



**EUROPEAN COMMISSION**

Directorate General Financial Stability, Financial Services and Capital Markets Union

**Financial services policy, inter-institutional relations and international affairs**

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## **CONSULTATION DOCUMENT**

### **An EU framework for simple, transparent and standardised securitisation**

#### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudge the final form of any future decision to be taken by the Commission.

You are invited to comment on the views reflected in this paper. These views are only an indication of the approach the Commission services may take and are not a final policy position nor do they constitute a formal proposal by the European Commission.

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

In replying to these questions, please indicate the expected impact described in each section of this paper on your activities or the activities of firms in your jurisdiction, including estimates of administrative or compliance costs. Please also state reasons for your answers and provide, to the extent possible, evidence supporting your views.

If need be, files with additional information can be uploaded using the button at the end of the consultation page. In order to assist in the evaluation of your contribution, we would appreciate if you could maintain the structure of this questionnaire and indicate clearly the question you are responding to in any additional material you might want to provide.

You are invited to reply to this online questionnaire by **13 May 2015 at the latest**.

Responses will be published on the following website unless requested otherwise:

[http://ec.europa.eu/finance/consultations/2015/securitisation/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/securitisation/index_en.htm)

## Commission Services Consultation

### Section 1 – Introduction

In its Work Programme for 2015<sup>1</sup>, the Commission announced that it would develop an EU framework for high-quality securitisation. In the Investment Plan for Europe presented by the Commission on 26 November 2014, creating a sustainable market for high-quality securitisation, without repeating the mistakes made before the crisis, was identified as one of the five areas where short-term action was needed<sup>2</sup>.

The development of a high-quality securitisation market constitutes a building block of the Capital Markets Union and contributes to the Commission's priority objective to support a return to sustainable growth and job creation. A high-quality EU securitisation framework will promote further integration of EU financial markets, help diversify funding sources and unlock capital, making it easier for banks to lend to households and businesses.

Securitisation refers to transactions that enable a lender – typically a bank – to refinance a set of loans or assets (e.g. mortgages, auto leases, consumer loans, credit cards) by converting them into securities. The lender pools and repackages a portfolio of its loans, and sometimes organising them into different risk categories, tailored to the risk/reward appetite of investors. Returns to investors are generated from the cash flows of the underlying loans. These markets are not for retail investors.

Securitisation is a crucial element of well-functioning financial markets. Soundly structured, securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It allows for a broader distribution of financial sector risk, allowing institutional investors to diversify their portfolios and can help to free up banks' balance sheets to allow for further lending to the economy. Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can bridge banks and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans, mortgages and credit cards).

Following the US subprime crisis in 2007-08, public authorities took a number of steps to make securitisation transactions safer and simpler, and to ensure that appropriate incentives are in place to manage risk – including through higher capital requirements, and mandatory risk retention requirements to ensure that securitised products are not being created solely for the purpose of distribution to investors, as was prevalent in the run-up to the financial crisis (a so-called 'originate to distribute' model).<sup>3</sup> These reforms were necessary to ensure financial stability. As a result of these reforms, all securitisations in Europe are now strictly regulated.

Since the beginning of the financial crisis, European securitisation markets have remained subdued. This is in contrast to markets in the US which have recovered. This is despite the fact that unlike the US, EU securitisation markets withstood the crisis relatively well, with

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<sup>1</sup> COM(2014) 910 final

<sup>2</sup> COM/2014/0903 final

<sup>3</sup> Since 2011, EU banks as investors have been obliged to check that originating banks or sponsors of securitisations have retained an economic interest in the transaction equivalent to at least 5% of the securitised assets. This approach was subsequently extended to the insurance sector and part of the asset management sectors.

realised losses on instruments originated in the EU having been very low compared to the US.<sup>4</sup>

While securitisation markets in the US have recovered more strongly than the EU, this is largely thought to be due to the role of public sponsorship. Almost 80% of securitisation instruments in the US benefit from public guarantees from the US Government Sponsored Enterprises (e.g. Fannie Mae and Freddy Mac). Banks investing in these products consequently also benefit from lower capital charges. In this way, and in spite of the greater losses experienced during the crisis, public support has helped rekindle US securitisation (see charts in annex 1).

In recent public consultations<sup>5</sup>, stakeholders have highlighted the key factors that are limiting a sustainable recovery in European securitisation markets. They include macroeconomic conditions, the availability of cheaper refinancing sources, regulatory uncertainties and the stigma still attached to the asset class. The slow recovery in EU securitisation markets (see Annex 1) reflects concerns among investors and prudential supervisors about the risks associated with the securitisation process itself. In contrast, investors in Europe have generally preferred covered bond instruments. This may have been due to the existence of well-developed national frameworks being in place and the higher degree of guarantee offered by their dual recourse nature (where the claim can be made to both the underlying pool of assets and on the issuer). This is in contrast to securitisation which offers recourse only to the underlying assets.

