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| From: | Presidency |
| To: | Working Party on Financial Services and the Banking Union (Securitisation)<br>Financial Services Attachés |
| Subject: | Securitisation Review: Working Party on Financial Services and the Banking Union (Securitisation) 22 September 2025<br>- Presidency discussion paper on amendments to SECR |

Delegations will find attached the above-referred Presidency discussion paper for the Securitisation WP meeting of 22 September, concerning agenda items no. 2, 4 and 5.

Danish Presidency
Council of the European Union

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# Presidency discussion paper on amendments to SECR – Working party 22 September 2025

Date: 12. Sep. 2025

## Introduction

The Working Party of 22 September is dedicated to the proposed amendments on SECR.

This note is drafted based on the input received from MS at the previous WP in July, the written responses to the questions raised at that meeting alongside the received 3CT, and input from bilateral meetings with MS.

A majority of MS have expressed general support for the COM proposal. The PCY has identified as most widespread MS concerns to be on the topics of the definition of public/private securitisations, extending the sanctions regime to investors, exclusions to the risk retention requirement, unfunded credit protection (UFCP), due diligence for STS and transparency and the proposed concept of a lead supervisor. The discussions in the Working Party meeting of September 22 will be on all those topics, except the private/public definition, which will be discussed at a later meeting.

**Topics of discussion on the amendments to SECR**
The PCY invites MS to comment on the following topics at the WP at the 22 September and elaborate further in the written procedure following the WP.

1. Due Diligence
2. Supervision
3. Transparency and STS criterion
4. UFCP

The PCY has written two papers. The current paper covering due diligence, extension of sanctions, supervision and STS and transparency. And another addressing UFCP and possible ways forward.

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# 1. Due Diligence

MS are generally supportive of the objective of COM proposal to ease the Due Diligence (DD) requirements for investors, making investments in securitisations less cumbersome. Comments by MS have highlighted a few topics that need further discussions. Some MS prefer additional safeguards before the DD requirements on STS compliance is removed. MS have also presented differing views on how to implement the principle-based risk assessment. It was also very clear from MS comments that further discussions of administrative sanctions for institutional investors are needed. These topics will all be addressed in this section of the non-paper.

## 1.1. STS verification

COM proposes to remove the requirement for investors to verify STS compliance. The reasoning is that STS compliance is already subject to separate regulatory oversight and notification. Moreover, not all institutional investors benefit from the STS label of a transaction and for such investors a requirement to check the STS criteria might act as a deterrent to invest.

There is general support among MS to remove the requirement for investors to verify STS compliance, though not unconditionally. Several MS believe that TPV verification is a prerequisite for removing the requirement from the investors, while other safeguards have also been suggested, like whether the requirement for TPVs to verify STS compliance should be ongoing or only at inception. Another suggestion is to condition investors' preferential prudential treatment of the STS label on whether they have performed DD on STS compliance.

In this discussion, it should be recalled that currently TPVs are intended to have only an advisory role. While they undoubtedly provide a service to the market, their involvement does not replace the responsibility of investors and issuers.

| **Section 1.1 – STS verification** |
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| **Q1: Do MS support removing the DD requirement on STS compliance for investors? If so, are there any safeguards needed to allow for the removal of the requirement? please specify.** |

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### 1.2. Principle-based risk assessment

COM proposes to make the DD requirements more principle-based. This would be achieved by removing the detailed list of structural features that investors need to check, and by applying proportionality in DD assessment corresponding to the riskiness of the securitisation. COM mentions that senior tranches are typically benefiting from substantial credit enhancement, thus posing lower risk and should therefore require less extensive DD. According to the COM proposal, it should also be allowed to conduct simplified DD for investments in repeat transactions where key risk characteristics are already well understood.

