Council of the European Union
General Secretariat

Interinstitutional files:
2025/0825 (COD)
2025/0826 (COD)

Brussels, 08 October 2025

WK 13225/2025 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Securitisation) Financial Services Attachés
Subject:	Securitisation Framework Review - WP meeting 14.10.2025: Presidency discussion paper on amendments to SECR

Delegations will find attached the above-referred working paper from the Presidency that will be discussed under agenda items no. 2 to 4.

Presidency discussion paper on amendments to SECR – Working party 14 and 15 October 2025

Date: 7 October 2025

Introduction

This note presents the PCY's proposed compromises on the topics discussed at previous WPs as well as presentation of topics where we still seek input from MS.

It is the aim of the WP to determine if the PCY proposed comprises can obtain support among MS as well as obtaining input on the outstanding topics of; waiving of due diligence and risk retention when 15% first loss tranche is guaranteed and the definition of public/private securitisation.

The PCY conclusions are based on input received from MS at previous WPs, written responses to WP questions alongside the received 3CT and input from bilateral meetings with MS. We have aimed to find compromise proposals that attract broad support among MS, while also maintaining a balanced approach between those advocating for less burdensome rules for market participants and those prioritising investor protection and who has expressed concerns on the impact of the review on financial stability. Furthermore, the PCY has considered the EU's broader ambitions to simplify legislation.

In the note, the PCY first presents the two topics where we seek detailed input from MS, namely waiving of due diligence and risk retention under certain circumstances and the definition of public/private securitisations. This is followed by a section on the PCY conclusions and landing zones on topics discussed at previous WPs. MS are invited to provide overall feedback on the landing zones. Finally, an Annex containing an overview of the COM provisions to SECR and the PCY proposals on each of the provisions is provided for.

Note content

1. Topics for discussion

1.1. Waiving due diligence and risk retention for guaranteed transactions:

At the July WP, several MS requested that COM elaborate on the reasoning behind the proposal to waive due diligence and risk retention requirements for securitisations where the first loss tranche constitutes at least 15% of total nominal value and is either held or guaranteed by the Union or national promotional banks or institutions within the meaning of point (3) of Article 2 of Regulation (EU) 2015/1017 of the European Parliament and of the Council (hereafter "a narrowly defined list of public entities").

At the September WP, COM presented a non-paper on the subject, and MS could ask follow-up questions.

The overall argument by COM is that the proposed adjustments are expected to be conducive to the uptake of private investments in public-private funds (PPFs), as these structures can help leverage the scale and influence of private institutional investors to support policy objectives. Furthermore, it is argued that the transactions in question inherently possess characteristics that mitigate the need for carrying out full due diligence and risk retention. The PCY notes that the COM proposal concerns the waiving of certain due diligence elements, specifically the verification and documentation requirements in articles 5(1) and 5(4), whereas article 5(3), which relates to the risk assessment of the securitisation, its underlying exposures and structural features, is retained.

MS initial reactions to the proposal have been cautious. Some MS emphasise that a guarantee on the first loss tranche does not justify lowering the requirements for other tranches in the securitisation. Some MS have noted that, while there may be some merit in waiving certain due diligence elements, risk retention remains a cornerstone and a fundamental safeguard of the EU securitisation regulation and should not be waived. More fundamental questions have also been raised, for example whether a market failure has indeed been identified, or whether the proposal risks crowding out private investments under market conditions. In other words, it could be considered whether preferential treatment of PPF-securitisations is justified in the pursuit of specific policy objectives.

Based on the COM non-paper and presentation, the PCY ask MS to provide their views on the appropriateness of waiving certain due diligence requirements and risk retention for the described kind of PPF-transactions.

Section 1.1 – Waiving of due diligence and risk retention
Option 1: Waiving certain due diligence elements and risk retention requirements for securitisations where a first loss tranche of 15% is either held or guaranteed by a narrowly defined list of public entities (COM proposal).
Option 2: Waiving certain due diligence elements but keeping the risk retention requirement for securitisations where the first loss tranche of 15% is either held or guaranteed by a narrowly defined list of public entities.
Option 3: Keeping both the due diligence and risk retention requirements for securitisations where the first loss tranche of 15% is either held or guaranteed by a narrowly defined list of public entities (status-quo).
Q1: MS are invited to provide their views on the presented options, and especially which option is preferred and why?
Q2: Do MS see other ways to achieve the policy aim of supporting the use of PPFs in mobilising private investments in the EU?

1.2. Definition of public/private securitisations

The COM proposal introduces a new definition of public securitisations. The aim is to ensure that all securitisations which are public in nature fall within the scope of the definition, thereby enhancing transparency. In particular, the COM is concerned that CLOs are not covered under the current criteria. To address this, the proposal broadens the definition by adding two additional criteria; a securitisation will also be considered public if it is either traded on an EU trading venue or if its terms are non-negotiable.