### **Policy initiatives to re-start securitisation markets**

In response to the slow recovery of securitisation markets, a number of public authorities have been looking again at the issue. For example, the joint paper and responses received in the context of the European Central Bank (ECB) and Bank of England (BoE) consultation, in May 2014 *'The case for a better functioning securitisation market in the European Union'*, offer some useful avenues to explore.

Moreover, the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) are jointly leading a cross-sectorial Task Force on the impediments to securitisation. Its main task is to develop criteria to **identify simple, transparent and comparable securitisation instruments**. The group issued a consultative document on 11 December. This work is well-advanced and is expected to be finalised in the coming months.

One of the regulatory issues that warrants further consideration is the **capital treatment of investors in securitisation**. BCBS published revised standards in December 2014 and agreed to consider how to incorporate the criteria being developed by the BCBS-IOSCO Task Force for simple and transparent securitisation, once finalised, into the securitisation capital framework. In its October 2014 consultation, the European Banking Authority (EBA) determined that qualifying securitisations (those that are simple, standard and transparent) warrant a different and more risk-sensitive capital treatment than other securitisations.

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<sup>4</sup> The RMBS sector in the EMEA suffered losses amounting to 0.2% of the original rated principal over 2000-2014 while in the US the total RMBS losses amounted to 7.9% of the rated notional over the same period, with losses in the subprime and Alt-A sector most exposed to the "originate to distribute" model amounting to over 10% of the original notional (see annex)

<sup>5</sup> Conducted by the European Central Bank (ECB) and Bank of England (BoE), and by the Basel committee of Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO).

Different options are currently being assessed, including the calibration and treatment of these instruments.

Finally, the Joint Committee of the European Supervisory Authorities is looking at the existing EU framework with respect to disclosure requirements and obligations relating to due diligence, supervisory reporting and risk retention. The Joint Committee is also examining possible inconsistencies in the current framework.

### **Policy initiatives at the EU level**

Currently, the framework for EU securitisation is determined by a large number of EU legal acts (see Annex 2). These include the Capital Requirements Regulation for banks<sup>6</sup>, the Solvency II Directive<sup>7</sup> for insurers, and the UCITS<sup>8</sup> and AIFMD<sup>9</sup> directives for asset managers. Legal provisions, notably on information disclosure and transparency, are also laid down in the Credit Rating Agency Regulation<sup>10</sup> (CRAIII) and the Prospectus Directive<sup>11</sup>. There are also elements related to the prudential treatment of securitisation in Commission legislative proposals currently under negotiation. Provisions are also included in delegated acts. Non-legislative provisions may also have an important role, especially accounting standards (e.g. IAS39, IFRS 10, IFRS 7).

From a market functioning perspective, several EU institutions have taken initiatives to build securitisation markets and increase confidence. The Commission, in association with the European Investment Bank and the European Investment Fund, is using securitisation vehicles to help finance SMEs, for example under the COSME programme and the joint Commission-EIB initiatives. The ECB has launched an asset-backed securities purchase programme that aims to further enhance the transmission of monetary policy.

In terms of building a market for high-quality securitisation, the Commission, together with other European authorities and central banks, has encouraged the development of a framework that better reflects the different characteristics of securitisations within the strengthened EU regulatory environment. The first step is to identify sound instruments based on clear eligibility criteria. The second step is to adjust the regulatory framework to allow a more risk-sensitive approach.

The EU has already taken steps to provide differentiated regulatory treatment in two delegated acts covering the prudential requirements for insurers (under the Solvency II Directive<sup>12</sup>), and the liquidity of banks (through the Liquidity Coverage Ratio<sup>13</sup>). This new approach helps to better differentiate simple, transparent and standardised products from the more opaque and complex. This can make securitisations more attractive, in particular to non-bank investors, by lowering barriers to the securitisation process and by improving

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<sup>6</sup> REGULATION (EU) No 575/2013

<sup>7</sup> DIRECTIVE 2009/138/EC)

<sup>8</sup> DIRECTIVE 2009/65/EC

<sup>9</sup> DIRECTIVE 2011/61/EU

<sup>10</sup> REGULATION (EU) No 462/2013

<sup>11</sup> DIRECTIVE 2003/71/EC

<sup>12</sup> COMMISSION DELEGATED REGULATION (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

<sup>13</sup> COMMISSION DELEGATED REGULATION (EU) of 10.10.2014 to supplement Regulation (EU) 575/2013 with regard to liquidity coverage requirement for Credit Institutions.

liquidity and market depth. However, this differentiation does not replace the need for investors' due diligence.

The EU's adoption of these delegated acts were preliminary steps that now need to be complemented by further action, building on the range of EU and international initiatives.

### **An EU framework for high-quality securitisation**

There is no intention today to undo what has been put in place in the EU to address the risks inherent in highly complex, opaque and risky securitisation. However, focusing on better differentiation and the development of transparent, simple and standardised securitisation is a natural next step to build a sustainable EU market for securitisation, supporting both EU investment and proper risk management.

