

General framework for securitisation and specific framework for simple, transparent and standardised securitisation

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OPINION OF THE EUROPEAN CENTRAL BANK on (a) a **proposal for a regulation** laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation; and (b) a [proposal for a regulation](#) amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

The ECB welcomed the objectives of the proposed regulations of promoting the further integration of Union financial markets, diversifying funding sources and unlocking capital for sound lending to the real economy. It considered that the proposed regulations strike the right balance between the need to revive the European securitisation market by making the securitisation framework more attractive for both issuers and investors, and the need to maintain the prudential nature of the regulatory framework.

As regards the proposal for a regulation laying down common rules on securitisation, the ECB made the following recommendations:

Provisions applicable to all securitisations: the ECB welcomed the proposed securitisation regulation's consolidation and harmonisation of existing regulatory requirements in a common set of rules for all securitisations.

In order to **avoid unnecessary duplication** of transparency and disclosure obligations the proposed securitisation regulation, the ECB recommended the repeal of Article 8b of [Regulation \(EC\) No 1060/2009](#) of the European Parliament and of the Council on credit rating agencies but also, after the expiry of the transitional period provided for in the proposed securitisation regulation, of the related [Commission Delegated Regulation \(EU\) 2015/3](#).

While welcoming the proposed securitisation regulation's approach to transparency requirements, the ECB considered that the **transparency requirements** need to be balanced against the confidentiality of private and bilateral transactions.

Prospectuses or equivalent offering documents, loan-level data and other securitisation documentation should be disclosed to prospective investors as well. However, such data should only be disclosed publicly in the case of public transactions and otherwise should only be disclosed to the prospective investors to which a transaction is marketed.

At the same time, the ECB recommended exempting certain securitisations from unnecessary disclosure burdens, such as intra-group transactions or where there is a single investor only.

The ECB also recommends that loan-level data is expressly required, redacted where this is necessary to protect confidentiality for corporate clients of sponsors.

Criteria for STS securitisations: the ECB supported the establishment of criteria to identify a subset of securitisations which can be classified as simple, transparent and standardised (STS) and welcomes the proposed CRR amendment's adjustment to capital charges to provide for a more risk-sensitive treatment for STS securitisations.

- **Clear criteria:** the ECB stressed the importance that the criteria and their application are not overly complex, to ensure, inter alia, that investors are not hindered in fulfilling their extensive due diligence obligations. The onus of ensuring and notifying compliance with STS criteria rests with the securitising parties. Thus, the clarity of the STS criteria is key to the decision by originators and sponsors to apply the STS framework and expose themselves to the sanctions regime for failing to fulfil the criteria.

The ECB considered **most of the criteria to be sufficiently clear**. However, it recommended mandating the European Banking Authority (EBA) to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), regulatory technical standards on STS criteria where further clarification is needed.

- **Sound asset quality:** this is key to the STS framework and underpins the capital charges for STS securitisations. Thus, performing loans restructured more than three years prior to inclusion in an STS securitisation can be allowed. However, any relaxation beyond this threshold would require a recalibration of the capital charges envisaged in the current proposal, to maintain the prudential nature of the STS framework.

- **Asset-backed commercial paper (ABCP) programmes:** although ABCP programmes have the potential to support financing of the real economy, the ECB considered however that preferential regulatory capital treatment should be restricted to ABCP programmes **without maturity mismatches** between the underlying assets and commercial paper liabilities. From a prudential perspective, maturity mismatches expose investors, in the case of sponsor default, to extension risk and potential losses, and sponsors to liquidity strains or even losses if investors no longer roll over short-term paper in times of market disruption. Therefore, the ECB recommended a one-year, rather than a three-year, up to six-year, residual maturity cap for underlying assets of STS ABCP programmes, with which most existing ABCP programmes could comply or adjust to.

- **Transparency standards:** STS securitisations should meet higher transparency standards than non-STS securitisations. The proposed securitisation regulation should therefore clarify that higher standards for investor reporting are mandatory for STS securitisations.

Repayment: the ECB considered that securitisations whose repayment is dependent on collateral liquidation should not qualify under the STS framework. Only securitisations whose repayment depends strictly on obligors' willingness and ability to meet their obligations should be eligible under the STS framework.

STS attestation, notification and due diligence: the ECB supported the proposed securitisation regulation's approach of requiring both that securitising parties jointly self-attest to the compliance of a securitisation with the STS criteria and that investors conduct their own due diligence on STS compliance.

The EB stipulated that **third parties should not be expressly granted a role by law** in the STS attestation process in the proposed securitisation regulation as this would weaken a key pillar of the STS framework. Instead, the ECB considers that legal certainty for securitising parties should mainly be achieved by making the STS criteria sufficiently clear.

The STS notification process should ensure greater clarity for investors by explicitly documenting, in the summary of the prospectus or equivalent information memorandum, whether and, if so, how the STS criteria have been fulfilled.

Effective cooperation between supervisory authorities: the ECB recommended:

- enhancements to the cooperation procedures between competent authorities and the EBA, ESMA and EIOPA to resolve more efficiently disagreements between two or more competent authorities, especially in cases when one or more of them decides that a securitisation should lose its STS status;
- that the ESMA should keep a centralised register of all remedial actions undertaken with respect to securitisations regulated under the proposed securitisation regulation.

Sanctions regime: the ECB recommended a reduction in the types of administrative sanctions available by limiting the extent of fines, the removal of the possibility for Member States to impose criminal sanctions for infringements of the proposed securitisation regulation, and the imposition of sanctions **only in the event of negligence**, including negligent omissions, rather than on a strict liability basis.

Ensuring robust supervision of third country STS securitisation: the ECB supported an STS securitisation framework that is open to accepting STS securitisations issued in third countries provided that such acceptance is complemented by a requirement that the third country originator, sponsor and SSPE taking part in such securitisation are **subject to a robust supervisory framework** in relation to their STS securitisation activities, which the European Commission has assessed as equivalent to the Union framework.

ECB's supervisory competences in respect of securitisation: the ECB also assessed its role under the new securitisation regime. It considered that the proposed securitisation regulation should be amended to ensure that the ECB's competences under the proposed securitisation regulation reflect the tasks conferred on it by [Council Regulation \(EU\) No 1024/2013](#).