**TARGETED CONSULTATION**

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

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| **Consultation questions** |

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| **Effectiveness of the securitisation framework** The EU securitisation framework has been in application since January 2019. The framework consists of the [Securitisation Regulation (SECR),](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2402) 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](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32017R2401) and in [Solvency II](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015R0035-20190101) [Delegated Act,](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015R0035-20190101) 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 economy10. 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](https://finance.ec.europa.eu/news/capital-markets-union-commission-publishes-its-report-review-securitisation-regulation-2022-10-11_en) [Commission 2022 report](https://finance.ec.europa.eu/news/capital-markets-union-commission-publishes-its-report-review-securitisation-regulation-2022-10-11_en)’),11 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.  10 See [IMPACT ASSESSMENT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0185) [PARLIAMENT AND OF THE COUNCIL laying down common rules on securitisation and creating a European framework for](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0185) [simple and transparent securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0185) [1060/2009 and (EU) No 648/2012 and Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0185) [COUNCIL amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0185)  11 [Capital Markets Union: The Commission publishes its report on the review of the Securitisation Regulation - European](https://finance.ec.europa.eu/news/capital-markets-union-commission-publishes-its-report-review-securitisation-regulation-2022-10-11_en) [Commission (europa.eu)](https://finance.ec.europa.eu/news/capital-markets-union-commission-publishes-its-report-review-securitisation-regulation-2022-10-11_en) |

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| 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. |

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| * 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: |

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|  | 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 |  |  |  |

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| 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 |  |

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| 1. **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: |

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| 1. **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](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0517) [Securitisation Regulation.](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0517) 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.  12 *See* [ESAs’ Opinion to the European Commission on the Jurisdictional Scope of Application of the Securitisation Regulation](https://www.esma.europa.eu/sites/default/files/library/jc_2021_16_-_esas_opinion_on_jurisdictional_scope_of_application_of_the_securitisation_regulation_003.pdf)  Questions to stakeholders: |

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| 1. **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 investments14. Article 5 of the Securitisation Regulation imposes due diligence requirements on EU investors both prior to investing and while holding the securitisation position.  14 This principle is well recognised by the International Organisation of Securities Commission (IOSCO) in their [report on the](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf) [subprime crisis,](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf) as well as their [report on good practices in relation to investment managers´ due diligence when investing in](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf) [structured finance instruments.](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf)  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: |

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| **Question 4.3:**  Please select your preferred option to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments.   * + - Option 1: The requirements should be made more principles-based, proportionate, and less complex;     - Option 2: The requirements should be made more detailed and prescriptive for legal certainty;     - Option 3: There is no need to change the text of the due diligence requirements;     - No opinion |

Answer to multiple choice:

* + - **Option 1: The requirements should be made more principles-based, proportionate, and less complex**

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| **Due diligence requirements prior to holding a securitisation position** |

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| **Question 4.4:**  Should the text of Article 5(3) be simplified to mandate investors to assess at minimum the risk characteristics and the structural features of the securitisation?   * + - Yes     - No     - No opinion   Please explain. |

Answer to multiple choice:

* + - **Yes**

Explanation / justification / answer:

Article 5 of the SECR, obliges investors across the board to include in their due diligence exercises all the information that sell-side entities are required to disclose under SECR article 7, that sell-side entities have made this available in accordance, with the stipulated frequency and modalities.

As stated in our responses to the previous questions, The article 5 parts (3)(a) and (b) are in adequation phase with required equivalent economic analyses for all investment decisions (i.e. risk characteristics and structural features).

Article 5(3)(c) requires redundant controls on the compliance of STS operations with their specific regulatory constraints. Investors in STS securitization should not be required to also perform such controls that have already been performed by the Originator, the sponsor or SSPE that are regulated entities, and also subjects to specific legal obligations. Please refer to Q4.10 and 7.15 related to this topic

While point (c) are covered by existing duties relative to the Initiator, the Sponsor or the SSPE (or its legal representant) and, for STS transaction, please remind the already supervised (as subject to local supervisor agreement) Third-Party Verifiers Verification Agent must also control the respect of all STS criteria.

