

## Response to EC targeted consultation on the functioning of the EU securitisation framework

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### 1. Effectiveness of the securitisation framework

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

	Fully agree	Somewhat agree	Neutral	Somewhat disagree	Fully disagree	No opinion
1.Revival of a safer securitisation market					X	
2.Improving financing of the EU economy by creating a more balanced and stable funding structure of the EU economy					X	
3.Weakening the link between banks' deleveraging needs and credit tightening						X
4.Reducing investor stigma towards EU securitisations		X				
5.Removing regulatory disadvantages for simple and transparent securitisation products					X	

6.Reducing/eliminating unduly high operational costs for issuers and investors					X	
7.Differentiating simple, transparent and standardised (STS) securitisation products from more opaque and complex ones		X				
7.1 Increasing the price difference between STS vs non-STS products						X
7.2 Increasing the growth in issuance of STS vs non-STS products						X
8.Supporting the standardisation of processes and practices in securitisation markets		X				
8.1 Increasing the degree of standardisation of marketing and reporting material		X				
8.2 Reducing operational costs linked to standardised securitisation products					X	
9.Tackling regulatory inconsistencies					X	

#### 4. Due diligence requirements

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

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

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

Yes.

Art. 5 of the STS Securitisation Regulation provides for a large number of requirements for institutional investors in securitisations. The individual measures can be understandable, but as a whole they lead to disproportionately high costs. These requirements make securitisations less attractive for investors and put them at a disadvantage compared to other asset classes.

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

processes are required for the securitisation asset class in addition to the normal regulatory requirements under Solvency II.

**4.5** *[If you answered yes to question 4.4.] - Please specify how this could be implemented.*

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

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

Yes.

**4.8** *[If you answered yes to question 4.7.] - Please select one or more of the following options to differentiate due diligence requirements:*

- Due diligence requirements should differ based on the risk of the position (e.g. senior vs non-senior)
- Due diligence requirements should differ based on the risk of the underlying assets
- Due diligence requirements should differ based on the STS status of the securitisation (STS vs non-STS)
- Non STS vs STS should require a stronger analysis of the underlying and the structure of the securitisation

The variety and complexity of securitisation transactions demand a simplified approach, with real risk transparency and adhering to the 'best knowledge' standard.

Therefore, the requirements should be based on the single principle that all participants are able to demonstrate to their competent authorities, upon request, that they have full and in-depth knowledge of each securitisation position. Additionally, they must implement written policies and procedures for managing the associated risks and for recording relevant information.

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

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

(i) risk retention requirements,

Yes.

(ii) credit granting criteria requirements,

Yes.

(iii) disclosure requirements,

Yes.

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

**Credit-granting criteria:**

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

**Disclosure requirements:**

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

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

Yes.

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

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

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

No opinion.

Maintaining a deep quality of due diligence that is useful and in line with normal market practice, as is the case for other asset classes, should be the overriding objective. Investors' protection, ensuring the ability to complete full due diligence after the investment, must be maintained as part of a principle-based approach.

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

Yes.

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

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

No.

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

Yes.

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

Some view this to mean:

- An institutional investor subject to the EU Securitisation Regulations would not be liable for non-compliance with due diligence requirements if it has delegated the compliance verification process to an institutional investor that is subject to the EU Securitisation Regulations.
- An institutional investor subject to the EU Securitisation Regulations may contractually engage a third-country entity to carry out investment due diligence activities but the EU institutional investor would remain fully liable and responsible for any non-compliance.

Others have adopted a very narrow reading, understanding this to mean that an institutional investor under the EU Securitisation Regulations cannot contractually delegate any due diligence activities to a third-country entity, even if retaining full liability and responsibility for compliance with the EU Securitisation Regulations Requirements.

In situations where delegation is required (for instance where the instructing institutional investor is looking to appoint a discretionary manager or has made a passive investment managed externally), the relevant institutional investor may, in the absence of clear guidance, be expected to specifically negotiate the instruction of another institutional investor as managing party in line with Art. 5 of the EU Securitisation Regulations.