In addition to the importance a well-functioning securitisation market for the financial sector and economy more widely, high quality securitisation may be useful to institutional investors in generating appropriate returns and meeting their asset diversification and investment duration needs. Against this background, the Commission services are preparing work on an EU securitisation framework with a view to:

1. Restarting markets on a more sustainable basis, so that simple, transparent and standardised securitisation can act as an effective funding channel to the economy;
2. Allowing for efficient and effective risk transfers to a broad set of institutional investors as well as banks;
3. Allowing securitisation to function as an effective funding mechanism for some non-banks as well as banks;
4. Protecting investors and managing systemic risk by avoiding a resurgence of the flawed "originate to distribute" models.

In view of these objectives, there is a need to look again at the EU's approach to securitisation – from a bank, investor and broader economic perspective – to come up with an effective and targeted initiative. The aim of this consultation is to gather information and views from stakeholders on the current functioning of European securitisation markets and how the EU legal framework can be improved.

On the basis of the feedback received, the Commission will put forward a proposal on how to build a sustainable securitisation market. The goal is for Europe to benefit from a safe, deep, liquid and robust market for securitisation, which is able to attract a broader and more stable investor base to help allocate finance to where it is most needed in the economy.

It is important to distinguish between the concept of a high quality securitisation – one that is simple, transparent and standardised/comparable in terms of the process by which it is created, and the underlying credit quality of the assets involved. This consultation generally focuses on high quality securitisations, however, in some cases, when adjusting regulatory requirements, it may also be necessary to differentiate for credit quality.

A high-quality framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products). However, any new EU framework should not be perceived as a new label that can be mechanically relied upon in a similar way that credit ratings were relied upon prior to the crisis. Investors will still need to conduct thorough due diligence

**Section 2 – Questions for review**

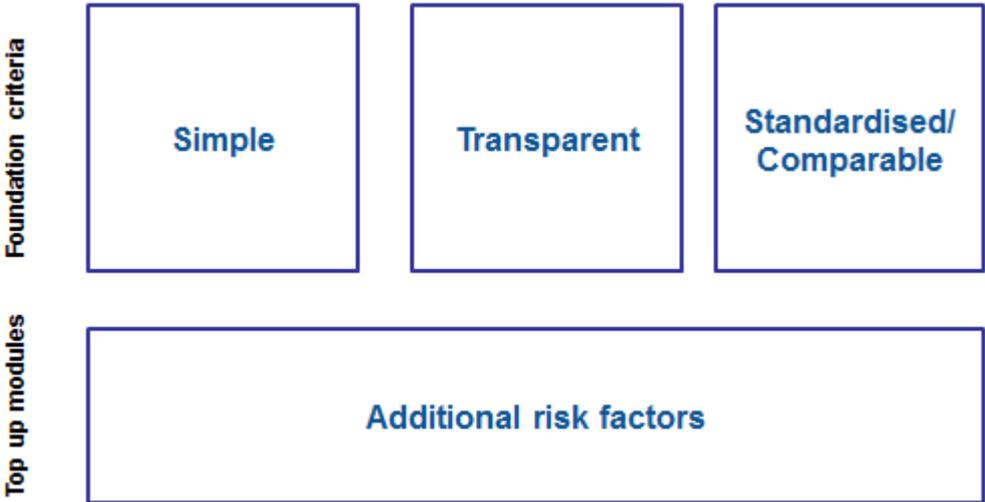
This section asks a number of questions about the identification criteria for qualifying securitisation. It goes on to consider the prudential treatment of securitisations – including bank capital requirements – and the regulatory frameworks applicable to other institutional investors. Questions are also raised in relation to promoting SME securitisation.

**2.1 Identification criteria for qualifying securitisation instruments**

In 2014, the Commission decided to introduce a differentiated approach to allow for a more risk-sensitive treatment of securitisations in the EU.<sup>14</sup>

The discussions on setting eligibility criteria to distinguish between different types of securitisation start with the principles of simplicity, transparency and comparability ('standardised'). These features are relevant across the whole financial system and form the **foundation criteria**. As a second step, these features can be supplemented with **additional criteria based on specific risks and for specific prudential requirements in a given sector**. By taking a 'modular approach', this allows for increased consistency across the system and, at the same time, can help address sector specific risks.

**The modular approach to qualifying securitisations**



In the delegated acts on Solvency II and the Liquidity Coverage Ratio, the eligibility criteria could be grouped as follows:

<sup>14</sup>See Article 13 of the delegated act for the liquidity coverage ratio, and Article 177(2) of the Solvency II delegated act.