As it currently stands, the COM proposal is likely to capture CLOs. However, the majority of MS have raised concerns that the proposed definition is too broad. Beyond including CLOs, it would also encompass transactions that are genuinely bespoke and should continue to be classified as "private." One example is private securitisations that are negotiated between the parties and listed solely for tax purposes (technical listings). In addition, MS have argued that the assessment of whether terms are non-negotiable will be difficult to supervise in practice and potentially result in uncertainty of outcome for issuers.

PCY has considered several potential modifications to criteria (b) and (c), but none appear likely to solve MS issues with the new definition:

- Remove "Union" from criterion (b) so that all trading venues are included in the definition – this would avoid that the listing of securitisations is simply moved outside the Union. This does not however address MS concerns on technical listings and would need to be combined with further criteria.
- Amend criteria (b) so that the securitisation is not only listed but it is also marketed to investors other than the originator, sponsor, and original lender. While this would exclude some securitisations from the definition of public definition, it is uncertain whether this would address MS concerns.
- Supplement the definition of private securitisation by requiring the issuers to provide proof to supervisors that the terms have been negotiated. Such an approach would lead to a more administratively cumbersome process.
- Combine criteria (b) and (c) into a single cumulative criterion; this would make the criterion less extensive, potentially making it more suitable to avoid truly bespoke and sparsely distributed securitisations.

Another suggestion is to replace criteria (b) and (c) with a single criterion referencing transactions where the underlying pool benefits from active portfolio management. Active portfolio management is a common feature of CLOs, enabling it as a proxy to target transactions that are CLOs. This criterion could, however, also capture other actively managed securitisations that are not CLOs within the definition of public securitisations.

Section 1.2 – Definition of public/private securitisations
Option 1: Keeping the criteria (b) and (c) unchanged in the definition of public securitisations (COM proposal).
Option 2: Keeping the criteria (b) and (c) in the definition of public securitisations but with certain modifications, including combining the two criteria in a single cumulative criterion.
Option 3: Replace the criteria (b) and (c) with a single criterion that include securitisations where the underlying portfolio is actively managed in the definition of public securitisations.
Option 4: Removing both criteria (b) and (c) (status quo).
Q3: 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 modifications are needed to criteria (b) and/or (c).

2. Due diligence

2.1. STS verification

COM proposes to remove the requirement for investors to verify STS compliance. There is general support among MS to remove the requirement, though not unconditionally. Several MS would prefer to have TPV verification as a prerequisite for removing the requirement for investors.

The STS label functions both as a quality mark and as a potential gateway to more favourable prudential treatment. This underlines the importance of ensuring appropriate supervision of compliance with the STS criteria. Such supervision is already embedded in the supervision of the originator/sponsor of STS securitisations.

While originators and sponsors have the option to engage a TPV, making TPV involvement mandatory could raise concerns. In particular, it risks driving up TPV fees due to limited market competition – currently, only few TPV providers operate in the EU. Increased costs could hinder the revitalisation of the securitisation market. In addition, one might argue that the supervisory regime for TPVs would need to be enhanced (further than COM proposed clarification that TPVs are to be supervised), if TPVs were to be given a formal role in endorsing STS-transactions.

Moreover, for some investors, the STS label does not carry significant added value. In such cases, requiring TPV verification would impose unnecessary costs without delivering corresponding benefits – potentially creating a disincentive to participate in the market.

Based on the above, the PCY is hesitant to make the removal of investors' obligation to verify STS compliance dependent on TPV verification. Despite the widespread support among MS for TPV verification, the ***PCY therefore proposes to maintain the COM proposal***. It should be noted that originators can still choose to have the STS compliance of a securitisation verified by a TPV in order to make the transaction more attractive to investors for whom the STS label holds value.

2.2. Principle-based risk assessment

There is general support to the COM proposal of making the due diligence requirements more principle-based. Only a few MS oppose the proposal, though there is general concern if more guidance is needed on how to perform principle-based due diligence. Some MS would prefer to include more guidance directly in the Level 1 text, e.g. by retaining parts of the due diligence checklist, while others suggest including a mandate to the ESAs on specifying basic guidelines to principle-based due diligence. A majority of MS supports including the definition of “repeat transaction” as well as a clarification of what proportional due diligence for “repeat transactions” entails.

PCY notes that there is broad support for the proposal on principle-based due diligence. PCY is concerned that if certain elements of the due diligence checklist remain in the Level 1 text, they could steer the due diligence process, making it rule-driven rather than risk-based. Furthermore, PCY sees a risk in mandating the ESAs to develop guidelines for principle-based due diligence, as such guidelines could become overly detailed and extensive and in practice make the due diligence process rule-driven. This would run counter to the general objective of having principle-based due diligence requirements, and risk to counter the broader EU objective of simplifying legislation.

Based on the above, PCY proposes two additions to the COM proposal: 1) to include a definition of "repeat transaction" in Article 2 and 2) a provision on proportional due diligence for "repeat transactions" in Article 5(4).

Article 2:

(34) “repeat transactions” mean a sequence of securitisation transactions that exhibit all of the following criteria:

(a) they have the same originator(s),

(b) they are backed by pools of exposures that are similar in their composition,

(c) they display the same structural features, notably concerning the number and hierarchy of tranches, credit enhancement mechanisms and cash flow distribution.