Many MS support the idea of proportional and principle-based DD requirements. However, one MS finds that the detailed list of DD tasks should not be removed completely, since this could, for instance, lead to less harmonisation across competent authorities. Finally, while MS are supportive of the descriptions of repeat transactions and proportional DD in the recitals of the COM proposal, several MS suggest including these descriptions in the legal text, or alternatively mandating an ESA to specify proportionality and provide guidelines for principle-based DD and simplified DD.

| **Section 1.2 – Principle-based risk assessment** |
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| **Q2: MS are invited to provide their views on the principle-based risk assessment, including whether the COM proposal is sufficient, whether further guidance on the approach is needed, or whether some or all of the detailed list of DD tasks should be kept.** |
| **Q3: Do MS support including the definition of repeat transactions in the legal text? If so, is it necessary to supplement the legal text with guidance on what proportional DD for repeat transactions entails?** |

### 1.3. Administrative sanctions:

COM is proposing to amend Article 32 on administrative sanctions and remedial measures. The amendment will subject institutional investors to sanctions if they do not meet the DD requirements. The reasoning is that institutional investors play a key role in ensuring the soundness and transparency of the securitisation market by conducting appropriate DD. The inclusion of institutional investors under the sanctioning regime subjects them to the same penalties applicable to other infringements, including, in particular, the potential pecuniary sanction of up to 10 % of the total annual net turnover, as set out in Article 32(2) point f).

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A significant number of MS have raised concern regarding this amendment, as they find it contrary to the spirit of the COM proposal and the objective of encouraging investor participation in the market. MS have raised various arguments for their opposition to the amendment.

First, a principle-based approach to DD may lead to legal uncertainty, both in terms of investors fulfilling their obligations and supervisors enforcing them, due to the absence of clear, objective criteria against which to determine the existence of a breach subject to sanction. Second, some MS argue that DD provisions will constitute double regulation as investors can already be sanctioned under sectoral legislation such as CRD/CRR, Solvency II etc. Third, several MS suggest that the sanctions should be limited or capped, arguing that sanctions that are relative to the turnover of the investor are disproportionate and could potentially limit investors' appetite to participate in the securitisation market. One MS has suggested capping the amount of the pecuniary sanctions to twice the invested amount in the securitisation in order to make the sanctions more proportionate.

| **Section 1.3 – Administrative sanctions** |
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| Option 1: Introduce administrative sanctions for institutional investors not meeting DD requirements, using the same sanctions regime as for other infringements in SECR (COM proposal). |
| Option 2: Introduce administrative sanctions for institutional investors in breach of DD requirements, but with certain modifications to make the sanctions more proportionate. |
| Option 3: Remove the proposed amendment to paragraph 1 of Article 32 on sanctions for investors (status quo). |
| **Q4: MS are invited to provide their views on the presented options, and especially which option is preferred and why? If Option 2 is preferred, please indicate which amendments you prefer to ensure proportionality of sanctions.** |

## 2. Supervision

The PCY notes that many of the COM proposals on supervision have attracted comments from MS, underlining a further need for discussion of these topics. The concept of lead supervisor is greeted with mixed views, but MS agree that if the concept is to be maintained, as a minimum a more efficient way of appointing the lead supervisor should be found. Some MS have also raised objections to COM proposal to appoint the prudential authority as the competent authority for the supervision of STS criteria, transaction level

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supervision and of the broad JCSC mandate to develop guidelines on supervisory procedures. MS also question the frequency of the suggested peer reviews. This section of the non-paper will address all the above issues.

### 2.1. Lead supervisor

*The concept of a lead supervisor for cross-border securitisations:*

The proposed new supervisory framework for cross-border securitisations has been received with mixed opinions. Some MS are fundamentally opposed to the concept and believe it increases supervisory complexity and administrative burden for authorities, risking slowing down the core supervisory tasks. A few MS have shown openness to the concept.

Some MS do not find the specific tasks and expectations of the lead supervisor clear enough, as it is not clear to them what is in fact expected from the lead supervisor. In particular, concerns have been raised on how the lead supervisor should be compensated for the extra tasks they are expected to carry out when supervision is delegated. There are also questions on how the cooperation between supervisors should be governed, including how authorities can share the necessary information.

Should the concept of a lead supervisor be retained in one form or another, there seems to be a consensus among MS that objective criteria for selecting the lead supervisor is needed to increase the overall efficiency of the framework.

As such, the PCY believes the aim of establishing objective criteria should be to foster a swift and unambiguous appointment of the lead supervisor.

A couple of MS have provided suggestions on which criteria could be used to appoint the lead supervisor. The suggestions try to determine the supervisor that is the “most material” to the transaction.