The priority should therefore be to remove Article 5(3)c to reduce the redundancy of current requirements.

More generally, a more principle-based due diligence, especially for private transactions, would render the process more fluid. The information that will be requested from sell-side entities will differ from operations to operations, because the needs of each party will differ, and products differ by the underlying and the structure of the transaction.

Therefore, it is essential that institutional investors be subject to proportionate due-diligence requirements ensuring that they properly assess the risks arising from all types of securitizations to the benefit of end investors, (including risks linked to the underlying and risks, or risk mitigation linked to the structure). Due diligence can thus also enhance confidence in the market and between individual originators, sponsors and investors.

Also, the due diligence requirements in the existing framework on these senior tranches are very prescriptive, impacting directly the capacity of (re)insurance companies to act in the primary market, and also indirectly as in case (re)insurance companies want to sell those assets (for example to pay new insurance claims, the potential buyer or market maker (if it is itself subject to EU rules) also needs to go through this burdensome due diligence process.

A better approach would be to align due diligence principles for securitisation with the existing regulatory framework applying to all regulated activities (fiduciary duties, risk management processes, etc…) considering that most actors and activities are already duly regulated and supervised. Such an approach would avoid singling out securitisation, and encourage the inclusion of securitisation in investment portfolios, with the commensurate investment decision process.

But this should not be considered as the top priority to revive securitisation. Currently the main drawback is the heavy prudential requirements for securitisations, which dried up this segment, rendering it less interesting for investors. Less penalising prudential requirements for issuers and investors are of the essence to relaunch the EU securitisation market.

Simplifying the due diligence obligations for investors, particularly about the review of risk retention (Art. 5 (1) c, d) and the review of compliance with disclosure obligations (Art. 5 (1) e), makes sense. Furthermore, the requirements in Art. 5 (4) should be critically reviewed and significantly reduced. This applies to the requirement to establish written procedures for due diligence, to ensure internal reporting to management bodies or the obligation to be able to provide evidence of compliance with all requirements at any time at the request of the competent authority. As a result, additional documentation and internal monitoring processes are required for the securitisation asset class in addition to the normal regulatory requirements under Solvency II

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

The individual assessment steps in Article 5(3) points a to c of the SECR should be deleted and replaced by principle-based wording. This might look as follows:

* Prior to holding a securitisation position, an investor shall carry out a due diligence assessment which enables it to assess the risks involved. This assessment must consider the underlying exposures and the structural features of the securitisation.
* In addition, regarding article 5(4), we suggest the following modifications aimed at removing burdensome and inexpedient requirements for investors:
* article 5(4) a §2: the sentence shall be removed because not all the listed characteristics are relevant to every securitisation. It should be left to the professional judgement of investors to decide the scope of criteria to include and document in their written procedures for monitoring the risk, performance and regulatory compliance of their securitisation positions, depending on the nature of their investments and the types, features and underlying assets of the securitisations.

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

The purpose of this simplification would not be to reduce costs, but to provide flexibility to investors to achieve their due diligence process in a more proportionate way, also depending on the complexity of the transaction. This flexibility, combined with more risk-sensitive capital charges, would remove the disincentive for investors to engage, including small and medium size financial institutions across all EU member states.

Also, for existing players, reducing the due diligence burden would bring important benefits in terms of time to market, making sure that origination and investment decisions can be made promptly, including in the case of market makers in the secondary market. In the current framework, EU investors and market makers are losing opportunities to the benefit of non-EU players, due to the necessary time to perform due diligence which are often not proportionate to the risk of the contemplated transaction.

