Position Paper

Response to consultation on EC call for feedback on securitisation framework

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General Comments

Insurance Europe welcomes the opportunity to provide comments on the European Commission's consultation on the functioning of the securitisation framework in the EU.

European insurers are Europe's largest institutional investors, with over €10tn of assets under management. In their role as investors, insurers need a wide range of appropriate assets to invest to achieve good returns, portfolio diversification and appropriate liability matching to benefit their policyholders. This includes investments in securitisation. The insurance sector therefore supports the promotion of sound securitisation and appropriate prudential treatment, in line with the objectives of the Capital Markets Union (CMU) project.

The European Commission has already taken helpful steps in recent years, but significant barriers remain for insurers to invest and, as a result, the level of investment by insurers in securitisations remains very low and below the levels seen before the financial crisis.

Further policy actions are therefore needed to increase the attractiveness of this asset class and, by so doing, help fund the European economy.

Insurance Europe has identified the following areas where policy action is needed and justified on an economic and risk bases:

- **The solvency capital requirements (SCR) for securitisations under Solvency II remain too high relative to the real risk** and relative to the yield that can be earned. As a result, the yield that can be earned by an insurer investing in securitisations is not usually high enough to cover both the risk and the additional capital that needs to be set aside by the insurer. This problem arises because the current Solvency II framework ignores the actual risk involved in investing in securitisation: ie the risk of actual losses from extreme level of defaults. Instead, Solvency II assesses risk and capital by assuming the insurer would sell all their securitisation after a huge change in market spreads.
  - The solution: Allow insurers to apply the dynamic VA (DVA) to value liabilities. This recognises the fundamental Solvency II principle that the extreme scenarios used to determine the SCR should be applied to both assets and liabilities. Doing so would result in a more economically correct and appropriately lower level of capital requirements.

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- **The mandatory "due diligence" actions issuers and investors are required to undertake is disproportionate and excessive.** While appropriate due diligence is vital, the current requirements are not linked to the risk and complexity of the securitisation and are very onerous, creating further disincentives.
  - The solution: Due diligence requirements should be simplified and allow for proportionality. The outcome should be that the requirements are similar to those required for other instruments, such as covered bonds.
- **Other issues** to address:
  - As well as the absolute level of capital being too high, the differences in capital requirements between senior and non-senior tranches of a securitisation remain too high: eg a senior five-year AA STS securitisation now has a capital charge of 6%, while the junior tranche with same AA rating has it at 17%.
  - Non-STS securitisations remain significantly penalised, without this being justified by historical performance data.
  - There is inconsistency in the treatment between a whole mortgage loans pool versus residential mortgage-backed securities (RMBS), the latter being heavily penalised in terms of capital.

1. Effects of the Regulation

Question 1.1
Has the Securitisation Regulation (SECR) been successful in achieving the following objectives:

	1 (fully agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (fully disagree)	Don't know – No opinion – Not applicable
Improving access to credit for the real economy, in particular for SMEs				X		
Widening the investor base for securitisation products in the EU					X	
Widening the issuer base for securitisation products				X		
Providing a clear legal framework for the EU securitisation market		X				
Facilitating the monitoring of possible risks	X					
Providing a high level of investor protection			X			

	1 (fully agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (fully disagree)	Don't know – No opinion – Not applicable
Emergence of an integrated EU securitisation market			X			

Question 1.2:
If you answered 'somewhat disagree' or 'fully disagree' to any of the objectives listed in the previous question, please specify the main obstacles you see to the achievement of that objective.
Please max 5000 characters

Capital (Solvency II) and operational costs (due diligence requirements) are unnecessarily high, and this creates unnecessary barriers for insurers to invest in securitisations. The capital requirements under Solvency II for securitisations should therefore be adjusted to reflect the real risks of securitisation.

Proper consideration should be given not only to the risk aspect, but also to appropriate equal treatment vis-à-vis similar asset classes. The current securitisation SCR, especially in comparison to, for example, those for loan pools or covered bonds, limits the attractiveness of securitisations for insurers.

In addition, "due diligence" measures required by investors should be simplified to find the right balance between such requirements and the risk of securitisation.

An integrated market has not yet been created and STS issues are still few, and often unlisted. There may be no adequate incentives for issuers of securitisations to work towards a specific EU "label". While legislation has helped to make the market more transparent, it still remains complex for investors to independently assess the value and associated risk.