The first suggestion would appoint the supervisor of the sell-side entity with “the most material regulatory footprint in the Union” as the lead. The PCY notes that this approach would need to be specified further, to make it operational and easily assessable, by selecting a metric for measuring a supervisor’s “regulatory footprint within the Union”.

The second suggestion would appoint the competent authority of the originator contributing with the highest proportion of exposures to the securitisation. PCY notes that the second suggestion could be seen as one way of operationalising the first suggestion, utilising the originator as a proxy for the most material regulatory footprint.

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Both suggestions envisage removing the competence of the JCSC to appoint the lead supervisor in case of disagreement, presumably on the assumption that the use of objective criteria would eliminate any grounds for disagreement.

Considering the broad support for establishing objective criteria for the selection of the lead supervisor, the PCY has elaborated on the first suggestion in order to enhance its practical evaluability, to facilitate MS discussion.

The PCY notes that the requirements of risk retention, transparency, ban on re-securitisation, credit granting criteria and STS criteria constitute the set of "sell-side" SECR provisions subject to supervision. PCY notes that all these provisions give rise to a "regulatory footprint" and could thus be relevant to determine the lead.

It is however worth noting that the above-mentioned provisions can be applicable to different types of sell-side roles (originators, sponsors, original lenders and SSPEs) and it is to some extent up to the sell-side actor to determine who among them will fulfil these requirements. Therefore, appointing a lead based on the role of a sell-side entity does not necessarily imply that the lead should always be the competent authority under the same set of provisions—and vice versa.

In addition, all sell-side entities need not be established in the Union, giving rise to situations where the "most material" entity to the transaction might not be established in the Union. Furthermore, as foreseen by the MS that suggest appointing the competent authority of the originator as the lead, there can be situations where multiple originators are present prompting a need for a "secondary criterion" to unambiguously determine the lead.

Both of the above-mentioned issues are relevant for both methods of appointment, i.e. irrespective of whether the appointment is based on SECR provisions or on the role of sell-side entity.

The PCY notes that these issues could be remedied by introducing a "hierarchy of materiality" (i.e. a ranking of prioritised appointment criteria), even though this would lead to a more complex method of appointment.
The issues could also be remedied by mandating the JCSC to appoint the lead supervisor in cases where the appointment criteria become ambiguous.
The PCY notes that the latter may seem at odds with the goal of ensuring a swift appointment process. However, depending on the quality of the chosen appointment criteria, the number of cases requiring JCSC involvement would presumably be limited.

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Finally, it could be argued that the measurement of regulatory footprint should not be confined to SECR but could also cover other relevant Union regulations, such as for instance CRR.

| Questions on section 2.1 part 2 – Appointment of the lead supervisor |
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| **Q5: What are MS views on the concept of lead supervisor? Do MS see it as an effective tool for ensuring harmonised supervisory practices, or do MS see it as a potentially administrative burdensome add-on to the current supervisory setup?** |
| **Q6: What are MS views on the tasks and responsibilities of the lead supervisor?** |
| **Q7: Should the lead supervisor be compensated for the extra tasks and responsibilities, and if so, how is this compensation foreseen?** |
| **Q8: MS are invited to indicate their preferences regarding the appointment of the lead supervisor, including the process of appointing a lead supervisor in case of disagreement.** |

### 2.2. Supervisory competence of the STS criteria

Most MS have not yet voiced an opinion on COM proposal to move supervisory responsibility of the STS requirements to the authorities responsible for supervising originators, sponsors and SSPEs under CRD.

Among MS who have commented on this proposal, a majority are against it. Some MS opposition is towards the SSM gaining competence in this area, arguing that STS requirements are not prudential in nature and thus exceeds ECBs existing mandate as provided for in SSMR[1]. Others question the motive of the shift in supervisory competence finding it ineffective and without cause.

| Questions on section 2.2 – Supervisory competence over the STS criteria |
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| Option 1: Move supervisory responsibility of the STS requirements to the authorities responsible for supervising originators, sponsors and SSPEs under CRD (COM proposal). |

[1] No 1024/2013

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| Option 2: Maintain national discretion to designate the competent authority to supervise STS requirements for all types of entities (status quo). |
| **Q9: MS are invited to provide their views on the presented options and indicate which are preferred.** |

### 2.3. Transaction level supervision

In the PCY discussion paper for the WP 15. July, the topic of transaction-based supervision was tabled with reference to recital 24 and the insertion of a new article 30(1a). The recital and provision respectively state that competent authorities must verify compliance of applicable requirements for every individual transaction and shall supervise compliance of sell-side entities with SECR.