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| **Question 4.7:**  Should due diligence requirements differ based on the different characteristics of a securitisation transaction?   * + - Yes     - No     - No opinion |

Answer to multiple choice:

* + - **Yes**

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| **Question 4.8:**  **If you answered yes to question 4.7.**, please select one or more of the following options to differentiate due diligence requirements:   * + - 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)     - Other   Please explain your answer. |

Answer to multiple choice:

* + - **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)**
    - **Other**

The variety and complexity of securitization transactions call for a simplifying approach, with real risk transparency and the ‘best knowledge’ standard

Therefore, single principle would be that all regulated participants able to demonstrate to their competent authorities, on request, that they have full and in-depth knowledge of each securitization position and the exposures underlying it, and that they implement written policies and procedures for managing the risks they entail, and for recording relevant information.

Regulated investors such as insurance and funds are already subject to strict risk management rules and supervision, which should encompass securitisation as one of the asset classes in their portfolios.

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| **Question 4.10:**  For EU investors investing in securitisations where the originator, sponsor or original lender is established in the Union and is the responsible entity for complying with those requirements, should certain due diligence verification requirements be removed as the compliance with these requirements is already subject to supervision elsewhere? This could apply to the requirements for investors to check whether the originator, sponsor or original lender complied with:   * (i) risk retention requirements,   + Yes   + No   + No opinion * (ii) credit granting criteria requirements,   + Yes   + No   + No opinion * (iii) disclosure requirements,   + Yes   + No   + No opinion * (iv) STS requirements, where the transaction is notified as STS   + Yes   + No   + No opinion   Please explain if you see any risks arising from the removal of these requirements, and if so, how they should be mitigated. |

Answer to multiple choice:

* (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
  + **Yes**

**Credit-granting criteria:**

* **Verification Standards:** The expected standard of verification can indeed vary based on factors like investor type, investment tenor, and seniority. For instance, senior tranches might require more stringent verification compared to junior tranches due to their lower risk tolerance.
* **Third Country Originators:** The differences in information availability for third country originators and original lenders can complicate compliance. Requiring attestations from these entities can help mitigate concerns, but clarity on this requirement is essential.
* **Historical Exposures:** For securitizations involving historical exposures, especially where the original lender no longer exists, investors should focus on the current originator of the securitized assets. Representations and warranties from this entity can provide the necessary assurance.
* **Due Diligence:** While due diligence is typically performed by investors, the administrative burden can be significant. Streamlining this process and providing clear guidelines can help reduce blockages in the investment process.

**Disclosure requirements:**

* We identify concerns arising from the sell-side transparency and disclosure requirements, which pose practical challenges for investors when verifying compliance. In certain private transactions where a “pricing” concept does not exist, the market has generally settled on the view that “pricing” in such context would broadly equate to the date of “signing” of the relevant transaction.
* Confirming compliance with Article 7 disclosure requirements pre-pricing does not tend to present challenges (and it makes sense) for investors in the primary markets. However, the position of an investor in the secondary markets might be different in this regard and there is interpretation uncertainty as to whether such secondary market investors should be required at all to verify any pre-pricing disclosures. Proportionate approach to investor due diligence would suggest that it should not be the case. Participants have emphasized that information format plays an important role in compliance with investor due diligence requirement

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| **Question 4.12:**  Do the due diligence requirements under Article 5 disincentivise investing into securitisations on the secondary market?   * + - Yes     - No     - No opinion   Please explain |

Answer to multiple choice:

* + - **Yes**

Explanation / justification / answer:

We noted that the administrative burden means that investors who have not performed due diligence on a primary market issuance often cannot participate in secondary market trades, as compliance is virtually impossible within the timeframe of typical secondary trading. This reduces market liquidity and results in a less efficient market for all.

For instance, issuers are now under an obligation to inform investors about the market risk, credit risk, and liquidity risk that the relevant covered bond transaction entails. They also have to disclose information about the levels of required and available coverage.

