Targeted consultation on the functioning of the EU securitisation framework

Fields marked with * are mandatory.

Introduction

In the wake of the global financial crisis engagement in the EU securitisation market has shrunk significantly both on the demand and the supply side. When soundly structured, securitisation can play a positive role in deepening capital markets and freeing up bank balance sheets. In particular, by transforming illiquid assets into tradable securities, securitisation can release bank capital for further lending. It is an important building block of the capital markets union (CMU) as it enables risk transfers to a broad set of institutional investors, allowing them indirectly to finance economic activities, and opens up new investment opportunities.

By enhancing legal clarity via codifying the sectoral rules governing the EU securitisation market in a single regulation, increasing market transparency and putting in place provisions that prevent the re-emergence of the harmful market practices that led to the global financial crisis, the EU aims to revive the EU securitisation market on a more sustainable basis. Furthermore, the introduction of a label for securitisations that are simple, transparent and standardised (STS) helps investors identify high-quality securitisation structures and thus contributes to overcome the stigma that had been attached to the securitisation market.

The EU securitisation framework is applicable since January 2019. The framework consists of the Securitisation Regulation which sets out a general framework for all securitisations in the EU and a specific framework for simple, transparent, and standardised (STS) securitisations as well as prudential requirements for securitisation positions in the Capital Requirements Regulation and in Solvency II.

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

In its capital markets union (CMU) action plan published on 24 September 2020 the Commission has committed to review the current regulatory framework for securitisation to enhance banks' credit provision to EU companies, in particular SMEs, to scale-up the securitisation market in the EU. This commitment was echoed in the European Parliament's own initiative report on the CMU, adopted in October 2020, and endorsed by the Council conclusions of December 2020 on the Commission's CMU action plan.

This coincides with the Commission's legal obligation under Article 46 of the Securitisation Regulation to submit a report on the functioning of the Regulation to the European Parliament and to the Council by 1 January 2022. Article 46 lists a number of

topics that shall be covered. In addition, the report shall take into account the findings of the report on the functioning and implementation of the regulation by the Joint Committee of the European Supervisory Agencies (ESAs).

In order to deliver on the Commission's commitment in the CMU action plan and in order to prepare the mandated report, this targeted consultation seeks stakeholders' feedback on a broad range of issues. It covers the areas mandated by Article 46 of the Securitisation Regulation, namely

- the effects of the regulation (Section 1) private securitisations (Section 2) the need for an
- equivalence regime in the area of STS securitisations (Section 5) disclosure of information on
- environmental performance and sustainability (Section 6) and
- the need for establishing a system of limited licensed banks performing the functions of SSPEs – securitisation special purpose entities (Section 7)
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In addition, the questionnaire seeks feedback on a number of additional issues that have been identified and raised by stakeholders and by the Joint Committee of the ESAs as having an impact on the functioning of the securitisation framework. This questionnaire will be followed by a call for advice to the Joint Committee of the ESAs on the appropriateness of the prudential treatment of securitisations.

In view of the technical nature of the issues, the questionnaire is targeted to market participants, including data repositories and rating agencies, industry associations and supervisors. While some questions are general, others are directed towards particular participants in the securitisation market, i.e. issuers or investors, or towards supervisors. Please note that not all questions are relevant for all stakeholders and that you are not expected to reply to every question.

The targeted consultation is available in English only and will be open for **8 weeks and will close on 17 September 2021**.

The consultation will be followed by a roundtable event for which a separate invitation will be issued in due time. The contact details provided in replying to this consultation will be used to send out the invitations to the roundtable.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-securitisationreview@ec.europa.eu.

