ICMA
International Capital Market Association

ICMA welcomes the opportunity to respond to the European Commission's Targeted consultation on the functioning of the EU securitisation framework 2024. The consultation was targeted towards market participants with practical expertise in the European securitisation markets and ICMA's buy-side and sell-side members contributed to this response. This consultation sought to gather views and collect evidence on the current EU securitisation framework and its subsequent amendments with a view to reviving the EU's securitisation market.

The following table sets out ICMA's response to the consultation. The table lists the questions and related responses that ICMA provided to the European Commission via the Commission's online portal on 4 December 2024.

**THEME 1 – CROSS-BORDER ISSUES AND JURISDICTIONAL SCOPE (QUESTION 3 OF THE CONSULTATION PAPER)**

| | Question | Answer |
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| 3.1 | In your opinion, should the current jurisdictional scope of application of the SECR be set out more clearly in the legislation?<br>• Yes<br>• No<br>• No opinion | The current scope is now well understood and reopening the scope of the SECR (particularly on the expansion of it to cover new grounds/entities) would create uncertainty and not be helpful. |
| 3.2 | If you answered yes to question 3.1, do you think it would be useful to include a specific article that states that SECR applies to any securitisation where at least one party (sell-side or buy-side) is based or authorised in the | N/A given the above response. |

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| | EU, and to clarify that the EU-based or EU-authorised entity(ies) shall be in charge of fulfilling the relevant provisions in the SECR?<br><br>• Yes<br><br>• No<br><br>• No opinion | |
| 3.3 | Do you think the definition of a securitisation transaction in Article 2 of SECR should be changed? You may select more than one option.<br><br>• Yes, the definition should be expanded to include transactions or vehicles that could be considered securitisations from an economic perspective;<br><br>• Yes, the definition should be narrowed to exclude certain transactions or introduce specific exceptions;<br><br>• No, it should not be changed;<br><br>• No opinion. | |
| 3.4 | Should the definition of a securitisation exclude transactions or vehicles that are derisked (e.g. by providing junior equity tranche) by an EU-level or national institution (e.g. a promotional bank) with a view to crowding-in private investors towards public policy objectives?<br><br>• Yes | |

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| | • No<br><br>• No opinion | |
| 3.5 | If you answered yes to question 3.4., what criteria should be used to define such transactions? | N/A |
| 3.6 | Should the definition of a sponsor be expanded to include alternative investment firm managers established in the EU?<br><br>• Yes<br><br>• No<br><br>• No opinion | No. |

**THEME 2 – DUE DILIGENCE REQUIREMENTS (QUESTION 4 OF THE CONSULTATION PAPER)**

| | Question | Answer |
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| 4.1 | Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the due diligence requirements under Article 5.<br><br>Please differentiate between costs that are only due to Article 5 and the costs that you would incur during your regular due diligence process regardless of Article 5. | **1 Costs**<br><br>*Members have commented on the need to recalibrate Article 5 by taking a more principles-based approach given the tangible/quantifiable costs as well as the indirect/opportunity costs associated with complying with due diligence requirements.*<br><br>*ICMA understands that AFME will be providing supporting material including a breakdown of costs for asset managers sampled and while ICMA has not yet seen the* |

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| | Please compare the total due diligence costs for securitisations with the total due diligence costs of other instruments with similar risk characteristics. | *final version, we understand that it aligns with the general tenor of members' discussions.*<br><br>*Comments provided by ICMA members include :*<br><br>i) *one member noted that, based on some reasonable assumptions, the estimates are circa EUR 12,000 (includes both internal and external costs) per transaction.*<br><br>ii) Another - our experience is that significant investment – both in terms of time and expense - is required in order to implement and maintain a broad compliance framework tailored to the Securitisation Regulation requirements. In addition to this, we have assessed that individual Article 5 due diligence costs can exceed c £1000 per securitisation, depending on the relevant jurisdiction, structure that is being proposed etc. While this does not seem a significant number viewed in isolation, when multiplied across potentially 100 or more securitisations per year the picture substantially changes.<br><br>iii) in summary, we estimated it took us around 16-19 hours on average to analyse a securitisation transaction and that the extra administrative burden due to the Article 5 requirements added about 16% extra time.<br>. |
| 4.2 | If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 5 of SECR. | As above in 4.1. |
| 4.3 | Please select your preferred option to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments. | [To include text response in Q4.4 given web form]. |

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| | • Option 1: The requirements should be made more principles-based, proportionate, and less complex;<br><br>• Option 2: The requirements should be made more detailed and prescriptive for legal certainty;<br><br>• Option 3: There is no need to change the text of the due diligence requirements;<br><br>• No opinion | |
| 4.4 | Should the text of Article 5(3) be simplified to mandate investors to assess at least the minimum risk characteristics and the structural features of the securitisation?<br><br>• Yes;<br><br>• No;<br><br>• No opinion; | On question 4.3, arguments that members have raised on supporting option 1 include:<br><br>1. Investors in the securitisation space are sophisticated investment entities that have extensive internal due diligence processes and criteria. Having a set of regulatory imposed due diligence requirements can lead to rigid due diligence processes which may be counter-productive these requirements are too rigid, since they can lead to investors substituting its own judgement in favour of the regulators.<br>2. Sophisticated investment entities that otherwise understand the relevant risks of investing in securitisation trades may be deterred/may not analyse or invest as much trades as they would like to given the high barriers of entry and costs of due diligence.<br>3. Investors should not perform "shadow regulation" roles to check compliance with regulatory requirements.<br>4. A lack of parity between different asset classes with comparable risk profiles to securitisation transactions e.g. SRT market/covered bond/other asset-backed financing trades. Beyond the principle objection of a lack of parity, there are also practical implications such as obstacles for growing a diverse base of market participants from both buy/sell side.<br>5. Due diligence requirements on investors in the EU are extremely burdensome and pose a significant barrier – in contrast, the US does not impose any specific due diligence obligations for investors in securitisation beyond their |