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| **Question 4.13:**  **If you answered yes to question 4.12.**, should investors be provided with a defined period of time after the investment to document compliance with the verification requirements as part of the due diligence requirements under Article 5?   * + - Yes     - No     - No opinion |

Answer to multiple choice:

* + - **No opinion**

Maintain a deep quality of due diligence that is useful and in line with normal market practice as other assets classes should be the overriding objective

Investor’s protection is given to complete fully due diligence after the investment must be maintained, as a principle-based approach

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| **Question 4.16:**  Do the due diligence requirements under Article 5 disincentivise investing into repeat securitisation issuances?   * + - Yes     - No     - No opinion |

Answer to multiple choice:

* + - **No opinion**

This point should be seen in the context of the development of a securitisation platform

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| **Question 4.18:**  Should Article 32(1) be amended to require Member States to lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures in case institutional investors fail to meet the requirements provided for in Article 5?   * + - Yes     - No     - No opinion   Please explain your answer. |

Answer to multiple choice:

* + - **No**

Explanation / justification / answer:

Adding new sanctions in SECR would only deter more investors to come into the market which would be detrimental to the development of the EU financial market.

Administrative sanctions already exist in case of failure to respect the fiduciary duty. Differentiating securitisation from other asset classes from the point of view of sanctions would act as a powerful disincentive to engage.

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

The monitoring of financial stability risks must be holistic, covering all asset classes, and there is no reason to single out securitisation in this process. The build-up of financial stability risks will also depend on the share that securitisation represents in an investor portfolio, and should be addressed through disclosure rather than due diligence.

The present requirements and related supervision are sufficient. Indeed, European market participants are already very heavily regulated. There have been no risk occurrences in the EU, all the more so since the 2017 regulations, that would justify the need for a strengthening of due diligence requirements.

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

Addressing due diligence excessively prescriptive requirements would improve the time to market, make the market more liquid, and encourage more medium size investors to access this asset class.

However, unless these changes are coupled with targeted reforms on the prudential side for banks and insurance companies, it is unlikely that overall volumes could increase significantly.

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| **Delegation of due diligence** |

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| Question 4.22:  Should the National Competent Authorities (NCAs) continue to have the possibility to apply administrative sanctions under Article 32 and 33 of SECR in case of infringements of the requirements of Article 5 SECR to either the institutional investor or the party to which the institutional investor has delegated the due diligence obligations?   * + - Yes     - No     - No opinion   Please explain your answer. |

Answer to multiple choice:

* + - **No opinion**

National Competent Authorities (NCAs) are guarantor in the Stability and Market Integrity.

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| **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](https://www.eiopa.europa.eu/publications/joint-committee-report-implementation-and-functioning-securitisation-regulation_en)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.  15 *See* [Joint committee report on the implementation and functioning of the securitisation regulation - European Union (europa.eu)](https://www.eiopa.europa.eu/publications/joint-committee-report-implementation-and-functioning-securitisation-regulation_en)  Questions to stakeholders: |

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| **Question 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 templates16 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).   16 [Commission Delegated Regulation (EU) 2024/1224](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024D1224)   * + - Option 2:       * Remove the distinction between public and private securitisations.       * Introduce principles-based disclosure for investors without a prescribed template.       * Replace the current disclosure templates with a simplified prescribed template that fits the needs of competent authorities with a reduced scope/reduced number of fields than the current templates.     - Option 3: No change to the existing regime under Article 7. |

Answer to multiple choice:

* + - **Option 1**
      * Streamline the current disclosure templates for public securitisations
      * Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public).

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| **Question 5.19:**  Should the text of Article 7 of the SECR explicitly provide flexibility for reporting on the underlying assets at aggregated level?   * + - Yes     - No     - No opinion |

Answer to multiple choice:

* + - **Yes**

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| **Question 5.20:**  If you answered yes to question 5.19., which categories of transactions should be allowed to provide reporting only at aggregated level? You may select more than one option.   * + - Granular portfolios of credit card receivables     - Granular portfolios of trade receivables     - Other   If you chose “other”, please explain. |

Answer to multiple choice:

* + - **Other**

In this context, there is no reason to provide detailed line-by-line information in a securitisation repository. The level of disclosure should only be negotiated on a bilateral basis between the seller and the involved investors, it being specified that the investors shall in all circumstances be able to conduct a proper evaluation.

