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## **WORKING DOCUMENT**

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<b>From:</b>	General Secretariat of the Council
<b>To:</b>	Working Party on Financial Services and the Banking Union (Securitisation) Financial Services Attachés
<b>Subject:</b>	Securitisation Review: Presidency discussion note on the securitisation package - WP meeting 04.12.2025

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# Presidency discussion note on the securitisation package – WP 4 December 2025

Date: 1 December 2025

## 1. Introduction

At the WP on 24 November, the PCY presented its proposal for a consolidated compromise on the comprehensive package for a revised securitisation framework, i.e. changes to the Securitisation Regulation (SECR) and the Capital Requirements Regulation (CRR).

In general, MS welcomed the consolidated compromise proposal, and there was broad support for the PCY to finalise the text with the aim of reaching a decision on the Council mandate in COREPER before the end of the Danish PCY.

On the CRR, the compromise proposal received broad support among MS. Accordingly, the PCY has finalised the compromise text, including a few technical adjustments, which are described in this note.

On the SECR, while there was general support for the bulk of the substance, a few outstanding issues remain to be decided before the PCY can finalise the compromise text. These outstanding issues are described in this note and include administrative sanctions, delegation of due diligence responsibility, transparency requirements for third country issuers and the size criterion for unfunded credit protection (UFCP). In addition, the compromise text includes a few technical adjustments and legal drafting based on the non-papers presented at the last WP has been reflected.

The PCY encourages all delegations to review the updated texts carefully and to maintain the constructive and solution-oriented approach that has characterised our work so far. The upcoming meeting will be crucial for resolving the remaining issues and ensuring that we can present a strong and unified Council position.

The PCY would like to thank all delegations for their hard work and willingness to compromise on such technical, complex and politically sensitive topics.

The upcoming WP will be the last meeting before going to the COREPER. Upon this meeting, where we can hopefully agree on how to solve the few outstanding issues, the PCY will

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make the necessary final technical amendments and initiate the silence procedure asap, before submitting for adoption at COREPER on the 16/17 December.

## Contents

The discussion note is structured as follows; first presenting the outstanding issues to the SECR and then the technical adjustments to the CRR following the agreements reached at the previous WP. For the remaining parts of the compromise not addressed in this note, the PCY kindly refers to previous discussion notes as well as the discussions at the WPs where all topics have been covered.

The accompanying three-column tables in the “3CT documents” show the PCY proposal as of 24 November with tracked changes compared to the COM proposal, the PCY’s new proposal with tracked changes compared to the PCY’s 24 November proposal.

In detail, the discussion note is structured as follows:

1. Introduction
2. State of play
3. Changes to previous outline of a compromise proposal on SECR
4. Adjustments to the previously agreed compromise on CRR

## 2. State of play

On CRR, the PCY’s proposal regarding the prudential treatment received broad support at the WP on 24 November. Therefore, the PCY has only made technical adjustments to the compromise proposal presented at the last WP. In addition to these adjustments, the proposal now also includes the proposal originally tabled by Spain regarding the treatment of project finance in the pre-operational phase, as well as a solution to the issue raised by Romania regarding the prudential treatment of bank’s exposures to public debt issued in euro by non-euro MS.

On SECR, the PCY compromise proposal was discussed together with a joint non-paper from Germany and Portugal on the proposed waiver for securitisations in which the first loss tranche is guaranteed by a public entity, as well as a non-paper from Spain on the threshold set out in the UCITS Directive, which imposes limitations on investments in securitisations by UCITS funds.

It is the PCY’s impression that there is broad support for the overall direction of the compromise on SECR. However, feedback from MS indicated that certain issues required

further adjustments, specifically those related to administrative sanctions, delegation of due diligence responsibility, UFCP, and transparency requirements for third countries. For the remaining items presented at the WP, the proposed drafting was endorsed by a majority of the MS that provided written comments. The two non-papers were also well received by MS, though certain adjustments to the Spanish proposal and the German part of the joint proposal from Germany and Portugal were requested.

The PCY has prepared concrete drafting on these points, and MS are invited to indicate their preference: either to accept the new PCY proposal, or alternatively, to delete the provision and revert to the PCY compromise as of 24 November.

