Luxembourg, 24 September 2021

Response to European Commission targeted consultation on the functioning of the EU securitisation framework

Introduction

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We thank the European Commission for the opportunity to participate in this targeted consultation on the functioning of the EU securitisation framework.

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	○	○	○	◉	○	○
Widening the investor base for securitisation products in the EU	○	○	○	◉	○	○
Widening the issuer base for securitisation products	○	○	○	◉	○	○
Providing a clear legal framework for the EU securitisation market	○	○	○	◉	○	○
Facilitating the monitoring of possible risks	○	○	◉	○	○	○
Providing a high level of investor protection	○	○	◉	○	○	○
Emergence of an integrated EU securitisation market	○	○	○	◉	○	○

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 SECR aimed at developing a simple, transparent and standardised securitisation market. As reflected in the above table summarizing the main objectives of SECR, ALFI is of the view that overall these objectives have not or have only partially been achieved.

The main outcomes may be summarised as follows:

- SECR is perceived by the main actors of the securitisation market as being the source of demanding regulatory requirements (in particular as to transparency) triggering material additional human and financial costs without any obvious added-value, especially as far as institutional investors are concerned. Moreover, the said actors have not identified any clear wider access of the public to securitisation products;

- Moreover, it has been noticed by our members that some of the rules contemplated by the SECR have generated some adverse effects, such as disadvantaging EU institutional investors in certain segments of the market. We may refer in particular to the accessibility of EU institutional investors to the US securitisation market. Indeed, although this market is very attractive and the demand is high (particularly US CMBS), our members face some difficulties to invest in US securitisation positions. One of the main reasons mentioned by our members is the reluctance of US issuers to commit to comply with the transparency requirements contemplated by Article 7 of SECR and the corresponding disclosure in their offering documents (i.e. disclosure stating no intention or covenant to comply with Article 7 SECR). As a consequence, our members may be prevented from purchasing these securitisation positions although they potentially satisfy both the US Dodd-Frank Act and EU risk-retention requirements (except for Article 7 of the SECR).

This puts at disadvantage EU institutional investors in a context of increasing globalization and an equivalence regime on transparency disclosures between the US and the EU should be initiated to limit those disadvantages. ALFI would welcome ensuring that the objective of improving the competitiveness of the European financial industry be part of the review of the securitisation framework.

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.

The SECR created additional costs by introducing several additional requirements e.g. due diligence, reporting and risk retention obligations (ex-ante checks, oversight checks). From an investment perspective, this has resulted in significant administrative new demanding tasks, regardless of whether the securitisation concerned is a STS or a non-STS. We note that the SECR has also imposed material constraints when investing in non-EU securitisations, thereby limiting diversification and ultimately reducing opportunities for investors. These costs are not only financial costs but also human costs.

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.

Our members have not perceived any material change in the number of private securitisations.
Historically market actors in certain asset classes seek private or public securitisations depending on the type of investors and investor needs. This is not different from other investment products. The private securitisations are the means to an end and the same goes for public securitisations (e.g. listing of deals for regulatory reasons or requirements of investors).

Private securitisations have lower barriers to entry and do allow the transactions that cannot (or not yet) be realised in the public market or are from a cost perspective not sensible to be realised by public transactions (e.g. confidentiality constraints) to exist and grant liquidity to actors that may not obtain access to funding in a particular scenario (SMEs).
Data may suggest that there are more private securitisation but the notifications by different parties in the chain may have given a distorted image of the actual number of private securitisations conducted.

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.

As per the SECR, notifications apply to both private and public securitisations. In ALFI's view, national competent authorities (hereafter "NCAs") receive sufficient information to perform their supervisory duties and have not identified any reasonable background justifying to increase the information to be provided to NCAs.

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.

Investors in private securitisations are often sophisticated investors with own due diligence requirements and quantitative and qualitative assessments of risk profiles (e.g. financial institutions or specialised investors depending on the type of investment fund invested through). They adapt their due diligence requirements to the needs of a particular transaction and interact with the relevant transaction parties.
In private transactions the relevant parties involved in the securitisation are often connected or communicating closely, making the access to information generally more streamlined by the nature of the transaction.

The prescriptive manner in which the due diligence information needs to be made available is disconnected from this reality and adds an additional layer of complexity to private securitisations where such information will likely already be in circulation between the parties. Where a private transaction is STS, the institutional investors are further required to assess the compliance with the STS criteria. In certain cases the STS qualification of the product in itself may not be relevant for the institutional investor (i.e. not affect any regulatory status) – yet requiring the institutional investor to conduct a due diligence. In such cases due diligence resources are not efficiently allocated, in particular as the STS qualification does not affect the credit quality of the product in itself.