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| | | typical fiduciary duties, and the UK has moved towards a principle based approach.<br><br>As a follow-up to point 4 and noting market turbulence and unpredictability since 2020, due diligence requirements can affect speed/execution of transactions which can in turn create market stability/price discovery issues which are important from a prudential regulation perspective.<br><br>On question 4.4, a helpful simplification would also be to include references/language to a proportionality approach re investors' assessment and due diligence process. |
| 4.7 | Should due diligence requirements differ based on the different characteristics of a securitisation transaction?<br><br>• Yes<br><br>• No<br><br>• No opinion | |
| 4.8 | If you answered yes to question 4.7., please select one or more of the following options to differentiate due diligence requirements:<br><br>• Due diligence requirements should differ based on the risk of the position (e.g. senior vs non-senior)<br><br>• Due diligence requirements should differ based on the risk of the underlying assets.<br><br>• Due diligence requirements should differ based on the STS status of the securitisation (STS vs non-STS) | As part of due diligence across different types of securitisation trades, investors do take into account different market-based principles, credit risk of underlying assets, risk of the positions based on the existing facts and circumstances. However, the overarching theme of proportionality and principled based due diligence requirements implies that the SECR should contain high-level principles and not overly prescribe *how* due diligence requirements should differentiate between different securitisation trades. As such, it would be helpful to recognise that market participants have developed established expectations and norms on the due diligence aspects across different asset classes being securitised and continually monitor and adapt these due diligence processes. It is thus not helpful for participants to select the different options in the spirit of not prescribing further criteria on investors to consider when approaching different securitisation trades. |

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| | • Other | |
| 4.9 | Taking into account your answers to 4.7 and 4.8, what would you estimate to be the impact (in percent or EUR) of differentiating due diligence requirements on your one-off and annual recurring costs for complying with the due diligence requirements under Article 5? | Subject to finalised AFME response, to align with AFME response. |
| 4.12 | Do the due diligence requirements under Article 5 disincentivise investing into securitisations on the secondary market?<br>• Yes<br>• No<br>• No opinion | Yes – for reasons that have been highlighted in the above responses e.g. high barriers of entry, speed of execution/trade. This creates opportunity costs where investors decide to invest limited time/resources/capabilities into other comparable assets of similar risk profiles that thus divert capital away from the EU securitisation market. |
| 4.13 | If you answered yes to question 4.12., should investors be provided with a defined period of time after the investment to document compliance with the verification requirements as part of the due diligence requirements under Article 5?<br>• Yes<br>• No<br>• No opinion | |
| 4.14 | If you answered yes to question 4.13., how many days should be given to investors to demonstrate compliance with their verification requirements as part of the due diligence requirements under Article 5? | N/A |

<table>
<tr><td></td><td><ul><li>0 – 15 days</li><li>15 – 29 days</li><li>29 – 45 days</li><li>No opinion</li></ul></td><td></td></tr>
<tr><td>4.22</td><td>Should the National Competent Authorities (NCAs) continue to have the possibility to apply administrative sanctions under Article 32 and 33 of SECR in case of infringements of the requirements of Article 5 SECR to either the institutional investor or the party to which the institutional investor has delegated the due diligence obligations?<ul><li>Yes</li><li>No</li><li>No opinion</li></ul></td><td>On 4.22, Article 5 non-compliance has never, and should not, be captured under the umbrella of Articles 32 and 33 SECR. The market position currently is that a) where the delegation has been done on the terms of Article 5(5), the delegate is responsible for compliance to the exclusion of the principal and b) the principal doing the delegating would already be caught under the due diligence obligations it is required to undertake, so there is no need for additional regulatory responsibility being imposed upon the delegate.<br><br>On 4.23, where there is no opportunity to expand:<ol><li>Institutional investor(s) should have freedom to contractually delegate delegates the due diligence requirements to other institutional investors – this is aligned with other asset classes. In line with principle of proportionality and level-playing field for securitisation trades vis-à-vis other asset classes, no reason to restrict which entities can be a delegate i.e. institutional investor(s) make the necessary judgement as an extension of their own interests.</li><li>Contractual delegation described in the manner above should also be accompanied by the regulatory obligation. However, such delegation to another institutional investor should not be automatic – the delegation of regulatory responsibility should be documented and, upon request, can be provide as documentary support of such delegation taking place.</li></ol></td></tr>
<tr><td>4.23</td><td>If you answered no to question 4.22, which party should be subject to administrative sanctions in case of infringement of the due diligence requirements?</td><td></td></tr>
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| | • the institutional investor<br>• the party to which the institutional investor has delegated the due diligence obligations | |

**THEME 3 – TRANSPARENCY REQUIREMENTS AND DEFINITION OF PUBLIC SECURITISATION (QUESTION 5 OF THE CONSULTATION PAPER)**

| | Question | Answer |
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| 5.1 | Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the transparency regime under Article 7.<br><br>Please differentiate between costs that are only due to Article 7 and costs that you would incur during your regular course of business regardless of Article 7.<br><br>Please compare the total transparency costs for securitisations with the total transparency costs of other instruments with similar risk characteristics. | ICMA understands that AFME will submit their response separately on this, while ICMA will not have sight of the final version of the response, it is aligned with the general tenor of members' discussions regarding both tangible/quantifiable costs as well as indirect/opportunity costs associated with complying with transparency and disclosure regime. |
| 5.2 | If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 7 of SECR. | As above in 5.1. |
| 5.3 | How do the disclosure costs that you provided in 5.1. compare with the disclosure costs for other instruments with similar risk characteristics?<br><br>• Significantly higher (more than 50% higher)<br>• Moderately higher (from 10% to 49% higher) | As above in 5.1. |