In particular, with respect to the above questions, the sector notes that:

- On improving **access to credit for the real economy and SMEs:**
    - The Securitisation Regulation (SECR) does not seem to have led to significantly broader and better financing of the real economy. Evidence of the specific impact of the SECR is little and the new issuance volumes on SME asset-backed security (ABS) are relatively small. The securitisation market has so far played only a minor role in financing the SME sector. Not only are SME securitisations rare, but they are almost never offered in the primary market.

- On widening the **investor base** for securitisation products in the EU:
    - The overall direct investor base appears not to have significantly grown in recent years, while EU ABS dedicated professionals have decreased. More disclosures and supervision, as well as extended geographical reach of the SECR, make securitisations less attractive for investors. The high regulatory requirements for investing in securitisations limit the number and types of investors that can participate in this market: eg the high SCR faced by insurers (especially when compared to capital charges for other asset classes such for loan pools or covered bonds).

- On widening the **issuer base** for securitisation products:
    - As mentioned, the regulatory burden for securitisation issuance limits the number and types of issuers. For example, when looking specifically at STS ABS, issuances have tended to involve mostly originators with programmes existing already before the SECR implementation.

- On **providing a clear legal framework for the EU securitisation market:**
    - The EU securitisation framework, as consolidated and extensively detailed, is overall clear for market participants.

- On **facilitating the monitoring of possible risks:**
  - The detailed and extensive disclosures required by ESMA templates allows to access to a lot of information, although not necessarily always usable in its current format or even needed. Some requirements on exposures, aside from general performance monitoring, also help monitor risks.

- On providing a high level of **investor protection:**
  - The SECR eventually results in a good level of investor protection, although this alone has not been enough to significantly widen the investor base and significantly increase risk taking on non-senior securitisations in Europe compared to the US market.

- On emergence of an **integrated EU securitisation market**
  - Preliminary evidence suggests that an integrated EU securitisation market comparable to the US one, has not emerged.

Question 1.3:
What has been the impact of the SECR on the cost of issuing / investing in securitisation products (both STS and non-STS)? Can you identify the biggest drivers of the cost change? Please be specific.
Please max 5000 characters

From an investor perspective, the general impact of the SECR on costs has been related to the need to ensure, through the several internal functions involved, adequate due diligence on investments both before purchase and on an ongoing basis. Compliance with the information requirements has created a higher cost burden compared to the analysis required on comparable products, such as covered bonds.

From an issuer perspective, it appears that additional costs have also been driven up: eg by governance and compliance with transparency requirements and the STS designation.

2. Private securitisations

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

Question 2.1:
Are you issuing more private securitisations since the entering into application of the EU securitisation framework?

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

Question 2.2:
What are the reasons for this development (please explain your answer)?
Please max 5000 characters

Question 2.3:
Do the current rules enable supervisors to get the necessary information to carry out their supervisory duties for the private securitisation market?

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

Question 2.4:
Do investors in private securitisations get sufficient information to fulfil their due diligence requirements?

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

Insurance Europe response: Yes

Overall, investors in private securitisations receive sufficient information to fulfil their due diligence requirements. However, this does not represent a major change in comparison with before the introduction of the SECR.

ESMA templates for private transactions are usually made available indirectly through reporting websites. However, the typical information provided in every deal is already sufficient to investors.

For insurance investors, private and public securitisations are not very different, as the parties involved typically are the same (eg trustee, services, risk retention provider etc).

Question 2.5:
Do you find useful to have information provided in standard templates, as it is currently necessary according to the transparency requirements of Article 7 and the associated regulatory and implementing technical standards?

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

Question 2.6:
Does the definition of private securitisation need adjustments?

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

3. Transparency and Due diligence

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

Question 3.1:
Do you consider the current due diligence and transparency regime proportionate?

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

Insurance Europe response: No

The current due diligence and transparency regime is appropriate in principle, but not in relation to other comparable instruments (eg loan pools, covered bonds, etc.). Therefore, they are excessive in practice, both for the issuer and the investor.

An appropriate due diligence is vital for insurance investors. The transparency regime in the SECR requires that the originator and sponsor make a range of information available to the holders of a position and to potential investors. So, while due diligence and transparency may seem adequate, they are not proportionate compared to other fixed income asset classes.

