricing, adequate (risk adjusted) regulation/due diligence/reporting.

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

An electronical European asset register could be an excellent idea. Has this idea ever been expored?

**9. Prudential and liquidity risk treatment of securitisation for banks**

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

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

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

Questions to stakeholders:

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

The biggest influence here has the combination of required RWAs to pricing and the availability of investors for these senior tranches. In addition, the more easy handling of retained tranches – no negotiation with external investors - makes retaining of such tranches attractive to originators if they are banks.

The following parameters would be (in decreasing order) be relevant:

1. Applicable RWAs (also important for smaller banks under the SEC-SA approach)
2. Reporting and DD requirements
3. Treatment for LCR & ECB eligibility & terms (e.g. haircuts)

The capital requirements for securitisation positions pursuant to the CRR are based on the so-called “non-neutrality factor”, according to which the sum of the capital required for all securitisation tranches must – systematically - be greater than the capital requirements for the underlying portfolio, if not be securitised. Policy makers and supervisors primarily justify this overcapitalisation by citing an increased model and agency risk. There is no empirical proof for the risk assumed in this justification.

The systematic overcapitalisation operates primarily via two mechanisms:

Conservative calibration of input parameters for calculating risk weights using formula-based approaches.

Application of minimum values (floors) set by supervisors to the results of step-up

capital requirements for bank investors must be released quickly, from the paradigm of blanket overcapitalisation and instead be designed in a significantly more risk-sensitive manner. Own funds must be able to be used efficiently based on the actual risk inherent to the transaction.

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

Reduction of RWAs and regulatory requirements would for sure have a substantial impact on both, our willingness as the bank issue more and on the business case of investing into Securitizations. Especially the capital weights for low-risk tranches (AAA to A) should be reduced.

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

As banks we see new business models – especially in the SME segment – where also a switch away from banks to electronic platforms (often with innovative and new SME products) is happening. Nevertheless, the bottleneck for these new players is also the financing/funding of their business models. Banks could potentially play an important role in funding these portfolios via senior tranches. The risk of theses senior tranches (if structured properly) should be pretty low and be supported also with low RWAs also under the standardized approach.

**9.4. Does the prudential treatment of securitisation in the CRR appropriately reflect the different roles a bank can play in the securitisation chain, concretely the roles of originator (limb ‘a’ and limb ‘b’ of the definition of the originator in the Securitisation Regulation[[20]](#footnote-21)), servicer and investor?**

• No opinion

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

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

• Yes

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

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

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

• Yes

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

In general, the regulators try to execute what is set out in the regulations. What we have seen is also gold-plating, i.e. different regulators trying to be even more strict in their interpretation of regulations.

One concrete example is, that Austria is the only securitization market in Europe where leasing securitizations are not ECB eligible. This would from our perspective an example for gold-plating.

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

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

Almost all released capital and funding of the bank via Securitizations flows back into lending to the EU economy.

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

Please also look at the disadvantages European Banks face vs their US peers.

**Risk weight floors**

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

The main objective of non-neutrality is to protect against certain structural risks, including agency and model risks, that are more prevalent for securitisations than for other financial assets and give rise to some degree of uncertainty in the calculation of capital requirements for securitisations, even after all appropriate risk drivers have been taken into account. To capture those risks adequately, the CRR sets out a 15% risk-weight floor for non-STS securitisation positions and a 10% risk-weight floor for STS securitisation positions[[21]](#footnote-22), irrespective of the approach for calculation of capital requirements and the role of the bank in the securitisation (originator or investor with respect to the securitisation position).

ESAs contend that originators, unlike the investors, are subject to reduced model and agency risk in relation to their own originated securitisation. The ESAs found that the current risk-weight floors on retained tranches are unjustifiably high and operate to dissuade banks from originating a larger volume of SRT trades. Accordingly, the ESAs recommend lowering the risk weight floors for originators being the original lenders[[22]](#footnote-23) (in STS deals, under SEC-IRBA, from 10% to 7%, and under non-STS for all approaches, from 15% to 12%), subject to safeguards. These safeguards would seek to ensure an adequate reduction in the credit risk of the underlying exposures retained by the originator and prevent undercapitalisation of the underlying risk of the respective securitisation positions retained by the originator (criteria in relation to the thickness of the sold non-senior tranches, amortisation structure, granularity and, for synthetic securitisations only, counterparty credit risk).

