EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB staff contribution to the European Commission's targeted consultation on the functioning of the EU securitisation framework

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1 General remarks

The European Central Bank (ECB) welcomes the Commission's targeted consultation on the functioning of the EU securitisation framework. A well-functioning European securitisation market is an important element of the capital markets union (CMU) agenda. The ECB's Governing Council recently concluded that further progress at the EU level was needed to ensure that the EU securitisation market could play a meaningful role in transferring risks away from banks so that they can lend more to the real economy, while creating opportunities for capital market investors.[1]

Improving the EU securitisation market can help deepen the EU's capital markets, provide lending to the real economy, and hence contribute to the CMU agenda. Policy action should promote the sustainable growth of the securitisation market, considering the interplay with other debt and equity instruments, and incentivise the transfer of risks outside of the banking sector to those actors best placed to carry them. Policy changes should promote simple and transparent transactions that could support financial stability and market functioning. While securitisations can play a role to free up capacities in the banking sector and increase financing to the economy, policy changes should also target specific market segments through for example securitisation platforms, to help increase the financial means available for key policy priorities in Europe, particularly the green and digital transitions.

The ECB has long supported the EU's objective to revive the European securitisation market, while maintaining a sound prudential framework. The asset-backed securities (ABS) purchased programme launched in October 2014 helped to improve market transparency and to support simple ABS. This support to simple and transparent securitisations also extended through the joint discussion paper from the ECB and the Bank of England, also in 2014, which was a seminal contribution to the development of a regulatory framework for simple, transparent and standardised securitisations. More recently, the ECB has been actively supporting the industry's efforts to further standardise and simplify securitisations, with a view to allow for a streamlined and fast-track supervisory significant risk transfer (SRT) assessment process, the securitisation market would benefit from further initiatives to enhance standardisation and scaling up of the market.

The adoption of the Securitisation Regulation in 2017 and the implementation of the Basel III framework for securitisation, effective 1 January 2019, aimed to strike the right balance between the need to revive the European securitisation market by making the securitisation framework more attractive to both issuers and investors, and the need to preserve the prudential nature of the regulatory

1 See Statement by the ECB Governing Council on advancing the Capital Markets Union.

framework[2]**.** This process has been complemented by subsequent amendments to the Securitisation Regulation, which most notably expanded the scope of simple, transparent and standardised (STS) securitisations to synthetic transactions[3].

Against this backdrop, the ECB response indicates areas considered most promising to enhance the framework for securitisation. It gives suggestions for action so that the market can develop in a sustainable manner, including by addressing issues related to the lack of demand.

It argues that initiatives to support market development should ideally be developed at the EU level. This would allow to achieve economies of scale in the development of such products, facilitate the upscaling of the market and support the integration of EU markets, which would broadly support the CMU.

In addition, it notes that – while the ECB is looking forward to the outcome of the consultation and concrete proposals on securitisation – this can only be seen as a first step towards a more comprehensive set of actions to deliver CMU. Progress is needed on other challenging and open dossiers[4]. Securitisation would equally benefit from the harmonisation of corporate insolvency rules, accounting frameworks, and securities law, as well as better disclosure of the financial information by EU corporates. These issues are key to deliver the necessary harmonisation for European markets – including for securitisation, to scale up throughout the Single Market. To reach progress in these areas, alternatives methods could be envisaged such as the introduction of a 28th regime as an intermediate step towards further harmonisation within the EU. This could be particularly useful in the areas of contract law where national differences are one aspect that limit the creation of homogeneous asset pools with underlying assets from several EU Member States. A 28th regime in the area of contract law could be designed as an optional instrument for contracting parties wishing to use it – whilst national laws would remain in place. Similarly, fragmentation of insolvency laws deters investors from investing in securitisations with underlying assets across EU Member States because the lack of equal safeguards and predictability with regards to the potential losses of cross-border claims prevent them from properly assessing the risks and their chances for recovery in case of default.

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2 See Opinion of the European Central Bank of 11 March 2016 on (a) a proposal for a regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitization; and (b) a proposal for a regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CON/2016/11).

3 See Opinion of the European Central Bank of 23 September 2020 on proposals for regulations amending the Union securitisation framework in response to the COVID-19 pandemic (CON/2020/22).

4 “Follow the money: channelling savings into investment and innovation in Europe”, speech by Christine Lagarde, President of the ECB, at the 34th European Banking Congress: "Out of the Comfort Zone: Europe and the New World Order", Frankfurt am Main, 22 November 2024

2 Specific remarks

2.1 Effectiveness of the securitisation framework

A well-functioning securitisation market can play an important role for the EU's financial market and the economy. Securitisation can be effective in channelling money from capital markets into projects and in redistributing risks across the entire financial system. Banks can rely on securitisation as a strategic tool to manage both capital (through capital relief) and funding. To achieve capital relief, securitisation requires a positive significant risk transfer (SRT) assessment from the competent authority, acknowledging that risks have been actually transferred and will not be re-assumed by originators during the life of the securitisation. While only cash (true sale) securitisation can be used for funding purposes, SRT transactions can be carried out using either cash or synthetic structures.