Article 5(4):

‘(h) in the case of investments in repeat transactions, provided that the investor has already purchased a securitisation position in a previous transaction in the preceding 24 months, document the due diligence solely on the elements of the transaction that have changed since the last issuance.’

2.3. Administrative sanctions:

COM proposes to amend Article 32 concerning administrative sanctions and remedial measures. Under the proposed amendment, institutional investors would be subject to administrative sanctions if they fail to comply with the due diligence requirements.

A majority of MS support the introduction of sanctions for institutional investors. However, they consider the proposed maximum levels of sanctions to be excessive, arguing that such high penalties could discourage investors from participating in the securitisation market. As a result, they propose introducing a cap on administrative sanctions. Some MS suggested this cap to be twice the amount invested.

Conversely, some MS oppose the introduction of such sanctions altogether. Their arguments are twofold; first, investors are already subject to sanctions under existing sectoral legislation, such as CRD/CRR and Solvency II; and second, the establishment of a new sanctions regime requires clear criteria for both compliance by investors and enforcement by supervisors – conditions they believe are not compatible with the principles-based nature of the due diligence requirements.

The PCY acknowledges the challenges inherent in a principles-based approach to due diligence where the criteria are less precise. However, this does not preclude the ability to assess whether an investor has fulfilled the due diligence obligations. Moreover, while the principles-based approach allows for interpretation, it should not be viewed as a license for investors to disregard their responsibilities.

Regarding potential overlaps with sectoral legislation, the PCY believes that the proposed sanctions are more targeted and detailed than the sanctioning provisions in sectoral legislation.

The PCY notes that the vast majority of MS consider a sanction of up to 10% of an investor's total annual net turnover to be disproportionate.

Based on the above, the PCY proposes to include the following provision in Article 32(2):

(fa) by derogation from point (f), in the case of situations referred to under point (i) of paragraph 1, maximum administrative pecuniary sanctions of at least twice the amount of the investment;

Section 2 – Due Diligence
Q4: MS are invited to provide their views on the proposed compromise on STS verification, Principles-based risk assessment and Administrative sanctions.

3. Supervision

3.1. Lead supervisor

According to the COM proposal, appointing a lead supervisor is intended to streamline the supervision of the sell-side parties' compliance with their obligations under the SECR. The lead supervisor as introduced by COM proposal is intended to be a coordinating role with no additional authority over the transaction than what is currently the case in SECR. However, COM has introduced wording that would allow a competent authority to delegate their part of the supervisory responsibility of a cross-border transaction to the lead supervisor. The PCY understanding is that the delegation of supervision (tasks and powers) is completely voluntary, both as to whether a competent authority wants to delegate their responsibility and whether the lead supervisor wants to accept such delegation.

The COM proposed concept of a lead supervisor has been received with mixed views by MS. Many MS find the concept of a lead supervisor to be unnecessary questioning what issues the concept is meant to address. As such, these MS see the concept as an additional administrative burden for competent authorities and furthermore remain confused as to the actual tasks the lead supervisor would perform, believing the JCSC is better suited to foster supervisory convergence. A smaller group of MS supports the introduction of a lead supervisor, believing it could add value to the current supervisory structure, both regarding harmonisation but also in relation to the supervision of STS-criteria, for which multiple competent authorities might hold supervisory responsibility at the same time. A couple of MS also want to take the concept even further by mandating the lead supervisor to assume supervisory responsibility for all aspects of the transaction.

It is the PCYs view that it remains unclear exactly why the lead supervisor concept is needed, and in what way the current framework has failed. In particular, the PCY takes note that convergence in supervision is likely to be further improved, seeing as the JCSC mandate is proposed to be strengthened in the COM proposal. PCY also notes that the current cooperation arrangements, as described in article 36 of SECR, do not prevent the competent authorities of a cross-border transaction to coordinate their supervision of the transaction. Thus, PCY would argue that the possibility for voluntary and ad-hoc coordination of supervision already exists today, albeit there are currently no rules specifying which competent authority should take the initiative to coordinate such supervision, i.e. who should assume the role of the "lead supervisor".

Finally, the PCY takes note that the designation of a lead supervisor for every transaction seems at odds with the practice of risk-based supervision, where all transactions need not necessarily be vetted by the supervisors, making the appointment potentially superfluous for some transactions. The PCY takes note that, in theory, a set of criteria, i.e. related to the transactions size or other relevant features, could be used to determine when a lead supervisor should be appointed for a transaction. Such an approach would however complicate the lead supervisor framework even further.

PCY have contemplated the feedback received by MS on how the appointment of the lead supervisor would be decided upon. Most MS have expressed their preference for an objective and workable appointment criterion, while some have been more specific, pointing to the previously presented approach of appointing the originator contributing the largest proportion of exposures to the transacting. The PCY notes that this method of appointment could result in cases where no lead supervisor can be appointed, e.g. if the originator is established in a third country. To ensure appointment in such cases, a fallback solution where the JCSC decides on the lead supervisor could be considered.

