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Report

A strong, competitive Europe: unlocking the potential of securitisation

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A strong, competitive Europe: unlocking the potential of securitisation

Final report of the securitisation task force

Presented by Dr Manfred Knof, Chairman of the Board of Managing Directors of Commerzbank AG, to the Federal Ministry of Finance on 16 September 2024 at the ESMT Berlin

Executive summary

Sep 2024

The European economy is heavily reliant on banks for financing, and securitisations are a means of connecting financing with capital markets. They expand the spectrum of investments for investors and are essential for financing investments into the green and digital transitions. European and national policy makers have finally recognised the significant contribution these instruments can make to a competitive, strategically independent Europe and plan to strengthen the European securitisation market, which is currently far too small and illiquid. The Initiative's objective in publishing this report is to contribute to this discussion and provide political decision makers with substantive information, highlight interdependencies and put forward concrete proposals.

One major objective for this report and the proposed amendments herein is to improve trust in securitisation as a financial instrument and demonstrate how a broader investor base and increased liquidity can mobilise private capital. Banks are in an excellent position to make balanced proposals pertaining to securitisation, as they are active both as originators and as investors, allowing them to view the issues from both sides.

Strengthening the European securitisation market is difficult at present, given the current excessive state of the regulations, the result of which is high transaction costs for both originators and investors. As a result, investors have moved away from securitisations, market participation is low and the appeal of securitisations as a financial instrument for the real economy has suffered. Over the course of this report, it becomes clear that there is no single solution. Instead, we propose a series of improvements to existing regulations that, when implemented, will permanently strengthen the securitisation market. Half-hearted implementation of a few individual proposals will not have the desired effect.

The specific problem with high transaction costs is that they function as a serious barrier to market entry, as they significantly limit the profitability of securitisations. As such, this report focuses on reducing these costs as a decisive means of improving the appeal of securitisation instruments. These high costs are largely generated by the Securitisation Regulation, which, while fundamentally on-target, leads in its current form and in practice to complicated processes and excessive reporting requirements. This report provides detailed proposals for specific amendments to the Securitisation Regulation that would streamline these processes and requirements: the Initiative has prepared a range of suitable proposals highlighting the path towards simplifying processes for originating banks as well as leasing entities and enterprises on the one hand and for investors on the other.

Banks are active in particular as originators of balance-sheet securitisation markets and as investors in public ABS transactions and private securitisations. The first step towards increasing the appeal of securitisation market segments over the long-term, including for additional investors, and to increasing market activity, is – in addition to the targeted streamlining of regulations – to implement measures to strengthen banks:

01 Over the long term, the Basel Committee on Banking Supervision must completely revise their approach to calculating capital requirements, so that they are no longer excessively high. This report proposes interim solutions, including amendments that reduce capital requirements for low-risk tranches. It is also important to permanently apply the current temporary relief for securitisations in the form of amended calculations for the output floor.

02 Supervisory verification (SRT processes) should be streamlined. This is particularly sensible when applied to securitisations whose process sequences always follow the same pattern.

03 Securitisations for bank investors must be made more appealing by improving eligibility for liquidity coverage ratios (LCR) as set by bank supervisors.

Of course, there is still a need to expand the investor base beyond banks. In this context, regulations for insurers (Solvency II) should be amended so that capital requirements for investments in securitisations are equivalent to those for comparable types of investments. In particular, insurances should also have easier access to synthetic STS securitisations.

Additional potential measures for strengthening the European securitisation market could include state support for the creation of a securitisation platform or the use of government guarantees. Both instruments can indeed have positive effects that stimulate the market, but both are costly and it would likely take some time for the effects to be noticeable. In addition, they could have unintended side effects and will require a stable regulation framework to be effective. As such, amendments to regulations must take priority, as these can be implemented much faster, would take effect quickly and are associated with lower costs.

When it comes to the green transition, a functioning market for securitisations would no doubt help green securitisations to become more important and also assist in covering the increased financing needs associated with this transition. The market for green securitisations is currently not well-developed in Germany, in part due to market participants' already existing uncertainties and in part due to the already high levels of transparency offered by securitisations, which allow investors to assess environmental impacts without a green label. This Initiative does believe that the European Green Bond represents the opportunity to use securitisations to support the green transition. A series of amendments to requirements could improve the chance of success for green securitisations.

Most of these measures must be implemented on the European level. However, there is also some leeway, on a national level, for reviving the securitisation market while simultaneously strengthening Germany as a financial hub. This would require the passing of a German Securitisation Act to eliminate existing legal uncertainties and loopholes, in particular as pertaining to corporate law, assignment of receivables and tax considerations, and to ensure German regulations are on par with those of neighbouring countries. The German legal framework to be created could be supported by targeted harmonisation of specific insolvency and contractual aspects of the European legal framework.

Table of contents

Annexes

Content and purpose of this report

Securitisations have been enjoying a lot of political attention in both Germany and Europe over the past few months. At a meeting of the Franco-German Ministerial Council on 28 May 2024, Federal Chancellor Olaf Scholz and France's President Emanuel Macron agreed to an ambitious agenda to realise the capital markets union. The European securitisation market was listed as one of the main topics, specifically the need to strengthen the market by improving regulatory and supervisory measures.[1]

Just one month before that, in April 2024, Enrico Letta, the former Italian Prime Minister, published a report on the future of the European single market,[2] commissioned by the Belgian EU Presidency. The report emphasised the urgency of further developing the European single market, including for financing. It recognised securitisations as an important link in the chain between the credit and capital markets and, in its roadmap for the new European legislature period (2024 to 2029), proposed a review of the securitisation framework in 2025.

Also in April 2024, Christian Noyer, former Governor of the Bank of France, presented a report[3] on the capital markets union commissioned by France's Economics and Finance Minister, Bruno Le Maire. In this report, Noyer focuses closely on the securitisation market. He confirms that securitisation is an important instrument for efficient risk allocation and prioritises regulatory changes ahead of other conceivable measures in the securitisation market.

This momentum must be upheld. Considering the significant role securitisation plays in the economy, the German Financial Industry Initiative aims, with this paper, to ensure that this impetus towards strengthening the securitisation market continues after the European parliamentary elections and against the backdrop of a newly established European Commission.

The Initiative is committed to the following objectives designed to achieve this aim:

- to translate policymakers' repeatedly expressed intention to strengthen the securitisation market into stimuli for actual measures
- to boost trust in this instrument with transparent proposals to amend the regulatory framework,

[1] A new agenda to boost competitiveness and growth in the European Union (bundesregierung.de).
[2] Enrico Letta's report on the future of the European single market.
[3] EN - Report - Developing European capital markets.pdf (true-sale-international.de).

- to submit concrete proposals for mobilising private capital by expanding the investor base and increasing liquidity,
- more broadly, to make a positive contribution to the capital markets union and to financing the green and digital transitions, and
- work towards ensuring that a growing European securitisation market and the associated deepening of the European capital markets contribute to improving Europe's sovereignty and competitive power.

The proposals are based on practical experiences of those involved in the securitisation process. They also take into account insights from interviews with potential investors who, for a variety of reasons, are not currently considering investing in securitisation positions.

The individual, highly specific proposals are derived from existing challenges and the effect they have on the securitisation market. Each proposal has been examined closely for its potential benefits. The report will also highlight possible weaknesses in the proposals. In addition, the Initiative provides an assessment of the intended effects and feasibility of the proposals.

By taking this approach, the Initiative aims to illustrate interdependencies and create a sound basis for the political decision-making process.

Following an introductory summary of the political situation, the report will then present **proposals for amending the regulatory framework** for securitisations. The proposals range from amendments to the **Securitisation Regulation** to **sector-specific requirements for banks (CRR) and insurances (Solvency II)**. The Initiative then examines the concept of a **securitisation platform** in terms of potential added value and, at the same time, evaluates the challenges involved in implementing any such securitisation platform. Finally, the Initiative focuses on the connection between securitisations and the **green transition**, as well as potential **national measures**.

Securitisations at a glance

Why are securitisations important?

Securitisations are an important instrument, used by banks and commercial enterprises to finance investments, credit portfolios and working capital. They thereby serve as a means of managing capital and liquidity. Securitisations allow risk in the economic system to be transferred to different investors in a highly regulated environment based on their risk preferences, and in doing so make a positive contribution to financial market stability. Securitisations therefore represent an important link between bank-based corporate financing and the capital markets. While Public ABS allow for direct financing of larger transactions by a broader investor base on the capital markets, smaller transactions are often financed directly via bank balance sheets and as Asset Backed Commercial Papers (ABCP) by money market investors. Lending to the economy can be increased with help from synthetic securitisations, which transfer some of the default risk to non-banks and allow banks to continue to meet their capital requirements while lending volumes increase.

What role did European securitisations play in the financial crisis?

During the 2008 financial crisis, European securitisations were unjustly discredited. This is clearly demonstrated by the very low default rates[4] before, during and after the crisis:

A comparison of Defaults from 1976 - 2022	EU	USA
Securitisations	1.0 %	4.1 %
RMBS	0.3 %	
ABS	0.2 %	
CLOs	0.1 %	

Weakest sectors	EU	USA
ABS CDOs	5.1 %	13.1 %
CMBS	3.0 %	
Subprime RMBS		5.3 %
alt-A RMBS		9.3 %

These data reflect the fact that even at the time, lending standards in Europe were stricter than those in the US. In addition, the Guidelines on loan origination[5] have been in force in Europe since 2021. They have ensured standardised, high-quality loan procedures throughout Europe. Banks' and investors' losses during the financial crisis were largely caused by the combination of high losses in US portfolios and the leverage of US securitisations from re-securitisations and arbitrage synthetic securitisations, both of which have since been subject to de facto bans.

How does securitisation work, exactly?

Securitisation connects bank-based corporate financing with the capital markets by passing risks on to institutional investors. The various segments of the securitisation market do this in a variety of ways:

Public ABS, that is securities with an underlying pool of assets traded on public financial markets, serve to finance the real economy. Securitising banks, leasing entities and commercial enterprises, known as originators, receive direct liquidity by selling the receivable (true sale, generally sold via a SSPE) on the capital market. Public ABS usually contain auto and consumer loans as well as real estate financing. It is also common for them to contain auto-leasing or moveable commercial assets receivables. For example, in this market segment, Volkswagen Financial Services AG securitises a pool of private or commercially used cars, including electronic vehicles. Deutsche Leasing AG securitises pools of receivables against medium-sized enterprises which have, as an example, leased their articulated lorries or work platforms from Deutsche Leasing AG.

Synthetic securitisations indirectly finance the real economy. Banks grant loans to retail customers and to small, medium and large enterprises. But there is a limit to the number of loans they can grant, as they must also retain capital in case of a potential default on the loan. There is thus a need for an instrument that can cover the growing need for loans. Banks use synthetic securitisations to hedge their credit risk without directly maintaining liquidity (no sale of receivables). As a result of this risk reduction strategy, they can grant additional loans to both retail customers and enterprises. For example, the Commerzbank AG uses synthetic securitisations to grant additional loans to innovative medium-sized enterprises.

The market segments **ABCP and private non-ABCP** largely securitise trade receivables and smaller auto and leasing portfolios within the framework of a true sale, allowing enterprises to offer product financing to their customers for items such as solar panels and heat pumps. This requires that solar panel and heat pump manufacturers, such as Enpal, secure funding from investors, which can be achieved via securitisation. During this process, the investor provides the capital in return for credit protection – financing from customers. The liquidity generated can then be used by Enpal to process new orders from customers.

All securitisation contributes to ensuring that investments can take place, risks can be shared with institutional investors and illiquid assets can become liquid. Commercial enterprises and banks can thus cover the increased need for investments. Investors, in turn, value the option to directly invest in exposures from various portfolios without having to simultaneously bear other, generalised business risks from the securitising bank or leasing enterprise.

[4] The data source is yearly reports by Standard & Poor's, usually published under the title "Default, Transition, and Recovery". No qualitative changes are evident when a different time period, e.g. from mid 2007 to the end of 2013, is chosen (see AFME, Page 19.).
For additional details comparing the performance of US/EU securitisations during the financial crisis, see the following report from the FSB: "Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitisation" (Page 39).

[5] Guidelines on loan origination and monitoring | European Banking Authority (europa.eu).

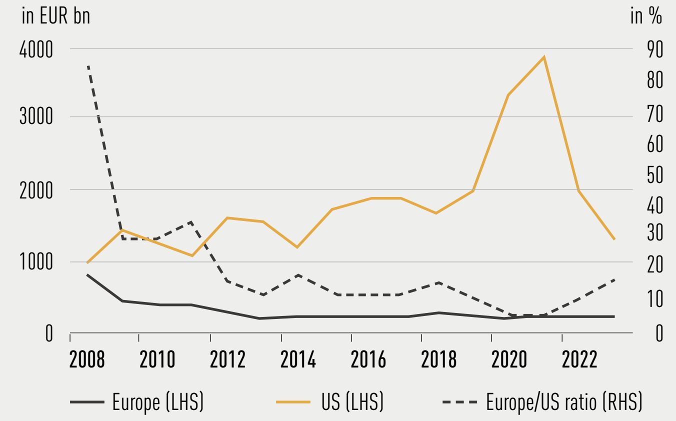
How has the European securitisation market developed over the past few years?

The European securitisation market shrank significantly after the global financial crisis, particularly in terms of Public ABS. For example, the yearly issuing total of securitised assets in Europe sank from 407 billion to 213 billion between 2007 and 2023, a reduction of 48 percent. There was no similar development on the international stage. A comparison of market volumes to GDP also clearly demonstrates the need for Europe to catch up.

In 2023, the European Commission concluded that the European securitisation market had experienced only moderate growth between 2016 and 2021. Only 280 billion euro was issued in 2021, of which 100 billion euro were synthetic securitisations. Even this moderate volume was not the result of an active market, as 40 to 60 percent of securitisations issued were not sold on the market, but rather retained by banks and used to secure liquidity at the central banks. The actual market is therefore even smaller than that suggested by these figures. In contrast, the US market and other international markets are showing strong growth.

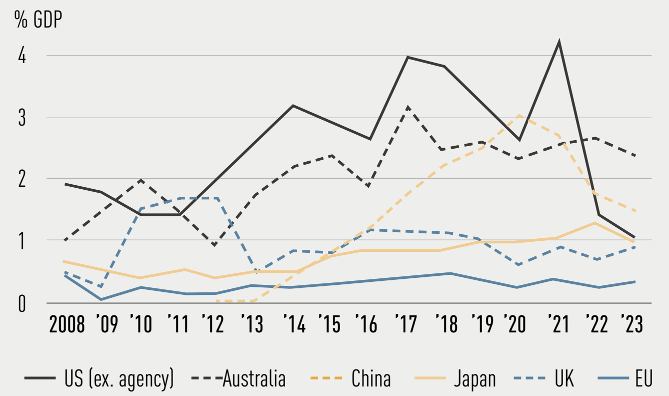
As a supplement to the Public ABS market, the market for synthetic SRT securitisations (SRT stands for Significant Risk Transfer) in Germany and Europe also holds great potential for increasing the number of corporate loans granted by banks. The market has indeed grown appreciably after the retroactive introduction of the standard for simple, transparent and standardised (STS) synthetic securitisations in 2021, but is still, considering the low lending growth, quite small. In 2022, the total synthetic securitisation volume was a mere 140 billion euro. Much higher volumes will be needed, particularly in light of the investments required to drive the green and digital transition.

