EFAMA
European Fund and Asset Management Association
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CONSULTATION RESPONSE

Brussels, 4 December 2024

TARGETED CONSULTATION ON THE FUNCTIONING OF THE EU SECURITISATION FRAMEWORK

3. Scope of application of the Securitisation Regulation

	Question	Answer
3.6	Should the definition of a sponsor be expanded to include alternative investment firm managers established in the EU? • Yes • No • No opinion Please explain, including if the definition should be expanded to any other market participants.	EFAMA is of the opinion that the definition of sponsor in Art. 2(5) of the SECR should not be amended to include AFIMs established in the EU. The main scope of activity of an AIFM is to manage and/or market AIFs, which means that AIFMs do not trade on their own books, they do not hold client's assets directly, and instead they act only on their clients' behalf, which constitutes the very nature of their agency business model. This distinguishes them significantly in comparison to credit institutions and investment firms, which also has important implications on the framework regulating AIFMs. If AIFMs were to become sponsors, that would put them in a position that is not necessarily aligned with their business model and would have implications for their legal obligations. In particular, they might need to hold assets directly on their balance sheet to fulfil the risk retention obligation under Art 6 SECR. If engaging as a sponsor of a securitisation would have implications for the AIFM's capital requirements, it could discourage them from getting involved in this type of financing. Therefore, we do not see it as appropriate to include EU AIFMs in the definition of a sponsor. From our members who are active in the area of securitisation, we hear that this is not a change that would be needed for them to further support this source of financing opportunities in the market.
3.7	If you answered yes to question 3.6., are any specific adaptions or safeguards	No response.

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	necessary in the Alternative Investment Firms Directive (AIFMD13), taking into account the originate-to-distribute prohibition in the AIFMD, to enable AIFMs to fulfil the functions of a sponsor in a securitisation transaction, as stipulated in the SECR? You may select more than one option. • An AIFM should not sponsor loans originated by the AIFs it manages • AIFs should not invest in securitisations sponsored by its AIFM • Minimum capital requirements under the AIFMD should be adapted to enable AIFMs, in particular to fulfil the risk retention requirement under SECR • Other safeguards • No safeguards are needed Please explain your answer.	

4. Due diligence requirements

	Question	Answer
4.1	Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the due diligence requirements under Article 5. Please differentiate between costs that are only due to Article 5 and the costs that you would incur during your regular due diligence process regardless of Article 5. Please compare the total due diligence costs for securitisations with the total due diligence costs of other instruments with similar risk cha	No response.
4.2	If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 5 of SECR.	No response.
4.3	Please select your preferred option to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments. • Option 1: The requirements should be made more principles-based, proportionate, and less complex; • Option 2: The requirements should be made more detailed and prescriptive for legal certainty;	[NO SPACE FOR COMMENT]

	• Option 3: There is no need to change the text of the due diligence requirements; • No opinion	
4.4	Should the text of Article 5(3) be simplified to mandate investors to assess at minimum the risk characteristics and the structural features of the securitisation? • Yes • No • No opinion Please explain.	Investors must be obliged to perform meaningful due diligence and monitor the invested positions on an ongoing basis, maintaining the current high qualitative standards of investment decisions. Investor due diligence and risk assessment is incumbent on all professional investors and is a central component of their functions. This applies regardless of the SECR, however the SECR's prescriptiveness adds excessive administrative burden. The securitisation market is comprised of sophisticated investors regulated by their own sectoral legislation, requiring stringent due diligence, credit analysis and management for all asset classes. This is a more effective approach than prescribing specific aspects of the due diligence within the legislation, as these will vary depending on the securitisation in question. Providing specifics of which risk characteristics to assess is not a useful exercise, and there is no equivalent of this exercise for other legislative frameworks applicable to other fixed income asset classes. Specifically, in this respect, the scope and content of the due diligence will depend on the securitisation itself, as these can be diverse as regards their risk characteristics and structural features. The depth of the due diligence also depends on the position of the investment within the capital structure (senior versus junior). As an example of the possible variations, the due diligence applicable to an AAA senior STS securitisation could be comparable to the due diligence performed on covered bonds; similarly, the due diligence required for a non-investment grade rated more complex securitisation could be more in line with that required for a high yield bond or alternative asset. The control requirements under Article 5 go beyond what is necessary for making sound investments regarding the compliance with regulatory requirements that have already been subject to controls by regulated entities (originator, sponsor, etc.). This gives rise to an additional unwarranted cost for redundant controls.
4.5	If you answered yes to question 4.4., please specify how this could be implemented.	As outlined above, sectoral legislation applicable to asset managers (such as the AIFMD and UCITS Directive) already requires comprehensive assessment of all assets to be invested in. This already covers not only the content of Article 5(3)(a) and (b) but further factors that may be more relevant to the specific product in question. A more principles-based

