Summary report

Targeted consultation on the functioning of the EU securitisation framework
23 July 2021 - 17 September 2021.

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A. Overview of respondents

A total 55 respondents replied to the consultation (40 from businesses or their representatives, 8 public authorities, 2 NGOs, 1 citizen, 1 research institute, and 3 classified as other). The majority of respondents came from businesses or their representatives (72,8%) and public authorities (14,5%). Respondents originated from 15 countries and mainly from France (21,8%), Germany (18,2%), Belgium (10,9%), Netherlands (9,1%) and the United Kingdom (9,1%).

Table 1: Types of entity replying

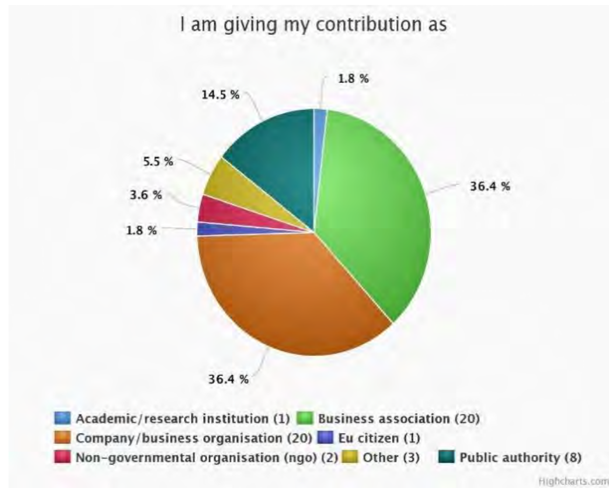
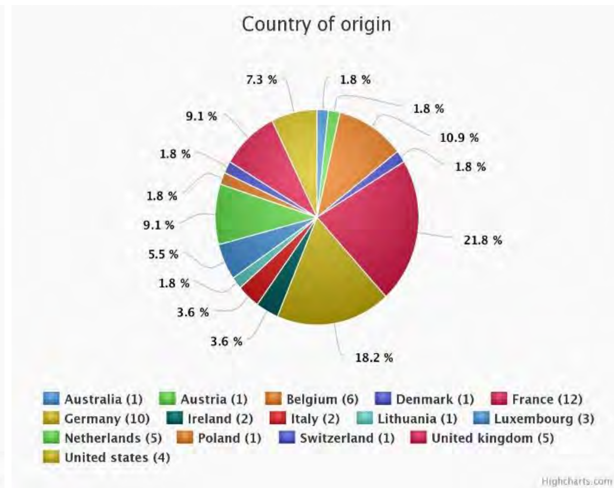


Table 2: Country of origin of respondents

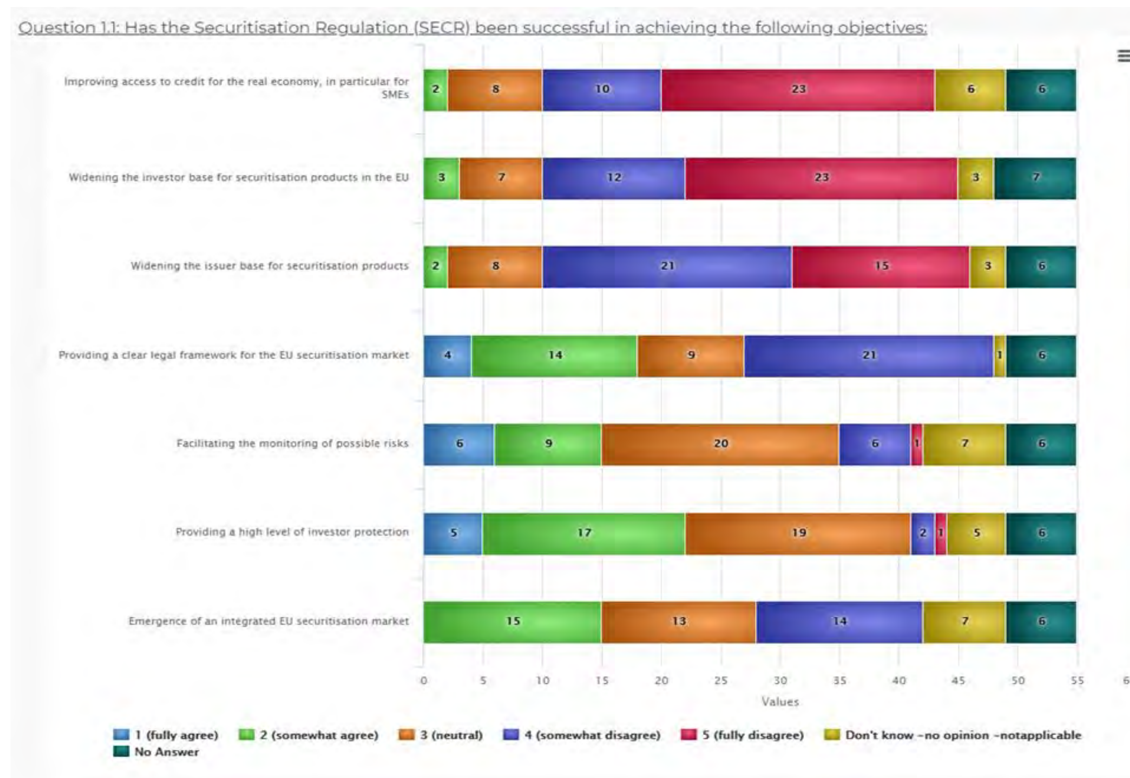


Among the companies and business associations responding, most indicated the following as their main field of activity: banking (18 respondents), investment management (10 respondents), and insurance (3 respondents).

B. Summary of responses per thematic section

1. Effects of the regulation

Questions 1.1. & 1.2. Objectives achieved by the Securitisation Regulation



1. Common elements

Most respondents affirmed that the market for securitisations has not grown (over the last few years). The SME loans segment was mentioned out in particular, in part because cheaper alternative tools for refinancing have been available, like the ECB asset purchase programmes (AAP) and the targeted longer-term refinancing operations (TLTROs). Most respondents, in particular those representing the industry, argue that there is a level playing field issue compared to other funding instruments, such as covered and corporate bonds, with securitisations facing higher compliance costs (transparency, due diligence) and relatively penalising prudential requirements. Multiple respondents from the industry argued in favour of making the latter more flexible, in particular for simple transparent and standardised (STS) securitisations. Many respondents also stated that these compliance costs are a barrier to entry for potential issuers and investors. Industry side argued that EU rules have been heavily influenced by the lessons learned from US subprime mortgage securitisations exacerbating the Global Financial Crisis and they are too conservative for the needs of the EU.

Several respondents, mostly from the industry, stated that it is still unclear if the requirements, most notably due diligence under Article 5(1)(e) of the Securitisation Regulation (the Regulation)[1], apply to non-European securitisations, and why disclosures are necessary given the availability of public market and prudentially reported data (COREP, Anacredit). In addition, respondents from the industry argued that: (i) collateralised loan obligations (CLOs) should be eligible for STS certification, (ii) non-MiFID-regulated investment firms, and EU alternative investment fund managers (AIFMs) in particular, should be eligible to act as sponsors, and (iii) ESMA's templates are one-size-fits-all and therefore not fit for the differing needs of investors in different tranches. It was also noted that the possible extraterritorial scope of due diligence and transparency requirements hinders access of EU investors to third-country markets because third-country originators are wary of this additional burden.

2. Other comments

A public authority remarked that securitisation has been helpful in reducing the ratio of non-performing loans in banks under its jurisdiction. Some respondents argued to review the risk retention modalities for CLO managers and to extend the supervision of private securitisations. A competent authority highlighted that the delayed regulatory technical standards (RTS), as well as the Regulation's ambiguous scope of application have posed difficulties. Another competent authority stated that the definition should clarify if non- AIFMs fall within the scope, as due diligence under Article 5(5) is often delegated.

On the side of **NGOs and academics**, one NGO noted that there is enough lending capacity in the EU and that policy should focus on fragmented national insolvency and debt enforcement regimes and harmonized credit information rather than securitisation. An academic affirmed securitisation is increasingly reserved for the relevant institutions that have the capacity and technical resources at their disposal to apply complex rules.

A market participant cautioned that the definitions in the Regulation might be capturing also instruments that are not intended to be securitisations. For example, some tools used in development finance, such as first loss guarantee structures, may (supposedly inadvertently) qualify as synthetic securitisations with potentially negative consequences for the parties usually benefiting from such financing.

As for **industry stakeholders**, one business organisation noted the investor base is shifting from asset-backed securities (ABS) to CLO. Another favoured greater harmonisation of ECB eligibility for ABS. An industry stakeholder commented that the rules adversely affect EU institutional investors wishing to access US markets: US issuers are reluctant to comply with the Regulation's transparency requirements under Article 7, which hinders EU investors even if they satisfy both the US rules and the EU risk-retention rules. A market participant argued that extensive disclosures and standardisation is a poor substitute for due diligence and risk management and can even lead to complacency. This participant also contended mandatory detailed templates can be useful for public transactions but not for private ones (several respondents also expressly favoured different disclosure regimes for public and private transactions). Another market participant favoured a clearer separation between one-off term transactions and ongoing transactions with regular renewals. It also stated that clearer guidance by the European Supervisory Authorities (ESAs) and a more active Q&A process would help level the playing field for EU originators as national competent authorities' interpretations differ. An industry organisation noted that originators might be incurring unnecessary transaction costs. Moreover, the current framework might be creating uncertainty for investors, because there is still no mechanism for binding significant risk transfer (SRT) assessments as well as for other regulatory aspects, such as risk retention, in more complex transaction structures. According to a few respondents, from investor protection and financial

[1] In the remainder of the feedback statements all references to legal texts refer to the Securitisation Regulation, unless stated otherwise.

stability perspectives it would be better to look at credit profiles and structural features of the transactions by targeting asset level origination at source. For better inclusion of SME and corporate loans, an industry association pleaded for full eligibility of synthetic securitisations for STS, with low concentration limits, because such loans are often not transferable, revolving and/or subject to confidentiality (even if ESMA templates require data that can identify borrowers, also for synthetics). Another business association stated that the significant risk transfer process should improve and senior tranches should be eligible as high-quality liquid assets.

Furthermore, a market participant regretted that the homogeneity requirement for STS certification forces issuers to either focus on SME or non-SME obligors, but not both, resulting in smaller and less economical transactions or causing the issuer not to enter into a securitisation at all. Likewise, another market participant argued it is inconsistent to allow SME and non-SME obligors in single-country portfolios but not in a multi-country portfolios. Rather, multi-country portfolio homogeneity should depend on factors such as credit and collection policy or the use of a centralised, global and consistent risk management approach.

Question 1.3. Impact of the Regulation on cost of issuing/investing in securitisation and the drivers of the cost change

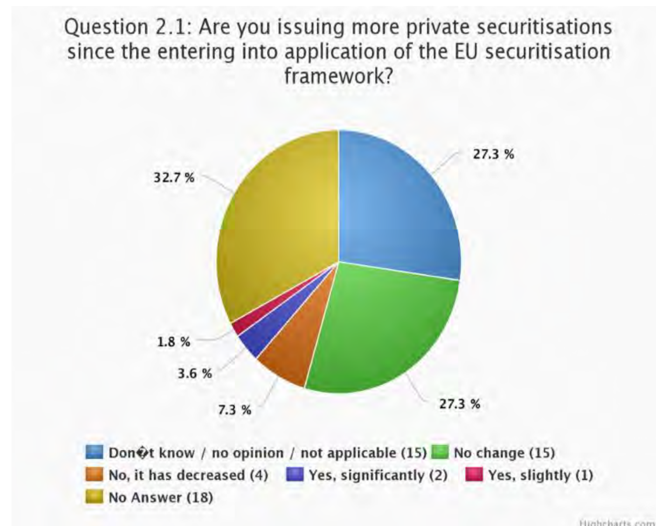
Most respondents indicated compliance costs, IT costs and prudential rules as the biggest drivers of cost change. Compliance relates to both transparency and due diligence, as well as the specificity of the processes compared to other financing instruments. For due diligence, some industry stakeholders pointed the additional costs necessary to demonstrate it, in addition to those already borne to perform it. Some respondents emphasised the increased costs for private transactions. For STS securitisations, some industry stakeholders emphasised the cost of STS certifications; some welcomed the reduced due diligence requirements; others opined that STS does not offer sufficient prudential benefits to broaden the investor base. Some market participants specifically mentioned the relevant ESMA templates as a hurdle for issuers. Respondents also identified other sources of increased costs: uncertainty and delays of the significant risk transfer assessments, uncertainty of the scope of application to third-country actors (equivalence), unnecessary application of risk retention rules to CLOs, as well as successive transitional periods for new requirements.

It was also argued that these increased costs and sometimes the need to involve external consultants (IT solutions, legal advice) make entry costs too high for new issuers or small investors, while some respondents responded that the Regulation had only a minor impact on the cost of issuing or investing.

Academics argued that, although higher due diligence costs may discourage investors and issuing costs may be too steep for small players, these rules are important for risk prevention.

2. Private securitisations

Questions 2.1. & 2.2. Increase in issuing of private securitisations



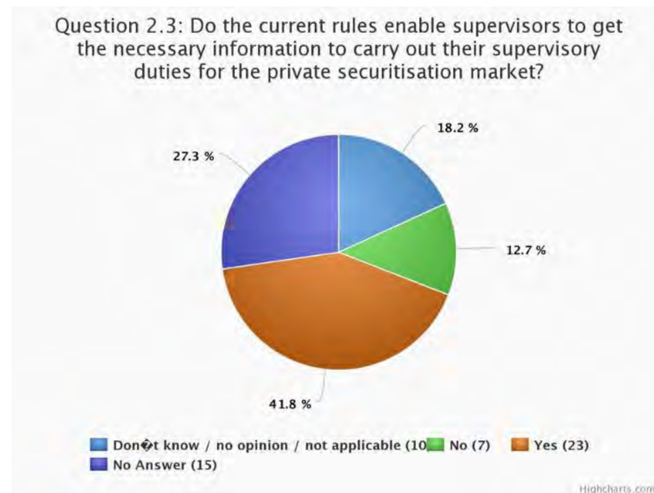
There was general consensus among market participants (public authorities did not reply to this question) that the new EU securitisation framework has not led to an increase in the issuance of private securitisations. Many respondents pointed to misleading figures in this regard, arguing that the apparent relative rise in private STS transactions is an artefact of the new regulatory framework, due to the following reasons:

- some transactions now being earmarked as private securitisations were previously considered as bank lending (e.g. warehouse lines, asset-backed commercial paper (ABCP) transactions);
- most of the STS-notified private transactions (especially ABCP transactions) are not new: they are existing securitisations being notified to upgrade to the new standard when renewed/rolled-over;
- some transactions are double counted since, in multi-conduit ABCP securitisations, each conduit lender must notify the transaction separately, which results in multiple notifications for a single lending arrangement.

According to a private market analysis commonly referred to by respondents, this would point to a number of private STS ABCP transactions 2.5 times lower than suggested by notification figures.

Two originators reported that they have increased the issuance of private securitisations by using private synthetic securitisations to transfer risk to the market.

Question 2.3 Availability of necessary information for supervisors regarding private securitisation

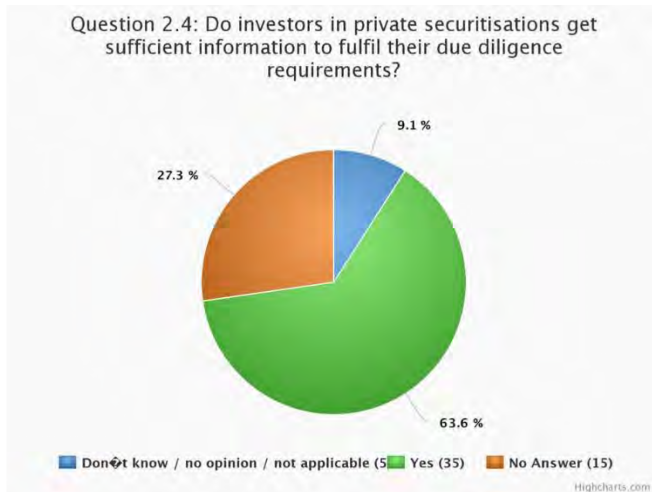


Market participants' responses were predominantly affirmative, whereas the views of the six public authorities answering that question were split evenly on whether the current rules are generally adequate in providing supervisors with an adequate set of information. Many market respondents pointed out that extensive information was available to supervisors but that this information was not shared between authorities. Some stated that a reduction of transparency requirements might be viable. Others underlined that in case of securitisations more information is available to regulators than for any other capital market or banking instrument.

The majority of the responding public authorities considered that further harmonisation is needed. Most highlighted that there is no uniform database by which the information is submitted, making it cumbersome for them to access the data or even to be aware of the issuance. They suggested obliging the reporting parties to make information available by means of a securitisation repository to ensure data quality. Two authorities stressed that a simple template with basic information on the transaction would be enough for their purposes and that the data should be submitted via a data repository without making this information available to the public.

One public authority pointed out that developments regarding securitisations carried out by non-bank financial intermediaries should be monitored to promptly identify any need in the future for intervention in this field as due diligence requirements pursuant to Article 5 of the Securitisation Regulation are not applicable.

Question 2.4. Sufficient information for investors in private securitisations

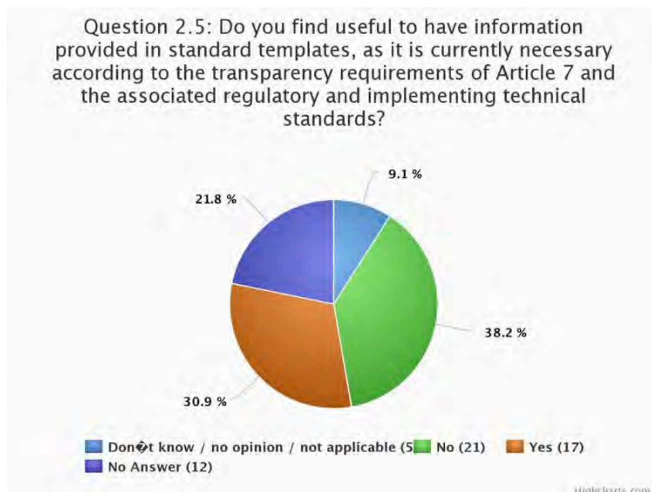


All respondents (both investor and originator side) agreed that investors of private securitisations receive sufficient information as they are in a position to request all necessary information because of their business relationship with the originator.