Securitisation issuance



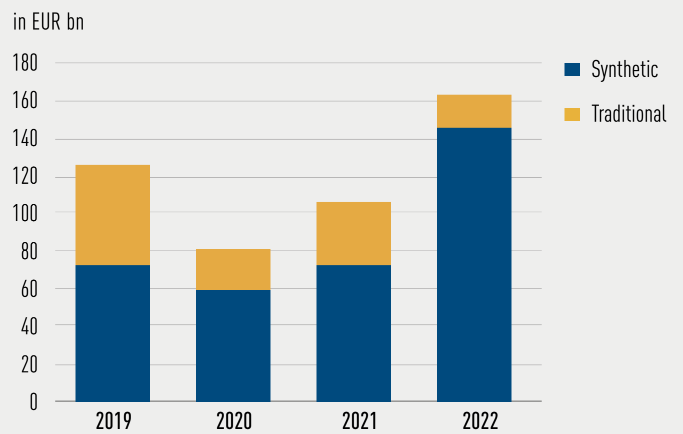
Source: AFME

Global securitisation issuance



Source: AFME

SRT market development: Transaction volumes from 2019-2022



Source: ECB

The market for ABCP and private, non-ABCP securitisations has grown moderately over the past few years, at approximately 3.5 percent per annum. Approximately 60 percent of this volume can be attributed to working capital financing for businesses (trade receivables), while auto leasing and moveable asset leasing represent important segments for smaller sales financing institutions that do not have the portfolio volumes required for Public ABS.

Development of ABCP and private non-ABCP securitisations 2021 - 2023

	Asset Amount			
Asset Type	**2021-12**	**2022-06**	**2022-12**	**2023-06**
Trade Receivables	88,097	92,053	84,240	80,295
Auto Loan or Leasing	46,711	44,477	48,889	52,430
Consumer Loans	8,321	9,233	9,307	9,098
Equipment Leasing	6,359	6,743	7,981	7,569
Other	23,528	30,820	33,742	35,373
Total	**173,016**	**183,326**	**184,159**	**184,765**

Source: EBE European Benchmark Exercise by AFME/EDW/TSI)

How do securitisations support the transition to a digital and green economy?

Securitisations grant economic enterprises easier access to the capital market and sorely needed liquidity, which in turn improves their ability to innovate and take action, not to mention their competitiveness. Banks, in turn, can use the capital freed up by securitisation to finance the transition. Given these essential functions, it is clear that securitisation is an important building block for financing the transition towards a green, digital economy. It must be noted at this point that, in addition to bank-based corporate financing, equity instruments in particular will have a significant role to play. Experience has shown that a combination of equity instruments and leveraged instruments – including securitisation – must go hand in hand and be readily available in order to develop new business models, such as rapid market expansion of solar panels or heat pumps for private real estate, and for the growth and scaling of same.

What role should banks play in strengthening the securitisation markets?

There are currently not enough non-bank investors active on the markets. As such, banks do not just perform an essential function in their role as originators of synthetic (balance-sheet) securitisations, but also as investors in Public ABS transactions and private securitisations. Banks primarily deal, as investors, with senior securitisation positions. Here, default risks are significantly lower than those for subordinated securitisation positions or an unsecuritised receivables portfolio. Securitisations are used to transfer risk outside of the banking sector (by non-bank investors in subordinate tranches). Risks are thus reduced in the banking sector while banks simultaneously contribute to liquidity. As market volumes and liquidity rise, securitisations become more appealing to non-bank investors. This, in turn, provides banks with the capacity to offer additional financing.

Is the regulatory framework for securitisations suitable? Can the instrument be used appropriately?

Appropriate regulation and a liquid market are needed in order to truly reap the benefits of securitisation. A liquid market requires both originators, as providers of securitisations, and investors, who generate demand. A securitisation transaction must be economically viable for both sides of the market. This requires reasonable transaction costs and capital requirements. Transaction costs are determined, among other things, by stipulations in regulations pertaining to processes and reporting. Capital requirements are also determined by regulatory provisions. As a result, regulations influence whether a transaction is worthwhile for the originator and the investor. In expanding the investor base, therefore, the supply side must be taken into account. Supply and demand develop in an iterative process, which also requires the involvement of the banks.

The Securitisation Regulation (SECR) sets out the general framework for regulatory requirements pertaining to securitisation transactions. Capital requirements for securitisations are regulated by the CRR for banks and by Solvency II for insurance firms. In addition, there are a large number of regulatory technical standards, such as RTS and ITS, as well as guidelines from the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA). Securitisation is thus apparently one of the most comprehensively regulated capital market instruments in the European Union. Transparency and due diligence requirements are extensively regulated.

The poor market dynamic exhibited by securitisations in the EU after the introduction of the new Securitisation Regulation demonstrates that regulatory measures to date have not achieved the desired effect of strengthening the securitisation market. Some requirements miss the mark and do not contribute to improving transparency or other markers. The barriers to (re)entry in the securitisation market are very high, both from the supply and demand sides. In addition, there is a disparity in regulatory requirements as compared to other capital market instruments with a similar risk profile. The basic advantage offered by strong regulation has been overpowered by the excessive nature of the regulations. At the same time, banks' securitisation capital requirements have been raised disproportionately, and the introduction of the new STS label has hardly mitigated the increase in such capital requirements. The degree of regulation for securitisations is disproportionately high and has resulted in a trend in which financing activities are moved to other sectors, particularly those subject to fewer regulations.

Securitisation connects bank-based corporate financing and capital markets. How can it be applied more effectively?

The main goal is to improve the liquidity and depth of the securitisation market. The first step is to revise regulations pertaining to securitisation. The Initiative has identified multiple relevant amendments. It is important to be clear at this point that there is no one single measure that will strengthen the market over the long-term. As supply affects demand and vice versa, action must be taken on both sides, that is in terms of the originator and the investor: we must rectify the inadequacies that have been identified. Overall, the regulation should be less detailed, and more principles based. This will result in a more goal-oriented regulation better suited to the risk profile.

The Initiative has also taken a close look at potential options for the state to manage the market. In the case of securitisation, this could mean the creation of a platform and use of state guarantees. Both the creation of a platform and the provision of guarantees could generate positive effects that stimulate the market. At the same time, however, both instruments would be costly and their effects would only be noticeable over the long-term. In addition, both risk causing undesired side effects. The Initiative has therefore concluded that these solutions should not be considered right now. Instead, they could be implemented in the future if and when the approach of amending regulations has been shown not to have the desired effect, that is should financing of underlying credit segments not function efficiently even after the amendments are passed.

Is there such a thing as green securitisations, and can they become more popular?

Green securitisation is a term often used, casually, to refer to the securitisation of portfolios that only finance green investments. However, there are currently no unified, universally valid definitions or regulatory frameworks. Instead,

a variety of assessments have been developed, such as certifications from private initiatives and the regulatory framework of the European Green Bond (EuGB) Regulation, which does not take effect until the end of 2024. The majority of the available assessments take a use-of-proceeds approach, which is based on how the proceeds from these transactions are used.

An analysis performed by the Initiative revealed that the European market for green securitisations is as yet largely undeveloped and that there is as yet no German market for public transactions. This is caused in particular by originator's existing uncertainties, a result of the many unharmonised ESG reporting requirements. Market participants are wary of certifying their transactions due to the risk of incorrectly classifying their securitisation as green. As such, the Initiative believes it is essential to harmonise and consolidate existing ESG reporting requirements.

Securitisations will inevitably have a significant role to play in the green transition. In particular, they are a sales financing instrument for businesses in the real economy, a fact that can currently be observed in the dynamic developments on the German solar panel and heat-pump markets. However, reluctance to classify securitisations as green is strong, and can largely be traced back to the requirement to prove alignment with the EU taxonomy and EuGB Regulation. If this continues to be prohibitive in the future, the Initiative proposes introducing a degree of flexibility in the form of inbuilt assumptions. It seems clear that flexibility will be required in order to adequately finance the transition. After all, as businesses become greener, their projects will also develop iteratively towards a fully green economy. Transition financing of this sort should not be excluded in the assessment per se, as foreseen by regulations to date. In addition, the EuGB Regulation should include synthetic securitisations.

Overall, the Initiative believes that the EuGB Regulation could potentially become a driving force behind the green transition. The amendments proposed in this report by the Initiative will effectively support and reinforce the establishment and growth of a green securitisations market, which has a significant role to play as the economy transforms and becomes green.

1 Reducing transaction costs on the market – simplifying the Securitisation Regulation

The Initiative believes that the securitisation regulation offers quite a few opportunities to ensure that the process of issuing securitisations becomes faster and easier, and also make them more attractive to investors.

The Securitisation Regulation (SECR)[6] sets out a general framework for securitisations and the specific requirements for STS securitisations. The provisions apply to all participants in the securitisation process and include provisions for such issues as due diligence and transparency.

1.1 Due diligence requirements for investors (Article 5 of the SECR)

Initial situation

European investors are met with broad and extremely detailed due diligence requirements for securitisation transactions, and must comply with continuous monitoring requirements. There is no corresponding requirement for similar or even more risk intensive investments, such as equity investments. These extensive requirements are also not earmarked as necessary for direct investments into loans or covered bonds. In addition, the same requirements apply equally to investments in senior tranches and subordinated tranches, even though the investment risks for these instruments differ.

In practice, it is clear that the excessive requirements pursuant to Article 5 of the SECR are preventing investors already active on the market from making a risk-adjusted investment decision within an appropriate time period. Increased costs are incurred for additional documentation of verification routines. These are partially responsible for the fact that investors cannot verify as many investment decisions in parallel, leading to a reduction in demand from investors. In addition, high fixed costs prevent new investors from adding securitisations to their product portfolio.

And last but not least, the provisions pursuant to Article 5 of the SECR make it difficult for EU investors to finance securitisations outside of the EU. Issuers outside of the EU are not prepared to formally fulfil the many requirements pursuant to the SECR. As, however, EU investors must take these into account when investing outside of the EU, they are at a competitive disadvantage to investors in third countries that do not have to take these requirements into account. They have significantly higher fixed costs on the one hand and are prevented from gathering expertise in new asset classes developed in third countries on the other.

[6] Securitisation Regulation – 02017R2402 — EN — 09.04.2021.

Objective

The objective is clear: increase the number of investors and the demand from investors for securitisations. One contribution to this objective could be the introduction of principle-based provisions instead of detailed specifications not tailored to suit the range of possible investments in securitisations. This would reduce the trading costs for securitisations for banks, insurances, asset managers and other investors within the EU without having a negative effect on the individual risk profile or overall financial stability.

Recommendation

The Initiative wholly supports the underlying idea of Article 5 of the SECR, that is that institutional investors should be required to carry out due diligence. However, in order to reduce investor costs (disproportionately high for securitisations) to an appropriate level, there is a need for less detailed regulatory specifications for investors on the securitisation market.

In this case, investments into securitisations must be designed as simply as those for other types of investments, such as corporate bonds or covered bonds. Not doing so results in a competitive disadvantage when investing in securitisations, which is simply not justified in light of the default rates.

The Initiative therefore proposes simplifying and streamlining Article 5 of the SECR in order to replace detailed specifications with principle-based provisions. The specific amendments proposed are discussed in the next section. In addition, Annex 1 contains a proposed amendment to the wording of Article 5 of the SECR. Annex 2 contains a comparison which highlights the differences between Article 5 of the SECR at present and the changes proposed by the Initiative.

In total, the subsequent proposals will, over the medium to long term, result in a reduction in costs and processes more appropriately aligned with the risks. The proposed changes could be implemented during the next legislative proposal.

1.1.1 Assessment of risk retention in EU securitisations

Current provisions	Proposed amendment
Pursuant to Article 5(1) point c of the SECR, investors in EU securitisations must verify, before purchasing same, whether the originator, sponsor or original lender, if located in the EU, retains on an ongoing basis a material net economic interest in accordance with Article 6 of the SECR and the risk retention is disclosed to the institutional investor in accordance with Article 7 of the SECR.	Article 5(1) point c of the SECR should be deleted.

Reasons

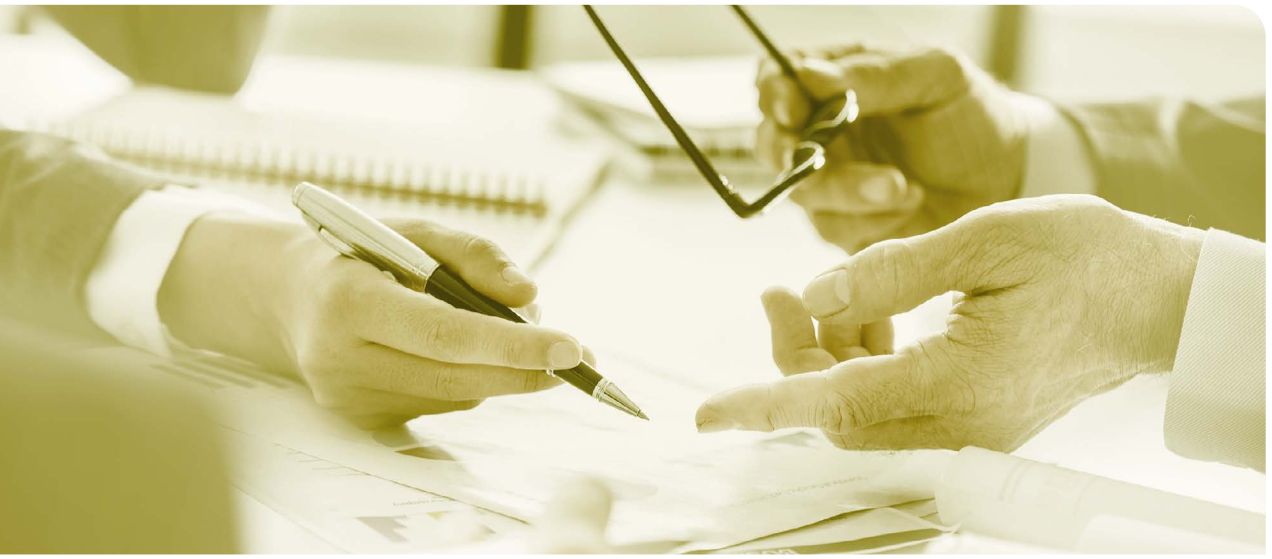
The originator, sponsor or original lender located in the EU is already subject to the obligation to retain risk retention pursuant to Article 6 of the SECR. It is not necessary to simultaneously burden investors with the obligation to monitor compliance with risk retention. This is an unnecessary and duplicated burden, and there is no need to impose it on either investors already active on the market or potential investors.