The adjustments to the consolidated PCY compromise proposal, together with the underlying rationale, are outlined in detail in the following section.

### 3. Changes to previous outline of a compromise proposal on SECR

#### 3.1. Waivers for securitisations with a publicly guaranteed first loss tranche

The COM 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 has been discussed at several WP's.

While a clear majority of MS initially opposed the proposed waiver, some movement has been observed during Council negotiations, with some MS requesting further discussions on the waiver. Accordingly, the Portuguese and German delegations presented a joint non-paper at the last WP, including revised drafting for the 15% first loss waiver (PT proposal) and new drafting creating an exclusion to the scope of SECR (DE proposal). MS were invited to provide their feedback on the two proposals, and PCY has updated the consolidated compromise proposal according to MS preferences.

Waiving risk retention for securitisations with a publicly guaranteed 15% first loss tranche (proposal by Portugal)

The PT-proposal on the 15% first loss waiver would imply a narrower scope of only guarantees provided by public entities<sup>1</sup> as compared to the COM proposal and furthermore limit the waiver to the risk retention requirement, while maintaining investors obligation to conduct due diligence. In addition, it was specified that these securitisation structures were subject to certain limitations; only allowed to have two tranches, that the first loss guarantees cannot be hedged or transferred except to other public entities, and finally that NPE securitisations do not qualify for this waiver.

**The PCY has included the revised 15% first loss waiver as proposed by PT in the compromise following the broad support by MS.** The PCY has only made minor editorial changes to the drafting proposed by PT. The proposed drafting can be found in Articles 6(5)(a) and Recital 10.

Waiving risk retention, transparency and credit granting criteria for securitisations with public FL guarantee (Proposal by Germany)

This proposal was presented at the WP on 24 November as part of the joint submission by the Portuguese and German delegations and concerned a general exclusion from SECR for securitisations consisting of underlying exposures held by a national promotional bank or institution<sup>2</sup> in which the first-loss tranche is guaranteed by a public entity.

Reactions to the above exclusion to SECR's scope were mixed, with concerns centred around the exclusion being too broad and on whether private investors would remain appropriately protected with the removal of SECR requirements. As part of the post WP questionnaire the PCY submitted a revised and more targeted version of the waiver for MS comments. Feedback received from MS has mostly been in favour of including the revised waiver within the compromise, while a small group of MS remain hesitant, voicing concerns about whether private entities are allowed to participate and questioning the waiving of the transparency requirements.

Based on MS feedback **the PCY has included the revised waiver proposed by DE in the compromise proposal, with additions and clarifications that ensure that no private investors can participate in these securitisations.** The revised waiver together with its underlying rationale is presented below.

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<sup>1</sup> The entities referred to in points (a), (b) and (d) to (f), paragraph 5 of article 6, thus excluding guarantees by 50% risk-weight institutions as covered by point (c).

<sup>2</sup> National promotional bank or institution as defined in point (3) of Article 2 of Regulation (EU) 2015/2017

In the PCY draft, the scope has been clarified to cover only synthetic securitisations. It is also clarified that all non-guaranteed tranches will be fully retained by the originators until maturity, ensuring that no private investors will hold any of the non-first loss positions in these securitisations. Furthermore, as is the case with the waiver proposed by the Portuguese delegation, it is emphasised that the guarantor cannot not hedge or transfer the first-loss tranche, except to other public entities, ensuring that no private investors will hold the first loss position. In summary, no non-public entity will thus be able to participate in this kind of securitisation, apart from the originator of the transaction which could be either public or private.

The original proposal by the German delegation envisaged a complete exclusion of these securitisations from the scope of the SECR. This has now been refined so that only the requirements on risk retention, transparency and credit granting criteria<sup>3</sup> are waived.