		approach could be achieved through removing the individual assessment steps in paragraphs (a) and (b) of Article 5(3) and replacing them with more principle-based wording. Separately, removing paragraph (c) of Article 5(3) would remove the inefficiencies resulting from redundant controls that have already been performed by other regulated entities that are part of the securitization transaction (originator, sponsor, etc.). For example: "Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due-diligence assessment. That assessment shall consider, in a manner proportionate under all the circumstances, the risks of the investment arising both from the underlying exposures and the structure of the transaction." This allows the core provision to remain in place, so that due diligence includes both the underlying exposures and the specific, legal securitization structure, while also allowing the DD assessment to match the type, risk and asset class of the securitization.
4.6	Taking into account your answer to 4.4, what would you estimate to be the impact (in percent or EUR) of such a modification in Article 5(3) on your one-off and annual recurring costs for complying with the due diligence requirements under Article 5?	No response.
4.7	Should due diligence requirements differ based on the different characteristics of a securitisation transaction? • Yes • No • No opinion	[NO SPACE FOR COMMENT]
4.8	If you answered yes to question 4.7., please select one or more of the following options to differentiate due diligence requirements: • Due diligence requirements should differ based on the risk of the position (e.g. senior vs non-senior) • Due diligence requirements should differ based on the risk of the underlying assets. • Due diligence requirements should differ based on the STS status of the securitisation (STS vs non-STS) • Other	The requirements should permit a risk-adjusted due diligence which indeed depends on the position within the capital structure and the underlying asset type, as suggested. However, this is not exhaustive, and other features of the deal must also be taken into account. As an illustration, regard should be had to asset quality (prime or subprime), structural position (subordination) and focus of the investment (senior or junior tranche), the granularity of the securitised portfolio, and the role and quality of certain counterparties. We do not support introducing further complexity into the Regulation by prescribing the due diligence requirements applicable to each specific type of transaction. This would create further administrative burden and cost without enhancing the quality of investment decisions or providing further transparency to auditors. It could also lead to

		ambiguity when dealing with different asset classes and structures. Rather, a principle-based, proportionate approach would require meaningful pre-investment due diligence and ongoing monitoring. This creates a more targeted, safer and efficient framework.
4.9	Taking into account your answers to 4.7 and 4.8, what would you estimate to be the impact (in percent or EUR) of differentiating due diligence requirements on your one-off and annual recurring costs for complying with the due diligence requirements under Article 5?	No response.
4.10	For EU investors investing in securitisations where the originator, sponsor or original lender is established in the Union and is the responsible entity for complying with those requirements, should certain due diligence verification requirements be removed as the compliance with these requirements is already subject to supervision elsewhere? This could apply to the requirements for investors to check whether the originator, sponsor or original lender complied with: (i) risk retention requirements • Yes • No • No opinion (ii) credit granting criteria requirements, • Yes • No • No opinion (iii) disclosure requirements • Yes • No • No opinion (iv) STS requirements, where the transaction is notified as STS • Yes • No • No opinion	In general, requiring investors to check regulatory compliance that has already been controlled by other entities which are themselves regulated and in particular subject to the SECR appears excessive and should be removed. Due diligence should remain the same in terms of evaluating underlying assets, structural features, regulatory risks, with the investment decisions being made accordingly.
4.11	Taking into account your answers to Q.4.10, what would you estimate to be the impact (in percent or EUR) of removing those obligations on your one-off and recurring costs for complying with the due diligence requirements?	No response.
4.12	Do the due diligence requirements under Article 5 disincentivise investing into securitisations on the secondary market? • Yes • No • No opinion	The complexity of the due diligence process increases costs and requires additional yield to cover this cost compared to other investments. It slows the market, giving rise to side effects such as reduced market trading and ultimately impacting market liquidity.

