European Financial
Markets Lawyers Group

DRAFT

EFMLG REPLIES TO THE QUESTIONNAIRE

ON LEGAL OBSTACLES TO CROSS-BORDER SECURITISATION

3 November 2005

COUNTRY	QUESTION 1: Securitisation Law
	(I) Is there a specific law applicable to securitisation in your jurisdiction? If not, please specify the relevant legal provisions which apply.
Austria	In Austria there is no specific (comprehensive) law regulating securitisation. Currently, only two provisions of Austrian law deal explicitly with aspects of securitisation. (1) § 33(21)(2)(7) of the Stamp Duty Act 1957 (*Gebührengesetz*) exempts assignments of receivables made to securitisation companies (*Verbriefungsgesellschaften*) from the 0.8 % stamp duty which would otherwise apply to such assignments. This provision entered into force on 31 December 2004.; and (2) § 2(60) of the Banking Act 1993 (*Bankwesengesetz*, BWG) describes special securitisation companies (*Verbriefungsspezialgesellschaften*) as legal entities which carry on the following activities exclusively: issuing debt obligations, taking-on loans, entering into hedging transactions and entering into auxiliary transactions with respect to the foregoing in order to purchase assets, in particular receivables, which originate in the business operations of other undertakings or to assume risks relating to such assets. The provision states that the business conducted by such companies is not banking business (which would imply that special securitisation companies do not require a banking licence). The provision further states that when purchasing receivables from credit institutions (or when assuming risks with respect to such receivables) the special securitisation company must adhere to §38 of the BWG (banking secrecy) in the same manner as credit institutions. § 2(60) of the BWG entered into force on 1 June 2005. The more general provisions applying to securitisations are, *inter alia,* (with respect to the 'true sale' of assets) Austrian civil law, commercial law and insolvency law; (with respect to data protection) the Data Protection Act [year] (*Datenschutzgesetz*) and (regarding credit institutions) § 38 of the BWG; etc.
Belgium	
Denmark	
England and Wales	English law is a common-law system based on statute and case-law. There is no single specific law applicable to securitisation in the UK. The following may apply when structuring a securitisation transaction in the UK. This is not an exhaustive list. **(1) Transfer and isolation of assets**: • In the context of banks, the Financial Services Authority's (FSA)'s 'Interim Prudential Sourcebook for Banks', Volume 2, Chapter SE 'Securitisation', Sections 5.2-5.5; in the context of building societies, the FSA's 'Interim Prudential Sourcebook for Building Societies', Volume 1, Chapter 10 'Securitisation', (hereinafter collectively referred to as the 'FSA Handbook'). • Section 136 (legal assignment) and Section 114 (transfer of mortgages) of the Law of Property Act 1925; Land Registration Act 1925. • The body of case-law on prohibition of assignment and declaration of trust (e.g. *Don King Productions Inc* v *Warren and others* [1999]). **(2) Taking security and insolvency**: • The body of case-law on the re-characterisation of floating/fixed charges (e.g. *Re Brumark Investment Limited* [year]*; Agnew* v *Commissioner of*