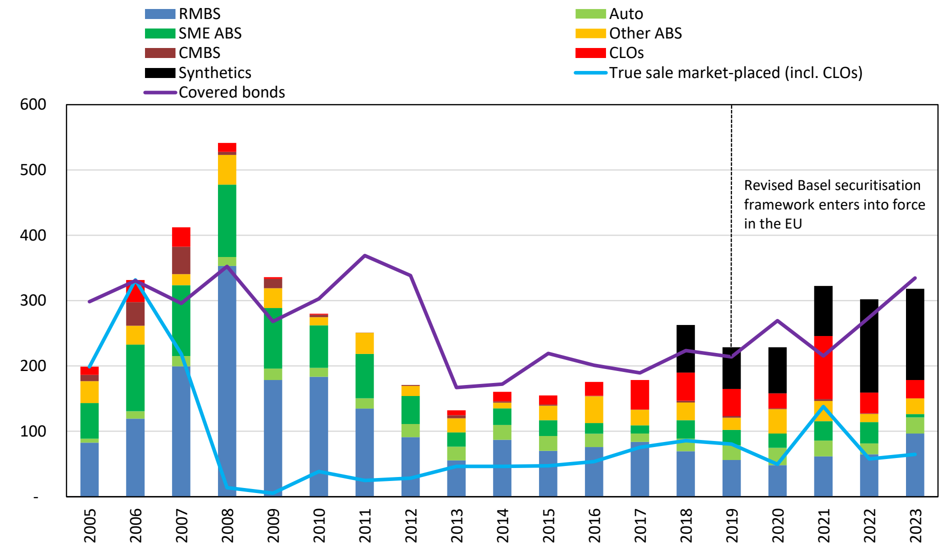
The objectives of policy measures for securitisation should be to foster a more active and sustainable market development within a sound prudential framework:

- Enabling a genuine transfer of risk outside the banking sector to a diversified investor base that is able to manage those risks appropriately.
- Promoting sustainable growth of securitisation volumes, avoiding any unintended or excessive build-up of risks.
- Promoting simple and standardised products to buttress financial stability and attract new market players.
- Targeting reforms to use securitisation as a strategic tool to finance the real economy and support European competitiveness, especially the green and digital transition.

Judging by the significant structural shifts that have taken place since the global financial crisis, banks have changed the way they use securitisation to meet their funding and regulatory capital needs. While the European true sale securitisation market has decreased and stabilised at lower levels when compared with the peak during the global financial crisis, issuance volumes of synthetic securitisation and covered bonds have grown significantly in recent years. Euro area banks use covered bonds for secured funding and synthetic securitisations for risk transfer and regulatory capital release. Importantly, synthetic securitisations have overtaken true sale structures as the vehicle of choice for risk transfer among banks. When considered holistically, European securitisation issuance therefore appears to be more dynamic than when assessed only for traditional, true sale securitisations (see Chart 1, which shows the trend in traditional, synthetic securitisations and covered bonds issued in the euro area).

Chart 1

Euro area securitisation and covered bond issuance (EUR billions)



Sources: JP Morgan, Bloomberg Finance L.P., ECB Banking Supervision, European Covered Bond Council and ECB calculations.
Notes: CLO issuance refers to EU ex United Kingdom. Synthetic securitisation issuance refers to issuance by significant institutions supervised by the ECB; available data start in 2018.

Banks have adapted their use of both securitisation and covered bonds to best suit their needs. Securitisation and covered bonds complement each other, sharing certain similarities but also with some important structural differences. While securitisation enables the tranching of risk, exposing the investors in senior tranches to losses only after the more junior tranches have been depleted, covered bonds are debt securities where all investors are ranked equally. Unlike securitisation, which is backed only by the securitised underlying assets, covered bonds provide investors with dual recourse against both the issuer and the cover assets. Furthermore, covered bonds only provide funding benefits, making them more comparable to cash securitisations than to synthetic securitisations, which do not provide funding benefits. In terms of remuneration, however, covered bonds are cheaper than cash securitisation, as investors are exposed to more limited risks. Overall, the reduction in the use of cash deals after the global financial crisis and the increased use of synthetics and covered bonds show that banks have optimised their strategies to draw capital and funding benefits.