		As secondary opportunities are often only available for a short amount of time, the time-consuming process can lead to dealing deadlines not being met. As an example, the primary ABS market may afford typically between 3 to 10 days to conduct due diligence, while on the secondary market, this may be limited to just a few hours or a single day.
4.13	If you answered yes to question 4.12., should investors be provided with a defined period of time after the investment to document compliance with the verification requirements as part of the due diligence requirements under Article 5? • Yes • No • No opinion	[NO SPACE FOR COMMENT]
4.14	If you answered yes to question 4.13., how many days should be given to investors to demonstrate compliance with their verification requirements as part of the due diligence requirements under Article 5? • 0 – 15 days • 15 – 29 days • 29 – 45 days • No opinion	Not applicable
4.15	If you answered yes to question 4.13., what type of transactions should this rule apply to?	Not applicable
4.16	Do the due diligence requirements under Article 5 disincentivise investing into repeat securitisation issuances? • Yes • No • No opinion	[NO SPACE FOR COMMENT]
4.17	If you answered yes to question 4.16., how should repeat or similar transactions be identified in the legal text and how should the respective due diligence requirements be amended?	We do not consider there is a need to identify what is a repeat or similar transaction in the SECR, nor that due diligence requirements should be written specifically for them. Rather, a more qualitative, principles-based approach outlined in our previous answers would be sufficient. It would allow for a reduction in duplicative gathering of documentation where the characteristics of the securitisation have not been changed. Currently, the prescriptive nature of SECR results in duplication of documentation without an increase in transparency and quality, particularly where the repeat issuance has limited changes to the previous ones.
4.18	Should Article 32(1) be amended to require Member States to lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures in case institutional investors fail	We do not believe that prescribing sanctions on the investor is necessary, noting that other asset classes do not carry with them sanctions for non-compliance with product-specific obligations. We also do not believe that this would align with the objective of

	to meet the requirements provided for in Article 5? • Yes • No • No opinion	encouraging investors to invest more in securitisations.
4.19	Taking into account the answers to the questions above on due diligence requirements, do you think any safeguards should be introduced in Article 5 to prevent the build-up of financial stability risks?	The investment processes currently implemented as part of the normal course of business for all types of assets are sufficient and appropriate safeguards. There should not be a need for regulatory safeguards at the asset-class level (i.e., specific only to securitisation as an asset) if Article 5 is made into a principles-based provision.
4.20	Taking into account your answers to the previous questions in this section, by how much would these changes impact the volume of securitisations that you invest in?	No response
4.21	If you are a supervisor, how would the changes to the due diligence requirements suggested in the previous questions affect your supervisory costs?	No response
4.22	Should the National Competent Authorities (NCAs) continue to have the possibility to apply administrative sanctions under Article 32 and 33 of SECR in case of infringements of the requirements of Article 5 SECR to either the institutional investor or the party to which the institutional investor has delegated the due diligence obligations? • Yes • No • No opinion	We do not consider there is a need for specific regulatory change.
4.23	If you answered no to question 4.22, which party should be subject to administrative sanctions in case of infringement of the due diligence requirements? • the institutional investor • the party to which the institutional investor has delegated the due diligence obligations	[NO SPACE FOR COMMENT]

5. Transparency requirements and definition of public securitisation

	Question	Answer
5.1	Please provide an estimate of the total annual recurring costs and/or the average cost per transaction (in EUR) of complying with the transparency regime under Article 7. Please differentiate between costs that are only due to Article 7 and costs that you would incur during your regular course of business regardless of Article 7.	No response.