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

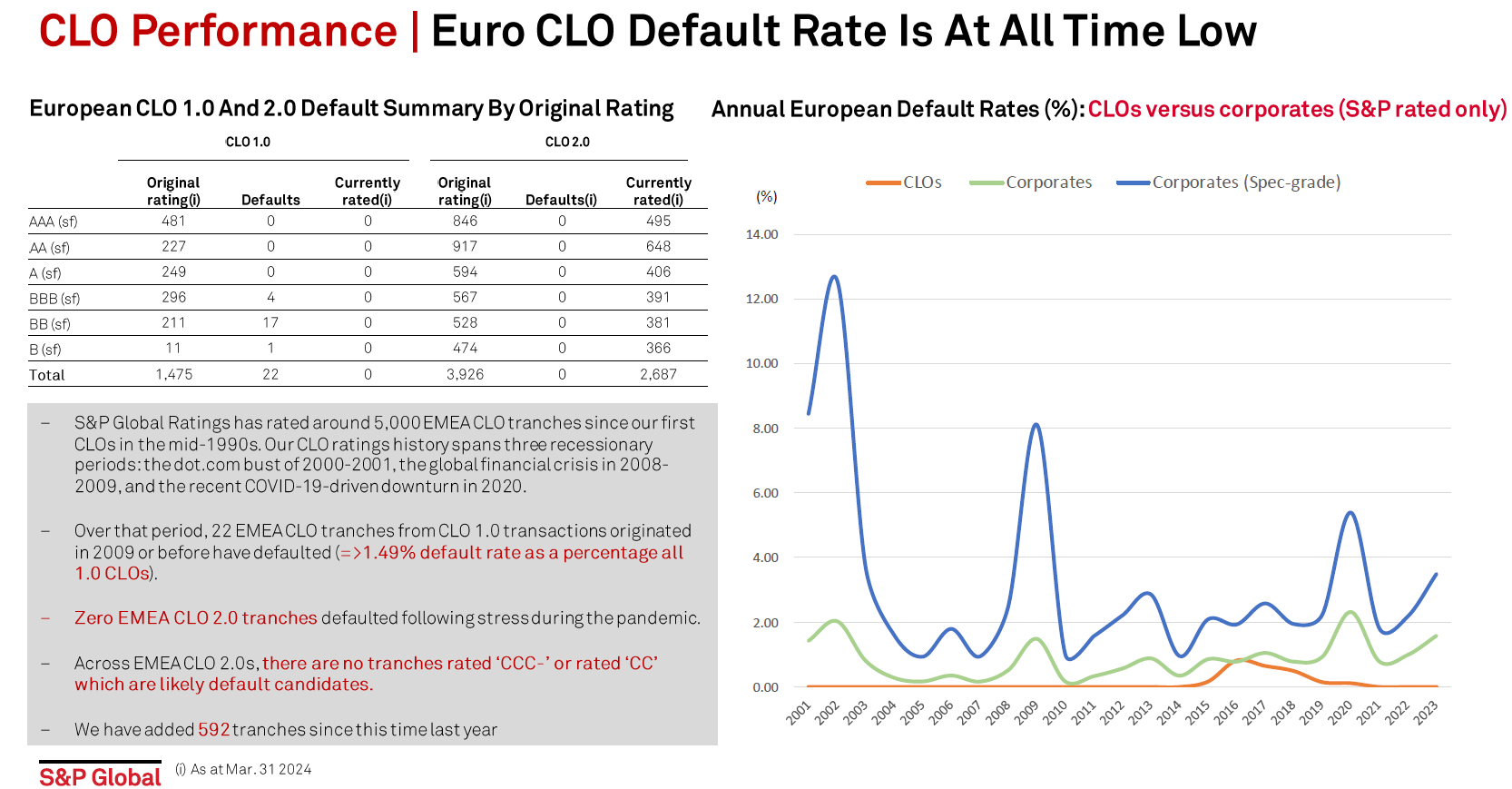
Questions to stakeholders:

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

• No

Please explain:

If correctly set up and modelled diligently there should be no difference, also not compared to covered bonds. Please have a look at historic default rates of securitizations vs corporates. There the long-term default rate for securitizations for IG and Non-IG transactions is considerably lower compared to similar rated corporates.



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

Ein Bild, das Text, Screenshot, Schrift, Zahl enthält.

Automatisch generierte Beschreibung

Ein Bild, das Text, Screenshot, Schrift, Zahl enthält.

Automatisch generierte Beschreibung

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

The excessive risk weights which were implemented with the new regulation are based on the significantly higher losses in the US in connection with model risks in securitisation. However, these risks were directly addressed in the new regulation by

1. transparency,
2. risk retention,
3. DD obligations and
4. interest alignment through liability obligations in the regulation.

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

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

• No

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

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

Even a stronger reduction in RWAs may be justified.

The bank would also support an extension to SEC-SA and ERBA approach. It would be very important to create a level-playing field for securitizations vs. covered bonds.

The introduction of floors for senior risk weights is generally appropriate when using the Simplified Supervisory Formula Approach (SSFA) from the Basel framework. However, the floor levels currently specified in the CRR – particularly for low-risk benchmark portfolios with excellent credit – are far too high. In addition, set floor levels create undesirable cliff effects.

Introduction of risk-sensitive senior floors in the formula-based approaches. Differentiation of floors for STS and non-STS transactions could be implemented via

Senior RW Floor = 7 % × K(pool) × 12.5 for STS transactions or

Senior RW Floor = 10 % × K(pool) × 12.5 for non-STS transactions

whereby

K(pool) = K(IRB) and/or K(pool) = K(A) pursuant to Article 255 of the CRR.

The bank would support, if the RWA gap between STS and non-STS transactions will not get too high. Therefore would set the proportionality factor for Senior non-STS to 10%.

Also we want to avoid an increase in RWAs on some asset classes as CLO’s.

Example: RWAs CLOs

Senior RW Floor = 12 % × K(pool) × 12.5 for non-STS transactions à CLO RWA to increase to 20%!

Please also be aware, that CLO’s play an essential role in financing the risky part of the European Corporate universe!

The proposed floor structure delivers risk-appropriate floor levels, as it changes according to the benchmark portfolio risk (KIRB and/or KA).

(see Duponcheele et al. (2024) “Rethinking the Securitisation Risk Weight Floor”)

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

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

• No

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

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

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

• No

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

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

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

No, we would strongly support reducing the risk weight floor for STS and Non-STS transactions.

Please refer to the US market, where STS is not used and how bustling the market there did develop (and still is compared to the EU), despite not having STS.

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

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

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

One is for sure – if there will not be substantial improvements to bolster the attractivity of the EU Securitisation market, we will further loose ground against other markets, which in turn will be very detrimental to the EU.

