Briefing note

AFME comments in anticipation of the European Commission's legislative proposal on securitisation

21 May 2025

Introduction

In anticipation of the European Commission's legislative proposal on securitisation on 17 June 2025, the Association for Financial Markets in Europe (AFME) would like to provide the following comments pertaining to the various regulatory measures that the Commission is considering in the context of its upcoming legislative proposal in order to relaunch the EU securitisation market.

Analysis

1. **Changes to the CRR – changes to risk weight floors for senior tranches**

We strongly support the Commission's intention to introduce changes to the risk weight floors for senior tranches. **AFME members have long been advocating for the re-introduction of a 7% RW floor in all approaches for STS securitisations and 12% for non-STS transactions (cash and synthetic) for banks acting in the role of originator, sponsor or investor.**

However, as we understand that reflections are ongoing on the concept of "resilient transactions" introduced by the 2022 Joint Committee Report, it is key that, should the Commission proceeds in this direction, any such implementation actually contributes to creating the right incentives to ensure that securitisation can fully play its role to support growth and EU's competitiveness.[1]

The Commission is also committed to deliver simpler and more impactful and effective rules.[2]

Therefore, the insertion of an additional layer of criteria to create "super" resilience (beyond STS) that may become a source of complexity at odds with this simplification agenda must be carefully considered in light of its potential benefits. In particular, the introduction of a new category of "resilient" criteria must achieve the following outcomes:

1. **The potential to create a large pool of eligible securitised bonds; and**
2. **The capital benefit outstrips the cost of introducing this additional layer of complexity caused by the creation of yet another category[3] of securitisation transactions for a product whose regulatory framework is already deemed overly complex.**

Both these outcomes have a better chance of being achieved if the eligibility criteria are closely aligned to the STS criteria. The effect of selecting criteria that are a subset of STS criteria will support augmenting this bucket with certain non-STS transactions that meet the "resilient" criteria. This is

[1] A Competitiveness Compass for the EU, January 2025.
[2] Communication on implementation and simplification, February2025.
[3] The STS framework has been precisely designed to identify a set of well-structured transactions already, so the concept of "resilient transactions" will create yet another category on top of the STS label in an already fragmented market.

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particularly important given that only 25% of transactions (placed and retained) in Europe qualify as STS.

Notwithstanding our concerns around additional complexity, if the Commission thinks that this concept must be introduced, we believe that **aligning the eligibility criteria with the proposal below - with appropriate capital adjustments (RW floor and LCR[4]) - would support securitisation's potential** to contribute to the Commission's competitiveness goals. **We would also support a further reduction of the RW floors for resilient transactions.**

AFME members also consider that it is appropriate for the reduced risk-weight floor to apply to all of originators, sponsors and investors rather than being limited to the originator only, as proposed by the Joint Committee Report. That is because there is no meaningful difference between the risk to which an investor is exposed in relation to the senior tranche of a securitisation and the risk to which an originator holding that same position would be exposed that would justify this more penalising treatment for investors. This effect arises from the implementation of the regulation which significantly reduces so-called model and agency risk for transactions permissible under the regulation.

The table below provides in further detail AFME's views on each of the criteria and makes **suggestions** on how this new framework could be adjusted in order to meaningfully benefit a larger part of the securitisation market.

JC of the ESAs' Recommendation: Reduction of the risk weight floor for originators of resilient transactions meeting certain eligibility criteria		
Scope		
	ESAs	**AFME**
	Credit institutions acting as originators in accordance with point (3)(a) of Article 2 of the SECR	Credit institutions acting as originators, sponsors and investors for STS and non-STS (cash and synthetic)
Eligibility criteria *(to be satisfied at the origination date and on an ongoing basis thereafter)*		
	ESAs	**AFME**
Amortisation	Sequential amortisation or non-sequential amortisation provided that the transaction includes performance related triggers to switch to a sequential amortisation which should be compliant with the EBA RTS on performance-related triggers.	• **This criterion should be aligned with the relevant STS criteria, i.e. Article 21(5) for STS traditional securitisations and Article 26(c)(5) for STS on-balance-sheet securitisations.**

[4] I.e. haircut reductions for the affected transactions.