More information on

on this consultation on the consultation document securitisation on

the protection of personal data regime for this consultation

Consultation questions

1. Effects of the Regulation

Question 1.1:

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

	1(fully agree)	2(somewhat agree)	3(neutral)	4(somewhat disagree)	5(fully disagree)	Don't know -No opinion –Not applicable
Improving access to credit for the real economy, in particular for SMEs	○	○	○	○	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			
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.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The argument about securitisations being a means to increase the provision of credit to the economy is flawed as such, which is based on the following considerations:

- There is no lack of banking lending capacity to the EU economy. The opposite is rather true - the European Union economy is over-banked, and the EU suffers, if anything, from too much banking assets as opposed to too little.
- Sound projects and companies can always attract the bank lending they need. The ability of banks to provide financing does not depend on the possibility to securitise exposures provided sufficient quality of their assets/exposures and ability to generate returns.

With regards to the remaining responses, the answer "neutral" provided for the majority of objectives in the table reflects our view that concentrating on securitisation rules to achieve those objectives is misplaced: There are other major hurdles, which hinder on the supply of cross-border financing in the EU economy and on the development of the securitisation market as well. Examples include fragmented national insolvency and debt enforcement regimes and the lack of harmonized credit information across the EU countries. Specifically for securitisation, these factors raise the cost of issuance and limit the investor base.

Question 1.3:

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not applicable.

2. Private Securitisations

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

Question 2.1:

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

- ○ Yes, significantly
- ○ Yes, slightly
- ○ No change
- ○ No, it has decreased

Don’t know / no opinion / not applicable

Question 2.2:

What are the reasons for this development (please explain your answer)?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not applicable.

Question 2.3:

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

Yes

No Don’t know / no opinion / not applicable

Please explain your answer to question 2.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, with reference to the SECR rules overall (not limited to private securitisations), we emphasise the impossibility for supervisors to execute their duties with regards to many of the SECR requirements. Examples include very specific criteria for simple, standard and transparent securitisations (STS) such as Articles 5(4a) (proportionality of the investors´ due diligence procedures to the risk profile of the securitisation position), 20(7) (prohibition of active portfolio management for the underlying exposures), 20(2)§2 (“pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender”), 20(13) (“The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures.”). We already drew attention to some of these in our response to the EBA consultation dated November 2019 (https://www.finance-watch.org/press-release/promoting-synthetic-securitisation-will-only-increase-financial-systemic-risk-with-no-benefit-to-the-economy/).

The ESAs Joint Committee (JC) Report on the implementation and functioning of the SECR, dated 17 May 2021, confirmed the concerns expressed above, as multiple instances where identified where National Competent Authorities (NCA) are not able to perform effective supervision of the SECR requirements - due to a lack of sufficient guidance and on interpreting the SECR rules, as well as a lack of expertise and resources. As a result, supervisory practices are very divergent on these aspects with some of the NCAs still being in the nascent stage of establishing a review over these.

With regards to private securitisations specifically, the ESAs JC Report noted the insufficient data access for supervisors, as private securitisations are not subject to the same reporting requirements and corresponding data quality checks, as the public securitisations are, which are submitted via/to the securitisations repositories supervised by ESMA, who run data quality checks. Furthermore, NCAs rely on the notifications submitted by securitising entities to become aware of private securitisations. Given the growing volumes of private securitisation issuance (see the note below*), we see a need to improve the availability of data on these to supervisors. Such data should be of adequate quality and consistent across Member States, as well as available to ESMA. Potential possibilities to implement a solution are:
i) harmonisation of private securitisations reporting via securities repositories, while simultaneously providing for sufficient capacity of such repositories (currently there are 2 authorised repositories, whereby authorisations have been only granted in 2021). It is also important to ensure confidentiality of the information submitted via repositories to supervisors, as market players have expressed concerns over the publication of sensitive data on their asset-level disclosures.
ii) exploration of the possibility to incorporate securitisations reporting into the existing prudential reporting frameworks (such as COREP for banks), which would mean using the already existing reporting format and data validation methodologies/rules. Given this, the solution has clear benefits for supervisors, as well as potentially to market participants in terms of compliance cost.