The (p) factor

The (p) factor is the main parameter of non-neutrality in the securitisation framework. Besides incorporating the capital non-neutrality, it also serves as a smoothing parameter to mitigate the so-called ‘cliff effects’ that arise when small changes in input parameters under the current risk weight functions result in comparably large changes in risk weights (the lower the (p) factor, the higher the cliff effect). The (p) factor aims to capture the structural risks of securitisation[[23]](#footnote-24) in particular agency and model risks, and to some extent correlation (risk of correlated defaults, particularly present in non-granular pools). A p-factor of “1” means that for the whole securitisation structure (i.e., all the tranches) there is 100% more capital required (doubling the capital required) compared to the requirement that applies to the underlying portfolio of assets.

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

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

Questions to stakeholders:

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

• No

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

Overcapitalisation is currently expressed by the determination of the p-factor. P-factor determination is different in the SEC-IRBA and the SEC-SA.

**SEC-IRBA:**

Determine permissible p-factor values using a 0.2 (STS) or 0.3 (non-STS) floor, and a 0.5 (STS) or 0.75 (non-STS) cap:

STS (Article 260 CRR):

p = min { 0.50 ; max { 0.2 ; 0.5×(A + B×(1/N) + C×K(IRB) + D×LGD + E×M(T)) } }

Non-STS (Art. 259 CRR):

p = min { 0.75 ; max { 0.3 ; (A + B×(1/N) + C×K(IRB) + D×LGD + E×M(T) } }

**SEC-SA:**

Halve the current p-factor as listed in Article 261 and 262 of the CRR. In order to avoid increasing cliff effects associated with the lowering of the p-factor (pertaining to risk weights), the total overcapitalisation could, alternatively, be lowered by scaling the capital input (KA). This means that the parameter KA when calculating KSSFA(KA) (Article 261 of the CRR) would be replaced by the expression (SF × K(A)), in which SF represents the scale factor. In this case, we propose the parametrization

**STS:** p = 0.5 und SF = 0.58

Non-STS: p = 1 und SF = 0.65

for the SEC-SA.

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

The proposed amendments lower the total overcapitalisation, which cannot be justified by either the empirical performance of the securitisations or by persistently high model and agency risks. In addition, the recommendation for the SEC-SA pertaining to scaling capital input reduces the cliff effects embedded in the mathematical structure of

the model. This adjustment can be achieved by amending the CRR, after which relief would occur directly after the amendment takes effect.

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

• Yes

Please explain your answer

Yes, this will help for sure SA banks and therefore also will foster the entrance of new investors (smaller banks which are usually still are in SA) Also quite some bigger bank investors also are still under SA/ERBA approach on their securitization product.

**9.23. If you answered yes to question 9.22., what criteria should be considered when considering such targeted and limited reductions? You may select more than one option.**

• Exposures held by originators versus investors

• Exposures in STS versus non-STS securitisations (beyond the differentiation already provided for in Article 260 and in Article 262 CRR)n• Exposures in senior versus non-senior tranches

• Exposures calculated under different capital approaches

Please explain your answer

There should be a differentiation between low risk (AAA-A equivalent) tranches and below IG tranches.

It should be taken care, that the differences in the capital treatment in different approaches do not get too big. This will promote also for smaller banks to re-enter the securitization market.

We deem an absolute difference between STS and non-STS of 3% for suitable. (e.g. STS floor 7%, Non-STS floor 10%)

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

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

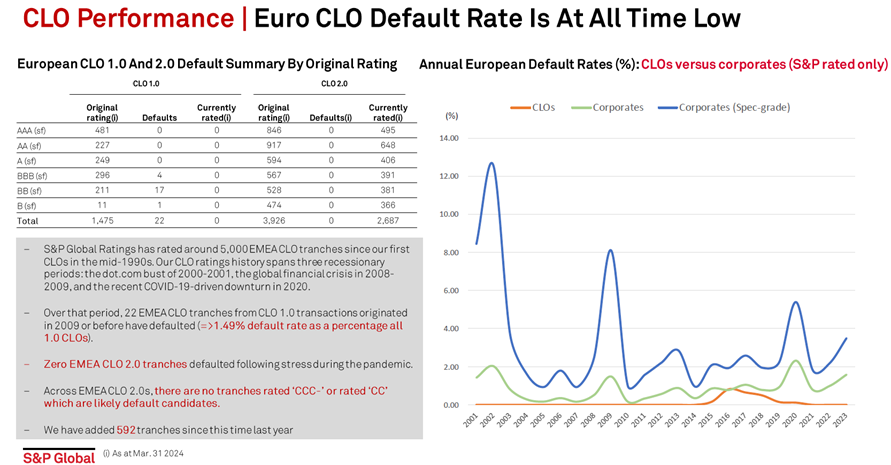
**9.26. Do you consider that the current approach to non-neutrality of capital requirements as one of core elements of the securitisation prudential framework, leads to undue overcapitalisation (or undercapitalisation) of the securitisation exposures, in particular when compared to the realised losses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

• Yes

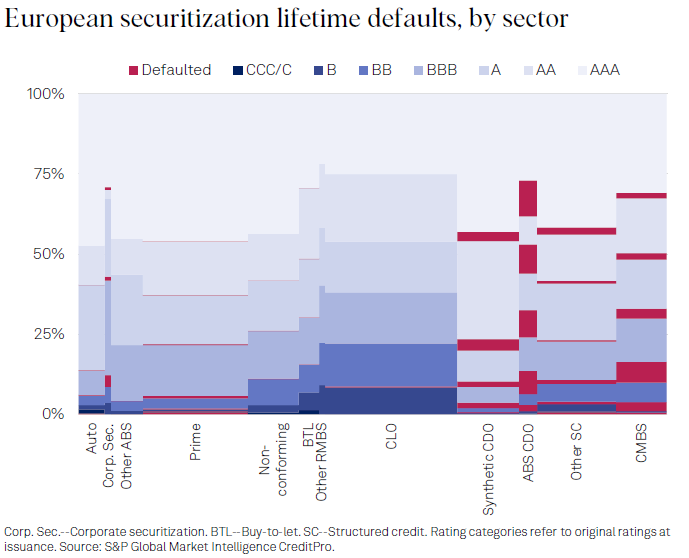
Please explain your answer

The current approach to non-neutrality of capital requirements leads to undue over capitalisation of securitisation exposures indicated by long historical data, covering the Global Financial Crisis, the European Sovereign Crisis and the Covid stress period.