A number of respondents stressed that market practices before the creation of the ESMA templates were already sufficient. They highlighted that the ESMA templates lead to the costly redundant disclosures since many investors did not rely on the information given in the ESMA templates but requested more tailored information. This is why some proposed to reduce the disclosure obligations or even to make an exemption for private securitisations.

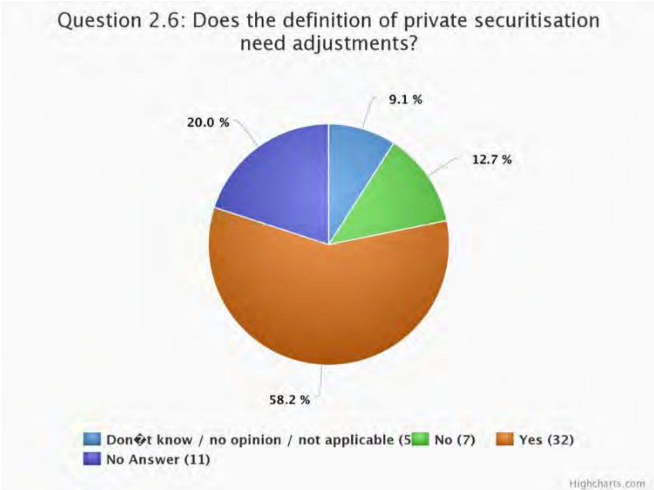
The view that disclosures were sufficient came mainly from the industry respondents, but it was supported by the few public sector and academia respondents who answered this question.

Question 2.5. Are standard templates useful for private securitisation?



Almost all respondents saw the merit of standardised templates in general. Many highlighted that standardised templates create comparability and facilitate the assessment by investors. At the same time, the broad majority (mainly industry representatives, but also four public authorities) found the information provided in the current standard templates not useful for private and synthetic deals, since in these cases investors rely on tailored information directly submitted to them by the originator. Those respondents did not consider a one-size-fits-all approach appropriate given the wide range of securitisation possibilities, and some of them suggested developing a simple template with basic information on the transaction.

Question 2.6. Definition of private securitisation

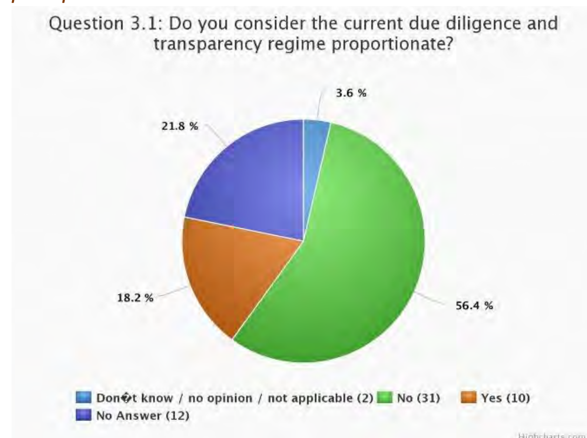


Almost three quarters of the respondents reacting to this question (including a vast number of industry representatives and all public authorities) supported the proposal to amend the definition of what constitutes a private securitisation (although the suggestions of what should be amended differed). At the same time, some of them acknowledged that the current definition was clear cut.

Respondents put forward various proposals for amendments, which usually followed the transparency requirements they deem appropriate for different types of transactions. Accordingly, many wanted to broaden the definition to include also scenarios where a deal is privately placed to a limited number of investors, even if a prospectus has been drawn up. Some other respondents proposed an approach including different levels of reporting. Most suggested exempting bilateral transactions and intra-group transactions, even if they had a prospectus. Some suggested different sub-categories of private securitisations. Finally, very few respondents (including one NGO) argued for a change of the definition that would limit it to intra-group transactions only, dropping the current defining criterion of a prospectus.

3. Due diligence

Question 3.1. Do you consider the current due diligence and transparency regime proportionate?



Most respondents, in particular market representatives, did not find the current due diligence and transparency regime proportionate. The main reasons are:

- The requirements imposed by the Regulation are stricter than those applicable to other instruments, such as covered bonds.
- The disproportionality is perceived to be more acute for private transactions, where investors might be able to obtain data better suited to their specific due diligence needs directly from the originator.
- The strict applicability of EU disclosure rules to third-country sell-side entities makes it difficult for investors to fulfil their respective due diligence requirements. According to respondents, those third-country sell-side parties are not likely to provide the same information as EU parties in the same position, unless such information is used in their business. This might effectively bar EU institutional investors from being able to invest in such positions.

Respondents warned that these elements increase the compliance cost for the due diligence and disclosure requirements and might create high barriers to entry into the market, thereby potentially obstructing market growth. Some respondents, therefore, called for introducing greater proportionality into the framework, taking into consideration the assets and types of activity being financed by the underlying loans, the holding periods of the securitisation position (e.g. until maturity or for trading) and the existing types of due diligence arrangements that are often relied upon by market participants.

Those that found the requirements proportionate highlighted the multitude of risks that investors in a securitisation are exposed to (such as agency risk, model risk, legal and operational risk, etc.) which require adequate analysis by investors before taking up a position. High level of transparency is deemed particularly beneficial for new investors.

Question 3.2. What information do investors need? How do investors carry out due diligence before taking up a securitisation position?

The prevailing view was that the due diligence process is not standardised and it is largely set up to respond to the needs of the individual investor. A few respondents highlighted the importance of loan-level data and historical performance data, but the specifics would depend on the nature of the assets.

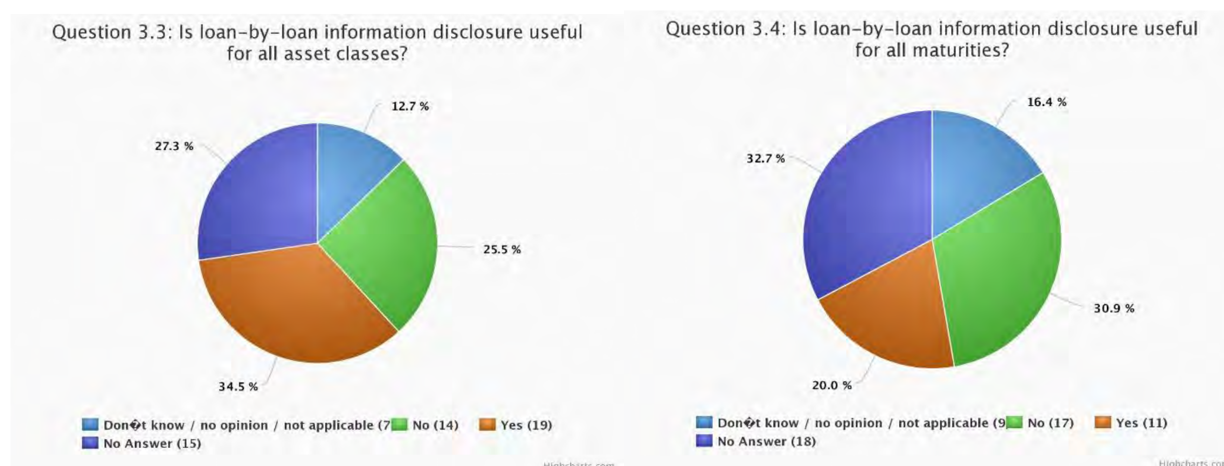
One respondent pointed out that the entry into force of the Securitisation Regulation did not bring about a change in how due diligence is carried out as the main elements were in place already before, namely a thorough credit analysis of the borrower, a review of the documentation that governs the debt, analysis of the asset portfolio and historical performance data to determine appropriate modelling scenarios, evaluating the origination and servicing practices.

Some respondents highlighted that the due diligence of ABCP investors, investing in fully supported ABCP transactions, focuses mainly on credit analysis of the sponsor bank, similar to the analysis of a covered bond.

An association that specialises in synthetic securitisations highlighted that besides the asset class, the risk profile of the securitised portfolio and bank-specific features such as underwriting and servicing standards, the due diligence will also depend on the seniority of the tranche the investor is exposed to.

For the STS criteria, the investors informed that they do rely on STS verification supplemented by their own analyses on specific sensitive issues.

Question 3.3 and 3.4. Is loan-by-loan information disclosure useful for all asset classes and for all maturities?



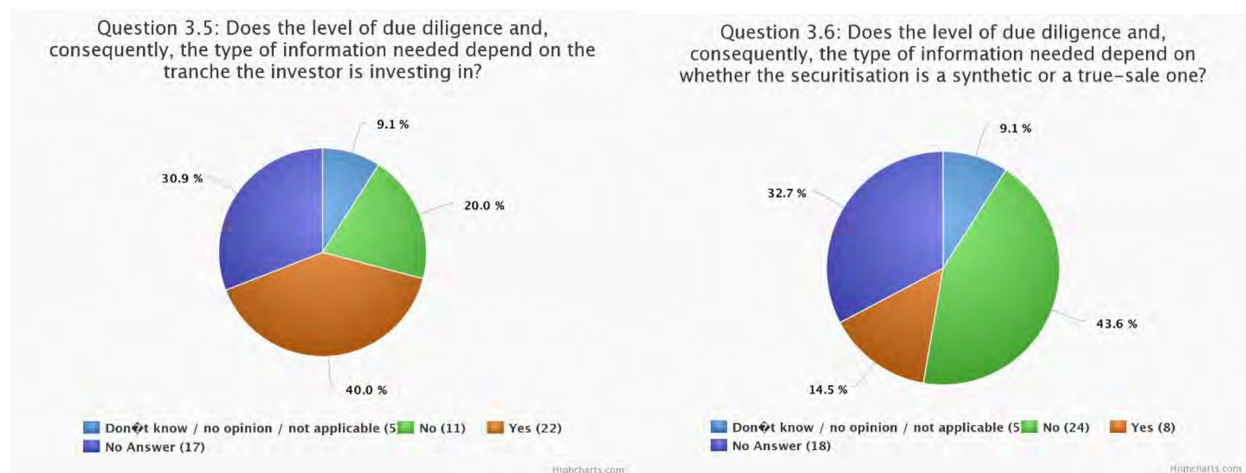
Most respondents, both from within industry and public authorities, answered the question affirmatively, highlighting the benefits of loan-by-loan information in terms of enabling systematic analysis of the underlying pool and facilitating the comparison across transactions.

On the question exploring the usefulness of loan-level information for all maturities, most replies were negative. A significant number of respondents, considered that loan-by-loan disclosure is less useful for securitisations of very granular pools of loans as well as for short-term exposures and for revolving facilities, where portfolio-level analysis is usually sufficient. The homogeneity of a pool of loans is another factor that

was indicated as potentially having an impact on the usefulness of loan-level information. One respondent warned that it may be difficult to find an objective cut-off point for when loan-by-loan information is no longer useful, but as a rule-of-thumb the more granular and homogeneous the underlying exposures are, the less important it is to have loan-level data.

A few respondents noted that independently from whether loan-by-loan information is required, the current disclosure templates should be reviewed as there are certain transactions, such as synthetic securitisations, for which the templates are not fit for purpose.

Question 3.5 and 3.6. Does the level of due diligence and, consequently, the type of information needed depend on the tranche the investor is investing in or whether the securitisation is a synthetic or a true-sale one?



According to most respondents, the type of due diligence does depend on the tranche the investor is investing in. Generally, the higher the risk associated with a tranche, the more thorough due diligence the investor carries out and, therefore, the more information would be required. Arguments brought forward include:

- Investors in a senior tranche are typically less exposed to credit risk of the underlying assets, but rather they are exposed to structural risk of the securitisation, to market and liquidity risks, and, on the credit side, to extreme systemic scenarios.
- By contrast, investors buying non-senior tranches typically carry out more detailed due diligence as they are mostly exposed to genuine credit and portfolio risks, i.e. jump-to-default of large single names, concentrations per obligor group, industry and geography concentrations, etc. Therefore, investors want to understand the credit process of the lender, have access to extensive historical data analysis, and access to the bank’s internal risk assessment (rating/PD per borrower, LGD per loan).
- In the case of ABCP conduits that benefit from liquidity support of a sponsor, investor due diligence relies primarily on the analysis of the sponsor bank.

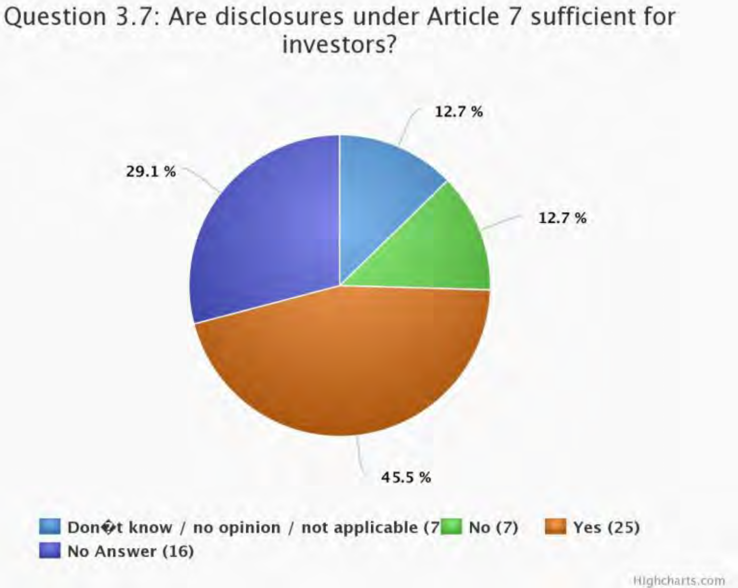
The respondents that did not think due diligence and information obtained should differ for different tranches highlighted that the amount of risks an investor might take would depend on the analysis of the structure and underlying assets. Therefore, those respondents found it appropriate to base the due diligence for any tranche in a securitisation on the same type of information. One respondent warned that potentially differentiating due diligence requirements depending on the tranche could create perverse incentives for investors to rely unduly on the high credit rating of senior tranches, similar to the experience in the 2008 US sub-prime crisis. A

competent authority remarked that the due diligence requirements aim to ensure that investing in securitisation tranches is based on an informed analysis of the value and risks of the position and this can only be achieved by a comprehensive knowledge of the securitisation.

A significant majority replied that the level of due diligence and the required information does not depend on whether the securitisation is a synthetic one or a true-sale one. The main argument brought forward was that the level of due diligence and, consequently, the necessary information depends on the underlying risk of the instrument and not on the mechanism for transferring risk from originator to investors, which is the main characteristic distinguishing a synthetic from a true-sale securitisation.

Those respondents that thought the due diligence in a synthetic securitisation differs in some respects highlighted in particular the need to perform a significant-risk-transfer verification and an analysis of the effectiveness of the risk transfer arrangement, which are features of synthetic deals that are not present in traditional securitisations, where particular features include the need to carry out a legal opinion of the effectiveness of the true sale of the underlying assets to the special purpose vehicle.

Question 3.7. Are disclosures under Article 7 sufficient for investors?

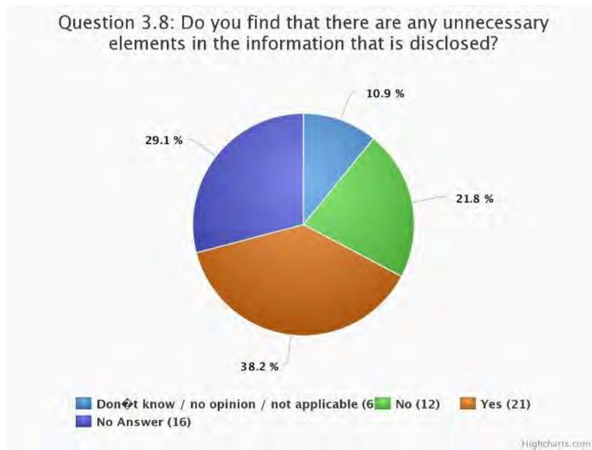


Most respondents to this question indicated that the information provided under Article 7 is sufficient for investors. This view prevailed both among industry respondents and public authorities.

Among the respondents that replied negatively, four industry representatives noted that the information required under Article 7 is excessive and not fit for purpose – this view was also shared by some respondents finding the information in Article 7 sufficient. One industry association indicated that Article 7 does not provide for sufficient information related to environmental, social and governance factors. Another association pointed out that there is insufficient provision of past performance data to fully understand the risk of the securitisation transaction.

A number of the respondents that replied positively, including one public authority, noted that while the information for public transaction is adequate, it is not appropriate in the case of private transactions.

Question 3.8 and 3.9. Do you find that there are any unnecessary elements in the information that is disclosed? Can you identify data fields in the current disclosure templates that are not useful?



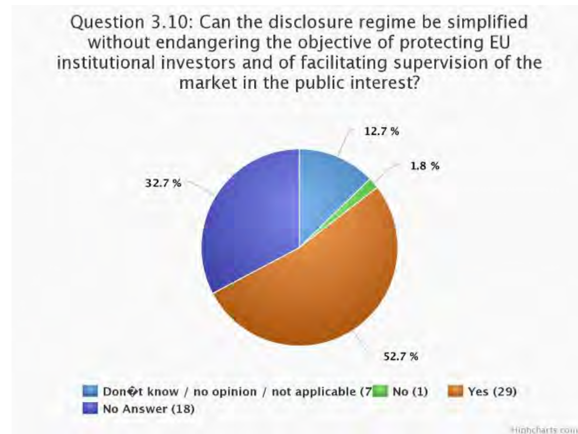
Most respondents thought that there are unnecessary elements in the information required in the securitisation disclosure templates stipulated by Commission Delegated Regulation (EU) 2020/1224.

A competent authority, a member of the academia and several industry associations, including ones particularly focused on investors, thought that all the disclosed information is useful. Some of them, however, qualified their answer, indicating that it would be desirable to avoid that some missing data deter or stop some originators from bringing deals to market and asked for more flexibility towards the use of no-data fields, and that it may be possible to revise some of underlying exposure fields for certain types of transactions. One respondent noted that some fields require the disclosure of information that may be confidential.