The PCY's revised drafting can be found below:

*"This Article does not apply to synthetic securitisations that meet all of the following conditions:*

*(i) The synthetic securitisation is originated by a national promotional bank or institution as defined in point (3) of Article 2 of Regulation (EU) 2015/1017;*

*(ii) The first-loss tranche is guaranteed by an entity referred to in points (a), (b) and (d) to (f) of Article 6(5) of this Regulation;*

*(iii) The non-guaranteed tranches are fully retained by the originator until maturity;*

*(iv) The guarantor has established and approved the eligibility criteria for the underlying exposures prior to the creation of the exposures, and no other party has discretion to alter or override such criteria; and*

*(v) The entity referred to in point (ii) guarantees the first-loss tranche on a continuous basis and cannot hedge or otherwise transfer the credit risk associated with that tranche to an entity not referred in points (a), (b) or (d) to (f) of Article 6(5) of this Regulation."*

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<sup>3</sup>It is noted that the circulated questionnaire gave the impression that this waiver would apply to articles 6,7 and 8, this was a mistake, the reference should have been to article 9 on criteria for credit granting rather than article 8 on resecuritisation. This scope was also presented in the -original non-paper by DE and PT.

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The provisions will be included in Article 6 (risk retention), Article 7 (transparency requirements) and Article 9 (criteria for credit-granting).

### 3.2. Administrative sanctions

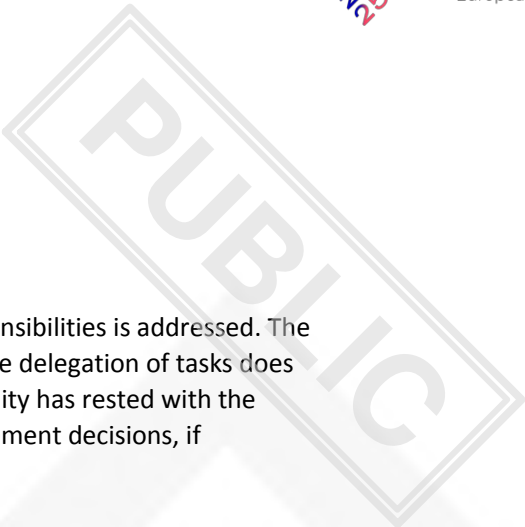
MS views on the imposition of administrative sanctions for institutional investors have been split. Some MS supported the imposition of sanctions, though a more proportionate approach than the one proposed by COM was favoured. Another group of MS argued that institutional investors' due diligence requirements are already sanctionable under sectorial legislation, making it redundant to subject these requirements to sanctions within SECR as well.

During the previous WP many MS reiterated their opposition to impose sanctions on institutional investors within SECR and pleaded that at least the hierarchy of the sanction regimes should be clarified where sectorial legislation also provides for sanctions. It was also highlighted that, in practice, there will be no institutional investors that are not subject to sectoral legislation, and therefore the amendment in Article 32 will have no practical implications. Some MS are furthermore concerned that subjecting institutional investors to administrative pecuniary sanctions could deter them from participating in the securitisation market, thereby running counter to the overarching policy objective of this reform.

Divergent views also remain regarding the appropriate level of sanctions, primarily due to concerns that disproportionate sanctions may deter institutional investors from entering the securitisation market. Moreover, MS have pointed out that some finetuning of the text is needed to ensure there is no overlap between the sanctions regime under SECR and the relevant sectoral legislation.

The PCY take note that a large group of MS prefer the status quo, while another group of MS remain open to sanctioning due diligence within SECR but still consider the proposed level of sanctions to be too high. Taking account of the prevalent support for the status quo and the lack of consensus on the level of the sanctions, **the PCY proposes to maintain the status quo**, which means that breaches to the due diligence requirements by investors are subject to the sectoral sanctions. The PCY thus propose to delete recital (25), the new provision in Article 32(1), point (i), on introducing administrative sanctions for institutional investors in SECR and the new provision in Article 32(2), point (fa), on the size of these sanctions. The discussions at the WP have provided clarity that due diligence breaches constitute a sanctionable offence under the sectoral legislation, which was one of the key objectives of the COM proposal.

The changes can be found in recital (25), Article 32(1)(i) and Article 32(2)(fa) of the 3CT.



### 3.3. Delegation of due diligence

In the COM proposal, the issue of delegating due diligence responsibilities is addressed. The COM aims to align SECR with other sectoral legislation, where the delegation of tasks does not entail a transfer of legal responsibility. Until now, responsibility has rested with the institutional investor responsible for making investment management decisions, if instructed by the delegating institutional investor.