1.1.2 Assessment of risk retention in non-EU securitisations

Current provisions	Proposed amendment
Pursuant to Article 5(1) point d of the SECR, investors in a third country securitisation must verify, before purchasing same, whether the originator, sponsor or original lender, if located in a third country, retains on an ongoing basis a material net economic interest which shall not be less than 5 percent determined in accordance with Article 6 of the SECR and discloses the risk retention to institutional investors.	The reference to Article 6 of the SECR should be deleted (analogue to the reference to Article 7 SECR). Instead, reference could be made to "equivalent provisions" for the originator, sponsor or original lender to affect an "alignment of interest".

Reasons

The Initiative's proposal still maintains a requirement to assess third country securitisations by requiring that risk retention be met. This is guaranteed by the wording "which, in any event, shall not be less than 5 percent". The originator, sponsor or original lender located outside of the EU, however, is not subject to the requirements of the SECR. Linking the assessment obligation to Article 6 of the SECR therefore represents a significant obstacle for European investors. An investment could fail due to this clause. Instead, reference could be made to similar and/or equivalent provisions that third country originators, sponsors or original lenders must comply with.



1.1.3 Assessment of compliance with the obligation to provide information

Current provisions	Proposed amendment
Pursuant to Article 5(1) point e of the SECR, investors in a securitisation must verify, before purchasing same, whether the originator, sponsor or original lender has fully met the transparency requirements pursuant to Article 7 of the SECR. This applies to both EU securitisations and third country securitisations.	The reference to Article 7 of the SECR should be replaced by more generalised wording. For example, the investor could be required to verify whether or not they possess sufficient information in order to carry out the required due diligence pursuant to Article 5(3) of the SECR.

Reasons

Verification remains necessary. However, the reference to transparency requirements pursuant to Article 7 of the SECR makes it practically impossible to invest in third country securitisations. Originators, sponsors or original lenders located outside of the EU are not subject to the requirements of the European Securitisation Regulation. European investors are therefore unable to fulfil these requirements and are thus excluded from the third country securitisation market. The result is that European investors cannot provide as much support to European companies that operate around the world, and the fixed transaction costs (e.g. establishment of a specialised department) cannot be distributed across a larger volume of investments. It also limits opportunities for financing banks and investors in Europe to develop expertise in new asset classes in other regions, such as Solar ABS in the USA 5 to 7 years ago, and then in turn to actively help develop these sectors within the EU. Last but not least, this reinforces the home bias towards the EU, in particular for smaller investors. Once the amendment is implemented, investments in third countries will be possible within the short-term.

1.1.4 Rules on due diligence assessments to be carried out by the investor

Current provisions	Proposed amendment
Pursuant to Article 5(3) of the SECR, the investor must perform a due diligence assessment before holding a securitisation position. This is designed to ensure that the investor can assess the risks involved. In doing so, the investor must take many requirements into account, including: – the risk characteristics of the individual securitisation and exposures – all the structural features of the securitisation that can materially impact the performance of the securitisation position, including the contractual priorities of payment and priority of payment-related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default – Fulfilment of STS criteria	The individual assessment steps in Article 5(3) points a to c of the SECR should be deleted and replaced by principle-based wording. This might look as follows: Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due diligence assessment which enables it to assess the risks involved. This assessment must take the underlying exposures and the structural features of the securitisation into account.

Reasons

The proposal supports a principle-based approach. As such, the overly detailed requirements have been waived. The core of the provision remains in place, so that the due diligence assessment includes both the underlying exposures and the specific, legal securitisation structure. Formulating the provision to align with a principle makes it possible to perform a due diligence assessment matched to the type, risk and asset class of the securitisation. Simply fulfilling requirements that have no added value for the assessment is thus no longer necessary, and transaction costs for the investment can be reduced.

1.1.5 Assessment of compliance with STS criteria

Current provisions	Proposed amendment
Pursuant to Article 5(3) point c of the SECR, the investor is required to once again assess the results of the external STS notification. In doing so, they may rely on the STS notification and on the information disclosed by the originator, sponsor and SSPE. However, they may not solely or mechanistically rely on that notification or information.	Article 5(3) point c of the SECR should be deleted.

Reasons

The proposal relies more heavily on the originator and, if applicable, the STS verifier. However, at the same time, it reduces duplications when verifying whether STS criteria have been met. This in turn will result in a simplification of STS securitisations, which will increase the appeal of this product.

1.1.6 Detailed specifications on monitoring performance

Current provisions	Proposed amendment
Article 5(4) point a sentence 2 of the SECR specifies a detailed list of the criteria to be used to monitor the performance of securitisations, specifically naming the following: the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, as permitted under Article 8 of the SECR (albeit only for a few narrow exceptions), institutional investors shall also monitor the exposures underlying those positions.	Article 5(4) point a sentence 2 of the SECR should be deleted.

Reasons

The Initiative supports explicitly setting out procedures in writing in order to monitor the performance of the securitisation position and the underlying exposures, including in regard to compliance specifications. However, we believe that a detailed list of what to include in these procedures is both laborious and inexpedient. Investors are obligated, including by supervisory specifications, to determine and indeed capable of determining procedures that take into account the elements appropriate for their purposes. Given the various types of securitisation transactions and any potential new asset classes, there may be a variety of different features appropriate for evaluating the performance of a securitisation position and its underlying exposures. As such, not all of the listed characteristics are relevant to every securitisation. The detailed list, however, means that investors must check off each feature to be assessed and, to remain compliant, provide proof as to what extent the characteristic in question is relevant in each specific case .

1.1.7 Performing stress tests on ABCP programmes

Current provisions	Proposed amendment
Pursuant to Article 5(4) points b and c of the SECR, an investor must regularly perform stress tests for ABCP programmes.	Article 5(4) points b and c of the SECR should be deleted in their entirety.

Reasons

Detailed provisions for stress tests are not necessary, as the fixed written procedures pursuant to Article 5(4) point a of the SECR already adequately specify how the risk assessment is to be carried out.

1.1.8 Internal reporting

Current provisions	Proposed amendment
Pursuant to Article 5(4) point d of the SECR, the investor must ensure internal reporting to their management body, so that the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed.	The following information should be added to Article 5(4) point d of the SECR: d) internal reporting to their management body or <u>an entity designated by the management body</u>, so that the management body or <u>the entity designated by the management body</u> is aware of the material risks arising from the securitisation position and so that those risks are adequately managed;

Reasons

The delegation to an entity designated by the management body provides the management body greater flexibility without having any effect on the quality of the information processing. Inclusion of the management body in individual decisions is also not necessary. Indeed, this obligation only serves to slow down the transaction. It makes investments into securitisations less attractive, because there is no equivalent provision for other financial products.

1.2 Transparency requirements (Article 7 of the SECR)

Initial situation

Securitisation transactions are subject to a multitude of reporting requirements. These requirements not only overlap, but also make use of different technologies. Despite this, the existing reporting requirements are not fit for purpose and do not represent a systematic evaluation of the market. In addition, investors primarily obtain their information from different sources.

The European Benchmark Exercise, EBE, launched by AFME, EDW and TSI and pertaining to additional, voluntary reporting on ABCP and private ABS by twelve leading banks that participate in the market, even showed that ESMA market analysis is, in some cases, incomplete and leads to incorrect conclusions. The EBE was brought into being to deal with the lack of transparency that exists, in particular in the private market segment, despite comprehensive reporting requirements.[7] The report allows for supplementation of European Security Authority (ESA) market assessments, which in some cases are inaccurate as they are based on incomplete information from reporting pursuant to Article 7 of the SECR. The EBE proves that market participants are willing and prepared to actively work on this issue.

Objective

Reporting should become better fit for purpose overall. The question rightly raised by the ESMA, that is which objectives do reporting requirements aim to meet, must be taken into account. The proposal for amending reporting pursuant to Article 7 of the SECR should therefore be dependent on the market segment.[8] In this case, both objectives, that is information from investors for their investment decision and information for supervisors and the public, must be weighed against each other.

Recommendation

Extensive reporting is a significant barrier to market entry that must be lowered. At the same time, it is important to ensure that originators established on the market are not burdened by having to alter systems that have already been implemented. At the end of 2023, the European Commission invited the ESMA to revise their reporting templates. A comprehensive, targeted revision of disclosure templates is necessary in order to ensure that the reporting is designed to be suitable for the target audience. At the same time, any revisions must consider options for standardising the various reporting systems. Revision of the reporting templates must be tailored to suit the various securitisation market segments:

1. Public ABS
2. ABCP / private non-ABCP
3. Synthetic balance sheet securitisations
4. CLOs (not covered here)

As these four market segments each have very different characteristics in terms of disclosure requirements, it would make sense not to apply one single option to all market segments, but instead to tailor any further template revision to suit the respective market segment. A summary of the four market segments can be found in Annex 4. In addition, the data format requirements should be amended for all templates, and .csv files should be set as the standard. The Initiative explicitly recommends including securitisation industry representatives when revising the templates to the same extent to which industry representatives were involved during the European Central Bank (ECB) development of loan level data templates.

Overall, there is a need to reduce the high levels of complexity in reporting, introduce cost savings and improve the relative appeal of securitisation products. Any such revision would have a significantly positive effect on new market participants as well as – to different degrees depending on the market segment – a positive effect on current market participants. These proposals would likely be implemented over the medium term, but the effects would be evident immediately after implementation.

[7] Current EBE report.

[8] Joint statement from TSI and German Banking Industry Committee on ESMA's consultation on disclosure templates

1.2.1 Multiple reporting systems

Current provisions	Proposed amendment
A broad range of regulations stipulate reporting requirements for securitisation transactions. These systems include reporting pursuant to Article 7 of the SECR, Common Reporting (COREP), the Simple, Transparent and Standardised (STS) report, Significant Risk Transfer (SRT) reporting, Sustainable Finance Disclosure Regulation (SFDR) reporting, statistical reporting from the ECB and AnaCredit. Subsequent introduction of the ECB notification template and the fact that COREP and SRT reporting exist in parallel clearly show that, despite this, these templates have failed to meet supervisory objectives. Comprehensive information is, in addition, already provided as part of disclosure reports by investors regulated pursuant to the CRR. This information ensures that supervisory authorities and investors have comprehensive insight into securitisation activities.	The existing reporting systems must be consolidated and simplified. The scope of the data – not just individual data points – must be reduced significantly and aggregated. The terms must be aligned. At the same time, those originators already operating on the market should not be discouraged from continuing their operations. This means that the work required to move away from systems that have already been implemented must be taken into account.

Reasons

There are too many redundancies in reporting which must be eliminated. In addition, they offer no clear utility for securitisations. It is not currently possible for supervisors to systematically evaluate the amount of data they receive. Reporting must be revised, from an end in and of itself to a streamlined, utilitarian reporting system which reduces costs, particularly for the originators.

1.2.2 Loan level data in highly granular Public ABS transaction portfolios

Current provisions	Proposed amendment
Pursuant to Article 7(1) point a and subparagraph 4 of Article 7(1) of the SECR, reports must be generated on the level of individual loans. This requirement applies to all securitisation portfolios regardless of the granularity of the securitisation portfolio or the needs of the investors and supervisors. This process is associated with a large amount of effort and represents a significant barrier to entry for new originators, such as medium-sized businesses. In addition, the utility of these reports for investors is questionable, provided that meaningful portfolio data is available. It is also unclear what advantages this detailed data provides to supervisory authorities.	Originators have largely automated the process of filling in ESMA reporting templates. Any smaller adjustments to existing templates would have no effect on investor behaviour, but only create additional costs for originators. For Public ABS, therefore, only the requirement to report loan level data for highly granular portfolios should be eliminated.

Reasons

Highly granular portfolios are comprised of many receivables whose individual value is extremely negligible as compared to the entire portfolio. The risk profile therefore arises from the portfolio as a whole, as individual loans do not have any significant impact in comparison.

Loan level reporting does not, as a rule, have any benefit for risk assessment. Investors and rating agencies do not evaluate a portfolio on the loan level, but instead use, as a rule, aggregated data and stratification tables created using individual data. Supervisors also assess granular portfolios as a whole or using stratification tables, so that reporting based on individual receivables does not provide any added value.

Removing this requirement, which requires a great deal of effort in reporting, would provide both a time savings and financial relief to originators. This would not just save costs for all participants, it would also increase the appeal of the securitisation market for a broader group of participants. Forgoing the provision of loan level data for highly granular portfolios does not disadvantage investors, as they use aggregated data for risk assessments.

These proposed amendments should have a significantly positive effect for market participants with relevant portfolios which could take effect immediately after implementation. The amendment could be introduced as part of the next legislative proposal.

1.2.3 Individual loan level data for ABCP/private non-ABCP and synthetic securitisations

Current provisions	Proposed amendment
Pursuant to Article 7(1) point a and subparagraph 4 of Article 7(1) of the SECR, reports must be generated on the level of individual loans. This also applies to private securitisations. This requires a great deal of effort when collecting and processing data, both for businesses (in particular small to medium-sized enterprises, or SMEs) and for banks.	The mandatory requirement to create loan level reports for private ABCP/private non-ABCP and synthetic securitisations should be removed, provided that a limited group of banks and investors are participating in these transactions, which can be classified as private-syndicated transactions. a) information on the underlying exposures on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis; <u>*this requirement does not apply to the originator, sponsor and SSPE of a securitisation if a limited number of credit institutions and investors are involved in said securitisation (private-syndicated transactions);*</u> [...] In the case of ABCP and <u>*private-syndicated transactions*</u>, the information described in points a, c(ii) and e(i) of the first subparagraph shall be made available in aggregate form to holders of securitisation positions and, upon request, to potential investors. Please see Annex 3 for more detailed specifications.

Reasons

Unlike investors in public securitisations, investors in these private securitisations enjoy early, close involvement in the transaction process. If they need specific information, it is provided to them before the transaction is concluded. If the information they require cannot be provided, the transaction is not concluded. Loan level reporting, therefore, does not offer added value to private investors in most cases.

The requirement to provide loan level data represents a significant barrier of entry for new originators who view private securitisations as an option for entering the securitisation market, as, in cooperation with investors, they allow for financing that meets the needs of the parties involved in the transaction, or, alternatively, their receivables are fundamentally unsuitable for broadly placed term transactions (in particular trade receivables). This reporting simply does not offer any benefits for these types of securitisations.

Please note that there is currently no notification via a securitisation register or other supervisory reporting system for private securitisations. Therefore, there is also no systematically collected market data available. As such, the templates should be revised in such a way that they can be used to generate an overview of the market. This requires the development of segment specific templates for private non-ABCP and synthetic securitisations containing the transaction-level data required by supervisors. In addition, supervisors must be able to access these templates. Existing templates, such as those for ABCP transactions, could be used as a basis for developing these new templates.

