



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Template for comments

ECB Guide on the notification of securitisation transactions

Institution/Company

German Banking Industry Committee

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General comments

We have serious reservations about the ECB's proposed guide. Contrary to the ECB's explicitly stated intention, the guide will most certainly introduce new reporting requirements and thus run directly counter to the politically declared wish to facilitate securitisation in the EU. In our view, the reporting requirements will generate significant additional costs, which will have an especially adverse effect on the provision of ABCP finance for SMEs.

We are particularly critical of the fact that the guide will oblige banks to report once again information that they have already submitted to their competent authorities in the context of supervisory reporting. We would welcome it if, in the interests of cost-efficiency, the ECB used existing reporting channels and the data thus obtained instead of establishing further separate reporting requirements.

Should the ECB have a legitimate interest in collecting certain information over and above that required under the Securitisation Regulation and the associated technical standards, these reporting requirements should be better integrated into existing formats in order to avoid duplicate reporting and ensure data consistency. We would also like to recommend that the ECB work in the context of the Securitisation Regulation review towards deleting existing reporting requirements which do not serve a useful purpose. We would like to refer you in particular to our attached response of 22 September 2021 to the targeted consultation on the securitisation framework, and especially to our reply to question 2.5. on private bilateral or closed-group transactions.

Furthermore, the guide contains no provision for permitting significant institutions to delegate compliance with the recommendations to another entity, such as the securitisation issuer. This despite the fact that Article 7 of the Securitisation Regulation allows such delegation and that this practice is commonly used in the market. The guide would thus require such institutions to put their own reporting regimes in place (potentially alongside those for the relevant securitisation). This would, moreover, apply to all securitisations, whether public or private and whether STS or not.

Based on past experience it will not be possible at this stage to address all open questions in detail. It would therefore be helpful if the ECB, like ESMA, offered a Q&A function after publication of its final guide and template and published the ensuing questions and answers

Template for comments

ECB Guide on the notification of securitisation transactions

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: 5/1/2022

ID	Chapter	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Chapter 1	Footnote 3	2	Clarification	We would appreciate clarification that there will be no backloading, i.e. transactions originated before 1 April 2022 will not be covered by "during the life" reporting requirements. Although the proposed guide states that its recommendations are intended to apply to any securitisation which creates new securitisation positions on or after 1 April 2022 (to be in line with Article 43(9) of the Securitisation Regulation), they also seem to permit the ECB to request information on securitisation transactions originated before that date on a case-by-case basis. So in practice, there may not actually be any grandfathering at all. Extending these obligations to historic securitisations would cause practical problems for SIs as they would not have envisaged having to comply with such requirements at the time.		Krohne, Felix	Publish
2	Chapter 2	2.2	4	Clarification	We would appreciate clarification of which requirements will be replaced by those set out in the ECB's guide. Compliance with the guide will require additional effort due to the newly introduced CASPER interface.		Krohne, Felix	Publish

3	Chapter 2	2.2	4	Clarification	<p>Although the guide states that it "does not intend to introduce any new requirements", many of the points listed in the Annex are indeed new reporting requirements, especially those in Sections C and D in respect of Articles 6 and 8 of the SECR. While institutions are certainly required to comply with these articles, they are not obliged at present to document in detail how their compliance is achieved.</p> <p>Also, the "during the life" reporting requirement with respect to "any material events ... in relation to compliance with Articles 6 to 8 SECR" (Chapter 3, page 6) is broader than the requirements of Article 7(1)(g) of the SECR.</p>		Krohne, Felix	Publish
4	Chapter 3		5	Clarification	<p>We would appreciate clarification of the CASPER onboarding process and its functioning. Will there, for example, be an online questionnaire or a possibility to upload information? We believe that workshops would be helpful.</p>		Krohne, Felix	Publish
5	Chapter 3		6	Clarification	<p>It should be clarified whether or not information has to be provided both on a continuous basis AND after a material event. Further below (on page 11) the ECB states that during the lifetime of the transaction a notification is required only after a material event (but not on a continuous basis). Therefore it should be clarified that any reporting required hereunder is either at closing or in the event of material changes. See also our remarks below on page 11.</p>		Krohne, Felix	Publish
6	Chapter 3		5	Clarification	<p>The Guide therefore recommends that SIS acting as originators or sponsors for either private or public securitisations notify the ECB of compliance of these transactions with Articles 6 to 8 SECR. Notifications are expected to be submitted in a dedicated template [via the CASPER platform].</p> <p>With regard to the technical standards which entered into force on 23 September 2020 and the 15 reporting templates available on https://www.esma.europa.eu/policy-activities/securitisation#title-paragrah-4: under Article 7(1) of the SECR a reporting obligation "to the competent authorities" already exists (for SIs) with respect to private ABSs. Please explain the reason for additional reporting of any information required under Article 7(1)(a) to (g) via separate channels. In particular, SIs already provide the ECB with information required under Article 7 of the SECR</p>		Krohne, Felix	Publish
7	Chapter 3		5	Clarification	<p>"...to be submitted in a dedicated template [via the CASPER platform]": would this be a different template to those published at https://www.esma.europa.eu/policy-activities/securitisation?</p>		Krohne, Felix	Publish