In line with views expressed by most MS, the overall balance of the framework and a lack of a concise justification for what issues the lead supervisor concept would be addressing ***the PCY proposes not to introduce the concept of a lead supervisor***.

3.2. Transaction-level supervision

Regarding the topic of transaction-based supervision, as introduced by recital 24 and the insertion of a new article 30(1a), a majority of MS have expressed their objections towards this, arguing that it is not in line with risk-based supervision.

COM explained during the WP meeting in September that it had not been the intention to subject every single securitisation transaction to verification by competent authorities.

COM mentioned that they considered it necessary to clarify the supervisory responsibilities of competent authorities following the conclusions of ESMA peer review on securitisation. In particular, COM wanted to clarify that the supervisory responsibilities of competent authorities encompass the direct supervision and verification of sell-side entities' compliance with the requirements of the SECR and are not limited to assessing the adequacy of their internal compliance frameworks or procedures. COM explained that their proposed clarification should however not be seen as an obstacle to risk-based supervision, arguing that competent authorities were free to conduct risk-based supervision, e.g. reviewing sample transactions.

Taking the above into consideration, ***the PCY believe that a redrafting of recital (24) is an appropriate way forward*** and can accommodate both the COM intention to clarify the scope of supervision and MS concerns regarding transaction-based verification. ***The PCY suggest maintaining the proposed new article 30, paragraph 1a, as this article does not in itself imply transaction-based verification***, but might help to clarify that the supervisory review performed by competent authorities should not be limited to above mentioned "arrangements, processes and mechanisms" of sell-side entities as stated in Article 30(2).

The PCY suggest recital (24) is amended as follows, to clarify the supervisory responsibilities also cover supervised entities compliance with applicable requirements under SECR:

*"(24) To ensure the effective implementation and enforcement of Regulation (EU) 2017/2402, it is necessary to clarify the responsibilities of competent authorities in supervising the compliance of all relevant parties involved in a securitisation. Competent authorities should oversee the conduct of originators, sponsors, original lenders, and SSPEs. This includes ~~verification~~ **supervision** of ~~**whether**~~ **the compliance with applicable requirements under this Regulation, and thus also, potentially, verification of selected requirements at transaction level, as appropriate under the competent authority's risk-based supervisory approach** ~~individual securitisation transactions comply with the applicable requirements under this Regulation~~."*

3.3. JCSC guidelines and frequency of peer reviews

MS generally support the that the JCSC is given a mandate to develop guidelines on common supervisory procedures. While some MS can support COM proposal outright, others argue that the mandate should be narrower and possibly also be made voluntary, i.e. the JCSC "may" develop guidelines rather than "shall" develop guidelines. During the WP of 22. September COM explained that the proposal contained a broad mandate since it is not possible to know in advance in which areas a guideline would be suitable.

Taking above argumentation into account, the ***PCY proposes to make it optional for the JCSC to draft guidelines on supervisory procedures, while also further specifying the circumstances where the JCSC can develop guidelines***. The PC suggest that guidelines are only considered if supervisory practises hinder an effective application of this Regulation.

PCY proposes below drafting of article 36, paragraph 3a:

The securitisation sub-committee referred to in paragraph 3 **may**~~shall by [12 months after adoption]~~ develop guidelines to establish common supervisory procedures**, in areas where divergent supervisory practices have been identified as a material impediment to an effective application of this Regulation**.

Regarding peer reviews, most of the feedback received by MS have been opposed to a revolving triennial peer review on the implementation of supervisory powers. MS concerns are primarily linked to the resource intensiveness of such reviews, arguing that mandatory peer reviews will limit EBA unnecessarily in deploying its supervisory resources.

Furthermore, arguments are also raised that the need for peer reviews is limited after the Regulation has been in effect for a couple of years and that the enhanced role of the JCSC should be sufficient to ensure supervisory convergence.

The PCY takes note that ESMA have recently conducted a peer review on the supervision of the STS-criteria, fulfilling the existing mandatory peer review mandate of SECR. Seeing as many of the proposed amendments of the current review of SECR are quite targeted in nature and does not constitute an extensive overhaul of SECR, the ***PCY proposes not to introduce a new mandatory peer review mandate***. Rather, the PCY would leave it to the discretion of the ESAs to decide which convergence tool, including peer reviews, are appropriate to facilitate a harmonised implementation of the SECR.

As such the PCY proposes to delete the proposed amendment to article 36, paragraph 7.

Section 3 – Supervision
Q5: MS are invited to provide their views on the proposed comprises on Lead supervisors, Transaction-level supervision and JCSC, guidelines and frequence of peer review.

4. Transparency and STS criteria

4.1. Aggregate form reporting for short term and granular pools

A majority of MS support COM proposal to exempt securitisations of highly-granular pools of short-term exposures from loan-level disclosure. However, several MS have requested a definition of “highly-granular pools of short-term exposures”. Additionally, some MS would prefer to see the reference to “credit card exposures” and “certain types of consumer loans” removed from the recital. There also appears to be very little support among MS for extending the exemption to all private securitisations.