	Inland Revenue [2001], *National Westminster* v *Spectrum* [2004]). • Land Registration Act 2002, if registered land. • Land Charges Act 1925, if unregistered land. • Companies Act 1985, Sections 395-399 relate to the creation of security by companies. • Insolvency Act 1986; Financial Services and Markets Act 2000; Enterprise Act 2002.
Finland	There is no single specific law applicable to securitisations. The Mortgage Bank Act [2000?], the Real Estate Fund Act [year] and the guidelines of the Finnish Banking Supervision Office [year], issued in 1996, contain provisions relevant to securitisation. The Mortgage Bank Act has the purpose of facilitating the incorporation of mortgage banks. The majority of the bank groups have established a mortgage bank, but only a few securitisations have taken placeso far, and these have been minor.
France	France's legal regime for securitisation is contained in Law No 88-1201 of 23 December 1988 relating to collective investment schemes and debt mutual funds (*loi n° 88-1201 du 23 décembre 1988 relative aux organismes de placement collectif en valeurs mobilières et portant création des fonds communs de créances,* hereinafter the 'Securitisation Law'). This was codified and amended in Articles L 214-5 and L 214-43 to L 214-49 of the Monetary and Financial Code (*Code monétaire et financier*, CMF), via the Financial Security Law of 1 August 2003 (*Loi de Sécurité Financière*, hereinafter the 'Financial Securitisation Law'). The Securitisation Law created a specific form of securitisation vehicle known as a *fonds commun de créances* (FCC), literally a 'common pool of debts'. The original Decree No 1989-158 of 9 March 1989 relating to securitisation was superseded and replaced by Decree No 2004-1255 of 24 November 2004. The Financial Securitisation Law has significantly changed the securitisation regime in France by, for example, authorising FCCs to issue various types of debt securities and enter into credit derivatives arrangements, and by creating dedicated accounts.
Germany	There is currently no single specific German law applicable to securitisation although legislation is pending which is intended to facilitate securitisation transactions in Germany. The most relevant provisions that apply to securitisation transactions are §§ 398 et seq. of the Civil Code (*Bürgerliches Gesetzbuch*), which deal with the assignment of claims. Certain tax provisions apply to securitisation, such as that relating to trade tax (*Gewerbesteuer*) as further described below (see question 7(I)). Another tax provision which is relevant to securitisation is § 13c of the Value Added Tax Act [year](*Umsatzsteuergesetz*). According to this provision, an SPV which acquires receivables on which value added tax (VAT) is to be paid is liable to pay such VAT if it is not paid by the seller. Furthermore, the servicing by the originator of the receivables sold in an asset-backed securities transaction need not be licensed under the Legal Advice Act [year] (*Rechtsberatungsgesetz,* § 5 No 5).
Greece	Yes, there is a specific legal framework which was established by Law 3156/25.6.2003 (hereinafter the 'Securitisation Law'). Furthermore, Article 14 of Law 2801/2000 contains specific provisions applicable to public sector securitisation which will not, however, be considered for the purposes of this questionnaire. In addition to the Securitisation Law, the sale and transfer of the securitised assets is governed by the relevant provisions on sale contracts and assignment (Articles 513 and 455, respectively, of the Civil Code).
Ireland	Ireland does not have a specific legislative framework relating to securitisation (although see question 7(II) relating to the special tax regime for SPVs). Securitisation transactions involving Irish entities and/or assets are governed by general Irish laws relating to companies, security, transfers and assignments of assets and insolvency matters, etc. Irish law on these matters derives from legislation (both domestic and Community) and case-law.

Italy	Law No 130 of 30 April 1999 (hereinafter the 'Securitisation Law'), governs securitisation transactions implemented in Italy. In addition to the Securitisation Law, the Parliament has regularly issued special provisions [what are these special provisions called exactly?] in respect of certain specific securitisation transactions carried out by public bodies, for example provisions relating to the recent public real estate securitisation transactions carried out by the Government, or the securitisation transactions carried out by (for instance) the Italian Lottery or the Italian regions. Such legal provisions, however, refer to specific transactions and do not constitute a legal framework applicable to securitisation transactions generally.
Luxembourg	Yes, the Law of 22 March 2004 relating to securitisation (hereinafter the 'Securitisation Law'), provides a flexible framework for securitisation transactions, including cross-border transactions using a Luxembourg securitisation entity as an SPV. Securitisation transactions may also be carried out outside the scope of the Securitisation Law, e.g. by using a fiduciary structure. However the responses to the questionnaire relate to the Securitisation Law only.
The Netherlands [1]	There is no specific law applicable to securitisations in the Dutch jurisdiction. Relevant legal provisions which would apply to securitisation transactions can be found in the Netherlands Civil Code and in the Bankruptcy Law.
Portugal	The regime for securitisations is contained in Decree-Law 453/99 of 26 October [1999?] (hereinafter the 'Securitisation Law'), which allows two types of securitisation vehicles to perform securitisation transactions: (i) credit securitisation funds (*fundos de titularização de créditos*, FTCs); and (ii) credit securitisation companies (*sociedades de titularização de créditos*, STCs'), both established under the terms and conditions of the Securitisation Law. Other laws and regulations must also be taken into account, such as Decree-Law 219/2001 of 4 August 2001 (hereinafter the 'Securitisation Tax Law'), the Share Capital Regulations (Regulation 284/2000 of 23 May [2000?] and Regulation 676/2002 of 19 June 2002) and finally a number of regulations issued by the Banco de Portugal and by the Securities Commission (*Comissão do Mercado de Valores Mobiliários*). This legislation introduced a specific securitisation regime and established the regulatory framework under which securitisations can be structured in Portugal. When the assignment of receivables for securitisation purposes is made to a type of vehicle other than the two mentioned above, the Securitisation Law and the Securitisation Tax Law do not apply. In these situations, if the assignment is to be made under the law, the general assignment regime established by the Civil Code will apply.
Spain	Yes. Specific legislation applies to the securitisation of mortgages and other types of assets. Specific regulations relate to synthetic securitisations and the securitisation of future cash flows (with certain restrictions).
Sweden	(a) The only specific statutory provisions applicable to securitisation regard regulatory issues as capital relief for financial institutions, an exception for SPVs to acquire financial assets on a few occasions without being regulated, and so called Covered Bonds. An orphan SPV incorporated in Sweden will not be subject to regulatory treatment (capital adequacy requirements etc) if it is acquiring financial assets on no more than a few occasions and is obtaining funding on the capital markets (i.e. from the public) on no more than a few occasions. (b) General law regarding perfection of transfer and contract and insolvency law. Legislation regarding consumer protection, data protection, taxes etc