Seven respondents identified concrete fields in several of the data templates that are problematic, namely, fields in the following Annexes of the above mentioned Delegated Regulation:

- Annex II - Underlying exposures template — Residential real estate;
- Annex III - Underlying exposures template — Commercial real estate;
- Annex IV - Underlying exposures template — Corporate;
- Annex V - Underlying exposures template — Automobile;
- Annex VII - Underlying exposures template — Credit card
- Annex VIII - Underlying exposures template — Leasing;
- Annex XII - Investor report template — Non-asset backed commercial paper securitisation;
- Annex XIV - Inside information or significant event template — Non-asset backed commercial paper securitisation

Question 3.10. Can the disclosure regime be simplified without endangering the objective of protecting EU institutional investors and of facilitating supervision of the market in the public interest?

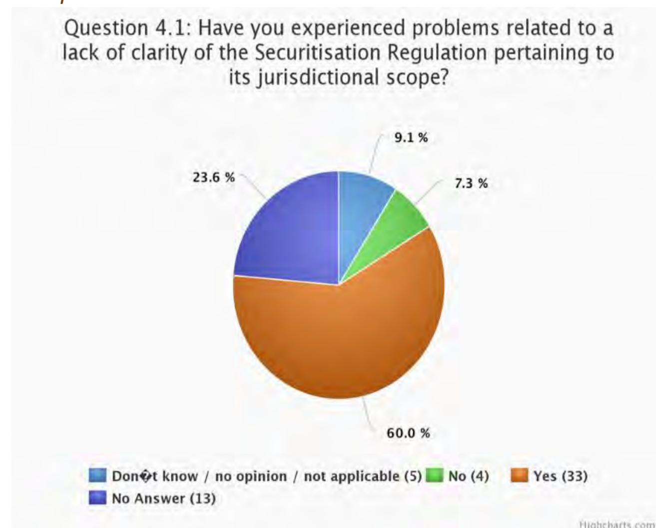


Most respondents, primarily industry representatives but also public authorities and members of the academia, thought that the disclosure regime can be simplified without endangering its objectives. The most frequently mentioned area was the disclosure for private securitisations. Other arguments that respondents brought up included the prescriptiveness and level of detail of the transparency requirements, their potential extra-territoriality, the strictness of the rejection criteria applied by the securitisation repositories when data is submitted, and the lack of a specific template for synthetic securitisations, making it difficult for such deals to comply with their disclosure requirements.

One public authority replied negatively, albeit with the qualification that while the regime is appropriate for public securitisations, the possibility to simplify it for private ones should be evaluated.

4. Jurisdictional scope

Question 4.1. Problems related to a lack of clarity pertaining to the jurisdictional scope



A vast majority of respondents noted a lack of clarity regarding the jurisdictional scope of the Securitisation Regulation across a number of issues.

In particular, market participants and supervisors alike complained about the lack of clarity as to the application and supervision of transparency requirements for non-EU sell-side parties. Many market participants questioned whether they should verify compliance by non-EU originators, sponsors or securitisation special purpose entities (SSPEs) with Article 7 requirements, pointing to a lack of clarity in this respect in Article 5 (1) (e). This lack of legal clarity was reported to create level playing field issues between those investors who apply Article 7 requirements to non-EU parties and those who do not.

One supervisor also reported a lack of clarity as to the application of risk retention requirements and credit granting standards to third-country parties.

Further, a few respondents raised the question as to whether assets generated by an EU subsidiary in a non-EU jurisdiction can qualify for inclusion in an STS securitization.

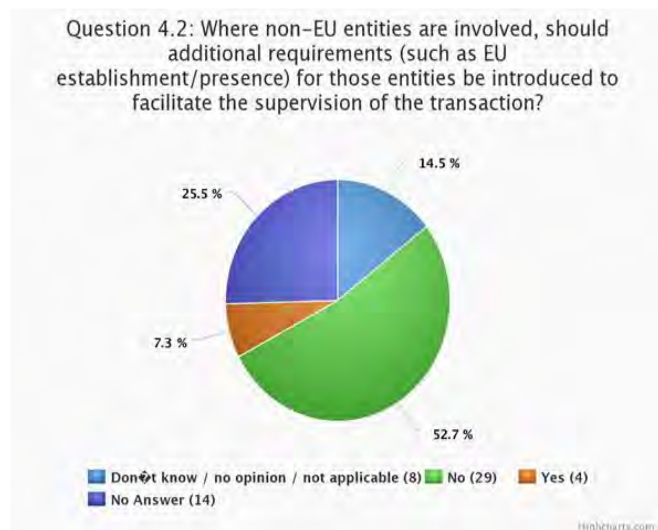
Some market participants also noted a lack of clarity as to whether some buy-side entities are in scope of the Regulation, in particular third country AIFMs.

Another question raised by several market participants is whether non-EU investment firms can act as sponsors for Regulation purposes. They pointed out that while the SECR specifies that credit institutions can qualify as sponsors "whether located in the Union or not", it does not make that same clarification in respect of investment firm sponsors.

In the case of securitisation structures with parties located in several Member States, two respondents pointed to a lack of clarity as to the allocation of supervisory responsibilities of the home and host NCAs - including on the question of which NCA is responsible for the administrative sanctions procedure vis-à-vis the managing party.

One supervisor also pointed to a lack of clarity as to the scope of Article 5(5) and whether the due diligence requirements laid down in Article 5(1) can be delegated to institutional investors (e.g. UCITS management companies and AIFMs) which are out of the Regulation scope, when these have been delegated portfolio management activities.

Question 4.2. Additional requirements where non-EU entities are involved

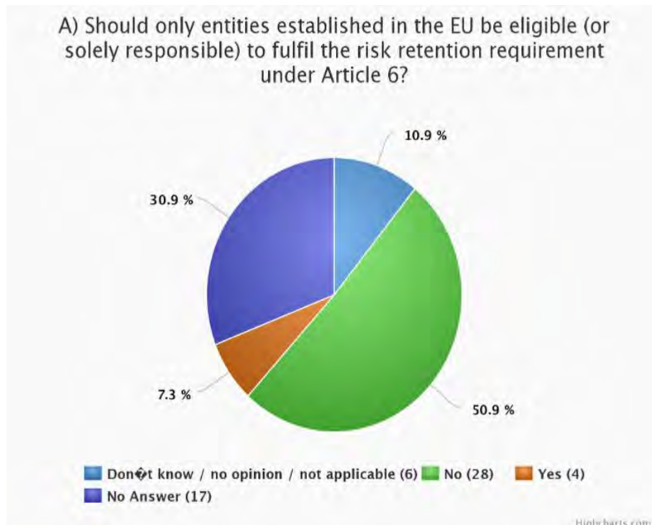


More than 85% of the respondents expressing their view (the vast majority of market participants and most supervisors) did not support the introduction of additional requirements for non-EU entities. They argued that additional requirements would disincentivise foreign sell-side parties to engage in the EU market, thus also leading to reduced investment opportunities. Moreover, in their view additional requirements were not necessary, since EU investors are already well-protected and supervised thanks to due diligence requirements of Article 5(1). Instead of adding new requirements, respondents generally called for clarifying the conditions under which securitisations involving non-EU sell-side parties should be regarded as compliant with Articles 6, 7 and 9 of the Regulation.

One public authority and a few other respondents stressed the benefits that a new obligation to appoint an EU-regulated legal representative could bring for facilitating the supervision of non-EU sell-side parties. In cases where one of the sell-side parties is located in the EU, this supervisor also supported the position of the ESAs Joint Committee that compliance should be ensured via the EU entity. Finally, two market participants argued that the introduction of an EU-regulated legal representative would improve the level playing field and facilitate the designation of a competent court in the event of a dispute.

Question 4.3 In transactions where at least one, but not all sell-side entities (original lender, originator, sponsor or SSPE), is established in the EU:

A) Risk retention requirement (Art. 6)

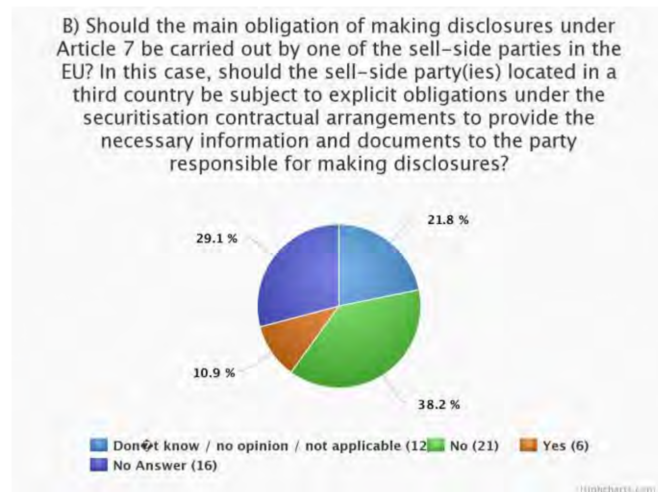


Almost 90% of the respondents (including all market participants) expressing their view on this question opposed the notion of making only EU-established entities eligible for fulfilling risk-retention requirements under Article 6.

They argued that the purpose of risk-retention rules is to align the commercial interests of sell-side parties with those of investors. As such, jurisdiction should thus not be a relevant factor in assessing eligibility for performing risk-retention requirements. Instead, risk retainers should be entities with actual and sufficient control over and interest in the securitised portfolio.

On the other hand, a few respondents (i.a. two supervisors and 1 NGO) emphasised the supervisory benefits from requiring entities fulfilling risk-retention requirement to be established in the EU. They argued that competent authorities could then effectively verify compliance with Article 6 and take enforcement actions as necessary.

B) Disclosure obligation (Art. 7)



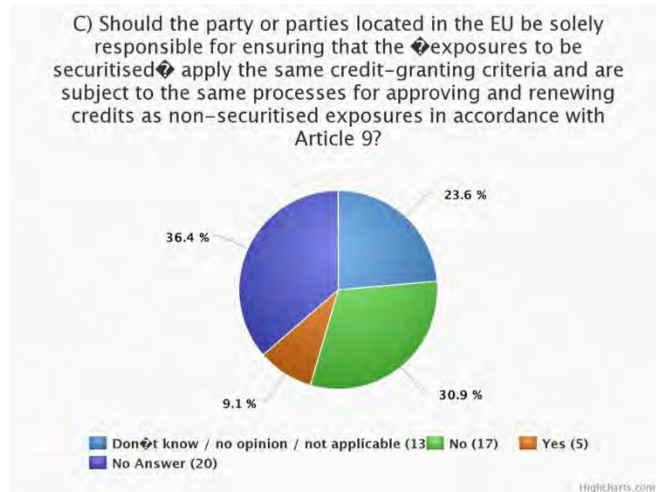
More than three quarters of respondents (industry stakeholders and a few public authorities) offering their view on this point did not deem it necessary that the disclosures obligation is carried out by one of the sell-side parties in the EU.

They saw the risk that this obligation can lead to inefficiencies especially in the case if the only sell-side party established in the EU is the SSPE. In most cases, the SSPE does not have access to all the necessary information and resources. Furthermore, such an obligation would create additional hurdles for EU investors to invest in third-country securitisations.

Conversely, two public authorities, one NGO and one academic as well as a few market participants noted that the obligation was necessary to ensure investor protection and offered the competent authorities better enforcement options as they could effectively supervise the transaction and take enforcement actions on the transaction.

Hardly any respondents answered the second part of the question. One public authority saw the risk that these clauses only lead to a “cosmetic” improvement, whereas two public authorities supported such clauses to ensure compliance.

C) Sole responsibility of EU located party for credit-granting criteria

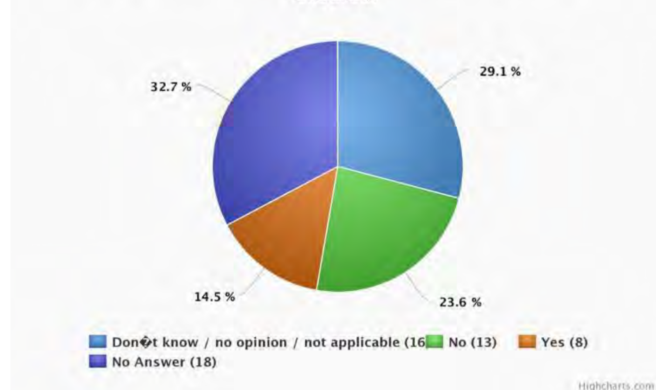


More than three quarters of the respondents to this question did not support the proposition that the sell-side party located in the EU should be solely responsible for the compliance with Article 9. The majority (that includes the biggest part of industry stakeholders and some public authorities) raised similar issues as those concerning question 4.3 B). They stressed that the verification is more effective, if the original actor carries it out, as the EU party may not be in the position to ensure compliance with these criteria. In their opinion, this obligation could add complexity and uncertainty to the framework. In addition, some saw the risk that it could put EU-based entities at a disadvantage.

A minority encompassing two public authorities, one NGO and a very few industry representatives supported the proposition. For the two public authorities this should however only be the case if this EU party has the overall responsibility for setting or applying the credit-granting criteria in relation to exposures to be securitised.

Some market participants stressed that the application of credit granting standards by sponsors should be reconsidered more generally, as they only establish and manage securitisations that purchase third party assets.

D) Reference to third country sponsors in the due diligence requirements

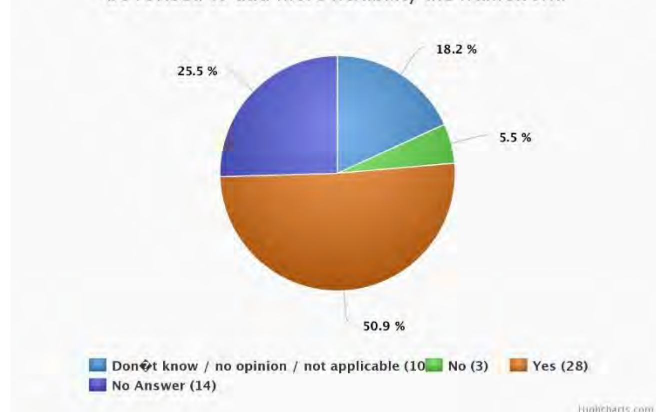


Most respondents (irrespective of their answer) pointed out that there is an inconsistency between Article 5 and Article 9 because the sponsor of a securitisation must comply with Article 9 but, where it is not located in the EU, it is not subject to the verification by the institutional investor in accordance with Article 5(1)(b).

Almost two thirds of the respondents (industry representatives and some of the public authorities) did not support the idea to include a reference to sponsors located in a third country. These respondents stressed that a requirement for a sponsor to meet credit granting standards, as if it were an asset creator, is not appropriate, as sponsors do not grant credits but establish and manage securitisations that purchase third party assets.

Those supporting the addition of a reference to third country sponsors, highlighted that a sponsor has also an impact on the risk characteristics involved and therefore should be subject to these rules. Moreover, they argued that there was no reason to differentiate between EU and non-EU sponsors. One competent authority suggested it would be appropriate to ensure supervision indirectly when the sponsor is a non-EU entity.

Question 4.4. More flexibility for the current verification duty for institutional investors



More than 90% of the respondents expressing their view (most industry representatives and public authorities) were in favour of an amendment to Article 5 (1) (e) to add more flexibility. Only two business organisations and one public authority opposed the idea.

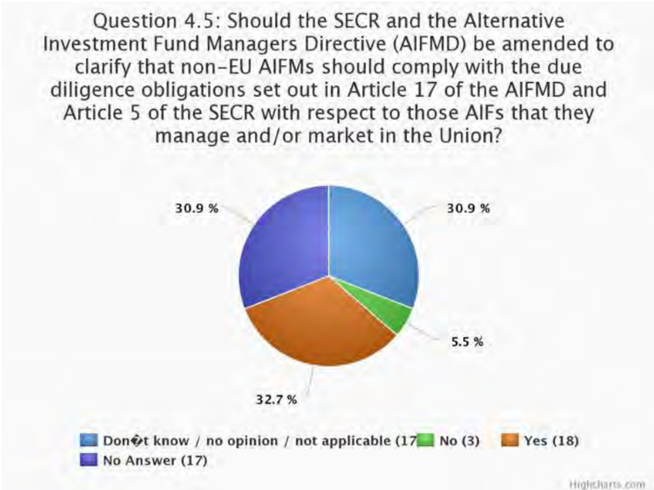
Many supporters of this proposal pointed out that under the current framework EU investors are disadvantaged when investing in non-EU securitisations as parties of these do not need to comply with these costly requirements. Referring to the recommendation made in the Final Report of the High-Level Forum on the CMU, many respondents favoured allowing an EU-regulated investor investing in non-EU securitisations to determine whether it has received sufficient information to carry out its due diligence obligation proportionate to the risk profile. Others suggested that it would be sufficient if investors verified that the information is 'materially comparable'. Only very few respondents favoured an equivalence regime as suggested by the Joint Committee. Some respondents stated that it would not be proportionate to require disclosure in respect of third country securitisations to be reported via a securitisation repository.

Alternatively, it was proposed to limit the verification requirement in relation to reporting requirements to securitisations where at least one party is located in the EU.

On the other hand, one public authority objecting greater flexibility stressed that giving institutional investors the possibility of fulfilling their due diligence requirements without requesting the same level of information from sell-side entities outside the EU, may foster the move of securitization transactions outside the EU.

Referring to the follow-up question how the ultimate objective of protecting EU institutional investors could be ensured, in case of more flexibility would be granted, , the vast majority claimed that there was no issue since typical investors in securitisation were sophisticated and able to determine the level and nature of information, they need to make an investment decision based on adequate due diligence.

Question 4.5 Compliance of non-EU AIFMs with due diligence obligations



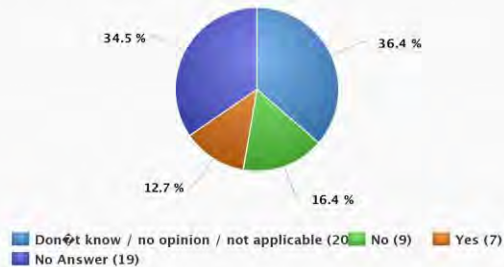
85% of the respondents that answered this question supported the idea of an amendment clarifying that due diligence obligations apply to non-EU AIFMs concerning those AIFs that they manage and/or market in the EU. There was however no common view on how the clarification should look like:

- One group consisting of industry representatives and all public authorities highlighted that the clarification as suggested in the question was needed to ensure an appropriate level of protection for

EU investors and to create a level playing field; an exemption would give the non-EU AIFM an unfair advantage vis-a-vis EU AIFMs.