- i. **Simplicity criteria:** including provisions that require the underlying exposures to be homogeneous (i.e. ensure no mixed pool of asset types). The use of derivatives is restricted to hedging purposes only. Re-securitisations are explicitly excluded, as they are typically complex with a loss waterfall difficult to understand due to re-tranching (e.g. in collateralised debt obligations 'squared').
- ii. **Transparency criteria:** including provisions requiring that the transactions comply with transparency and disclosure requirements, such as the provision of loan-level data.
- iii. **Standardisation criteria:** including provisions requiring that the transfer of the underlying exposures to the securitisation vehicle is sufficiently robust from a legal point of view (e.g. there is a 'true sale'). Additionally, it cannot be a synthetic securitisation.
- iv. **Additional risk features:** including provisions requiring that the creditworthiness of the borrowers is assessed thoroughly, in accordance with the Mortgage Credit Directive (Directive 2014/17/EU) or the Consumer Credit Directive (Directive 2008/48/EC). Minimum levels of credit quality and seniority of the tranches are needed. For the Liquidity Coverage Ratio, metrics of liquidity (such as minimum issue size and maximum weighted average time to maturity) must be met. The instruments should also be listed on a regulated market or recognised exchange, or be admitted to trading on another organised venue, with robust market infrastructure.

The scope of application is limited, however, as these criteria apply only for insurers, and banks (under the liquidity coverage ratio), acting as investors.

For the 'foundation criteria', the objective is to identify instruments in which the underlying risks are appropriately disclosed, and where it is easy to understand what assets are included and how they are packaged. Qualifying instruments have to be sufficiently transparent so that investors have access to the information they need and can conduct comprehensive and well-informed credit due diligence.

Since the adoption of the above-mentioned delegated acts, there have been further developments in the EU (i.e. the EBA consultation) and at international level (i.e. the BCBS-IOSCO consultation).

This consultation seeks views on both the foundation and further specific criteria.

#### Question 1:

- A. Do the identification criteria need further refinements to reflect developments taking place at EU and international levels? If so, what adjustments need to be made?**
- B. What criteria should apply for all qualifying securitisations ('foundation criteria')?**

## 2.2 Identification criteria for short term instruments

The criteria of the delegated acts mentioned above are designed for medium to long-term securitisation instruments (i.e. asset-backed securities). They do not cover short-term securitisation instruments especially asset-backed commercial paper.

Due to the specificities and different structures of short-term instruments (e.g. the underlying assets having very short maturities, such as trade receivables), a number of the criteria set

out in the delegated acts cannot be directly applied. Similarly, the BCBS-IOSCO Task Force highlighted in its consultation that its draft criteria do not cover these instruments.

These instruments are important refinancing tools for non-financial companies. Developing specific eligibility criteria could allow further instruments to become qualifying securitisations. Any approach would need to ensure it adequately reflected the different risks of these instruments.

**Question 2:**

- A. To what extent should criteria identifying simple, transparent, and standardised short-term securitisation instruments be developed? What criteria would be relevant?***
- B. Are there any additional considerations that should be taken into account for short-term securitisations?***

**2.3 Risk retention requirements for qualifying securitisation**

Risk retention requirements help to ensure a proper alignment of interests throughout the securitisation chain. The retention obligation is instrumental in ensuring that the original lender applies strong and robust underwriting standards.

The EU's current approach to risk retention – the so-called 'indirect approach' – supports the proper and detailed due diligence of investors prior to any investment in securitisation instruments. It also protects investors from purchasing instruments originated in jurisdictions where mechanisms to align interests in the securitisation chain are weak or insufficient.

Risk retention requirements are necessary to ensure investors' confidence. However, it has been suggested that the implementation of these requirements could be adjusted, in particular for qualifying securitisation instruments. Since by definition these instruments will qualify only if they fulfil the risk retention requirements, the question arises if an 'indirect approach' (where investors have the responsibility of verifying the risk retention requirements) could be lifted for these instruments. Investors would continue to perform due diligence assessments but more to ascertain the value of the underlying assets, rather than on the structure of the product itself.

**Question 3:**

- A. Are there elements of the current rules on risk retention that should be adjusted for qualifying instruments?***
- B. For qualifying securitisation instruments, should responsibility for verifying risk retention requirements remain with investors (i.e. taking an "indirect approach")? Should the onus only be on originators? If so, how can it be ensured that investors continue to exercise proper due diligence?***

**2.4 Compliance with criteria for qualifying securitisation**

According to the BCBS-IOSCO and ECB-BoE public consultations, the establishment of a clear set of eligibility criteria may help to alleviate investor concerns about securitisation. While investors should continue to perform careful due diligence of the underlying risks before investing, the introduction of specific monitoring/verification mechanisms could help to ensure compliance with the identification criteria. This identification mechanism is not intended to provide an opinion on credit or other risks but make investors' assessments of these risks more straightforward.

There are various ways in which a mechanism to monitor and verify compliance with the eligibility criteria could be developed. For example, more clarity, certainty and confidence might be given to investors that the eligibility criteria were being met via a labelling, certification or licensing system. This could be applied to each securitisation instrument (i.e. taking an issuance-led approach), or as a licensing procedure for an issuing vehicle or originating bank (i.e. taking an issuer-based approach).

It would be equally important to establish who is responsible for carrying out this monitoring function. These procedures might rely on public authorities (e.g. supervisory authorities or other dedicated bodies) or on independent private organisations. In the latter case, potential conflicts of interest would need to be identified and managed carefully. A self-certification process could also be envisaged, though it remains to be seen whether it would give sufficient confidence to investors.