[1] Please note that the contribution regarding the Dutch legal framework is still under review and not complete.

COUNTRY	QUESTION 1: Securitisation Law (II) Does the law provide any definition of securitisation? Please specify.
Austria	No, but a definition could be derived from the definition of ‘special securitisation company’ in § 2(60) of the BWG (see question 1(I)). The immediate scope of that provision is limited to matters regulated by the BWG.
Belgium	
Denmark	
England and Wales	There is no formal definition. However, please note the following. • The glossary to the FSA Handbook provides the following definition: ‘Securitisation is a process by which assets are sold to a bankruptcy remote special purpose vehicle in return for immediate cash payment through the issue of debt securities in the form of tradable notes or commercial paper.’ • The UK Accounting Standards Board in its Financial Reporting Standard No 5 (Substance of Transactions) of April 1994, defines securitisation as ‘a means by which providers of finance fund a specific block of assets rather than the general business of the company’. • The Enterprise Act 2002 (see question 6(III)) provides for a special exception allowing the appointment of an administrative receiver in the case of what is described as a ‘capital market arrangement’, which aims to provide a relief for securitisation transactions falling under the following definition of a ‘capital market arrangement’: ‘72B First exception: capital market (1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least GBP 50 000 000 under the arrangement; and (b) the arrangement involves the issue of a capital market investment.’ • The Insolvency Act 1986 (as amended by the Enterprise Act 2002), Schedule 2A,provides the following definition of ‘capital market arrangement’: ‘2(1) For the purposes of Section 72B an arrangement is a capital market arrangement if (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement; or (b) at least one party guarantees the performance of obligations of another party; or (c) at least one party provides security in respect of the performance of obligations of another party; or (d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (options, futures and contracts for differences) … 3(1) For the purposes of Section 72B an investment is a capital market investment if it (a) is within Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (debt instruments); and (b) is rated, listed or traded or designed to be rated, listed or traded.’
Finland	The law does not provide any definition of securitisation.

COUNTRY	QUESTION 1: Securitisation Law (II) Does the law provide any definition of securitisation? Please specify.
France	No, French law does not provide any definition of securitisation. However Article L 214-43 of the CMF mentions that the exclusive purpose of an FCC is to acquire receivables and to issue units. Furthermore, Decree No 2004-1255 introduced a new legal concept for FCCs which was only applicable to collective investment schemes: the management strategy. Pursuant to Article 1 of this Decree, an FCC will complete its management strategy by purchasing receivables and debt securities or entering into credit derivatives agreements in order to bear the credit risk in respect of one or more reference entities of any nature.
Germany	The law does not provide any definition of securitisation.
Greece	Article 10(1) of the Securitisation Law contains the following definition: For the purposes of the present law, securitisation of claims is the transfer of business claims under a sale agreement concluded in writing between the 'transferor' and the 'transferee' combined with the issue and distribution, through private placement only, of bonds of any type and form, the redemption of which is effected: (a) by the proceeds of the business claims transferred; or (b) by loans, credit agreements and derivative instrument contracts. For the purposes of the present law 'private placement' is the distribution of bonds to a restricted circle of persons whose total number cannot exceed one hundred and fifty. Participation in the placements in question is open to mutual funds and portfolio investment companies with their registered office in Greece, provided that the bonds have been rated as 'investment grade' by an internationally recognised risk rating agency. Insurance funds and insurance companies cannot participate in private placement through either mutual funds or portfolio investment companies. Although the Securitisation Law refers to insurance funds and insurance companies, without specifying whether or not these are Greek (i.e. with their registered offices in Greece) as it does in relation to mutual funds and portfolio investment companies, we are of the opinion that only Greek companies fall within this article's scope of application. (Please note that the Securitisation Law also applies to claims in connection with real estate assets (Article 11(1)) Issues relating to real estate securitisation, however, will not be dealt with in this questionnaire. This provision reads as follows: For the purposes of the present law, securitisation of claims from immovables [i.e. real estate assets] is the transfer of immovables under an ordinary sale agreement concluded in writing between the 'transferor' and the 'transferee' combined with the issue and offer, through private placement only, of bonds of any type and form, each having a nominal value of at least one hundred thousand (100 000) euro, the redemption of which is effected: (a) by the proceeds of the administration or sale of the immovables transferred ; or (b) by loans, credit agreements and derivative instrument contracts. What is considered as a transfer of immovables for the purposes of the present article as well as of Article 14 is the transfer under bare ownership or enjoyment. The definition of private placement together with the restrictions and the conditions concerning participation to a private placement of mutual funds and portfolio investment companies registered in Greece, that are mentioned in paragraph 1 of previous
Ireland	Irish law does not contain a specific definition of securitisation.
Italy	Article 1(1) of the Securitisation Law states that the law applies to: 'securitisation transactions carried out by way of non-gratuitous assignment of pecuniary receivables, whether already in existence or arising in the future, and