Counterparty credit risk (only for synthetics)	The credit protection agreement by which the transfer of risk is achieved shall comply with the criteria specified in paragraphs 8 to 10 of Article 26e SECR for STS synthetic securitisation. As a way of derogation from paragraph 10, the third and the fourth subparagraphs, and the minimum credit quality step of the originator, or one of its affiliates, for collateral in the form of cash on deposit with them, as set out in the second subparagraph, shall not apply for synthetic securitisations other than STS on-balance-sheet securitisations.	• This criterion prohibits insurers and reinsurers' involvement in the STS securitisation market. • Insurers already provide unfunded credit protection in the non-STS SRT securitisation market, which does not require the protection agreement to be collateralised. • **We suggest that unfunded credit protection provided by an insurer/reinsurer meeting a minimum credit rating requirement be eligible for the STS synthetic label.**[5]
Thickness of the sold non-senior tranches	The thickness of the sold non-senior tranche is captured by the RW assigned to securitisation positions held in senior securitisation tranches by the formulas. The latter should be below 50% of the STS and non-STS RW floors (i.e. the senior RW is below 5% for STS and below 7.5% for non-STS).	• **This criterion would not allow the review of the securitisation framework to achieve its objective. Therefore, we would not be supportive of it neither for STS nor for non-STS.**
Good granularity	The exposures in the pool shall comply with a concentration limit of 0.5% determined in accordance with point (a) of Article 243(2) CRR. This will imply that, at origination, the minimum effective number of exposures N requested will be 200 or more, depending on the distribution of the exposures.	• The single debtor concentration of 0.5% will de-scope a significant number of transactions, especially corporate and SME securitisations which won't be able to meet such criterion. • Instead of 0.5%, **we suggest a minimum level of granularity of 2% both for STS and non-STS transactions (cash including non-ABCP and ABCP transactions and synthetic) in order to be consistent with the concentration limit of 2% imposed under article 243(2)(a) of the CRR for non-ABCP STS transactions and 243(1)(b) for**

[5] See AFME response to the Commission consultation (section 7.5) and page 22 of AFME's response to the EBA Discussion Paper for the STS Framework for Synthetic Securitisations.

		ABCP STS transactions. To be noted that the 2% granularity threshold for ABCP transactions is calculated at the level of the ABCP programme under Article 243(1)(b) and this needs to be the same approach for resilient transactions. • Ongoing compliance with this requirement is not possible in practice given the nature of portfolio amortisation which is outside the control of the originator. • Besides, the granularity criterion under article 243(2)(a) of the CRR suffices to be satisfied at the time of origination, i.e. there is no requirement under CRR to meet this criterion on an ongoing basis, as proposed by the ESAs, which is unworkable as explained above.

Lastly, it is important to point out that the effect of introducing risk sensitive risk weight floors – another measure that, we understand, is also currently contemplated upon – should not be diluted by combining such measure with overly conservative pre-defined minimum levels.

2. Changes to the Securitisation Regulation

(a) Due Diligence requirements

Turning to the Securitisation Regulation ("SECR"), **we strongly support the Commission's intention to simplify the due diligence requirements under Article 5.** Undoubtedly, the existing requirements are too prescriptive, complex and a source of high costs to institutional investors thereby inhibiting investments in the product and restricting the investor base. **AFME members have been advocating for a meaningful reform which will introduce a principles-based approach and reduce investment barriers and costs**.[6]

In this respect, removing the requirement for EU investors to check the compliance of sell-side parties with the obligations stipulated in the SECR where the sell-side parties are based in the EU is a positive step in the right direction. **However, EU investors will remain limited in their investment scope versus their global competitors if the legislative proposal does not address the regulatory limitations imposed by Article 5(1)(e)** which requires them to obtain full Article 7 information from third country reporting entities. Given that third country originators are not subject to the SECR, i.e. they are not obliged to report the relevant information in the form of the ESMA Article 7 templates, this requirement poses huge compliance challenges

[6] AFME Article 5 Impact Analyses (here and here). Article 5 Issues Report (here).