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| | • Similar<br><br>• Moderately lower (from 10% to 49% lower)<br><br>• Significantly lower (more than 50% lower) | |
| 5.5 | To ensure that investors and supervisors have sufficient access to information under Article 7, please select your preferred option below.<br><br>Option 1:<br><br>• Streamline the current disclosure templates for public securitisations<br><br>• Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public). Commission Delegated Regulation (EU) 2024/1224<br><br>Option 2:<br><br>• Remove the distinction between public and private securitisations.<br><br>• Introduce principles-based disclosure for investors without a prescribed template.<br><br>• Replace the current disclosure templates with a simplified prescribed template that fits the needs of competent authorities with a reduced | [Response in 12.10] |

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| | scope/reduced number of fields than the current templates.<br><br>Option 3:<br><br>• No change to the existing regime under Article 7. | |

**THEME 4 – REGULATORY DIVERGENCE AND DIFFEREING APPROACHES TAKEN BY NCAS (QUESTION 6 OF THE CONSULTATION PAPER)**

| | **Question** | **Answer** |
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| 6.1 | Have you identified any divergencies or concerns with the supervision, based on the current supervisory set up?<br><br>• Yes<br><br>• No<br><br>• No opinion | Members raise the issue of NCAs taking divergent approaches to reporting obligations over and beyond those provided at the European level – examples of "gold-plating" is include: a) Luxembourg authorities and additional reporting obligations and 2) supervisory expectations in connection with STS label and French AMF authority. |
| 6.2 | Would you see merit in streamlining supervision to ensure more coordination and supervisory convergence?<br><br>• Yes<br><br>• No<br><br>• No opinion | As indicated. |

| 6.3 | If you answered yes to question 6.2., what should be the scope of coordinated supervision?<br><br>• STS securitisations only<br><br>• All securitisations<br><br>• Other (please specify) | As indicated. |
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| 6.4 | If you answered yes to question 6.2., what should be the supervisory tasks of coordinated supervision?<br><br>• Compliance with Securitisation Regulation as a whole<br><br>• Compliance only with STS criteria<br><br>• Compliance with Securitisation Regulation and prudential requirements for securitisation<br><br>• Other (please specify) | As indicated. |

**THEME 5 – CAPITAL REQUIREMENTS, P-FACTOR RELATED DISCUSSIONS, STS/NON-STS CAPITAL TREATMENT (QUESTION 7 STS STANDARD AND QUESTION 9 PRUDENTIAL AND LIQUIDITY RISK TREATMENT OF SECURITISATION FOR BANKS) REGULATORY DIVERGENCE AND DIFFEREING APPROACHES TAKEN BY NCAS (QUESTION 6 OF THE CONSULTATION PAPER)**

| | Question | Answer |
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| 7.1 | Do you think that the STS label in its current form has the potential to significantly scale up the EU securitisation market?<br><br>• Yes<br>• No<br>• No opinion | In principle, members support the STS framework and intent. However, the STS label in its current form has not scaled up the EU securitisation market as anticipated in the context of high capital charges/LCR treatment as elaborated further below. Members also point out that while amendments that provide a more favourable regulatory capital treatment of STS labels is helpful, question whether this in and of itself will significantly scale up the EU securitisation market i.e. reforms need to be broad based rather than focusing exclusively on STS labels to the exclusion of other parts of the securitisation markets. |
| 7.2 | Which of the below factors, if any, do you consider as holding back the expansion of the STS standard in the EU? You may select more than one option.<br><br>• Overly restrictive and costly STS criteria<br>• Low returns<br>• High capital charges<br>• LCR treatment<br>• Other | On the buy-side, bank treasuries can invest in other asset classes with a comparable risk profile but enjoy better capital/LCR treatment. Members pointed out that the areas for possible amendments to liquidity risk treatment under the LCR Delegated Regulation include 1) whether non-STS securitisations should be eligible for HQLA and in what form/level, 2) consideration of amendments to haircuts for HQLA and 3) query whether appropriate to have EU STS securitisations as eligible securities for LCR purposes. Additionally, members also noted the WAL restrictions under the "Simplicity" criteria that limits assets that can be included for a STS ABCP transaction. |