8	Chapter 3		5	Deletion	"...to be submitted in a dedicated template [via the CASPER platform]": we see no benefit in using different templates to those published on https://www.esma.europa.eu/policy-activities/secritisation .		Krohne, Felix	Publish
9	Chapter 3	Footnote 7	5	Clarification	Footnote 7 "...new transactions be notified to the ECB within two weeks of the date of origination": our understand is that footnote 7 actually refers to the "closing" of a transaction (i.e. the issuance of funding instruments). The term "origination" may lead to confusion.		Krohne, Felix	Publish
10	Chapter 3		5	Clarification	"...new transactions be notified to the ECB within two weeks of the date of origination": we think any reporting dates should be aligned with those already in place under implementation of Article 7 of the SECR to avoid redundant work streams. Also, data might not be ready for delivery at a different date as procedures are calibrated for reporting in accordance with Article 7 of the SECR.		Krohne, Felix	Publish
11	Annex Section A		8	Clarification	As a general point, there should be no overlaps or double reporting. Information which is already reported under Article 7 of the SECR should be exempted.		Krohne, Felix	Publish
12	Annex Section A	3(c)	8	Deletion	Information about the SRT status is already submitted to competent authorities in the application for recognition of a significant risk transfer (SRT). Duplicate provision of the information should be avoided.		Krohne, Felix	Publish
13	Annex Section A	5	8	Deletion	Details of the "nominal amount of the underlying exposure" are already reported to competent authorities in accordance with Article 7(1)(a) of the SECR. Duplicate reporting should be avoided. Should this reporting requirement nevertheless be retained, we assume it will be sufficient to report the nominal amount at the time the transaction is closed, not monthly updates on changes.		Krohne, Felix	Publish
14	Annex Section A	6	8	Deletion	Details of the "nominal amount of the tranches" are already reported to competent authorities in accordance with Article 7(1)(a) of the SECR. Duplicate reporting should be avoided. Should this reporting requirement nevertheless be retained, we assume it will be sufficient to report the nominal amount at the time the transaction is closed, not monthly updates on changes.		Krohne, Felix	Publish
15	Annex Section A	9	8	Clarification	A private ABS is not offered to investors. The SI finances/invests in a private ABS transaction wholly (or partially together pari passu with other banks). 100% of the private ABS transaction is funded at closing. All funding parties (banks) will have undertaken credit procedures before closing and no other investor will need any information.		Krohne, Felix	Publish