- Another group of industry representatives objected such a clarification since subjecting non-EU AIFMs to the due diligence rules of the SECR could in their view disincentive non-EU AIFMs from marketing their AIFs in the EU. Some requested to clarify the legal wording in a way that these due diligence requirements apply to non-EU AIFMs only with respect to these AIFs that they market and manage in the EU and not to all of their other AIFs. Furthermore, these respondents argued that subjecting non-EU AIFMs to AIFMD or to the Regulation obligations would not be appropriate and add an extraterritorial element.

Question 4.6. Sub-threshold AIFMs as institutional investors

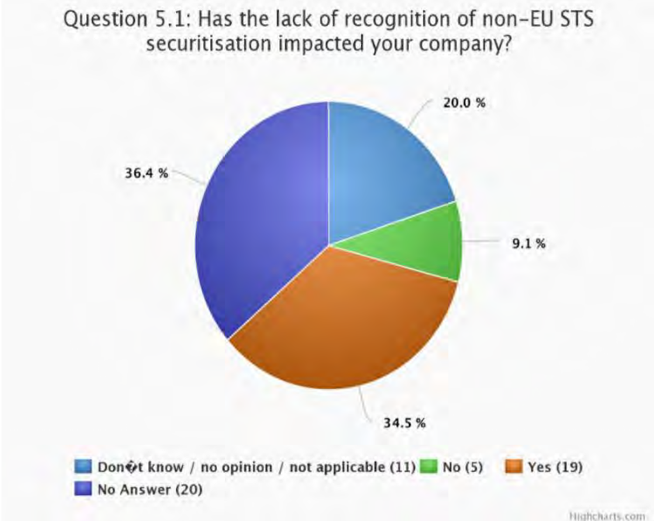


Views on this question were split with a slight majority being in favour of not making sub-threshold AIFMs subject to due diligence requirements under the Regulation. These respondents argued that sub-threshold AIFMs do not pose a systemic risk due to their size and therefore these due diligence requirements would not be proportionate. Furthermore, they thought that any change should be part of the AIFMD review, rather than of the Securitisation Regulation.

The other group of respondents (comprising all public authorities) argued that exempting sub-threshold AIFMs from the due diligence requirements creates a regulatory loophole and would weaken investor protection. Also some industry representatives spoke in favour of levelling the playing field.

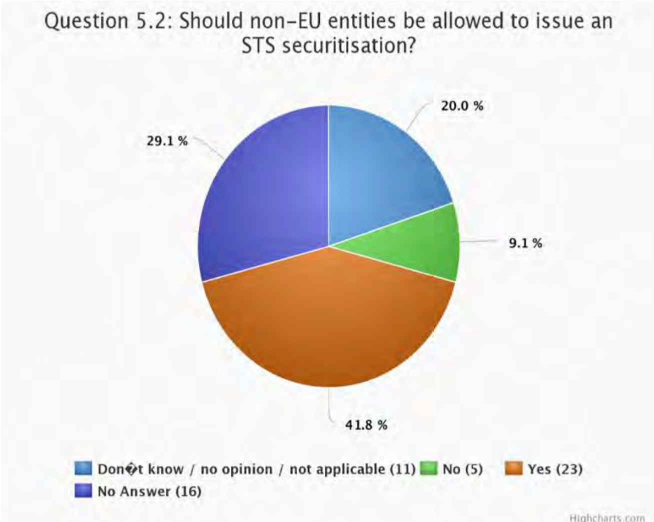
5. Equivalence

Question 5.1. Impact of the lack of recognition of non-EU STS securitisation



Most respondents reported that they have been impacted by the lack of recognition of non-EU STS securitisation. Typically, this impact took the form of EU investors being prevented from purchasing some UK- or US- originated securitisations as they would face higher capital charges on these assets than foreign investors. Further, investors reported that they faced higher capital charges on exposures to securitisations that formerly had STS status in the UK as these lost their STS status following the departure of the UK from the EU. These respondents generally called for an equivalence regime to recognise UK originated STS securitisations under EU law.

Question 5.2. Issuance of STS securitisation by non-EU entities



Responses to this question were divided. Market participants were almost unanimously in favour of allowing non-EU entities to issue STS securitisations. Conversely, public authorities, together with a few think tanks/academics, opposed or expressed some reservations to such a measure.

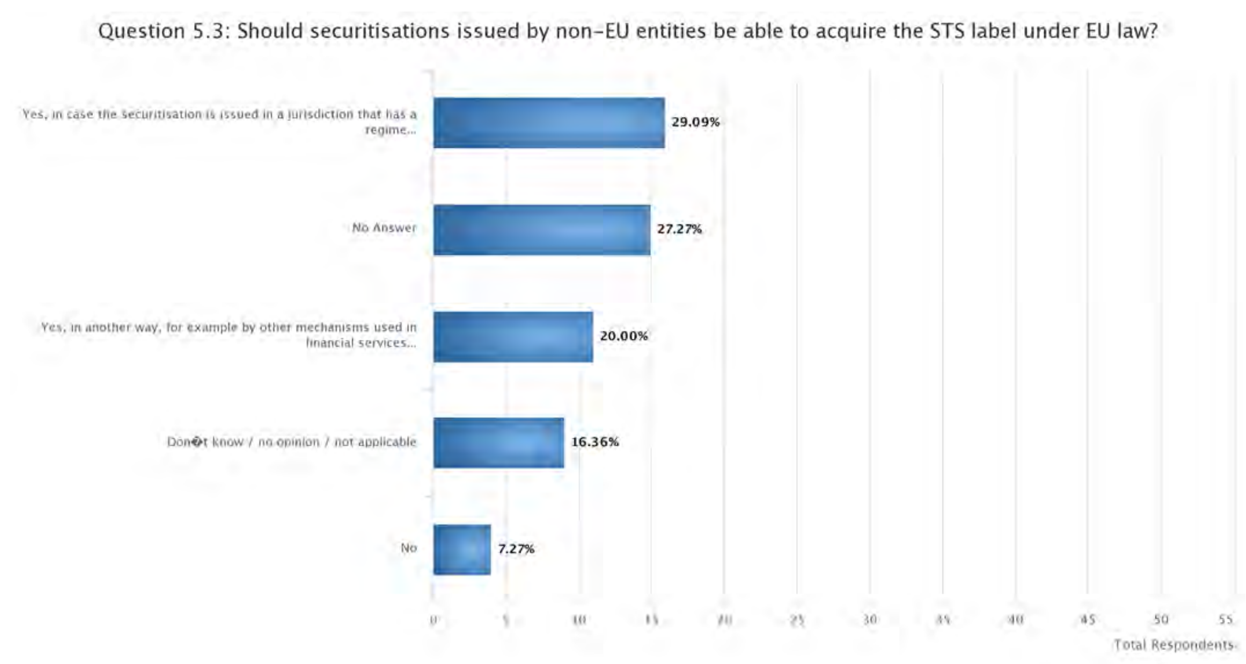
Market participants argued that issuers meeting criteria equivalent to the Regulation's STS criteria should not be banned from using the label on jurisdictional grounds. Opening up the STS label to non-EU issuers would allow EU investors to benefit from lower capital charges on those foreign, STS-equivalent or STS-compliant exposures and diversify their portfolios. To allow this, respondents suggested various alternatives to the current Article 18, such as:

- allowing for recognition mechanisms,
- requiring that only the SSPE be established in the EU or
- setting up an equivalence regime for the STS framework, possibly based on the BCBS-IOSCO STC standard.

The UK was commonly cited as the natural candidate for such a regime. Several respondents cautioned that equivalence should not be based on a mere alignment or convergence of rules, but also on close supervisory cooperation and reciprocity.

Many public sector respondents were firmly opposed to allowing non-EU entities to issue STS securitisations. Among these, reciprocity was commonly cited as a prerequisite. Furthermore, several respondents questioned how compliance with the complex STS requirements could be effectively supervised and enforced in the case of non-EU issuers. They also raised concerns over the impact that equivalence decisions could have on investor protection, general trust in the label and financial stability. For certain specific asset categories such as residential mortgages, consumer loans, credit cards or car loans, one supervisor also questioned the possibility to ensure compliance with requirements stemming from the Mortgage Credit Directive and Consumer Credit Directive. Finally, two public authorities cautioned that equivalence measures could encourage investment in third country securitisation instead of enhancing the EU securitisation market.

Question 5.3. STS label for securitisations issued by non-EU entities under EU law



Most respondents reiterated here the points made in their replies to the previous question, further clarifying their preference for either an equivalence regime or recognition/endorsement mechanisms or repeating their opposition to any such scheme.

Among those viewing an equivalence framework as a prerequisite, several respondents specified that compliance with STS requirements should be ensured via adequate contractual undertakings. One market participant stated that for most third countries it might be difficult to attain equivalent outcomes in terms of transparency, disclosure, risk retention and capital requirements: EU investors would thus need to perform their due diligence duties in a "proportionate" way, based on information contractually agreed to be provided on an ongoing basis. Other respondents differed, arguing that non-EU issuers wishing to acquire the STS label should be obliged to fulfil all of the Regulation's STS requirements, transparency included. Overall, respondents saw equivalence as complementary rather than as a substitute to endorsement mechanisms.

As in the previous question, most respondents insisted that any equivalence measure would have to be based on full reciprocity. As a result, some argued, recognition or endorsement mechanisms should be the favoured solutions.

Opponents to equivalence or recognition/endorsement mechanisms reiterated their doubts as to the benefits of such measures for the EU securitisation market, cautioned against the supervisory complexity it would create and questioned the possibility for any jurisdiction to rightfully qualify as equivalent to the EU.

Question 5.4. Which considerations could be relevant to introducing any of the above mechanisms (e.g. equivalence/recognition/endorsement/other) and which could be the conditions attached to such mechanisms?

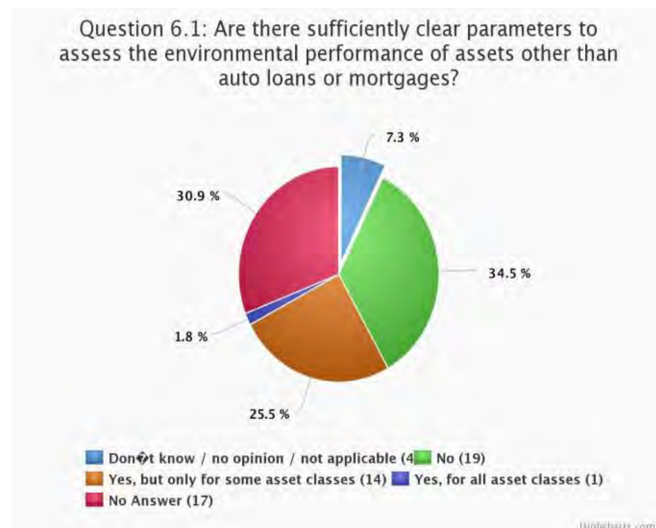
Respondents in favour of such mechanisms suggested that either requirements should be identical to the STS requirements, or that equivalence decisions should be based on the application of the BCBS-IOSCO STC standard. Reciprocity was identified by many respondents as a precondition.

One (non-EU) market participant pointed out that consideration should also be given to the underlying asset classes eligible for the STS label, where certain jurisdictional differences within tolerance levels should be taken into account (e.g. distinct LTV rules for mortgages).

An investor association considered that having a legal representative in the EU for an entity based outside the EU does not completely resolve the legal uncertainty that may result from the intervention of non-EU actors in STS transactions. Consequently, they argued an appropriate legal framework for the handling of disputes is paramount, whereby resale rights should be guaranteed as the dispute arises and third-country parties should contractually recognise the application of EU rules and the competence of EU courts.

6. Sustainability disclosure

Question 6.1. Parameters to assess environmental performance

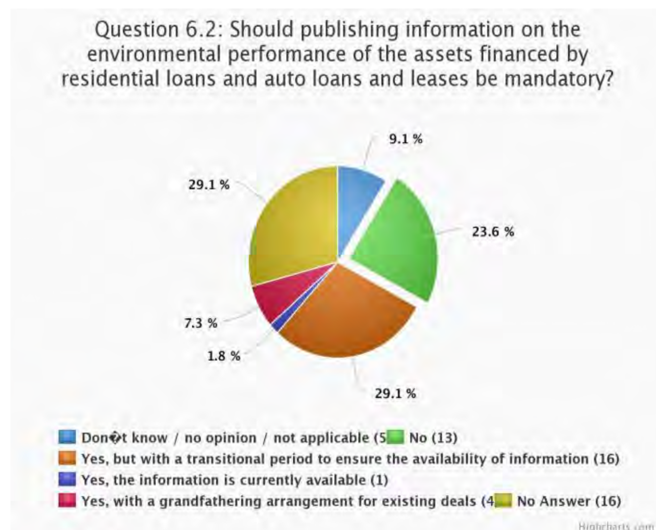


Most respondents answered that there were no sufficiently clear parameters to assess environmental performance of assets other than auto loans or mortgages, without providing further specification. Some respondents argued securitisation should remain outside of the scope of Sustainable Finance Disclosure Regulation (SFDR) as it is unpractical to assess its sustainability risks, or that the parameters used to assess environmental performance are not adequate, also for auto loans and mortgages.

Only an NGO responded that there are clear parameters for all asset classes. Other respondents considered that sufficiently clear parameters exist, but only for some asset classes. Notably, a market participant observed that in practice, sustainable securitisations are not only issued for residential mortgage-backed securities (RMBS) and auto loans but also for CMBS and SME ABS. Standardised parameters were favoured for all asset classes, but to enhance comparability with common definitions progress on the Taxonomy RTS should come first. Respondents advised to consult relevant industry bodies on this point.

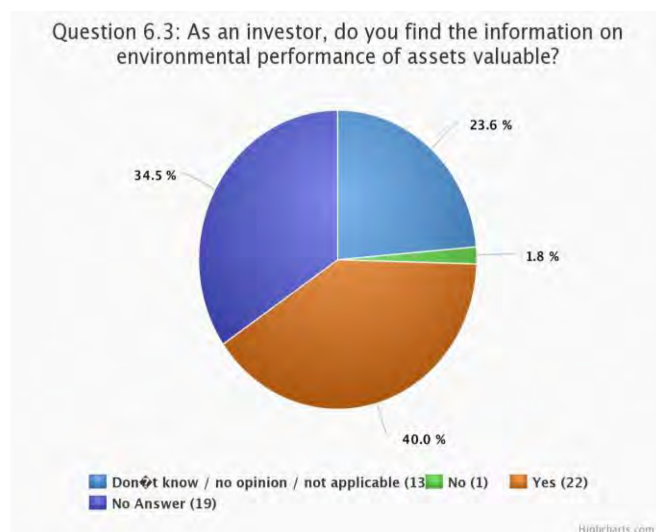
Some respondents argued that existing parameters best suit RMBS and CMBS; CLOs will depend on the RTS, and the upcoming Corporate Sustainability Reporting Directive (CSRD); and for personal loans and credit cards there are no sufficiently clear parameters. They cautioned that there is no central database available for such information for vehicles as well as that there is a risk of discriminating between asset classes, for example due to diverging standards for energy performance certificates between countries.

Question 6.2. Mandatory disclosures of environmental performance



About one-third of respondents to this question answered that publishing information on the environmental performance of the securitisation assets consisting of residential loans and auto loans and leases should not be mandatory. About two-thirds answered that it should be mandatory but most of them see the need for a transitional period to ensure the availability of information, and in some cases also a grandfathering arrangement for existing deals.

Question 6.3. Investor use of environmental performance information



Respondents were also invited to comment on the availability, value and use of environmental performance information.

Regarding data availability, many investors and associations generally considered information on environmental performance of assets valuable, but also indicated it is not yet available across the board. There is less available data compared to the corporate bond market (e.g. no third-party sources), but this improves

for RMBS and auto loans, thanks to the Regulation. To improve availability and quality, a regulator suggested including new fields in corporate and ABCP templates for environmental performance, such as the percentage of Taxonomy-aligned/eligible activities (other than by SMEs), as the CSRD will require such disclosures by 2023 anyway, and the percentage of green or sustainability-linked loans by banks.

Regarding the value of available data, most investors considered such data useful. It was also argued certain types of environmental information (e.g. CO2 emissions in g/km) are more comparable than others (energy performance certificates), and that asset class-specific key performance indicators (KPIs) may be more appropriate than the Taxonomy and SFDR requirements.

Regarding the use of available data, investors stated they use it to measure their own share of environmental, social, and corporate governance (ESG) investment, to assess ESG-related risks, and as a comparison tool. It was also argued that it can be used to assess credit risk.

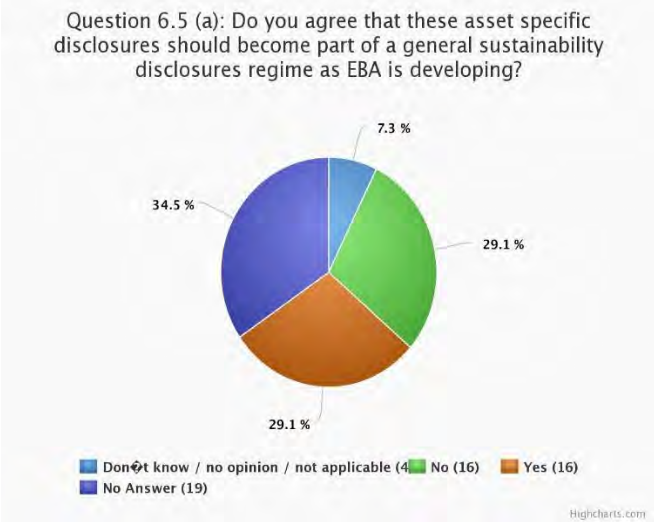
Question 6.4. Preference for environmental performance or adverse impact

Many respondents stated they find information both on the environmental performance and on the adverse impact important, because they can, in turn, be required to disclose the data to investors, or because on their own neither gives a full picture.