This approach was proven successful for providing information to supervisors and the public in the EBE.

These proposed amendments should have a significantly positive effect for market participants, which would take effect immediately after implementation. The amendment could be introduced as part of the next legislative proposal.

1.3 STS provisions (Article 18 ff. of the SECR)

Initial situation

The introduction of the requirements for STS securitisations in Chapter 4 of the European Securitisation Regulation successfully met its objective, that is establishing a universal quality standard for the securitisation market. The associated capital relief for regulated investors when investing in qualified transactions is logical and appropriate. Even though the STS label does not make any direct statements regarding the degree of economic risk of a transaction, but rather instead focuses on the named attributes, that is simple, transparent, standardised, it is important, despite this quite formal approach, not to disregard the associated economic mechanisms of action when defining quality criteria. The practical implementation of numerous transactions has already shown that there is a need to revise the rules to ensure that high-quality transactions that currently do not qualify can, in the future, justifiably be assigned the STS label, in turn strengthening the market for securitisation transactions.

Objective

Some of the STS criteria are opposed to their own simple, transparent principles. The wording is unclear in parts, and sometimes gives the impression that some aspects and/or effects of individual provisions have not been thought through to their logical conclusion. Some criteria, on the other hand, have such strong unintended effects that they discourage market participants, complicate processes or increase costs unnecessarily. The objective is to reconcile the criteria with market practice and create a simplified set of rules.

Recommendation

The STS provisions in need of improvement are addressed in the following proposals. They may seem to be amendments to details only, however implementing them would have positive effects on the market activities of both originators and investors. All proposals can be implemented short term as part of the next legislative proposal. Implementing these proposals will lead to an increase in financeable volumes.

1.3.1 Obligation to use a SSPE

Current provisions	Proposed amendment
Pursuant to Article 20(1) and 24(1) of the SECR, a purely formal review shows that the only transactions that qualify for the STS label are those for which the ownership of the underlying exposures are acquired by an SSPE. It is thus not possible, argumentum e contrario, for an investor to acquire the exposure directly, even though this alternative would, in some cases, be subject to less risk and incur fewer costs. This formal approach was, unfortunately, confirmed as part of the Q&A process by the responsible supervisory authorities, who rejected a more appropriate substantive assessment.	As a direct investment via the bank balance and not via a Special Purpose Entity does not, per se, have the effect of increasing risk and the cost saving would be noteworthy, clarification is called for to the effect that securitisations can qualify for the STS label even if no SSPE is involved. The articles named above are to be amended as follows: The title to the underlying exposures shall be acquired ~~by the SSPE~~ **by the buyer of the receivables** by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to ~~the SSPE~~ **the buyer of the receivables** shall not be subject to severe clawback provisions in the event of the seller's insolvency.

Reasons

In some cases, the bank, as an example, takes receivables from an industry business onto their balance sheet themselves, meaning there is no need to involve a Securitisation Special Purpose Entity (SSPE). However, tranching takes place just like a classic ABS transaction involving a SSPE. These types of transactions, in which banks purchase receivables directly without involving a SSPE, should also meet STS requirements. There are no disadvantages or risks, as no additional, third-party investors are involved in these transactions.

1.3.2 Historic performance

Current provisions	Proposed amendment
Pursuant to Article 22(1)/Article 24(14)/Article 26d(1) of the SECR, data on static and dynamic historical default and loss performance must be made available to potential investors in order to meet transparency criteria. However, in practice it is often unclear which specific data must be provided.	The originator must instead have the right to choose, as they can use factors specific to the business and transaction in order to provide targeted information to the investor.

Reasons

The amendment eliminates ambiguities in the practical implementation of the provision and allows investors to receive information targeted specifically to them.

1.3.3 Limits on residual maturity

Current provisions	Proposed amendment
Article 24(15) of the SECR specifies that the remaining weighted average life of a securitisation pool may not be more than three and a half years for auto loans, auto leases and equipment lease transactions, and that none of the underlying exposures may have a residual maturity of more than six years. It can indeed be assumed that transactions with longer residual maturities are, on the whole, riskier, requiring implementation of increased transaction structure safety mechanisms in order to reduce risks. In light of that, the specified limitation appears to be understandable. However, it is not suitable for use as a strict criterion. Assets within the framework of transition financing, in particular, often have longer residual maturities and therefore cannot be financed within the framework of STS securitisation transactions. Particularly in light of the fact that transactions with long residual maturities are equipped with increased security mechanisms, limitations on residual maturity should not be included in the SECR as a general restrictive component.	The criterion limiting residual maturity should therefore be removed.

Reasons

By removing the residual maturity limitation, longer term financing contracts will no longer be discriminated against inappropriately. The result will be an increase in financing volumes. This provision is particularly relevant for the corporate movable property leasing and sales financing industries, which provide longer term financing of economic assets for small and medium-sized enterprises. For example, injection moulding machines are generally leased for a duration of 13 years, filling lines for 10 years, milling machines for 8 years, tractor units for 9 years, trailers for 11 years and aerial work platforms for 11 years.

1.3.4 Amortisation trigger

Current provisions	Proposed amendment
Article 21(6) point d of the SECR prescribes the necessity of ending the revolving period if there is "a failure to generate sufficient new underlying exposures that meet the predetermined credit quality." This trigger is not appropriate for transactions with fluctuating exposure volumes, as is often the case in particular for private transactions. These are compensated for by a corresponding fluctuating volume of issued financing instruments. It is particularly important to ensure that industries with cyclical financing needs, such as agriculture, have access to fluctuating volumes. Unlike public transactions, in these cases the intention is for principal payments to be made on issued securitisation positions which can then be re-issued when the volumes experience a renewed increase.	This criterion should be waived, at the very least for private transactions.

Reasons

Waiving this provision would provide relief, in particular for private transactions. As various types of monitoring triggers are more sensitive in private transactions than in public transactions (no negative publicity), there would be no negative effects on the financing banks if this provision was waived.

1.3.5 Homogeneous criteria

Current provisions	Proposed amendment
The requirement for underlying exposures to be homogeneous in order for a securitisation portfolio to qualify for the STS label, as pursuant to Articles 20(8), 24(15) and 26b(8), is understandable and appropriate. This includes, in particular, the requirement that a securitisation pool may contain only one asset type. However, the technical specifications introduce comprehensive limiting factors. Under Article 2(3) of the RTS on homogeneity,[9] it is, for example, possible to bundle together exposures to SMEs, other types of businesses and corporates in one transaction if the exposures are owed to debtors with residence in the same jurisdiction. The securitisation of cross-border portfolios which include SMEs and other businesses is not possible or only possible if the originator can prove that the exposures in the securitised portfolio are subject to a standardised internal rating system.	There should be the possibility of securitisation of cross-border portfolios with SMEs and other types of enterprises. As a supplement, a clarification could be added stating that the originator must have suitable and homogeneous risk measurement procedures/internal rating systems in place to appropriately evaluate the quality of cross-border portfolios consisting of SMEs and other businesses.

Reasons

Reducing uncertainty would relieve structuring and financing processes.

1.3.6 Protection provider for synthetic transactions

Insurances should be included on an equal footing as investors under STS, see Section 3.2. below.

[9] https://www.tsi-kompakt.de/en/2024/02/new-homogeneity-rts-comes-into-force/

1.3.7 Differentiated treatment of own funds

Current provisions	Proposed amendment
Article 243 of the CRR defines additional requirements for STS transactions allowing the position to profit from reduced requirements for STS securitisations in terms of underlying capital. In Article 243(1) of the CRR, a distinction is made between positions in an ABCP programme or an ABCP securitisation and in Article 243(2) of the CRR, a distinction is made between positions which are not part of an ABCP programme or ABCP transaction. Pursuant to Article 243(1) point b of the CRR, the maximum aggregate exposure value (2 percent) for a single obligator does not apply to trade receivables in protected portfolios. In (2), in contrast, this specific regulation is missing for non-ABCP securitisations. In practice, this results in a limitation of financing options for trade receivables, dependent on the type of transaction or refinancing. There is no logical reason, from a risk perspective, to differentiate based on the type of refinancing (ABCP programme or other programme structures, or via the bank balance sheet). From a risk perspective, the type of refinancing is irrelevant provided that the portfolio is protected. In practice, this limits the financing of medium-sized trade receivables portfolios in particular, dependent on the type of transaction. Financing for transition projects (project financing) is also affected by this limitation and cannot currently be provided.	It should be clarified here that non-ABCP securitisations are also excepted from the rule regarding maximum aggregate exposure if they are protected.

Reasons

Waiving this limitation would increase financing volumes and simplify the structuring process.

2 Creating appropriate framework conditions for banks

Initial situation

In the wake of the financial crisis, European banks largely left the securitisation market behind. Even though the performance of European securitisations did not exhibit any significant problems compared to those from the USA, banks generally considered the reputation risk associated with the instrument to be too high.

In addition, this was a time of regulatory uncertainty, in which, beginning around 2010, the initial proposals for tightening securitisation frameworks were under discussion. During these discussions, specifically on the level of the G20 and the Basel Committee on Banking Supervision, substantial increases in capital requirements for securitisation positions with risk weights of up to 1.250 percent emerged.

The new framework was adopted in Europe in 2015 and came into full force in 2019. During this time period, market participants increasingly moved away from securitisations and towards alternative products.

Given the experience of the financial crisis, European policy makers and supervisors designed the European securitisation framework to be restrictive, adding prohibitive hurdles. Unfortunately, they failed to take into account the supporting role securitisations play in financing the real economy.

Today, the majority of those active on the European securitisation market are large banks. Small and medium-sized banks generally do not make use of securitisations. These banks are not reticent to use securitisations because they are not an effective instrument for refinancing and risk reduction.

Instead, European banks today largely avoid securitisations due to

- the high costs of implementation
- the disproportionate capital requirements

The **high cost of implementation** for securitisations arises for banks predominantly due to the complexity and level of detail in the provisions, as well as the scope of the required disclosures (see Chapter 1).

Determining the risk weight that applies to a specific securitisation position requires going through a multi-step, non-linear decision tree (hierarchy) with more than a dozen decision nodes. Almost all nodes require the evaluation or verification of current pool data and/or the transaction structure. The formula-based approaches at the heart of the hierarchy deliver the numerical value of the risk weight with help from models that can only be understood with a robust background in mathematics.

In addition to the CRR and the SECR, multiple RTS and EBA guidelines dictate additional detailed provisions implementing securitisation transaction requirements. Within the framework of the public Q&A process, the EBA issues additional statements and clarifications on numerous individual questions regarding implementation of the framework.

The **disproportionately high capital requirements** on banks for securitisation positions were deliberately built into the framework. The capital requirements for securitisation positions pursuant to the CRR are based on the so-called "non-neutrality factor", according to which the sum of the capital required for all securitisation tranches must, systematically, be greater than the capital requirements for the underlying portfolio, should it not be securitised. Policy makers and supervisors primarily justify this overcapitalisation by citing an increased model and agency risk. There is no empirical proof for the risk assumed in this justification.

The systematic overcapitalisation operates primarily via two mechanisms:

- Conservative calibration of input parameters for calculating risk weights using formula-based approaches
- Application of minimum values (floors) set by supervisors to the results of step 1.

The barriers to market entry affect, above all, institutions that were unable to continually grow alongside the increasingly intensive requirements. These barriers are, today, only overcome by institutions that

- are able to make available the high financial, organisational and personnel resources required to issue and operate products
- have their own business model which regularly creates high securitisable and marketable exposure volumes (pipeline)

Recently, European banks' interest in securitisations has risen. The focus is increasingly on transactions with a **Significant Risk Transfer** (SRT) for outplacing credit risks to capital markets. During implementation of these transactions, the experience has been that cooperation with supervisors to achieve regulatory recognition of capital relief is often difficult and time-consuming, and different outcomes often resulted from similar situations. There is a lack of transparent and largely unified guidelines for this process within the EU. Such guidelines would improve the reliability of the process for banks and supervisors when planning SRT transactions.

The requirements for eligibility for inclusion in the banking supervision Liquidity Coverage Ratio, or in the **LCR capable** securitisation positions, which go above and beyond Basel requirements, result in banks being less willing to use securitisation positions as central bank eligible financing tools and also less willing to use the LCR stress buffer as part of relevant supervisory tests. The result is that market liquidity in AAA senior tranches for Public ABS is low. The classification as HQLA 2b and associated high haircuts, combined with the STS requirements from the Securitisation Regulation, represent costs that undermine, particularly from the point of view of bank investors (treasuries), the use of securitisations or holding securitisation positions as central bank eligible financing tools

Objective

Securitisations must be made accessible to a large number of banks in Europe.

Securitisations should be used to strengthen banks' ability to provide credit to their customers by means of outplacing risk, and to refinance new business with their customers by selling receivables (true sale). In addition, banks can, in their capacity as investors, relieve third-party banks and provide them with liquidity for retail lending.

One prerequisite is that the complexity, scope and burden of implementing regulatory securitisation requirements in Europe once again be reduced to a level that is equivalent to provisions for other instruments and can, be managed by all banks.

In addition, the capital requirements for bank investors must be released, and quickly, from the paradigm of blanket overcapitalisation and instead be designed in a significantly more risk-sensitive manner. Own funds must be able to be used efficiently based on the actual risk inherent to the transaction. The requirements for LCR capability, in particular those for senior STS securitisation positions, should be designed in a more risk-appropriate manner.

In addition, SRT transactions must be able to be processed more reliably and significantly faster than has previously been the case within the framework of standards agreed upon by supervisors and the financial industry.

Recommendation

The development of the regulatory securitisation framework in Europe has, since the financial crisis, resulted in a complicated network of intricately nested requirements, demanding quantitative methods and far too many detailed provisions.

This requires a two-step process:

- Short term, there is a need to mitigate key barriers to market entry for EU banks. This can be achieved via targeted amendments to the current framework towards a more risk-sensitive and consistent design of central parameters for determining requirements for banks pertaining to own funds and liquidity. The most important issues to address are the implementation of a more risk-sensitive senior floor design and a reduction in generalised overcapitalisation. In addition, permanent halving of the SEC-SA p-factor when calculating the output floor and appropriate treatment of senior securitisation positions in the LCR. Finally, there is a need for reliable guidelines for the SRT process and a variety of additional specific measures.
- Over the medium term, there is a need to permanently strengthen the securitisation market in Europe and also to fundamentally revise the Basel regulatory framework. This is the only path to once again harmonising supervisory requirements pertaining to transparency, reliable processes and capital requirements with the potential of securitisations for financing the real economy. The measures listed above are discussed in detail below.