*Note on the securitisations data: As per the data published by ESMA, there were 307 private vs 224 public STS securitisations as of 15 August 2021; transaction data for non-STS securitisations is not available. The data published by AFME indicate that the larger part of securitisations in terms of volume are non-STS securitisations, as STS ones have practically emerged in 2019. In 2019, 33.3% of the issued securitisation transactions (in terms of volumes) qualified as STS; in 2020 - 39.7%.

Question 2.4:

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

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

Please explain your answer to question 2.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not applicable.

Question 2.5:

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

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

Please explain your answer to question 2.5:

Not applicable.

Question 2.6:

Does the definition of private securitisation need adjustments?

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

If you answered ***Yes*** to question 2.6, please explain why and how the definition of private securitisations should be adjusted:

With reference to our response to question 2.3 above, we see a need for the increased transparency requirement for private securitisations so that supervisors can execute their duties and monitor the risks in the financial sector associated with the growing volume of private securitisations. This can be done either by extending certain transparency requirements, as outlined above, to private securitisations, or narrowing the definition of private securitisations so that investors´ interests are not jeopardised by a lack of transparency. Specifically, the definition of private securitisations could be narrowed down to intra-group transactions only. Currently private securitisations are defined as transitions not

subject to the Prospectus Directive (2003/71/EC), which also includes bilateral securitisations where investors are typically only one or more institutional investors/sophisticated professionals.

The latter option was also outlined in the ESAs Joint Committee Report on the implementation and functioning of the SECR, dated 17 May 2021.

3. Transparency and Due diligence

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

Question 3.1:

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

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

Please explain your answer to question 3.1:

The issue with the due diligence and transparency regime is not its insufficient proportionality, but the insufficient clarity of the Regulation on how such proportionality can be effectively achieved to ensure consistent market practices and adequate management of securitisation risks in the economy. The legal text does not provide sufficient guidance to investors to interpret and implement in practice the requirement of Article 5(4) to "establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book". Based on this wording, it is unclear what is considered proportionate, which data might be mandatory to collect and which different types of risk profiles should be a basis for differentiation.
Article 5(3) also requires investors to assess compliance with STS criteria (for STS securitisations) and allows for reliance on the STS notifications (pursuant to Article 27(1)) "to an appropriate extent", however "without solely or mechanistically relying on that notification or information". The wording is clearly far from providing a solid guidance to ensure consistent application of the requirements by investors, as well as enable supervisors to review compliance.

Some further issues with regard to effective implementation of due diligence and transparency requirements were highlighted by the ESAs in the Joint Committee Report on the implementation and functioning of the SECR, dated 17 May 2021.

The above issues have major implications for the supervisory duties of the ESAs and NCAs, which face challenges in establishing adequate and convergent procedures to supervise compliance with SECR.

Further refer to our response to question 2.3 for additional comments related to transparency requirements.
Transparency at the aggregated/macroeconomic level is also of major importance from the supervisory perspective to enable competent authorities to monitor the systemic risk inherent in the securitisation structures. Such systemic risk arises from the interconnectedness of market agents-participants to the securitisation transactions, reliance on assumptions of diversification and correlations between underlying assets, which have shown to increase significantly during crisis times. An excellent example of interconnectedness is the recent case of Greensill Bank, which, albeit not leading to systemic consequences on its own, demonstrated how a materialisation of risks can quickly propagate through the financial system.

Question 3.2:

What information do investors need? How do investors carry out due diligence before taking up a securitisation position?

Not applicable.

Question 3.3:

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

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

Question 3.4:

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

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

Question 3.5:

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

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

Please explain your answer to question 3.5:

5000 character(s) maximum

The question seems to inquire about the current investor practices and it is unclear which purposes the question serves. The objective of the Regulation should be to provide clear guidance and establish clear due diligence standards to ensure sound market practices, investor protection, transparency and financial stability.
The level of due diligence should not depend on the tranche the investor is investing in, but on the overall structure of the transaction - type of securitisation, instruments used, structural features such as call options, amortisation structure, early termination clauses etc. Allowing for a different level of due diligence depending on the tranche will create problems akin to the ones experienced in the subprime crisis of 2008, where investors placed undue reliance on the high credit ratings of senior tranches of securitisations.