The Luxembourg market players note that the due diligence requirements create a parallel due diligence procedure solely for compliance with the SECR but which is disconnected from the reality in which market actors connect their due diligence for a particular asset class. As such, market players have parallel due diligence processes running which are not cost effective.

Question 2.5:

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

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

Please explain your answer to question 2.5:

5000 character(s) maximum

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:

5000 character(s) maximum

The publication of a prospectus under the Prospectus Regulation should not be the metric of determining whether a securitisation is public or private. As such, a mere but discrete listing (on a regulated market) for a limited number of parties could lead to triggering the public securitisation obligations whereas the economic reality of a transaction is in essence a “private market”.

The term of private securitisation can be further refined by providing different subcategories of private securitisations upon which the requirements to be fulfilled are dependent (e.g. It would be sensible in the context of a small club deal in which all actors know each other to require a different level of due diligence; e. g. a single asset securitisation will require a different type of due diligence than a basket of assets rebalancing each other.) When defining such sub-categories it should be kept in mind that the AIFMD already contains a set of rules with regards to how assets are managed.

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:

5000 character(s) maximum

Please see above in comment to question 2.4 the item on parallel due diligence procedures in practice and STS specific requirements.

The current due diligence and transparency regime seems highly complex and unnecessarily prescriptive. Given the challenges in navigating the SECR, the burden placed on market participants may result in potential investors from being deterred, particularly smaller and potentially less-well-resourced investors. Furthermore, given the prescriptive nature, it imposes a certain rigidity which does not permit the legislative framework to take into account market developments – in practice this means that any potential changes will need to through the full rigors of ordinary legislative procedure. For the market players, the worst case scenario is that they are left with a product that no longer reflects market and investor needs.

Away from the complexity of the regulation, due to the complex treatment of non-EU issuer (please see question 1.3), it reduces diversification into non-EU countries and sectors which could be beneficial for investors in terms of diversification, protection and returns.

Question 3.2:

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

5000 character(s) maximum

Before taking up a securitisation position, an investor's due diligence analysis focuses on three key pillars: 1) Originator, 2) Pool, and 3) Structure.

Regarding the due diligence on the originator, this will entail analysis of its business model, origination standards and loan enforcement process. Institutional investors will take any credit view from the credit research into consideration, where relevant and appropriate. When looking at the pool of assets, an investor will typically assess the overall composition and quality of the collateral, taking into account origination standards and available information about past performance of the respective back book. This will be complemented with a macroeconomic analysis to form a view on how the collateral could perform. As part of this, our members regularly run cash flow scenarios. With regards the due diligence on the structure, this entails a detailed analysis of the waterfall, triggers and their effects on the tranche under different scenarios. This also includes an assessment of the counterparties in the structure (swap/hedge counterparties /agreements, servicer, administrator etc.) and respective triggers under different scenarios.

Question 3.3:

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

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

Please explain your answer to question 3.3:

5000 character(s) maximum

While this can be useful, it is not a key driver and may be disproportionate.
In this respect, the ESAs express the view that "due-diligence at loan-level is essential to ensure that investors have an accurate understanding of the value and of the risk associated with the 7 Review Report, paragraph 20(ii). To market players this proposal seems challenging.
For non-granular portfolios, particularly with large individual exposures, it is necessary to understand each individual asset. Requiring the same level of detailed, asset-by-asset diligence of a highly granular portfolio of small exposures, particularly when revolving, is not sensible and ignores the portfolio effects that begin to appear in such circumstances. That is to say, for instance that having a detailed understanding of the creditworthiness of the obligor who owes €150m out of a €300m CMBS deal is important. Having the same detailed understanding of the obligor who owes €50 in credit card debt for one period in a €500m portfolio is not; and it is certainly less important than understanding the general features and behaviour of the portfolio as a whole. Consequently, overall, it would seem much more justifiable and practical to market players to make any requirements for institutional investors to undertake loan-level diligence part of the overall proportionate diligence guidance.

Question 3.4:

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

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

Please explain your answer to question 3.4:

5000 character(s) maximum

Please see comment under question 3.3.
Where loan-by-loan disclosure is useful, it is not necessarily related to maturity (i.e. loan-by-loan analysis is independent of maturity).

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

For investment in investment-grade (IG) tranches, there should be only light due diligence requirements. When investing in non-IG investments there may be a need for additional due diligence, given the risk of "being wrong" on an investment is magnified when investing further down in the capital structure.

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:

5000 character(s) maximum

The extent of the due diligence analysis should be consistent regardless of whether the securitisation is true-sale or synthetic.