#### **Question 4:**

- A. *How can proper implementation and enforcement of EU criteria for qualifying instruments be ensured?***
- B. *How could the procedures be defined in terms of scope and process?***
- C. *To what extent should risk features be part of this compliance monitoring?***

#### **2.5 Elements for a harmonised EU securitisation structure**

It has been suggested that the development of the EU market for securitisation would benefit from further harmonisation and/or the creation of an optional regime at the EU level. While further private sector initiatives could have a significant impact, the creation of an EU securitisation structure may help further harmonise the structures used in securitisation transactions. It could include, *inter alia*, provisions on a standardised securitisation structure that might further address:

- i. the legal form of the special purpose vehicles used for securitisation transactions;
- ii. the modalities to transfer assets; and
- iii. the rights and subordination rules among noteholders.

Such a framework would increase the simplicity and legal certainty of EU structures for the benefit of investors, originators and issuers. It may contribute to the greater standardisation of securitisation practices, help create economies of scale, and provide access to securitisation for smaller lenders in Member States where securitisation markets are underdeveloped.

For investors, such an EU securitisation structure could reduce unnecessary burden in the due diligence process and save time spent in analysing country-specific securitisation

practices. In turn, a harmonised framework may increase their confidence to invest in securitised instruments.

The objective would be to establish a structure that helps issuers as well as boosts investor appetite in EU securitised products.

#### **Question 5:**

- A. What impact would further standardisation in the structuring process have on the development of EU securitisation markets?***
- B. Would a harmonised and/or optional EU-wide initiative provide more legal clarity and comparability for investors? What would be the benefits of such an initiative for originators?***
- C. If pursued, what aspects should be covered by this initiative (e.g. the legal form of securitisation vehicles; the modalities to transfer assets; the rights and subordination rules for noteholders)?***
- D. If created, should this structure act as a necessary condition within the eligibility criteria for qualifying securitisations?***

#### **2.6. Standardisation, transparency and information disclosure**

Market participants (originators and investors) may be dissuaded from creating securitisation instruments or from investing in them due to a lack of standardisation. Issuing structures, documentation, asset types and legal frameworks remain highly fragmented. This makes creating and investing in securitised instruments more time-consuming and costly.

Providing investors with sufficient and high-quality information (in terms of comparability, reliability and timeliness), is key to enabling them to make fully informed investment decisions. At the same time, it is also important to avoid overlaps or inconsistencies between the different disclosure requirements placed on issuers and originators. The information should also be provided in a user-friendly format to ease understanding and to avoid confusion or misleading interpretations. Structures need to be clear, complete, and presented in an understandable manner.

#### **Question 6:**

- A. For qualifying securitisations, what is the right balance between investors receiving the optimal amount and quality of information (in terms of comparability, reliability, and timeliness), and streamlining disclosure obligations for issuers/originators?***
- B. What areas would benefit from further standardisation and transparency, and how can the existing disclosure obligations be improved?***
- C. To what extent should disclosure requirements be adjusted – especially for loan-level data<sup>15</sup> – to reflect differences and specificities across asset classes,***

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<sup>15</sup> For example, securitisation encompassing revolving underlying assets (e.g. credit card receivables), compared to static pools (e.g. residential mortgages).

***while still preserving adequate transparency for investors to be able to make their own credit assessments?***

When considering whether or not to invest in a securitised instrument, investors typically look at the credit rating issued by credit rating agencies. Current methodologies employed by the majority of credit rating agencies take into account country risk in determining the appropriate credit rating. As a result, some securitisations do not qualify for the highest credit ratings for the simple reason that they are issued in a specific Member State.

Reducing reliance on ratings would mitigate the negative impacts of country ceilings employed in rating methodologies, in line with the aims and objectives of the Credit Ratings Agencies III Regulation (which encourages investors to make their own assessments of creditworthiness).<sup>16</sup>

**Question 7:**

- A. What alternatives to credit ratings could be used, in order to mitigate the impact of the country ceilings employed in rating methodologies and to allow investors to make their own assessments of creditworthiness?***
- B. Would the publication by credit rating agencies of uncapped ratings (for securitisation instruments subject to sovereign ceilings) improve clarity for investors?***

**2.7 Secondary markets, infrastructures and ancillary services**

Securitisation involves a long chain of "ancillary services" (e.g. swaps providers, liquidity facility providers, depositaries). The cost and availability of these services clearly affect the attractiveness of a securitised instrument as an investment. It is thus important to understand if and how EU initiatives could optimise this chain and to identify any other possible issues that could have a negative effect on the functioning of the market infrastructure used for securitisation.

While securitisations are often purchased in order to be held until maturity, developing an effective secondary market could attract a broader investor base and thereby improve the allocation of finance to where it is most needed. The further development of venues for the issuance and trading of securitisation instruments may also contribute to the creation of a deeper and more liquid secondary market. It could also increase transparency for investors as the vast majority of securitisations remain over-the-counter. The development of common benchmarks for these markets may also prove helpful.