## 5. Transparency requirements and definition of public securitisation

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

In connection with the review of Art. 7 and simplifications for issuers, the industry points out that investors are fundamentally reliant on detailed information in order to be able to carry out an adequate review of the

securitisation, including its risk.

- The review and adjustment of the securitisation regulations should therefore not be aimed at a general reduction in the scope of information requirements, but rather at the actual information requirements of investors and facilitating the availability of data.
- In this respect, it should be reviewed whether the ESMA templates regarding STS securitisation, with their large number of data points, are justified or whether they should be reduced to the essential data points. In principle, the development of an industry standard with the involvement of issuers and investors may be an option here.

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

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

## 7. STS standard

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

No.

The framework is necessary but requires improvement regarding the current process.

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

- **Overly restrictive and costly STS criteria**

## 10. Prudential treatment of securitisation for insurers

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

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

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

However, correcting the Solvency II capital charges and reducing the operational requirements for investors in securitisations will not necessarily lead to increased allocations in securitisations from insurers, particularly in the short term. (Re)insurers' allocations to different asset classes are based on many factors including their

liability structure, asset-liability management, strategic asset allocations, liquidity requirements, the yield/expected available, capital costs, complexity, investor preferences and sustainability considerations.

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

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

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

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

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

Yes.

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

- **Capital consumption** remains a significant barrier because the capital requirements for securitisations under the Solvency II standard formula are too high in relation to the actual risks and the achievable returns. Insurance Europe supports a calibration of standard formula capital requirements for all investment assets, including securitisations, that are based on the risk that they pose to insurers as long-term investors. Insurers invest in securitisations, like most fixed income assets, on a buy and hold basis. This is a fundamental aspect of their asset/liability management (ALM) and risk management strategies. The risk of investing in securitisations to an insurance investor is therefore the risk of loss from default and not the short-term changes in its value due to market illiquidity, ie spread risk (as experienced during the 2008-2009 financial crisis). The capital charges should be calibrated to reflect the nature of an insurance investor.
- **Non-STS securitisations are disadvantaged compared to STS securitisations.** It should be reviewed thoroughly in how far a different treatment under the Solvency II standard formula is justified by historical performance data. In our view, the riskiness of an investment is not convincingly correlated with the STS-Label. The risk charges for non-STS securitisations are an order of magnitude greater. For AAA and AA non-STS securitisations the risk charges are 12.5% and 13.4% for duration 1, and 37.5% and 40.2% for duration 3. By comparison, corresponding risk charges for STS senior securitisation

tranches with an AAA (AA) and duration 1 respectively 3 are 1% (1.2%) respectively 3% (3.6%). To stimulate the securitisation market, disadvantages stemming from overly high-risk charges of non-STS securitisations in comparison to STS securitisations should be eliminated.