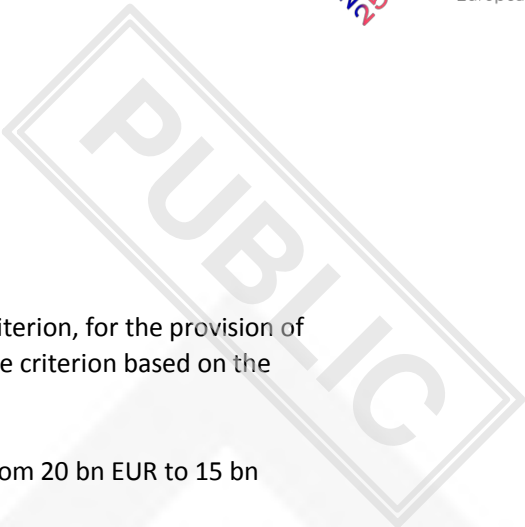
The question of delegation has not yet been discussed in detail in the Working Party meetings. However, the PCY has received sporadic feedback from MS, and at the previous meeting the PCY therefore invited all MS to provide their views on the COM proposal concerning delegation.

A majority of respondents oppose the COM proposal, referring to the fact that due diligence is an integral component of investment management, and therefore compliance with due diligence requirements primarily remain the responsibility of the investment manager actually performing the due diligence checks.

Although some MS see merit in aligning SECR with other sectoral legislation, this view is outweighed by concerns by MS that such alignment could deter institutional investors from investing in securitisations. However, in line with comments by multiple MS and the opinion of the ECB, it should still be explicitly stated that investors are obliged to ensure that any delegated party possesses the necessary experience to conduct due diligence assessments.

Based on this, the PCY proposes amending recital (11) and the amendments to Article 5(5) in the COM proposal. Instead, the following amendment to Article 5(5) is proposed (with changes tracked against the current legislation):

*“5. Without prejudice to paragraphs 1 to 4 of this Article, where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that, where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 and 33 may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation. Before instructing the managing party to fulfil its obligations under this Article, the institutional investor shall ensure that the managing party has prior experience in conducting due diligence obligations for its own account or on account of other parties.”*



### 3.4. Unfunded credit protection - The size criteria

During the WP of 15 October, the PCY proposed a revised size criterion, for the provision of UFCP under the STS label, allowing the (re)insurer to fulfil the size criterion based on the total assets of its parent undertaking.

Furthermore, the PCY proposed to lower the size requirement from 20 bn EUR to 15 bn EUR.

The PCY's reasoning for making the size criterion more lenient was that the size criterion as proposed by COM is expected to severely limit the number of undertakings that can provide this unfunded credit protection, thus hindering the objective of stimulating securitisation markets and raising potential concentration risks issues.

The PCY would like to remind MS of the previously circulated non-paper by the Commission Services<sup>4</sup> where it was estimated that only 21 (re)insurers fulfil the eligibility criteria for the provision of unfunded credit protection, and in practice, based on the survey conducted by the Commission Services, only a handful<sup>5</sup> of the (re)insurers believed to have an interest in this kind of business would satisfy these criteria.

The PCY's revised size criterion is expected to increase the number of (re)insurers eligible to provide unfunded credit protection significantly, thereby also reducing the risk of concentrating the provision of credit protection with a few entities. An updated quantitative impact study<sup>6</sup> from EIOPA on the number of undertakings that can provide UFCP, indicate that allowing the parent to fulfil the size criterion will increase the number of eligible (re)insurers<sup>7</sup>.

The PCY does not see the size criterion as a criterion on loss absorbing capacity. The size requirement, being a crude measure of "total assets", ignores the composition of the (re)insurers liabilities and thus also its financial capacity to absorb losses. As such, the PCY continue to believe that the size requirement provides very limited information on the