**QUESTION 9 PRUDENTIAL AND LIQUIDITY RISK TREATMENT OF SECURITISATION FOR BANKS**

<table>
<tr><th></th><th>Question</th><th>Answer</th></tr>
<tr><td>9.1</td><td>What concrete prudential provisions in the CRR have the strongest influence on the banks' issuance of and demand for those types of traditional, i.e. true sale, securitisation which involve the senior tranche being sold to external investors and not retained by the originator?</td><td>Specifically in the context of originating a true sale / traditional securitisation, banks will look to sell the senior tranche of a securitisation for funding purposes or to reduce its leverage exposure where it has also achieved SRT.<br><br>From an issuance standpoint a significant proportion of the investor base is comprised of bank treasury investors for whom HQLA is important. Given that LCR eligibility has been tied to STS classification, this means that non-STS has a structurally more restricted investor base than STS. Issuers decision to use the market will take into account numerous factors including cost of execution (including upfront and ongoing costs), relative value to other instruments, investor depth and diversification and market stability. Banks also facilitate market making and market liquidity, so these issues affect other investor types (asset managers, funds) by extension.<br><br>Motivation to invest in senior tranches can be based on a number of factors including (inter alia) that the return is commensurate to the risk of such senior tranche, for bank investors whether the senior tranche is LCR eligible and whether it meets the organisation's return on capital requirements.</td></tr>
<tr><td>9.2</td><td>Please explain how possible changes in the prudential treatment would change the volume of the securitisation that you issue, or invest in (for the latter, split the rationale and volumes for different tranches).</td><td>Some members recommended the below measures listed below.<br><br>Firstly, the proposal is to reduce the p-factor under SEC-IRBA and SEC-SA (see table below) for banks acting as investor, originator or sponsor of a securitisation. Furthermore, it is recommended for the risk weight floors are reduced from the current 15% and 10% for non-STS and STS labelled securitisation respectively for investors, originators and sponsor to 12% and 7% respectively.<br><br>
<table>
<tr><th></th><th></th><th>Current</th><th>Proposed</th></tr>
<tr><td rowspan="2">SEC-SA (Art</td><td>STS</td><td>0.5</td><td>0.25</td></tr>
<tr><td>non-STS</td><td>1</td><td>0.50</td></tr>
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| 261-<br>262) | | | |
| **SEC-IRBA**<br><br>(Art 259-260) | **STS** | 0.3 floor<br><br>max 0.75 | 0.1 floor<br><br>max 0.3 |
| | **non-STS** | 0.3 floor<br><br>max 1.5 (low-risk mortgage pools) | 0.25 floor<br><br>Max 0.75 |

If together with other recommendations set out within this consultation related to the due diligence requirements and transparency requirement are adopted then, such combined changes should enable a larger volume of securitisations to be originated by banks both as traditional securitisations and through SRT. With the prudential framework of CRR 3 going live on 1 January 2025, the proposed adjustment to p-factor and risk weight floors will allow to mitigate the RWA inflationary expected. In particular, the lower risk weight floor together with the reduced p-factor which is expected to benefit the retained senior tranche would allow for better risk aligned capital requirement for banks originating securitisation (e.g. synthetic securitisations).

Furthermore, banks acting as investors in third party securitisations would benefit from a reduction in the RWA inflation expected for their transactions under CRR 3. In particular, banks tend to act financiers through providing senior financing in securitisation form to corporates or other third parties seeking to raise funding. A large proportion of these tend to be private / bi-lateral trades and with appropriate lender protections, therefore, the changes to both the risk weight floor and the p-factor will allow to mitigate the expected RWA inflation due to CRR 3 and will also allow for better risk aligned capital requirements for such investments.

It is also recommended to incorporate both non-STS and STS securitisations as eligible instruments under the LCR, in line with other instruments such as covered bonds (where both regulated and non-regulated and even unrated covered bonds are

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| | | eligible), and to remove the WAL limitation to allow for a more diverse range of maturities to be considered by issuers accessing the market.<br><br>Finally, it is recommended that reciprocal equivalence is granted for UK STS securitisation, to facilitate a broader and more diverse basis of issuance and investment capacity for EU investors. |
| 9.3 | Based on your answer to 9.1, please explain how possible changes in the prudential treatment could support the supply for and demand of SME and corporate exposure-based securitisation transactions. | Response set out in 9.2 is intended to cover all underlying asset classes including SME / Corporate exposures and together with the changes proposed to the due diligence and transparency requirements should enable banks maintain good levels of SME / corporate exposure securitisation origination and investment.<br><br>We would note that given that funding is fungible, and given the variety of low cost funding options available to banks (including retail deposits, covered as well as residential mortgage backed securitisation) it is unlikely that SME / corporate loan backed securitisation would be prioritised for funding purposes, regardless of the regulatory treatment, given that the efficiency of funding in this form is unlikely to be higher than other available options. Priority in terms of regulatory reform/stimulus should be applied towards broadening/deepening the investment capacity for securitisation regime as a whole (given than banks are more likely to prioritise other asset types) as well as addressing the frictional and other prudential issues associated with the SRT process in order to ensure appropriate access to capital management tools for SME / corporate loan securitisation. |
| 9.4 | Does the prudential treatment of securitisation in the CRR appropriately reflect the different roles a bank can play in the securitisation chain, concretely the roles of originator (limb 'a' and limb 'b' of the definition of the originator in the Securitisation Regulation21), servicer and investor?<br><br>• Yes<br><br>• No | |

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| | • No opinion | |
| 9.5 | If you answered no to question 9.4., please explain and provide suggestions for targeted amendments to more appropriately reflect the different roles of banks as originator, investor, and servicer. | Members felt that the risk weight formulae calibrations for securitisations are too conservative and should be amended as proposed in section 9.2 for all roles that a bank plays (e.g. investor, originator or sponsor). The recommended changes are ever more important to implement as soon as possible to mitigate the capital inflationary effects of CRR 3 going live on 1 Jan 2025. |
| 9.6 | Have you identified any areas of technical inconsistencies or ambiguities in the prudential treatment of securitisation in the CRR (other than the 'quick fixes' identified by the ESAs in the report JC/2022/66) that could benefit from further clarification?<br><br>• Yes<br><br>• No<br><br>• No opinion | [For members' inputs on examples.] |
| 9.7 | If you answered yes to question 9.6., please explain and provide suggestions for possible clarifications. | Commission Delegated Regulation 2024/1780 (based on an EBA RTS)<br><br>The change through the Commission Delegated Regulation 2024/1780 (based on an EBA RTS) Art.8 providing fixed Loss Given Default (LGD) values for non-retail senior qualifying securitised exposures in certain cases, for instance when the bank is the servicer for 'own originated exposures' is problematic. In case the securitised portfolio is secured by eligible immovable property, the fixed LGD values of 50% are too high. A fixed LGD fails to adhere to the principle of recognising collateral in the underlying pool and its risk mitigation. Collateral is especially relevant in non-granular deals, e.g. Commercial Real Estate, object finance (e.g. aviation and shipping) and project finance. The fact that the bank is not the servicer in such non-granular deals does not justify |