A majority of MS have not yet voiced their opinion of transaction level supervision. Two MS have stated they believe recital (24) is redundant, arguing that supervision of all relevant parties to a securitisation is already clear from the existing text. One of these MS furthermore argues that verification of the compliance of every individual transaction would not be plausible due to the sheer number of transactions in some MS. Both MS have also suggested to delete the proposed new article 30(1a), either questioning the added value of the provision or believing it to be duplicative to article 29. Along this line of thought, a third MS asks what COM expect the resource impact of transaction-level verification to be.

| **Questions on section 2.3 – Transaction level supervision** |
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| **Q10: MS are invited to provide their views on whether it's appropriate to deviate from the general course of risk-based supervision by mandating competent authorities to verify compliance of sell-side entities with the requirements of SECR for each individual securitisation.** |

### 2.4. JCSC, guidelines and frequency of peer-reviews

MS generally support COM proposal to strengthen the JCSC to achieve more convergence in supervision. A couple of MS have however questioned the scope of the new JCSC mandate to develop guidelines to establish common supervisory procedures, arguing that it is too broad and needs further specification. One MS suggests limiting the guideline to only cover STS provisions while another suggests making the guidelines optional, i.e. JCSC may choose whether to make such guidelines or not.

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| Questions on section 2.4 – JCSC guidelines |
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| **Q11: MS are invited to share their views on the competences of the JSCS, including whether it should have the powers to develop guidelines on common supervisory procedures and on any preference to the scope of these guidelines.** |

*Peer reviews*

Some MS have also objected to the revolving triennial peer review mandate that has been given to EBA. One MS prefer that the peer-review mandate is removed altogether, arguing that it restricts the ESAs in prioritising their resources. Another MS suggest removing the revolving property of the mandate (thus maintaining the mandate for a single peer review after three year), arguing that the peer review process requires substantial administrative resources making a fixed frequency unproportionately cumbersome. That MS argues that supervisory discrepancies are likely to be addressed by the other convergence tools of the JCSC and furthermore suggests to systematically incorporate feedback from market participants for the JCSC to identify areas where supervisory processes could be improved, as a more useful convergence tool. Finally, a third MS suggests extending the interval between the peer reviews to reduce the associated burden.

| Questions on section 2.4 – Frequency of peer-reviews |
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| Option 1: Maintain the triennial peer review mandate (COM proposal). |
| Option 2: Lower the frequency of the triennial peer review mandate. |
| Option 3: Remove the triennial peer review mandate, leaving the determination of peer review frequency to the ESAs. Possibly supplemented with other measures to enhance supervisory convergence of supervision. |
| **Q12: MS are invited to share their views on the presented options 1 to 3, and especially which option is preferred and why? If MS prefer option 2 they are asked to state their preferred frequency. If MS prefer option 3 they are asked to elaborate on any additional measures to enhance convergence they deem appropriate.** |

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## 3. Transparency and STS criterion

The PCY finds that there is general support to COM overall objective of reducing the burdens attached to the transparency requirements. However, several MS commented on the topic of COM proposal of aggregate level reporting for pools of underlying exposure that are highly granular and short term, presenting differing views on possible ways forward. The PCY has thus chosen to address this topic in this non-paper.

On the topic of STS criteria, the PCY finds that MS are supportive of the more technical amendments proposed by COM, but that the more substantive amendments of homogeneity criteria and UFCP warrant further discussions. The PCY will address the former in this non-paper and the latter in a separate non-paper.

### 3.1. Aggregate form reporting for short term and granular pools

The PCY believes there is general support for the direction of COM proposal to exempt securitisations of highly granular pool of short-term exposures from loan level disclosures.

Some MS want further clarity on what is meant by “highly granular”, “short term exposures” and “certain consumer loans”, asking for further elaborations or clear definition in the legal text to avoid supervisory divergences.