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

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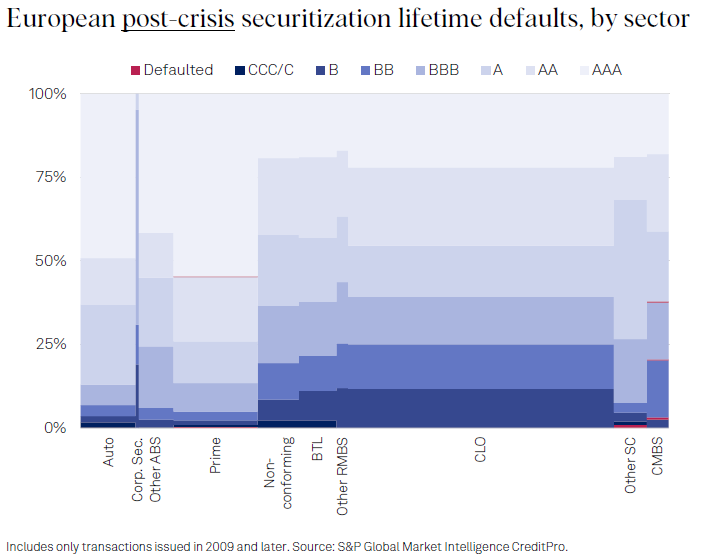
As outlined in the graphs above – European CLOs have a much lower default rate compared to European Corporates.

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The graphs shows the lifetime defaults of all rated securitizations by S&P since begin of the 1980’s until end of March 2023.

Most of the defaults occurred in certain subsectors of structured credit, notably collateralized debt obligations (CDOs) backed by other securitizations—predominantly the U.S. residential mortgage-backed securities (RMBS) that suffered from severe credit distress during the 2007-2008 financial crisis. Most of these instruments have been banned by regulators and/or this segment does not exist any more.

The more traditional European asset-backed securities (ABS), RMBS, and leveraged loan collateralized loan obligation (CLO) sectors have seen lifetime default rates of only 1.0%, 1.5%, and 0.5%, respectively.

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Focusing on only the period since the 2007-2008 financial crisis, European securitization credit performance has been even better.

For transactions issued since 2008, the lifetime default rate has been only 0.2% across about 7,500 tranches. This is despite notable periods of stress, including the sovereign debt crisis in the early 2010s, the COVID-19 pandemic starting in 2020, and the more recent sharp increase in consumer price inflation and interest rates across Europe.

**9.28. Based on your answer to 9.26., do you consider that alternative designs of the risk weight functions, such as an inverted S-curve, or introducing a scaling parameter to scale the KA[[24]](#footnote-25) downwards, within the current halfpipe design, as investigated in the Section 3.3.2 of the EBA report, have potential to achieve more proportionate levels of capital non-neutrality and capital distribution across tranches, address the potential cliff effects more appropriately and achieve prudential objectives?**

• Yes

Please explain your answer

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

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

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

Significant risk transfer (SRT)

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

In its report published in 2020[[25]](#footnote-26), the EBA identified a series of structural limitations of the existing SRT regulatory framework in the CRR and it proposed a set of recommendations to enhance the efficiency and robustness of the SRT framework and strengthen the consistency in the SRT outcomes (in particular in three areas: in relation to the SRT tests, the process applied by the competent authorities to assess the SRT, and the structural features of securitisation transactions which may affect the effectiveness of the risk transfer).

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

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

Questions to stakeholders:

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

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

• No

Please explain your answer

In general, we welcome principal based tests, however it should be clarified that this test only have to be complied at inception of the transaction.

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

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

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

• No

Please explain your answer

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

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

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

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

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

• Don’t know / no opinion / not applicable

Please explain your answer

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

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

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

Transitional measure in Article 465(13) of the CRR

The transitional measure in Article 465(13) of the CRR as amended by Regulation (EU) 2024/1623 aims to mitigate possible unintended consequences of the introduction of the output floor on the calculation of capital requirements for securitisation exposures. It introduces a targeted relief for exposures risk-weighted under the SEC-IRBA and internal assessment approach (IAA) by halving the (p) factor in the calculation of the output floor for those IRB securitisation positions (i.e. the (p) factor is halved to 0.25 for the STS securitisation positions eligible for the preferential capital treatment under the CRR, and to 0.5 for all other securitisation positions). The introduction of this targeted relief acknowledges the fact that the (p) factor levels embedded in the securitisation standardized approach formula (SEC-SA) when used in the context of the output floor would produce unduly punitive results for securitisations structured based on the SEC-IRBA by banks using internal models. The transitional measure will be in application from 1 January 2025 until 31 December 2032.

Questions to stakeholders:

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

• Yes

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

Article 465(13) of the CRR currently allows for temporary (until the end of 2032) halving of the p-factor for those banks bound to the output floor (application of SEC-IRBA or IAA).