**Question 8:**

- A. For qualifying securitisations, is there a need to further develop market infrastructure?***

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<sup>16</sup> See articles 5(a) and 5(c) of the CRA III Regulation.

**B. What should be done to support ancillary services? Should the swaps collateralisation requirements be adjusted for securitisation vehicles issuing qualifying securitisation instruments?**

**C. What else could be done to support the functioning of the secondary market?**

## **2.8. Prudential treatment for banks and investment firms**

### A. General framework for banks' and investment firms' exposures to securitisations

The existing EU capital requirements for banks' exposures to securitisations were developed in a pre-crisis economic environment building on global standards: the Basel II securitisation framework.<sup>17</sup>

Concerns about the adequacy of those requirements were raised in light of the financial crisis, with particular regard to insufficient risk sensitivity, sometimes lenient capital charges, and mechanistic reliance on external ratings.

#### **Question 9:**

- ***With regard to the capital requirements for banks and investment firms, do you think that the existing provisions in the Capital Requirements Regulation adequately reflect the risks attached to securitised instruments?***

At the global level, the Basel Committee has proposed to revise the securitisation framework to make it more prudent and risk sensitive, in particular for higher-rated securitisation tranches.<sup>18</sup> A revised securitisation framework was published by BCBS in December 2014.<sup>19</sup> The revised framework could be used as a baseline for the review of EU rules on the capital treatment of securitisations in order to better reflect the risks attached to these instruments as revealed by the financial crisis.

#### **Question 10**

- ***If changes to EU bank capital requirements were made, do you think that the recent BCBS recommendations on the review of the securitisation framework***

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<sup>17</sup> Under existing CRR rules the capital requirements for well-rated senior tranches can be as low as 7% (i.e. 56 cents per 100 euro of exposure) under the so-called Ratings Based Method.

<sup>18</sup> The Basel Committee suggests that its recommendations take effect as of 1 January 2018.

<sup>19</sup> The revised Basel III securitisation framework represents a significant departure from the Basel II framework in several aspects:

- Complexity of the hierarchy and the number of approaches for the calculation of capital requirements is reduced;
- The application of the hierarchy no longer depends on the role that the bank plays in the securitisation (i.e. investor or originator); or on the credit risk approach that the bank applies to the type of underlying exposures;
- The mechanistic reliance on external ratings is reduced since the Ratings Based Approach is no longer at the top of the hierarchy and other relevant risk drivers have been incorporated into that approach ;
- the capital requirements have been significantly increased, with the aim of making them commensurate with the risk of securitisation exposures. Still, capital requirements of senior securitisation exposures backed by good quality pools will be subject to risk weights as low as 15%.

***constitute a good baseline? What would be the potential impacts on EU securitisation markets?***

***B. Specific framework for banks' and investment firms' exposures to qualifying securitisations***

Any changes to the existing EU rules on capital treatment should be applied in a differentiated way to take into account the lower risk of simple, transparent, and standardised instruments. This approach – in place in the insurance sector and for the banking Liquidity Coverage Ratio – should also be reflected in the rules on the capital treatment for banks and investment firms with respect to their securitisation transactions.

***Question 11:***

- ***How should rules on capital requirements for securitisation exposures differentiate between qualifying securitisations and other securitisation instruments?***

The Basel Committee and EBA are currently working on possible approaches to adequately reflect the special features and risk profile of simple, transparent and standardised securitisations in the rules on the capital treatment of securitisations. These criteria will provide greater clarity and reduce uncertainty, such as around modelling risks, and provide valuable insight into the appropriate calibration of risk weights for securitisation exposures. The Commission is following this work closely as it seeks to base its prudential rules on international best practice.

***Question 12:***

- ***Given the particular circumstances of the EU markets, could there be merit in advancing work at the EU level alongside international work?***

## **2. 9. Prudential treatment of non-bank investors**

High quality securitisation provides an opportunity to expand the investor base for securitisation further, beyond banking actors, to EU institutional investors such as insurers and other long term investors.

The choice to invest in securitised products may offer these firms new investment opportunities in areas where they are not able to invest directly (e.g. SME loans). Furthermore, long-term institutional investors may see advantages from the perspective of investment duration, returns, and asset liability management. If the structural features of EU securitisation markets are further improved through harmonisation at the EU level, the appetite from this investor base may improve and lead to a more sustainable EU market in the future.

***Question 13:***

- ***Are there wider structural barriers preventing long-term institutional investors from participating in this market? If so, how should these be tackled?***

### A. Insurance

In the insurance sector, the Commission has recently adopted, after in-depth consultation, a 'standard formula' in Solvency II for the calculation of capital requirements. The Solvency II delegated act includes two sets of specific calibrations: the first set is applicable to investments in senior tranches of simple, transparent and standardised securitisations; the second set is applicable to all other positions (including non-senior positions in simple, transparent and standardised securitisation, together with non-simple securitisation).