Among the respondents voicing a preference between the two categories of data, most found the information on environmental performance more useful, arguing that environmental performance provides a more objective and balanced view. For some of the respondents, relative usefulness depended on whether it is at asset level (environmental performance) or at company policy level (adverse impact), whether it concerns green assets (environmental performance) or brown assets (adverse impact), whether data and indicators are readily available (which can however be more difficult for adverse impact, where additional proxies may be needed), or which investors participate in CLO transactions (as some may need adverse impact information to comply with the SFDR on their end).

Respondents also raised other points, for instance (i) that focus should be on financing the greening/renovation of existing assets rather than new green assets, (ii) that only green-labelled securitisations should require environmental performance information, and (iii) that investors could benefit if the regulation required adverse impact information, as securitisation is not in scope of the SFDR but investors are so they may need this information.

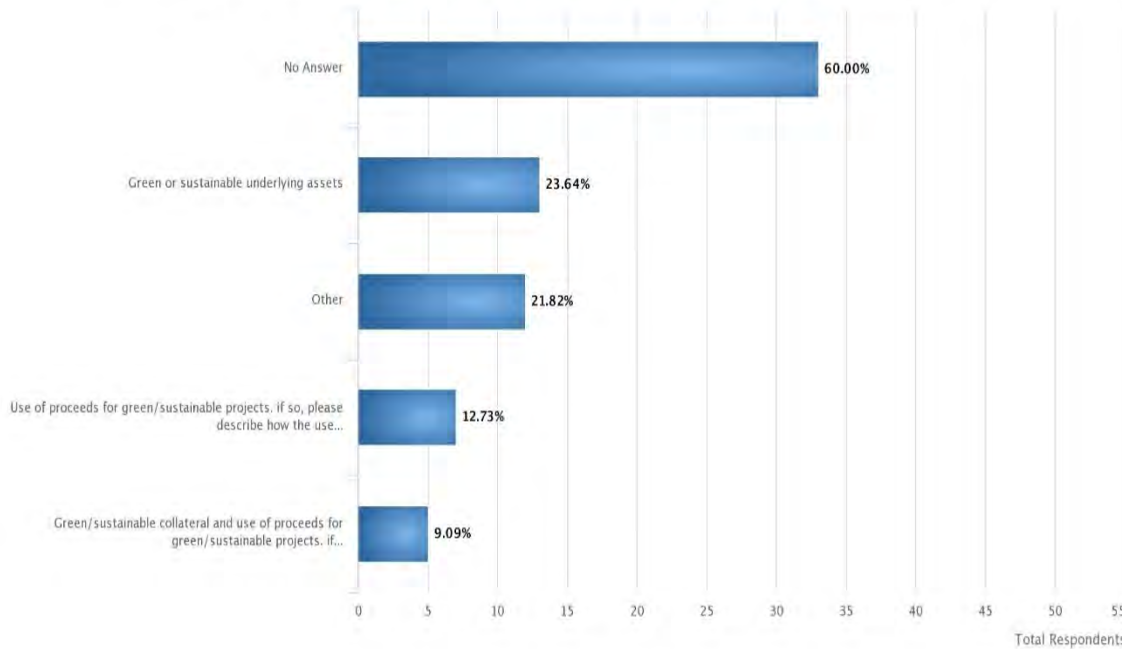
Question 6.5. Asset specific disclosures



Views were evenly split between supporters (industry actors, but also regulators, academics and an NGO) and opponents (only from industry) of the idea that asset specific disclosures should become part of a general sustainability disclosures regime that EBA is developing.

Most respondents (including all regulators and NGOs) favoured mandatory ESG disclosure for all three cases (securitisation that complies with the EU Green Bond Standard (EU GBS)); RMBS; Auto loans/leases ABS).

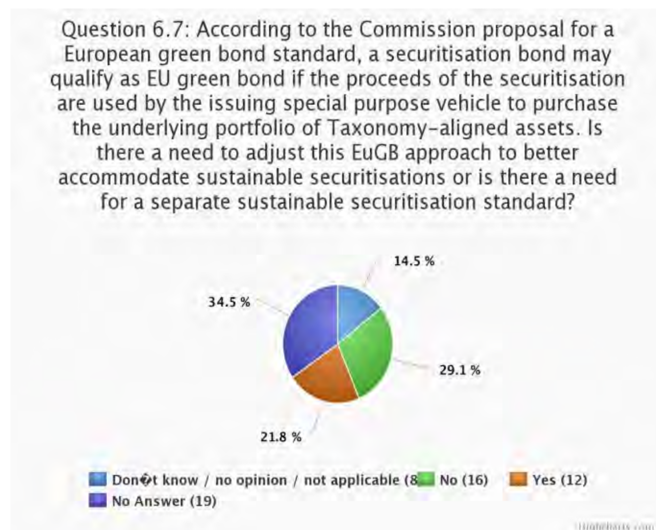
Question 6.6. Experience issuing or investing in green or sustainable-labelled securitisations



A minority of respondents answered this question indicating they issued or invested in green or sustainable-labelled securitisations where the amount not reflected in green collaterals would have to be used for green, and 'impact-labelled' securitisations (which were not significantly different from other securitisations and very limited compared to impact bonds with a clear project).

In addition, a securitisation repository reported nine ESG securitisations, which are either based on collateral, use of proceeds, or a mix of both. For some, environmental performance information is available. Several industry associations also reported this for their members. An industry association mostly referred to the use of proceeds to define a securitisation as green but highlighted that some stakeholders think it should be fully backed by green collateral.

Question 6.7. Adjustment of EU GBS or separate sustainable securitisation standard



Answers to this question offered feedback as to whether a separate framework would be needed apart from the EU Green Bond Standard (EuGBS) proposal, and if so, whether it should be based on the use of proceeds or collateral, which disclosures should be required, and which entity should report.

In general, many respondents, mostly from industry but also representing public authorities, were concerned about (i) the level playing field with other instruments such as covered bonds, should securitisation be treated differently, and (ii) the limitations to finance the green transition by securitisation, due to a shortage of eligible underlying assets, should this be required, rather than, or together with the green use of proceeds.

Regarding the question if a separate framework for sustainable securitisation should be created, most respondents were against and favoured the alignment with existing or proposed regimes (i.e. EuGBS) to avoid unnecessary fragmentation or greenwashing. In particular, they argued that sustainability reporting standards, such as the EuGBS, already exist and should be refined accordingly, taking account of the specificities of securitisation. For example, the five-year period for issuers to comply with amended delegated acts under the proposed EuGBS is not fit for application to securitisation as securitised portfolios may have to exclude underlying assets, possibly triggering loan repurchasing. At the same time, few industry respondents favoured separating securitisation from other funding instruments, since current rules did not cover some of the specific assets underlying securitisation.

Regarding a use of proceeds- or collateral-based approach, most respondents, favoured the former approach, arguing eligible assets were scarce, i.e. transition financing would be limited, and it would level the playing field with other funding instruments. Some respondents suggested using the collateral and use of proceeds approaches as alternatives, rather than cumulatively. Furthermore, they suggested a transition period during whereby not all underlying assets need to be Taxonomy-aligned from the outset, possibly combined with a commitment to build up such assets on the balance sheet; and a carve-out for previously issued transactions. Proponents of the collateral-based approach also recognised that requiring all underlying assets to be Taxonomy-aligned may be difficult.

Regarding disclosures that should be required to qualify as sustainable, it was argued that an overly descriptive regime would be counterproductive given the wide range of activities related to underlying exposures. Some respondents questioned how the performance of the expected outcomes can be verified in practice.

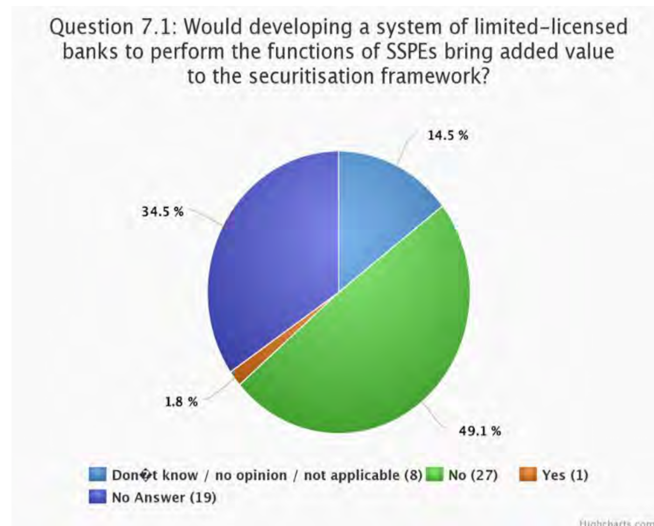
Arguments against additional disclosures included: (i) the need to preserve level-playing field with other instruments, and (ii) the expectation that investor demand makes investments greener anyway. Respondents generally favoured alignment with the other sustainability reporting regimes, to the extent this fits securitisation.

Regarding disclosures for all securitisations (or STS-only) and irrespective of any qualification as sustainable, industry stakeholders opposed mandatory requirements or favoured an initial period during which it remains optional. It was argued that data is lacking, industry needs time to adapt, or that the Commission should first be able to evaluate upcoming corporate disclosure requirements. Academics argued the STS disclosures on principal adverse impacts of RMBS and auto loans should be aligned with the EuGBS proposal.

Regarding the responsible entity for reporting, respondents pointed to originators rather than issuers (contrary to what would be required with the EuGBS proposal), since reporting would be difficult for the issuers (the SSPEs in this case) as they do not control the assets.

7. A system of limited-licensed banks to perform the functions of SSPEs

Questions 7.1. & 7.2. System of limited-licensed banks as SSPEs

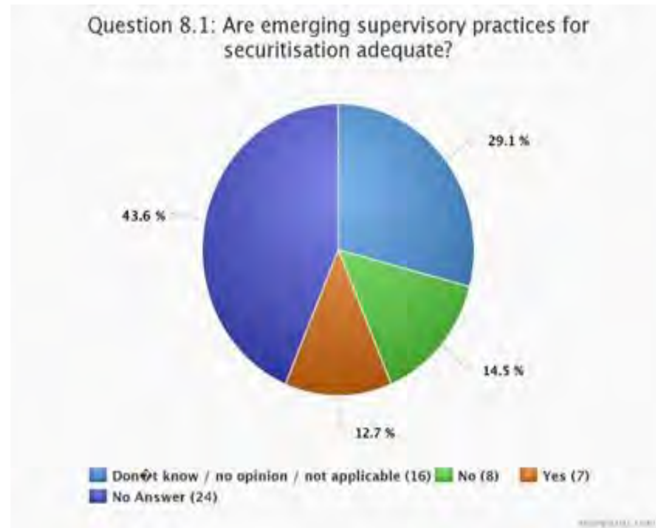


Only one respondent from academia saw benefits in establishing a system of limited-licensed banks to perform the functions of SSPEs. According to this view, limited licensing should primarily have consequences for the availability of adequate (and sufficiently independently drawable) liquidity facilities to support purchasing or redemption mechanisms. Liquidities should then be added to the SSPE's balance-sheet instead of replacing assets transferred under the securitization.

All other respondents cautioned against the introduction of such a system and the impact it could have on the market. Authorities and market participants stressed that SSPEs are already subject to authorisation and supervision by the NCA, which allows for their adequate supervision and the proper monitoring of risks. More generally, market participants considered that the current system of insolvency-remote SSPEs functions satisfactorily, with clearly set out priorities over cash-flows, enforcement rights and governance between tranches. Under the current framework, market participants saw no specific risks related to the role of SSPEs in the market. Instead, they saw potential risks arising from a system of limited-licensed banks. Several market participants cautioned that this would lead to a higher concentration of risks, as licensing constraints would keep potential issuers out of the market and increase dependence on banks to perform the SSPE functions. Furthermore, a few respondents pointed out that as limited-licensed banks would have to be included in the regulatory scope of consolidation, capital relief - in particular using the full deduction method - might no longer be possible in case of true sale securitisations. Hence, the introduction of limited-licenced banks would go against the very logic of risk diversification and reduction that underpin the securitisation market. A few respondents also argued that limited licenses would be detrimental to the independence of the issuing entity as such, with a greater number of actors eventually managing the securitisation funds through separate entities belonging to the same consolidated group. Those respondents considered that the priority should be to ensure independence in control, management and reporting of the securitisation transaction vis-à-vis initiators, sponsors and investors. Finally, one respondent argued that a system of limited-licensed banks would discriminate securitisation issuances vis-à-vis covered bonds.

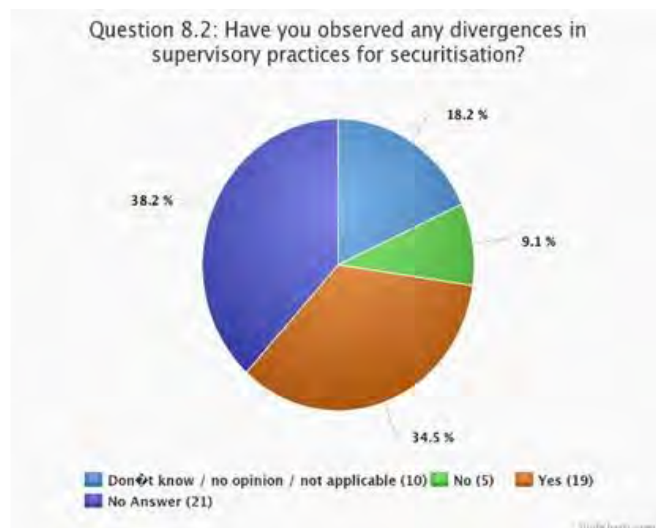
8. Supervision

Question 8.1. Adequacy of emerging supervisory practices



The vast majority of respondents did not answer or had no opinion on this question. Among those who replied views were almost evenly split as to whether emerging supervisory practices are adequate (7 positive replies vs 8 negative replies). Positive replies came from a heterogeneous group: public authorities, NGO, industry and investors. Only two public authorities replied to this question and expressed a positive opinion. Negative replies came from mainly from industry respondents.

Questions 8.2. & 8.3. Divergences in supervisory practices



A majority of respondents did not answer or had no opinion on this question. Among those who replied the vast majority (both from industry representatives and public authorities) reported having observed divergences in supervisory practices.

Many public authority respondents recalled the finding of the ESA Joint Committee report and noted that there are differences in supervisory approaches and this could create market uncertainty. One authority referred to the issues linked to private securitisation, the submission of the information pursuant to Article 7(1)(c) of the Securitisation Regulation as well as the and disclosures templates. It stressed that these information and templates are to be submitted systematically in their jurisdiction, while in other cases only on request by the competent authority. Another authority reported different views on the treatment of Article 234 of the CRR, i. e. whether portfolio guarantees should also comply with the requirements of the SECR. Many authorities shared the view that guidelines by the ESAs should be developed, in particular, spelling out the due diligence obligations, to harmonise practices with a view to ensuring proportionality.

Among the industry respondents major issues reported were:

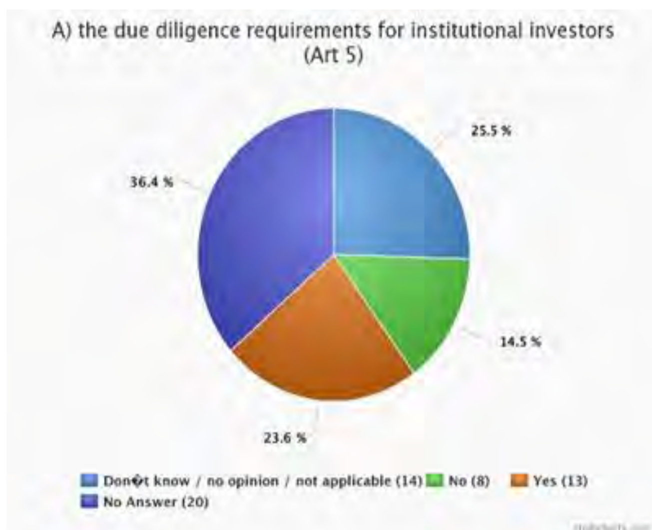
- Differences in the interpretation of the Regulation and involvement of competent authorities in the supervisory process.
- 'Gold-plating' by some Member States in particular on notification requirements both applicable to private and public securitisation.
- A lack of coordination among regulators.
- Different practices among competent authorities for checking the STS status of a securitisation with some doing ex ante other ex post or some doing for every transaction, while other carrying it out as part of the overall review of an institution
- Divergence in the interpretation and implementation of the delegation rules applicable to the due diligence assessment of securitisation positions to a delegated portfolio manager (whether EU or non-EU).
- Varying practices in the context of seeking approval for Significant Risk Transfer (SRT).

Many of them called for the Joint Committee to publish guidelines that should be pragmatic and ensure a harmonised application of the SECR and supervision of compliance efforts. At the same time, they were against more binding measure like regulatory technical standards.

One NGO argued in favour of centralised supervision of securitisation transactions by ESAs.

Question 8.4. Detailed guidance by the Joint Committee

Question 8.4. A) Due diligence requirements for institutional investors (Article 5 of the Regulation)



A majority of respondents to the consultation did not answer or had no opinion on this question. Among those who replied the majority requested additional guidance by the regulator.

Industry views were almost evenly split with a slight majority calling for guidance. Public authorities that replied and two NGOs asked for guidance. One academic was also not in favour of having guidance.

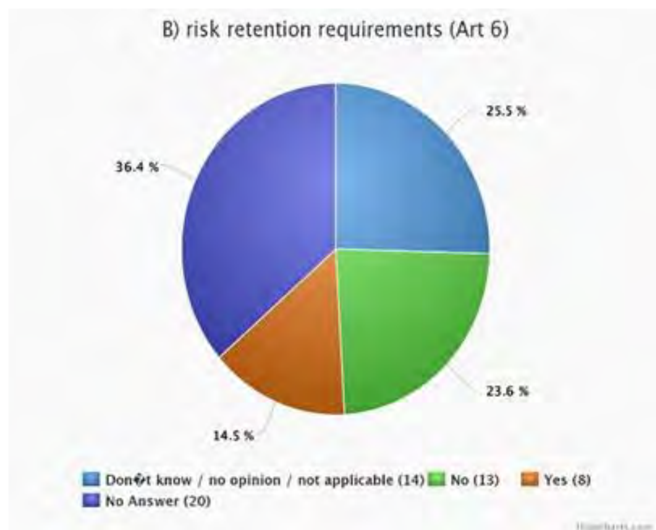
Public authorities recalled the finding of the ESA Joint Committee report and asked for developing a common EU best practices supervisory guide on due-diligence for national supervisors. They stressed in particular the importance of additional steer on proportionality aspects of due diligence requirements.