for EU investors, which in many instances inhibits EU lenders from extending their EU relationships to overseas subsidiaries and more generally reduces the ability for EU investors to diversify their risk through adoption of a global view of the product. An urgent solution is, therefore, needed, and AFME members would urge the Commission to address this issue in its legislative proposal. In this regard, AFME members also welcome the recommendation of the Joint Committee of the ESAs in the Article 44 Report of 31 March 2025 not to require third-country securitisations to report to an EU-registered securitisation repository.[7]

In relation to the enforcement of due diligence rules, **AFME members are concerned that the possible introduction of administrative sanctions and remedial measures under Article 32(1) of the SECR will create further compliance challenges and investment disincentives.** Existing cross-sectoral legislation (such as CRR, Solvency II, AIFMD and UCITS) already imposes certain consequences on the relevant institutional investors for non-compliance with SECR due diligence requirements, there isn't, therefore, a gap in the law currently. AFME members are also concerned by the fact that it is unclear whether the contemplated sanctions under Article 32 of the SECR will be in addition to or in replacement of the existing provisions in the cross-sectoral legislation. As a result, if the objective of simplifying investor due-diligence requirements is to encourage more investors into the market, introducing additional sanctions will likely have the exact opposite effect. We are also not aware of any other product that carries regulatory sanctions for failing to comply with product-specific requirements.

(b) Transparency requirements

We strongly support the Commission's intention to make reporting requirements more proportionate by simplifying the templates for public securitisations and introducing one for private securitisations able to address the supervisors' needs (assuming the intention here would be to have "private" templates designed solely to provide supervisors with the information they require to adequately supervise the market.) **AFME members advocate for a meaningful reform which will introduce a more principles-based / "substance over form" approach to the reporting regime overall.[8] Broadly speaking, therefore, the direction of travel taken by the Commission is encouraging.**

However, we would further make the following observations:

- It is critical that the category of "public" securitisations not be drawn too broadly. In particular, third country securitisations should continue to be treated as "private" securitisations. Otherwise, it will act as a serious disincentive to cross-border capital flows if third country securitisations are captured by even a streamlined version of the current templates. As noted above, we welcome in this regard, the recommendation of the Joint Committee of the ESAs in the Article 44 Report not to require third-country securitisations to report to an EU-registered securitisation repository.

- **Requiring private securitisations to report to repositories would be highly problematic for several reasons.** Firstly, it would create additional costs for first time issuers of securitisation who may be considering using securitisation to fund their early-stage growth. Secondly, it would require an overhaul of the design of the repository regulatory framework and operational standards to prohibit inappropriate access, and finally, given the breadth of the scope of the definition of "securitisation", it would create challenges for certain segments of the product in reporting compliance, depending on where reporting requirements land.

[7] See paragraph 199, page 70.

(c) Risk Retention

As explained in our recent position paper with regards to the Joint Committee of the ESAs' Article 44 Report, the ESAs' interpretation of the sole purpose test has created legal uncertainty and significant disruption in the CLOs and non-CLOs markets. In this regard, we consider that making further amendments to Article 6 needs to be handled extremely carefully to avoid unintended consequences. If it is considered appropriate to give a new mandate to the EBA to make further revisions to the risk retention RTS, it is critical that this mandate give the ESAs clear direction to revise the RTS in a way that would limit the type of market disruption caused by the Article 44 Report, which disruption is ongoing. To this end, early engagement by the Commission with the industry would be most welcomed, and AFME stands ready to engage positively to assist with crafting appropriate language. We would encourage the Commission also to bear in mind that amending the existing RTS is a time-consuming process which, in the meantime, could leave the market in a state of new uncertainty. Giving the EBA a mandate that frames the direction of travel fairly clearly could help to mitigate any such uncertainty.

3. Other issues

For all other issues, please refer to AFME's response to the Commission's targeted consultation on the functioning of the EU Securitisation Framework and AFME's 5-point plan for the revival of the EU securitisation market. It is worth reinstating that **only a package of measures can successfully relaunch the EU securitisation market by addressing simultaneously and effectively both supply and demand issues**. In respect of the latter, appropriate changes to the LCR and Solvency II Delegated Regulations remain top priorities for AFME members, and we stand ready to participate in the upcoming consultations.

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