Question 3.7:

Are disclosures under Article 7 sufficient for investors?

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

Please explain your answer to question 3.7:

5000 character(s) maximum

In ALFI's view, the disclosures are sufficient and, as mentioned on several occasions in this consultation, rather overburdening.

From a qualitative point of view, our members are of the opinion that the type of information to be disclosed is inconsistent with the information intended to be collected by investors in practice and the needs of the market segments they operate in. The standardisation attempts at the level of the information to be provided are useful to the extent standardisation is being used for data collection purposes. However, in order to be conducive to the real life due diligence exercise of the investors, it must be reconnected with the actual due diligence procedures and models used in the applicable markets. See also the response regarding question 2.4 above.

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

Please explain your answer to question 3.8:

5000 character(s) maximum

It is not customary for parties to a CMBS securitisation transaction to collect information on the tenant of the commercial real estate property securing such CMBS, as requested in fields CRET4 to CRET9 of Annex 3 of the Commission Delegated Regulation 2020/1224 (the "CDR");

ESMA acknowledged the difficulty of parties to CMBS transactions to get into possession of tenant information (para 53 of Final Report on draft RTS). Unfortunately, ESMA oversaw that this difficulty extends to obtaining information on the identities of the tenants and the underlying lease agreements;

Since the reporting templates do not, or only partially foresee the possibility to use the “ND” option, parties in a CMBS transaction face uncertainty as to the fulfilment of their reporting obligation with respect to loans that are secured by land, storage, empty properties or properties used by the owner, i.e. where there simply is no tenant; and

Most importantly, the identity of the tenant or the terms of the underlying lease agreement are not of primary importance for investors, since the repayment of the loan depends on the solvency of the borrower, for which sufficient information is provided.
Please also see the comments under 2.2 and 2.4.

Question 3.9:

Can you identify data fields in the current disclosure templates that are not useful? Please explain your answer.

5000 character(s) maximum

Yes – please see 3.8.

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

Please explain your answer to question 3.10:

5000 character(s) maximum

The regime can be simplified without endangering the objective of protecting EU institutional investors and facilitating supervision of the market in the public interest. One example is Article 5. 4. (a) 2nd clause. For instance, this clause could be shortened or taken out without endangering the need of investors to do surveillance work.

4. Jurisdictional scope

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

Question 4.1:

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

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

Please explain your answer to question 4.1:

5000 character(s) maximum

To ensure coherence with AIFMD which contains an express exemption carving out securitisation vehicles from its scope, the SECR shall contain a similar express exemption carving out alternative investment funds as defined in Art 4.1 (a) of AIFMD ("AIFs") from its scope.

Securitisation vehicles and AIFs have indeed a different nature, purposes and macroeconomic impacts. In particular, a securitisation vehicle is a financing and risk management tool. It usually aims at doing refinancing and the setting-up focuses on a transfer of certain risks. Investors typically buy underlying pre-identified or pre-identifiable groups of assets. On the other hand, an AIF is a placement and an investment management tool. Investors invest in a "blind pool" vehicle and buy discretionary management services with respect to assets which will be acquired in accordance with a pre-defined investment policy.

These differences have lead to the adoption of two different set of rules, each, specifically tailored to the idiosyncrasies of these vehicles. Although the exclusion of AIFs from the scope of SECR is implicit as it is notably clear that the rules of SECR have not been designed to apply to AIFs and are actually not compatible with the nature of an AIF, it would be welcome to have a clear parallelism in the form between SECR and AIFMD regarding the definition of their respective scopes and corresponding exclusions thereof.

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:

5000 character(s) maximum

This would hinder the attractiveness of the EU securitisations for foreign investors/sell-side entities and would hinder the competitiveness of the EU on the global securitisation market. The sufficient protection of the relevant actors can be achieved by other means.

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):

5000 character(s) maximum

The securitisation market being a market with international actors, in our view there is no reason why only EU entities should be eligible. In ALFI’s opinion, entities established outside the EU should also be eligible to fulfil the risk retention holder roles provided that the respective entity agrees to comply with the risk retention requirements under article 6 SECR.

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):

5000 character(s) maximum

(i) Whilst the disclosure obligations in Article 7(1) apply to the originator, sponsor and SSPE indistinctively, the appropriate reporting entity may for a given securitisation transaction, not be located in the EU. Artificially shifting the obligation to an EU party does not add any additional safeguard and may render the regime less attractive and further increase the structural costs. In particular, where the reporting entity needs to create additional internal processes to cater for reporting obligations or where for example the reporting entity is the SSPE, resources of the SSPE are likely to be limited. The relevant contractual obligations would also need to be analysed under their governing law which may lead to further time constraints.