The significant increase in synthetic securitisation – done predominantly in private markets for capital relief purposes, impacting less the relationship between the bank and the client – resulted in high retention levels among banks of their own SRT securitisations (see Chart 2).[5] This is particularly the case for the most senior tranches of these transactions, for which market placement is rather limited, while riskier tranches are protected by external investors. From a prudential perspective the high retention raises attention since in case of an unexpected credit risk deterioration in the underlying exposures, losses may be

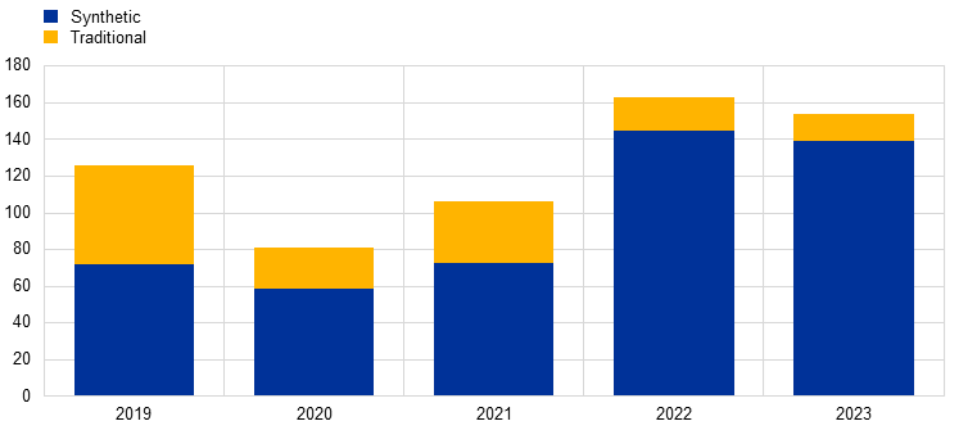
[5] Since banks keep the underlying exposures in synthetic transactions on their balance sheet, these transactions have no impact on the direct relationship between banks and their clients.

ultimately carried also by the holder of senior tranches (in this case the originating bank). Synthetic transactions are usually private and bilateral in nature, which implies an absence of a secondary market, impacting negatively the liquidity of the securitisation market. In addition, in case synthetic transactions are used for capital optimisation purposes rather than for new lending, they may not contribute to the CMU objectives.

Conversely, true sale securitisation has failed to garner the same level of interest as its synthetic counterpart. More precisely, there has been a sharp decline in the issuance of residential mortgage-backed securities (RMBS) in the EU following the global financial crisis, while issuance of other asset classes has been subdued (see Chart 1).

Chart 2

Evolution of the capital relief market: transactions with performing loans (EUR billions)[6]



Source: ECB Banking Supervision.

All in all, the evolution of EU securitisation markets has been more complex than meets the eye. Against this backdrop, any assessment of the need to further support securitisation markets should take a holistic view that considers both supply and demand factors. For instance, for the time being, the investor base remains quite limited and concentrated among a few non-bank financial institutions, rendering very difficult the placement of the senior tranches by originators. The ECB is in favour of a comprehensive analysis of the limiting factors affecting investors' appetite to invest in securitisation tranches.

The regulatory framework should promote the development of an active and sustainable market. Potential risks that could impair market functioning should be avoided, such as a small and homogenous investor base, unhealthy volumes, or opaque and complex structures that might pose financial stability risks. Authorities also need to be able to monitor interlinkages between investors and the banking

6 The capital relief market includes SRT and full deduction transactions (1250%) (i.e. where all retained tranches are risk-weighted by 12.50 or deducted from CET1) on performing exposures originated by SSM significant institutions.

sector via an enhanced supervisory framework, embedding also better statistics, in particular for the NBFI sector.

In a sustainable securitisation market, banks will channel funding and lending to the economy throughout the cycle. Drawing on the lessons of the global financial crisis, when opaque and complex securitisations led to excessive risk-taking by originators and prevented investors from running proper due diligence, we would do well to ensure that securitisation does not create excessive leverage in the financial system by fuelling asset bubbles and hiding risks on bank balance sheets. Incentivising simple transactions with clear and transparent objectives would help to avoid renewed stigma effect for the securitisation market. These features would alleviate procyclicality by minimising the risk of deleveraging and tightening of credit conditions if the economic cycle turns.

Well-functioning securitisation markets instead could potentially foster cross-border activity among banks and make banks more competitive. In a more integrated pan-European capital market, banks could exploit economies of scale and offer more attractive products and services in several countries. This in turn would foster intra-EU competition in the banking sector, although the exact magnitude of this effect should be further evaluated. Achieving a pan-European securitisation market would be facilitated by ensuring closer harmonisation of insolvency regimes and better disclosure of the financial information by EU corporates, which would ultimately foster standardised securitisation of cross-border pools.

Lowering bank capital requirements would not provide further incentive to transfer risks out of the banking sector and would come at the cost of further deviations from international standards. The ECB considers, in line with the European Supervisory Authorities (ESAs)[7], that the securitisation prudential framework for banks – namely capital and liquidity regime- is not a major obstacle to the task of strengthening EU securitisation markets. In any case, making changes to capital requirements should not leave pockets of risk unaddressed and should be compatible with international standards.