The p-factor amount for the applicable SEC-SA when determining the output floor is listed as:

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

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

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

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

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

• Don’t know / no opinion / not applicable

Please explain your answer

Liquidity risk treatment in the LCR Delegated Regulation

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

In terms of eligible asset classes, in addition to securitisations with underlying mortgages (RMBS) in line with the Basel Standards, the EU transposition allows inclusion of securitisations with underlying auto-loans, consumer-loans and SME-loans, subject to different haircuts, credit quality steps (CQSs) and other requirements[[26]](#footnote-27). This expansion of eligible securities in the EU was motivated by the expectation that it would increase diversification of banks’ liquid assets.

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

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

On a more technical aspect, several stakeholders propose to introduce an amendment to the LCR Delegated Regulation, with the aim to reflect the increased granularity of CQSs under the amended CRR and the related amendment to the Implementing Regulation on the mapping of credit assessments for securitisation positions by external credit assessment institutions’ (ECAIs)[[27]](#footnote-28). They recommend modifying the reference from CQS 1, to CQS 1 to 4, in the Article 13(2) of the LCR Delegated Regulation regarding the long-term rating. In the absence of the updated reference, the STS securitisation tranches with ratings between AA+ and Aa- would unintentionally not be eligible as Level 2B securitisations and the eligibility would be limited to tranches with AAA rating.

Questions to stakeholders:

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

• Yes

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

The LCR rules are another building block in the aim to revitalize the securitization market in Europe. Its always the combination of reducing RWAs, easing the regulatory & reporting burden and also LCR considerations. Issuance, investment and market liquidity will be positively influenced by improvements in the LCR rules. This should happen on level of eligibility (not only AAA) but also with a reduction in respective haircuts. The benchmark should be the covered bond market/treatment.

Pursuant to current CRR provisions and the delegated regulation on LCR (Articles 12 and 13),11 specific senior tranches in STS securitisations can qualify as level 2B liquid assets. The ability of securitisations to qualify in the LCR shouldbe amended as follows:

- Senior STS securitisations: HQLA Level 2A

- Senior non-STS securitisations: HQLA Level 2B

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

New investors can only be attracted via banks that can accept new emissions on their books and offer and place them on the market. Demand from institutional investors must be stimulated by strengthening the supply side after the long-term crowding out by the ECB. Beyond measures for reducing high implementation costs and disproportionately high capital requirements, securitisation positions will become more appealing to investors if they qualify appropriately as HQLAs and if risk-appropriate haircuts are applied. This will increase market liquidity, in particular for Public ABS.

First, this will strengthen the role of securitisations in protecting liquidity positions for lending banks, in turn contributing to the stability of the financial market.

Second, full placement of the tranches (full stack) of Public ABS leads to capital relief, thus increasing banks ability to grant loans.

Third, this paves the way for new non-bank investors to (re-)enter the market – provided regulatory incentives are in place for creating such capacities – which will take on systematic risks from banks.

The proposed amendment can be implemented by amending the CRR and the delegated regulation (EU) 2015/61.12 Over the medium-term, this will lead to an increase in the market volume of Public ABS, similar to the market dynamic expected for synthetic on-balance-sheet securitisations after they are granted STS-capability as part of the Capital Market Relief Package.

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

• No

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

Securitizations should be treated equal to covered bonds. Evidently also the liquidity of a lot of public ABS transactions is equal or better compared to covered bonds.

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

If in bundle with other measures as outlined above, potential could be an 30-50% increase.

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

• Yes

Please explain your answer

With the Corona-crisis a severe crisis has hit the world-economy. Securitisation (STS and Non-STS) performance and liquidity during this crisis is providing evidence, that we have a robust framework at hand, which can be used.

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

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

The “internal benefit” of securitizations is much lower compared to covered bonds. A part of LCR “inspired” investments will be shifted to securitizations. Depending on the market, perhaps +20% of all liquid investments could go to securitization vs. 0% right now.

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

• Yes

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

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

The “internal benefit” of securitizations is much lower compared to covered bonds. A part of LCR related investments will be shifted to securitizations. Depending on the market, perhaps +20% of all liquid investments could go to securitization vs. 0% right now.

Specific impediments of the current LCR Delegated Regulation (and the respective targeted amendments to make the liquidity treatment more proportionate, without endangering financial stability) include the following:

The homogeneity requirements in Article 13 (2) (g) of the LCR Delegated Regulation are overly prescriptive (examples being the requirement that residential loans secured with a first-ranking mortgage must be granted to individuals for the acquisition of their main residence, the LTV and loan-to-income requirement and the minimum 80% SME requirement in Article 13 (2) (g) (i) and (iii) of the LCR Delegated Regulation) and not consistent with the homogeneity requirements under the STS criteria. Instead, the homogeneity requirements in Article 13 (2) (g) of the LCR Delegated Regulation should be aligned with the homogeneity requirements under Article 20 (8) and 20 (14) of the Securitisation Regulation in combination with the RTS on homogeneity.

The requirement in Article 13 (13) of the LCR Delegated Regulation that the originator “shall be an institution as defined in Article 4(3) of Regulation (EU) No 575/2013 or an undertaking whose principal activity is to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU” is too focused on financial institutions and other regulated entities and discriminates non-bank lenders and operating leasing companies. Instead, there should be no restrictions on the type of and the level of regulation of the originator, i.e. Article 13 (13) of the LCR Delegated Regulation should be deleted.

**10. Prudential treatment of securitisation for insurers**

Insurance companies allocate 0.33% of their investment assets to securitisation positions[[28]](#footnote-29). The Commission would like to know whether Solvency II standard formula capital requirements as currently applicable, also taking into account the forthcoming amendments to the Solvency II Directive that were approved by co-legislators, or other factors cause limited demand by insurance companies.