MS feedback reveals a substantial divergence in the interpretation of the term “highly-granular”. While some MS regard a pool of 200 exposures to be “highly-granular”, others require a minimum of 20,000 exposures. In the PCY view, this indicates that there is a need for clarification of the term to ensure harmonisation in implementation across competent authorities.

Regarding the reference to “credit card exposures” and “certain types of consumer loans” the COM has explained that this is not to be interpreted as an exhaustive list.

Based on this, the ***PCY proposes to include definitions of "highly-granular pools of short-term exposures"*** in Article 2 of SECR and make the below amendment to recital (12).

Article 2:

<u>(35) 'highly-granular pools of short-term exposures' means a pool of exposures with an original maturity of one year or less and where no single exposure represents more than 0.005 % of the overall pool.'</u>

Recital (12):

The disclosure requirements should consider the granularity of the underlying pool of exposures, i.e. how many loans are in the underlying pool. In addition, it is important to consider the average maturity of the underlying exposures. Loan-level disclosure for highly-granular pools of ~~very~~ short-term exposures can be particularly costly and entails a considerable burden for issuers, often without offering significant benefits in terms of additional information to investors. Therefore, disclosure requirements for securitisations of ***<u>highly-granular pools of short-term exposures</u>*** ***~~credit card exposures and certain types of consumer loans~~*** *should not need to encompass reporting at the level of each individual underlying exposure.*

However, competent authorities should still have the possibility to ask for additional information to ensure that they have a complete overview of the market, including on the exposures that constitute the underlying pool, in carrying out their duties under Regulation (EU) 2017/2402.

4.2. Homogeneity criteria

A majority of MS indicated that they were open to easing the requirements to homogeneity for SME exposure, though hesitant to support the COM proposal.

The COM proposal states that a pool consisting of 70% exposures to SME is considered to be homogeneous, no further restrictions apply to either the 70% SME exposure (e.g. requirement to belong to the same asset type) or to the remaining 30%.

The majority of MS see a need for imposing restrictions on the remaining 30% of exposures. The most favoured suggestion is to require the 30% to be exposures to other types of corporates.

In the RTS on homogeneity[1] the exposures need to meet requirements on asset type, similarity of underwriting and servicing standards and homogeneity factors. PCY takes note that these requirements are waived in the COM proposal not only for the remaining 30% but also for the 70% SME exposure, which have relevance seeing as SME exposures could potentially be originated under multiple asset types[2]. PCY also takes note that the majority of MS have not addressed this in their responses. Based on this the ***PCY proposes to impose restrictions only on the remaining 30% by requiring the underlying to be corporate exposures***.

The PCY drafting of Article 20(8), 24(15) and 26b(8):

'A pool of underlying exposures shall be deemed to comply with the first subparagraph where at least 70% of the exposures in the pool at origination consists of exposures to SMEs ***<u>and the remaining 30% consists of exposures to corporates</u>****.';*

Sections 4.1 and 4.2 – Transparency and STS criterion
Q6: MS are invited to provide their views on the proposed comprises on Aggregate form reporting and Homogeneity criteria.

4.3. Unfunded credit protection

MS have mixed views on the appropriateness of the general concept of unfunded credit protection (UFCP), with support and opposition to the concept being almost equally divided. MS in opposition to the concept are primarily concerned about the preservation of the integrity of the STS-label and the potential implications on financial stability. Many MS have been constructive and have expressed their preferences for finetuning the safeguards envisaged by COM, to ensure their effectiveness, irrespective of their general attitude towards the concept of UFCP.

Keeping the general balance of the compromise in mind, the PCY proposes to maintain eligibility of UFCP under the STS-label in line with COM proposal, but to finetune the safeguards to better accommodate MS concerns about their effectiveness.

[1] RTS 2019/1851

[2] As an example, SME exposures could be originated under the asset type "auto loans and leases", where the obligor type, distinguishing between SMEs and other enterprises and corporates, is used as a homogeneity factor.

Internal model requirement:

Most feedback received from MS have been in favour of maintaining a safeguard requiring (re)insurers to have an approved internal model and use this model to calculate capital requirements for the guarantees. MS views on the preferred way to proceed with the internal model requirement are mixed, some prefer COM proposal while others prefer enhancements or additional safeguards, although many MS seem flexible on the particularities of these additions.

During the previous WP the PCY raised the issue of how the originator in practice would go about verifying that the (re)insurer internal model appropriately captures the risk characteristics of the credit guarantees. In particular, the inner workings of a (re)insurers internal model is confidential information, furthermore an originator might not be equipped to assess the adequacy of the internal model if they were to be given access to it. Different solutions to this issue have been provided by MS; one being that the originator should seek confirmation by the supervisor of the (re)insurer that the internal model is adequate for such guarantees, another suggests incorporating a new reporting and approval regime for internal model users wanting to provide UFCP, enabling more transparency into the coverage of the internal model.