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| **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 framework17 and in the [Commission 2022 securitisation review report.](https://finance.ec.europa.eu/news/capital-markets-union-commission-publishes-its-report-review-securitisation-regulation-2022-10-11_en) 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.  17 *See* [ESAs report on the implementation and functioning of the securitisation regulation | European Banking Authority](https://eba.europa.eu/publications-and-media/press-releases/esas-report-implementation-and-functioning-securitisation)  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: |

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| **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: |

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| **Question 7.1**:  Do you think that the STS label in its current form has the potential to significantly scale up the EU securitisation market?   * + - Yes     - No     - No opinion   Please explain. |

Answer to multiple choice:

* + - **No**

Explanation / justification / answer:

The question refers to the ‘current form’ of the STS label. The framework is necessary but requires improvement regarding the current process.

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| **Question 7.2**:  Which of the below factors, if any, do you consider as holding back the expansion of the STS standard in the EU? You may select more than one option.   * + - **Overly restrictive and costly STS criteria**     - Low returns     - High capital charges     - LCR treatment     - Other   Please explain. |

**Overly restrictive and costly STS criteria**

Counterparties need strong resources, as new appropriate procedures and internal controls (e.g., on STS notification or on STS due diligence) are required:

* developing IT reporting, in addition to existing reporting (maintained)
* implementation of dedicated systems and procedures
* additional audits for synthetic transactions.

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| **STS criteria** |

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| **Question 7.4:** In the case of an unfunded credit protection agreement18 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?  18 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”.   * + - Yes     - No     - No opinion |

Answer to multiple choice:

* + - **No opinion**

According to the latest figures from AFME, the loan transfer indicator for UE is around 1.9% in 2024 H1 (Source: Capital Markets Union Key Performance Indicators – Seventh Edition Unlocking Capital Markets for a Competitive Europe November 2024)

Securitisation is a link in the chain of financing, project-oriented and is not an end in itself. It is a mantra.

As long-term investors, we are committed to increasing the capacity of financing development in Europe. Considering the "neighbouring" approach, it would be in the same way as private assets investors.

The principles of STS are very appropriate for the Regulation and Supervision, but application should be further improved for all stakeholders.

From France Assureurs shall be most attached and interested by the following principles:

* + - * + Risk retention requirements satisfied (with a true and clear sharing of Risk)
        + Focus on True sale and Investment Grade exposition (included the risk exposure to a regulated Counterparties)
        + Assignment, or transfer with the same legal effect of the underlying assets to the issuer
        + Underlying assets and the condition of transfer meeting transparency, predetermined, unambiguous and clearly as reported
        + Homogeneity and no securitisation positions
        + Exclusion of non-hedging derivatives
        + A view of Clawback Arrangement
        + To be defined and improved, the Environmental performance of Asset in accordance with Article 22 of SECR

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| **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](https://www.tresor.economie.gouv.fr/Articles/2024/04/25/developing-european-capital-markets-to-finance-the-future)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](https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/Final_Report_German_Securitisation_Platform_convenience_translation.pdf)20) and entail the pooling of resources and information to reduce issuance costs and encourage standardisation.  19 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>  20 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-](https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/Final_Report_German_Securitisation_Platform_convenience_translation.pdf) [gmbh/tsi\_downloads/aktuelles/Final\_Report\_German\_Securitisation\_Platform\_convenience\_translation.pdf](https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/Final_Report_German_Securitisation_Platform_convenience_translation.pdf)  In its statement of [7 March 2024, the ECB Governing Council highlighted](https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240307~76c2ab2747.en.html) 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: |

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| **Question 8.1:** Would the establishment of a pan-European securitisation platform be useful to increase the use and attractiveness of securitisation in the EU?   * + - Yes     - No     - No opinion |

* **Yes**

A platform approach could be defined as a collaborative participation at the European level, considering the distinctive characteristics of local markets.