COUNTRY	QUESTION 1: Securitisation Law (II) Does the law provide any definition of securitisation? Please specify.
	identifiable as a pool (*blocco*) where the assignment of more than one receivable is involved, and where the following conditions are involved: a) the purchasing company is a company provided for under Article 3 [see question 2(II)]; b) the sums paid by the assigned debtor(s) are to be used by the purchasing company exclusively toward the satisfaction of the rights incorporated in the notes issued, whether by the purchasing company or a separate entity, for the purposes of financing the purchase of such receivables, as well as toward the payments relating to the costs of the transaction'.
Luxembourg	Yes, Article 1(1) of the Securitisation Law provides: 'Securitisation, within the meaning of this law, means the transaction by which a securitisation undertaking acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities, whose value or yield depends on such risks'.
The Netherlands	No. Only the Solvency Regulation on Securitisation does (The Nederlandsche Bank): "Securitisation: A traditional or a synthetic securitisation. Synthetic securitisation: A structure that results in at least two different stratified risk positions or tranches that reflect different degrees of credit risk, and where the credit risk of underlying exposures is transferred, in whole or in part, through the use of funded or unfunded credit derivatives or guarantees. The investor's potential risk is dependent upon the performance of the pool of securitised exposures. Traditional securitisation: A structure where the cash flow from a pool of securitised exposures is used to service at least two different stratified risk positions or tranches reflecting different degrees of credit risk. Payments to the investors depend upon the performance of the specified underlying exposures and are not derived from a general obligation of the originator." However, the rules contained in this regulation are restricted to rules that relate to the solvency of credit institutions. Those rules are not being examined in this questionnaire.
Portugal	The Securitisation Law does not provide a definition of securitisation but defines which assets may be securitised, by which entities and through which SPVs. One can conclude that, pursuant to the Securitisation Law, 'securitisation' is the process by which an originator assigns its debts to a specific SPV (as laid down in the Securitisation Law) which, in turn, issues securities which, generally speaking, give [limited] recourse to the cash flows generated by the debt portfolio assigned.
Spain	Royal Decree 926/98, [further details – date and full title?] when describing the issuing vehicle for securitisation transactions (*fondo de titulización*), states that securitisation is a financial process whereby cash flows arising from the underlying assets (mortgage loans or others) are converted into fixed income securities.
Sweden	No, except in regulatory law. For the purpose of capital relief where a financial institution securitise assets, an SPV is defined as a Swedish or foreign entity, which is not a regulated entity in Sweden, which business is to directly or indirectly acquire assets and normally fund the acquisitions by issuing negotiable instruments on the market. The financial institution may not own the SPV and may not fund the SPV except for any first loss position. Also other restrictions apply.