In the PCY view there are two fundamental ways to approach the internal model requirement, without relying intensively on the originators abilities to by itself assess the internal model.

The first approach, which the PCY views as consistent with the COM proposal, is to require the (re)insurer to have an internal model that covers credit risk and that is applied to the UFCP. This approach would not require anything else from the internal model in terms of its adequacy to model capital requirements of these UFCP.

In the PCY view this requirement would be easily assessable by the originator through public disclosures (SFCR[3]). The disadvantage of this approach is that it does not guarantee the internal model adequately covers and models the risk of guarantees on securitisations, thus making the internal model requirement more of a "proxy" for the (re)insurers ability to model the risks and needed capital for such guarantees.

The second approach would require far more involvement by making sure that the internal model covers the particularities of these kinds of credit guarantees. The PCY believes that the best way to ensure the above would be to rely on the expertise of the (re)insurers' competent authority to assess the adequacy of the internal model.

[3] Solvency and financial condition report as prescribed by article 51 of Directive 2009/138/EC

In practice this could be achieved by embedding, within Solvency 2's requirements on internal models, that in the context of UFCP intended to be labelled as STS, the internal model should explicitly cover the risks arising from unfunded credit protection. In addition, the documentation requirements for the internal model within Solvency 2 could be supplemented with a requirement for a dedicated section on the treatment of UFCP intended to be classified as STS.

In the PCY view, the second approach would ensure a very thorough assessment of the internal model's capabilities to model UFCP. This approach would, however, also be more costly to implement, both in term of adding to the complexities of the Solvency 2 regulation and in terms of the need to approve the new "add-on" to the internal model of (re)insurers wanting to supply UFCP that is STS eligible.

With a view to maintaining the overall balance of the compromise, while keeping true to the agenda of rule simplification and burden reduction, ***the PCY proposes to maintain COM proposal regarding the internal model criterion***.

<u>*SCR and rating requirements*</u>
Most MS have a preference for maintaining the requirement that (re)insurers must comply with their solvency capital requirements (SCR) as proposed by COM.

In relation to the rating requirement on the (re)insurer a majority of MS prefer to align the rating requirement with that of article 249 of CRR, i.e. requiring the (re)insurer be assigned a CQS 2 or above at the time the credit protection is recognised and a CQS 3 or above throughout the transaction. Multiple MS argue that alignment with CRR will help ensure procyclicality concerns are better addressed.

Taking the above into consideration, ***the PCY propose to maintain the requirement that (re)insurers must comply with their solvency capital requirements (SCR) as proposed by COM but that the rating requirement is aligned with article 249 of CRR***. This includes a clarification that the rating must be assigned by an ECAI, as is also the case in article 249 of CRR.

On the topic of procyclicality MS have generally been sympathetic toward the introduction of some kind of "grace period" pertaining to the eligibility of an UFCP as STS in the event of breaches to the SCR or rating requirements. A couple of MS argue that a grace period would not be necessary if the rating criteria is aligned with that of article 249 of CRR.

Seeing as the PCY is proposing to align the rating requirement with that of article 249 of CRR, it would take a downgrade of at least two credit quality steps (from CQS 2 to 4) to make a UFCT ineligible under the STS label. As such PCY is of the view that procyclicality risks relating to the rating requirement are already substantially mitigated by the PCY proposal.

PCY take note that a (re)insurers solvency capital requirement and eligible own funds are periodically published through the SFCR and continuously monitored by the (re)insurers themselves enabling more transparency in this area. As suggested in the Commission services non-paper on UFCP[4], an originating bank may require some kind of own funds buffer above the solvency capital requirement, to mitigate the risk of the UFCP becoming ineligible for the STS-label. As such, PCY believes originators has available means to monitor an insurers SCR and prepare accordingly.

Considering the above ***the PCY does not propose to introduce a "grace period" that preserves the STS-label temporarily during breaches of capital and rating requirements***.

Business diversification

PCY suggest using lines of business (LoB), rather than classes of insurance to measure a (re)insurers business diversification. Using LoB will provide an easily assessable and public source of an (re)insurers business diversification through the SFCR. To cater for MS concerns regarding the correlation between the non-life classes of insurance of "Credit", "Suretyship" and "Miscellaneous financial loss", the PCY suggest that the requirement should be to operate in at least one additional LoB than the LoBs containing insurance or reinsurance activity in "Credit", "Suretyship" and "Miscellaneous financial loss"[5]. As such the (re)insurer would be required to have other business activity that is not closely correlated with the provision of UFCP.

The PCY has chosen to base the measurement of the business diversification on both direct insurance and reinsurance activity seeing as reinsurance and direct insurance fundamentally provides the same risk profile. To ensure proper business diversification a (re)insurer should thus not be able to satisfy the diversification requirement by solely providing reinsurance in one of the LoBs containing the insurance classes of either "Credit", "Suretyship" and "Miscellaneous financial loss.

