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## Position paper

# Joint Committee Report on the implementation and functioning of the Securitisation Regulation (Article 44)

April 2025

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### Introduction

AFME welcomes many of the Joint Committee's ("JC") recommendations set out in the Article 44 report, landing as they do at a crucial moment in the legislative cycle, with the Commission's proposal scheduled to be published mid-June.

The bulk of the report focuses on legislative recommendations to enhance clarity and proportionality relating to investor due diligence (Article 5), disclosure requirements (Article 7) and the Simple, Transparent and Standardised (STS) framework with additional proposals covering the jurisdictional scope of application, the definition of public securitisation and risk retention rules (Article 6). Lastly, they make some suggestions to enhance the consistency of the supervisory framework.

### Key areas of interest

**Risk retention rules** – the proposals appear product specific and do two things; firstly, they seek to clarify legislative intent to identify retention vehicles that may independently operate and not be reliant on the relevant CLO fund's cashflows by setting a minimum percentage income threshold to pass the sole purpose test; the report sets out that this interpretive guidance was to be applied from the date of publication of the report. This has had two effects which we believe to be unintended; the first being market disruption for those CLOs that had priced prior to the publication of the report but not settled, and the second being market disruption for securitisations in general arising from their inclusion within scope of this interpretive guidance that were not intended to be captured by the legislation. AFME understands from discussions with ESAs and certain regulators that the supervisory approach prior to publication of the report should be grandfathered for CLOs in this "window" which should, in turn enable resumption of a functioning market. Resolution is still needed on the second effect however. Secondly, the report recommends the Commission to explore the possibility of incorporating CLO managers within the scope of the definition of Sponsor.

**Investor due diligence (Article 5)** – the JC of the ESAs propose a more balanced approach that ensures a meaningful risk assessment by investors while reducing compliance burden and safeguarding investor protection. These objectives appear to be broadly reflected in their recommendations, although there is scope to interpret recommendations in ways that could undermine these objectives.

AFME welcomes their shift in focus to the substance of information over form, which not only is sensible, but also one that comes in line with the approach now adopted in the UK. This is particularly important given further fragmentation of the European securitisation market should certainly be avoided.

AFME also welcomes the departure from an obligation verification framework which imposes upon investors obligations to verify satisfaction of sell side obligations to a proportionate framework in which investors must assess they have sufficient information to analyse the transaction, which includes STS verification, with conditions.

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AFME also welcomes the proposal that provides a window of up to 15 calendar days post-trade to document an assessment as part of a secondary market purchase.

Lastly, we welcome the ability to delegate regulatory due diligence to an authorised party. Whilst the devil is always in the detail, these recommendations go far in addressing investors' concerns in relation to Article 5. AFME's own assessment of the challenges investors face in [AFME's Article 5 Issues report](#) highlights the challenges driving these solutions and the costs arising for investors that create disproportionately high barriers to entry in [AFME's Article 5 Impact Analysis](#).

**Transparency Framework (Article 7)** – The Joint Committee's recommendations seek to streamline the current disclosure templates for public securitisations and introduce a simplified template for private securitisations, an aspiration in line with AFME's own objectives. The proposal introduces greater proportionality into the disclosure framework, including eliminating the need for loan-by-loan data for certain asset classes.

However, this report proposes a broad definition for public securitisations, the consequence of which will be for many transactions which are deemed private by the market, to become public, with the associated overly burdensome reporting requirements. Linked to this challenge, ESMA's own [consultation on private securitisation](#) carved out of its own proposed definition of "private", third country issuers, with the effect of requiring them to report using public templates, potentially limiting EU investors ability to invest in third country issuance.

A mandatory use of Securitisation Repositories for private securitisation will have the effect of burdening potential issuers with more costs. It will have the greatest impact on smaller issuers who will often fund themselves privately because they do not have the scale to use the public markets as frequently and are very cost sensitive.

**STS Framework** – the report's recommendation is limited to refinements to specific criteria with a caveat to consider implications of any changes. The extension of the use of the STS label to unfunded guarantees is debated with neither a conclusion nor a recommendation given, other than for the Commission to conduct a thorough impact assessment, if considered. AFME is supportive of this extension on the basis that it should further diversify the investor base of the SRT product.

**Jurisdictional scope of application** – a curious clarification has been given in the report which proposes that SECR should apply if at least one securitisation party (sell-side or buy-side) is established within the European Union. We would question the merits of such a hair trigger which would quite possibly cause transactions to fall inside and then outside of the regulation as a consequence of secondary market buy-side activity.

**Enhancing the consistency of the European supervisory framework** - The Joint Committee of the ESAs has identified possible approaches to enhance the consistency of the supervisory framework. While AFME welcomes the enhanced consistency, the JC of the ESAs however, acknowledges that these proposals extend beyond the scope of its mandate in Article 44 of SECR, particularly in light of potential implications at national and European levels.