



# Capital Markets Union

## Simple, transparent and standardised securitisation

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The European Commission wants to revive securitisation in Europe and has launched a consultation in a bid to define a framework for simple, transparent and standardised (STS) securitisation<sup>1</sup>.

The AMF supports this initiative, which it hopes will result in the establishment of a regulatory framework to guarantee the quality of securitisation transactions, which would be under the responsibility of a pre-authorized party, similar to a French management company. The introduction of STS certification should encourage the maximum number of securitisation transactions to be soundly structured, provided certification is issued by a national or European public authority. STS certification must not give an assessment of the credit risk associated with the underlying assets, which could create the risk of its being used to replace investor due diligence, but would provide additional security by making the securitisation vehicle more transparent and avoiding conflicts of interest.

### Securitisation: a key area for the European Commission in the capital markets Union

The goal is to achieve greater legal certainty and comparability for securitisation instruments through increased product standardisation. The Commission wants to create a separate sound securitisation class to strengthen the transparency, consistency and availability of key investor information, particularly in the area of SME lending.

The AMF proposes five priorities to ensure that securitisation can become a reliable, safe and effective mechanism for financing the economy.

### The AMF's five priorities for simple, transparent and standardised securitisation

#### 1. Sound governance under the responsibility of a pre-authorized party

Standardisation of the rules applicable to STS securitisation vehicles should make it possible to guarantee sound governance of the vehicle by an independent party authorised by a competent national public authority and acting in the interest of investors. For any STS securitisation vehicle, an independent party must thus be appointed to manage risks, especially to verify asset eligibility criteria, monitor and supervise cash flows on the asset side and the payment waterfall on the liabilities side, manage conflicts of interest and manage other risks not covered by the vehicle's documentation. To ensure the model is robust, this party would have to be authorised in advance by a competent national authority, demonstrate its ability to supervise risks and show that it has adequate resources. The party could then receive a European passport to handle governance of securitisation vehicles in all EU Member States.

#### 2. STS status should be independent from the credit risk of the underlying assets

STS certification should be dissociated from the credit risk of the underlying assets and be designed to make the investor's analysis more straightforward by guaranteeing the quality of the securitisation structure and limiting conflicts of interest. STS vehicles could receive a European marketing passport. The AMF does not think that STS securitisation should be restricted solely to transactions aimed at freeing up bank balance sheets or whose underlying assets command high credit ratings.

<sup>1</sup> The securitisation initiative is part of ongoing work at international level to define an overarching and consistent approach to simple, transparent and standardised securitisation, and builds on the recent adoption of delegated acts on Solvency 2 and the liquidity coverage ratio (LCR). The Basel Committee/IOSCO Task Force on Securitisation Markets has proposed three types of criteria, covering underlying assets, structural risk and responsibility of participants and transparency to investors, which form an excellent foundation on which to base a European framework. .

The STS label would be used to certify that a structure is sound, enabling the issuer to correctly analyse the risk on the underlying assets. If the label was supposed to assess the quality of the underlying assets, it would become a guarantee of the quality of the securitisation for the investor, who might not conduct the requisite due diligence. For this reason, the AMF believes that STS securitisation should be able to include more or less risky assets provided that the structure of the securitisation vehicle is robust and the securitised have been properly underwritten.

### **3. Certification of STS criteria and checks on retention of economic interest by a national or European public authority**

How the STS label is granted will have a decisive effect on the robustness of the European framework. The AMF believes that labelling can only be legitimately performed by a public authority. A label that is self-awarded by the sponsor and checked after the fact could raise issues of credibility and reliability in the case of a party whose interests are not necessarily aligned with those of investors. The AMF recommends ex ante certification of STS securitisation structures, along the lines of the authorisation system for collective investment undertakings. It will be necessary to ensure that perfectly harmonised certification rules are applied throughout Europe, because securitisation vehicles can easily be established in the jurisdiction offering the lightest regulation.

European Regulation 575/2013 (CRR) requires the originator, sponsor or original lender in a securitisation transaction to retain a 5% economic interest to limit conflicts of interest. Currently, investors in a securitisation vehicle are responsible for making sure before they invest that an interest has been retained. In practice, however, it is hard for them to check this, and they have to rely on statements made by the entity retaining the interest. In the case of an STS securitisation, responsibility for verifying that an economic interest has been retained, which is currently with the investor (indirect approach) could be given to the authorised party in charge of the vehicle's governance (direct approach) or to the authority that issues STS certification

### **4. Criteria adjusted to reflect the specific features of underlying assets in order to simplify the structures of the maximum number of transactions**

The eligibility criteria used to define STS securitisation need to be adapted to reflect the specific features of underlying assets. Asset-backed commercial paper (ABCP), a type of short-term commercial paper that is often backed by trade receivables, is an efficient channel for financing the economy and should under certain conditions be eligible for the STS label. However, certain general STS eligibility criteria such as, for example, the history of borrower defaults or the absence of resecuritisation, could result in most ABCPs being excluded. Europe's criteria for STS securitisation must not be so restrictive that the initiative ends up having the opposite effect to that sought, by creating an overly strict label that would reduce financing for the economy. The objective of STS certification must be to ensure that the maximum number of securitisation vehicles can be structured according to STS criteria in order to rekindle sound securitisation.

### **5. New European rules establishing a European securitisation vehicle**

Efforts to restart securitisation should not be confined to providing a definition of high-quality STS securitisation but should also seek to promote consistency between different pieces of European legislation. The creation of a single European regulation specifically for securitisation would put an end to the fragmentation of participant-oriented sector regulations to focus on specific rules for securitisation.

A European legal vehicle for securitisation, reserved for STS securitisation and establishing a new legal form, would enable more effective standardisation at European level by substituting European legal rules for specific national arrangements, particularly if it includes robust criteria for asset "true sale", failure of the vehicle or the status of the securitisation entity. This European vehicle would ensure a level playing field for the participants of different Member States and facilitate the establishment of a European passport. Accordingly, the AMF favours such a vehicle, on condition that governance is sound (point 1), the labelling process is satisfactory (point 3) and the vehicle takes account of the specific features of underlying assets (point 4).

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