MS have also been vocal on the need to quantify what is meant by "effectively operates" to ensure a proper and harmonised business diversification. The PCY suggests using total technical provisions net of any proportionate reinsurance to measure the size of different lines of business. To ensure that the (re)insurer effectively operates other business areas,

[4] As circulated ahead of the 22. September WP.

[5] The LoB that currently encompass direct insurance and reinsurance of these three insurance classes are LoB (9), (12), (21) and (24) as listed in point A. of Annex I of Delegated Regulation (EU) 2015/35.

the ***PCY suggest that the sum of technical provisions from LoBs other than the ones containing insurance or reinsurance activity of "Credit", "Suretyship" and "Miscellaneous financial loss" constitute at least 40%.*** This requirement would ensure that the (re)insurer has meaningful business activity in areas that are not significantly correlated with the area of credit protection.

Compromise drafting:

"***<u>(iii) the undertaking's total non-life technical provisions, net of amounts recoverable from reinsurance contracts and special purpose vehicles, across all lines of business, within the meaning of the Delegated Regulation adopted pursuant to Article 86(1)(e) of Directive 2009/138/EC, except those that contain insurance or reinsurance activity in the non-life classes of insurance of "Credit", "Suretyship" and "Miscellaneous financial loss", shall represent at least 40% of the total non-life technical provisions of the undertaking, net of amounts recoverable from reinsurance contracts and special purpose vehicles;"</u>***

<u>Size requirement</u>

In relation to the size requirement of EUR 20 bill, many of MS have expressed that they do not believe a lowering of this threshold to be appropriate. Other MS prefer that the threshold should be lowered and that the assets of other entities within the group should also be taken into account, arguing that the scope of (re)insurers able to provide UFCP would otherwise be very limited.

The PCY would like to remind MS of the previously circulated non-paper by the Commission Services highlighting that the size requirement is in limiting the amount of (re)insurers in the EU that are able to fulfil the criteria for providing UFCP. As highlighted in this paper it is estimated that only 21 (re)insurers are fulfil the criteria, and in practice, based on the survey conducted by the Commission Services, only a handful[6] of the (re)insurers, believed to have interest in this kind of business, would satisfy the criteria.

The PCY is of the view that the size requirement provides very little to no information on a (re)insurer's ability to honour its provided guarantees. The size requirement, being a measure of total assets, ignores the liabilities of the (re)insurer and thus also its financial capacity to absorb losses. As such, the PCY views the size requirement as an "indirect safeguard" and a way to target what is perceived to be the "big" and more "sophisticated" (re)insurers, rather than a safeguard that directly contributes to the robustness of the provided guarantees. Taking the above into consideration, the PCY would find it

[6] The Commission Services among 53 market participants found about 10% were eligible.

unfortunate if the size requirement became overly restrictive and thus propose to soften the criterion.

PCY proposes lowering the threshold of 20 billion to 15 billion EUR. PCY note that the proposed lowering of the size requirement would result in 30 rather than 21 EU entities fulfilling the 3 main safeguards[7].

The PCY also proposes to allow the size requirement to be fulfilled by the parent undertaking of the (re)insurer under certain safeguards. The safeguards would be twofold;
-The (re)insurer and its parent undertaking should be subject to group supervision in accordance with Solvency 2, and
-There should exists financial arrangements that ensure effective financial support, through the provision of additional own funds on demand by the parent undertaking, that is recognisable by the (re)insurer as ancillary own funds.

In the PCY view this method to satisfy the size requirement might expand the scope of eligible (re)insurers, while maintaining the essence of the size requirement.

Compromise drafting:

*"**(iv) any of the following conditions are fulfilled:***

-the total assets of the insurance or reinsurance undertaking providing the unfunded credit protection exceed EUR 15 billion; or

***-where that undertaking is a subsidiary of a group subject to group supervision within the meaning of Article 213(2), points (a), (b) or (c), of Directive 2009/138/EC, the total assets of the parent undertaking of that group exceed EUR 15 billion, and there are financial arrangements, including ancillary own funds, ensuring effective financial support through the provision of additional own funds on demand by the parent undertaking to the insurance or reinsurance undertaking, in the event that the latter is unable to provide timely compensation to the originating credit institution**."*

Applicability of criteria to third country (re)insurers

[7] As indicated by the Commission services in the non-paper on UFCP distributed ahead of the 22. September WP.

As highlighted in the PCY discussion-paper on UFCP[8], several of the eligibility criteria for UFCP refers to Solvency 2 concepts, thus de facto excluding non-EU (re)insurers from providing UFCP under the STS-label. MS views, while split, are most favourable toward not attempting to create a framework that could accommodate third country (re)insurers provision of UFCP under the STS-label. Some of the MS showing openness toward extending the provision of UFCP to third country (re)insurers also commented on the possible need for additional safeguards, some arguing that the solvency concept of equivalence was not fit for purpose as a seal of approval of third country (re)insurers.

Seeing as there is not a clear majority in favour of deviating from COM proposal and the lack of a mature concept to pursue, ***the PCY proposes to maintain COM proposal and thus not introduce a "regime" for third country (re)insurers to provide UFCP under the STS-label***.