The most impactful measure for securitisation and the CMU more broadly would be to increase standardisation for example by means of an EU platform. Enhanced standardisation beyond the STS standard and simpler processes and practices in the securitisation market would be beneficial. Simpler and robust structures, ideally based on fully harmonised industry practices comparable with other financial products, would provide further comfort to investors while safeguarding the prudential position of the originator. Furthermore, highly standardised structures could be effective in reducing costs related to issuance and investment and facilitate due diligence by investors. In this way, a deeper and more liquid market could be achieved, thus facilitating higher market placement.

In the meantime elements of the regulatory framework, such as due diligence, transparency and supervision, should be reviewed to address certain supply and demand factors relevant for the market. This should not prevent a more

[7] As included in the 2022 joint advice to the EU Commission on the review of the securitisation prudential framework.

comprehensive review of demand and supply related factors that goes beyond the regulatory landscape.

2.2 Securitisation platform

Establishing a securitisation platform could bring further standardisation that would benefit uptake, making it worth exploring. Standardisation through harmonised issuance could potentially support targeted segments of securitisation, such as green securitisation to support the climate transition, one of the key priorities of the EU.

A European platform for green securitisation might play a catalytic role as both an issuer and a standard-setting agent. Such a platform could potentially foster standardisation by incentivising banks to adapt the contractual terms of their loan portfolios to fit uniform criteria set by the platform. Standardised structures issued through a single platform for pan-EU issuance could be effective in reducing market fragmentation and costs, which hold back issuance. They would also foster standardisation of securitisation by facilitating investor-side due diligence. By promoting a high degree of standardisation across European countries, the EU platform could help to increase both the supply and demand for securitisation, ultimately improving market liquidity.

An EU structure might also be effective in lowering transaction costs for sponsors and originators and reducing information asymmetries between sponsors, originators and investors, with a targeted approach focusing on specific segments to strike the right balance between impact and technical feasibility. A platform targeting a broad scope of loans would offer the most potential but might be challenging to set up due to the current lack of standardisation of underlying loans. Opting instead for a targeted approach focusing on a market segment such as green securitisation might be easier to achieve. However, given that green securitisation can also cover a wide variety of underlying asset classes, such harmonisation may not be that easy to implement in practice and would require further consideration. Issues such as the ongoing involvement of originators and servicers, whether it is possible to ensure the insolvency remoteness of the issuing entity and its compliance with requirements such as risk retention obligations, would all need to be clarified.

The creation of an EU platform should not imply a trade-off in terms of financial stability. For example, key questions include the EU platform’s liability towards investors, especially if it assumed the role of “sponsor” (as per the SECR) or issuer liable for all repayments under the notes. Furthermore, the platforms should be subject to adequate prudential requirements.

The European Investment Bank (EIB) provides examples of how private capital can be channelled towards common EU policies using securitisation. The EIB has provided financing to companies as well as climate initiatives building on securitised products, attracting both private and public investors, such as insurance corporations and national promotional institutions.

While an EU platform would provide benefits without the use of public guarantees, a guarantee programme could be designed to enhance the potential of securitisation for targeted segments such as financing the green transition, as suggested by the March 2024 Governing Council statement on CMU. Home renovation loans or other types of green assets, such as SME loans, might be suitable candidates for this purpose. A public guarantee focused on a particular market segment would ensure that public support is appropriately targeted, not just to promote market development, but also to contribute towards the EU's climate transition objectives. It could also limit the need for public resources compared to direct public investment and could potentially leverage on existing funds such as InvestEU and the European Investment Fund (EIF). Such a programme should preferably be implemented at EU level in order to foster harmonisation, risk-sharing and pan-EU issuance.

2.3 Due diligence requirements

Investors in securitisations need to conduct their own due diligence when they invest in securitisation, in order to ensure that they fully understand the risks and the characteristics of securitisation structures. However, overly prescriptive due diligence might deter new investors from entering the market, and they could also generally limit secondary market activity.

Due diligence requirements could be made proportional to lower the burden on investors, though they should remain detailed and prescriptive in the interests of legal certainty. To properly assess the risk of any securitisation transaction, investors are currently required to assess its risk characteristics and structural features, covering the areas described in Article 5(3) of the SECR. However, due diligence requirements could be made proportional with respect to compliance with the STS criteria, as currently set out in Article 5(3c) of the SECR. The ECB supports the work that the joint committee of the ESAs is currently undertaking to define due diligence proportionality under Article 5. Introducing proportionality increases reliance on existing obligations among the parties notifying a securitisation as STS-compliant. This would require enhanced supervision of STS compliance and trends by ESMA and the joint committee of the ESAs. Additionally, the due diligence obligations of investors under Article 5 of the SECR in respect of risk characteristics and structural features should be streamlined to capture more explicitly the following areas:

1. Analysis of the credit quality of counterparties who are involved in the transaction on an ongoing basis after issuance (such as originators, original lenders, servicer, swap provider(s), issuer account bank or liquidity facility providers).