Questions to stakeholders:

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

• Yes

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

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

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

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

• Yes

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

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

- Current calibration of capital requirements for securitisations are too high, notably in comparison with equally rated corporate or other collateralised instruments.

- A fundamental aspect of insurers’ asset/liability management (ALM) is a hold to maturity approach that needs to be reflected in standard formula capital requirements.

-There is inconsistency in the treatment between a whole mortgage loans pool and residential mortgage-backed securities (RMBS). The latter are heavily penalised in terms of capital.

-The mandatory “due diligence” actions that issuers and investors are required to undertake are disproportionate and excessive.

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

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

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

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

• Yes

Please explain your answer, being specific in your reply.

There is no clear disincentive to investment in securitisation. Nevertheless internal models are likely be anchored at punitive Solvency II standard formula risk charge levels, but for sure internal models on the asset side will usually be based on critical past experience. Especially within securitisation this past experience is heavily dominated by spread volatility and rating migration experience partially including defaults stemming from the global financial crisis.

A key learning regarding securitisation positions was, that rating agencies had been underjudging accumulation risks stemming from structures specifically correlation risks. There also has been a separation of performance by region as well as asset class (e.g.: EBA Report on Qualifying Securitisations 2014). Performance of European securitisations was significantly better than the performance of U.S. securitisations and many asset classes driving defaults of securitisation tranches are - not anymore or to a very minor extent - securitised and regulatory banned from markets (e.g. resecuritisations).

Thus, using historical performance (e.g. rating migration matrices) in model building, including today no more existing and bad performing market segments (as resecuritisations), is broadly leading to miscalibration and overstating risks of the today existing market. At the same time rating agencies have been altering their modelling making migration history from the GCS less meaningful for usage in today modelling.

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

• No

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

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

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

**For STS**

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

**For Non-STS:**

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

To obtain the non-senior non-STS capital charges, we multiply the new Senior Non-STS heatmap by a ratio of 150%. For the first 5 years, the new non-senior non-STS CQS 0 charge-per-year-of-duration is 1.42%, compared to the new Senior Non-STS value of 0.91%.

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

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

• No

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

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

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

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

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

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

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

• No

Please explain your answer.

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

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

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

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

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

• No

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

Solvency II risk charges are too high in comparison to competing asset classes as corporate- or covered-bonds. Although a simple standardisation via STS seems to be rather welcomed by investors, due to a lack of dramatical differences in between STS and non-STS no investor or regulator seems to be able to by - way of proper argument or empirically justify - the dramatic increase in risk charges for non-STS in comparison to STS. For senior tranches, where structuring reallocates away first losses, risk charges are obviously too high in comparison to risk charges for the assets of their underlying portfolios. From a logical ratio, a senior tranche risk charge should never be above the pool average risk charge. For junior tranches risk charges remain too high when looking at empirical evidence from historical data taking into consideration that volatile securitisation positions from the time of financial crisis are regulatory prohibited (e.g. resecuritisations) or not broadly existent anymore.

Insurance Europe (in a 2018 response to EC proposal to amend Solvency II capital Requirements) points out that for a European “AA” rated 5Y securitisation default experience from the global financial crisis and thereafter from 2008 to 2013 accumulated to 0.29%, but compare to a Solvency II risk charge of 6% when STS, - climbing to 67% when non-STS!.

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

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

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

• Yes

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

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

Please note that the granularity effect is normally reflected via the rating methodology, but in a way that is not unified, and not under the control of regulators.

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

• Yes

Please explain your answer, being specific in your reply.

**10.13. If you answered no to question 10.12., please provide suggestions for calibrations of capital requirements for such senior and non-senior tranches, including the data/evidence backing such suggestions. Please also indicate whether you target a specific segment of non-STS securitisation.**

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

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

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

Questions to stakeholders:

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

• Other

Please elaborate in case you are not an IORP.

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

• Yes

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

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

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

i/ the number of non-IORP in your jurisdiction,

ii/ the amount of assets under management and

iii/ the type of pension business concerned, for which investment in securitisation would be interesting.

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

• No opinion

Please explain your answer.

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

• Yes

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

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

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

• Don’t know / no opinion / not applicable

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

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

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

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

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

**12. Additional questions**

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

**12.1. What segments of the securitisation market have the strongest potential to contribute to the CMU objectives, and that should be the focus of any potential regulatory review? You may select more than one option.**

• Traditional placed securitisation

• Synthetic securitisation

• SRT securitisation

• ABCP securitisation

• STS securitisation

• Non-STS securitisation

• Securitisation of SME and corporate exposures

• Securitisation of mortgages

• Securitisation of other asset classes

• Other

Please explain your answer.

We would like to see here a focus on SME and Corporates as well as SRT. Also to strengthening of the STS and Non-STS market would be vital.

In addition, we would also have a look at Europe’s biggest securitization market – the CLO market. Which provides financing for high risk loans, which is also essential for functioning market to have this high risk transactions to be financed. Please have a look at the US CLO market, which is ~ 4x the size of the European market.

There is not the one segment which could contribute most to the CMU objectives. Jointly, all types of securitisation (Public ABS, CLOs, synthetic, Private Non-ABCP and ABCP) have the potential to contribute to the CMU. Non-ABCPs and CLOs are mainly done for the funding of the Originator which allows him to act more flexible. Synthetic transactions are done with the goal of a capital relief which allow banks to give out more loans or. ABCP transaction directly support the real economy through it’s funding. Therefore, the regulatory review should definitely be approached holistically.

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

Why do banks choose not to issue traditional securitisation for both funding and capital relief? You may select more than one option.