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| | | entirely ignoring collateral or security. The rules should allow approved own LGD estimates for own-originated exposures regardless of servicer status by removing the Art.3(c) and amend 3(a). If not possible, then at least allow some reflection of collateral in Art.6(2) by introducing a secured-LGD <50% depending on collateral type in line with Table 1 of Article 230 of CRR 3.<br><br>Scope of CRR Art.47a<br><br>Scope of CRR Art.47a for securitisation positions: It should be clarified that securitisation positions are not in scope of CRR Art.47a, i.e. not in scope of the minimum loss coverage requirement for Non-Performing Exposures. In Art.47a(3) all the conditions for the exposures to be classified as non-performing are listed. Two conditions are of relevance here: the condition for the default in accordance with CRR Art.178 (Art.47a(3)(a)), and the impairment according to the applicable accounting framework (CRR Art.47a(3)(b)). There is no statement in these CRR articles for the inclusion or exclusion of securitisation positions from the scope of the backstop regulation, leaving it unclear. However, considering CRR Art. 47a(1), only the case of “debt instrument” (point a) can be interpreted as inclusive also of securitisation positions since the CRR does neither define the term ‘debt instrument’ nor the term ‘debt security’. Beyond the CRR, if the only differentiation is on the level of ‘debt security’ vs. ‘equity security’, a securitisation note would fall under ‘debt security’. However, in the CRR, for example, for the topic of eligible financial collateral in CRR Art.197, debt securities and securitisation positions are separately mentioned. In addition, according to CRR Art.4(61), securitisation has its own specific definition, but it is not stated whether a securitisation would qualify as ‘debt security’. We would welcome the statement that the term “debt instrument, including a debt security” does not include securitisation positions.<br><br>Moreover, compared to a common debt instrument (for example a corporate bond), securitisation positions are generally designed to be loss absorbing and to sustain losses, that are statistically expected since the beginning, throughout the life of the securitisation. This phenomenon is clearly driven by the underlying securitised pool of assets and its lifetime performance. The terms and conditions of the notes provide for the priority of payments of investors in normal and distressed scenarios. Therefore, principal losses on a securitisation tranche (for example a junior one) may occur, but without triggering a regulatory classification of default, which does not apply in this |

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| | | context. This is simply driven by the portfolio performances that can affect positively or negatively the overall return on the investment. Consequently, securitisation positions do not have credit events similar to, for example, corporate exposures and therefore, the application of the minimum loss coverage seems to be not appropriate. |
| 9.10 | How do banks use the capital and funding released through securitisation? Please explain your answer and if possible, quantify how much of the released capital and funding is used for further lending to the EU economy. | Securitisation programmes established by banks tend to be against their core lending businesses and therefore any capital and / or funding released through such programmes can be redeployed into additional lending.<br><br>Note: The manner in which the re-deployment occurs can vary between organisation, for example, a treasury function overseeing the re-deployment of capital and funding released vs each business division taking on this responsibility. |
| 9.11 | Do you agree that securitisation entails a higher structural model risk compared to other financial assets (loans, leases, mortgages) due to, for example, the inherent tranching? Please explain your answer.<br><br>• Yes<br><br>• No<br><br>• No opinion | In general, different tranches will exhibit different levels of risk relative to the risk of the references securitised portfolio, this is core to securitisation and allows for a diverse set of investors to invest in different levels of risk. Tranching in itself does not result in model risk as the sum of all risk of the tranches equals that of the securitised portfolio. Furthermore, with the evolution of credit risk RWA in Europe, for example, the implementation of EBA's PD and LGD guidelines under the internal ratings based approach (IRBA); and soon to come into force CRR 3 that revises the IRBA through the introduction of parameter floors and restrictions on use of own estimate of LGD and newly introduces the SA output floor will lead to greater inflation in the RWA of securitised portfolio and securitisations. In addition, all these changes lead to significant standardisation of risk weights across the EU banking sector and therefore reducing the variability in risk weights that results in significantly reducing the model risk.<br><br>Furthermore, tranching also exists to some degree in other products including mortgages where the interest charge can vary based on the LTV of a mortgage as a lender would see the risk differently for a 60% LTV mortgage compared to a 80%/90% LTV mortgage, as well as the distinction between for example different liens (first charge, second charge etc) and mortgage guarantee schemes. |
| 9.12 | Do you consider that scope and the size of the reduction of the risk weight floors, as proposed by the ESAs, is proportionate and adequate to reflect the | |

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| | limited model and agency risks of originators and improve the risk sensitivity in the securitisation framework, taking into account the capital requirements for other financial instruments?<br><br>• Yes<br><br>• No<br><br>• No opinion | |
| 9.13 | If you answered no to question 9.12., should the scope and size of the reduction of the risk weight floors be amended?<br><br>For example, should it be extended to investors in a targeted manner (such as, for example, to investors in STS securitisations and under SEC-IRBA approaches only, to prevent discrepancies with the prudential treatment of covered bonds under the SA approach)?<br><br>Or, on the contrary, should the scope be reduced to only include originators who are servicing the underlying exposures?<br><br>Please justify your reasoning. | The reduction in the risk weight floor should be available to investors and sponsors of both STS and non-STS securitisations and not only for originators as the current risk weight levels do not reflect the economic risk that such senior tranches are exposed to.<br><br>As previously mentioned, when acting as investor a large part of the activity for banks would include the provision of senior financing to third party's originated securitisation where such transactions tend to be private / bi-lateral securitisation where the third party seek to raise financing and where the bank investor is able to negotiate protective features for its senior financing and is able to get the appropriate reporting that will allow it to monitor the performance of such senior securitisation financing. Furthermore, through this process the senior tranche thickness or senior advance rate is negotiated between investor and originator, where the investor's focus is to minimise the risk of loss which means there is significant credit enhancement and alignment of interest between investor and originator such that the current risk weight floors are materially higher compared to the actual risk that the senior tranche exhibits. |
| 9.14 | Do you consider that the ESAs' proposed accompanying safeguard, with respect to the thickness of the sold non-senior tranches, is proportionate and adequate in terms of ensuring the resilience of the transactions? | |