COUNTRY	QUESTION 1: Securitisation Law (III) Please provide a short description or chart (as an annex) of the most common securitisation structures used in your jurisdiction.
Austria	In practice, securitisation structures have been market-driven rather than 'law-driven', although transactions are nevertheless structured so as to meet certain requirements of Austrian law. In past true sale securitisations, the originator's receivables were sold and transferred (on a one-time or revolving basis) to an off-shore SPV which issued asset-backed securities (in certain transactions only the 'economic', not 'legal' ownership in the receivables was transferred, using a trusteeship (*Treuhand*, a structure recognised by Austrian law). In one case the transaction was structured as a secured loan. Structural peculiarities have included:[1] - not creating written documentation (in Austria) in order to avoid Austrian stamp duty, - using a data protection trustee, in order to comply as closely as possible with Austrian data protection rules, - complying with Austrian perfection rules when granting *in rem* security, - establishing a 'parallel claim' in favour of the security trustee (if any), in order to comply with the 'accessory' principle of Austrian collateral law. [1] The use of some of these may have become (partly) obsolete following the introduction of the legal provisions described in the answer to question 1(I) .
Belgium	
Denmark	
England and Wales	Please see attached.
Finland	The securitisation structures used in Finland are largely similar to the structures used in the other Member States. The Finnish regulatory regime concerning securities has no distinctive features in this respect.
France	Please see attached.
Germany	Please see attached.
Greece	The most common structures in Greece concern securitisation of certain groups of loans (housing loans, consumer loans, etc.) transferred by banks, as originators.
Ireland	Please see attached.
Italy	A securitisation transaction under the Securitisation Law is based on two main agreements linked by a common purpose: a) a non-gratuitous assignment of pecuniary receivables from an assignor (hereinafter the 'originator') to an assignee, i.e. a company whose exclusive corporate purpose must be the implementation of one or more securitisation transactions (hereinafter the 'securitisation company' provided by Article 3

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<tr><td rowspan="2">COUNTRY</td><td>QUESTION 1: Securitisation Law</td></tr>
<tr><td>(III) Please provide a short description or chart (as an annex) of the most common securitisation structures used in your jurisdiction.</td></tr>
<tr><td></td><td>of the Securitisation Law, substantially equivalent to the SPV of the common law systems);
b) in order to finance the acquisition of the receivables, the issuance by the SPV of notes, which may be listed in a regulated market or privately placed with specific investors[2].
Under the Securitisation Law, collection and other activities related to the management of the assigned receivables (hereinafter ‘servicing activities’) have to be performed by separate entities (‘servicing agents’) and not by the SPV. As a consequence, in addition to the two main contracts, the securitisation company enters into mandate agreements with third-party entities providing servicing activities.

The Securitisation Law provides two other possible ‘structures’, substantially different from the ‘traditional’ structure described above.

Pursuant to Article 7(1) of the Securitisation Law, the provisions of that Law shall apply also to securitisations ‘realised by the granting of financing to the selling entity by the company issuing the notes’.

In this case, no credit portfolio assignment is envisaged: the transaction is based on the granting of financing by the issuing company (financing entity) to the originator (financed entity), facing the issuance of the notes. [Please clarify this sentence] The financing and the financed entity, to which the underlying debtor (i.e. the assigned debtor in the ‘traditional’ scheme) is completely unrelated, sign an agreement.

The credits remain the property of the financed entity (i.e. the originator).The originator undertakes to pay back the loan to the financing entity as it [collects the credits portfolio].

The other possible structure is envisaged by Article 7(1)(b) of the Securitisation Law according to which the provisions of that Law shall also apply to ‘assignments to mutual investment funds, having [holding?] receivables, established in accordance with Legislative Decree No 58 of 24 February 1998’ (the ‘Consolidated Law on Finance’[3]). The concept of a common pool of debts (fondi comuni di crediti) was introduced by Ministerial, Decree No 228 of 24 May 1999 and the Banca d’Italia, by the Governor’s Decision of 20 September 1999. The assets of such funds must be invested exclusively in [credits] the object of securitisation transactions and such funds must be ‘closed-end funds’, managed by a specialised financial intermediary. Such funds therefore have a similar structure to those employed in France (fonds communs de créance) and in Spain (fondos de titulizaciòn).

This securitisation technique is based on the principle of the separation of the assets pertaining to the fund from those pertaining to the management company, provided by Article 3(2) of Law No 77 of 23 March 1983 on the establishment of mutual investment funds, according to which ‘each fund constitutes an independent pool of assets, separate for all intents and purposes from the assets of the management company’.</td></tr>
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[2] As stated below (see question 2(VII)), this simple structure may be made more complex by ‘articulating’ this second phase, i.e. by using two or more special purpose entities, one purchasing the receivables and the other issuing the notes.
[3] The English version of the Consolidated Law on Finance can be found at: http://www.consob.it/mainen/legal_framework/index.html.