The first set of calibration is based on a 'look-through approach'. This means that the capital requirements applicable to a senior position are capped at the same level as they would be for an insurer holding the underlying assets directly.<sup>20</sup> This approach is deemed appropriate only for the most senior tranches, which have first claim on the underlying assets.

#### **Question 14:**

- A. For insurers investing in qualifying securitised products, how could the regulatory treatment of securitisation be refined to improve risk sensitivity? For example, should capital requirements increase less sharply with duration?***
- B. Should there be specific treatment for investments in non-senior tranches of qualifying securitisation transactions versus non-qualifying transactions?***

### B. Other investors

The following questions focus on qualifying instruments and on other securitisation instruments. While some investors are likely to focus on simple, transparent and standardised securitisation instruments, a number of institutional investors have sufficient expertise to invest in more sophisticated (e.g. non-simple) instruments. This includes, in particular, some asset managers that have been traditionally active in these markets.

#### **Question 15:**

- A. How could the institutional investor base for EU securitisation be expanded?***
- B. To support qualifying securitisations, are adjustments needed to other EU regulatory frameworks (e.g. UCITS, AIFMD)? If yes, please specify.***

## **2.10. Role of securitisation for SMEs**

Developing SME securitisation could help to channel additional funding to the parts of the EU financial system that need it most. Before the crisis, there was some SME securitisation market activity in Member States, including Spain and Italy. Volumes were often driven by

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<sup>20</sup> See also Commission Press release MEMO/15/3120.

public support schemes. However, since the crisis, and despite various initiatives from the private sector and by public authorities, issuance volumes has not recovered, nor substantially developed elsewhere in the EU.

There are specific problems affecting SME securitisation, in particular around information availability, lack of standardisation in underlying assets, and relating to reporting requirements. For instance, heterogeneous loan level data (and, more widely, a lack of credit information on SMEs), may prevent investors from being able to conduct proper due diligence. Currently, business information and scoring firms do not provide all necessary data.

However, several central banks – including the ECB – in Europe have started developing additional information sources to close information gaps (e.g. loan level data requirements<sup>21</sup> and the provision of centralised credit registries). This may help to ensure that important data is available in the future.

#### **Question 16:**

- A. What additional steps could be taken to specifically develop SME securitisation?**
- B. Have there been unaddressed market failures surrounding SME securitisation, and how best could these be tackled?**
- C. How can further standardisation of underlying assets/loans and securitisation structures be achieved, in order to reduce the costs of issuance and investment?**
- D. Would more standardisation of loan level information, collection and dissemination of comparable credit information on SMEs promote further investment in these instruments?**

#### **2.11. Miscellaneous**

A number of market participants are concerned with the complexity and potential inconsistencies associated with the large number of legal texts in the EU dealing with securitisation. Stakeholders have suggested that there would be benefits for both originators and investors in adopting a clear and harmonised set of pan-EU rules common to all financial sectors in an 'umbrella' piece of legislation.

However, in view of the specificities of the different financial sectors (and as prudential objectives differ across sectors and regulations), certain aspects will need to remain in sector specific legislation (e.g. Solvency II, CRR).

#### **Question 17:**

- To what extent would a single EU securitisation instrument applicable to all financial sectors (insurance, asset management, banks) contribute to the**

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<sup>21</sup> See: <http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html>

***development of the EU's securitisation markets? Which issues should be covered in such an instrument?***

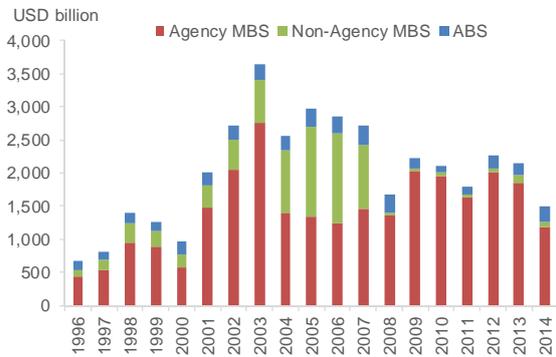
There may be other factors and drivers that could help stimulate qualifying securitisation. Stakeholders are invited to provide information, ideas and suggestions accordingly.

**Question 18:**

- A. For qualifying securitisation, what else could be done to encourage the further development of sustainable EU securitisation markets?***
- B. In relation to the table in Annex 2 are there any other changes to securitisation requirements across the various aspects of EU legislation that would increase their effectiveness or consistency?***

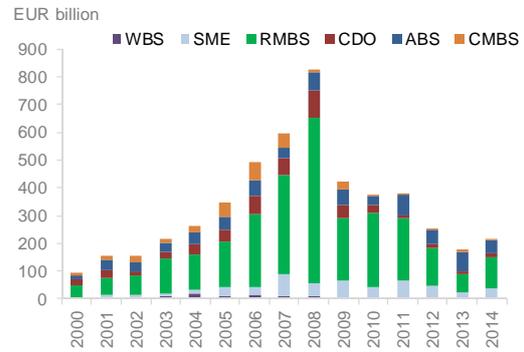
# Annex 1: Stylised facts on securitisation markets