Now, Pan-European securitisations with collateral from several countries only play a minor role, representing less than 1% of the total (Outstanding true-sale volume, Q4 2023, % of GDP)

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| **Question 8.2:**  **If you answered yes to question 8.1**., which of the following objectives should be main objective(s) of the platform? You may select more than one option   * + - Create an EU safe asset     - **Foster standardisation (in the underlying assets and in securitisation structures, including contractual standardisation)**     - **Enhance transparency and due diligence processes in the securitisation market**     - **Promote better integration of cross-border securitisation transactions by offering standardised legal frameworks**     - **Lower funding costs for the real economy**     - **Lower issuance costs**     - **Support the funding of strategic objectives (e.g. twin transition, defense, etc.)**     - **Other**   Please explain how the platform could be designed to achieve the objectives that you selected in your answer to question 8.2. |

* + - **Foster standardisation (in the underlying assets and in securitisation structures, including contractual standardisation)**
    - **Enhance transparency and due diligence processes in the securitisation market**
    - **Promote better integration of cross-border securitisation transactions by offering standardised legal frameworks**
    - **Lower funding costs for the real economy**
    - **Lower issuance costs**
    - **Support the funding of strategic objectives (e.g. twin transition, defense, etc.)**
    - **Other**
* Develop a process where a pan-European securitisation platform acts:
  + in analysing transactions,
  + structuring them in compliance with:
    - the requirements of the STS regulatory regime,
    - ensuring through monitoring and due diligence
    - the quality of collateral
* Develop standardised documentation and reporting to facilitate “plug and play” participation of other Protection Sellers and monitoring counterparty risk
* Ensure excellent execution and at scale

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| **Question 8.6:** Are guarantees necessary?   * + - Yes     - No     - No opinion |

* + - No

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| **Prudential treatment of securitisation for insurers** Insurance companies allocate 0.33% of their investment assets to securitisation positions29. 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](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0138) that were approved by co-legislators, or other factors cause limited demand by insurance companies.  29 *See* [Joint Committee advice on the review of the securitisation prudential framework (Insurance) - JC-2022/67](https://www.eiopa.europa.eu/document/download/047ef9c7-1a7e-49b3-87e1-b3aa5f8f4cb7_en?filename=JC%202022%2067%20-%20JC%20advice%20on%20the%20review%20of%20the%20securitisation%20prudential%20framework%20-%20Insurance.pdf)  Questions to stakeholders: |

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| **Question 10.1:**  Is there an interest from (re)insurance undertakings to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)?   * + - Yes     - No     - No opinion |

European (re)insurers represent EU’s largest pool of institutional investment. In their capacity as investors, insurers require access to a broad spectrum of assets to achieve robust returns, diversify their portfolios effectively and align their investments with long-term liabilities — ultimately benefiting policyholders.

Currently, the European market for securitisations is neither sufficiently large nor liquid enough for many insurers to invest significantly in it. For insurers to consider increasing allocations in securitisations, the market for these assets needs to be further developed in line with the Commission’s objectives. In our view, regulatory changes, including more appropriate risk-based capital requirements in Solvency II and reduced due diligence requirements are needed.

However, correcting the Solvency II capital charges and reducing the operational requirements for investors in securitisations will not necessarily lead to increased allocations in securitisations from insurers, particularly in the short term. (Re)insurer’s allocations to different asset classes are based on many factors including their liability structure, asset-liability management, strategic asset allocations, liquidity requirements, the yield/expected available, capital costs, complexity, investor preferences and sustainability considerations.

The reduced opportunities in the securitisations markets over the past 10-15 years has also led to a loss of expertise in these products for many insurers. It will take time to regain this expertise and for companies to reassess the opportunities that a revived securitization market may offer.