COUNTRY	QUESTION 1: Securitisation Law
	(III) Please provide a short description or chart (as an annex) of the most common securitisation structures used in your jurisdiction.
	The first method of securitisation by the assignment of receivables is the most widespread technique employed on the market in Italy. This is mainly due to the fact that the Securitisation Law only provides a structured and explicit legal framework for securitisations established by way of the assignment of receivables; as concerns the other two structures, the Securitisation Law merely provides a generic 'extension' of the rules applying to 'traditional' securitisation, 'where compatible' (Article 7(1)), with the consequence that many important legal issues require clarification. Law No 80 of 14 May 2005 has amended the Securitisation Law, introducing new Articles 7*bis* and 7*ter* of the Securitisation Law, allowing banks to issue covered bonds under certain circumstances, guaranteed by specific types of receivables.
Luxembourg	The most common securitisation structure is the 'traditional' securitisation . However, more complex structures have developed over recent years, and have been given legal certainty by the enactment of the Securitisation Law.
The Netherlands	The originator sells and delivers assets – usually receivables - to an SPV. That SPV then issues bonds or commercial paper, secured by the transferred assets.
Portugal	The most common securitisation structures used in Portugal are described in the attached charts.
Spain	Please see attached.
Sweden	Loan Structure: please see separate chart True sale – Term: please see separate chart

COUNTRY	QUESTION 1: Securitisation Law (IV) Which securitisation techniques are covered by national law (traditional securitisation, synthetic securitisation and recourse to credit derivatives, whole business securitisation, etc.)? In the absence of a specific national legal framework, please specify whether and if so, how, these techniques can be used in your jurisdiction.
Austria	§ 2(60) of the BWG (see question 1(I)) refers to both true sale and synthetic securitisation. Generally, Austrian law allows for any type of securitisation, taking into account certain legal peculiarities that should be addressed by each structure (see question 1(III)). There has been no whole business securitisation in Austria as yet. For a number of reasons (including creditors having comparatively little control over the debtor's bankruptcy, and restrictions on the ability of creditors to establish effective security over the working capital assets of an undertaking) it would appear that the Austrian legal environment does not easily accommodate whole business securitisation.
Belgium	
Denmark	
England and Wales	English law does not provide for a specific legal framework. The UK securitisation market has seen many securitisations since the early 1980s: residential mortgage-backed securities (RMBS), commercial mortgage-backed securities (CMBS), cash flow and synthetic collateralised debt obligations(CDOs), collateralised loan obligations (CLOs), auto loans, consumer loans, trade receivables and leases as well as whole business securitisations. Master trust structures are commonly used with RMBS prime and credit card markets, which are almost entirely composed of issuances from master trust structures.[4]
Finland	There is no specific legal framework for securitisation techniques, which are covered by general provisions of national law. Finnish law does not specifically restrict or prohibit the use of a specific technique. All the examples given in the question can be used.
France	Both traditional and synthetic securitisation is covered by the Financial Securitisation Law. As stated at question 1(II), FCCs are expressly authorised to have recourse to credit derivatives. FCCs are now a more secure alternative to CDOs vehicles, which are usually incorporated overseas. As stated in the answer to question 1(III), an FCC will complete its management strategy either by purchasing receivables or by entering into credit derivative agreements in order to bear the credit risk in respect of one or more reference entities of any nature. In the first case, FCCs will be structured as cash flow securitisation vehicles; in the second, FCC will be structured as synthetic securitisation vehicles and sellers of credit protection. Nothing in the Financial Securitisation Law or Decree No 2004-1255 prohibits structuring an FCC as a hybrid securitisation vehicle. The same FCC may have two cumulative management strategies.
Germany	German law does not provide for a specific legal framework. All kinds of structures, including traditional and synthetic securitisations, are used in Germany.
Greece	The Securitisation Law covers only traditional securitisation techniques.

[4] A structure whereby the receivables will assigned to a receivables trustee who will declare a trust over the receivables which it may own from time to time in favour of the beneficiaries of the trust, usually the seller/originator and an investor beneficiary.