Question 3.6:

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

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

Please explain your answer to question 3.6:

The question seems to inquire about the current investor practices. However, we would like to emphasize that there is a clear need to differentiate due diligence requirements for the true-sale vs synthetic securitisations, in particular with

regards to the significant risk transfer (SRT) verification. Since in a synthetic securitisation the exposure remains on the balance sheet of the originator, whereas capital relief is applied, additional due diligence steps are needed to verify the effectiveness of risk transfer. In this respect, the EBA report on SRT, dated November 2020, identified a number of issues and made recommendations to further harmonise the SRT regulatory framework.

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.

Not applicable.

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 seeks feedback on the issues identified by the Joint Committee.

Question 4.1:

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

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

Please explain your answer to question 4.1:

Despite not being an investor, we would like to draw attention to a lack of clarity on many aspects related to the jurisdictional scope of SECR, which were highlighted in the Joint Committee Opinion.

Following the considerations of investor protection and financial stability, we consider the following solution to address these issues appropriate: Securitisation sell-side entities located in the EU should be responsible for SECR compliance (including risk retention, disclosure and checking credit-granting standards), which implies that in certain cases third-country entities might need to establish an EU entity for the purposes of distributing their securitisation products. Only under such conditions EU supervisors can oversee compliance with the SECR provisions, as third-country entities cannot be held accountable under SECR. This solution is without prejudice to the right of non-EU entities to distribute their products to the EU investors.

Further, the above solution is appropriate in the context of the objectives declared in the CMU Action plan - scaling up the securitisation market in the EU and using securitisations to grow lending capacity in the EU economy (action #6 of the CMU Action Plan). These objectives imply that the legislation should focus on creating conditions for the EU originators to offload risks by means of securitisation and, thus, generate lending capacity for the economy. Stimulating EU investors to invest in third-country securitisations will not lead to positive effects for the EU economy, single capital market or cross-border sharing of EU risks. On the contrary, recognising equivalence of third-country securitisations without corresponding possibility for the EU supervisors to oversee compliance with the rules would be of concern from the financial stability perspective. The financial crisis of 2008 offers historical evidence of such financial stability risks materialising.

Question 4.2:

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

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

Please explain your answer to question 4.2:

Refer to our response to questions 4.1 and 4.3.

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

Please explain your answer to question 4.3 A):

Refer to our response to question 4.1. As mentioned above, the obligation for the EU entities to be solely responsible for the fulfillment of the SECR requirement is essential from the supervisory perspective, as the EU supervisors would have

no power to enforce compliance on the parties located outside the EU.

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

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

Please explain your answer to question 4.3 B):

Refer to our response to question 4.1. In any case the structure of the sell-side translation should be such as to ensure that EU supervisory authorities have powers to enforce SECR compliance. This means that the entity(ies) located in the EU should be liable to fulfil all SECR requirements, including ensuring that securitisation contractual arrangements provide for access to all necessary information and documents.

We understand that Article 5(1)(e) SECR is silent as to the location of the transaction parties, so that the institutional investors' obligation to verify that the originator, sponsor or SSPE has complied with Article 7 may be understood as including third-country securitisations, where the party responsible for making the disclosures would be located outside the EU. In case of such third-country securitisations, EU investors will hardly be able to verify compliance with the requirements of Article 7 without third-country regime/laws being recognised as equivalent. However, given the complexity of the EU securitisation rules and securitisation as a financial product overall, an equivalence of a third-country regime cannot be effectively achieved (refer to our responses in section 5 below). Therefore, the EU investors will face restrictions in investing in such third-country securitisations.