This puts securitisations at a disadvantage compared to equally risky or riskier asset classes. The SECR should address this inconsistency with respect to other comparable instruments (eg loan pools, covered bonds, etc.).

Question 3.2:
What information do investors need? How do investors carry out due diligence before taking up a securitisation position?
Please max 5000 characters

To perform due diligence, investors need pool level data, including historical performance and stratifications, data on structure, data on originator and data on servicing. Overall, insurance investors are satisfied with the information/data that they receive. This allows them to evaluate the securitisation position.

Question 3.3:
Is loan-by-loan information disclosure useful for all asset classes?

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

Question 3.4:
Is loan-by-loan information disclosure useful for all maturities?

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

Question 3.5:
Does the level of due diligence and, consequently, the type of information needed depend on the tranche the investor is investing in?

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

Question 3.6:
Does the level of due diligence and, consequently, the type of information needed depend on whether the securitisation is a synthetic or a true-sale one?

- Yes
- No

- Don't know / no opinion / not applicable

Question 3.7:
Are disclosures under Article 7 sufficient for investors?

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

Question 3.8:
Do you find that there are any unnecessary elements in the information that is disclosed?

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

Question 3.9:
Can you identify data fields in the current disclosure templates that are not useful? Please explain your answer.
Please max 5000 characters

Question 3.10:
Can the disclosure regime be simplified without endangering the objective of protecting EU institutional investors and of facilitating supervision of the market in the public interest?

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

4. Jurisdictional scope

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

Question 4.1:
Have you experienced problems related to a lack of clarity of the Securitisation Regulation pertaining to its jurisdictional scope?

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

Insurance Europe response: Yes

There are barriers for EU-regulated investors when investing in securitisations from non-EU countries. These barriers should be identified and addressed in the review of the jurisdictional scope of the SECR.

It would be appropriate for EU regulated investors to face minimal regulatory hurdles when investing in securitisations from non-EU jurisdictions. While US, Japanese and Australian investors are flexible in accessing other securitisation markets, this is not the case for European investors. European investors therefore compete at a disadvantage with respect to their global peers (ie EU insurers cannot access non-EU markets while competitors can easily enter the EU market).

Question 4.2:

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

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

Insurance Europe response: No

Additional requirements or costs for non-EU investors do not seem helpful to develop and expand the European securitization market.

To ensure a level playing field between EU regulated and non-EU investors, EU regulated investors should be allowed to invest or face minimal regulatory hurdles to invest in securitisations in non-EU jurisdictions.

Question 4.3

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

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

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

Insurance Europe response: No

The risk retention should not be dependent on nationality and membership of the EU. Any distinction should be justified from a risk perspective.

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

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

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

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

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

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

Question 4.4:

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

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

Question 4.5:

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

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

Question 4.6:

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

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

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

5. Equivalence

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

Question 5.1:

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

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

Insurance Europe response: No

In principle, the sector would welcome the introduction of an equivalence regime to avoid any uncertainty. If a non-EU country has an STS regime, then equivalence by the EU regulation would be very much needed.

Question 5.2:

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

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

Insurance Europe response: Yes

There is no economic rationale to stop STS being issued by non-EU entities. Article 18 of the SECR should therefore be changed accordingly to allow such issuances.

Question 5.3:

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

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

Insurance Europe response: Yes

The insurance sector would welcome it if securitisations issued by non-EU entities could acquire the STS label under EU law. However, for this to be possible, the establishment of an equivalence regime would not be necessary, as it would be sufficient that the individual securitisation meets the STS requirements, also as verified by an STS verification agent.

Question 5.4:

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

Please max 5000 characters

6. Sustainability disclosure

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

Question 6.1:

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

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

Insurance Europe response: No

For sustainability-oriented long-term investors such as insurers, the availability of sustainability data is essential, but unfortunately currently insufficient to meet investors' needs. Several insurers are already working to close this data gap with securitisation issuers. However, legislative regulation to improve data availability would be very helpful for all sustainability-oriented investors.

Data availability needs to improve across sectors (ie energy efficiency ratings for houses, engine characteristics for car loans, etc.) both for securitisations and for comparable asset classes, such as covered bonds or loan pools (other asset based financings).

Question 6.2:

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

- Yes, the information is currently available
- Yes, but with a transitional period to ensure the availability of information
- Yes, with a grandfathering arrangement for existing deals
- No
- Don't know / no opinion / not applicable

Insurance Europe response: Yes, with a transitional period to ensure the availability of information and a grandfathering arrangement for existing deals.