2. Analysis of interest rate risk (and where relevant currency risk), including hedges, as well as liquidity risk.

However, institutional investors should not differentiate their due diligence analysis based on whether the transaction is public or private, as doing so would not distinctively affect the intrinsic risk characteristics or structural features of the transaction. In the case of repeated transactions, the due diligence process could leverage on previously gathered information and analysis. Repeated or similar transactions typically belong to an existing ABS programme and present the same underlying asset type, as well as the same sell side parties and credit-granting criteria. Therefore, the due diligence process could focus only on those aspects that diverge from previous issuance, while usefully relying on the due diligence analysis of previous transactions. However, for this approach it would be helpful to have a clear notion of what qualifies as a "repeated transaction", as well as a declaration from the issuer clearly identifying those securitisation aspects that are fully repeated from those that are not. Meanwhile, investors should be given a relatively long period of time following the investment in which to document and demonstrate compliance with the verification requirements of the due diligence process, such as 45 days, which should be enough to comply with these requirements.

2.4 Transparency requirements and definition of public securitisation

The transparency framework is a central building block for the development of securitisation markets in the EU. The introduction of standardised loan-level templates and transaction disclosure requirements in the aftermath of the global financial crisis was key to promote a high level of transparency in the EU securitisation market. The current transparency regime is geared towards ensuring that investors in a securitisation have all the information they need for their due diligence processes. It also allows users of standardised data, such as that obtained from credit rating agencies, research and analytical service providers, to assess the risk characteristics of securitisation portfolios over time. The Eurosystem is also a key user of this information for its collateral framework and its due diligence in the context of its ABS outright purchase programme. The current transparency regime is also conducive to the standardisation of information gathering during the origination process of securitised exposures.

The goal of past Eurosystem-initiated initiatives was to foster a sufficiently high degree of transparency in the securitisation market. Hence, the ECB's views expressed in this reply are based on the lessons learned from the introduction of loan-level data requirements for asset-backed securities eligible as collateral for Eurosystem credit operations and the subsequent adoption of the ESMA templates – replacing the ECB templates – as reporting templates for the loan-level data requirements.

The ECB sees significant value in maintaining the current standardised templates, albeit with some modifications to make them more usable by investors. Standardised templates allow for data comparability, which is essential to achieve transparency and critical for investors who are looking to invest in securitisations. This standardisation would be lost when using unprescribed templates, which would adversely affect future market development due to the proliferation of different transparency standards. This lack of transparency could even lead to financial instability. Moreover, the processing and handling of the data would expose investors to increased operational risk when performing their risk analysis.

However, the ECB also sees merits in exploring the possibility of adjusting the transparency framework and the required templates, especially based on whether the securitisation transactions are public or private, with the latter following a more flexible approach in terms of format and the level of detail required in the templates, among other options. If this approach is ultimately taken, the ECB would suggest defining public transactions as broadly as possible so that all currently eligible Eurosystem securitisations (ABS fulfilling both the general criteria for marketable assets and specific eligibility criteria for ABS set out in Guideline ECB/2014/60[8]) remain subject to detailed standardised template data requirements as stated in Annex VIII of Guideline ECB/2014/60.

Securitisation repositories (SRs) should continue to play a role in collecting and distributing securitisation information. To reduce the level of opacity in some segments of the securitisation market, all securitisations (public and private) could be notified to SRs and, as a bare minimum, SRs should collect standardised data templates for public transactions and simplified notification templates for private transactions. The principle-based approach for investors (as proposed in question 5.5 of the Commission's consultation document) cannot be fully evaluated given that no details of its design and functioning are available to date in the public domain. If a principle-based approach is pursued further, it would require additional work and significant in-depth analysis. It would be useful to examine the potential ramifications and emerging risk areas (climate-related) with the goal of presenting a more comprehensive proposal.

A prudent and diligent analysis of the risks associated with a securitisation transaction is heavily dependent on what information is available. Thus, the proposal to streamline the current templates for public securitisation should not preclude reporting only the most significant metrics needed to assess the relevant financial risks and valuations of securitisations. The current templates have some room for improvement to achieve a higher degree of usability and ease the burden on the reporting entities, while still allowing them to disclose critically significant information. Additionally, any review of the existing disclosure templates should incorporate new climate-related indicators and assess certain data quality concerns (e.g. excessive misuse of no data options, particularly ND5, which compromises the

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8 Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) (OJ L 091, 2.4.2015, p. 3).

completeness and representativeness of loan-level data) to effectively enforce data quality. Securitisation repositories, as approved market data infrastructures, could play a role in supporting any process of adapting or modifying the existing templates.