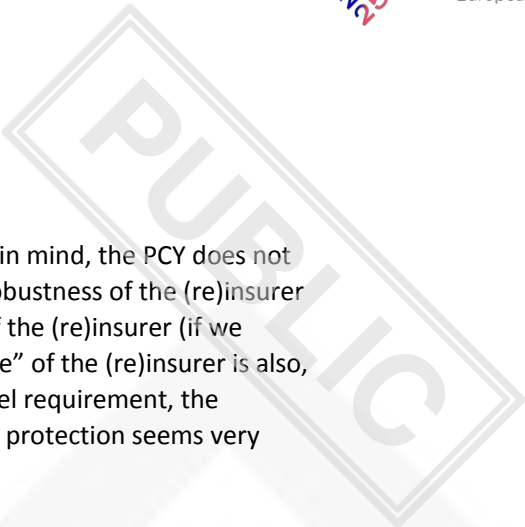
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<sup>4</sup> Commission Services' non paper on the recognition of (re)insurance-based unfunded credit protection under the STS framework, shared with MS ahead of the 15. October WP

<sup>5</sup> The Commission Services among 53 market participants found about 10% were eligible.

<sup>6</sup> EIOPA quantitative assessment was included in the non-paper by Commission Services, shared with MS ahead of the 15. October WP.

<sup>7</sup> See Annex 1.



(re)insurer's ability to honour its provided guarantees. With this in mind, the PCY does not view the size requirement as a safeguard that is related to the robustness of the (re)insurer but rather a safeguard that is perhaps related to the expertise of the (re)insurer (if we assume size is correlated with expertise). Seeing as the "expertise" of the (re)insurer is also, and perhaps more appropriately, addressed by the internal model requirement, the necessity of the size criterion in ensuring robust unfunded credit protection seems very limited.

The PCY's revised size criteria has been received with mixed views by MS. One group of MS support the direction of the PCY's size criterion, while calling for further concessions making the criterion more lenient. Another group of MS is opposed to the "parent application" of the size criterion and suggests that co-signing of the credit protection agreement by the parent should be a prerequisite, if the parent application of the size requirement should be considered.

Considering the extent of changes made to accommodate a less limiting size criterion, by both lowering the threshold to 15 bn EUR and introducing the possibility to rely on the total assets of the parent, the PCY proposes to require that the parent co-signs the unfunded credit protection agreement. This would require the parent to be liable to fulfil the UFCP contract if its daughter (re)insurer is not able to.

Should this solution not be acceptable to MS, the PCY considers the only other viable alternative would be to revert to the PCY compromise as presented on 24 November.

Finally, the PCY is also proposing to amend the reference to group supervision by removing the reference to point (c) of Article 213(2). This amendment is made to ensure that the parent undertaking is established within the Union, catering to our previous discussions on the third country applicability of UFCP.

### **3.5. Threshold for securitisations in UCITS**

At the last WP, the Spanish delegation presented a proposal concerning the threshold set out in the UCITS Directive, which imposes limitations on investments in securitisations by UCITS funds. In the non-paper, it is argued that while the changes proposed in the securitisation package are likely to increase the supply side, further consideration should be given to increasing the demand side. As a way of addressing the demand side, Spain proposes to remove the limit in the UCITS Directive that prevents a UCITS fund from acquiring more than 10 per cent of the debt securities of a single issuing body. MS were invited to provide their feedback on the Spanish proposal, and the compromise text has been updated to reflect MS' preferences.

PUBLIC

The PCY acknowledges that the timing of the proposal has raised concerns among some MS, particularly regarding the limited opportunity for thorough discussion and assessment of the implications. While there is broad recognition of the relevance of addressing the demand side for securitisations, and general support for facilitating UCITS investments in these instruments, the late introduction of the proposal has made it challenging to fully explore all aspects.

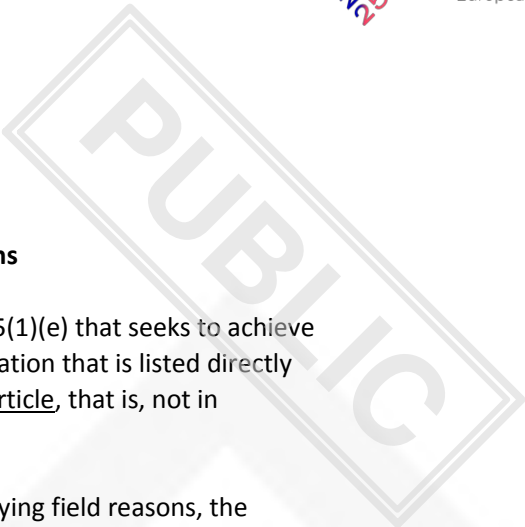
In considering this proposal the PCY is mindful that the introduction of this new element should not delay the ongoing negotiations on the securitisation package. MS feedback has shown that positions are generally divided, with some supporting the proposal to remove the threshold entirely, and others being more cautious – preferring either to limit the removal of the 10 per cent threshold to public securitisations or to STS securitisations only, or alternatively to increase the threshold (e.g. to 50 per cent) rather than removing it entirely.