Publication of information on the environmental performance of assets financed with housing loans and auto loans and leases should be mandatory after a sufficiently long transition period. In addition, a grandfathering provision for existing transactions would be sensible. While many issuers do not currently have the necessary sustainability data available, they should be encouraged to collect the data and make it available by a medium-term date, without excluding them from the ESG market.

Question 6.3:

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

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

Describe the use you have made of it?

Please max 5000 characters

Insurance Europe response: Yes

For sustainability-oriented long-term investors, such as insurers, information on the environmental performance of assets is key. Insurers use this kind of data for an ESG assessment of securitisations. This allows insurers to form an independent opinion on the ESG impact.

Question 6.4:

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

Please max 5000 characters

Robust, comparable and reliable ESG data is important for a number of reasons, including to:

- Assess ESG impact and enable financial institutions and investors to steer their portfolios towards the objectives of the Paris Agreement and of the European Green Deal.
- Identify and assess sustainability risks in business activities.
- Comply with the increasing expectations and new regulatory requirements in the context of the EU Sustainable Finance agenda due to apply shortly.
  - For example, compliance with the new sustainable finance disclosures regulation (SFDR) requires financial market participants to have access to comparable robust and reliable ESG data for their portfolios. From the perspective of the EU taxonomy Regulation, companies subject to the non-financial reporting directive (NFRD) will also be required to disclose how and to what extent their activities qualify as environmentally sustainable as per the taxonomy.

Question 6.5 (a):

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

- Yes

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

Insurance Europe response: Yes

Question 6.5 (b):

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

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

Insurance Europe response: securitisation that complies with the EU green bond standard and RMBS.

ESG disclosures should be mandatory for all securitisations, but optimally a transitional period should apply (see Question 6.2).

Question 6.6:

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

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

Insurance Europe response: Green or sustainable underlying assets, Green/sustainable collateral and use of proceeds for green/sustainable projects.

European insurers already have experience in investing in green or sustainable securitisations. In these cases, they have assessed these transactions with regards to ESG aspects based on available information.

Question 6.7:

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

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

Insurance Europe response: No

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

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

Question 7.1:

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

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

Question 7.2:
If you answered ***Yes*** to question 7.1, please specify what elements should such a system include?

8. Supervision

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

Question 8.1:
Are emerging supervisory practices for securitisation adequate?

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

Question 8.2:
Have you observed any divergences in supervisory practices for securitisation?

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

Insurance Europe response: Yes

Question 8.3:
If you answered ***Yes*** to question 8.2, please explain your answer:
Please max 5000 characters

Question 8.4
Should the Joint Committee develop detailed guidance (guidelines or regulatory technical standards) for competent authorities on the supervision of any of the following areas:
A) the due diligence requirements for institutional investors (Art 5)

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

Insurance Europe response: No

B) risk retention requirements (Art 6)

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

Insurance Europe response: No

C) transparency requirements (Art 7)

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

D) credit granting standards (Art 9)

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

Insurance Europe response: No

E) private securitisations

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

Insurance Europe response: No

F) STS requirements (Articles 18 – 26e)

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

Insurance Europe response: No

Question 8.5:

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

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

Question 8.6:

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

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

Question 8.7:

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

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

9. Assessment of non-neutrality correction factors impact

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

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

Question 9.1 (a):
In your view, is the capital impact of the current levels of the (p) factor proportionate, having regard to the relative riskiness of each of the tranches in the waterfall, and adequate to capture securitisations' agency and modelling risks?

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

Question 9.1 (b):
If you would favour reassessing the current (p) factor levels, please explain why and what alternative levels for (p) you would suggest instead:
Please max 5000 characters

Question 9.2:
Are current capital floor levels for the most senior tranches of STS and non-STS securitisations proportionate and adequate, taking into account the capital requirements of comparable capital instruments?

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

Question 9.3:
Are there any alternative methods to the (p) factors and the capital floors to capture agency and modelling risk of securitisations that could be regarded as more proportionate?
Please provide evidence to support your responses to the above questions:
Please max 5000 characters

10. Maturity

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

Question 10.1:
Do you think that the impact of the maturity of the tranche is adequate under the current framework?