Access to climate-related data is needed to adequately assess the increase in transition and physical risks arising from climate change. Including risk indicators related to climate change can give investors the information they need to assess the impact and exposures of risks arising from climate change.[9] Introducing a minimum number of data metrics, aligning with other EU regulatory criteria, such as the EU taxonomy or Sustainable Finance Disclosure Regulation (SFDR) disclosure requirements, would allow for a more rigorous assessment of the associated climate-related risks without unduly burdening the reporting agents or requiring unreasonable efforts to capture the necessary data.

Attempt to streamline or modify the templates would benefit from a prior consultation process. This would benefit from the active participation of market participants (i.e. reporting entities, investors, credit rating agencies (CRAs), central banks, legal firms, etc.) in the design of the revamped templates under ESMA's supervision and oversight. ESMA, also coordinating with the Joint Committee of the ESAs, should have the final say on the adoption of the new templates to ensure that sufficient levels of transparency and standardisation are maintained. ECB Banking Supervision does not anticipate any significant impact on supervisory costs if this option is ultimately pursued.

As part of the streamlining exercise, the question should be asked as to whether a transition to clustered information from granular data is justifiable in some cases. For credit card receivables, moving away from loan-level data would make sense on account of the exposure of these revolving assets being highly dynamic and not easily captured by loan-level data, and also because of their short duration (the information is already obsolete when published). Disclosing information in the case of intra-group transactions and securitisations below a certain threshold could create problems. In particular, it should be ensured that any securitisations retained by Eurosystem counterparties should not fall under the definition of intra-group transactions.

2.5 Supervision

The ECB welcomes the proposal of a unified or greatly coordinated centralised supervision, considering the successful experience of the SSM securitisation hub.[10] The SSM Hub has been created as a new form of cooperation between the ECB and the national competent authorities (NCAs). This allows the SSM to pool

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9 Please refer to the joint statement by the ECB and the European Supervisory Authorities published in March 2023.

10 For more details, see, for instance, "Supervisory priorities and securitisation", keynote speech by Elizabeth McCaul, Member of the Supervisory Board of the ECB, at the 26th Annual Global ABS Conference, Barcelona, 14 June 2022.

resources and be more effective and consistent in the supervision of the requirements laid down in the Securitisation Regulation.

It should aim to ensure a level playing field of high-quality regulation and supervision without regulatory arbitrage or a race to the bottom among Member States. One of the ESAs could coordinate such a team and the Joint Committee of the ESAs could oversee it. Potentially, a joint supervisory hub of supervisors or a joint pan-European oversight network, along the lines of the model established under the Digital Operational Resilience Act (DORA), with ESAs and competent authorities pooling common resources and expertise, could be viable models meriting further analysis.

ECB staff recommend the creation of a dedicated task force to define in more detail the scope, supervisory model, governance and required resources. To maximise the benefits in terms of enhanced coordination and lower supervisory costs per average transaction, the scope should cover all securitisations and compliance with the SECR, including STS requirements.[11] Additionally, the new structure could support the development of the securitisation market by removing inconsistencies in how the SECR is implemented across the EU by various national supervisors and by introducing a single-entry point for market participants.

2.6 Significant risk transfer process

The ECB Is actively contributing to increase standardisation in the market jointly with the industry with the aim to streamline the process for assessing significant credit risk transfer via securitisation.

Regarding the significant risk transfer (SRT) process, the ECB generally distinguishes between (i) simple, standardised and repeat deals; and (ii) complex and innovative transactions, for which the supervisor should have room to run the comprehensive assessment of the SRT. For complex transactions, an in-depth supervisory review of securitisations with difficult features is needed to assess SRT robustness, which would enhance the financial resilience of supervised banks.

An industry-led initiative to simplify securitisation under the current applicable framework was launched earlier in 2024. From a supervisory perspective, the issuance of such simple and non-complex securitisations (which may or may not qualify as STS transactions) would allow for a streamlined and fast-track SRT assessment process, on which the ECB is currently working. The fast-track process would involve the following key steps:

- Creating a standardised process and template to speed up the supervisory assessment of SRT, especially for non-complex transactions with more standardised features, based on pre-agreed criteria.

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11 For more details, please refer to the ESAs' Consultation Paper on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1)(c) of Regulation (EU) 2022/2554.

- Reducing the approval process time, thus allowing for faster time to market.
- Shifting the focus from an ex-ante review of individual transactions to risk-based bank-level supervision of securitisation activities.

We believe that the current regulatory framework offers enough flexibility to increase the efficiency of the SRT process, which can be exploited both by supervisors and industry. If this simplification process is successful, the results could feed into further work and guidance on a fast-track SRT assessment by the EBA at EU level.