COUNTRY	QUESTION 1: Securitisation Law (IV) Which securitisation techniques are covered by national law (traditional securitisation, synthetic securitisation and recourse to credit derivatives, whole business securitisation, etc.)? In the absence of a specific national legal framework, please specify whether and if so, how, these techniques can be used in your jurisdiction.
Ireland	As mentioned at question 1(I), there is no specific legislation governing securitisation transactions. It is possible to implement a wide variety of securitisation structures, including true sale and synthetic (using credit default and/or total return swaps) securitisation.
Italy	Only 'traditional' securitisation, carried out using one of the three techniques described at question 1(III), is explicitly covered by Italian civil law. In particular, synthetic securitisation, in which the credits portfolio is not the object of an assignment, but is elected as the reference entity regulating the obligations of the originator and the vehicle respectively, is excluded from the scope of the Securitisation Law. [Do you mean that synthetic securitisations merely fall outside the scope of application of the Securitisation Law or have they been expressly excluded? The word "excluded" indicates an express exclusion]
Luxembourg	The Securitisation Law covers any and all types of securitisation techniques. [to be developed]
The Netherlands	As mentioned in answer 1.1, there is no specific law applicable to securitisations in the Dutch jurisdiction. Both traditional and synthetic securitisation have become important risk management tools for credit institutions, as well as means of offering market financing to their clients.
Portugal	The Securitisation Law only covers traditional securitisation techniques. There is no specific legal regime for synthetic securitisation; general provisions of national law apply. [, with recourse to credit derivatives. Delete?] Credit derivative products do not have a specific legal regime either, with the exception of the issue of domestic credit linked notes [Would it be useful to insert further information about domestic credit linked notes? Does a specific regime apply to them?]
Spain	National law covers all the examples given in the question [expressly?].
Sweden	The regulatory provisions referred to above, deal with true sale transactions. Other general regulatory provisions deal with credit linked notes. These will apply to synthetic securitisations. To obtain perfection under Swedish law, debtors need to be notified or, in respect of promissory notes, possession needs to be transferred. Otherwise all techniques should be possible to use.

COUNTRY	QUESTION 1: Securitisation Law (V) Are there any limitations in terms of types of securitised assets? Please specify. Does the law provide for the securitisation of future cash flows? If so, please give the definition of future cash flows according to legislation or case-law.
Austria	(1) There are no specific limitations in terms of types of securitised assets. The normal criterion would be that the asset may be legally transferred. Until 1 June 2005 the assignment of a receivable was void if there was a contractual prohibition on assigning the receivable. However, under new legislation which has recently come into force, from 1 June 2005 this is no longer the case for receivables created on or after that date. (2) Generally, future cash flows may be legally assigned and thus can be securitised. The assignment of the receivable is ineffective only where the contract underlying the receivable has not been entered into by the time bankruptcy proceedings are initiated with respect to the debtor's assets.
Belgium	
Denmark	
England and Wales	Not applicable. See question 1(IV).
Finland	There is no specific legal framework for securitisation techniques, which are covered by general provisions of national law. Finnish law does not specifically restrict or prohibit the use of a specific technique.
France	Decree No 2004-1255 has extended the list of eligible assets of FCCs. Pursuant to Articles 2 and 3 of the Decree, the assets of the FCC may consist of the following: - Receivables arising from an existing agreement (*acte déja intervenu*) or a future agreement (*acte à intervenir*). Such receivables may be governed by French law or any foreign law, and can be non-matured receivables, future receivables (the amount and maturity of which are not determined on the relevant transfer date) or defaulted (*immobilisées*) receivables, doubtful receivables (*douteuses*) or receivables subject to litigation (*litigieuses*). - Debt securities (governed by French law or foreign law) which represent a monetary claim against the relevant issuer. - Debt securities purchased in connection with the cash management of the temporary excess cash available to an FCC. The Financial Securitisation Law expressly authorises securitisation of future receivables. However prior to 7 December 2004, the French courts did not authorise the securitisation of future receivables.
Germany	There are no specific limitations in terms of types of securitised assets. German law does not lay down specific provisions governing the securitisation of future cash flows. However the securitisation of future cash flows must be structured in compliance with the relevant sections of the Insolvency Code (e.g., §§ 47, 103, 108 of the Insolvency Act [year]).
Greece	According to Article 10(6) of the Securitisation Law, securitised assets consist of claims against any third party, including consumers; such claims can also be future or conditional [could you clarify "conditional"?]. In addition, [formational?] rights (i.e. rights to establish, change or terminate a legal relationship) or other rights, even if these do not constitute accessory rights within the meaning of Article 458 of the Civil Code, may be transferred along with the securitised claims provided that they are connected to the latter. Future claims can be securitised provided that they are ascertained or ascertainable in any way whatsoever.