- **Review and risk-adequate reduction of capital requirements between senior and non-senior tranches.** In addition to the level of capital requirements, the differences in capital requirements between senior and non-senior tranches of a securitisation seem not risk adequate and should be reviewed and adjusted. For example, a senior 5-year AA STS securitisation has a capital requirement of 6%, while the subordinated tranche with the same AA rating has a capital requirement of 17%. Default studies suggest that this material difference between senior and non-senior tranches is not justified.
- **Level playing field with other asset classes.** Under the current Solvency II framework, **securitisation instruments are treated more harshly** than other comparable assets, despite offering similar risk-return profiles. This is particularly evident in the capital charges imposed on securitisation investments, which are disproportionately high compared to other financial instruments with similar credit risk and asset quality, notably corporate bonds. The capital requirements imposed on both STS and non-STS securitisations are perceived as disproportionate to the actual risk posed by these instruments. **The capital requirements for securitisation should be more aligned** with those applied to other assets that have equivalent characteristics, ensuring that there is no regulatory discrimination simply because an asset is securitised. In other words, when the **risk and quality of the underlying asset are similar**, the capital requirements under Solvency II should be **equivalent** for securitisations and other investment opportunities. Currently, this is not the case, and securitisation is unjustly penalised.
- In addition, there is a potential **regulatory barrier to investing in securitisations** for users of the **Matching Adjustment (MA)**. Securitisation instruments, particularly those with a long-term focus, may be interpreted as not being compliant with the MA framework, which restricts their eligibility for more favourable capital treatment.
- Furthermore, from a **market perspective**, the European securitisation market remains relatively **small and illiquid**, with fewer participants and lower trading volumes. This lack of liquidity can make it difficult for insurers and reinsurers to **trade securitisation assets efficiently**, further reducing their appeal. A more liquid market, with a greater number of market participants, could help alleviate these concerns.
- **Some insurers have concerns about the fragmentation of investor landscape in the STS market.** For instance, credit insurers, on the liabilities side of their balance sheet, are usually not funded and offer insurance contracts to assume risk without providing security. Before the introduction of the STS synthetic framework in 2021, implemented as part of the Capital Markets Recovery Package (CMRP), credit insurers were able to participate in the synthetic risk transfer market, providing 'capital velocity' to banks (i.e., the capacity for banks to redeploy their capital relief for new lending). The introduction of the new framework fragmented credit insurers' investment landscape, as the newly introduced regulation in the Securitization Ordinance currently does not allow them to participate as protection providers in synthetic STS securitisations in the form of an unfunded and unsecured guarantee. Protection providers for STS have been limited to public sector actors with a risk weight of zero in accordance with (Art 26e (8) (a) SecReg) and is thus mainly reserved for multilaterals such as the European Investment Fund (EIF) with strong activities to stimulate the market (especially in the wake of COVID19).
- All non-public sector guarantors need to be collateralised, but only for STS securitisations. Naturally, multiline insurers guarantee their solvency through the insurance principle based on the law of large numbers and the diversification of risks with sufficient equity capital under rigid regulation. A collateral position represents excessive friction for insurers because liquid assets are held by insurance companies for potential claims payments and are linked to the opportunity costs of the illiquidity premium. Providing collateral or taking on capital-backed risks in securitisations is therefore associated with significantly higher costs for such covers. Suggested solutions are therefore in order of priority:
  - Adaptation of the Level 1 text in Art. 26e (8) (c) SecReg so that insurers are exempt from the obligation to provide collateral or capital coverage.



- Introduction of a bank letter of credit as an alternative to providing cash collateral with third-party banks in Art. 26e (10) (b) SecReg.
- In conclusion, addressing both the **capital treatment under Solvency II** and the **liquidity challenges** in the market would help create a more favourable environment for (re)insurers to increase their investments in securitisation.

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

Internal models are subject to the same level of calibration, 99.5% VaR, as the standard formula. However, internal model users are able to benefit from the dynamic volatility adjustment which enables them to better model the long-term nature of their fixed income portfolios, ie to calculate capital charges based more on default risks than spread risks.

Notwithstanding this, internal models are also subject to benchmarking exercises by EIOPA and supervisors to compare the internal model with the standard formula. Through the benchmarking exercises and more general supervisory expectations, there is an indirect impact of the standard formula calibration.

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

No.

Solvency II capital requirements are based on market and liquidity risks, ie spread risks, in addition to the true credit/default risks. This results in significantly higher capital charges for securitisations, despite insurers typically holding these assets to maturity as part of their ALM strategies, which naturally mitigates such risks. Solvency II's heavy emphasis on market risk volatility, even for long-term holdings, creates a burden that discourages investment in securitisations

It would be interesting to mention the last publicly available calibration exercise has been performed by a study from Risk Control / AFME in 2022 by William Perraudin and Yixin Qiu. This work provides additional data which could be helpful for the Commission in its assessment of the calibrations.

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

No.

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

No.

It is not necessarily desirable for Solvency II standard formula capital requirements to differentiate between mezzanine and junior tranches of STS securitisations. Rather than focusing on tranche-specific distinctions, the focus should be on reducing the overall capital calibrations for these STS securitisations, as the current high levels discourage investment in both mezzanine and junior tranches.

A more balanced approach would enable insurers to evaluate the structure of the securitisation as a whole, assessing how it fits within their ALM framework, rather than being driven away by overly burdensome capital stresses.

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

No.

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

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

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

Yes.

There is a need to focus on senior tranche.

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