• Interest rate environment

• Low returns

• Operational costs

• High capital charges

• Difficulty in placing senior tranches

• Significant Risk Transfer process

• Preference for alternative instruments for funding

• Prefer to retain to keep the revenue from the underlying assets

• Prefer to retain to access central bank liquidity• Other

Please explain.

The by far biggest reasons for this crowding out for securitizations are the super cheap liquidity provided by the ECB in the recent years, the huge regulatory burdens and the capital requirements, which are not justified with regards to the risk structure of securitisations - compared to other instruments. A lot of traditional securitization did not make economical sense any more. To a large extend, this is still true today. It is even more true in CEE markets – such as Poland.

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

The biggest influence here has the combination of required RWAs to pricing and the availability of investors for these securitizations.

The following parameters would be (in decreasing order) be relevant:

1. Applicable RWAs (also important for smaller banks under the SEC-SA approach)
2. Reporting and DD requirements
3. Treatment for LCR & ECB eligibility & terms (e.g. haircuts)
4. Supervision

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

The by far biggest influence here are the different jurisdictions in which the assets are located. Each country has different legal system, different consumer protection laws, different requirements for the “true sale” to be fulfilled. Different bankruptcy procedures, registration requirements for assets and notification requirements add to the complexity.

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

Please substantiate your answer for traditional and synthetic securitisation respectively.

**Traditional cash securitization:**

The biggest issue is the fragmentation of the legal systems in different countries. Potentially an electronical European asset register could be a step in between before a full harmonization of the legal systems can be achieved.

**Synthetic (SRT):**

For synthetic securitisations, it is still not possible to reach the STS status when securitising SME- and Large Corporate loans from different jurisdictions – which is very common für synthetic transactions. If this rule could be amended, this would be beneficial.

**12.6. Securitisation activity is heavily concentrated in a few Member States – primarily Italy, France, Germany, Netherlands and Spain.**

What are the main obstacles to increasing securitisation activity in other Member States?

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

Here – especially if we also look at CEE the issues are as follows:

* Fragmented markets with regards to legal systems
* Relatively small asset portfolios – which can not be utilized efficiently
* High regulatory burden to set up new transactions
* Relative (compared to portfolios sizes) high set-up costs
* Disadvantages for banks in Standardized approach with regards to RWA treatments – many CEE banks are still in the Standardized approach – especially for their securitization product.
* RWA burden for the Senior tranches should be improved.

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

• Yes

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

We belief, that the regulators think regulation is the superpower which will make the markets trust and promote securitizations. In reality, all this regulations strangle the securitizations markets. Its not one thing particular, but the summary of all this measures. Therefore the solution is also not one particular thing, but a bundle of measures (which have been argued in detailed through this document) which should be implemented to really promote the securitization market.

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

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

There are no incentives for ESG or green financings – two examples.

Example 1: Securitization for a pool of leasing assets with a share of electric cars of ~35%. The client had an unusual high share of electric cars due to a cooperation with Tesla. Finally, the client had no benefit of his efforts to promote electrical cars, as not the whole pool was electrical – not even a partial benefit – in this securitization was possible. The change towards electric cars will happen gradually and based on the acceptance of the final clients. Accordingly, also the benefits should be gradually given to support the process and not an “all or nothing” policy.

Example 2: ESG in CLOs – there is also no incentive in any way to push this topic further. Almost all CLO have ESG ratings on their underlying assets but even if they invest only in ESG friendly assets there no incentive (neither from investors – nor in pricing) at all. We can see in many conversations, that the interest (by investors & issuers) is disappearing in the topic as no one has any benefit. As long as there is no clear framework, which outlines certain criteria & rules and have a benefit attached this topic will not be pushed forward strongly.

The ESG framework should be made practical workable for securitizations, where also partial benefits & improvements should be recognized and supported via beneficial treatment.

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

• Yes

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

As also outlined in the Draghi Report, one of the main reasons why Europe’s capital markets have fallen back vs the US is the weak securitization market. In 2022 the European securitization market was 0.3% of GDP, while the US figure was 4%.

After the GFC European regulators have been keen to implement very harsh regulations for securitizations. Unfortunately, there has not been a proper analysis and appropriate calibration, as securitization is an asset class, which covers many different underlying assets and risk profiles. The effect was, that certain securitizations have punitive high RWAs and other restrictions, which are by no means justified by their historical performance.

The consequence of the strict regulation is threefold.

First, a sluggish development of the securitization market, failing to channel risk from banks and other financial institutions into the private market.

Second, having very high entry barriers for new players in the market due to high reporting and monitoring requirements.

Third, the relatively high RWAs on senior tranches prevent the European banks from investing into the low-risk senior tranches, as they are often the critical part in order to make transactions work.

The very high reporting requirements also make it difficult and expensive to make the securitization market also attractive for smaller players with smaller portfolio sizes, which you would typically see in more fragmented markets as you have for example in CEE.

To summarize, securitization is unnecessary penalizing for banks – especially in the standardized approach – which makes it inefficient from an originator and investor perspective. Here smaller banks have a substantial disadvantage.

We would like to see improvements for securitizations on the following topics:

* Lowering the regulatory and reporting burden in general
* Decreasing the RWAs for banks for the senior tranches (for all approaches)
* Making the RWAs for banks in the standardized approach less punitive (SEC-SA calculation)
* Elaboration on the required due diligence if a bank invests in externally rated transactions, possibly tied to rating (=risk) level.
* Reducing haircuts and requirements for the ECB collateral framework
* Better eligibility of securitizations in the regulatory liquidity ratios
* Further promotion of the STS label
* Closer alignment of taxation and legal frameworks in the fragmented European market
* Electronical European asset register
* Easing the regulations for SRT transactions in order to support the resilience and capabilities to place risk to private investors for European banks

The Draghi reports mention’s securitizations pretty prominently in the key objectives in the “Sustaining Investment” section as one of the areas Europe is lacking behind. The bank fully agrees with the analysis, the conclusions and supports strongly the concrete policy proposals made in Draghi’s report.