2.1 More risk-sensitive senior floor design and reducing generalised overcapitalisation

2.1.1 Senior Floors

Current provisions	Proposed amendment
The introduction of floors for senior risk weights is generally appropriate when using the Simplified Supervisory Formula Approach (SSFA) from the Basel framework. However, the floor levels currently specified in the CRR – particularly for low-risk benchmark portfolios with excellent credit – are far too high. In addition, set floor levels create undesirable cliff effects.	Introduction of risk-sensitive senior floors in the formula-based approaches. Differentiation of floors for STS and non-STS transactions could be implemented via Senior RW Floor $= 7\,\% \times K_{pool} \times 12.5$ for STS transactions or Senior RW Floor $= 12\,\% \times K_{pool} \times 12.5$ for non-STS transactions whereby $K_{pool} = K_{IRB}$ and/or $K_{pool} = K_A$ pursuant to Article 255 of the CRR.

Reasons

The proposed floor structure delivers risk-appropriate floor levels, as it changes according to the benchmark portfolio risk (K_{IRB} and/or K_A). Example: the proposed amendment with a unified proportionality factor (10%) delivers the current STS floor (10%) for SME portfolios with a medium KSA risk weight of 100% and $K_A = 0.08$ (see Duponcheele et al. (2024) "Rethinking the Securitisation Risk Weight Floor").[10] The proposal does not create additional cliff effects. This adjustment can be achieved by amending the CRR, after which relief would occur directly after the amendment takes effect.

[10] 20240503-Rethinking-the-Securitisation-Risk-Weight-Floor-v61.pdf (riskcontrollimited.com).

2.1.2 P-factor reduction and/or scaling capital input

Current provisions	Proposed amendment
Overcapitalisation is currently expressed by the determination of the p-factor. P-factor determination is different in the SEC-IRBA and the SEC-SA.	**SEC-IRBA:** Determine permissible p-factor values using a 0.2 (STS) or 0.3 (non-STS) floor, and a 0.5 (STS) or 0.75 (non-STS) cap: STS (Article 260 CRR): $p = \min \{ 0.50 ; \max \{ 0.2 ; 0.5 \times (A + B \times (1/N) + C \times K_{IRB} + D \times LGD + E \times M_T) \} \}$ Non-STS (Art. 259 CRR): $p = \min \{ 0.75 ; \max \{ 0.3 ; (A + B \times (1/N) + C \times K_{IRB} + D \times LGD + E \times M_T) \} \}$ **SEC-SA:** Halve the current p-factor as listed in Article 261 and 262 of the CRR. In order to avoid increasing cliff effects associated with the lowering of the p-factor (pertaining to risk weights), the total overcapitalisation could, **alternatively**, be lowered by scaling the capital input (K_A). This means that the parameter K_A when calculating $K_{SSFA(KA)}$ (Article 261 of the CRR) would be replaced by the expression (SF × K_A), in which SF represents the scale factor. In this case, we propose the parametrisation STS: p = 1 und SF = 0.58 Non-STS: p = 1 und SF = 0.65 for the SEC-SA. This parametrisation, when compared to the current provisions, still results in significant, yet appreciably lower overcapitalisation of approximately 15 percent (STS) and approximately 30 percent (non-STS).

Reasons

The proposed amendments lower the total overcapitalisation, which cannot be justified by either the empirical performance of the securitisations or by persistently high model and agency risks. In addition, the recommendation for the SEC-SA pertaining to scaling capital input reduces the cliff effects embedded in the mathematical structure of the model. This adjustment can be achieved by amending the CRR, after which relief would occur directly after the amendment takes effect.

2.1.3 Adjusting SEC-ERBA RW tables (including IAA)

Current provisions	Proposed amendment
Pursuant to current regulations, SEC-ERBA is to be used if SEC-IRBA and SEC-SA are not applied. The risk weights to be used in this case are listed in tables in Articles 263 and 264 of the CRR.	The RW tables for SEC-ERBA (Articles 263 and 264 of the CRR), and therefore also for IAA, must be consistently adjusted to the amendments in the formula-based approaches.

Reasons

The proposed amendments ensure that the approaches remain consistent in their hierarchy. This adjustment can be achieved by amending the CRR, and relief would occur directly after the amendment takes effect.

2.1.4 Permanent halving of the SEC-SA p-factor when calculating the output floor

Current provisions	Proposed amendment
Article 465(13) of the CRR currently allows for temporary halving of the p-factor for those banks bound to the output floor (application of SEC-IRBA or IAA). The p-factor amount for the applicable SEC-SA when determining the output floor is listed as: STS-securitisations: p = 0.25 in Article 262 of the CRR Non-STS securitisations: p = 0.5 in Article 261 of the CRR	The time limits in Article 465(13) of the CRR should be deleted. In addition, there should be no set numerical requirements for p-factor values. Instead the text should read "Halve the values listed in Article 261 and 262 of the CRR".

Reasons

The technical justifications in favour of temporarily halving the p-factor used to calculate the output floor apply permanently. In addition, unified and permanent provisions lower the complexity within the framework and avoid future burdens. Declining to provide a set numerical requirement reduces the need to revise future p-factor amendments in Articles 261 and 262 of the CRR. The proposed amendment can be achieved by amending the CRR and will have a stabilising effect, as it will avoid abrupt pressures caused by a renewed increase in the p-factor after 2032.

2.2 Appropriate treatment of senior securitisation positions in the LCR

Current provisions	Proposed amendment
Pursuant to current CRR provisions and the delegated regulation on LCR (Articles 12 and 13),[11] specific senior tranches in STS securitisations can qualify as level 2B liquid assets.	The ability of securitisations to qualify in the LCR should be amended as follows: - Senior STS securitisations: HQLA Level 2A - Senior non-STS securitisations: HQLA Level 2B In addition, the haircuts should be adjusted to a level equivalent to those of covered bonds and corporate bonds. There are also detailed requirements for ABS transactions pertaining to the originator and the homogeneity that prevent ABS transactions from qualifying as HQLAs. Here, too, there is a need to examine whether these requirements might, in detail, decrease liquidity and are not, as suspected by supervisors, per se a criterion for lower liquidity.

Reasons

New investors can only be won via banks that can accept new emissions on their books and offer and place them on the market. Demand from institutional investors must be stimulated by strengthening the supply side after the long-term crowding out by the ECB.

Beyond measures for reducing high implementation costs and disproportionately high capital requirements, securitisation positions will become more appealing to investors if they qualify, appropriately, as HQLAs and if risk-appropriate haircuts are applied. This will increase market liquidity, in particular for Public ABS. First, this will strengthen the role of securitisations in protecting liquidity positions for lending banks, in turn contributing to the stability of the financial market. Second, full outplacement of the tranches (full stack) of Public ABS leads to capital relief, thus increasing banks' ability to grant loans. Third, strengthening the sales side will, over time, stimulate the buy side. This paves the way for new non-bank investors to enter the market – provided regulatory incentives are in place for creating such capacities – who will take on systematic risks from bank-based business financing.

The proposed amendment can be implemented by amending the CRR and the delegated regulation (EU) 2015/61.[12] Over the medium-term, this will lead to an increase in the market volume of Public ABS, similar to the market dynamic expected for synthetic on-balance-sheet securitisations after they are granted STS-capability as part of the Capital Market Relief Package.

[11] Delegated regulation on LCR.
[12] Delegated Regulation (EU) 2015/61 .

2.3 Reliable guidelines for the SRT process

Current provisions	Proposed amendment
Article 244 f. of the CRR calls for transfer of significant credit risk (SRT) to third parties. The process of supervisory confirmation for a SRT generally takes three months. This process can vary from bank to bank and from country to country, and the duration of the process and its results can therefore be different even under similar circumstances. There are, in some cases, high levels of uncertainty regarding the expected result of a SRT process.	To ensure that SRT transactions can, in the future, be brought onto the market faster, supervisors and industry should agree on unified guidelines for the SRT process for standardised transaction structures. These guidelines could increase the reliability of the process and planning for all parties. Repeat transactions could run through a fast-track process. The methods used by the relevant supervisory authorities should become more transparent overall. The current joint project between the SSM and a special securitisation working group from the European Banking Federation is a suitable means for developing this fast-track process. However, it is important to ensure that the suitability criteria for the process are not, due to an excess of supervisory caution, defined so narrowly that it is, in practice, unusable.

Reasons

Shorter issuance process with increased reliability and predictable results from the SRT process would remove additional hurdles faced by banks. This would result in more effective outplacing of risks associated with granting credit to non-bank investors, in particular when outplacing the mezzanine tranches of synthetic on-balance-sheet securitisations. This would free up lending capacities. Strengthening the sales side would stimulate demand from non-bank investors. The expected result is additional increases in market volumes and increased efficiencies when transferring risks from bank balance sheets to existing non-bank investors and those just entering the market.

The amendments represent a further contribution to the broader banking economy and could become effective in the medium-term, particularly for new issuers. Implementation of these measures is at least partially reliant on supervisors. In principle, however, the measures could be implemented in the short-term.

2.4 Various amendments

2.4.1 STS plus requirements

Current provisions	Proposed amendment
The regulations in Article 243 of the CRR stipulate additional requirements for STS securitisations in addition to those listed in the European Securitisation Regulation. In order to use privileged STS risk weights, a banking investor or sponsor must verify whether these additional requirements have been met. Bank investors and sponsors must rely on information from originators to meet these requirements. These can only be obtained with great effort, and in some cases not at all. STS privileges are thus void or transactions become too costly and, as a result, are not entered into.	The STS plus requirements should be integrated into the STS criteria in the European Securitisation Regulation.

Reasons

Implementing the proposed amendment would relieve bank investors in implementing the requirements. The amendments could take effect immediately after implementation and would have a positive effect on reducing transaction costs. An amendment could be implemented short term as part of the next legislative proposal.

2.4.2 Double counting receivables in default

Current provisions	Proposed amendment
When determining risk weighted position amounts using the standard approach (SEC-SA) pursuant to Article 261 of the CRR, receivables in default are counted twice.	Clarification in Article 261 of the CRR that K_{SA} applies to the (partial) portfolio of receivables not in default.

Reasons

Taking receivables in default into account twice is not appropriate. The amendment would remove double counting when calculating K_A. An amendment could be implemented short-term within the framework of the next legislative proposal and the effect, while small, would quickly be noticeable.

2.5 Amendments to the Basel framework on capital requirements for securitisations

The interaction between the complicated hierarchy of approaches, the demanding calculation requirements and the extensive yet often obscure detailed regulations within the securitisation framework result in a lack of transparency that can only be penetrated by very few specialists. It is therefore becoming increasingly more difficult, in terms of normal business processes and bank management, to anticipate capital requirements for new securitisation transactions, to understand why risk weights are set as they are or to reliably estimate what their sensitivity is in regard to amendments to parameters or framework data.

Most small and medium-sized banks in Europe therefore avoid securitisations due to the financial and organisational effort and increased needs for personnel they entail. As such, the potential for securitisation to support transition finance is currently untapped for the most part.

There is a need to fundamentally rework the supervisory securitisation framework, in order to

- significantly simplify the rules for underlying capital **(reduce complexity and implementation costs)**,
- find a more flexible structure for formula-based approaches, that creates fewer conflicts pertaining to achievement of various supervisory objectives and more appropriate risk weights **(increase risk adequacy)**,
- move away, on level one, from the current extremely detailed regulations and introduce provisions that are focused more on principles and objectives in order to allow for greater flexibility during further development of technical implementation measures and operative implementation in the future, based on the experiences gained **(more effective management of provisions)**.

Bank for International Settlements - BIS in Basel

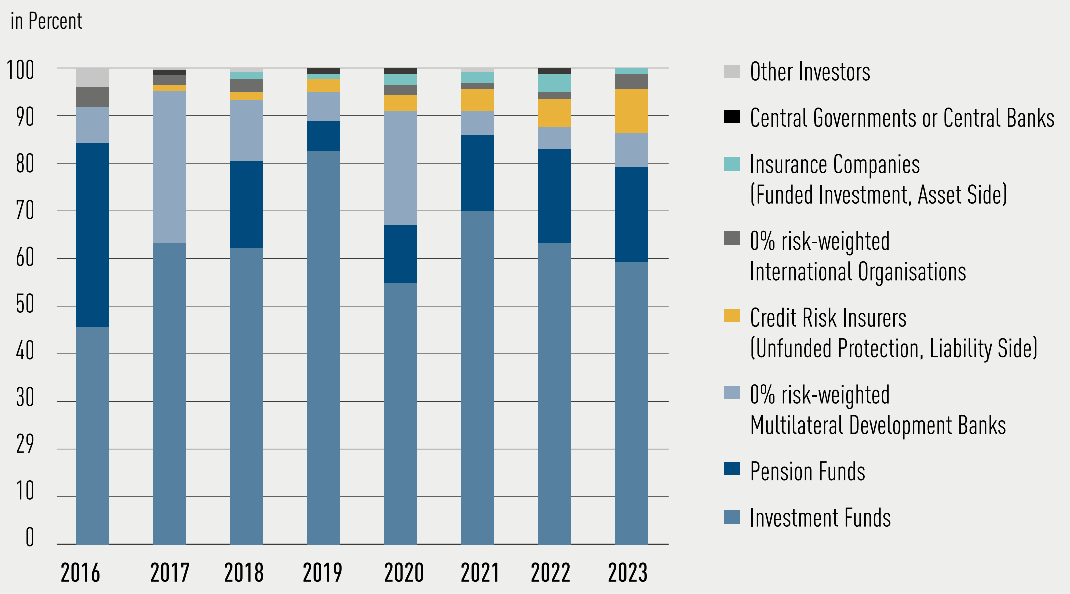
3 Creating appropriate framework conditions for insurances

Initial situation

Asset managers and insurers are significant investors in securitisations and contribute substantially to potential market growth. Both could have a key role to play in managing challenges presented by the economic transition and promoting the capital markets union, helping to master the forthcoming technical and ecological transformation and remove demographic pressure on pensions. Insurance undertakings can help with the transition due to their investments in securitisation on both sides of their balance sheet. On the asset side of the balance sheet thanks to investments in the form of funded capital investments in ABS and on the liabilities side of the balance sheet by assuming damages from securitisation positions via insurance cover provided they are active in credit insurance operations.

The following chart shows that the percentage of insurances active on the synthetic securitisation market has grown rapidly since 2017, particularly in the unfunded segment, but still hovers only around ten percent.

This is due to a series of regulatory barriers that make it very difficult to enter the market, particularly for smaller insurances. However, even larger insurances avoid this type of investment, because transaction costs are too high and/or because specific requirements make the investment less attractive. Insurers continue to contribute significantly to the development of the Public ABS market. ECB purchase schemes have pushed many investors out of the market. The expiry of this programme has led to a drop in demand. Insurances could raise demand over the medium-term, as Public ABS are, due to their transparency and risk profile, generally considered an attractive product for insurers. Reducing regulatory barriers would therefore increase the number of insurers active as investors. This will increase market liquidity and therefore appeal, which in turn will attract additional investors.