Other MS can support the COM proposal as it is or prefer the recitals to remain silent on what exposure types are considered relevant for aggregate form disclosure, seeing as the articles of the proposal does not reference any specific asset classes either.

Finally, one MS wants to extend the aggregate form reporting to also cover private securitisations, irrespective of the nature of the granularity and maturity of the underlying exposures of the private securitisation. The argument presented is that loan level disclosure is often not considered useful for private securitisations as they are tailored to investors’ needs, thus making loan level disclosures unproportionally burdensome for private transactions.

The PCY takes note that if MS are in favour, the terms “highly granular” and “short-term” could be clarified by defining these concepts directly in SECR. As such, quantitative criteria could be established to evaluate the granularity and the maturity of the underlying exposures, e.g. a maximum allowed average size and maturity of the exposures.

The PCY notes it would be possible to include these quantitative criteria, either while maintaining the reference to asset classes in the recital or on a standalone basis, i.e. with the reference to asset classes removed from the recital.

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The latter approach would imply that aggregate form reporting would apply to all types of asset classes, if the specific securitisation is able to meet the criteria the above-described quantitative criteria. The former approach would limit aggregate form reporting to pools of "credit card exposures" and "certain types of consumer loans" that fulfil the criteria.

| **Questions on section 3.1 – Aggregate form reporting for granular and short-term exposures** |
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| Option 1: Leave the concepts of "short-term", "highly granular" and "certain types of consumer loans" unspecified (COM proposal). |
| Option 2: Remove the reference to "credit card exposures" and "certain types of consumer loans" from the recital, thus not limiting the aggregate form reporting to any particular asset classes. |
| **Q13: MS are invited to provide their views on the options while indicating their preferred one.** |
| **Q14: MS invited to provide their view on whether to establish quantitative criteria to clarify the concepts of "short-term" and "highly granular" in the legal text.**<br><br>**Should MS have any views on how to quantify the concepts of "short-term" and "highly granular" they are invited to share these.** |
| **Q15: MS are invited to share their views on whether aggregate form reporting should be extended to all private securitisations.** |

### 3.2. Homogeneity criteria

COM has proposed to amend the STS criteria on homogeneity, allowing the criteria to be met where the underlying pool of exposures consists of at least 70% exposures to SMEs. PCY notes that as currently drafted there is no limitation on the number of asset types that both the SME exposures and the remaining 30% of exposures can be composed of, i.e. exposures from multiple asset types can be included.

The proposal to make homogeneity requirements for SME securitisations more lenient was generally well received by MS. However, many MS pointed to the need to further specify what the remaining 30% of exposures in the pool are allowed to be composed of, mentioning concerns such as comparability with the SME pool and riskiness of the assets. Suggestions included limiting the remaining 30% to one particular asset class or to the specific asset class of corporate exposures.

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An alternative approach could be to amend the homogeneity criteria in a way that seeks to achieve the same policy goal of allowing better conditions for the securitisation of SME exposures, while at the same time simplifying the framework of homogeneity altogether. This approach entails specifying a simplified homogeneity criteria directly in the Level 1 text and thus removing the mandate for the RTS on homogeneity criteria[2]. The simplified homogeneity criteria would require all exposures of an underlying pool to fall within the same asset class, thereby allowing, for instance, corporate SME pools to be supplemented by other corporate exposures. The set of asset classes that would be incorporated directly into the Level 1 text, would be the same eight classes that are currently specified in the existing RTS. The current more granular homogeneity factors, concerning obligors, jurisdiction etc., as specified in Article 2 of the existing RTS, would not be maintained, making the eight asset classes the only relevant factor when determining homogeneity.

| **Questions on section 3.2 – Homogeneity criteria** |
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| **Q16: Do MS agree with the proposal that the homogeneity criteria can be met where the underlying pool of exposures consists of at least 70% exposures to SMEs? If so, do MS believe there should be requirements for the remaining 30 %? If so, which restrictions?** |
| **Q17: What are MS' views on the alternative approach of inserting a simplified homogeneity criteria directly in the level 1 text and remove the RTS mandate?** |

[2] RTS 2019/1851