	Please compare the total transparency costs for securitisations with the total transparency costs of other instruments with similar risk characteristics.	
5.2	If possible, please estimate the total one-off costs you incurred (in EUR) to set up the necessary procedures to comply with Article 7 of SECR.	No response.
5.3	How do the disclosure costs that you provided in 5.1. compare with the disclosure costs for other instruments with similar risk characteristics? • Significantly higher (more than 50% higher) • Moderately higher (from 10% to 49% higher) • Similar • Moderately lower (from 10% to 49% lower) • Significantly lower (more than 50% lower)	No response.
5.4	Is the information that investors need to carry out their due diligence under Article 5 different from the information that supervisors need? • Significantly different • Moderately different • Similar	Many of our members have explained that, for certain types of securitisations such as CLOs and CMBS, the quarterly granular reporting templates mandated under the SECR are not fit for purpose, as they (i) capture some irrelevant information, (ii) fail to capture necessary information, creating a data gap which has to be filled in by reports of third parties, and (iii) as a result, impose undue costs and operational burden for CLO/CMBS issuers and managers, and (iv) create a barrier for entry for smaller issuers. For example, a loan template contains mainly qualitative data without an interpretation and analysis of market information, such that investors are themselves required to extract and standardise this information to purpose their due diligence. It is agreed that the needs of investors in CLOs and CMBS are adequately addressed by customary monthly investor reports delivered under the terms of the CLO/CMBS transaction (which includes loan-level detail the market accepts as beneficial to investors and proportionate to the asset class). In reality, CLO investors generally rely on these customary reports, which were developed by the CLO market directly with investors and other stakeholders (including prior to the introduction of the SECR) and do not in practice rely on the Article 7 SECR template reports. For example: (a) for CMBS, information missing from quarterly reports includes underwriting by the investor, and underlying commercial exposures required for property due diligence; (b) for CLOs, relevant information which is not required in the templates includes the industry of the underlying corporate obligor and market value. For other categories of securitisations such as consumer asset classes (RMBS, auto loans, consumer unsecured loans), differences of opinion exist with

		some seeing these as valuable and well or relatively well-served by the template, and others considering the templates are not fit for purpose. Please note that for the following question, Question 5.5, we have instead addressed this as part of our response to Question 12.10 in order to reflect a more nuanced view.
5.5	To ensure that investors and supervisors have sufficient access to information under Article 7, please select your preferred option below. Option 1: • Streamline the current disclosure templates for public securitisations • Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public). Commission Delegated Regulation (EU) 2024/1224 Option 2: • Remove the distinction between public and private securitisations. • Introduce principles-based disclosure for investors without a prescribed template. • Replace the current disclosure templates with a simplified prescribed template that fits the needs of competent authorities with a reduced scope/reduced number of fields than the current templates. Option 3: • No change to the existing regime under Article 7.	[NO SPACE FOR COMMENT]
5.6	If you are a supervisor, what impact (in percent or EUR) would you anticipate Option 1 would have on your supervisory costs?	No applicable
5.7	Assuming that transparency requirements are amended as suggested in Option 1, by how much would the volume of securitisations that you issue, or invest in, change?	No response
5.8	What impact (in percent or EUR) would you anticipate Option 1 would have on your one-off and annual recurring costs for complying with the transparency requirements in Article 7? Please explain your answer.	No response
5.9	Do you see any concerns, impediments, or unintended consequences from requiring private securitisations to report to securitisation repositories? • Yes	Subjecting private deals to this requirement does not seem consistent with the spirit of a private deal. Sponsors/originators may make data available to the investor base via other, simpler means. On the other hand, adding this requirement simply risks