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

Question 10.2:

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

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

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

STS securitisations currently qualify as level 2B assets under the LCR Delegated Act, subject to certain additional requirements laid out therein. If STS securitisations were reclassified as level 2A, up to 40% of a credit institution's liquidity buffer could be made up of STS securitisations.
ABCPs may qualify as STS securitisations but do not meet the necessary requirements to qualify as liquid assets for LCR-purposes.

Question 11.1 (a):
Should STS securitisations be upgraded to level 2A for LCR purposes?

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

Question 11.1 (b):
If you answered 'yes' to question 11.1(a), should specific conditions apply to STS securitisations as Level 2A assets to mitigate a potential concentration risk of this type of assets in the liquidity buffer.
Please support your arguments with evidence on the liquidity performance of STS securitisations or parts of the market thereof, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.
Please max 5000 characters

Question 11.2 (a):
Should ABCPs qualify as level 2B assets for LCR purposes?

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

Question 11.2 (b):
Should specific conditions apply to ABCPs as level 2B assets for LCR purposes.
Please support your arguments with evidence on the liquidity performance of ABCPs, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.
Please max 5000 characters

12. SRT tests

The recent EBA report on significant risk transfer (SRT) recommended improving the current SRT tests, the specification of the test on the commensurate transfer of risk (CRT test) and the implementation of a new principle-based approach test (PBA test).
The allocation of the lifetime expected losses (LTEL) and the unexpected losses (UL) of the underlying portfolio plays a fundamental role in those tests. In synthetic securitisations in particular, the consideration of optional calls and the application of Article 252 of the CRR on maturity mismatches affect the outcome of the tests. Optional calls shorten the expected life of the deal, reduce the LTEL as a result, and favour the allocation of the UL to the tranches that provide credit enhancement, while, at the same time, such calls may trigger the

application of Art. 252 on maturity mismatches, thus increasing the capital charge on the tranches retained by the originator.

Question 12.1:
Do you agree with the allocation of the LTEL and UL to the tranches for the purposes of the SRT, CRT and PBA tests, as recommended in the EBA report?

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

Question 12.2:
What are your views on the application of Art. 252 of the CRR on maturity mismatches when a time call, or similar optional feature, is expected to happen during the life of the transaction?
Please max 5000 characters

13. SRT assessment process

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

Question 13.1:
What are your views on the EBA-recommended process for the assessment of SRT as fully set out in Section 5 of the EBA report on SRT?
Please max 5000 characters

Question 13.2:
Do you agree with the standardised list of documents that the EBA report on SRT recommended for submission to the competent authority for SRT assessment purposes?
Please max 5000 characters

Question 13.3:
Once it has been established that the regulatory quantitative and qualitative criteria are met and transactions are in line with standard market practices, should a systematic ex-ante review be necessary?

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

Question 13.4:
Should the ex-ante assessment by the Competent Authority be limited to complex transactions?

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

14. SRT Amendments to CRR

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

Question 14.1:

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

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

15. Solvency II

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

Question 15.1:

Is there an appetite from insurers to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)?

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

Insurance Europe response: Yes

European insurers appear to have an appetite to invest in this asset class, but there is evidence (eg sourced via Bank of America Global Research Structured Finance Europe, July 2021) that securitisations have become a less attractive investment for EU insurers and that EU insurers' securitisation exposure has fallen significantly in the last decade and is currently stabilising at a lower level than before.

While there is willingness to invest in this asset class, the capital intensity of securitisation in Solvency II has clearly been one of the key obstacles to invest in this asset class (this is also shown by the fact that there is a different degree of participation between insurers using internal models, who can appropriately reflect the risks of investing in securitisations, and insurers using standard formula, who are generally much less present in this market).

Insurance companies need to look for investments based on several factors, including the risk-return profile, the level of market risk, the sustainability aspects and the matching of assets and liabilities. This also holds true for securitisation. A good level of revenue and a reasonable level of required own funds are therefore key aspects to investing in securitisation. However, Solvency II's SCR for securitisation are too high, notably in comparison with equally rated corporate or covered bonds.

If this level of capital is corrected, insurers will be able to look for securitisation investments with returns and liquidity commensurate to their risk appetite. This would likely make insurers' investment in securitisation increase.