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| | • Yes<br>• No<br>• No opinion | |
| 9.15 | If you answered no to question 9.14., please provide and explain alternative proposals to ensure a sufficient thickness of the sold non-senior tranches to justify a possible reduction of the risk-weight floor in an efficient and prudent manner. | The conditions are too conservative and likely to result in the proposed floor being unimplementable for a large number of banks. The provisions are overly conservative and seems an unnecessary safeguard that would only lead to increased costs for originators, which would be forced to sell tranches disproportionate to the actual riskiness of the portfolio.<br><br>Furthermore, as set out in the response to 9.13, the risk weight floor reduction should be available also to investors and sponsors. |
| 9.16 | Do you consider that the other three safeguards as proposed by the ESAs (amortisation structure, granularity and, for synthetic securitisations only, counterparty credit risk) are proportionate and adequate in terms of ensuring the resilience of the transactions?<br><br>• Yes<br>• No<br>• No opinion | |
| 9.17 | If you answered no to question 9.16., please provide and explain alternative proposals for safeguards that would effectively ensure the resilience of the | Some members felt that in relation to the criterion that the RW floor reduction should apply to originators only, this would unnecessarily restrict the capital benefit. The reduced RW floor should apply to all types of securitisations (originator, sponsor, investor) to ensure consistency in the risk sensitivity. |

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| | transaction and would justify the reduction of risk-weight floors. | Another problematic criterion was that the unfloored RW derived from the formulae would need to be below 50% of the STS and non-STS floors (i.e. 5% and 7.5%) at inception and on an ongoing basis. This is difficult to control during the lifetime of the deal: While the bank may have an expectation of defaults on the life of the securitisation, it is not certain that the actual defaults will be in line or below expectation. This will result in non-controllable RWA/capital volatility, because if the unfloored RW goes above the threshold, then the RW floor would revert back to the original (i.e. 10% or 15%).<br><br>Finally, the granularity criterion, that at origination, the minimum effective number of exposures requested is to be 0.5% (200) or more is also problematic. A granularity requirement of 200 is 4 times what is required under the STS label. In practice this means that the RW floor reduction would only be available for a narrow set of portfolio types, and likely to exclude many wholesale portfolios. |
| 9.18 | If you answered no to question 9.16., as an alternative, instead of these three safeguards, taking into account the need to ensure simplicity, would it be preferable to limit the reduction of the risk weight floor to STS transactions only? Please explain. | See our response to questions 9.13 to 9.17. It is also important to note that STS labelled securitisations do not comprise a significant portion of the overall securitisation market. Therefore, limiting the proposal to STS labelled securitisations will have little effect. |
| 9.19 | What would be the expected impact of a possible reduction of the risk weight floor on EU securitisation activity?<br><br>Please explain any possible impact on different types of securitisations (traditional securitisation, synthetic securitisation), from both supply and demand sides. | With the better aligned risk weight for the senior tranche to the actual risk, it is expected that such capital relieved could be re-deployed to additional lending. Additionally, from an investor perspective the ability to invest in more senior tranches, for example, provision of senior financing as described in 9.13, will allow for greater lending activity. |
| 9.20 | Do you consider that the current levels of the (p) factor adequately address structural risks embedded in securitisation, such as model risk, agency risk and to some extent correlation, as well as the cliff effects?<br><br>• Yes | |

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| | • No<br><br>• No opinion | |
| 9.21 | If you answered no to question 9.20., please provide the justification, and provide quantitative and qualitative data, for whether and how the (p) factor overestimates the risks and inappropriately mitigates the cliff-effects, for specific types of securitisation exposures. | Since the Global Financial Crisis (GFC) of 2008 / 2009, there has been a significant change in the securitisation market, both from the origination to investment in securitisations. In particular:<br><br>• Significant changes in credit underwriting practice of securitised portfolios including legislation introduced to ensure institutions underwrite credit such as loans having done appropriate due diligence (e.g. Mortgage Credit Directive introduced in 2014)<br><br>• Investors focus on undertaking appropriate due diligence prior to investing in securitisations and ensuring they receive appropriate ongoing information to monitor performance of their securitisation investments<br><br>• Changes in the securitisation regulation in 2011 which introduced the need for alignment of interest through the minimum retention requirements, and the need to conduct due diligence (although post GFC banks had materially changed their approach to due diligence)<br><br>These changes related to securitised assets and securitisation need to be taken into consideration with broader changes in regulation related to conduct, compliance, controls and compensation (particularly for banks) which require investing with due care and more explicitly links compensation to longer term performance which has resulted in individuals and organisations undertaking more rigorous due diligence prior to investing and ensuring they receive sufficient information on an ongoing basis to monitor the performance of their securitisation investment.<br><br>Introduction of the revised securitisation framework in 2018 resulted in a more conservative calibration of risk weight. In particular, the level of p-factor set within the SEC-IRBA and SEC-SA which was designed to address the structural risks such as model |