Section 4.3 – Unfunded credit protection
Q7: MS are invited to provide their views on the proposed comprises on Unfunded credit protection.

[8] Circulated ahead of the 22. September WP.

Annex - Overview of compromise and PCY actions

Topic	Reference in COM proposal	Reference in securitisation regulation as amended by the proposal	PCY action
Due diligence & risk retention			
Removal of verification for supervised EU sell-side entities	Recital (5) and article 1(3)(a)(i, ii)	Article 5(1)(c, e, f)	COM substance
Proportional and risk sensitive due diligence requirements	Recital (4, 6, 8) and articles 1(3)(b)(i) and 1(3)(c)(i,ii)	Article 5(3(b), 4(a, g))	COM substance
Clarification on repeat transactions and proportionate DD for these.	PCY addition	New Article 2(34) and 5(4)(h)	PCY proposal
Removal of STS verification	Recital (7) and article 1(3)(b)(ii)	Article 5(3)(c)	COM substance
Delegation of responsibility for due diligence	Recital (11) and article 1(3)(e)	Article 5(5)	COM substance
Waiver for multilateral development banks	Recital (9) and article1(3)(d)	Article 5(4a)	COM substance
Waiver for guaranteed first loss tranche	Recital (10), articles 1(3)(d) and 1(4)(a, b)	Article 5(4b), 6(5(f), 5a)	MS input
Sanctioning of institutional investors	Recital (25) and article 1(17)	Article 32(1)(1)(i) and new Article 32(2)(fa)	PCY proposal
Transparency requirements and definition of private securitisation			

Lower reporting burden on all securitisations	Recital (13)	NA	COM substance
Aggregate form disclosure on underlying exposures for securitisations with highly granular pools of short-term exposures	Recital (12) and article 1(5)(a)	Article 7(1)(4) and new Article 2(35)	PCY proposal
Reporting to securitisation repositories and new light reporting templates for private securitisations	Recital (14) and article 1(5)(b) and 1(7)(a)	Article 7(2)(3) and 17(1)	COM substance
Definition of "private securitisation"	Recital (3) and article 1(2)	Article 2(1)(32, 33)	MS input
Responsibility of draft technical standards on disclosure and timeline for implementation	Recital (15) and article 1(5)(c, d) and 1(7)(b)	Article 7(3, 4) and 17(2)(a)	COM substance
Supervisory framework			
Lead supervisor	Recital (29) and article 1(18)(c)(2)	Article 36(3b)	PCY proposal
Prudential authority to supervise STS-criteria	Article 1(15)	Article 29(4a, 5)	Postponed
Transaction-level supervision and monitoring of selection of	Recital (24) and article 1(16)	Article 30(1a, 5)	PCY proposal

exposures for securitisation			
JCSC: lead ESA and other tasks	Recital (26-28) and article 1(18)(a, b, d, f)	Article 36(2, 3, 6(1, 2), 8)	COM substance
JCSC: GL and peer-review mandates	Recital (27) and article 1(18)(c(1), e)	Article 36(3a, 7)	PCY proposal
STS requirements and other subjects			
Homogeneity criteria for SME exposures	Recital (16) and article 1(1(a), 10(b), 11(b))	Article 20(8), 24(15) and 26b(8)	PCY proposal
Unfunded credit protection	Recital (22) and article 1(13)(c)	Article 26e(8)(aa, c)	PCY proposal
Exclusion from general prohibition on active portfolio management	Recital (18) and article 1(11)(a)	Article 26b(7)(4)(e, f)	COM substance
Information on restructured exposures	Article 1(8(b), 10(a), 11(c))	Article 20(11)(a)(ii), 24(9)(a)(ii) and 26b(11)(a)(ii)	COM substance
Recognition of retained tranches during debt workout process	Recital (19) and article 1(12)	Article 26c(5)(8)	COM substance
Credit protection premiums	Recital (20) and article 1(13)(a)	Article 26e(3)(3)	COM substance
Synthetic excess spread	Recital (21) and article 1(13)(b)	Article 26e(7)(d)	COM substance

Mandate guiding the JCSC periodic evaluation report	Article 1(19)	Article 44(1(1)(e), 1(2))	COM substance
Review clause	Recital (30) and article 1(20)	Article 46	COM substance
Clarification on regulation application to Servicers	Article 1(1)	Article 1(2)	COM substance
Supervision of Third parties verifying STS compliance	Recital (23) and article 1(14)	Article 28(1)(1)	COM substance
Correction of reference in article on Securitisation repositories	Article 1(6)	Article 10(1, 2)	COM substance
Environmental performance data disclosure	Article 1(9)(a)	Article 22(4)(1)	COM substance
Less information on private securitisations before pricing	Article 1(9)(b)	Article 22(5)	COM substance
Other topics not addressed in COM proposal			
EL proposal on risk retention waiver on senior tranches of guaranteed NPE securitisations			MS input
ESRB to be included in Article 36(1) of the SECR.			Postponed