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

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

Please explain your answer to question 4.3 C):

Refer to our responses to questions 4.1 and 4.3B).

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

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

Please explain your answer to question 4.3 D):

Based on the definition of the sponsor in SECR, the sponsor carries the responsibility for establishment and management of "an asset-backed commercial paper programme or other securitisation that purchases exposures from third-party entities". Sponsor is also an eligible party to fulfil the risk retention requirement. This means that the sponsor has an impact on the quality/risk characteristics of exposures included in an ABCP programme. Thus, the sponsor should be included in the scope of Article 5(1)(b) to ensure it adheres to the sound credit-granting processes.
Sponsors should be supervised akin to the originators or original lenders in cases where the effective role played by the sponsor has implications for the risk profile of the transaction. With respect to the cross-jurisdictional aspects in relation to sponsors, our answers above in section 4 apply.

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 to 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

Please explain your answer to question 4.6:

5000 character(s) maximum

The purpose of due diligence requirements is to ensure that investors into securitisations are able to understand and manage the associated risks. Exemption regime as per other regulatory acts should not be a justification for not fulfilling due diligence requirements. Quite the contrary, allowing for exemptions from due diligence assessment for sub-threshold AIFMs would create a regulatory loophole and a wrong incentive, whereas investments in securitisations might be increasingly channeled via such sub-threshold AIFMs to avoid the burden of compliance.

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

Question 5.2:

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

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

Please explain your answer to question 5.2:

5000 character(s) maximum

Given the complexity of STS criteria, as well as challenges to supervise compliance with these criteria, as referred to in our responses in sections 3, 4 and 8, an equivalence of third-country regime cannot be effectively achieved and overseen in order to allow for STS recognition of non-EU securitisations. Thus, allowing for such recognition would be of concern from the investors´ risk perspective and more broadly from the financial stability perspective.

Question 5.3:

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

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

Please explain your answer to question 5.3:

Refer to our response to question 5.2.

Question 5.4:

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

Not applicable.

6. Sustainability disclosure

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

Question 6.1:

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

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

Please specify: *1000 character(s) maximum*

While improving availability, quality, comparability and reliability of ESG data on the underlying assets is work in progress, the need to improve sustainability-related disclosures in financial sector has been recognised with the adoption of the EU Climate Benchmarks Regulation, the Regulation on Sustainability-related Disclosure in the financial services sector (SFDR) and the EU Taxonomy Regulation. In line with those recently adopted rules, financial market participants, including financial benchmark administrators, asset managers, credit institutions, financial advisers and insurance and pensions providers, will need to disclose sustainability-related information on their underlying investments, irrespective of the asset type. Currently the focus is on investments; however, in accordance with the EU Taxonomy Regulation, credit institutions will need to disclose a Green Asset Ratio which, among others, will reflect the level of the environmental sustainability of the loans they grant.
Recognising the climate change-related urgency to act and the need for regulatory consistency, we advise that a consistent approach is followed with regards to the securitisation. We suggest that the disclosures should be in line with those required by SFDR, the EU Taxonomy and EU Green Bonds (the latter being currently negotiated by the EU institutions).

Question 6.2:

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

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

Question 6.3:

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

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

Question 6.4:

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

Finance Watch strongly believes that information on both environmental performance and on adverse impact should be published. Both types of information are necessary to assess impacts of the underlying assets, and hence of the investment, on the environment. Moreover, both types of information are needed to assess sustainability-related risks that the assets, and hence the investment, are exposed to.

The notion of adverse impacts was introduced in the EU law by the EU Taxonomy Regulation (referring to the principle of "do no significant harm" that the EU Taxonomy-aligned investments need to meet) and by Regulation on sustainability-related disclosures in the financial services sector (SFDR) requiring financial markets participants to disclose information on the consideration of adverse sustainability impacts in their investment processes.