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

(Re)insurers are generally open to investing in a broad range of securitisation segments, as long as the investment offers a suitable risk-return profile. Insurer’s investment decisions are primarily driven by key factors such as profitability, credit risk, and liquidity, rather than the specific structure of the securitisation vehicle (whether a true sale or synthetic structure). This means that the seniority of the tranche, whether senior, mezzanine, or junior, is not a limiting factor for (re)insurers, as long as the associated risks and returns align with their investment objectives.

As regulatory frameworks evolve and more flexible structures become available, there is considerable potential for an increase in the share of securitisation investments on (re)insurers’ balance sheets. The ability to structure payment flows through these vehicles to match specific funding needs in the markets makes securitisation an attractive tool for diversifying investment portfolios and managing risk. With the right adjustments in regulation and transparency, insurers could see securitisation as an even more viable asset class, potentially increasing their allocation to this segment.

**Furthermore, a focus on senior tranche is needed. Senior, true sale** of senior loans, mortgages. Potential increase could be around 5% on a medium term but only if STS criteria are simplified, a strong liquid market, rating reflect the risk of each tranche. The increase would likely be very progressive (eg. less than 0,5% each year).

In conclusion, (re)insurers are willing to expand their investments in securitisation across different seniority levels and asset types, particularly if they are able to structure these investments to align with their risk, return, and liquidity preferences. With favourable market conditions and regulatory frameworks, securitisation could play a larger role in insurers' portfolios, supporting further diversification and capital management strategies.

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| **Question 10.3:** Is there anything which in your view prevents an increase in investments in securitisation by (re)insurance undertakings?   * + - Yes     - No     - No opinion   Please explain your answer. 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%. |

Yes.

There are several factors that could prevent an increase in securitisation investments by (re)insurance undertakings.

Capital consumption remains a significant barrier. Under the current Solvency II framework, securitisation instruments are treated more harshly than other comparable assets, despite offering similar risk-return profiles. This is particularly evident in the capital charges imposed on securitisation investments, which are disproportionately high compared to other financial instruments with similar credit risk and asset quality notably corporate and covered bonds. The capital requirements imposed on both STS and non-STS securitisations are perceived as disproportionate to the actual risk posed by these instruments. The capital requirements for securitisation should be more aligned with those applied to other assets that have equivalent characteristics, ensuring that there is no regulatory discrimination simply because an asset is securitised. In other words, when the risk and quality of the underlying asset are similar, the capital requirements under Solvency II should be equivalent for securitisations and other investment opportunities. Currently, this is not the case, and securitisation is unfairly penalised.

For instance, a senior five-year AA-rated STS securitisation carries a capital charge of 6%, while the junior tranche with the same rating faces a charge of 17%.

This issue is particularly pronounced for non-senior tranches, where capital charges can be excessively high even when credit ratings are equivalent to safer assets like covered bonds.

When compared to other regulatory frameworks, Solvency II's treatment of securitisations appears overly conservative. For example, IAIS proposes for its capital standard, a more refined approach, particularly to credit and default risks.

In contrast, SII imposes capital requirements that are more focused on market and liquidity risks, in addition to credit risks. This results in significantly higher capital charges for securitisations, despite insurers typically holding these assets to maturity as part of their ALM strategies, which naturally mitigates such risks. SII’s heavy emphasis on market risk volatility, even for long-term holdings, creates a burden that discourages investment in securitisations.

Furthermore, from a market perspective, the European securitisation market remains relatively small and illiquid, with fewer participants and lower trading volumes. This lack of liquidity can make it difficult for insurers and reinsurers to trade securitisation assets efficiently, further reducing their appeal. A more liquid market, with a greater number of market participants, could help alleviate these concerns.

Also, the market of STS securitisation is very small because of the numerous criteria to be respected. The STS criteria still need some simplification. Also, a transparent reporting (like Ampere Files with the funds) could help to estimate the risk of the underlying assets through.