In the written feedback several MS raised concerns regarding consumer protection. As UCITS are typically marketed to retail investors who may have limited knowledge of financial markets, it is important to ensure that they are not inadvertently exposed to complex products such as securitisations. Some MS therefore consider that the proposal requires further reflection and would be more appropriately addressed within the forthcoming discussions on the market integration package.

The PCY would like to underline that the 10 per cent threshold on holdings of debt securities from a single issuing body is intended to prevent a fund from acquiring a controlling or dominant position in the issuer's debt market, thereby avoiding undue influence or control over the issuer. The provision is therefore not aimed at addressing consumer protection concerns related to concentration risk. Such risks are already covered by Article 52 of the UCITS Directive, which limits the portion of a fund's assets that may be invested in instruments issued by the same entity to 5 per cent.

Considering the above, the PCY proposes including the Spanish proposal; however, to strike an appropriate balance and facilitate a compromise, the removal of the threshold would be limited to public securitisations. Given the advanced stage of the process, the PCY does not see further room for recalibration. Therefore, the proposal is presented as a final compromise for endorsement, alternatively leaving this to be discussed in the market integration package. Drafting to be included in Article 56(2) of the UCITS Directive (2009/65/EC):

***The limit laid down in point (b) shall not apply to debt securities that constitute securitisation positions as defined in Article 2(19) of Regulation (EU) 2017/2402 of the European Parliament and of the Council, where such positions are in public securitisations as defined in Article 2(32) of that Regulation.***



### 3.6. Transparency requirements for third country securitisations

At the previous WP the PCY proposed an amendment to Article 5(1)(e) that seeks to achieve that third country issuers would only have to provide the information that is listed directly in Article 7(1) but not in accordance with the modalities of the Article, that is, not in accordance with the delegated regulations/ESMA templates.

Although a few MS remain sceptical of this proposal for level playing field reasons, the substance of PCY's proposal received broad support by MS. However, some MS in support of the proposal questioned the legal certainty of the chosen approach, in particular the continued referencing to article 7, including to parts of the Article that are not relevant for third country issuers, such as information on the STS criteria. Some MS proposed that the relevant parts of the information requirement is instead inserted directly into the provision governing due diligence of third country securitisations.

The PCY takes note of the concerns but remain hesitant to reiterate the information of Article 7(1) in Article 5(1)(e) as well, as it prolongs the legal text substantially, and thus run counter to the objective of achieving a simpler regulation.

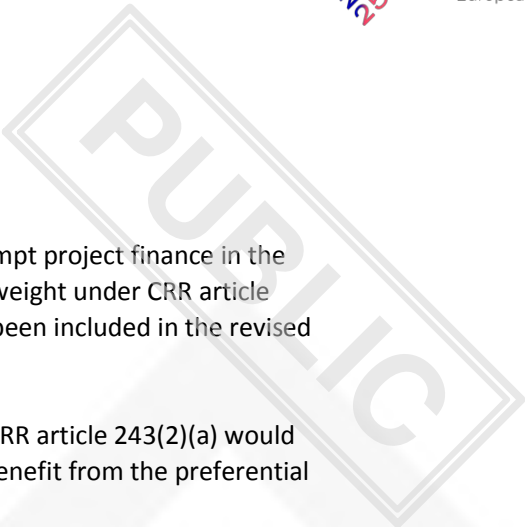
The PCY take note that the individual components of the transparency requirements of article 7 is limited by their applicability to the particular transaction, e.g. information on the STS criteria are only required for STS securitisation and thus not third country securitisation.

In relation to the concerns on the legal certainty of the proposed approach, ***the PCY is proposing minor clarifications to Article 5(1)(e) and to add a new recital to explicitly clarify that due diligence on transparency requirements for third country issuers is limited to the information stated directly in paragraph 1 of Article 7 without taking account of the further information granularity of the delegated regulations.*** The PCY is also proposing a slight rewording of Article 5(1)(e) to underline the intent.