In both instances, such information only provides information on whether the underlying assets / investments have a significant negative impact on the environment (in case of SFDR also on society). It does not give a full picture of the environmental performance of the underlying assets / investments. Neither does it provide information on what sustainability-related risks are.

Therefore, both information on environmental performance and on adverse impacts should be required. In order to ensure regulatory consistency, such disclosures should be aligned with the EU Taxonomy Regulation and SFDR. Alignment with the former would result in a better picture related to environmental performance, indicating which investments are substantially contributing to at least one of the environmental objectives while not harming any other objectives. Alignment with SFDR would result in more information on sustainability-related risks as well as consistency with regards to the adverse impacts that financial market participants should consider.

Question 6.5 (a):

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

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

Question 6.5 (b):

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

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

Question 6.6:

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

☐ Green or sustainable underlying assets

☐ Use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied

☐ Green/sustainable collateral AND use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied ☐ Other

Please describe:

1000 character(s) maximum

Not applicable.

Question 6.7:

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

○ Yes

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

If so, what should be the requirements for a securitisation standard? Please explain your answer:

Finance Watch believes that there is no need to adjust EU Green Bonds Standards to accommodate for specificities of securitisation. If anything, such adjustment would lead to a lowering of the EU Green Bonds Standards, which would be a highly detrimental result.

Moreover, Finance Watch does not believe that securitisation will increase in any manner the pool of capital available to purchase green bonds, nor that there is any need to do so. The issue with green bonds is not the lack of capital ready to buy them but the (relative lack of supply). Securitisation will not benefit the green bonds market nor increase the pool of capital available to finance sustainable assets.

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

8. Supervision

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

Question 8.1:

Are emerging supervisory practices for securitisation adequate?

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

Question 8.2:

Have you observed any divergences in supervisory practices for securitisation?

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

Question 8.3:

If you answered ***Yes*** to question 8.2, please explain your answer:

In response to the consultation on the EBA proposals to create a STS framework for synthetic securitisation, dated November 2019, Finance Watch has already emphasized the effective impossibility for the supervisors to oversee compliance with certain SECR rules, specifically for the synthetic securitisations. Still, synthetic STS securitisations were introduced via the Capital Markets Recovery Package legislation.

As highlighted in our responses to question 2.3 and in section 3 above, there remains a large number of SECR provisions, where additional clarity/guidance is required to ensure consistent application. In this context, the Joint Committee´s report confirms our views, as the report highlighted that basically in all SECR-relevant areas (transparency, due diligence, risk retention, STS criteria) there is a need for additional supervisory guidance, as the supervisory practices have either not been effectively established or are in their nascent stage and non-uniform across NCAs, mainly due to the combination of complexity and granularity of the rules and lack of resources and expertise of NCAs. EBA Report on SRT additionally confirmed that harmonisation of supervisory SRT assessment practices is required.

The scope and details of the analysis, done by the ESAs and summarised in the JC report, reflect the complexity of the securitisation framework, which corresponds to the complexity of the product itself. Provided there will be additional supervisory guidance on all identified aspects of SECR, the regulatory framework will become even more burdensome for NCAs and its increased complexity will draw on their expertise and resources. Based on this, we see a clear need for a centralised supervision of securitisation transactions by ESAs, which would have advantages in terms of expertise building, access to data and market monitoring, as well as economies of scale (as some in some Member States securitisation issuance is negligible, which makes expertise building impossible and not economically meaningful). Centralised supervision would also spare significant coordination efforts between NCAs, for which there is currently a need. The fact that securitisation transactions are by nature cross-border, i.e. include pulling of risks and selling these to investors across Member States, offers an additional argument in favor of the centralised supervision. The latter becomes a necessity in order to be able to manage and monitor the risks of securitisations holistically in the whole EU economy.

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

Please explain your answer to question 8.4 A):

Refer to our response to questions 8.3 and 3.1 above.