(ii) By asking for an EU element to be involved effectively limits the amount of issuers available to EU investors to invest in, i.e. limits diversification. In terms of a sell-side party located in a 3rd country be subject to explicit obligations, it is important to highlight that each 3rd country issuer has its own regulator and regulatory framework which might not necessary be in line with rules applied by EU regulators. Having said this and bearing in mind the EU regulatory goal of protecting the investor, we would think that 3rd country issuers would be willing to adjust to EU contractual arrangement and provide the necessary information and documents in case the SECR is less complex and prescriptive without devaluation the protection aspect for the potential investor.

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):

5000 character(s) maximum

Party or parties located in the EU should 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, but only provided such parties have the overall responsibility in the overall structure for the credit-granting criteria and processes. In the opposite case, the EU parties may not be in the position to perform due diligence on the third country entities.

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):

5000 character(s) maximum

The sponsors are subject to the credit-granting criteria under Article 9 of the SECR. There is no reason why their compliance with this obligation should be exempted from the verification requirements under Article 5(1) (b) of the SECR if they are located in a third country.

Question 4.4:

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

Yes

No

Don’t know / no opinion / not applicable

Please explain your answer to question 4.4:

5000 character(s) maximum

Yes, the third country sell-side entities will not be in the position to apply highly inflexible modalities set out in Article 7 and the delegated legal acts. Equivalency standards should be established.

If you answered ***Yes*** to question 4.4, how can it be ensured that the ultimate objective of protecting EU institutional investors remains intact?

5000 character(s) maximum

Equivalence standards should be established in relation to third- country sell-side entities in order to ensure adequate protection of EU institutional investors.

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

Please explain your answer to question 4.5:

5000 character(s) maximum

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. Their exemption from this obligation would give an unfair advantage to the non-EU AIFMs, compared to the EU AIFMs.

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

Sub-thresholds AIFMs should not be regarded as institutional investors. These vehicles are subject to a lighter regulatory burden under the AIFMD and a similar approach should be adopted for the SECR.

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

If you answered ***Yes***, please provide a brief explanation how was your company affected:

5000 character(s) maximum

The STS being an additional category of the SECR, market participants believe it would be more important to ask whether the lack of recognition of non-EU securitisation under the SECR has impacted market participants. The response to this question would be “yes” insofar the SECR results in banning UCITS in practice from investing in US securitisations. Given the US markets global development, the inability to tap into this market may have detrimentally impacted the investors.

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

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:

5000 character(s) maximum

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?

5000 character(s) maximum

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

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

Describe the use you have made of it?

5000 character(s) maximum

Question 6.4:

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

5000 character(s) maximum

In ALFI’s view it may be more useful to publish information on environmental performance given that where such information is available and relevant, it is valuable to investors to understand the strategic business management and increase the credibility of the company. That said, such initiatives should apply on an elective basis and should not be mandatory for all participants and asset classes across the board.

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)

- [x] 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

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:

5000 character(s) maximum

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

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

Question 7.1:

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

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

Question 7.2:

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

5000 character(s) maximum

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:

5000 character(s) maximum

A) Our members have noticed some divergence between NCAs in the interpretation of the first sentence

of Article 5 paragraph 5 of the SECR.

This has led to a divergence of implementation of the delegation rules applicable to the due diligence assessment of securitisation positions contained in Article 5(5) SECR, when (i) the delegating institutional investor is a UCITS management company or AIFM and (ii) the delegated entity is an investment portfolio manager not located in the EU.

As per some NCAs' practice, although the portfolio management of an investment fund (including the due diligence over the assets held by the said investment fund) is duly delegated by the UCITS management company/AIFM to an investment manager in accordance with the UCITS/AIFMD rules, these NCAs require the said UCITS management company/AIFM to remain involved in the ex-ante due diligence process referred to in Article 5 SECR if the delegation is to an investment manager located outside the EU (hence not qualifying as institutional investor). Such NCAs seem to read the above provisions as a prohibition for the UCITS management companies/AIFMs to delegate the due diligence assessment of securitisation positions to a delegated portfolio manager which is not located in the EU (i.e. not qualifying as an institutional investor as per SECR).

Other NCAs do not read this provision to mean that the due diligence assessment cannot be performed by the delegated investment portfolio manager (whether located within or outside the EU) of the UCITS management company or AIFM. As per the UCITS/AIFM delegation rules, the due diligence as to the eligibility of the target investments can entirely be performed by the duly appointed delegated investment manager. The UCITS management company /AIFM performs its oversight duties and accordingly is informed in particular of any due diligence concerns as per an escalation process in place with the delegated investment manager. In case the investment manager is located outside the EU, the UCITS management company/AIFM can however not transfer the liability as outlined in article 5(5) and remains liable for any failures regarding the due diligence requirements foreseen in the SECR.