Source: IACPM Synthetic Securitisation Market Volume Survey 2016-2023

Objective

The regulatory framework for insurers must be revised to ensure that investing in securitisation is once again worthwhile for insurers. First and foremost, this will require appropriate capital requirements, in particular within the standard approach pursuant to Solvency II. In addition, STS provisions in the European Securitisation Regulation should be adjusted to allow insurers to participate as guarantors without funding. Insurers and their asset managers place strict requirements on the liquidity of their investments. This is because insurers must be able to handle liquidity outflows at any time, including for large amounts of damages. As such, it is generally the case that only a small portion of their investments can be non-liquid. High liquidity in securitisation positions is a must for insurers, in order to increase their suitability within the insurer's asset mix.

Recommendation

The disproportionately high capital requirements pursuant to Solvency II are the greatest barrier to market entry for smaller insurers who apply the standard model pursuant to Solvency II. However, this model is also applied by many larger insurances and their subsidiaries, so that the provisions also represent a barrier for larger businesses. As such, formulating risk-adequate capital requirements for investments into securitisation pursuant to the standard approach as laid out in Solvency II is very important. In addition, there is a need to end discrimination against insurers as guarantors for synthetic STS securitisation. Furthermore, there are discrepancies between the European regulations, and also within national regulations. These must be harmonised.

It is important, at this point, to discuss a connection that may not appear obvious at first glance. Improved risk-appropriate consideration of securitisations for banks in the LCR, as described above, is also a necessary measure from the point of view of insurers, as this will increase the overall liquidity on the securitisation market. Increasing the liquidity of securities is an important investment criterion for insurers. The same is true for calls to relax due diligence requirements pursuant to Article 5 of the SECR, as this would mean that investment decisions can be made much faster, also improving liquidity on the market.

3.1 Adequate capital requirements pursuant to Solvency II

Current provisions	Proposed amendment
Pursuant to Solvency II, insurers must retain capital to cover their European investments, in particular for market and credit risks. Insurers that do not have their own model for doing so must make use of the standard formula approach. The calculation based on the spread module as part of market risks leads to unusually high capital burdens for securitisation positions which do not hold up in comparison with the actual performance of the securities. These capital requirements appear moderately inflated for securitisations conforming with the STS standard, and cannot continue, particularly when compared to covered bonds. Capital requirements for non-STS senior tranches seem exorbitantly high, with a factor of up to 12.5 relative to STS senior tranches. This also applies for the ratio non-STS to STS in non-senior tranches.	Based on studies[13] of the market risk behaviours of securitisations, the following simple step by step amendments to current capital requirements from the spread module appear appropriate: – recalibrating the spread module for senior STS to match the calibration for covered bonds – calibrate the senior non-STS capital requirements to be a 1.3 factor of capital requirements for senior STS – calibrate the non-senior tranche capital requirements to be a 1.5 factor of capital requirements for senior tranches

Reasons

When making investments, insurers focus on the best rating quality and liquidity in securitisation positions and give preference to the most secure tranches that transfer only a small amount of risk from bank portfolios. In this respect, therefore, their main function is that of refinancing. This must be reflected in capital pricing. If they are to fulfil the function of assumers of risk, the difference between non-senior and senior tranches cannot be too large, so that investments in mezzanine and junior tranches are still worthwhile, at least in terms of ROI, even if these tranches are not an insurers' first choice. The proposed factor, 1.5, is appropriate.

13 Perraudin et al 2016 "Solvency II Capital Calibration for Securitisations".

3.2 Participation of insurers in STS securitisations

Current provisions	Proposed amendment
Provisions in the European Securitisation Regulation do not currently allow insurers to participate as protection providers in the form of a guarantee for non-funded and unprotected synthetic STS securitisations, as the protection provider must, in order to do so, qualify for a 0% risk weight pursuant to Article 26e(8) point a of the SECR. Insurers that, as a matter of routine, offer non-funded insurance contracts without collateral for assuming risks on the liabilities side of their balance sheet are therefore de facto excluded as protection providers for STS transactions, as private insurers with a risk weight of 0%, as required by the European Securitisation Regulation, do not exist. Insurers guarantee solvency using an insurance model based on the law of large numbers, by diversifying their risks and by keeping adequate own funds on the books.	Article 26e(8) point c of the SECR should therefore be amended to release insurers from the obligation to put up collateral or provide capital coverage. In addition, letters of credit should be added in Article 26e(10) point b of the SECR as an alternative to collateral in the form of cash held with a third-party credit institution.

Reasons

The requirement of credit protection is a serious problem for insurers, as liquid funds are kept on insurances' books to cover any potential damage payments and therefore have higher opportunity costs. The funded or protected assumption of risks via securitisations therefore results, in comparison to other hedging transactions, in significantly higher hedging costs.

3.3 Harmonising provisions

Current provisions	Proposed amendment
Provisions for insurers and their asset managers do not appear to be adequately harmonised in some instances, leading to contradictions and redundancies. One example is the BaFin circular 11/2017 (VA) as compared to provisions within the European Securitisation Regulation. For example, Article 5(5) of the SECR explicitly allows the mandating of asset managers to assume due diligence requirements. The BaFin circular, however, requires that these types of investments must undergo investment and risk management with an insurance undertaking before purchase, and in addition the structure and components of the investment must be analysed in terms of legal and economic risks before purchase and during the duration of the investment, whether or not an asset manager has been mandated. These contradictions are also not resolved during internal auditing of the undertaking. An additional example can be found when comparing AIFMD (2011/61/EU) and the SECR, which have redundant provisions, for example regarding the material net interest or due diligence requirements for investors.	A central certification register for asset managers and the removal of redundant provisions could help solve these conflicts.

Reasons

Contradictory or redundant legislative provisions make it difficult for insurances to invest in securitisations.

4 Securitisation platform

Initial situation

The discussion on establishing securitisation platforms is exceptionally complex. In addition to the question of what, exactly, a securitisation platform would offer, there is also the question as to how such a platform would be designed and what requirements would have to be met to ensure that the market would accept any such platform. Establishing a securitisation platform simply for the sake of having one would not strengthen the securitisation market.

A securitisation platform must target those areas where the market is not functioning adequately. This requires a corresponding analysis of the market and would ideally take place at a time in which regulatory frameworks are largely finalised. A solution consistent with the market is required in order to ensure that securitisations can truly function as a bridge between bank financing and the capital market.

Existing (securitisation) platforms at a glance

The securitisation market has already developed a variety of options that function as platforms in the broadest sense, featuring very different objectives and designs.

These platforms are introduced below:

- The European Investment Fund (EIF),[14] part of the European Investment Bank Group, currently has a prominent position regarding SME securitisation transactions promoting transition finance. Securitisations on the platform are policy driven and include both true sale and synthetic securitisations. In the case of synthetic securitisations, banks profit from the categorisation of the EIF as a multilateral development bank and the associated 0 percent risk weight for tranches guaranteed by the EIF. The EIF signs a subsidiary agreement with originators, so that a specific percentage of the capital released is granted in loans towards transition financing, particularly for SMEs (use of proceeds approach). Starting in 2013, the EIF has concluded more than 100 synthetic securitisation transactions using a template agreement, which offers at least some degree of standardisation.

- The former securitisation programmes PROMISE (loans for medium-sized enterprises) and PROVIDE (residential property loans) from the Kreditanstalt für Wiederaufbau (KfW) banking group,[15] were aimed at developing a German securitisation market for these asset classes. This was considered necessary as a stimulus, in particular in light of high transaction costs. The programmes used synthetic securitisations. The KfW did not retain the risks themselves, but rather transferred them to OECD banks and the capital market. The KfW was thus operating as an intermediary. Overall, the market segment was largely homogeneous. The KfW standardised, in particular, the structure, documentation and reporting.

- The current German programmes Sparkassen-Kreditbasket (savings banks) and VR Circle (cooperative banks) offer connected institutions the option of relieving credit lines via synthetic bundling of individual loans.[16] As there is no tranching, this is not securitisation pursuant to the Securitisation Regulation and no capital relief is achieved. These programmes prove, however, that standardisation within a group (IT, ratings systems, lending process) make pooling possible. The degree of integration is, in this case, already much higher and goes beyond standardisation up to and including centralisation at the central institute in question. The market segment is considered largely homogeneous due to mandatory compliance with internal group requirements.

- In America, the government-supported enterprises Fannie Mae, Freddie Mac and Ginnie Mae contribute significantly to the considerable size of the US securitisation market.[17] The strong political motivation behind the implementation of these structures aims above all to revive the residential property market. Some credit risks arising from these securitisations are, in the end, credit risks carried by the US government. The market segment exhibits much more homogeneity (one country, one asset class) and the standardisation and centralisation are much more pronounced than in the other structures. State guarantees for default risks are particularly noteworthy.

- In a report on the capital markets union, Noyer also proposed a securitisation platform with guarantees on a national and European level. The fundamental target of the proposed securitisation platform is, in this case, also residential property loans, due to the supposed homogeneity of the market. The proposal does not, however, address how to create the underlying prerequisites for this market, in particular the creation of a homogeneous securitisation pool that is both pan-European and includes securitisations from various groups of financial institutions. The underlying market segment for this platform is therefore rather heterogeneous, even though it simultaneously exhibits maximum integration via guarantees.

[14] www.eif.org.
[15] Kreditverbriefung.pdf (kfw.de).

How would a securitisation platform add value?

It is clear from the examples above that a securitisation platform can, in principle, make a supplementary contribution to strengthening the securitisation market. One central contribution could be the standardisation of structures, documentation and data requirements. It could also conceivably take on supervisory requirements, e.g. when harmonising the process for verifying significant risk transfer. Approval criteria defined in advance could be used to achieve standardisation for financing to be securitised. Another possibility would be a harmonised central IT platform providing professional expertise.

This standardisation would likely lead to a reduction in transaction costs by improving process efficiency and therefore making it easier to access securitisations, thus reducing barriers to market entry. A platform would provide benefits to both originators and investors, and could host both true sale transactions and synthetic transactions. The platform could securitise different asset classes depending on its design.

[16] Final Report German Securitisation Platform (stiftungsprojekt-kapitalmarktunion.de).
[17] Report on the institutional and regulatory differences between the American and European securitization markets (econstor.eu).
[18] EN - Report - Developing European capital markets.pdf (true-sale-international.de).

One clear positive effect provided by a securitisation platform would be to increase the perceived trustworthiness of securitisations. Securitisations continue to suffer from stigma (see introduction) that is simply not based in reality. The prejudice is so strongly rooted, however, that even the smallest, well-justified amendment to the framework is viewed with suspicion. Many companies that could potentially invest in securitisations still do not include the instrument in their strategic investment planning. Perceived trustworthiness could be significantly increased by involving a government institution – at least transitionally – and thus improving investors' sense of security.

One means of government involvement would be via guarantees. However, implementation of state guarantees for entire portfolios is a double-edged sword. The added trustworthiness that could be generated by guarantees is set against the risk of crowding out current investors and asset classes. As a general rule, state guarantees also reduce profits. State guarantees thus negatively affect the appeal of the instrument for investors with a specific risk and return profile. Investors could distance themselves from such investments and implementation could be limited by lending banks.

Recommendation

A securitisation platform may only be able to offer a supplementary contribution to the market. It will not remove blocking points, but could contribute to reducing friction points (challenges and barriers to market entry), promote standardisation and improve efficiencies. In order to achieve these goals, a platform must address those elements of the market that do not function (efficiently). For this to be the case, any such solution must be derived in a targeted manner from current framework conditions and the resulting market environment. The hope is that, as part of the current discussion regarding the regulatory framework, it will be possible to reduce inefficiencies, barriers to market entry and regulatory challenges. This would also influence prerequisites and framework conditions for a platform solution.

The term securitisation platform is a broad one, and there are many potential design options. In general, however, a platform is characterised by standardisation and automation combined with centralisation of processes, data and documentation. The standardisation of structure, documentation and data requirements on a securitisation platform would certainly increase synergies and therefore result in an appreciable reduction in effort and costs for securitisation transactions, in turn increasing the appeal of securitisations.

An additional potential feature of a securitisation platform could involve cross-institutional pooling of receivables to generate highly granular portfolios with a marketable volume. The issuers/originators currently active on the mar-

ket already generate an adequate volume of securitisable receivables and therefore do not require pooling. They have implemented standardisation and automation independently and centralisation is inherent in the form. As such, platforms offer no or only minor supplementary benefits for those already established on the securitisation market. In fact, connection with a platform would be associated with additional work required to adjust existing processes and interfaces.

As such, a European platform is not considered advisable under current circumstances. Please see the results of the working group "German Securitisation Platform" published by TSI in 2023,[19] that concluded, in regards to a national solution within Germany, that the prerequisites and needs of financial institutions are too different and therefore that a platform solution would be most useful within independent groups of institutions and alliances and/or this is where the greatest synergies could be realised.

It is also unclear, on a fundamental level, whether a European wide platform could even be realised. As a rule, this could only be done with the application of significant public resources, such as risk assumption (see the Noyer report). However, an essential criterion of any such platform would be that it prevents the crowding out of private investors when introduced. It goes without saying that the design of any such platform must also conform with the market. National/European bodies should only assume risks in an emergency and/or at market conditions (state aid).

Focusing on certain asset classes or on synthetic vs. true sale securitisations would also be inadvisable. According to current assessments, securitisations offer significant added value when risks are transferred from the banking sector to private investors (via SRT), as this stimulates the lending capacity of banks. However, this can also be achieved via true sale securitisations and, depending on the market, the funding aspect may also play an important role.

Considering the heterogeneity of national banking markets and the corresponding differences in framework conditions, it is clear that platform solutions must, for now, be created – if at all – on a national level in order to provide targeted, effective support for the development of the markets in question. It is also clear that it will be easier to realise platforms in those locations where banking groups and associations have already standardised their retail lending within national borders, using unified procedures and processes. One important prerequisite is a stable regulatory framework, because this will have a direct and significant impact on the potential design of a platform and the efficient implementation of same. At present, the regulatory framework is simply not stable enough. There is plenty of evidence of inadequacies in the current regulatory framework (see above). The first step is to address these issues. Amending regulations is the deciding factor for market revival and must therefore be given top priority. The market can only undergo robust revival once the regulatory framework conditions have been amended and optimised accordingly.

Implementing and operating a securitisation platform would cost a great deal, and there is simply no justification for the use of these resources at this time. However, it is possible that amendments to the regulations and progress in terms of the capital market union could lead, over the medium- or long-term, to a different conclusion. An improved regulatory environment and better integration of the European capital markets could create the correct starting conditions for successfully implementing a securitisation platform.

[19] Final Report German Securitisation Platform (stiftungsprojekt-kapitalmarktunion.de).