16	Annex Section B	1	9	Deletion	The classification of the underlying exposures in accordance with Article 2 of Delegated Regulation (EU) 2020/1224 already has to be reported to competent authorities under Article 7(1)(a) of the SECR. Duplicate reporting should be avoided.		Krohne, Felix	Publish
17	Annex Section B	3	9	Deletion	The classification of the underlying exposures in accordance with Annex XI of Delegated Regulation (EU) 2020/1224 already has to be reported to competent authorities under Article 7(1)(a) of the SECR. Duplicate reporting should be avoided.		Krohne, Felix	Publish
18	Annex Section B	4	10	Clarification	It is not clear exactly what information is supposed to be reported about a "portfolio in the ramp-up phase".		Krohne, Felix	Publish
19	Annex Section B	5	10	Clarification	It is not clear whether this notification requirement only refers to loans.		Krohne, Felix	Publish
20	Annex Section C	1	10	Clarification	It is not clear how transactions are supposed to be reported if they have no final legal maturity.		Krohne, Felix	Publish
21	Annex Section C	2	10	Clarification	It is not clear exactly what information is supposed to be reported here.		Krohne, Felix	Publish
22	Annex Section C	3	10	Deletion	This information already has to be reported to competent authorities under Article 7(1)(a) of the SECR. Duplicate reporting should be avoided.		Krohne, Felix	Publish
23	Annex Section C	4	10	Clarification	We believe a distinction should be made about who has retained the risk since this will give rise to different requirements.		Krohne, Felix	Publish
24	Annex Section C	10	10	Clarification	It is not clear exactly what information is supposed to be reported here. Please check the reference to Article 8(4) of the SECR, which sets out exemptions from the definition of "resecuritisation" for ABCP programmes.		Krohne, Felix	Publish
25	Annex Section D	1	10	Deletion	It is not clear to us why SIs should have to reconfirm that they have complied with rules that are (for the most part) binding under the SECR. On top of that, we consider the amount of information required to be excessive. Banks will have to invest considerable time and effort compiling these data which, given the sheer scale involved, supervisors are unlikely to be able to evaluate in a meaningful way. Banks are naturally prepared to answer specific questions about individual transactions. This should be sufficient to satisfy supervisors' interest in obtaining information. Furthermore, SIs will have to provide written confirmation that a securitisation complies with Articles 6 to 8 of the SECR and with any applicable delegated regulations and that the information provided reflects the "actual arrangements and features" of the securitisation. This (particularly confirmation of aspects regarding the "actual arrangements") goes beyond what is currently delivered by originators, sponsors, etc. and will potentially alter (or at least fail to reflect) the burden of responsibility for describing the transaction in accompanying material.		Krohne, Felix	Publish

26	Annex Section D	2	11	Deletion	This information already has to be provided under Section A, no. 9 of the Annex to the ECB guide. The requirement should therefore be deleted from Section D.		Krohne, Felix	Publish
27	Annex Section D	1(b)(iii) and 2	10, 11	Clarification	It should be clarified that there is no need to make this information available to investors if an institution is funding a transaction which is not offered to investors. Detailed description of such a case: the SI finances/invests in a private ABS transaction wholly (or partially together pari passu with other banks). 100% of the private ABS transaction is funded at closing. All funding parties (banks) have received full information and have undertaken credit procedures before closing. There is no other investor who would need any information. The SI has already provided the ECB with the information required under Article 7 of the SECR.		Krohne, Felix	Publish
28	Annex Section D	3	11	Deletion	The Annex contains an ongoing requirement for SIs to provide an assessment at least every two years of how its internal policies and procedures ensure compliance with Articles 6 to 8 of the SECR. It is not clear how this would be structured to align with the existing monitoring of ECB-regulated entities or whether this is in fact an additional obligation. Though banks are happy to answer specific questions about individual transactions, they oppose the idea of preparing extensive documents ex ante whose number and scale make it unlikely that they will actually be read. What is more, such a requirement is nowhere to be found in the SECR. This goes especially for the frequency of "at least every 2 years". Should the requirement nevertheless be retained, it should be clarified whether it can be met by reviews of the processes concerned by external auditors in the course of the annual audit (these are normally carried out as and when required rather than at fixed intervals).		Krohne, Felix	Publish
29	Annex Section D	3	11	Clarification	Most private ABS transactions and trade receivable transactions, in particular, often have similar structures to ensure compliance with Articles 6 to 8 of the SECR. Should the requirement to demonstrate compliance with Articles 6 to 8 be retained, it should be clarified that it will not always be necessary to involve senior management in such cases. Corresponding contractual undertakings by the originator of a securitisation are usually in place, especially with respect to Articles 6 and 8.		Krohne, Felix	Publish

30	Annex Section D		11	Clarification	<p>The guide recommends notifying the ECB without undue delay of any material event or change affecting or likely to affect the features of the transaction, particularly in relation to Articles 6 to 8 of the SECR. Leaving aside the potential duplication of existing equivalent transparency obligations under the SECR, the open/non-exhaustive way in which this is drafted suggests that SIs will be required to undertake a more general monitoring/notification role for the benefit of the ECB than that set out in the SECR.</p>		Krohne, Felix	Publish
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