Question 15.2:

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

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

Insurance Europe response: Yes

As noted before, and highlighted by analysts for several years now, it is clear that EU investors' participation in the securitisation market is "well below their potential and appetite for yield", as structured assets account for not more than 2% of the overall investment mix.

While each insurer has its own investment strategy in securitisations, there is general consensus among insurers that the cost of capital is one of the most important factors driving such strategy. It is clear that the capital charges and regulatory burdens for securitisations are too high, especially when considering the excellent credit performance of European securitisations. The conservatism of Solvency II's SCR for securitisation, especially in comparison with the ones for similar exposures or relative to US NAIC's capital charges, may explain such low investment levels.

Participation is particularly limited for non-STS and non-senior STS, where the asymmetry in capital treatment between selected RMBS tranches and whole loan mortgage pools (as well as between selected collateralized loan obligations (CLO) tranches and pools of leveraged loans) can create further disincentives for standard formula users to invest.

Question 15.3:

Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the **senior tranches of STS securitisations** proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics?

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

Insurance Europe response: No

Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments:
Please max 5000 characters

Solvency II's SCR for securitisation are unnecessarily punitive and there is a need for more risk-sensitive capital charges, especially \ considering the good historical default experience for European securitisations and existing measures to mitigate agency and modelling risks (eg risk retention requirements, transparency requirements including the mandatory publication of cashflow models for STS, due diligence requirements etc). As such, past volatility (eg 2008/2009) is not seen as an appropriate guide for future volatility and hence risk charges.

In Insurance Europe's view, capital charges for securitisations should be consistent with corporate bonds when the securitisation is based on a corporate pool or should be in line with covered bonds when securitisation is based on granular mortgage or consumer loan pools.

The unjustified differences in risk charges are shown, for example, by a comparison of the capital requirements for senior tranches of STS securitisations that are ranked with AAA and AA and a duration under five years with comparable bonds.

- The corresponding risk charges for an AAA (AA) STS securitisation with credit assessment with duration one and three years are 1% (1.2%) and 3% (3.6%) respectively. By comparison, corporate bonds ranked with AAA (AA) and duration one and three years have risk charges of 0.9% (2.7%) and 1.1% (3.3%) respectively. The comparable covered bonds have risk charges of 0.7% (0.9%) and 2.1% (2.7%).

Question 15.4:

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

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

Insurance Europe response: No

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

The industry notes that the differences in capital requirements between senior and non-senior tranches of a securitisation remain high – eg a senior five-year AA STS securitisation now has a capital charge of 6%, while the junior tranche with same AA rating has it at 17%. Insurers take the view that the rating is already encompassing the level of risk, whether the concerned tranche is senior or non-senior, so that a factor of one to three in the capital charge appears much too high.

In addition, the SCR for securitisation appears significantly more punitive when compared to equally rated covered bonds and, although to a lower extent, corporate bonds, and also shows an increasing penalisation as ratings decline. See also previous response on required due diligence.

Question 15.5:
Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for **non-STS securitisations** proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics?

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

Insurance Europe response: No

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

The industry notes that non-STS securitisations remain significantly penalised, without this being justified by historical data. While the STS label brings some guarantees to investors, non-STS tranches, when benefiting from an identical rating to STS tranches, should be treated in a similar way, and in any case should not have a capital charge more than 10 times higher. There are cases when the riskiness of an investment is not really correlated with the STS label, meaning that the difference in the credit performance between STS and non-STS securitisations does not justify the huge difference in risk charges.

In addition, there is inconsistency in treatment between a whole mortgage loans pool versus RMBS, the latter being heavily penalised in terms of capital.

Question 15.6:
Should Solvency II standard formula capital requirements for spread risk differentiate between **mezzanine and junior tranches of STS** securitisations?

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

Insurance Europe response: Don't know

In principle, regulation should avoid being too complex: ie through the introduction of too many refinements. In the case of mezzanine versus junior tranches, the rating could a priori be enough to differentiate between different levels of risks.

Question 15.7:

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

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

Insurance Europe response: Don't know

As mentioned in Questions 15.4, 15.5 and 15.6, the rating of a securitisation could be enough to differentiate between different levels of risks, so that the differentiation between senior and non-senior tranches of non-STS securitisation does not appear a priori relevant. However, there is some ground to assess the possibility to better differentiate capital requirements for spread risk between senior and non-senior tranches of non-STS securitisations, where senior tranches benefit from the first losses taken by non-senior tranches.