	• No • No opinion	representing a further impediment for private/bilateral trades.
5.10	Under Option 1, should the current definition of a public securitisation be expanded to a securitisation fulfilling any of the following criteria: (1) a prospectus has been drawn up in compliance with the EU Prospectus Regulation; or (2) notes were admitted a trading venue; or (3) it was marketed (to a broad range/audience of investors) and the relevant terms and conditions are non-negotiable among the parties? • Yes • No • No opinion	We do not support an expansion of the definition of 'public' securitisations. An impact of such an expansion would be that it would capture certain CLOs, which should not be subject to additional transparency requirements under the SECR. Notably: - The current reporting regime is sufficient for investor and regulatory oversight. As outlined in Question 5.4, the quarterly loan level reporting required under Art. 7 SECR is already extensively detailed and prescriptive, requiring over 200 fields to be completed per underlying asset/loan, and in fact are not useful to investors in practice, who instead rely on customary monthly transaction reporting delivered to investors under the terms of the CLO transaction. We therefore do not believe it is appropriate or proportionate for CLOs to be subject to increased reporting or transparency requirements such as reporting to SRs, which would add further cost and time burdens to CLO issuers, and in contrast we consider the reporting requirements should instead be streamlined to become more simplified and proportionate for CLOs. - This would add to the burden of reporting which is already particularly high for managed CLOs where portfolios are subject to change. Managed CLOs provide for a strict set of loan eligibility, collateral quality tests and other criteria within which the portfolio may be managed. Such criteria are made available to investors and competent authorities. Additional granular loan level reporting is not necessary provided a managed CLO is managed within such criteria. - In addition, European investors commonly now also request CLOs to disclose under the SFDR, which itself is very detailed and prescriptive. - CLO transactions are "private" in nature for a number of reasons. Particularly at the initial CLO "warehouse" stage (which is used to acquire leveraged loans before the CLO forms), the key parties are the CLO manager and the arranger bank which provides financing. At this stage there is no marketing or issuance of CLO notes to third party investors. Upon issuance, CLO notes are primarily sold as private placements and not as a public offering. Where European CLOs do list their notes on regulated exchanges, this is done in many cases to meet the requirements of investors who can

		only hold listed bonds, and not because they will in reality trade on this exchange.
5.11	If you answered yes to question 5.10., what criteria should be used to assess point (3) in the definition above (i.e. a securitisation marketed (to a broad range/audience of investors) and the relevant terms and conditions are non-negotiable among the parties)?	Not applicable
5.12	If the definition of a public securitisation is expanded (for example, to encompass securitisations fulfilling the criteria set out in question 5.10), what share of your existing private transactions would now fall under this newly-expanded public definition?	Not applicable
5.13	Under Option 1, what would you estimate to be the impact (in percent or EUR) of changing the definition of public securitisation on your one-off and annual recurring costs for complying with Article 7?	No response
5.14	Assuming that transparency requirements are amended as suggested in Option 2, by how much would the volume of securitisations that you issue, or invest in, change?	No response
5.15	What impact (in percent or EUR) would you anticipate Option 2 would have on one-off and annual recurring costs for complying with the transparency requirements in Article 7? Please explain your answer.	No response
5.16	Under Option 2, what should be included in the principle-based disclosure requirements for investors to reduce compliance costs while ensuring access to information? How should investors access this information? Please explain your answer, listing all relevant information that you think investors need to do proper due diligence that could be common across all securitisations.	We do not consider it to be in line with a principles-based approach to have a predetermined list of information to be included in disclosure. Reference can be made to information related to key areas that are also mentioned in the template, but without prescriptiveness or a specific format.
5.17	Under Option 2, should intra-group transactions, and securitisations below a certain threshold, be excluded from the reporting requirements in Article 7? • Yes • No • No opinion Please explain your answer. If you answered yes, how should intragroup transactions be defined and how should the threshold be determined?	Yes with respect to intra-group transactions only. Where a transaction is intra-group, there should not be concerns about information disclosure and risk-retention, hence such transactions should be excluded from the reporting requirements in this regard. No with respect to the imposition of a given threshold. The size of the transaction should not impact these considerations.
5.18	Under Option 2, what would be the impact (in percent or EUR) on your one-off and annual recurring costs for complying with	No response