**Chart 1: US securitisation issuance**



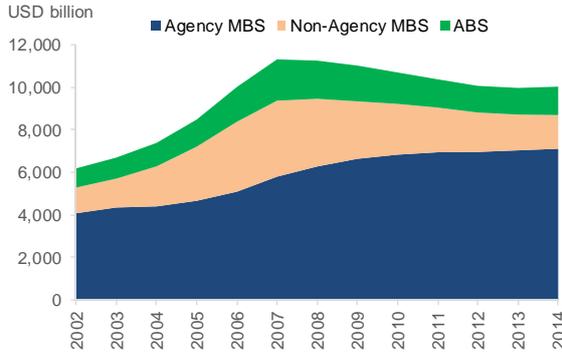
Source: SIFMA

**Chart 2: European securitisation issuance<sup>a</sup>**



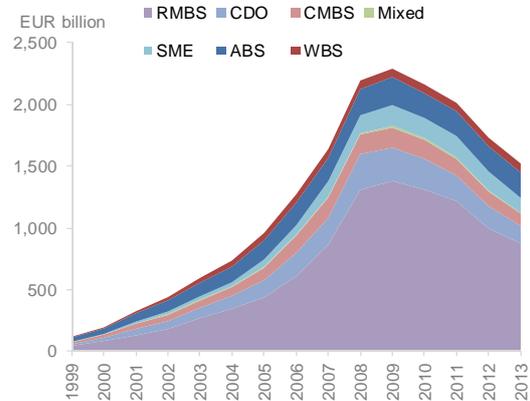
Source: SIFMA, Commission Services

**Chart 3: US securitisation outstanding**



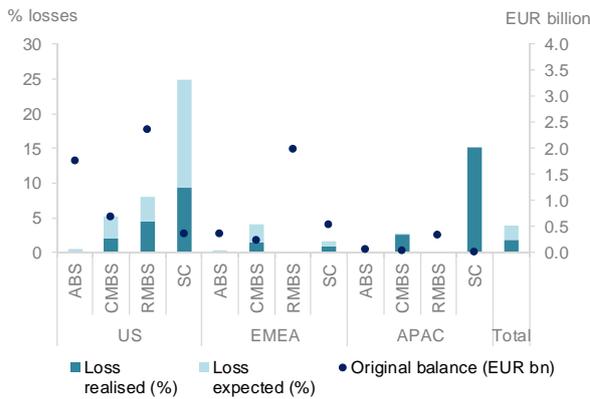
Source: SIFMA

**Chart 4: European securitisation outstanding**



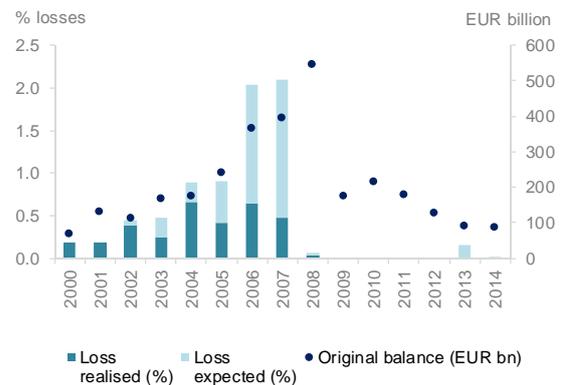
Source: SIFMA

**Chart 5: Cumulative losses for 2000-2014 securitisation issuances, by region and product type<sup>b</sup>**



Source: Fitch Ratings

**Chart 6: Cumulative losses for EMEA 2000-2014 securitisation issuances, by vintage<sup>b</sup>**



Source: Fitch Ratings

<sup>a</sup>includes retained issuance

<sup>b</sup>Fitch rated deals only; EMEA = Europe, Middle East, Africa; APAC = Asia and Pacific. ABS = Asset Backed securities; CMBS = Commercial Mortgage Backed Securities; RMBS = Residential Mortgage Backed Securities; SC = Structured Credit.

## Annex 2: Mapping of existing EU provisions dealing with securitisation

Sector	Legal text(s)	Subject
<b>Banking</b>	Regulation 575/2013/EU (Capital Requirements Regulation)  Commission Delegated Regulation 2015/62 ("LCR" Delegated Act)  Commission Delegated Regulation 625/2014  Commission Implementing Regulation 602/2014	Definitions, prudential treatment, liquidity, risk retention, disclosure and due diligence
<b>Insurance</b>	Directive 2009/138/EC (Solvency II)  Commission Delegated Regulation 2015/35 (Solvency II Delegated Act)	Definitions, risk retention, due diligence, disclosure, eligibility criteria and prudential treatment
<b>Asset management</b>	Directive 2011/61/EU (AIFMD)  Commission Delegated Regulation 231/2013 (AIFM Regulation)	Risk retention and due diligence
<b>Credit ratings</b>	Regulation 1060/2009 (CRAIII Regulation)  Commission Delegated Act 2015/3	Disclosure
<b>Prospectus</b>	Commission Regulation 809/2004 (Prospectus-Regulation)	Disclosure