1. See Action 6 in the 2020 CMU action plan [↑](#footnote-ref-2)
2. ESMA50-524821-2908\_TRV\_risk\_analysis\_-\_EU\_securitisation\_markets\_overview.pdf [↑](#footnote-ref-3)
3. https://www.afme.eu/publications/data-research/details/securitisation-data-report-q4-2023--2023-full-year [↑](#footnote-ref-4)
4. 4ESMA50-524821-2908\_TRV\_risk\_analysis\_-\_EU\_securitisation\_markets\_overview.pdf (europa.eu) [↑](#footnote-ref-5)
5. 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 (CRR) and in Solvency II Delegated Regulation, and liquidity requirements in the LCR Delegated Regulation. [↑](#footnote-ref-6)
6. 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. [↑](#footnote-ref-7)
7. Report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation COM/20222/517 final [↑](#footnote-ref-8)
8. This includes bilateral and group-based outreach to the population of stakeholders active in the EU securitisation market, including issuers, investors, sponsors, third-party verifiers, and all other established actors active throughout the securitisation market, data repositories, industry associations, competent authorities, and research institutions. [↑](#footnote-ref-9)
9. Political Guidelines for the Next European Commission 2024-2029 [↑](#footnote-ref-10)
10. See IMPACT ASSESSMENT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common rules on securitisation and creating a European framework for simple and transparent securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 and Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms [↑](#footnote-ref-11)
11. Capital Markets Union: The Commission publishes its report on the review of the Securitisation Regulation - European Commission (europa.eu) [↑](#footnote-ref-12)
12. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0061 [↑](#footnote-ref-13)
13. This principle is well recognised by the International Organisation of Securities Commission (IOSCO) in their report on the subprime crisis, as well as their report on good practices in relation to investment managers´ due diligence when investing in structured finance instruments. [↑](#footnote-ref-14)
14. See Joint committee report on the implementation and functioning of the securitisation regulation - European Union (europa.eu) [↑](#footnote-ref-15)
15. [↑](#footnote-ref-16)
16. See ESAs report on the implementation and functioning of the securitisation regulation | European Banking Authority [↑](#footnote-ref-17)
17. According to Article 26e(8)(c) eligible credit protection for STS on-balance-sheet securitisation should be “secured by collateral meeting the requirements laid down in paragraphs 9 and 10 of this Article”. [↑](#footnote-ref-18)
18. Developing European capital markets to finance the future: Proposals for a savings and investments union. Available at: https://www.tresor.economie.gouv.fr/Articles/2024/04/25/developing-european-capital-markets-to-finance-the-future [↑](#footnote-ref-19)
19. The challenge of financing the transformation for companies and banks in Germany – securitisation as an instrument for linking bank loans and capital markets. Available at: https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi\_downloads/aktuelles/Final\_Report\_German\_Securitisation\_Platform\_convenience\_translation.pdf [↑](#footnote-ref-20)
20. According to Article 3(2) of the Securitisation Regulation, an originator can be an entity that has originated the exposures that are securitised (letter (a)), or has purchased a third party’s exposures on its own account and then securitises them (letter (b)) [↑](#footnote-ref-21)
21. Positions in resecuritisations – generally not admitted under the EU securitisation framework – when allowed by supervisors, are subject to a more conservative 100% risk-weight floor. [↑](#footnote-ref-22)
22. For instance, only originators involved in the origination of the underlying exposures as referred to in point (3)(a) of Article 2 of the Securitisation Regulation. This would exclude any originator that “purchases a third party’s exposures on its own account and then securitises them”, according to point (b) of the same Article, to avoid that credit institutions would expand beyond core businesses just for the purpose of securitising the respective exposures in order to benefit from the reduction in the risk weight floor. [↑](#footnote-ref-23)
23. Under SEC-SA, there is a fixed (p) factor of 1 (for non-STS securitisations) and 0.5 (for STS securitisations). Under the SEC-IRBA, banks may calculate their own supervisory parameter based on four risk factors, i.e., the framework (correlation effect), the granularity of the securitised pool for wholesale, the capital charge for the underlying exposures, the average loss given default of the securitised pool, plus one non-risk parameter (tranche maturity MT, capped at 5 years), which is subject to a floor of 0.30. There is no (p) factor in SEC-ERBA where the capital requirements are set out in the look-up tables, to ensure consistency compared with the capital requirements with SEC-SA. [↑](#footnote-ref-24)
24. KA factor as specified in paragraph 2 of Article 261 of the CRR, for the purpose of calculation of the capital charge under the standardised approach (SEC-SA) [↑](#footnote-ref-25)
25. See the EBA calls on the European Commission to harmonise the significant risk transfer assessment in securitisation | European Banking Authority [↑](#footnote-ref-26)
26. In addition, as clarified by Q&A 2019\_4786, securitisations, including NPL securitisations, that are explicitly guaranteed by the central government of a Member State can qualify as level 1 liquid assets in the LCR in accordance with Article 10(1)(c)(i) of the LCR Delegated Regulation. [↑](#footnote-ref-27)
27. Implementing Regulation (EU) 2016/1801 as per Commission Implementing Regulation (EU) 2022/2365 [↑](#footnote-ref-28)
28. See Joint Committee advice on the review of the securitisation prudential framework (Insurance) - JC-2022/67 [↑](#footnote-ref-29)