COUNTRY	QUESTION 1: Securitisation Law (V) Are there any limitations in terms of types of securitised assets? Please specify. Does the law provide for the securitisation of future cash flows? If so, please give the definition of future cash flows according to legislation or case-law.
Ireland	As mentioned above, there is no specific legislation governing securitisation transactions. It has, however, proved possible to securitise a wide range of Irish and non-Irish assets through Irish SPVs, including commercial and residential mortgages, consumer loans, trade receivables, commercial loans, aircraft leases, portfolios of bonds, etc.
Italy	Pursuant to the definition of securitisation transactions contained in Article 1 of the Securitisation Law, the types of assets that can be securitised under Italian law are only monetary claims, i.e. 'receivables' (*crediti pecuniari*). Italian securitisation legislation applies to existing and future receivables, whether performing or non-performing. The Securitisation Law also applies where the assignment of more than one receivable is involved, provided that the receivables are identifiable as a 'pool' (*individuabili in blocco*), i.e. to the extent that they are capable of being distinguished by a common feature, on the basis of objective and predefined criteria. As far as assignment of future monetary receivables is concerned, the Securitisation Law is silent as to the extension of the [faculty.?][to be clarified] In particular, the Securitisation Law does not refer to the provision (Article 3) contained in Law No 52 of 21 February 1991 on factoring, which authorises Italian companies to assign credits that are identifiable as a pool, even before the agreements underlying such credits are entered into, on condition that such agreements are entered into within 24 months following the assignment. As a consequence, it is questionable whether Italian originators can assign, under a securitisation transaction, credits deriving from commercial activities where the contracts underlying those credits have not been entered into at the moment the assignment agreement is signed. A conservative approach would suggest that the only types of receivables that can be effectively securitised are those that arise from contracts already in place at the time of the assignment. This is the reason why transactions involving the assignment of receivables arising from contracts not already entered into are usually structured through the use of revolving purchase arrangements between the originator and the purchasing company, whereby receivables are sold by the originator as and when they arise after the date of the initial transfer.
Luxembourg	There are no limitations; the Securitisation Law covers all types of assets and risks. Article 53(1) of the Securitisation Law provides: 'Risks relating to the holding of assets, whether movable or immovable, tangible or intangible, as well as risks resulting from the obligations assumed by third parties or relating to all or part of the activities of third parties are capable of being securitised.' Future cash flows are also covered by the Securitisation Law. Article 54 thereof provides that securitisation undertakings may acquire and (subject to certain conditions) transfer claims and other assets, existing or future. As regards the definition of a future claim, Article 55(2) of the Securitisation Law provides that a future claim, which arises out of an existing or future agreement, is capable of being assigned to or by a securitisation undertaking, provided that it can be identified as being part of the assignment at the time it comes into existence or at any other time agreed between the parties.
The Netherlands	Under Dutch Law, a receivable which does not yet exist may be sold and assigned in advance by the seller so that the purchaser automatically becomes the owner thereof when it comes into existence provided that the receivable is sufficiently identified in the deed of assignment and the requirements for the transfer of ownership are met. If the assignment is effected pursuant to section 3:94 (1) of the Dutch Civil Code, the assignment of the fuure receivable has to be notified to the relevant debtors. If the assignment is effectuated pursuant to section 3:94 (3) of the Dutch Civil Code, the legal relationship from which such receivables results must already exist at the time of the assignment in advance Furthermore, it is of note that an assignment of a future receivable will not be effective to the extent the receivable comes into existence after or on the date on which the seller has been declared bankrupt or has had a suspension of payments granted to it . This stands in the way of the securitisation of operational lease contracts or assignment of future rent**.**

COUNTRY	QUESTION 1: Securitisation Law (V) Are there any limitations in terms of types of securitised assets? Please specify. Does the law provide for the securitisation of future cash flows? If so, please give the definition of future cash flows according to legislation or case-law.
Portugal	The Securitisation Law limits the type of assets (debts/receivables) that can be securitised. Receivables may only be assigned when there are no legal or contractual restrictions on their assignability and provided that such receivables: (i) are monetary in nature; (ii) are not subject to any conditions; and (iii) have not been encumbered, pledged or seized under litigation. When the securitisation transaction is carried out by the State or the social security system, debts not complying with items (ii) and (iii) above may be assigned. The Securitisation Law establishes that future receivables may be securitised, provided that the amount of the receivables to be assigned is established or quantifiable at the moment of the assignment and that they arise from contractual relationships existing at the moment of the assignment. The purchaser will become the owner of the 'sold' receivables immediately when they come into existence. The future receivables to be securitised must comply with the general requirements laid down by the Securitisation Law, which means that such future receivables must be monetary in nature, must not be encumbered, pledged, or seized under litigation, must not be subject to any condition and the respective transfer must not be subject to any legal or contractual restrictions. Any registration requirements, if applicable, must be complied with. The Securitisation Law also expressly provides for the possibility of assigning mortgage loans with subsidised interest.
Spain	The assets to be securitised must be credit rights that appear as an asset in the balance sheet of the originator. Future credit rights may also be securitised if the assignment agreement is sufficient evidence of the assignment of title.
Sweden	Future cash flow can be securitised provided that the originator has performed its related obligations at the point of funding. Lease assets can be securitised provided the lease object is subject to a perfected interest of the SPV. All financial assets can be securitised, generally.