Industry called for guidance to promote a pragmatic, flexible approach ensuring a level playing field. One industry representative asked for guidance also about what would be considered an appropriate method or practice to establish and validate compliance. Parts of the industry representatives pleaded for detailed guidance, while other part preferred such guidance not to be too detailed.

When calling for guidance, both industry and public authorities always referred to guidelines and never to regulatory technical standards, considering the latter not fit for purpose and too burdensome.

Industry representatives opposing new guidance warned against having too detailed requirements as these would imply greater compliance effort and would eventually frustrate the market. They also stressed that supervision is sufficient and does not require additional regulatory technical standards.

Question 8.4. B) Risk retention requirements (Article 6 of the Regulation)



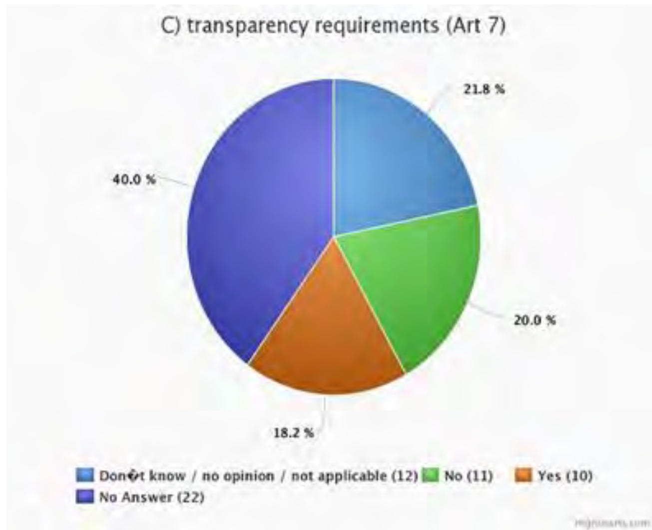
A majority of respondents to the consultation did not answer or had no opinion on this question. Among those who replied the majority was against additional guidance.

Industry views were almost evenly split with a slight majority not calling for guidance. Public authorities that replied and two NGOs views were also split between having guidance or not. One academic was also not in favour of guidance.

Industry representatives that were in favour of additional guidance stressed that it should ensure consistency and more clarity amongst competent authorities for all market participants. When calling for guidance they always referred to guidelines and never to regulatory technical standards, considering the latter not fit for purpose and too burdensome.

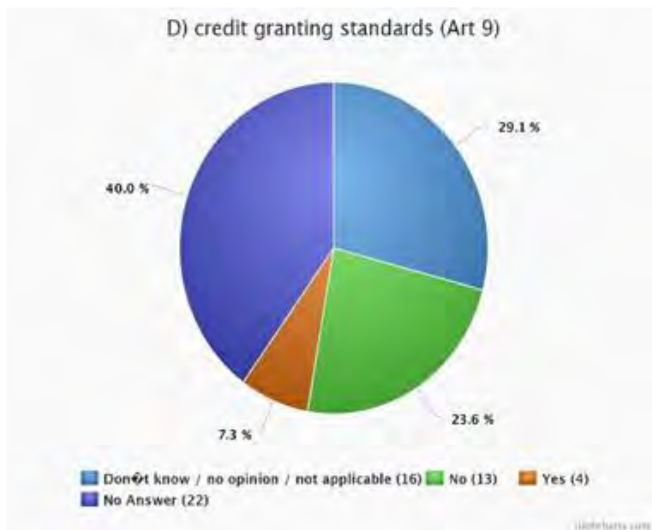
Among those turning out against additional guidance both industry and public authorities referred to the existing and forthcoming regulatory technical standards and stressed the need to let market and competent authorities get acquainted with the rules. Industry also highlighted that any potential clarification could be provided via the Q&A process.

Question 8.4. C) Transparency requirements (Article 7 of the Regulation)



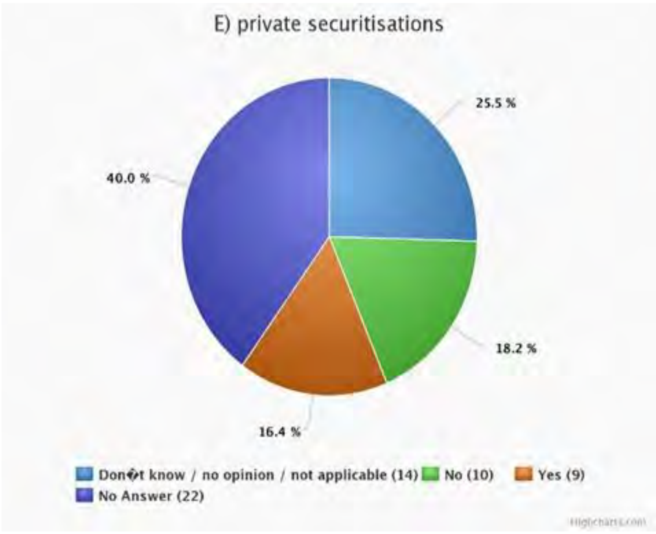
A majority of respondents to the consultation did not answer or had no opinion on this question. Among those who replied there was a slight majority against guidance. Most industry views were against having guidance. Public authorities that replied and one NGO views were in favour of guidance. Another NGO and one academic were not in favour. Public authorities calling for guidance from the Joint Committee stressed that there are different approaches among supervisors and consistency should be achieved. Industry that called for guidance highlighted in particular the issue of whether transparency requirements are applicable to non-EU issuers or not. Those stakeholders arguing against additional guidance stressed that current ESMA templates and the Q&As process provide already sufficient guidance.

Question 8.4. D) Credit granting standards (Article 9 of the Regulation)



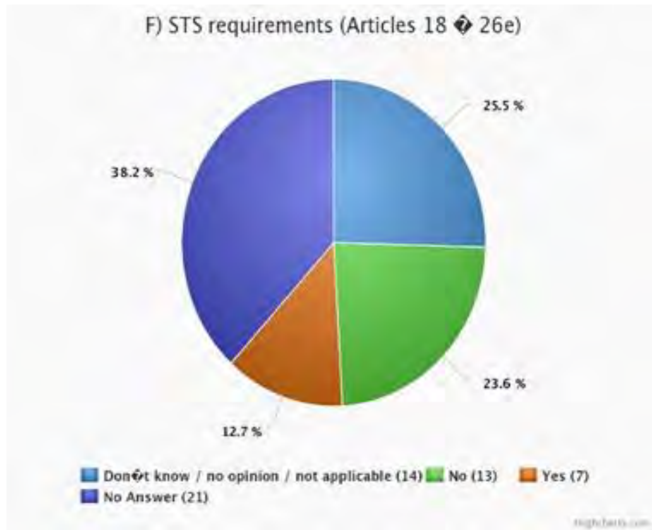
A majority of respondents to the consultation did not answer or had no opinion on this question. Among those who replied there was a wide majority against guidance. Most industry views expressed on this point were against having guidance. Responding public authorities were split on the issue. One academic was in favour of guidance. Both industry and public authorities arguing against new guidance stressed that the requirements under Art. 9 were sufficiently clear and that both market participants and supervisors knew how to comply with them.

Question 8.4. E) Private securitisation



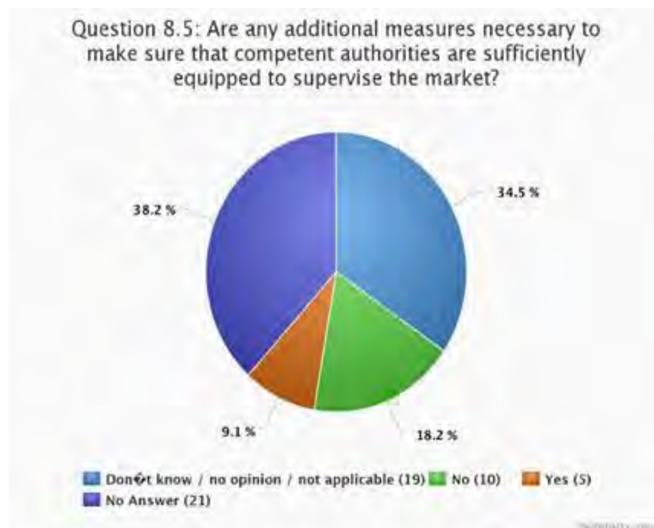
A majority of respondents to the consultation did not answer or had no opinion on this question. Among those who replied there was a slight majority against guidance. There was a majority of industry views against guidance. The vast majority of public authorities that replied and NGOs called for guidance. One academic and one public authority were against guidance. Both industry and public authorities arguing against additional guidance stressed that before issuing such guidance more clarity should be provided regarding the definition of private securitisation.

Question 8.4.F) STS requirements (Articles 18 – 26e of the Regulation)



Most respondents to the consultation did not answer or had no opinion on this question. Among those who replied the majority was against guidance. There was a large majority of industry views against having additional guidance. The majority of public authorities that replied, one academic and one NGOs called for guidance. One NGO and one public authority were against guidance. One public authority calling for guidance underlined the need for a harmonised approach amongst competent authorities for monitoring compliance of the STS requirements. Likewise, one industry representative highlighted the importance of guidance to avoid differing interpretations of the STS criteria, both among Member States and among market participants. Both industry and public authorities arguing against additional guidance stressed that requirements set out in legislation are sufficiently clear. A couple of industry representatives asked for centralisation of supervision of the interpretation of STS criteria under one body to avoid the need to consult all competent authorities involved.

Question 8.5. Are any additional measures necessary to make sure that competent authorities are sufficiently equipped to supervise the market?

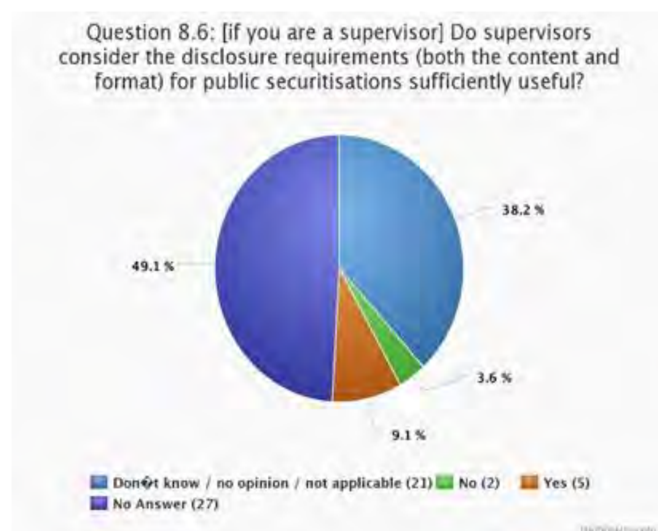


Most respondents to the consultation did not answer or had no opinion on this question. Among those who replied there was a clear majority against additional measures. Most industry views stressed that no additional measures are necessary. Most public authorities that replied, one NGO shared this view. One NGO and two public authorities were in favour of additional measures.

Two public authorities (from the same Member State) called for the introduction of the concept of a lead supervisor chosen amongst competent authorities. In their view, this lead supervisor would coordinate the sharing of information between supervisors, particularly in a context where different supervisors are involved in checking the compliance with the different requirements of the regulation. One NGO asked for expanding supervisory resources and expertise at the ESAs, so that effective ex ante reviews of securitisation transactions can be introduced. It also called for centralised supervision.

Industry arguing against new guidance stressed that no additional measures were necessary. Public authorities against guidance highlighted that the current measures appear adequate and, besides the points mentioned in questions 8.4 (i.e. guidance from Joint Committee), no additional measures are necessary.

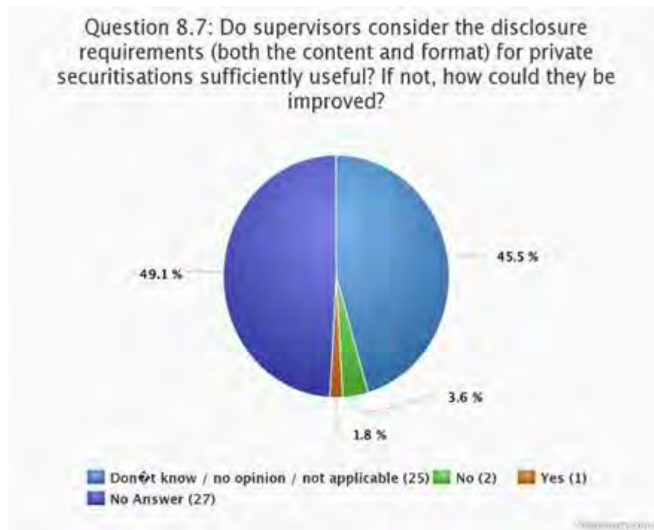
Question 8.6. Disclosure requirements for public securitisation



This question was addressed only to supervisors. Four public authorities replied. However, a few industry representatives replied too. The majority that replied considered the disclosure requirements sufficiently useful. Two public authorities had the opposite view.

One public authority pointed out that the current disclosure requirements are fit for purpose and allow to collect and analyse data about the trend in the performance of the underlying assets. Another authority highlighted that despite the concerns among reporting entities, especially among less sophisticated issuers, about the quantity and complexity of data to report it is still too early to carry out an evaluation. They also stressed the importance to continue to re-calibrate the templates to ensure they respond to the needs of investors and supervisors. One public authority called for an in-depth review of existing templates, particularly by evaluating the merits of such templates vis-a-vis those used in other important non-EU jurisdictions. One public authority reported that information on private securitisation disclosed in investor reports provides more sufficient data than the information disclosed in templates.

Question 8.7. Disclosure requirements for private securitisations

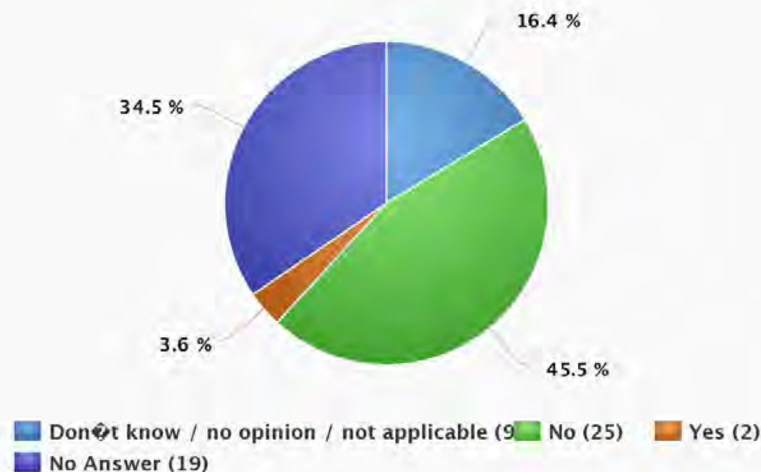


This question was addressed only to supervisors and only three of them replied. Two public authorities considered the disclosure requirements sufficiently useful.

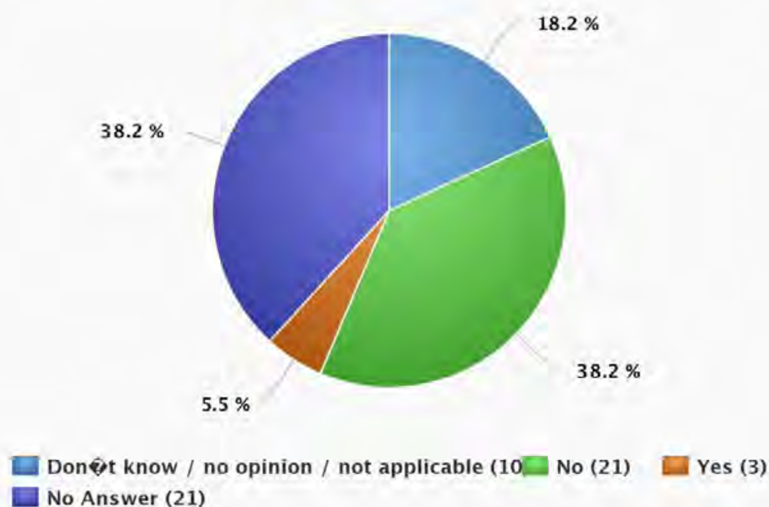
Two public authorities from the same Member State called for a simplification of the disclosure templates and for requiring a set of information available by means of a securitisation repository similar to those used for public deals, however restricted to NCAs' access only. Another authority highlighted that despite the concerns among reporting entities, especially among less sophisticated issuers, about the quantity and complexity of data to report it is still too early to carry out an evaluation. They also stressed the importance to continue to re-calibrate the templates to ensure they respond to the needs of investors and supervisors.

9. Assessment of non-neutrality correction factors impact

Question 9.1 (a): In your view, is the capital impact of the current levels of the (p) factor proportionate, having regard to the relative riskiness of each of the tranches in the waterfall, and adequate to capture securitisations� agency and modelling risks?



Question 9.2: Are current capital floor levels for the most senior tranches of STS and non-STS securitisations proportionate and adequate, taking into account the capital requirements of comparable capital instruments?



Summary of stakeholders' feedback on questions 9.1 and 9.2:

Industry stakeholders were unanimously opposed to current non-neutrality levels and recommended that these should be reassessed, noting that the absence of such non-neutrality factors in the US framework creates an uneven playing field for their EU counterparts.

More specifically, industry stakeholders found (p) factor levels embedded in the SEC-IRB and SEC-SA unduly punitive and not justifiable as they argued that model and agency risks have been (or will be) addressed by several supervisory (TRIM, SREP) and regulatory initiatives (EBA IRB repair, Securitisation Regulation, STS framework, output floors). As alternatives, stakeholders suggested:

a) scaling down current (p) factor levels. Some suggested lowering (p) levels to 0.25 for STS SEC IRBA and 0.5 for STS SEC SA, while setting/keeping levels at 1 for non-STS transactions; or

b) differentiating (p) factor levels by asset class to enhance the risk sensitivity of the framework,

Industry stakeholders also regarded capital floors as overly high when compared with capital charges on covered bonds and, thus, recommended that those be reduced for senior tranches of STS securitisations to narrow the gap.