5 Securitisation and the green transition

Initial situation

The financial market will have an important role to play in mitigating climate change. The transition towards a green economy will require large amounts of financing, which will come from the financial markets. The terms sustainable finance or green finance are often used in this context. However, the framework is still marked by a high degree of complexity and fragmentation; it is still in flux. Because this is the case, a variety of benchmarks have been developed that can be used to determine whether an investment and/or a project can be considered 'green'. The main options are investor specific assessments, certifications from private initiatives and the regulatory framework of the EU Green Bond (EuGB) Regulation.

Classifying transactions as green

Currently, the benchmarks with the widest market distribution are individual models from investors. The investors often decide themselves, based on ESG questionnaires, whether they consider a project to be green/sustainable and what factors are considered during the assessment. In this context, the approach used by the European Investment Bank (EIB) in cooperation with the European Investment Fund (EIF) stands out. The EIB Group assesses their transactions based on a use of proceeds approach, in which the designated use of the proceeds from a transaction is decisive. The EIB Group refers to EU Regulation 2020/852 (EU Taxonomy) to assess whether a transaction is sustainable. A transaction is considered green if the designated use of the proceeds conforms with the EU taxonomy. The originator profits from this approach, as the EIB Group, within the framework of a retrocession and commitment agreement, refunds part of the interest costs of the securitisation transaction.

Another option for marking a transaction as green is to have it certified with a green label. The private International Capital Market Association (ICMA) and Climate Bonds Initiative (CBI) and their certificates are well established here. Both employ a use of proceeds approach. As such, the decisive factor is not that the underlying assets are classified as green, but rather that proceeds from a transaction are used for sustainable purposes. In principle, every individual transaction could qualify for a certificate. In practice, however, the trend is towards an enterprise-wide Sustainable Finance Framework, which is certified pursuant to ICMA standards via a second party opinion. Individual certification of each transaction is not a regular occurrence in this case.

The European Green Bond (EuGB) Regulation (EU) 2023/2631 represents the first regulatory framework for green bonds. As of 21 December 2024, only those bonds that meet the requirements listed in the regulation may be called European Green Bonds (EuGB). The EuGB Regulation contains specific rules on green securitisations (Article 16 ff EuGB Regulation). In accordance with the current market standard, the EuGB Regulation also takes a use of proceeds approach. Whether or not something is considered sustainable is based on whether the designated use of the proceeds aligns with the EU taxonomy. The regulation stipulates both a mandatory obligation to publish a prospectus pursuant to the Prospectus Regulation (Regulation (EU) 2017/1129) and continuing documentation and monitoring obligations after the bond/securitisation has been issued. Synthetic securitisations are explicitly excluded from the scope of the regulation.

ESG reporting

There are currently multiple, in many cases convoluted, ESG reporting rules in the existing European regulation framework. Enterprises are subject to a variety of ESG reporting specifications arising from Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation or SFDR), Directive (EU) 2022/2464 (Corporate Sustainability Reporting Directive or CRSD), the EU taxonomy and European Supply Chain Directive, among others. In addition to these requirements for enterprises, there are further ESG reporting requirements for products. For example, the Securitisation Regulation specifies reporting requirements pertaining to ESG factors for certain securitisations in Article 22(4). Additional requirements can arise for both originators and investors pursuant to the SFDR (e.g. the PAI score). As such, both originators and investors must comply with multiple co-existing ESG reporting rules for both enterprises and products. It would be preferable to consolidate and harmonise the existing rules without exacerbating existing uncertainties on the market via the introduction of new requirements. When it comes to securitisation, it is important that amendments to reporting obligations are carried out in close consultation with market participants and also that no additional reporting requirements are imposed above and beyond those for other bond classes.

Green transactions

An analysis of green securitisation transactions to date reveals that the European market is as yet largely undeveloped and that there is as yet no German market for public transactions.

Notable on the European market are Green Lion transactions from ING and Green Storm transactions from Obvion Hypotheken. Both are Dutch RMBS transactions that securitise mortgage loans. Only underlying properties that meet specific energy efficiency class criteria are accepted into the portfolios. Both Green Lion transactions (ICMA Green Bond Standard) and Green Storm transactions (CBI) have been certified as green. Another notable example is a securitisation issued by Toyota Financial Services (Komoro, Italy, 2023) which securitises loans for vehicles with hybrid engines. Market participants believe that the issuer deliberately did not seek green label certification for this securitisation, leaving the decision as to whether or not it could be considered green up to investors.

An examination of private transactions on the German market reveals some examples of green securitisations, although it is striking that as yet, there are no German transactions that have applied for a green certification or green label. This is no doubt due to the uncertainties described below. For example, the Landesbank Baden-Württemberg cooperated with the EIB Group to implement a synthetic securitisation for a non-green corporate loan portfolio with an associated obligation to create new financing for solar systems and wind farms (use of proceeds approach).

There is also an interesting development on the German solar system and heat pump markets. Recently, start-up companies in this sector, such as Enpal, Zolar and AIRA, have made significant use of securitisations. These enterprises have set up private securitisation facilities with a financing volume totalling over 2 billion euro for financing sales of solar systems and heat pumps to end users in Germany. Here, securitisations are used not just to finance the green transition, but also to allow enterprises to offer financing models to their clients that allow the majority of the population to invest in solar systems and heat pumps. This financing solution has serious significance, as while around nine out of ten households want to transition to renewable energy, only around half of them can pay for a solar system and/or heat pump with liquid funds.

Enpal, Zolar and AIRA prove that securitisation also and in particular represents an essential financial model for enterprises in the real economy. It is the method of choice for these types of enterprises when it comes to sales financing, and thus make a significant contribution to the green transition in the German economy.

How do originators and investors view green securitisation?

At present, green securitisation is viewed differently by originators on the one hand and investors on the other. Originators active in green securitisation are doing so in particular in order to have the opportunity, as first movers, to make their mark on a developing market. In addition, green securitisation makes a positive impression on stakeholders, customers and investors. One advantage is that the green components of a transaction can also attract new investor groups. Green securitisation does not currently enjoy any obvious pricing advantage on the market.

In light of this, in particular, the complexity of existing (reporting) regulations (see above) is currently an obstacle for originators. Alignment with the EU taxonomy, as required by the EU Green Bond Regulation, must be highlighted here as a particular challenge. It seems that providing proof of same is particularly difficult in practice. As such, transactions to this point have been limited to attempting to achieve alignment on the basis of a best effort approach. Originators welcome the implementation of the already-established use of proceeds approach, as there is a lack of green assets that can be securitised and that are also in alignment with the EU taxonomy.

Originators are particularly wary of certifying their transactions due to the risk of incorrectly classifying their securitisation as green. In addition, some originators run the risk of creating a residual pool of brown assets by pooling their green assets via green securitisation. This residual pool may only be securitised at worse conditions and may be harder to market.

While investors are fundamentally interested in making investments that conform with the ESG, there is not currently a market focus on certified green investments. Green investments are considered nice-to-have, while the structure and quality of the assets is generally viewed as being more important. From the investors' point of view, internal ESG strategies provide an impulse that increases the importance of categorising investments based on ESG criteria. In addition to internal requirements, in the future there will be an increase in indirect requirements to invest in green investment products arising from regulatory frameworks such as the CSRD. Here it must be noted that the CSRD is explicitly based on alignment with the EU taxonomy. As such, the alignment of an investment with the EU taxonomy will, in the future, be highly significant even independent of the EuGB. Overall, it seems that the market for green securitisation in Germany is not well developed as yet. Market participants have doubts regarding legal aspects combined with potential risks to reputation, increased costs for implementation and a lack of incentives, for example combined with reduced financing costs caused by a greenium.

Stimulating the green transition

The importance of securitisation for the transition is not limited to green credit portfolios and green securitisation. Banks, particularly in an economy such as that in Germany, which features a large number of productive medium-sized enterprises, will have to assume an important role in corporate finance. And securitisation is essential to doing so. An explicit green label for securitisations is not the focus here. In general, securitisations are instruments for managing the liabilities side of balance sheets, while banks contribute to the transition by granting loans, that is on the asset side. SFDR, Green Asset Ratio, corporate strategies and other factors are decisive when it comes to the role banks have to play in financing the transition, and securitisations should be viewed as an enabler in this process.

A functioning German and European securitisation market will also ensure that the significance of green securitisations increases. Prior green transactions with participation from the EIB Group have demonstrated that this group and its unique position will have a significant role to play as the market develops. As part of the European Green Deal, the European Union plans to reduce net greenhouse gas emissions to zero by 2050. The EIB Group is, as a financing instrument for the European Union, required to follow their political objectives. Due to this unique position, the EIB Group can not only make green investments as an investor, they can also act as a guarantor to simplify or even make possible transactions between other parties. Participation of state organisations can revive markets, particularly markets that are not well-developed, as solidly proven by the actions of the ECB after the financial crisis. The EIB Group can build bridges and stimulate the market for green securitisations within the framework of its mandate.

One important step towards improved security on the market is the harmonisation and consolidation of existing ESG reporting requirements. The current market uncertainties largely arise from the multitude of requirements that are to be applied in each case. The principle of "less is more" could be applied here to create additional security on the market without reducing the overall qualitative requirements for ESG reporting.

The EuGB can also contribute to increasing the number of green securitisations. As it is based on the EU taxonomy and the associated strict requirements, the EuGB could become the new gold standard for the green securitisation market. As a significant portion of securitisations are synthetic, however, it would make sense to include synthetic securitisations in the EuGB.

One challenge, of course, is that the EuGB Regulation works on the principle of "all or nothing". Only those transactions with a high green quota can meet the standard, i.e. at least 85 percent of the use of proceeds must align with the EU taxonomy. The remaining 15 percent cannot be used for activities that do not align with the EU taxonomy, but only for those that are not yet covered by the taxonomy. These activities must also meet EU taxonomy criteria and, for example, contribute to achieving environmental goals. Of course, as the economy transitions, there will be many grey areas in which projects become greener step-by-step, as part of an iterative process, and are not completely green from the start. There should also be room to represent these transitional states on the green securitisation market.

Proof of alignment with the EU taxonomy could turn out to be a practical barrier to the establishment of the EuGB. In transactions to this point, originators have refrained from

legally binding statements regarding alignment with the EU taxonomy. It seems that it is particularly complicated to provide proof of fulfilling the criteria listed in Article 3 points b to d of the EU taxonomy, as doing so requires a great deal of information that is not always available and that the decisions of third parties, such as consumers, suppliers and others have a significant influence on the alignment. It therefore remains to be seen whether proof of alignment pursuant to Article 3 of the EU taxonomy can be provided by market participants. If it turns out that this is not the case, one option would be to revise the EuGB Regulation or the EU taxonomy. One possible solution would be to work with assumptions, within the framework of the European Green Bond or within the EU taxonomy itself. In this case all criteria listed in Article 3 of the EU taxonomy would have to be met, but only alignment with Article 3 point a would require positive proof. Alignment with the criteria in Article 3 points b to d would still have to be given, but would in this case be assumed to the benefit of the originator. This would make it significantly easier to issue European Green Bonds and therefore support the creation of a market for same.

6 Reducing transaction costs on the German market – creating a national securitisation framework and further harmonisation of the legal framework

The Securitisation Regulation (SECR), applicable as of 1 January 2019, sets out comprehensive and uniform provisions as to how securitisation in Europe is to be designed in order to maintain a minimum security standard and guarantee effective supervision from authorities. The SECR itself, the associated regulatory and implementing technical standards (RTS/ITS), relevant EBS guidelines and additional provisions referencing these (in particular the CRR and the German Regulation on appropriate equity funding for institutions, institutional groups, finance holding groups and mixed finance holding groups, SolvV) represent the European legislature's answer to the subprime crisis of 2008 and specify comprehensive rules for a secure, sustainable securitisation market as a core element of the European capital markets union.

However, the SECR does not cover the legal provisions pursuant to which securitisation transactions are to be implemented within the member states, such as the laws governing the sale and transfer of receivables and the applicable tax or insolvency regime. These questions remain the subject to the laws of the members states. Many European countries have (not just since the introduction of the SECR) introduced dedicated securitisation laws addressing the legal questions arising in connection with securitisation transactions. This is the case in Luxembourg, Italy, Spain and France, among others. In other member states the existing yet very divergent general legal provisions continue to apply. Germany, in particular, does not have a specific securitisation law, although, as an example, there is a specific law governing covered bonds, the Pfandbriefgesetz. This means that in Germany, taxation and legal securitisation questions are subject to the provisions of the general laws, that is the German Civil Code (Bürgerliches Gesetzbuch, BGB), the Insolvency Code (Insolvenzordnung, InsO), the Fiscal Code of Germany (Abgabenordnung, AO), the German Value Added Tax Act (Umsatzsteuergesetz, UStG), etc.

The Initiative does not believe that these general laws cover all securitisation issues; there are many uncertainties, in some cases pertaining to key issues, such as true sales. In addition to eliminating uncertainties and regulatory gaps, some of Germany's European neighbours have added creative solutions to their legal regime for securitisation transactions that make it more attractive to set up securitisations in countries such as Luxembourg or Ireland instead of Germany.

In order to improve the conditions for capital market financing of German businesses, in particular SMEs, there is a need to pass a dedicated German securitisation law that improves tax and legal framework for securitisation transactions. Doing so will ensure that Germany can at least catch up with other European member states, making securitisations less costly, eliminating legal uncertainties and placing them firmly in the jurisdiction of German supervisory authorities. The goal is to ensure that SSPEs can be established in Germany, to eliminate cross-border legal and taxation issues and to make securitisation easier and more appealing to medium-sized businesses, start-ups and leasing entities. This will guarantee employment, strengthen Germany as a financial hub and contribute to financing the green and digital transitions.

The proposals listed here will contribute to reviving the securitisation market within the framework of the European capital markets union and strengthening Germany as a financial centre. It is particularly important to note that these proposals require no subsidisation and are neutral in terms of tax revenue.

In addition, these proposals should be accompanied by and potentially even expanded via European harmonisation efforts. The German securitisation law could, therefore, serve as a model or an impulse for developing a more harmonised European securitisation framework within the capital markets union.

Source: Federal Ministry of Finance / Photos

Four key proposals

The four key proposals that must be regulated by a German securitisation law[20] in order to achieve the objectives named above are as follows:

1 German Securitisation Special Purpose Entities

A specific legal form of a GmbH should be created, the Verbriefungs GmbH (Securitisation GmbH). The Securitisation GmbH would remain subject to the general provisions of the Act on Limited Liability Companies (Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG). It would however have to stipulate in its articles of association that it is an SSPE pursuant to the SECR. The Securitisation GmbH would then be subject to a special regime that provides specific provisions with regard to selected legal issues. This would include, in particular, that a Securitisation GmbH can hold its assets in compartments which are legally separate from each other and, in particular, segregated for insolvency purposes. This proposal is based on the model that Luxembourg has used since 2004 with considerable success and is conceptually comparable to the special asset pools ("Sondervermögen") used by German Investment management companies.