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| | | risk, agency risk and cliff effects, however, does not take into consideration the aforementioned positive changes mitigating some of these risks (e.g. agency risk).<br><br>Furthermore, increases in the risk weights of securitised exposures through the various changes which have come through since the GFC (e.g. EBA PD and LGD guidelines) combined with the credit risk elements of CRR 3 due to come into force on 1 Jan 2025 results in increased conservatism within the IRBA and taken together with the SA Output Floor, is expected to further increase both the risk weight of securitised assets as well as the risk weight of securitisations. These revisions essentially result in a material reduction in variability of RWA for securitised pool (which materially mitigates the model risk) whilst the SA Output Floor within CRR 3 is expected to increase the risk weight for securitisation themselves. Finally, the recommendation of the p-factor reduction as set out in 9.2 is to bring down the expected RWA inflation due to come in as a result of CRR 3 and does not create the cliff effect that is thought to be of concern.<br><br>We would also note that the US introduced similar protections in relation to risk retention and in terms of stricter credit granting standards post GFC, but stopped short of a broader overhaul of securitisation regulation, and have seen significantly higher growth in the breadth and depth of both private and public securitisation markets relative to the EU. |
| 9.22 | Do you consider that potential targeted and limited reductions to the (p) factor may increase securitisation issuance and investment in the EU, while at the same time keeping the capitalisation of the securitisation tranches at a sufficiently prudent level?<br><br>• Yes<br><br>• No<br><br>• No opinion | Reduction of p-factor should allow for the ability to mitigate the RWA inflation expected due to CRR 3 and therefore enable EU banks to continue lending into the real economy, and to generate capital velocity using securitisation as part of prudent and diversified capital management tools. The proposals set out in 9.2 do not seek to compromise the capitalisation levels of banks. |

| 9.23 | If you answered yes to question 9.22., what criteria should be considered when considering such targeted and limited reductions? You may select more than one option.<br><br>• Exposures held by originators versus investors<br><br>• Exposures in STS versus non-STS securitisations (beyond the differentiation already provided for in Article 260 and in Article 262 CRR)<br><br>• Exposures in senior versus non-senior tranches<br><br>• Exposures calculated under different capital approaches<br><br>• Other criteria | The calibration of the risk weight framework for securitisations has been overly conservative across all roles that banks play including originator, investor and sponsor. A key contributor to this has been the level set for the p-factor. The p-factor calibration is too conservative and does not take into consideration changes in the underwriting practices, credit assessment which does not simply rely on external ratings, changes in regulation including, for example, mortgage credit directive. All of these changes have resulted in reduced agency risk and coupled with CRR 3 where there is a concerted effort to reduce the variability of RWA and with the SA Output Floor there is materially less idiosyncratic RWA and more consistency in how banks Risk Weight exposures, this further reduces model risk (See also our response to question 9.21). |
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| 9.25 | As regards your answer to 9.22, please provide the data on how they would have a positive impact on the issuance of securitisation, the investments in securitisation, and the placement of securitisation issuances with external investors, for different types of securitisations (traditional securitisation, synthetic securitisation). | In combination with the changes proposed for due diligence and transparency, there is potential for greater volume of supply and demand of securitisations. |
| 9.26 | Do you consider that the current approach to non-neutrality of capital requirements as one of core elements of the securitisation prudential framework, leads to undue overcapitalisation (or undercapitalisation) of the securitisation exposures, in particular when compared to the realised losses and distribution of the losses across the capital structure | |

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| | (different tranches of securitisation) over a full economic cycle? Please explain your answer.<br><br>• Yes<br>• No<br>• No opinion | |
| 9.27 | If you answered yes to question 9.26, please justify your reasoning and provide quantitative and qualitative data to show the extent of the undue non-neutrality (overcapitalisation or undercapitalisation), in particular when compared to the realised losses and distribution of the losses across the capital structure, taking into consideration the need to cover a full economic cycle. | The level of credit losses in securitisation in Europe both during and since the GFC has been low which is in contrast to the level of the p-factor calibration for the SEC-IRBA and SEC-SA and hence it is recommended that our proposal to reduce the p-factor is taken up.<br><br>We would further highlight that the effects of the GFC for banks in Europe and particularly in the securitisation market were predominantly of a liquidity nature, whereas many of the regulatory policies have actively constrained liquidity by increasing the costs for both issuers and investors, increased due diligence requirements, increased capital requirements, and reduced the liquidity value of securitisations relative to other instruments (LCR). Addressing the various points highlighted in question 9.2 would be significant in addressing some of these issues. |
| 9.28 | Based on your answer to 9.26., do you consider that alternative designs of the risk weight functions, such as an inverted S-curve, or introducing a scaling parameter to scale the KA25 downwards, within the current halfpipe design, as investigated in the Section 3.3.2 of the EBA report, have potential to achieve more proportionate levels of capital non-neutrality and capital distribution across tranches, address the potential cliff effects more appropriately and achieve prudential objectives? | Reduction in the p-factor is the preferred method for reasons set out in 9.21. Furthermore, it is adopted as part of the CRR 3 transitionals for SEC-SA; the US SSFA securitisation formula currently uses a p-factor of 0.5 for all securitisations and adjusting the p-factor is what is being proposed by the UK PRA. Therefore, there is also a common understanding and familiarity of adjusting the p-factor and hence seen to be a preferred approach. |