Various industry stakeholders were adamant that the senior tranches retained by the originator should get a more favourable capital treatment than currently and relative to non-senior tranches. This would be justified by the originator's better understanding of the underlying assets and by its direct role in structuring the transaction which puts it in a strong position to reassess the input parameters of the SEC-IRBA on a continuous basis.

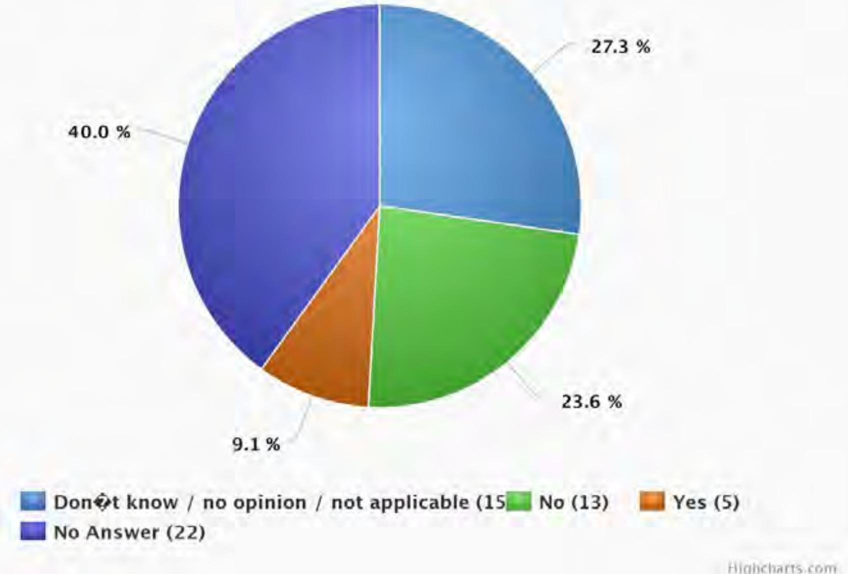
Another related comment concerned the impact of the output floor (OF). Industry stakeholders argued that the interaction of the OF with the SEC-SA would discourage the use of securitisation (especially synthetic securitisation) for risk transfer purposes, due to the punitive impact of the high (p) factor level in the SEC-SA. While those stakeholders advocated lowering the (p) factor level, they also contended that would partially offset the impact of the output floor.

Public sector stakeholders generally disagreed with these views, but some called for a review of the current framework to enhance its risk sensitivity while maintaining an adequate level of prudence.

Question 9.3: Are there any alternative methods to the (p) factors and the capital floors to capture agency and modelling risk of securitisations that could be regarded as more proportionate? Please provide evidence to support your responses to the above questions:

Only two stakeholders answered this question. One said that actual risk should be taken into account based on observed actual defaults and losses of securitisation positions that include agency and model risk. Another stakeholder suggested dropping the (p) factor and floors in exchange for tightening the STS.

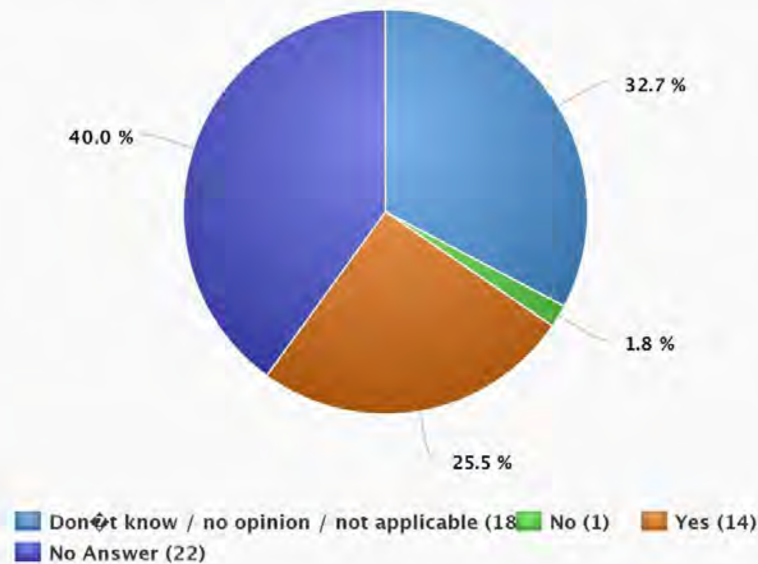
10. Maturity



A large majority of private sector stakeholders opined that the impact of the tranche maturity under the current framework (including EBA's methodology) is not adequate. Stakeholders put forward the following arguments to support their views:

- The exclusion of a prepayment assumption from the weighted average maturity (WAM) calculation for synthetics remains at odds with the true risk of a synthetic tranche. There is no rationale for this divergence between synthetic and traditional structures.
- The WAM calculation for SRT synthetic on-balance sheet transaction remains too conservative in certain aspects, with outcomes often not aligned with standard market practice for calculating the true maturity of a tranche.
- Divergent WAM calculation frameworks for originators and investors should be considered. As a risk mitigant /hedging tool, SRT transactions for banks should, all else being equal, be viewed more favourably when they offer a longer protection period. However, the current framework penalises this greater maturity. Other equivalent hedging tools (e.g. CDS) are treated more favourably by the CRR when being executed for longer periods.
- Article 257 (3) of the CRR has not been clarified by the EBA. This causes significant difficulties for private funding transactions, either through balance sheet or ABCP.
- The treatment of revolving periods is excessively conservative and unnecessarily complex as it assumes originators replenish with the longest permitted maturity. It introduces modelling difficulties whilst making the final WAM numbers harder to interpret, resulting in a potential misunderstanding of the true risk of a tranche.

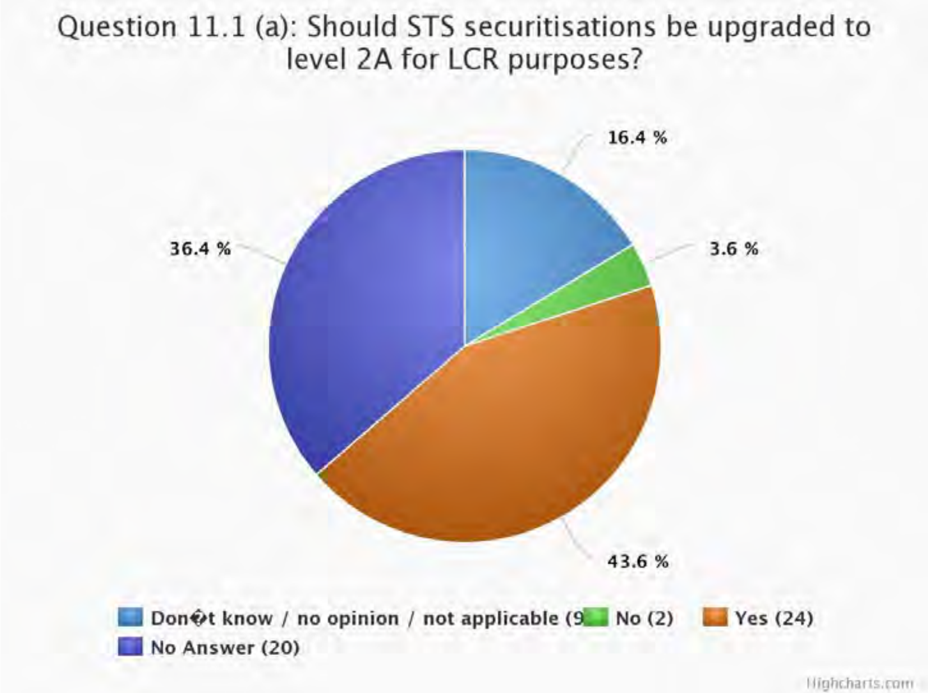
Stakeholders from the public sector, disagreed with this majority view and, instead, found the EBA's methodology on tranche maturity adequate.



Industry stakeholders suggested the following alternatives/changes to the treatment of tranche maturity under the current framework:

- Banks and investors should be informed on how maturity factors into the calibration of (p) in the SEC-SA.
- A significant reduction of the (p) factor would serve to address the issues raised by the current treatment of tranche maturity.
- Apply the standard WAL logic used by the market and, as suggested under question 10.1 above, consider divergent calculation methodologies for originators and investors.
- Use real data metrics for each sub-asset class to derive expected maturities for those securities. This is of particular benefit to ABS which currently sees no benefit from prepayment speeds being allowed. With both ABS and CLOs there has been enough issuance and enough data to show the (real) time needed for bonds to mature. One could then take the average of this and apply that as the expected maturity.

11. Treatment of STS securitisations and asset-backed commercial papers (ABCPs) for the liquidity coverage ratio (LCR)



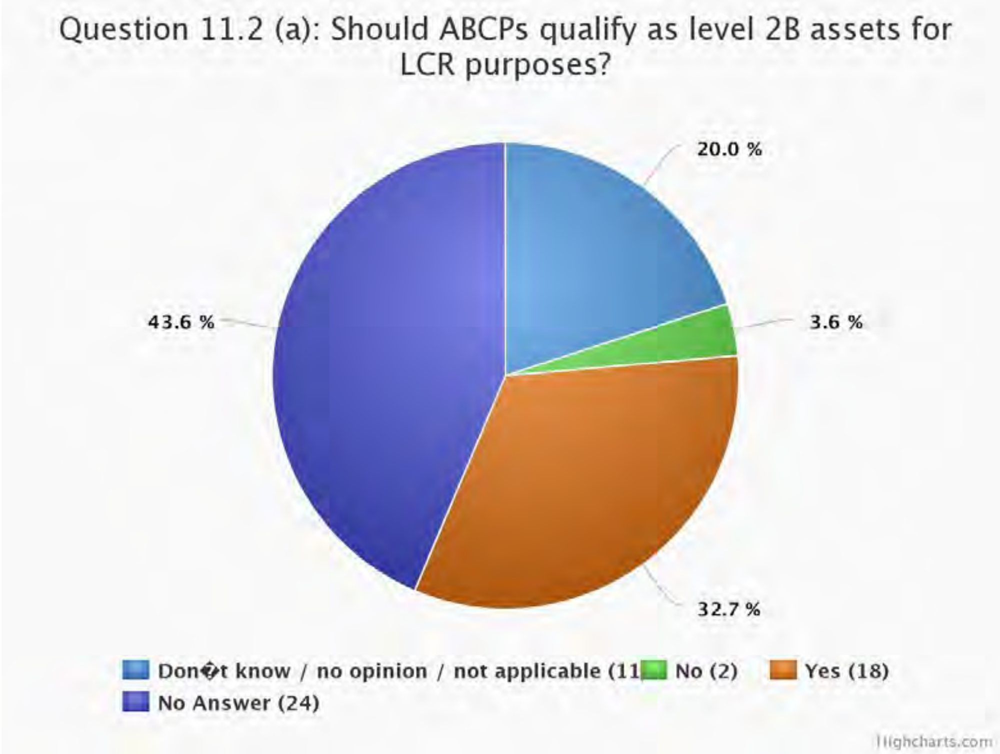
A large majority of private sector stakeholders believed the LCR treatment of STS securitisations should be upgraded in view of their good performance during the 2020 COVID crisis. A better LCR treatment would reduce or remove the existing gap between securitisations and covered bonds. Those stakeholders also criticised the fact that LCR eligibility was narrowed to completely exclude non-STS securitisations.

Industry stakeholders suggested upgrading the LCR treatment to Level 1 for senior tranches of STS securitisations backed by residential mortgages and auto loans, and to Level 2a for senior tranches of STS securitisations backed by SME loans and other consumer loans. Senior tranches of non-STS securitisations should be eligible for Level 2b, with haircuts aligned to those applying to covered bonds. The maturity cap of 5 years for LCR eligibility should be removed.

Stakeholders from the public sector, disagreed with these views and opined that the current LCR treatment of securitisations is adequate.

Question 11.1 (b): If you answered 'yes' to question 11.1(a), should specific conditions apply to STS securitisations as Level 2A assets to mitigate a potential concentration risk of this type of assets in the liquidity buffer. Please support your arguments with evidence on the liquidity performance of STS securitisations or parts of the market thereof, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020

Indusry stakeholders were of the view that securitisations should be treated like any other level 1 or 2a asset class and that existing LCR rules already allow to mitigate concentration risk by limiting shares and haircuts.



Private sector stakeholders advocated giving ABCPs LCR eligibility, at least as level 2b or higher. Those stakeholders argue that the ABCP market showed a good liquidity performance during the Covid-19 crisis with no severe impact on external placement activities. They also argued that ABCP programmes in Europe are structured with fully supported liquidity lines, which makes them similar to 'short term covered bonds' and that, given the availability of 100% liquidity back-up lines provided by banks, ABCP should be similarly treated as other bank exposures.

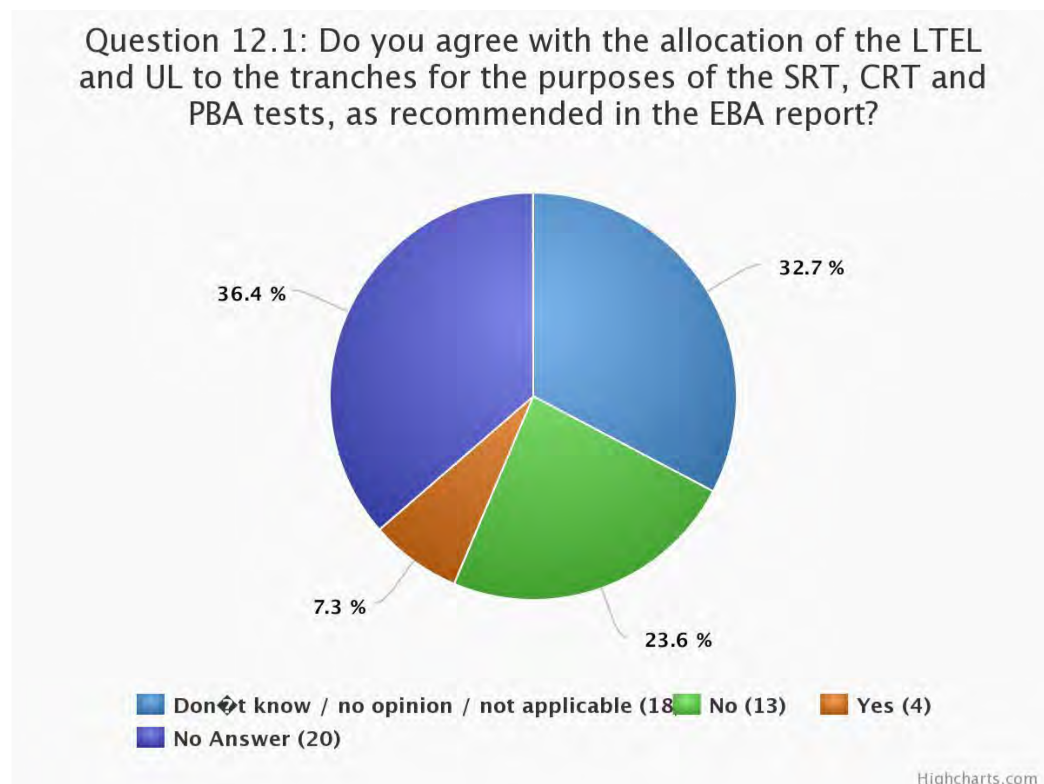
Private sector stakeholders argued that some large European investors are reluctant to invest even in multi-seller fully supported ABCP programmes for several reasons, noting in particular that ABCPs do not qualify for LCR and are not eligible as Eurosystem collateral. Hence, giving ABCPs LCR eligibility would help grow their investor base.

Stakeholders from the public sector argued that there is no clear evidence of the liquidity performance of ABCPs and, therefore, it would not be prudent to recognise them as level 2b assets. Furthermore, this would be a deviation from the Basel framework.

Question 11.2 (b): Should specific conditions apply to ABCPs as level 2B assets for LCR purposes. Please support your arguments with evidence on the liquidity performance of ABCPs, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

No relevant feedback was provided in relation to this question.

12. SRT tests



Question 12.2: What are your views on the application of Art. 252 of the CRR on maturity mismatches when a time call, or similar optional feature, is expected to happen during the life of the transaction?

Summary of market stakeholders' feedback on questions 12.1 and 12.2:

- Private sector stakeholders disagreed with the EBA-recommended allocation of lifetime expected losses (LTEL) and the unexpected losses (UL), in particular as regards the suggested back-loading of UL in a stressed scenario. They noted that this allocation would make it very difficult for securitisations with pro-rata amortisation structures to pass the tests.

- Those stakeholders considered that the EBA recommendations are based on incorrect assumptions because the proposed allocation regards the LTEL and UL absorbed by excess spread or by a retained first

loss tranche as not having been transferred to investors. Furthermore, they consider that the allocation mechanism underpinning the tests is based on the (wrong) premise that the originator will exercise the time call at the first available opportunity and that the securitised portfolio is comprised of bullet loans.

- Private sector stakeholders recommended instead that the tests be amended to distribute the UL across the life of the transaction using the same back-loaded vector proposed by the EBA for the distribution of expected losses (33.4% of UL allocated to first 2/3 of the transaction, and 66.6% allocated to final 1/3, as determined by the timing of the clean-up call).