Lastly, the CRR mechanical tests for SRT (Articles 244(2) and 245(2)) present certain constraints, notably regarding the lack of control over the right thickness of transferred securitisation tranches, which have been acknowledged also by the EBA.[12] Going forward, we see merit in further exploring alternative, more prudent methodologies that would ensure that banks transfer to third parties a sufficient share of the estimated credit losses arising from the securitised exposures. In this context, further guidance on technical aspects in the form of Level 2 measures related to the assessment of significant risk transfer and the related quantitative criteria could be developed more broadly to ensure consistent treatment across the EU, which would also benefit originators.

2.7 Prudential and liquidity treatment of securitisation for banks

The current regulatory framework, which took effect in the EU in 2019, reflects the Basel III standards agreed to by the Basel Committee in 2014 to address shortcomings in previous regulations that came to light during the global financial crisis. The Financial Stability Board noted recently, in its draft evaluation report on securitisation, that the reforms of the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) have helped to make the securitisation market more resilient, without compelling evidence of material negative side effects on financing to the economy.[13] The EU framework was amended in 2021 to include new elements that go beyond Basel standards, such as the extension of the preferential treatment for STS securitisations to include synthetic transactions. Generally, the ECB is of the view that prudential requirements should be commensurate with the risks embedded in securitisation structures.

Overall, the view held by ECB staff is aligned with the conclusion set out in the 2022 European Supervisory Authorities' joint advice on securitisation. The ESAs proposed to improve the consistency and risk sensitivity of the capital

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12 See EBA report on significant risk transfer in securitisation under Articles 244(6) and 245(6) of the Capital Requirements Regulation.

13 See *Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitisation: Consultation report*, Financial Stability Board, July 2024.

framework for banks, but that re-calibrating the securitisation prudential framework would not be a solution that in itself would ensure the revival of the securitisation market. It is unlikely to lead to significantly higher true sale issuance and can even be said to raise certain prudential concerns. Any potential changes to the regulatory framework should be assessed against the objective of transferring risk outside of the banking sector, to widen the investor base for securitisations and to support a sustainable and healthy market. It should not promote complex or non-transparent transactions, as the benefits of those transactions for financing the real economy are limited and risks for banks and investors are high.

As identified by the ESAs, the current prudential regulatory framework in the EU might benefit from targeted improvements in the framework's risk sensitivity, to further enhance the differentiation between the actual risk profile of underlying asset pools, structural features and model and agency risks. Relative to other financial products like covered bonds, securitisations are more complex due to the tranching of credit risk and do not exhibit the same features. This requires a more prudent approach, while also exploring potential changes to the regulatory regime. Many technical and structural features can affect securitisation performance and, in turn, the capital position of originators and the risk held by investors. A more risk-sensitive prudential treatment would do a better job at reflecting risks and thus allow for a closer calibration of capital requirements applicable to banks. In this regard, any targeted measures to lower requirements should be strictly limited to securitisation positions of a very high quality.

To maintain a prudent approach, it is essential to consider the fundamental role played by safeguards in securitisation structures, as proposed by the ESAs. Any targeted changes in the regulatory treatment should be accompanied by a comprehensive set of safeguards to ensure resilience in securitisation throughout the economic cycle. While further analysis is needed on the impact of the p-factor, it seems appropriate to preserve proper capital non-neutrality since securitisations entail significant model and agency risk. This would prevent cliff effects that might be triggered by inadequate reductions of capital charges for mezzanine and junior tranches, which inherently carry the highest model risk.

The prudential framework is key to avoid pockets of risks being unaddressed, which could generate ripple effects across the financial system, amplifying vulnerabilities. Potential changes to the prudential rules should be considered very carefully, and should not be reached in isolation, but taking into account the entire framework and based on a thorough impact assessment. Given this complexity, the ECB would support first having discussions at the Basel level. These would encompass also other shortcomings with the current framework that were identified by the ESAs, and only then changing the framework. Any shortcomings identified should then be assessed in terms of their materiality. Considering the structural changes in the European securitisation markets, any further change should also consider how banks use securitisation at present.

2.7.1 Output floor

The effects of targeted regulatory changes for securitisations falling under the internal model-based approach for securitisation (SEC-IRBA) – which accounts for the lion's share of SRT transactions – need to be carefully assessed. The output floor should be implemented gradually from 2025 onwards due to increasing adjustment factors, coinciding with the potential introduction of regulatory changes (if adopted by EU legislators). Any further changes to the existing framework should acknowledge that the temporary exemption granted by EU legislators[14] for calculating the output floor application represents a significant regulatory support factor. In this regard, the impact of potential further changes on the difference in requirements between internal model-based and the standardised approaches should be considered. Failing to do so might lead to further deviations from the Basel framework.