If the capital requirements for securitisation investments were reduced—for example, by 5% or 10%—this could increase the attractiveness of securitisation as an asset class. However, even with such a reduction, the underlying regulatory mismatch, particularly the exclusion of securitisation from the Matching Adjustment framework, would still represent a significant barrier. The Solvency II treatment of securitisation needs to be more granular, considering the specific characteristics of the underlying credit risk in each securitisation deal. A more flexible and risk-sensitive approach to capital requirements, rather than a one-size-fits-all model, would help level the playing field and make securitisation more competitive with other asset classes.

In conclusion, addressing both the capital treatment under Solvency II and the liquidity challenges in the market would help create a more favourable environment for (re)insurers to increase their investments in securitisation.

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| **Question 10.4:** Is Solvency II providing disincentives to investments in securitisation for insurers which use an internal model?   * + - Yes     - No     - No opinion   Please explain your answer, being specific in your reply. |

Answer to multiple choice:

* + - Yes

The internal model methodology follows Solvency II principles and considers historical data for calibrating capital requirements on assets held in portfolio, as probabilities of default and recovery rates.

In this context, stresses applied on securitizations are in general more severe than those applied in the standard formula, and capital requirements for securitizations are higher than for fixed income assets with similar ratings - which can be considered as a disincentive.

However, as stress calibrations consider the additional risk historically borne by investors compared to alternative fixed income investments, we do not consider that the current framework is biased against securitizations on a risk-return basis for our investment decisions

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| **Question 10.5:** Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the **senior** tranches of **STS** securitisations proportionate and commensurate with their risk?   * + - Yes     - No     - No opinion   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. |

Answer to multiple choice:

* + - **No**

To put it another way, the latter is considered in a distinctly favourable manner under Solvency II, even if research indicates that the risk of senior and non-senior STS tranches is 5% and 3% lower, respectively, than the risk that a (re)insurance undertaking assumes when investing in covered bond. The same holds true when securitisation is compared to corporate bonds. However, the biggest difference lies between non-senior STS tranches and other financial instruments.

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It would be interesting to mention the last publicly available calibration exercise has been performed by a study from Risk Control / AFME in 2022 by William Perraudin and Yixin Qiu. This work could seem to be a step into a calibration revaluation.

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| **Question 10.6:** Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the **non-senior** tranches of **STS** securitisations proportionate and commensurate with their risk?   * + - Yes     - No     - No opinion   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. |

Answer to multiple choice:

* + - **No**

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| **Question 10.7:** Is it desirable that Solvency II standard formula capital requirements for spread risk differentiate between **mezzanine** and **junior** tranches of **STS** securitisations?   * + - Yes     - No     - No opinion   Please explain your answer. |

Answer to multiple choice:

* + - **No**

No, it is not necessarily desirable for Solvency II standard formula capital requirements for spread risk to differentiate between mezzanine and junior tranches of STS securitisations. Rather than focusing on tranche-specific distinctions, the focus should be on reducing the overall capital calibrations for these STS securitisations, as the current high levels discourage investment in both mezzanine and junior tranches. A more balanced approach would enable insurers to evaluate the structure of the securitisation, assessing how it fits within their ALM framework, rather than being driven away by overly burdensome capital stresses.

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| **Question 10.9:** Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for **non-STS** securitisations proportionate and commensurate with their risk, taking into account?   * + - Yes     - No     - No opinion   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. |

Answer to multiple choice:

* + - **No**

Solvency II risk charges are too high relative to those for other fixed income investments like corporate bonds and covered bonds.

Solvency II risk charges are too high relative to risk charges for underlying pool of assets, for non-junior tranches. There is no evidence for additional risks introduced by securitisation.

The risk charges for non-STS securitisation are too high relative to STS securitisation given the limited differences in terms of additional requirements.

The risk charge for non-senior STS is too high relative to senior tranches as both are subject to the same requirements.

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| **Question 10.12:** Is it desirable that Solvency II standard formula capital requirements for spread risk differentiate between **senior** and **non-senior** tranches of **non-STS** securitisations?   * + - Yes     - No     - No opinion   Please explain your answer, being specific in your reply. |

Answer to multiple choice:

* + - **Yes**

There is a need to focus on Senior tranche.