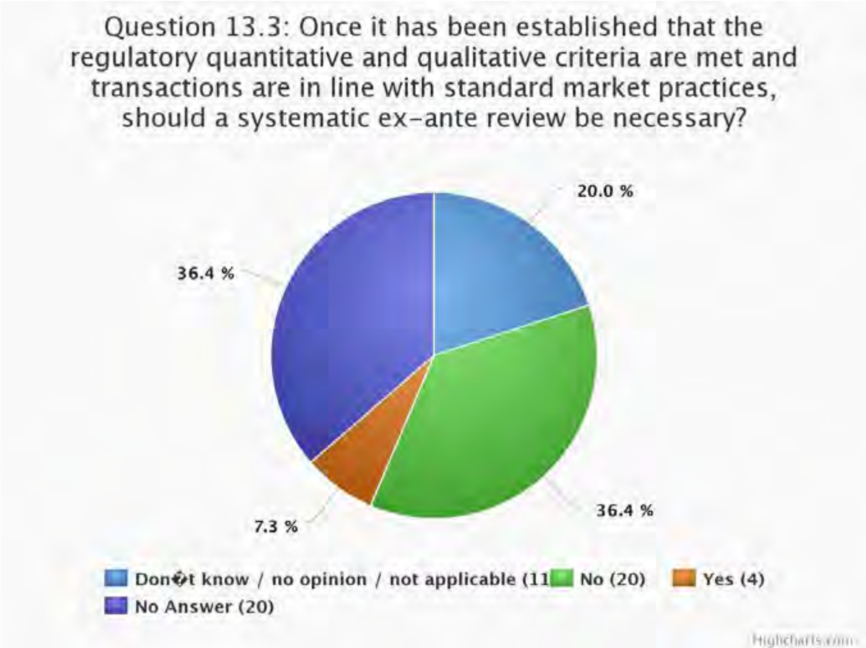
- Those stakeholders also noted that the EBA-suggested tests are based on the assumption that the originators of synthetic securitisations are required to treat the earliest call date as the scheduled maturity of the securitisation, with the resulting maturity mismatch causing the transaction to be economically unviable.

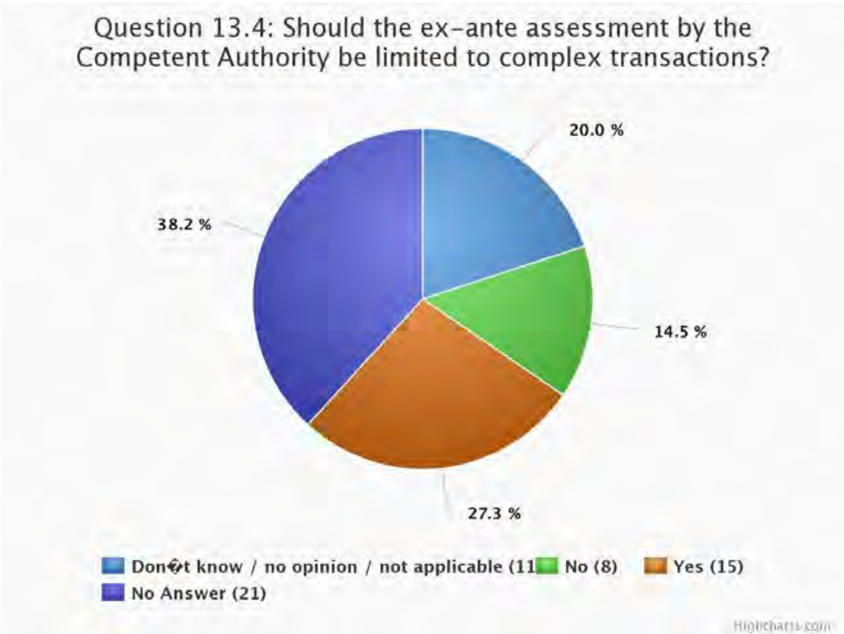
- Some industry respondents also questioned the merit of the principle-based approach (PBA) test to supplement the existing mechanistic tests in the CRR. They stressed that the PBA's stated purpose of ensuring that the thickness of the mezzanine tranche placed with investors is large enough is already met through the operation of the framework. Transactions with too thin mezzanine tranches could potentially pass the mezzanine test, but they would not be economically viable for the originator as capital savings generated would be insufficient to justify the cost of the transaction. However, these stakeholders would see merit in replacing the current mechanistic test in the CRR with a PBA test as suggested by the EBA.

13. SRT assessment process

Question 13.1 What are your views on the EBA-recommended process for the assessment of SRT as fully set out in Section 5 of the EBA report on SRT?

Question 13.2: Do you agree with the standardised list of documents that the EBA report on SRT recommended for submission to the competent authority for SRT assessment purposes?

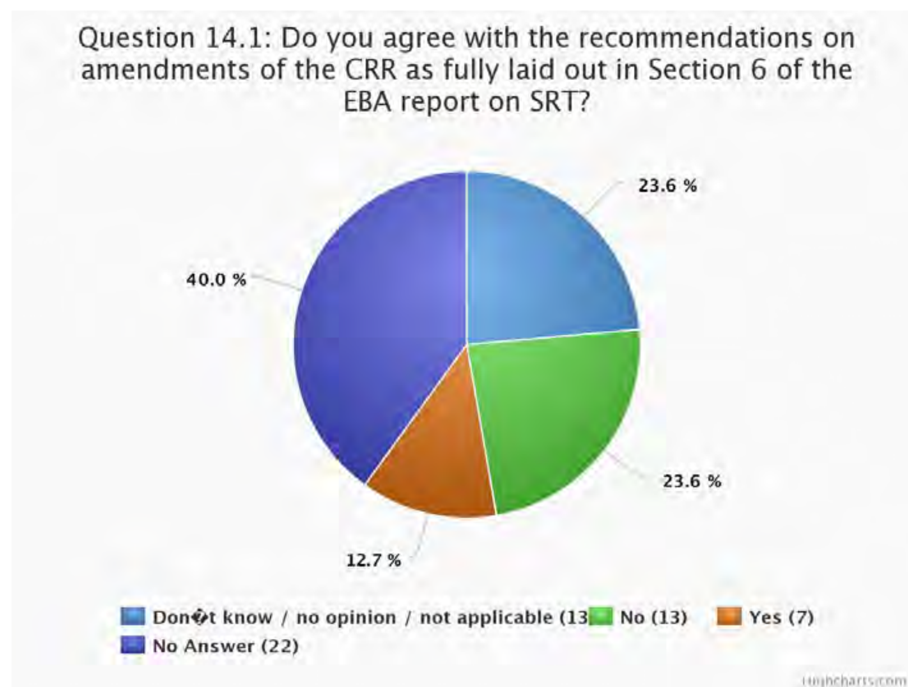




Summary of stakeholders' feedback on questions 13.1 to 13.4:

- Private sector stakeholders generally regarded the proposal of a formal and binding process for SRT notifications and the explicit feedback from the competent authority as helpful. Likewise, the industry also welcomed the proposed fast-track for certain securitisations but considered the proposed list of transactions eligible for such a fast-track as too short.
- However, industry respondents found the suggested "structural features" and related "safe harbours" as overly complex, with the potential of rendering the SRT assessment process longer.
- Private sector stakeholders would favour much shorter timetables than those envisaged by the EBA and a much more expedited process for repeat transactions and for transactions that do not exhibit new or non-standard features.
- Generally, those stakeholders called for predictability, stability and transparency in SRT assessments. Competent authorities should grant their non-objection before the securitisation's closing and this decision should not be subject to potential revocation or subsequent review.

14. Amendments to CRR

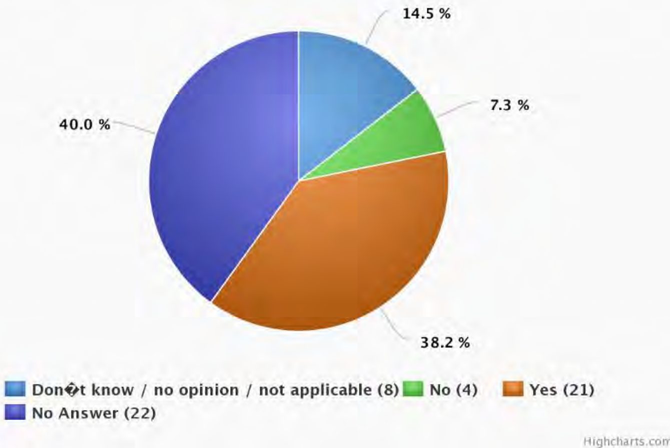


The respondents (private sector stakeholders only) were practically unanimous in their opposition to the EBA recommendation of replacing the current quantitative tests in the CRR with the PBA test. However, this view appeared motivated mainly by their previously stated objection to the assumptions underpinning the PBA test as per the SRT Report.

15. Solvency II

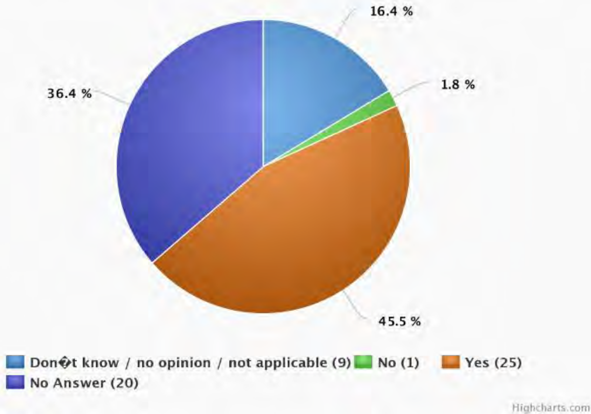
Section 15 included questions on capital requirements for investments in securitisation by insurance and reinsurance companies. Out of the 56 replies to the consultation, there were three stakeholders from the insurance sector, namely two insurance sector trade associations and one insurer from a third country.

Question 15.1. Insurers' appetite for investments in securitisation



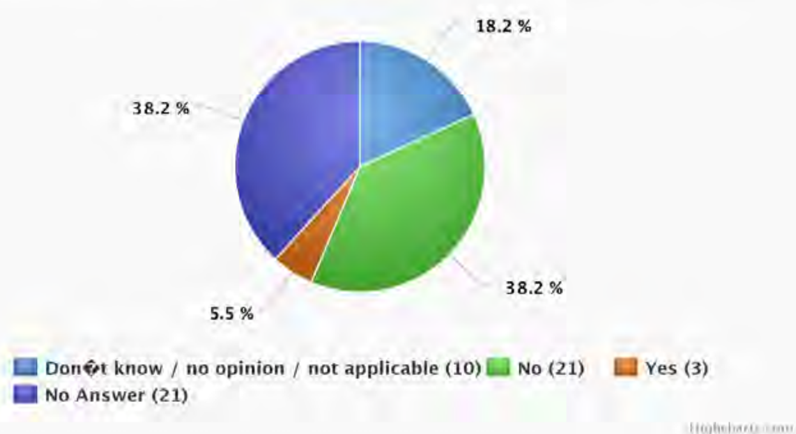
There were 25 responses to this specific question. Only four of those reported no appetite by insurers to increase investments in securitisation, whereas all others, including all three insurance stakeholders, reported such appetite by insurers.

Question 15.2. Impediments to investments in securitisation



27 stakeholders responded to this question[2] and 25, including all three insurance stakeholders, said that there are factors preventing an increase of investments in securitisation by insurers. Most of those responses referred to the level of capital requirements for securitisation. Few responses mentioned that high capital requirements at the inception of Solvency II led to a withdrawal of insurers from the securitisations market and the resulting loss of expertise has increased the barriers for re-entry. Two respondents found nothing preventing an increase in securitisation investments by insurers.

Question 15.3. Level of capital requirements for senior tranches of STS securitisation



Out of 26 replies to this specific question[3], three respondents, including two insurance stakeholders, found that the level of capital requirements for senior tranches of STS securitisation is proportionate and commensurate with their risk. The other 23 responses found the capital requirements for senior traches of STS securitisation was not commensurate with the risks. Most respondents deemed the differences in capital requirements for senior STS securitisation and other asset classes, notably corporate bonds and loans, covered bonds or mortgages, too high. Some asked for alignment with the capital requirements for those other asset classes. Some also suggested to introduce a floor to the capital requirements for senior tranches of STS securitisation on the basis of the capital requirements for the underlying pool of assets. Furthermore, some respondents suggested an approach differentiating between assets held for trading and those held for a longer term ('buy and hold') with the latter not be subject to spread risk. That would be similar to the bank and trading book separation in banking prudential rules. Those respondents would expect securitisation investments by insurers to fall typically into the "buy and hold" category of assets. Some respondents suggested a recalibration of the capital requirements on the basis of data for the period since the Securitisation Regulation has entered into application. One respondent suggested to determine the capital requirements for investments in senior

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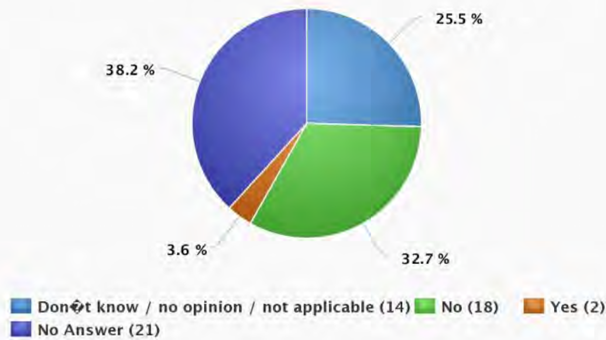
[2] One respondent that marked the 'Don't know/no opinion/not applicable' answer, provided input in the free text field.

[3] Three respondents that ticked the 'Don't know/no opinion/not applicable' box , provided an answer in the free text field.

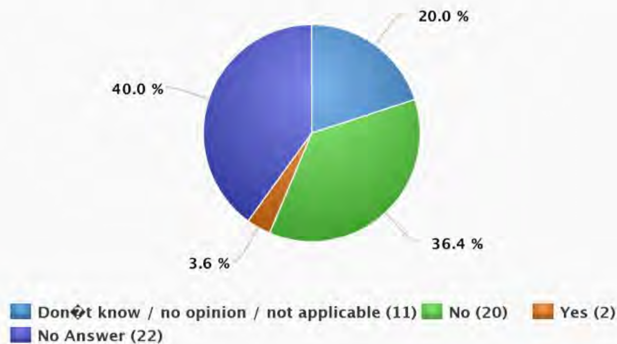
tranches of STS securitisation by applying the same capital requirements that would apply to covered bonds of the same credit quality step and duration.

Question 15.4. Level of capital requirements for non-senior tranches of STS securitisation



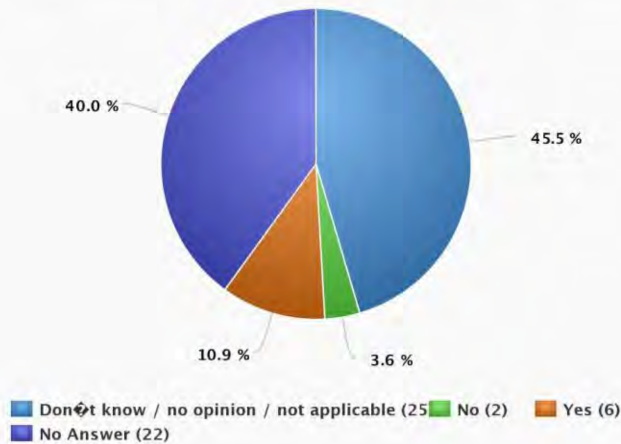
Out of 20 responses, two found that the level of capital requirements for non-senior tranches of STS securitisation is proportionate and commensurate with their risk. The 18 other respondents, including two insurance stakeholders, were of the view that capital requirements were not commensurate with the risk. Various reasons were provided to illustrate why capital requirements are considered too high. Several respondents referred to the large difference between, on the hand, capital requirements for non-senior tranches of STS securitisations and, on the other hand, capital requirements for (exposures to) corporates or senior tranches of STS securitisations. Several respondents also expressed the view that there should be no separate treatment for different tranches of securitisations as the differences in risk should be captured by the credit quality step of a tranche. Few respondents argued for a link to the capital requirements that would apply to direct investments in the underlying pool of assets. Few others said that the capital requirements should be calibrated on the basis of defaults instead of spreads. One respondent suggested to determine the capital requirements for investments in non-senior tranches of STS securitisation by applying the same capital requirements that would apply to exposures to corporates of the same credit quality step and duration.

Question 15.5. Level of capital requirements for non-STS securitisation



Out of 22 responses to this question, two found that the level of capital requirements for non-STS securitisation is proportionate and commensurate with their risk. The 20 other respondents, including all three insurance stakeholders, were of the view that capital requirements were not commensurate with the risk. Various reasons were provided to illustrate why capital requirements are considered too high. Several respondents referred to the large difference between, on the hand, capital requirements for non-STS securitisations and, on the other hand, capital requirements for exposures to corporates, STS securitisations or direct investments in the underlying pool of assets. Some respondents also expressed the view that the "STS label" would not be a good indicator for the risk of an investment in securitisations. One respondent suggested to determine the capital requirements for investments in non-STS securitisation by applying the same capital requirements that would apply to an investment in STS securitisation with the same duration but one credit quality step better.

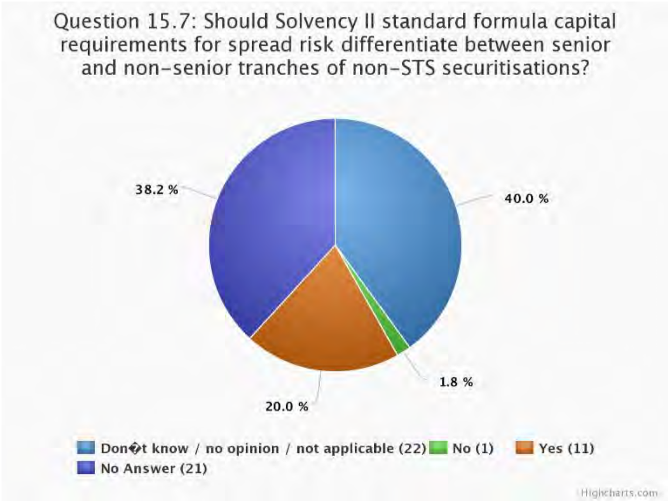
Question 15.6. Granularity of capital requirements for non-STS securitisation



Question 15.6 asked whether capital requirements should differentiate between mezzanine and junior tranches of STS securitisations.

Out of eight responses to this question, six favoured such a differentiation, including two insurance stakeholders. Two respondents indicated their disagreement with such an approach. Seven respondents provided further explanations on this topic. On the one hand, several respondents stated the view that credit quality steps are a better way to capture the differences in the risk between tranches of securitisation. Most of those respondents also expressed concerns on the complexity of the rules. On the other hand, several respondents saw merit in a more granular differentiation of capital requirements for tranches of securitisations.

Question 15.7. Granularity of capital requirements for non-STS securitisation



Out of twelve responses to this question, eleven, including two from insurance stakeholders, favoured a differentiation of Solvency II capital requirements between senior and non-senior tranches of non-STS securitisations. One respondent indicated disagreement with such an approach. Several respondents argued that credit quality steps are a better way to capture the differences in the risk between tranches of securitisation.