For prudential reasons, we deem it appropriate to secure alignment with the Basel framework and avoid turning the temporary arrangement into a permanent one. Estimated total losses in the underlying portfolio are a key parameter in the capital structure of a securitisation, chiefly affecting the carving up and size of the tranches placed with external investors in order to achieve capital relief. Estimated total losses are also a key input in determining capital requirements on retained tranches, and the capital benefit is generally higher under SEC-IRBA than under the standardised approach (SEC-SA). Acknowledging that the output floor will have an impact on the economic decision of banks on whether to enter into a securitisation, the ECB would support further analysis of the issue in order to find a prudentially sound, long-term solution.

Total estimated losses related to the underlying pool shape the capital structure and magnitude of the tranches sold to external investors in SRT securitisations. Ensuring a proper calibration of such estimated total losses, in line with generally conservative requirements applied to internal models used outside the securitisation framework, would render securitisation structures more robust. This would incentivise banks to sell thicker credit-protected tranches. In contrast, a more lenient regulatory treatment for internal models used in securitisations compared to the broader use of models for credit risk, would render the SRT structures more fragile, potentially inducing further model and agency risks in securitisation. In turn, this might affect the due diligence process carried by external investors, who would rely on an underestimated loss of the underlying pool that would be disclosed by the originator bank.

2.7.2 Liquidity treatment

It is still unclear whether and if so, to what extent, the current the treatment of securitisations in the liquidity coverage ratio (LCR) treatment has been an

[14] i.e. reduction of the p-factor under SEC-SA for the purpose of calculating floored risk-weighted exposure amounts (see Article 465(13) CRR3).

explicit determining factor in securitisation issuance and investment activity among banks and for the liquidity of the securitisation market in the EU.

As regards significant institutions under the direct supervision of the ECB, the share of securitisation to total LCR liquidity appears negligible overall. As of 30 September 2024, and looking at significant institutions at the highest consolidated level in the euro area, the weighted average share of securitisations of total liquid assets before applying haircuts and caps is 0.6% (the number gets even smaller when factoring in LCR haircuts). At individual level, 29 out of 109 significant institutions report securitisation exposure in their LCR buffer. It is rarely the case that significant institutions are constrained by the caps on liquid assets, including the 15% cap for Level 2B assets. What this means is that they could theoretically hold more Level 2B assets, including securitisations, before being constrained by the cap. This could indicate that the LCR categorisation as well as the haircuts applied for securitisations are not, on a stand-alone basis, a limiting factor for securitisation activities.

Overall, it appears premature to consider upgrading the LCR treatment of securitisations at this stage. Instead, the ECB deems it necessary to conduct an analysis of liquidity risk related to securitisation positions before concluding in favour of a change in the LCR treatment of securitisations. Such analysis should provide evidence that securitisations have a proven record as a reliable source of liquidity, even during stressed market conditions. While the ECB acknowledges the benefits provided by securitisations for the purposes of risk management in general, even in terms of diversification, securitisations have not been sufficiently tested over the past decade, embedding also stress events that are consistent with the scenarios referred to in Article 5 of Delegated Regulation (EU) 2015/61. This is further emphasised in the 2022 joint response to the call for advice to the EU Commission on the review of the securitisation prudential framework, according to which no LCR stress period in the banking system has been observed in recent years, including the period spanning the COVID-19 pandemic.

The ECB would call for inserting in Level 1 a mandate for the EBA to perform an in-depth scenario analysis of securitisation liquidity, with a view to reassessing the liquidity characteristics of securitisations, including during periods of idiosyncratic and market-wide stress. Changes in market practices that improve the standardisation and simplicity of products, the diversification of the investor base and ultimately market depth could also be considered positive factors in this regard.

2.8 Scope of application of the Securitisation Regulation

The ECB would welcome further clarifications regarding the scope of application of the Securitisation regulation. The ECB welcomed the Opinion of the Joint Committee (JC) of the ESAs on the Jurisdictional Scope of Application of the European Securitisation Regulation (SECR) and clarifications made by the

Commission in the 2022 report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation. However, the ECB has called for further clarity as to whether the SECR applies to any securitisation where at least one party (whether on the sell side, such as originators, original lenders, securitisation special purpose entities (SSPEs) or sponsors, or buy side, such as investors) is based, or authorised to operate, in the EU. EU-based and EU-authorised entities should be responsible for fulfilling the relevant SECR provisions assigned to those entities.

The ECB would welcome an expansion of the definition of eligible sponsors. While the current SECR definition of a securitisation transaction as a transaction that involves tranching of credit risk is well understood by the market and supervisors and does not require modification, the definition of eligible sponsors could be expanded to include alternative investment funds established in the EU, since these entities are able to fulfil this role in the current marketplace. This type of entity should meet the SECR conditions applicable to sponsors, such as risk retention or disclosure requirements.

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For specific terminology please refer to the ECB glossary (available in English only).