	the transparency requirements of excluding intra-group transactions and securitisations below a certain threshold from the reporting requirements in Article 7?	
5.19	Should the text of Article 7 of the SECR explicitly provide flexibility for reporting on the underlying assets at aggregated level? • Yes • No • No opinion	[NO SPACE FOR COMMENT]
5.20	If you answered yes to question 5.19., which categories of transactions should be allowed to provide reporting only at aggregated level? You may select more than one option. • Granular portfolios of credit card receivables • Granular portfolios of trade receivables • Other	Not applicable
5.21	If you are a supervisor, what impact (in percent or EUR) would you anticipate Option 2 would have on your supervisory costs?	Not applicable

12. Additional questions

	Question	**Answer**
12.9	Are there any other relevant issues (outside of those addressed in the specific sections of the consultation paper above) that affect securitisation issuance and investments that you consider should be addressed? • Yes • No • No opinion	[NO SPACE FOR COMMENT]
12.10	If you answered yes to question 12.9., please explain your answer	*With respect to Question 5.5, you will note that we did not answer this question, as we wish to provide a more comprehensive overview of the perspectives of the European asset management industry on this point.* *We advocate for elements of both Options 1 and 2, as the relevance of the template differs depending on factors such as the type of securitisation.* *We see benefits in removing the prescribed template in favour of a principles-based disclosure for investors in the case of securitisations such as CLOs and CMBS, while also providing flexibility for all other types of securtisations for investors to opt not to receive the template in cases where sufficient disclosure is made following a principles-based*

		approach (explained below). This is because the current reporting regime (particularly the quarterly granular reporting templates) are not fit for purpose for securitisations like CLOs and CMBS as they (i) capture some irrelevant information, (ii) fail to capture necessary information, creating a data gap which has to be filled in by reports of third parties, and (iii) as a result, impose undue costs and operational burden for CLO/CMBS issuers and managers, and (iv) creates a barrier for entry for smaller issuers. For example, a loan template contains mainly qualitative data without an interpretation and analysis of market information, such that investors are themselves required to extract and standardise this information to purpose their due diligence. It is agreed that the needs of investors in CLOs and CMBS are adequately addressed by customary monthly investor reports delivered under the terms of the CLO/CMBS transaction (which includes loan-level detail the market accepts as beneficial to investors and proportionate to the asset class). *However, for categories of securitisations such as consumer asset classes (RMBS, auto loans, consumer unsecured loans), differences of opinion exist with some seeing the template as a valuable source of information in a standardised format which should be retained, with benefits including a reduction in time spent data-handling and the ability to perform research using standardised historical data, and others considering the templates as not being fit for purpose for this category which are better served by monthly trustee reports. We note, in any case, the requirements within the template should be simplified and as such allow for a more focused way to create transparency for investors. This should also help to increase supply of new transactions in the market.* *Nonetheless, investors should have flexibility to opt not to receive the template in cases where sufficient disclosure is made following a principles-based approach. Not all issuers/originators are capable or willing of providing the information within the format of a prescribed template, whereas the quality of investors' due diligence should not depend on the availability of certain templates provided sufficient information is available. This decision to elect not to receive the template should be in the opinion of the relevant investors based on the information made available and should be able to be justified to regulators without penalty. This flexible approach would allow for investors to respond more promptly, where necessary, to trades on the secondary market for which insisting on the relevant information being provided within the prescribed template may cause them to miss the offering timeline, and to cater for instances where the issuer is not located in the EU and therefore not in scope of the SECR. In the latter case, limited voluntary compliance by non-EU issuers*

		limits EU investors' access to otherwise beneficial opportunities for end-investors, hampering their competitiveness compared to their global peers.

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ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages about 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

More information is available at www.efama.org

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