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| | • Yes<br>• No<br>• No opinion | |
| 9.32 | Do you consider the process of the SRT supervisory assessment to be efficient and adequate?<br>• Yes<br>• No<br>• No opinion | uncertainty with respect to the regulatory scrutiny process especially for transactions that primarily face meet the objective criteria for SRT specified in the regulations risks potential cliff effects where banks are not able to recognise the benefit of transactions executed, which in turn may reduce capital and lending capacity and contribute to flow back risks. Processes should be clear, transparent, objective, consistently applied and allow for users full clarity on what is/is not required/allowed. The EC/ECB should look to develop minimum standards for NCAs that increases the transparency and consistency of the SRT approval process |
| 9.40 | Does the liquidity risk treatment of the securitisation exposures under the LCR Delegated Regulation have a significant impact on banks' securitisation issuance and investment activities and on the liquidity of the securitisation market in the EU?<br>• Yes<br>• No<br>• No opinion | [Web form does not allow for further elaboration – however members noted senior tranches have been most affected under current LCR]. |

**THEME 5 – OTHERS (QUESTION 12 OF THE CONSULTATION PAPER)**

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<td>12.8</td>
<td>How could securitisation for green transition financing be further improved?<br><br>What initiative could be taken in the industry or in the regulatory field?</td>
<td>ICMA is taking the opportunity to highlight under this section that in June 2022, the Executive Committee of The Principles , supported by the ICMA Secretariat, updated the guidance on Sustainable Securitisation as, especially in the European market, members had seen a split in the type of green bond that were being issued. All of these were Use of Proceeds (UoP) bonds but for some transactions, the UoP were for the collateral securing the bond and in other transactions it was observed that the UoP were ignoring the collateral and looking through to the originators or sponsors behind the transaction.<br><br>The related guidance on sustainable securitisation is divided into two main documents:<br><br>• Appendix 1 of the Green-Bond-Principles Voluntary Process Guidelines for Issuance and also of the Social-Bond-Principles (secured green or social bonds)<br>• Chapter 3 (page 23) of the Guidance-Handbook<br><br>In addition, we note that the EU Green Bond Standard Regulation anticipates that traditional true sale securitisations can be designated as EuGB provided certain additional disclosure and reporting requirements are met (as well as other general requirements of the new framework) and provided the UoP requirement is met by the originator (rather than SSPE issuer) thus excluding green collateral.-That is, it is not possible to seek the EuGB label in a transaction where the originator does not apply proceeds for Taxonomy-aligned purposes even though the underlying collateral is green (ie SSPE issuer acquires from the originator a pool of green assets). From the industry perspective, it was a missed opportunity to encourage more securitisations to help with sustainability finance under the EuGB label.</td>
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| 12.9 | Are there any other relevant issues (outside of those addressed in the specific sections of the consultation paper above) that affect securitisation issuance and investments that you consider should be addressed?<br><br>• Yes<br><br>• No<br><br>• No opinion | |
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| 12.10 | If you answered yes to question 12.9., please explain your answer. | ICMA has set out further elaboration on key questions to reflect members' views and also to address one question that the EC has not raised specific questions in point 3:<br><br>1. Question 4.13 No defined period of time after investment to document compliance with verification requirements:<br>a. Diligence should be conducted *prior* to making an investment decision as compared to fulfilling diligence requirements post-investment.<br>b. This proposal is not appropriate to alleviate the demands on investors in connection with due diligence – the correct solution is in line with amending the due diligence requirements vis-à-vis proportionality and principles—based approach due diligence.<br>c. Finally, if investors must document compliance with verification requirements after an investment within a prescribed window, this adds an unwelcomed additional burden to ensure compliance with this item.<br><br>2. Question 5.5 Option regarding access to information under Article 7 – While members expressed that Option 1 was the closest to the envisaged reforms however, they felt they could not fully endorse Option 1 given that:<br><br>a. as currently worded, members cannot take on board any options wholesale. Option 1 is the closest to the envisaged reforms that |

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| | | members want to see, however there are objections to the need to report to a repository;<br><br>b. the discussion around streamlining disclosure templates for public securitisations should be separate from discussions regarding scope of public securitisations, the overall effect of having streamlined templates but greater scope of public securitisations would not overall help streamline due diligence obligations; and<br><br>c. treating third country securitisations as private securitisations is necessary to enable European entities to be globally competitive e.g. banks can collect equivalent/necessary information from issuers in third countries and assist with these disclosure templates (if simplified, not in the current form).<br><br>3. UCITS Directive and SECR: Some of our members also commented that the 10% acquisition limit for debt securities in a single issuing body imposed under Article 56 of the UCITS Directive hinders their ability to make larger allocations when investing in a securitisation. For example, in certain cases this restriction can make it impossible for a large UCITS investor to subscribe for full or a substantial part of a tranche in a securitisation because the issuing body is a stand-alone SSPE (and not a programme ABS issuer). This restriction reduces the ability of some UCITS investors to play a bigger role in growing the securitisation market and drives more UCITS investments towards unsecured corporate credit with higher risk of defaults, less protections and lower rates of return compared to securitisation. Our members who raised this comment therefore propose to remove this restriction as it is not fit for purpose in the case of an SSPE issuer and creates disincentives to scale up some of the UCITS securitisation investments, which is contrary to the CMU 2.0 objectives to grow European securitisation market.<br><br>4. Need for reporting simplification: Streamlining reporting obligations and file formats would save considerable costs to existing players and critically attract much needed new participants. Today, a single securitisation transaction involves up to six “Data Stakeholders” who create, report or process various data-subsets and information documents. They are often saved in at least six |

| | | different file formats: Acrobat PDF, Word DOC, Excel XLS, Text CSV, XML, Hypertext HTML, Business reporting XBRL (additional details available here: Responses to ESMA March 2024 consultation+select Storied Data). |
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