B) risk retention requirements (Art 6)

Yes

No Don't know / no opinion / not applicable

Please explain your answer to question 8.4 B):

Refer to our response to question 8.3 above.

C) transparency requirements (Art 7)

Yes

No Don't know / no opinion / not applicable

Please explain your answer to question 8.4 C):

Refer to our response to questions 8.3 and 3.1 above.

D) credit granting standards (Art 9)

Yes

No Don't know / no opinion / not applicable

E) private securitisations

Yes

No Don't know / no opinion / not applicable

Please explain your answer to question 8.4 E):

Refer to our response to questions 8.3 and 3.1 above.

F) STS requirements (Articles 18 – 26e)

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

Please explain your answer to question 8.4 F):

Refer to our response to question 8.3 and 3.1 above.

Question 8.5:

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

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

Please explain your answer to question 8.5:

In our response to the consultation on the EBA proposals to create a STS framework for synthetic securitisation, dated November 2019, we have already expressed strong objections against establishment of an STS label for synthetic securitisations. The validity of the arguments we used has only been strengthened by the findings of the ESAs´ reports (Joint Committee report from May 2021 and EBA Report from November 2020), which identified weaknesses in the current supervisory practices. Given the synthetic STS label has been put in force, we see a clear need for significant enhancement of supervisory resources and expertise at the ESAs level to introduce effective ex ante reviews of such transactions. Hereby we consider a centralised supervision as the most meaningful to bundle expertise and guarantee the consistency of approach, as exposed in our response to question 8.1. Furthermore, transparency of information and access to data for supervisors should be strengthened, as these are of major importance from the micro- (transaction-level) and macroprudential perspective (refer to our response to question 3.1). Commercial confidentiality should not be used as an excuse to create nontransparent markets, which is typically the case for private securitisations currently. Securitisations represent an important source of systemic risk, which should be monitored and managed appropriately in line with the mandates of the supervisory authorities, in particular ESRB. This systemic nature of risk has been demonstrated by the financial crisis 2008, and analysed thoroughly through academic research (see for example the working paper "The systemic risk of corporate credit securitization revisited" - https://www.boeckler.de/en/faust-detail.htm?sync_id=8920). The current state of reporting requirements does not allow for a comprehensive assessment of the securitisation market. Stating the above, we are aware that the ESRB is due to publish a report on securitisations by year-end 2021, and is currently developing an analytical toolbox to monitor systemic risks of securitisations, as mentioned in the ESRB´s EU Non-bank financial intermediation risk monitor 2021.

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
- [x] 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

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

Question 9.1 (a):

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

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

Question 9.1 (b):

If you would favour reassessing the current (p) factor levels, please explain why and what alternative levels for (p) you would suggest instead:

Not responding to this question.

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:

Not responding to this question.

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

Please explain your answer to question 11.1 (a):

The liquidity of STS securitisation positions - ability to liquidate & appropriateness of haircuts, as defined by the LCR Delegated Act, has not yet been tested in the crisis circumstances, whereas the Basel standard defines the HQLA as follows: "In order to qualify as "HQLA", assets should be liquid in markets during a time of stress and, ideally, be central bank eligible. … Assets are considered to be HQLA if they can be easily and immediately converted into cash at little or no loss of value. The liquidity of an asset depends on the underlying stress scenario, the volume to be monetised and the timeframe considered".

Quite on the contrary to the above definition, the financial crisis of 2008 demonstrated how quickly the securitisation markets can become illiquid. In particular, this happens due to: i) the moral hazard problems that securitisations create - incentives for underpricing of risks, which inflates valuation of underlying assets; ii) interconnectedness between

market participants. Therefore, not only the risks inherent in securitisation structures do not warrant an upgrade of securitisations to the level 2A for LCR purposes, but also the overall classification of securitisation exposures as HQLA should be questioned (currently certain securitisations can quality as level 2B securities and can account for up to 15% of the liquidity buffer). The statement is even more true for the synthetic securitisations, which have been taken under the STS label in the meanwhile. These are complex and bespoke structures by definition, which have nothing in common with the regulatory definition of an HQLA asset.