2 Corporate income tax and local business tax

The ban on deducting interest on securitisations as business expenses, which is to take effect as of 2025, needs to be abolished. This could be achieved in the legislation by adopting an exception for bearer bonds and equivalent debt instruments in Section 8(1) no. 1 of the Act on Preventing Tax Evasion and Unfair Tax Competition (Gesetz zur Abwehr von Steuervermeidung und unfairem Steuerwettbewerb, StAbwG). The ban on deducting interest as a business expense applies only because the issuer, due to the characteristics of securities transactions, does not know where the investor is located.

The exemption from the double charge for business tax pursuant to Section 19(3) of the German Business Tax Implementation Regulation (Gewerbesteuer-Durchführungsverordnung, GewStDVO) should be extended to apply to all securitisations. At present, Section 19(3) GewStDVO only exempts bank loan securitisations. This exemption should be extended to include all securitisations, in particular of leasing receivables and receivables from deliveries and services. As the law stands, securitisation of these receivables would be subject to unjustified double taxation. This provides clarification on the tax neutrality of securitisation and will not cause tax revenue shortfalls in Germany.

3 True Sale

Implementation of a provision ensuring that a sale of receivables to an SSPE pursuant to the SECR always constitutes, under both (i) civil law (Sections 433, 398 BGB) and (ii) insolvency law, a true sale (i.e. the SSPE can, in the event of insolvency of the originator and independently of the type of securitised receivable, always claim the right to separation pursuant to Section 47 InsO or the right to separation extending to consideration received as substitute for object of separation pursuant to Section 48 InsO). There are currently no specific legal provisions concerning this issue and there is also no clear case law. The legal definition of the term true sale is based on examples of similar provisions in France and Spain.

4 Start-up financing/license agreements

Stipulate that continuing obligations, in the event that the originator becomes insolvent, cannot be terminated and that Sections 91 and 103 of the InsO do not apply in the event that the receivables have been sold and assigned to an SSPE as part of a true sale securitisation. This will expand the potential for securitisation in Germany and allow securitisation in industries which are currently unable to utilise it and yet would benefit greatly from the option. It would be particularly relevant for license agreements as a means of eliminating existing competitive disadvantages for German tech start-ups (Software as a Service, SaaS) and for rental contracts for subscription models such as those for electric vehicles or IT hardware (Shared Economy). There is already a comparable provision for leasing contracts in Section 108(1) sentence 2 of the InsO, which has already proven effective, apart from the fact that the scope of application is too narrow, and the requirements are too complicated.

[20] Statement from TSI and German Banking Industry Committee on a "Financing for the Future Act II".

Targeted European harmonisation of issues pertaining to insolvency and contract law

The German legal framework to be created could be accompanied by a targeted harmonisation of specific aspects of the insolvency and contractual law of the member states.

This could eliminate existing differences between the legal regimes of the member states regarding the contractual and insolvency law aspects of securitisation transactions in the EU (and also for other capital market transactions). Such targeted harmonisation would also close existing gaps and clarify uncertainties in the member states' legal regimes. This would significantly simplify the necessary the legal review process required for securitisation transactions in respect of the applicable laws of the member states and considerably increase legal certainty.

Of particular concern to securitisation transactions are the existing legal uncertainties pertaining to one key aspect: namely, the validity and enforceability of the transfer of the receivables to be securitised as well as the protection of the collateral provided by the originator SSPE in the event of an insolvency of the originator.

European harmonisation initiatives focusing on the following would be both welcome and highly effective:

- Targeted harmonisation of member states' insolvency and collateral laws by way of uniform minimum standards for the protection of the legal validity and enforceability, in particular in the event of an insolvency, of transfers of receivables made for securitisation purposes (including collateral provided).
- In parallel and accompanying the introduction of a German legal framework for a Securitisation GmbH: targeted harmonisation of member states' corporate law by way of uniform minimum standards for SSPEs with compartments safeguarding their insolvency-proof character in cross-border transactions.

An introduction to the Financial Industry Initiative

The Association of German Banks and True Sale International GmbH have worked together to start a national Financial Industry Initiative. The Initiative aims to strengthen the securitisation market in order to fully realise the potential of securitisations. The Initiative wants to make a positive contribution to improving Europe's competitiveness and to managing financing for the green and digital transitions. It examines the securitisation market as a whole from a European perspective.

The Initiative is sponsored by Dr. Manfred Knof, the Chief Executive Officer of the Commerzbank AG. Commerzbank AG has been active on the public and private securitisation market for years, as an investor, originator and arranger. It has access to broad institutional knowledge.

The other members of the Initiative, both businesses and institutions, represent a wide range of participants in the securitisation process. They have expertise in various securitisation process roles, a variety of types of securitisation and as supervisors.

The Financial Industry Initiative is supported by the Federal Ministry of Finance. In addition, we would like to thank the Deutsche Bundesbank and the European Investment Fund (EIF) for their constructive feedback and valuable comments.

Initiators

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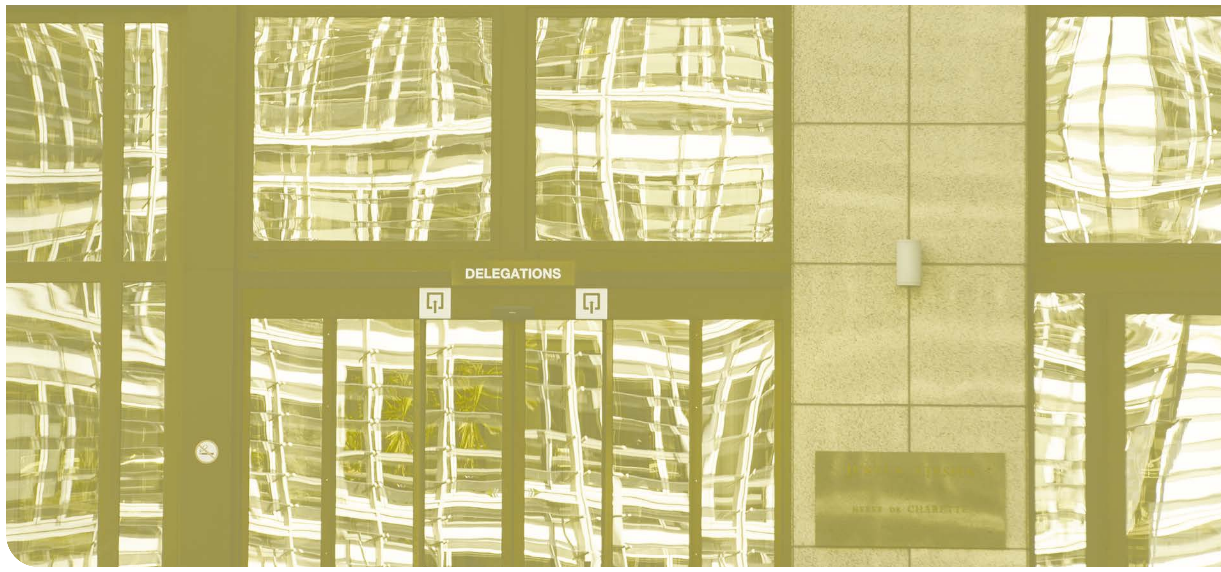

The Association of German Banks represents the interests of the private banks in Germany, including large international banks, regional banks and foreign banks. The Association has 177 members and offices in Berlin, Frankfurt and Brussels.

True Sale International GmbH (TSI) is dedicated to promoting the development of the securitisation market in both Germany and Europe. They do so via training programmes, conferences, expert information and transparency initiatives as well as open dialogue with market participants, supervisory authorities, politicians and academics.

Annexes

Annex 1 Proposed amendment to Article 5 of the SECR

Article 5

Due diligence requirements for institutional investors

(1) Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall verify that

a) where the originator or original lender established in the Union is not a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1) of this Regulation;

b) where the originator or original lender is established in a third country, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness;

c) if established in a third country, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest which, in any event, shall not be less than 5 percent, determined in accordance with Article 6, and discloses the risk retention to institutional investors;

d) The originator, sponsor or original lender is in possession of enough information to carry out the required due diligence pursuant to Article 3;

e) in the case of non-performing exposures, sound standards are applied in the selection and pricing of the exposures.

(2) By derogation from paragraph 1, as regards fully supported ABCP transactions, the requirement specified in points a and b of paragraph 1 shall apply to the sponsor. In such cases, the sponsor shall verify that the originator or original lender which is not a credit institution or an investment firm grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1).

(3) Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due diligence assessment which enables it to assess the risks involved. This assessment must take the underlying exposures and the structural features of the securitisation into account.

(4) An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, shall at least:

a) establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor, on an ongoing basis, compliance with paragraphs 1 and 3 and the performance of the securitisation position and of the underlying exposures;

b) ensure internal reporting to their management body or an entity designated by the management body, so that the management body or the entity designated by the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed.

(5) Without prejudice to paragraphs 1 to 4 of this Article, where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that, where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 and 33 may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation.

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Annex 2 Comparison Article 5 of the SECR

Article 5

Due diligence requirements for institutional investors

(1) Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall verify that

a) where the originator or original lender established in the Union is not a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1) of this Regulation;

b) where the originator or original lender is established in a third country, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness;

~~c) if established in the Union, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with Article 6 and the risk retention is disclosed to the institutional investor in accordance with Article 7~~;

c~~d~~) if established in a third country, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest which, in any event, shall not be less than 5 percent, determined in accordance with Article 6, and discloses the risk retention to institutional investors;

d~~e~~) ~~the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article;.~~ the originator, sponsor or original lender is in possession of enough information to carry out the required due diligence pursuant to Article 3;

e~~f~~) in the case of non-performing exposures, sound standards are applied in the selection and pricing of the exposures.

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(2) By derogation from paragraph 1, as regards fully supported ABCP transactions, the requirement specified in points a and b of paragraph 1 shall apply to the sponsor. In such cases, the sponsor shall verify that the originator or original lender which is not a credit institution or an investment firm grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1).

(3) Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due diligence assessment which enables it to assess the risks involved. That assessment ~~shall consider at least all of the following:~~

~~a) the risk characteristics of the individual securitisation position~~ must take the underlying exposures;

~~b) all~~ and the structural features of the securitisation~~, that can materially impact the performance of the securitisation position, including the contractual priorities of payment and priority of payment related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default~~; into account. ~~In this assessment~~

~~c) with regard to a securitisation notified as STS in accordance with Article 27, the compliance of that securitisation with the requirements provided for in Articles 19 to 22 or in Articles 23 to 26, and Article 27 must also be taken into account. Institutional investors may rely to an appropriate extent on the STS notification pursuant to Article 27(1) and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements, without solely or mechanistically relying on that notification or information.~~ .

Notwithstanding points a and b of the first subparagraph of sentence 2 in the case of a fully supported ABCP programme, institutional investors in the commercial paper issued by that ABCP programme shall consider the features of the ABCP programme and the full liquidity support.

(4) An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, shall at least:

a) establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor, on an ongoing basis, compliance with paragraphs 1 and 3 and the performance of the securitisation position and of the underlying exposures;

~~Where relevant with respect to the securitisation and the underlying exposures, those written procedures shall include monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, as permitted under Article 8, institutional investors shall also monitor the exposures underlying those positions;~~

continue Annex 2 Comparison Article 5 of the SECR

~~b) in the case of a securitisation other than a fully supported ABCP programme, regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, in the absence of sufficient data on cash flows and collateral values, stress tests on loss assumptions, having regard to the nature, scale and complexity of the risk of the securitisation position;~~

~~c) in the case of fully supported ABCP programme, regularly perform stress tests on the solvency and liquidity of the sponsor;~~

b~~d~~) internal reporting to their management body or an entity designated by the management body, so that the management body or the entity designated by the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed~~;~~.

~~e) be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that it has implemented written policies and procedures for the risk management of the securitisation position and for maintaining records of the verifications and due diligence in accordance with paragraphs 1 and 2 and of any other relevant information; and~~

~~f) in the case of exposures to a fully supported ABCP programme, be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.~~

(5) Without prejudice to paragraphs 1 to 4 of this Article, where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that, where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 and 33 may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation.

Annex 3 Comparison of Article 7 of the SECR pertaining to private securitisation

Proposal 1: Eliminating the reporting requirements pertaining to Loan Level Data

(1) The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2 of this Article, make at least the following information available to holders of a securitisation position, to the competent authorities referred to in Article 29 and, upon request, to potential investors:

a) information on the underlying exposures on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis; this requirement does not apply to the originator, sponsor and SSPE of a securitisation if a limited number of credit institutions and investors, fixed from the start, are involved in said securitisation (private-bilateral transactions).

[...]

In the case of ABCP and private-syndicated transactions , the information described in points a, c(ii) and e(i) of the first subparagraph shall be made available in aggregate form to holders of securitisation positions and, upon request, to potential investors.

Annex 4 Overview of the European securitisation market (EU27 and UK)

Market segment	True Sale Public ABS	True Sale CLOs	Synthetic On-Balance Securitisation	True Sale ABCP / Private Non-ABCP
Description	Public market; Broad investor base	"Public by nature/Private by regulation" Broad investor base	Private market Non-Bank Investors	Private market Financing through banks
Volumes 2023	€ 161 bn. (UK: 30%)	€ 36 bn. (UK: n.a.)	€ 140 bn. (UK: n.a.)	€ 185 bn. (UK: 15%)
2019-2023	€ 166 bn. Ø new issue p.a.	€ 74 bn. Ø new issue p.a.	€ 97 bn. Ø new issue p.a.	€ 181 bn. Ø outstandings p.a.
Asset classes	55% Real estate loans 40% Auto/Leasing 5% Other	80% (Large) corporate loans 20% SME loans	55% (Large) corporate loans 25% SME loans 20% Other	60% Trade receivables 25% Auto/Leasing 15% Other
Investors	Broad investor base (incl. ECB) Typically 30-50 investors involved	Broad investor base Typically 10-25 investors involved	Non-bank investors Typically 1-3 investors involved	Financing through banks Typically 1-3 (sponsor) banks involved
Funding of the real economy	Direct (Liquidity)	Direct (Liquidity)	Indirect (bank capital)	Direct (Liquidity)
Goals	Funding	Funding	Capital relief	Funding, balance sheet relief
Performance	Study S&P: Defaults of European securitisation consistently low before, during and after the great financial crisis	Study S&P: Defaults of European securitisation consistently low before, during and after the great financial crisis	Study EBA: Defaults of synthtetic securitisations in Europe slightly lower than of public true sale securitisations	Study AFME/EDW/TSI: Market segment significantly larger than expected; companies with BB ratings are funded within the range of A and AA ratings
Market transparency and Disclosure	Market transparency: high Disclosure: high	Market transparency: high Disclosure: high	Market transparency: low Disclosure: high	Market transparency: medium Disclosure: high
Data sources	*Bloomberg, ConceptABS, Rating Agencies, Other*	*Bloomberg, ConceptABS, Rating Agencies, Other*	*EBA*	*EBE - European Benchmark Exercise - AFME/EDW/TSI [>>Link]*