Requiring that a UCITS management company /AIFM remains involved in the due diligence process, on an ex-ante basis, although appropriate delegation arrangements are in place with an investment manager located outside the EU causes substantial operational and timing challenges:

- Analytical conclusions on the risk characteristics of a securitisation position are available only at the end of the credit analysis performed by the delegated investment manager;
- Performing a credit analysis takes some time and is usually finalised shortly before pricing;
- Involving the UCITS management company/AIFM at this point in time not only duplicates work (although a delegation is in place) but also puts a lot of time pressure for not being late, especially with regards to secondary market transactions, which puts the performance of "best execution" obligations at risk. It must be reminded that depending on the location of the delegated investment manager, time-zone issues may be faced;
- Investment managers look after several transactions at the same time which increases the operational issues and timing constraints triggered by the need to involve the UCITS management company/AIFM on an ex-ante basis.

ALFI would welcome a clarification that the delegation rules stated in Article 5(5) SECR do not derogate to the standard delegation rules contained in the UCITS and AIFMD framework with regard to the performance of the due diligence assessment over the assets into which an investment fund can invest. In other words, ALFI would welcome a clarification that the due diligence contemplated by Article 5 SECR can be fully delegated by a UCITS management company/AIFM to any investment manager (EU or non-EU) duly appointed to perform the portfolio management in accordance with the UCITS and/or AIFMD framework. In ALFI's view the purpose of Article 5(5) is solely to provide that where an institutional investor delegates due diligence assessment to an investment manager which is also an institutional investor, the liability for same transfers to the investment manager. It does not seek to prohibit something that is otherwise common (ie, delegation by UCITS, UCITS management company or AIFM).

B) In addition to the above, our members have noticed that NCAs have implemented diverging practices in respect of (i) the need to file information, (ii) the information to be filed and (ii) the frequency of filings in respect of private transactions.

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):

5000 character(s) maximum

Please see the comment to question 8.3 Additional guidance ensuring a level playing field would be useful. In addition, the SECR being principles-based, technical guidelines on how compliance with each requirement should be verified, as well as more clarity on what would be considered an appropriate method or practice to establish and validate compliance would be necessary.

B) risk retention requirements (Art 6)

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

Please explain your answer to question 8.4 B):

5000 character(s) maximum

C) transparency requirements (Art 7)

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

Please explain your answer to question 8.4 C):

5000 character(s) maximum

US entities do not formally abide by the transparency requirements of the SECR.
Luxembourg market participants increasingly are coming across wording in the prospectuses of non-EU securitisations, implying that the transparency requirement may not be applicable to non-EU securitisation issuers. This is usually related to references to various ESMA and EBA guidelines which serve as basis to the position. A clear statement on this particular point - whether transparency requirements are applicable to non-EU issuers or not – would be of use.

D) credit granting standards (Art 9)

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

Please explain your answer to question 8.4 D):

5000 character(s) maximum

E) private securitisations

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

Please explain your answer to question 8.4 E):

5000 character(s) maximum

F) STS requirements (Articles 18 – 26e)

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

Please explain your answer to question 8.4 F):

5000 character(s) maximum

Question 8.5:

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

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

Please explain your answer to question 8.5:

5000 character(s) maximum

Question 8.6:

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

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

Please explain your answer to question 8.6. In particular, if you answered ***No***, how could they be improved?

5000 character(s) maximum

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

Please explain your answer to question 8.7. In particular, if you answered ***No***, how could they be improved?

5000 character(s) maximum

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:

5000 character(s) maximum

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

Please explain your answer to question 9.2:

5000 character(s) maximum

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:

5000 character(s) maximum

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

Please explain your answer to question 10.1:

5000 character(s) maximum

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

Please explain your answer to question 10.2:

5000 character(s) maximum

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):

5000 character(s) maximum

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.

5000 character(s) maximum

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):

5000 character(s) maximum

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.

5000 character(s) maximum

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

Please explain your answer to question 12.1:

5000 character(s) maximum

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?

5000 character(s) maximum

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?

5000 character(s) maximum

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?

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

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

Please explain your answer to question 15.2:

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

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:

5000 character(s) maximum

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can

upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2021-eu-securitisation-framework_en)

Consultation document (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-consultation-document_

More on securitisation (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/securitisation_en)

Specific privacy statement (https://ec.europa.eu/info/files/2021-eu-securitisation-framework-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

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