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.

Not applicable.

Question 11.2 (a):

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

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

Please explain your answer to question 11.2 (a):

Refer to our response to question 11.1(a).

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.

Refer to our response to question 11.1(a).

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?

Not responding to this question.

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?

We broadly agree with the EBA recommendations in regards to the standardisation of the supervisory review process, as a sound and consistent review process is a precondition to ensure harmonised application of SECR requirements, level playing field across the EU CMU, as well as management of securitisation risks in the EU financial sector overall. In particular, we consider the following aspects of the recommendation of great importance:

- A formal notification framework requiring ex ante notifications by the originator followed by ex ante supervisory review of the SRT and explicit feedback before market participants can proceed with a securitisation: Any other approach bears the risk of securitisation transactions being concluded, which do not fulfill the SRT criteria and thus will not fulfill their risk management or capital relief objectives for the transacting parties.
- Harmonisation of the supervisory assessment and harmonisation of transaction documents to be submitted to such assessment: As mentioned above, this is indispensable to ensure SECR applies consistently for all market players in the EU, in particular given the mostly cross-jurisdictional nature of securitisations. With reference to our response to question 8.1 and arguments provided therein, we consider the centralised supervision, including the transaction assessment being discussed here, to be the most appropriate solution to ensure harmonisation.

  We also deem meaningful the differentiation of the assessment process into "fast track" and "more in-depth," depending on the complexity/structural features of the risk transfer arrangements. However, we think that only securitisation transactions issued in accordance with plain vanilla structures should be eligible for the "fast track" review, whereas transactions featuring any structural features should go through an in-depth inspection, as the exact design and specifics of such features affect the effectiveness and the sustainability of SRT during the maturity of the transaction. This is in contrast to the EBA suggestion that the "fast track" review should be applied to transitions without structural features, as well as transactions with only certain/defined structural features provided they meet the respective defined safeguards.

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?

Not responding to this question.

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

Please explain your answer to question 13.3:

As mentioned in our response to question 13.1 above, we support the mandatory ax ante review of the SRT provisions. Introduction of the two assessment tracks - fast track for plain vanilla structures vs in-depth review for transactions with structural features - should help make the process sufficiently agile allowing for lean verification of the above stated conditions - fulfilment of the regulatory and market practice compliance criteria.

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

Please explain your answer to question 13.4:

Refer to our response to question 13.1.

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

Please explain your answer to question 14.1:

We would like to opine only on specific parts of the proposed amendments, as per below.

We emphasize the necessity of having in place quantitative criteria for assessing the fulfilment of the significant risk transfer condition (rather than applying a principle-based approach and allowing for significant degree of supervisory discretion on this). This is of major importance to ensure convergent supervisory approach and thus equal treatment of securitisation risks across the EU, which remains an open issue in the EU, as was highlighted in our responses in section 8 on supervision. Still, such quantitative criteria should serve as a substitute for further supervisory judgement in assessing the commensurateness of the risk transfer in every case.

We also agree with the recommendation to mandate EBA to perform a monitoring role in "in relation to new type of structural features of securitisations and SRT, or variations of existing ones, that may appear in the market" in order to "avoid heterogeneous supervisory approaches with respect to SRT across Member States and to keep regulatory certainty and a level playing field for institutions transferring risk through Securitisation".

15. Solvency II

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

Question 15.1:

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

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

Question 15.2:

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

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

Question 15.3:

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

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

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

Not applicable.

Question 15.4:

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

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

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

Not applicable.

Question 15.5:

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

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

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

Not applicable.

Question 15.6:

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

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

Please explain your answer to question 15.6:

Not applicable.

Question 15.7:

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

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

Please explain your answer to question 15.7:

Not applicable.