The suggested recital is inserted as recital (4a) in the 3CT.

## 4. Adjustments to the previously agreed compromise on CRR

At the WP on 24 November the PCY's proposed consolidated compromise proposal received broad support.



The PCY also sensed broad support, including from COM, to exempt project finance in the pre-operational phase from the upper limit of 100 per cent risk weight under CRR article 243(2)(b) as originally proposed by ES. This exemption has now been included in the revised PCY compromise text.

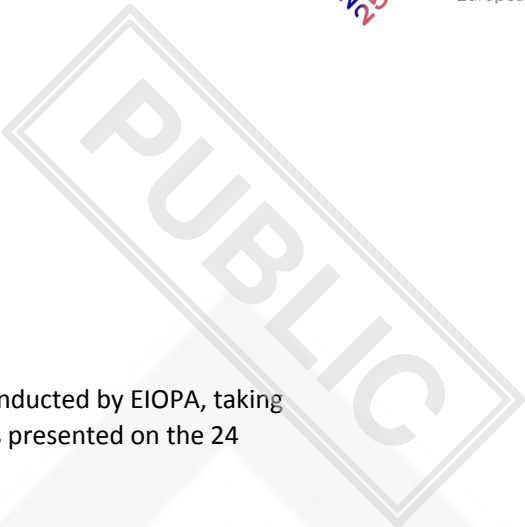
The PCY notes that all other STS-criteria contained in SECR and CRR article 243(2)(a) would still need to be complied with in order for the securitisation to benefit from the preferential capital treatment applicable to STS-positions.

Finally, COM presented two options regarding the solution to the issue raised by Romania on the prudential treatment of banks' exposures to euro-denominated public debt issued by non-Euro MS; option 1 – a revised transitional arrangement, option 2 – a permanent solution.

Generally, MS are open to both solutions, but a clear majority state a preference for the revised transitional arrangement – which is also the preferred option by Romania – as it would allow time for a comprehensive assessment of the permanent solution. The current timing and inclusion in the securitisation package would not allow for such an assessment. Based on this, the PCY has included wording allowing for a revised transitional arrangement (option 1) in the legal drafting.

Apart from this, only minor technical adjustments have been added to the text based on input by MS. The PCY would like to emphasise that these adjustments are purely technical and uncontroversial, and that the substance of the proposal remains unchanged.

<b>Question on consolidated compromise proposal</b>
<b>Q: Do MS endorse the consolidated compromise proposal, hence mandating the PCY to finalise the compromise text with the aim of initiating the silent procedure and submitting the text for approval in COREPER?</b>



## Annex 1

At the request of the PCY an updated impact assessment was conducted by EIOPA, taking into account the revised size criterion, with group application, as presented on the 24 November WP.

The PCY takes note that the current size criterion of the compromise is a bit narrower as it precludes group supervision as referred to in point (c), Article 213(2) of Directive 2009/138/EC, i.e. with a parent undertaking with head office in a third country. As such, the impact assessment below should be seen as an upper bound on the amount of eligible (re)insurers.

Furthermore, in deriving the results EIOPA assumed the reference to “parent undertaking” in the second criterion to mean “ultimate parent undertaking”. The internal model and business diversification criteria have not been amended and remain the same as in the quantitative assessment previously provided by EIOPA.

Condition 1 - Number of insurance and reinsurance undertakings that apply a full or partial internal model to calculate the SCR: 148

Condition 2 - Number of insurance and reinsurance undertakings with total assets of at least EUR 15 bn or belonging to a group whose parent has total assets  $\geq$  EUR 15 bn) : 788

Condition 3 - Number of insurance and reinsurance undertakings with positive gross written premiums in at least two non-life lines of business: 1454

Number of insurance and reinsurance undertakings that comply with conditions 1 and 2:  
126

Number of insurance and reinsurance undertakings that comply with conditions 1 and 3:  
113

Number of insurance and reinsurance undertakings that comply with conditions 2 and 3:  
475

Number of insurance and reinsurance undertakings that comply with conditions 1, 2 and 3:  
91 “